

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2011-CP-43-1192

Michael Boulware,

Petitioner,

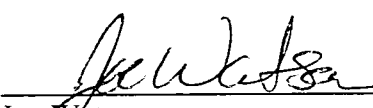
v.

State of South Carolina,

Respondent.

2013-000513

APPENDIX



Joe Watson
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-0380
(864) 672-1406 (fax)

Attorney for the Petitioner

Megan E. Harrigan
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Dated this 20 day of August, 2013
Greenville, South Carolina

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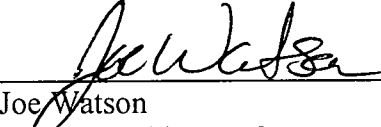
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EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2013 FEB 21 PM 1:17

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Michael Boulware, #343541, JAMES C. CAMPBELL
Applicant, CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2011-CP-43-1192

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Dandra C. O'Quinn

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed June 17, 2011. The Respondent made its Return on September 19, 2011. An evidentiary hearing into the matter was convened on December 12, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Joseph J. Watson, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the September 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor – Second Degree, Lewd Act on a Child (2010-GS-43-1137), and Contributing to the Delinquency of a Minor (2010-GS-43-1140). Edgar R. Donnalld, Jr., Esquire, (herein "Counsel") represented Applicant on these charges. On November 8, 2010, Applicant appeared before the Honorable George C. James, Jr., and pled guilty to as indicted to Contributing to the Delinquency of a Minor and Criminal Sexual Conduct with a Minor, Second Degree. Judge James sentenced Applicant to three years

imprisonment for Contributing to the Delinquency of a Minor and twelve years imprisonment for Criminal Sexual Conduct with a Minor – Second Degree, with both sentences to be served concurrently. The Lewd Act on a Minor charge was *nolle prossed* pursuant to the plea. Applicant did not appeal his pleas or sentences.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations:

1. Ineffective Assistance of Counsel
 - a. “Advised would receive a certain sentence”
 - b. “Failure to advise of all constitutional rights”
 - c. “Failure to investigate and inadequate preparation”

At the evidentiary hearing, Applicant proceeded forward on the following specific allegations of ineffective assistance of counsel:

1. Counsel advised Applicant he would receive a maximum sentence of no more than three years if he pled guilty;
2. Counsel failed to object to comments from Applicant’s former wife regarding having her minor daughters evaluated; and
3. Counsel failed to advise Applicant that he was entitled to two separate trials for these charges.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his wife, Kelly Sosebee, his brother, Richard Boulware, his mother, Kay Boulware, and his father, Walter Boulware. Respondent presented testimony from Counsel. This Court also had before it a copy of the Applicant’s guilty plea transcript, the records of the Sumter County Clerk of Court, and the Applicant’s records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that he is currently twenty-nine years old, holds two associates degrees, and is a former Air Force serviceman who was in active duty in Korea and Iraq and was honorably discharged in August, 2006. Applicant testified

that at the time of the incidents, he was a Sumter County Sheriff's Deputy. Applicant testified that the victim in the Criminal Sexual Conduct with a Minor – Second Degree victim is his former wife's niece. Applicant testified that he retained Counsel to handle his annulment from his former wife. Applicant testified that he retained Counsel for these criminal charges because he was satisfied with Counsel's prior services with his annulment. Applicant testified that he first met with Counsel when he was released from the Sumter-Lee Regional Detention Center and met with him multiple times throughout his representation. Applicant testified that his current wife, Kelly Soesbee, as well as his parents Kay and Walter Boulware, were present for some of his meetings with Counsel.

Applicant testified that he met with Counsel several times in the fall of 2010 to discuss his case and the likelihood of an upcoming trial date. Applicant testified he wanted to plead guilty to Contributing to the Delinquency of a Minor, but did not want to plead guilty to Criminal Sexual Conduct with a Minor – Second Degree. Applicant testified he only decided to plead to both charges because Counsel assured him he would receive a maximum sentence of no more than three years imprisonment and would likely receive a probationary sentence. Applicant testified that Counsel assured him that he would receive a lenient sentence, because Counsel was friends with the trial judge, with whom he played golf, attended church, and helped to get reelected. Applicant acknowledged that he signed the two sentencing sheets that were clearly marked "Without Negotiations or Recommendations" and that he heard the trial court state several times on the record that he was pleading without any recommendations or negotiations from the State regarding sentencing.

Applicant testified that his Contributing to the Delinquency of a Minor charge stems from an incident where he provided alcohol to three fourteen year old minors, at least one of whom

was related to his former spouse. Applicant testified that was arrested for this charge before the Criminal Sexual Conduct with a minor – Second Degree and the Lewd Act with a Minor charges. Applicant testified that he voluntarily admitted his guilt to fellow law enforcement officers before he was even questioned regarding the Contributing to the Delinquency of a Minor charge. Applicant testified that he is guilty of providing alcohol to these minors as was alleged in this indictment.

Applicant testified that he is not guilty of Criminal Sexual Conduct with a Minor – Second Degree. Applicant acknowledged that he stated under oath that he was indeed guilty of this crime, but testified that he was untruthful on the advice of Counsel. Specifically, Applicant testified that he asked Counsel if he should be honest during his guilty plea, to which Counsel replied, “No, you need to convince the judge you are guilty.” Applicant testified he lied when the trial court asked him if he understood he could receive an aggregate sentence of up to twenty-three years imprisonment, but that he only did so only on the advice of Counsel. Applicant acknowledged that there is an audio recording of a telephone conversation between himself and the minor victim, but denied that he admits to having sexual relations with her on the tape.

Following his testimony, Applicant presented testimony from his wife, Kelly Sosebee (herein “Sosebee”). Sosebee testified that she was dating Applicant and married him while these charges were pending. Sosebee testified that she was present for meetings between Counsel and Applicant on the Sunday before his guilty plea, as well as conversations before and after his guilty plea. She testified that during these meetings, Counsel advised Applicant that he would likely receive a probationary sentence, but at most would receive a sentence of no more than three years. She testified that Counsel assured Applicant, as well as members of Applicant’s family, that Applicant would receive a lenient sentence, because he played golf with the judge

and the judge “owed him a favor.” Sosebee testified that she was present for her husband’s guilty plea and heard the solicitor and the judge both state that the plea was without any negotiations or recommendations from the State.

Following Sosebee’s testimony, Applicant’s brother, Richard Boulware, testified. He testified that he was present for the meeting between Applicant and Counsel the Sunday before Applicant’s guilty plea, as well as for the conversations before and after Applicant’s guilty plea. He stated that Counsel told Applicant that he would receive no more than a three year sentence if he pled guilty, but that if he proceeded to trial, Applicant would likely receive a sentence between eighteen and twenty-one years. He testified that Counsel advised Applicant to lie to the plea court during his guilty plea.

Following testimony from Applicant’s brother, Applicant’s mother Kay Boulware testified on her son’s behalf. She testified that she met with Counsel four times, including a meeting with Counsel and her husband without Applicant. She elaborated that at this meeting, as well as during several phone conversations with Counsel, she and her husband offered to provide financial assistance to the Criminal Sexual Conduct with a minor victim in hopes of making her son’s charges disappear, as she wanted to do whatever possible to assist her son. She testified that Counsel told Applicant numerous times that he would receive a sentence of no more than three years, but would likely receive a probationary sentence. She testified that Counsel told her and Applicant that he was close with the plea judge, whom he helped get elected to the bench and was golfing buddies. She testified that Counsel stated that due to this close relationship, the plea judge “owed him a favor” and Applicant would receive a lenient sentence. She testified that Counsel advised Applicant to lie during his plea to “convince [plea court] you’re guilty.” She testified that he son admitted his guilt to her regarding the Contributing to the Delinquency of a

Minor charge, but that he denied his guilt regarding the Criminal Sexual Conduct with a Minor – Second Degree charge.

Following the testimony of Kay Boulware, Applicant's father, Walter Boulware, testified on his son's behalf. He testified that he met with Counsel five times and some of these meetings were without his son. He testified that he and his wife asked Counsel numerous times if they could provide financial assistance to the Criminal Sexual Conduct with a Minor victim in exchange for the charge being dismissed. He testified that Counsel told him and Applicant that the plea judge owed him a favor and would give Applicant a lenient sentence due to their close relationship. He testified that Counsel advised Applicant that he would receive a sentence of no more than three years imprisonment. Additionally, he testified that Counsel told him and Applicant that he was unprepared to try the case, so Applicant needed to plead guilty. He testified that he witnessed Counsel advising Applicant to lie during his plea. He testified that he met with Counsel following the plea to discuss a possible sentence reduction.

Following Applicant's presentation of testimony, Respondent called Counsel to testify. Counsel testified that he has been practicing law for ten years. He testified that he was previously employed as an Assistant Attorney General in the Prosecution Division and an Assistant Solicitor in Richland County, so he felt very competent handling criminal matters when he was retained by Applicant. Counsel testified he has represented Applicant twice previously, handling both his divorce and his annulment. Counsel testified he was retained for these charges immediately after Applicant was arrested for Contributing to the Delinquency of a Minor, and that after speaking with Applicant, he was afraid that he would be arrested for the Criminal Sexual Conduct with A Minor charge in the near future. Counsel testified he met with Applicant numerous times, likely between five and ten times. Counsel testified he also met with members

of Applicant's family "three or four times." Counsel testified he represented Applicant at his bond hearing and was able to successfully get Applicant released on bond while he awaited a disposition of these charges.

Counsel testified that he discussed the elements of the crimes, what the State was required to prove, and potential defenses with Applicant. He stated that Applicant stated he did not want a trial on these charges and was interested in reaching a favorable plea agreement with the State. Counsel testified that he could not recall whether he discussed with Applicant that he was entitled to two separate trials for the charges, but that Applicant never once indicated he wanted to proceed to trial. Counsel also testified that the Contributing to the Delinquency of a Minor case was never called to trial, only the Criminal Sexual Conduct with a Minor – Second Degree charge. Additionally, Counsel testified that the various charges were interrelated, as both involved allegations of providing alcohol to minors, so he did not think it would have been necessary to have two separate trials or move to sever the cases. Specifically, Counsel testified that Applicant told him he was "so drunk" during the time of Criminal Sexual Conduct with a Minor – Second Degree incident that he could not recall what happened at all and that the minor victim was also under the influence of alcohol. Counsel testified that Applicant informed him that he was under a "haze of drunkenness" during the time these incidents occurred. Counsel testified that based on Applicant's own admission that he was too intoxicated to recall the incident, Counsel was wary of being able to present a defense at trial on this charge.

Counsel testified that he was prepared to proceed to trial on these charges, despite his client's complete inability to recall the incident due to intoxication. Counsel acknowledged that he did not have any voir dire prepared or witnesses subpoenaed for trial, but testified that at the

time of Applicant's guilty plea, a trial was "three to four weeks away at earliest," providing him ample time to complete trial preparation if necessary.

Counsel testified that he thinks Applicant "caught a bad break because the case was referred to the prosecution Coordination Commission because the Solicitor's office conflicted out" because Applicant was a Sheriff's Deputy. Counsel elaborated that he thinks that because of this, no plea offers were made regarding the Criminal Sexual Conduct with a Minor – Second Degree charge. He stated that the prosecutor assigned to the case was mainly interested the sex crime and did not focus on the Contributing to the Delinquency of a Minor charge, which was never called to trial. Counsel testified that he informed Applicant, as well as Applicant's family, that no negotiation or recommendation was being made by the State. He testified that he explained to Applicant and his family that this meant Applicant could receive up to the maximum sentence on each charge. Counsel testified that he never told Applicant or any family members that Applicant would receive a sentence of three years or less if he entered a guilty plea. Counsel testified that he did tell Applicant and his family that the court is traditionally inclined to give defendants who admit their guilt more lenient sentences and that Applicant likely would not receive the maximum sentence for each charge. Applicant also testified that once he knew the plea would be before Judge James, he informed Applicant and his family that Judge James had recently sentenced a defendant with similar crimes to a sentence between five to seven years. Counsel testified that he never told or inferred to Applicant or his family that he had an improper relationship or influence over Judge James that would result in a more lenient sentence. In regards to the specific testimony from Applicant and his various family members that he was "golfing buddies" with Judge James, as well as helped with his election, Counsel testified that he does not play golf and was in no way involved with Judge James' election; he

did acknowledge that he attends the same church as Judge James, but that he did not inform Applicant or his family of this. Counsel testified he advised Applicant and his family that because Criminal Sexual Conduct with a Minor – Second Degree is categorized as violent, Applicant would have to serve at least eighty-five percent of his sentence before being eligible for release.

Counsel testified that he never advised Applicant to lie or anything less than truthful during his guilty plea hearing. He testified that he has never advised any client to lie under oath or to a court. Counsel testified that he did inform his client that he had appeared before Judge James countless times for guilty pleas and that Judge James typically requires defendants to admit their actions while under oath.

Counsel testified that during Applicant's guilty plea, Applicant's former wife addressed the court and stated that her two minor daughters were evaluated following these incidents. Counsel testified that he did not object to these comments because in his professional opinion, he did not think it was wise to ask Judge James to ignore a victim's statement. Counsel stated that shortly after these comments, he did emphasis to the court numerous times that this incident was limited to one victim and there was nothing to indicate any more minors were involved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors,

he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for advising Applicant he would receive a maximum sentence of no more than three years if he pled guilty.

Applicant alleges that Counsel was ineffective for advising him that he would receive no more than a three year sentence if he pled guilty. In support of this allegation, Applicant presented testimony from himself, his wife, brother, mother, and father, who all stated that Counsel informed them numerous times he would receive no more than three years if he pled guilty. However, Counsel testified that informed Applicant that there was no negotiation or recommendation from the State and that he could receive up to the maximum sentence on each charge. Counsel elaborated that he informed Applicant that he would likely receive a more lenient sentence than the maximum if he entered a guilty plea, as courts often reward defendants for admitting their guilt. This Court finds Counsel's testimony to be credible. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. Counsel advised Applicant that he could receive up to the maximum sentence on each charge to which he pled guilty. The plea court advised Applicant of the maximum sentence he could receive for each crime and that there was no recommendation or negotiation from the State. Applicant was sentenced to well below the maximum, receiving an aggregate total of

twelve years imprisonment. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective for failing to object to comments from Applicant's former wife regarding having her minor daughter's evaluated

Applicant alleges that Counsel was ineffective for failing to object to comments made by his former wife at his plea regarding having her minor daughter's evaluated for sexual assault. Counsel testified that he did not object to these comments because in his professional opinion, he did not think it was wise to ask Judge James to ignore an impact statement from a victim or someone affected by the crimes. Counsel stated that shortly after these comments, he did stress to the court numerous times that this incident was limited to one victim and there was nothing to indicate any more minors were involved. This Court finds that the record from Applicant's guilty plea shows that immediately following the comments in question from Applicant's former wife, Counsel did emphasis to the plea court that there was only one victim of Criminal Sexual Conduct and no evidence to support that any other minors were involved or harmed. See Tr. p. 34 lines 4-15. Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has failed to meet his burden of demonstrating any actual prejudice from this alleged deficiency of counsel. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

Counsel was ineffective for failing to advise Applicant that he was entitled to two separate trials

Applicant alleges that Counsel was ineffective for failing to advise him that he was entitled to two separate trials, one for Contributing to the delinquency of a Minor and one for Criminal Sexual Conduct with a Minor – Second Degree. Counsel testified that he could not recall whether he discussed with Applicant that he was entitled to two separate trials for the charges, but that Applicant never once indicated he wanted to proceed to trial. Counsel also testified that the Contributing to the Delinquency of a Minor case was never called to trial, only the Criminal Sexual Conduct with a Minor – Second Degree charge. Additionally, Counsel testified that the various charges were interrelated, as both involved allegations of providing alcohol to minors, so he did not think it would have been necessary to have two separate trials or move to sever the cases. Based on the foregoing, this Court finds that Counsel's performance was reasonable and effective in regards to this allegation.

Furthermore, Applicant failed to meet his burden of showing he was prejudiced by Counsel's alleged deficiency. This Court holds that the Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

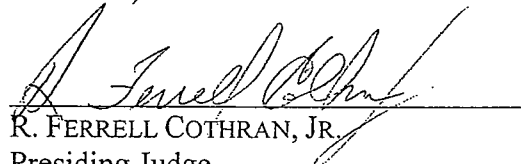
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Feb., 2013.


R. FERRELL COTHAN, JR.
Presiding Judge
Third Judicial Circuit

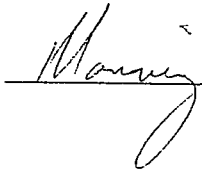
, South Carolina.

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER
STATEVS.
MICHAEL J. BOULWARE

AKA:

Race: W Sex: M Age: 27

DOB: 04/30/83 SS#: [REDACTED]

Address:

City, State, Zip:

DL# 101130530 * 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: Contributing to the Delinquency of a MinorIn violation of § 16-17-490 of the S.C. Code of Laws, bearing CDR Code # 0048
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☒ Without Negotiations or Recommendation, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Suzanne D. [Signature], 64191
Solicitor SC Bar #

Defendant

Attorney for Defendant

12333
SC Bar #WHEREFORE, the Defendant is committed to the State Department of Corrections for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$14-1-211 (A)(2)(DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

\$90.7(SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$ 100.00

\$ 100

\$ 12

\$ 25

\$ 500

\$ 25

\$ 100

\$ 50

\$ 40/ea

\$ 5

\$ 5.00

\$ 3.90

\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

James C. Campbell
Margaret Sullivan

Presiding Judge

Judge Code:

Sentence Date

SCCA/217 (11/2009)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010 -GS- 43 - 1140

AW#: DIR00041

Date of Offense: March 1-June 30, 2009

S.C. Code §: 16-17-490

CDR Code #: 0048

SENTENCE SHEET

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER
STATEVS.
MICHAEL J. BOULWARE

AKA:

Race: W Sex: M Age: 27

DOB: 04/30/83 SS#: [REDACTED]

Address:

City, State, Zip:

DL# 101130530 * 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: COUNT ONE: Criminal Sexual Conduct with a Minor - Second Degree

In violation of § 16-3-655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☒ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

[Signature] 64191
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 12 months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211 (A)(1)(Conv. Surcharge)	\$	
§ 14-1-211 (A)(2)(DUI Surcharge)	\$	100.00
§ 56-5-2995 (DUI Assessment)	\$	
§ 56-1-286 (DUI Breath Test)	\$	
§ 47.12 (Public Def/Prob)	\$	500
§ 14-1-212 (Law Enforce. Funding)	\$	
§ 14-1-213 (Drug Court Surcharge)	\$	25.00
§ 50-21-114 (BUI Breath Test Fee)	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$	
§ 90.7(SCCJA Surcharge)	\$	5
3% to County (if paid in installments)	\$	5.00
TOTAL	\$	133.90

Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

SCCA/217 (11/2009)

EXHIBIT 4

State of South Carolina)
)
County of Sumter)
)

The State of South Carolina,
Plaintiffs

vs.

Guilty Plea

Michael Boulware,
Defendant

November 8, 2010
Sumter, S.C

BEFORE THE HONORABLE George C. James, Jr., Judge.

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

Ms. L. Suzanne Mayes,
Assistant Solicitor for the State

Mr. Edgar R. Donnalld, Jr.
Attorney for Defendant

Margaret T. Sullivan,
Court Reporter

1 THE COURT: Ms. Mayes.

2 MS. MAYES: Yes, sir, Your Honor. The
3 next case brought before the court is the State
4 versus Michael Boulware.

5 THE COURT: According to the relatively
6 brief conversations I had with the lawyers last
7 week, this is a plea. Is that correct?

8 MS. MAYES: Yes, sir, Your Honor.

9 MR. DONNALD: That's correct.

10 MS. MAYES: Your Honor, the indictment is
11 for criminal sexual conduct with a minor in the
12 second degree. It is Indictment No.
13 2010-GS-43-1137. He tenders a plea of guilty at
14 this time, of Count 1, which is criminal sexual
15 conduct with a minor in the second degree. The
16 second Indictment before the court is Indictment
17 No. 2010-GS-43-1140. And that Indictment is for
18 contributing to the delinquency of a minor.

19 THE COURT: Mr. Donald, you represent
20 Mr. Boulware?

21 MR. DONNALD: I do, Your Honor.

22 THE COURT: Is it Bullware or Boulware?

23 MR. DONNALD: Boulware.

24 THE COURT: Boulware. All right, does he
25 understand both of these charges and his rights

1 and the nature of the punishment?

2 MR. DONNALD: He does, Your Honor.

3 THE COURT: And Count 2 on the CSC
4 Indictment is being dismissed.

5 MR. DONNALD: That's correct, Your Honor.

6 THE COURT: And the CSC charge, does he
7 understand it carries up to 20 years? And the
8 other is up to 3 years?

9 MR. DONNALD: He does, Your Honor.

10 THE COURT: Based on your knowledge of the
11 facts is it likely that a jury would find him
12 guilty of both of these offenses?

13 MR. DONNALD: I do.

14 THE COURT: And all and all do you agree
15 with his decision to enter these two pleas?

16 MR. DONNALD: I do, Your Honor.

17 THE COURT: Do you have any concerns about
18 his competency?

19 MR. DONNALD: None.

20 THE COURT: Does he understand the fact
21 that the CSC count is considered under South
22 Carolina law to be a violent crime, and what the
23 ramifications of that are?

24 MR. DONNALD: He does, Your Honor.

25 THE COURT: Your name, sir?

1 THE DEFENDANT: Michael Boulware.

2 THE COURT: Mr. Boulware, before I can
3 accept your plea, I am required to ask you a lot
4 of questions to make sure you enter your plea
5 freely and voluntarily. If at any time, you do
6 not understand the words I use or as a matter of
7 fact, you don't understand or agree with anything
8 that anybody says; specifically, the lawyers or
9 perhaps law enforcement who might talk to anybody,
10 you let your lawyer know and he will let me know.
11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And that means that anything
14 that you don't agree with, and anything that you
15 don't understand. All right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Also if at any time you want
18 to stop and talk to your lawyer, do not hesitate
19 to let me know that you want to do that. And we
20 will stop immediately and you will have a chance
21 to confer with your lawyer. Do you understand
22 that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And the reason I say all that
25 is because this is your guilty plea. It is not

1 Ms. Mayes' plea. It's not Mr. Donnalld's plea.
2 It's not the law enforcement officer's plea. It's
3 your plea. So it is absolutely vital that you
4 understand everything that is going on. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: Now, first of all, do you
8 understand that you do have a right to a jury
9 trial?

10 THE DEFENDANT: Yes.

11 THE COURT: Is this case on the trial
12 list?

13 MS. MAYES: Yes, sir, Your Honor.

14 THE COURT: In a minute I am going to
15 explain to you certain of your rights which you
16 have under the constitution. But before we can
17 really get started, do you understand that you can
18 have a jury trial. And we can stop right now. Or
19 any time during the plea we can stop, and recess
20 and the case will be called for trial.

21 THE DEFENDANT: I understand, Your Honor.

22 THE COURT: How old are you, sir?

23 THE DEFENDANT: 27 years old, sir.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: I am currently in college

1 working on my Bachelor's Degree. I have two
2 associates.

3 THE COURT: And you are 27?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Where are you originally from?

6 THE DEFENDANT: North Carolina.

7 THE COURT: Have you ever been treated for
8 any mental problems?

9 THE DEFENDANT: No, sir.

10 THE COURT: How about any alcohol or drug
11 problems?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any of those
14 problems?

15 THE DEFENDANT: I did at one time.

16 THE COURT: You need to speak up for me.

17 THE DEFENDANT: I did at one point,
18 alcohol.

19 THE COURT: How long ago was that?

20 THE DEFENDANT: During the time in
21 question.

22 THE COURT: And the Indictment for the CSC
23 talks about the time frame of June 2009?

24
25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you under the influence of
2 any drugs or alcohol now?

3 THE DEFENDANT: I am not, Your Honor.

4 THE COURT: Did you get any treatment for
5 your alcohol problem?

6 THE DEFENDANT: I stopped drinking
7 completely, sir.

8 THE COURT: Have you had any medication or
9 drugs or alcohol in the last 24 hours?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you have any condition
12 today that would keep you from being able to
13 understand what you are doing?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Do you agree with that, Mr.
16 Donnald?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: You've heard your lawyer tell
19 me that you understand these charges and that he
20 has explained these charges to you. Is he correct
21 about that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: The Indictment that ends in
24 the numbers 1137, it says under Count 1, that on
25 or about the month of June 2009, you willfully and

1 unlawfully committed a criminal sexual conduct
2 with a minor in the second degree by engaging in a
3 sexual battery with a minor who is at least 14
4 years of age, but who was at least 16 years of
5 age. Any objection to saying her name?

6 MS. MAYES: No, sir, Your Honor.

7 THE COURT: Specifically, the minor being
8 ~~Minor~~, whose date of birth is
9 October 19, 1994. And the Indictment goes on to
10 say that you are older than the victim. And that
11 would be a violation of the Code Section 16-23-655
12 D-2. Do you understand that charge?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: It carries up to 20 years in
15 prison. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that the law
18 classifies that as a violent crime. And that you
19 have to serve 85 percent of any sentence that
20 might be issued. Do you understand that?

21 THE DEFENDANT: I am aware of that, Your
22 Honor.

23 THE COURT: And after that, is that
24 consequences that are important to these purposes.
25 You would be on a community supervision program

1 for up to two years. Do you understand that?

2 THE DEFENDANT: Yes, I do, Your Honor.

3 THE COURT: The Indictment that ends in
4 1140 says that you did, and you are a person over
5 the age of 18 years, did in this county, on or
6 about March 1, 2009, until June 30th 2009,
7 knowingly and willfully encourage, aid, cause or
8 influence a minor in violation of the law, or to
9 deport herself and to willfully injure or endanger
10 or moral for health; in that, you did aid Bailey
11 C , whose date of birth is September 18,
12 1994, and in possession, acquisition or
13 consumption of alcohol. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: That carries up to 3 years in
16 prison. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that the only victim that
19 is an issue with that particular case?

20 MS. MAYES: Bailey C

21 THE COURT: Yes.

22 MS. MAYES: Your Honor, the alcohol was
23 given to Bailey C and then used by Bailey
24 and two of her friends.

25 THE COURT: All right, going back to the

1 criminal sexual conduct, there is a, under the
2 law, it's a little bit difficult to understand.
3 Typically that offense is what we call a most
4 serious offense. At least one strike against you
5 under our two strikes law. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If I find that particular acts
9 that you are accused of committing was consensual
10 on the part of the minor, I could conclude that
11 it would not be a strike. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And the reason that that is
14 difficult to understand is because the law
15 relatively clearly states that a person that age
16 can't consent. But the law does state that I have
17 that room for making the rule, do you understand
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did I explain that correctly,
21 Ms. Mayes?

22 MS. MAYES: Yes, sir, Your Honor.

23 THE COURT: Mr. Donald, do you agree with
24 that?

25 MR. DONNARD: I do.

1 THE COURT: If it does turn out being a
2 strike, and you get another most serious
3 conviction in your life, now you would be facing
4 the possibility of life in prison without parole.
5 Do you that?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: Are you on probation or parole
8 now?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Mr. Boulware, when you plead
11 guilty, you give up some rights you have under the
12 constitution. I am going to go over those with
13 you now. First of all, when you plead guilty,
14 you give up your right to remain silent. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: That means you give up your
18 right to say nothing. Ordinarily, you can't be
19 compelled to testify or provide evidence against
20 yourself. But if you want to plead guilty, you
21 will have to speak to me specifically about these
22 charges. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Secondly, when you plead
25 guilty, you give up your right to have a jury

1 trial. Which means you give up a right to have a
2 jury made up of 12 Sumter County Citizens to
3 decide whether or not you are guilty beyond a
4 reasonable doubt. During that trial, you would not
5 have to prove or disprove anything. And the jury
6 would base its decision as to whether or not you
7 are guilty or not guilty, on evidence or lack of
8 evidence. Do you understand that?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: The burden of proof the
11 prosecutor would have to meet is referred to as
12 beyond a reasonable doubt. And that is an
13 extremely high burden of proof for her to meet.
14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. You understand your
17 right to have a jury trial?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: And the third right that you
20 have that you must give up is your right to
21 confront and be confronted by witnesses who might
22 be called to testify. That means very simply,
23 that means you would give up your right to see
24 them, hear them and cross examine them. Some of
25 them may speak today. And you have the right to

1 hear that. But your lawyer will not have a
2 chance to cross examine or question them. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now you would also have the
6 right even though you are not required to do so,
7 to be a witness of your own during a hearing or a
8 trial. Do you understand that?

9 THE DEFENDANT: I do.

10 THE COURT: When you plead guilty, you
11 won't get to do that. Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Mr. Boulware, do you
14 understand all the rights I have explained to you?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Do you understand specifically
17 that if you plead guilty, you will not get a jury
18 trial?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Now if you have any defenses
21 to these charges, I do not know if you do. But if
22 you do, do you understand that when plead guilty,
23 you give up any defenses to these charges?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: And do you understand that

1 when you plead guilty, you admit the truth of the
2 charges that are made against you?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: If you have given any
5 statements in this case, some of them may be
6 considered to be incriminating. But when you
7 plead guilty, do you understand that you give up
8 the right to contest or challenge whether or not
9 anything you said to the police was stated by you
10 freely and voluntarily and in accordance with your
11 constitutional rights?

12 THE DEFENDANT: I do.

13 THE COURT: And what was your occupation
14 before you were charged?

15 THE DEFENDANT: Law Enforcement Officer.

16 THE COURT: So you are familiar with these
17 rights?

18 THE DEFENDANT: I am, sir.

19 THE COURT: Where were you a law
20 enforcement officer?

21 THE DEFENDANT: Sheriff's Office.

22 THE COURT: Here in Sumter?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Concerning the charge of
25 criminal sexual conduct with a minor in the second

1 degree, understanding that charge and the
2 punishment that you face, do you plead guilty or
3 not guilty?

4 THE DEFENDANT: Guilty, Your Honor.

5 THE COURT: Are you truly guilty?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Considering the charge of
8 contributing to the delinquency of a minor, do you
9 plead guilty or not guilty?

10 THE DEFENDANT: Guilty, Your Honor.

11 THE COURT: Are you truly guilty of that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Any recommendations or
14 negotiations?

15 MS. MAYES: Your Honor, the State will
16 nol-pros the charge which is Count 2 of that
17 Indictment for criminal sexual conduct with a
18 minor. Or on a plea to criminal sexual conduct
19 with a minor second degree to delinquency of a
20 minor. The State has agreed to nol-pros Count 2
21 of that Indictment, which is a non-violent offense
22 of lewd act upon a child.

23 THE COURT: Is that correct, Mr. Donnald?

24 Mr. Donnald: That's correct, Your Honor.

25 THE COURT: Is that correct, Mr. Boulware?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Boulware, has anybody
3 promised you anything or held out any type of, or
4 any hope of reward to get you to plead guilty?

5 THE DEFENDANT: No, sir, Your Honor.

6 THE COURT: Has anybody used any threats,
7 pressure, force or any intimidation?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: And I commonly ask this. Is
10 your lawyer forcing you to plead guilty?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Are you -- or do you think you
13 have had enough time to make up your mind?

14 THE DEFENDANT: I have, Your Honor.

15 THE COURT: And when all is said, are you
16 entering these two pleas based on your free will?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with the
19 manner in which Mr. Donnald has advised you and
20 represented you?

21 THE DEFENDANT: I am, Your Honor.

22 THE COURT: Have you talked with him for
23 as often as you wanted to, and as long as you
24 wanted to?

25

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: And do you need more time to
3 talk to him now?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you think Mr. Donnald has
6 done everything that he could have reasonable done
7 to represent you properly?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And do you think he's done
10 everything -- done anything that's inappropriate
11 or improper?

12 THE DEFENDANT: No.

13 THE COURT: Are you completely satisfied
14 with his services?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Have you investigated it,
17 talked to all potential witnesses to your
18 satisfaction?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: Do you any complaints at all
21 about law enforcement or the prosecutor?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Have you understood all of my
24 questions?

25 THE DEFENDANT: I have, Your Honor.

1 THE COURT: Is there anything at all that
2 you want me to go back over, repeat, or explain?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: Under the law you do have 10
5 days to appeal these two pleas or either one of
6 them. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: You or your lawyer within that
9 10 days you have to perfect an appeal. Do you
10 understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Ms. Mayes.

13 MS. MAYES: Yes, sir, Your Honor. This
14 investigation began on July 17th 2009. Sheriff
15 Anthony Dennis brought to the attention of
16 investigator Tommy Barron that there was a
17 complaint on deputy Michael Boulware.

18 THE COURT: Who brought that to the
19 police's attention?

20 MS. MAYES: Actually Sheriff Dennis had
21 received a phone call from the family member of
22 one of the victims. And made the sheriff's
23 department aware that Deputy Boulware had been
24 giving alcohol to three 14-year-old girls.

25 During the meeting with Sheriff Dennis,

1 Investigator Barron was asked to conduct an
2 internal investigation. At the meeting, Sheriff
3 Dennis gave Investigator Barron a statement from
4 Sergeant Dale Horton. Sergeant Horton in his
5 statement indicating that on July 16th of 2009, he
6 had been working security at the Piggly Wiggly on
7 Guinyard here in Sumter County.

8 He had been approached by Deputy Boulware.
9 And Deputy Boulware told him that he had bought
10 liquor for his 14-year-old niece, Bailey C.
11 He told Sergeant Horton that if he was questioned
12 about it, he would tell his supervisors at the
13 Sheriff's Department the truth. Later on
14 July 17th 2009, an interview was conducted with
15 Allie B. Allie is 14 years of age, or was at
16 that time. She stated that she and Molly D
17 had been staying with Bailey C. Bailey had
18 called Deputy Boulware to ask him to bring her
19 some liquor and he agreed.

20 When he arrived, he was driving a police
21 car and wearing a uniform. The liquor he brought
22 was vodka. He told the girls to be careful and
23 not to make this a habit. On July 17th 2009, an
24 interview was conducted with Molly D. by
25 Investigator Melissa Bradley. Molly D. was also

1 14 years of age. *Molly D.* admitted that
2 Deputy Boulware brought them some liquor. She
3 also stated that he was in uniform. After
4 interviewing several of the juvenile witnesses,
5 and based on Boulware's statement, warrants were
6 signed against him for contributing to the
7 delinquency of a minor.

8 Another interview was conducted with
9 Boulware. He was advised of his Miranda Rights.
10 He signed the form indicating that he understood
11 his Miranda Rights and agreed to waive them. He
12 gave a verbal statement that he brought Bailey
13 C. some alcohol to her residence. Also once
14 again, he knew that she was only 14 or 15 years
15 of age. Also present at that interview was
16 Lieutenant David Florence.

17 On July 20th 2009, an interview was
18 conducted with Bailey C. *Bailey C.* was in
19 fact 14 years of age. She said she had called
20 Deputy Boulware to bring them some liquor. She
21 said that during the phone conversation she told
22 him that Allie and Molly were there. And he
23 ultimately brought her some vodka. He was wearing
24 a uniform driving his police vehicle. Your Honor,
25 Bailey C. the 14-year-old niece, was a niece

1 by marriage. Mr. Boulware was married to -- was
2 married to Wendy C who was the sister of
3 Bailey's mother.

4 THE COURT: Are all those facts, correct?

5 MS. MAYES: Christina.

6 THE COURT: What about Christina?

7 MS. MAYES: Christina was his wife, I am
8 sorry. And, Your Honor, as to the follow up
9 investigation on the separate charge of criminal
10 sexual conduct with a minor in the second degree,
11 that began on or July 20th of 2009. Kathy
12 McKenzie of South Carolina Law Enforcement
13 Division received a request from the Sheriff
14 Dennis to investigate a possible criminal sexual
15 conduct charge against Deputy Boulware.

16 What had occurred, Your Honor, is that
17 around July 17th of 2009, Robert Falls who is the
18 father of Bailey C, the victim in the
19 contributing to the delinquency of a minor case.
20 Bailey spoke with her father Robert Falls, and
21 advised him that her cousin, *minor* needed
22 advice on what to do about her relationship with
23 Deputy Boulware. Falls then called *minor*
24 who was age 14, and was told that she and Deputy
25 Boulwae had engaged in sex.

1 Falls then called Sheriff Dennis the next
2 morning and reported the relationship. On July
3 28th 2009, Agent Kathy Bass, conducted a forensic
4 interview with , minor at the Sumter County
5 Sheriff's Office. minor disclosed that
6 in month of June 2009, she and deputy Boulware had
7 left her father's home to purchase beer and
8 cigarettes. Her father, Your Honor, had been
9 having a party at his home. minor was there.
10 minor had been drinking that night. And Deputy
11 Boulware was also present at that party.

12 Apparently at some point, they left the
13 party. The two of them together in his pickup in
14 order to purchase beer at the Kangaroo Station
15 here in Sumter County. On the way to the store,
16 Deputy Boulware took , minor down a dirt
17 road and had sex with her. A copy of the forensic
18 interview was preserved for the trial. Your
19 Honor, on this July 27th, 2009, , minor who
20 is 14 years of age, called Deputy Boulware, while
21 using a video recorder and ear piece provided by
22 Investigator Wayne Dubose of the Sumter County
23 Sheriff's office.

24 Senior Sled Agent James Johnson,
25 supervised the call to Deputy Boulware. Captain

1 Allen Dailey was also present during the
2 recording. *minor* called Deputy Boulware
3 three times during the course of several hours.
4 During the first call Deputy Boulware advised he
5 was working and not to call, but to call him
6 later. *minor* text messaged him, and
7 advised him that her mother would be coming home
8 early, and that she would call him after lunch.

9 After lunch she called him and he did not
10 wish to answer. Deputy Boulware called her back
11 minutes later. Their conversation revealed that
12 Deputy Boulware was concerned that *minor*
13 might tell others they had sex. He encouraged her
14 not to tell anyone about what had happened.

15 *minor* advised Deputy Boulware that she
16 might be pregnant. He advised her she had no
17 choice but to terminate the pregnancy. Deputy
18 Boulware advised *minor* that he did use a
19 condom when they had sex. A copy of the tape was
20 made and preserved as evidence in this case, Your
21 Honor.

22 On July 30th 2009, a warrant was obtained
23 and served on Deputy Boulware for criminal sexual
24 conduct with a minor second degree with a \$75,000
25 bond being set. And that was as to *minor*

1 age 14.

2 Your Honor, pursuant to that tape recorded
3 phone call, *Minor* approached him with the
4 scenario that she had previously discussed with
5 law enforcement in preparation for the recorded
6 confrontation.

7 She confronted him with the hypothesis of
8 What if I pregnant: "What am I going to do. He
9 responded, well you can't carry it to term. You
10 have to abort it. She stated, what am I going to
11 do. And he said, you have to help me here. She
12 said, how can help you when I think I am pregnant.
13 And he stated you are 14 years old, sweetie. And
14 she said, yes. And she said, you did use a
15 condom, didn't you. And he said, yes. Yes, I
16 used a condom. She said, Just making sure."

17 So it was clear based on a conversation
18 that he was aware that *Minor* was age 14.

19 THE COURT: All those facts correct, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You did have sex with that
22 girl when she was 14?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right, anything else?
25 That's the only act that is indicted?

1 MS. MAYES: Yes, sir, Your Honor.

2 THE COURT: Ms. Mayes, of course, the
3 victims have a right to speak. Do they understand
4 that?

5 MS. MAYES: Yes, sir, Your Honor.

6 THE COURT: Do any of them want to?

7 MS. MAYES: Yes, sir, Your Honor. I
8 would start by saying that ~~Minot~~ is not
9 here this morning. We met last week. She
10 indicated that she might come. She might wish to
11 address the court. But her mom is here this
12 morning and stated that ~~Minot~~ decided she didn't
13 want to come. Her mother is actually here and
14 wishes to address the court. And then maybe some
15 other members as well.

16 THE COURT: Okay. You are Jackie Mayes?

17 MS. MAYES: Yes. At the time this
18 happened some with her dad, we were going through
19 some rough times. She wanted to spend some time
20 with him and I allowed it. I never knew this man.
21 Never seen him. And all I know is that he took
22 advantage of my 14-year-old daughter and it has
23 changed her life forever. She's had some blowups
24 that we couldn't understand. Some outbursts have
25 caused an awful lot of problems. And weeks later

1 we asked why. And she has carried this inside
2 her, and it was eating her alive. And she was
3 having anger outbursts. But thanks to getting it
4 out and seeking counseling, she is doing better.
5 I would like to say to keep in mind, that he was
6 26. She was 14. She was easily manipulated. He
7 was law enforcement with military.

8 He was the type of person to look up to.
9 It's really hard for her now to look at law
10 enforcement and military personnel and respect
11 them when someone like that takes advantage of
12 her. He was trained to be there for people when
13 they were done this way. And here he took upon
14 himself to commit a crime that he puts people away
15 for.

16 I just ask that you keep that in mind when
17 deciding what needs to happen to him. Your Honor,
18 I would just like to mention that in the beginning
19 of his sentencing hearing, you asked him what his
20 occupation was. He clearly stated that he was
21 indeed law enforcement. With that being said, he
22 knew before he took the oath to be a law
23 enforcement officer, he walked in here and was an
24 average citizen. When he graduated from the
25 academy, he became a notch above that. He was

1 charged to be able to uphold the law and enforce
2 it. And I would like to make sure that you keep
3 in mind whenever you give your sentence, that he
4 was above the law. Correction, he was there to be
5 able to uphold the law and enforce the law. And
6 whenever you give your sentence that you remember
7 that, you know, he was indeed a law enforcement
8 officer. As well as a -- he was a law enforcement
9 officer that was still certified and charged to be
10 able to carry out the law. So please keep that in
11 mind whenever you charge and do your sentence.

12 THE COURT: Thank you.

13 MS. MAYES: Your Honor, this is the aunt
14 of both ~~Michael~~ and Bailey.

15 THE AUNT: Cindy Pierson.

16 THE COURT: Yes, ma'am.

17 MS. PIERSON: Judge, during the time,
18 Michael Boulware was not only a law enforcement
19 officer, a military person. He was these girl's
20 uncle. I realize that they asked for -- that they
21 may have asked for alcohol. He was the adult in
22 the situation. He should have said no. I don't
23 want to go into a whole lot, and I don't want to
24 get off key. My brother would be here today, but
25 my brother committed suicide on July 3rd 09. He

1 had an alcohol problem, and he had a drug problem.
2 And as a young teenager, my brother was introduced
3 to drugs and alcohol. And if the adult would have
4 told him no at that time, I may still have a
5 brother today. But I don't.

6 He wanted to be accepted into the family,
7 but I think he went about it the wrong way. But I
8 do want you to realize that not only is law
9 enforcement charged to uphold the law, a military
10 personnel is supposed to serve our country. And
11 he was also these kids' uncle. And I think he
12 took advantage of a situation that could have been
13 avoided. It has been a long road for all of us.
14 And I don't -- we don't need any sympathy for what
15 happened to my brother. And that's not why I am
16 here. But I want you to know the reason my
17 brother is not here. Somebody introduced him at a
18 young age to drugs and alcohol. And it held a
19 life long sentence for him. And but for these
20 girls at the age of 14 years old, it can hold a
21 life long sentence for these girls.

22 THE COURT: Ms. Mayes, while or before you
23 check on the issue of consent which I am required
24 to make some type of finding on that, the only way
25 that I can interrupt what the legislature may have

1 intended, a person who at that age can't really
2 consent. Whether or not they can in laymen's
3 terms. That's the only way it can be interpreted
4 that way. What is there if anything on this issue
5 that is before me?

6 MS. MAYES: Yes, sir, Your Honor. We
7 understand the dilemma of the problem as well on
8 that situation with a 14-year-old not being able
9 to legally consent. But yet he has that language.
10 Under Section 17 which refers to consent, there is
11 no allegation here of physical force pursuant to
12 the forensic interview that was done by Kathy Bass
13 with *minor*. She did indicate that it was
14 consensual. When of course I immediately go in to
15 layman's terms as well. So that's legal terms.
16 Which we know at 14 she can't legally consent. No
17 allegation of physical force.

18 THE COURT: And how about the sex offender
19 registry and the child abuse registry?

20 MS. MAYES: Yes, sir, Your Honor. He is
21 required to register as a sex offender for life.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And the central registry on
25 child abuse and neglect as well. He should be on

1 that.

2 MS. MAYES: I believe so, Your Honor.

3 THE COURT: Anything else, Ms. Mayes, that
4 you would like to present either yourself or from
5 anyone else? Anyone with law enforcement that is
6 not connected with the case or any other victim?

7 MS. MAYES: No, sir, Your Honor.

8 THE COURT: Who was the supervisor at the
9 sheriff's office that day?

10 CAPTAIN DAILY: Your Honor, I believe it
11 was sergeant Dale Horton.

12 THE COURT: And he's the one, I didn't
13 really understand the logic at the time. The
14 Defendant saw him at the Piggly Wiggly and said I
15 just brought liquor for them?

16 CAPTAIN DAILEY: From what I am gathering.

17 THE COURT: Just out of the blue he
18 admitted he did it?

19 MS. MAYES: Your Honor, it appears that
20 there had been some rumors going around.

21 THE COURT: Okay. So it was prompted by
22 that. I got you. Anything else? Does he have a
23 record?

24 MS. MAYES: Your Honor, I am sorry,
25 Christina also wishes to address the court. And

1 she is the ex-wife of Mr. Boulware. She was
2 Christina Boulware.

3 THE COURT: Your name, please, ma'am?

4 MS. PAPANIA: Christina Papania.

5 THE COURT: Your last name?

6 MS. PAPANIA: Papania.

7 THE COURT: Can you spell it for the Court
8 Reporter?

9 MS. PAPANIA: P-A-P-A-N-I-A.

10 THE COURT: Yes, ma'am.

11 MS. PAPANIA: How are you doing?

12 THE COURT: Fine.

13 MS. PAPANIA: I am here today that aside
14 from what I didn't allege. He also caused my
15 little girls to be in this situation. I had to
16 get my 5-year-daughter at the time, and my
17 2-year-old daughter at the time, examined by Kathy
18 Bass for an intimate interview. To get a
19 5-year-old and 3-year-old checked to make sure
20 that they were in tact.

21 THE COURT: You were married to him?

22 MS. PAPANIA: I was married to him. And
23 for that reason I had to get my children checked.
24 And the two little girls at such young, innocent
25 ages to go through something like that.

1 THE COURT: There are not his children?

2 MS. PAPANIA: They are not his children.

3 But that's all I have to say is that put my
4 children through that because of him. Thank you.

5 MS. MAYES: Your Honor, Christina was
6 serving in Iraq during the majority of the
7 marriage. It was a short marriage. And I
8 believe was actually overseas when this incident
9 occurred.

10 THE COURT: Okay. Mr. Boulware, do you
11 understand that whatever period of time that you
12 may be sentenced to, if it involves SCDC time, you
13 will have to assume that you will serve that
14 entire amount of time in prison?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I don't have anything to do on
17 my end with any early release? Anything else. Do
18 you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The CSC is what we call a no
21 parole offense, which we've already talked about.
22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Well the victim's rights have
25 been protected. And I do find that there is a

1 substantial factual basis for. Both pleas have
2 been entered freely, voluntarily, knowingly and
3 intelligently. And Mr. Boulware is represented by
4 an attorney with whom he is satisfied. I will
5 accept those. Mr. Donnald.

6 MR. DONNALD: Thank Your Honor. To clear
7 up a couple of things, I don't think these are not
8 inconsequential things. Just clear up the
9 record. He tells me the supervisor at the time
10 was Coakley. And it was under that -- those
11 auspices he was talking to ~~him~~. And also
12 technically, I think this may be good news.
13 She's not his ex-wife. So legally they were not
14 actually married. Even though they went through a
15 wedding ceremony. I was his attorney for that.
16 That's actually how I know Mr. Boulware. I
17 represented him in Family Court.

18 And to be honest with you, this is one of
19 those things where I got a phone call to my
20 office. Somebody was in trouble for something I
21 would have never dreamed that they would be in
22 trouble. He's standing here before you today
23 taking responsibility to try to make amends the
24 best he can. And to stand before you with no
25 recommendation from the State. He takes the

1 responsibility for what he did. Some of what we
2 are talking about, judge, there are two,
3 incredibly committed these actions in lapses of
4 judgment on his part. And I won't talk about,
5 there were some discussions with other girls and
6 other family members. Everybody in this matter
7 under age female, was talked to and investigated.
8 That's not a good thing, but there is no
9 indication that anything happened with anybody
10 else.

11 There is nothing in the evidence that I
12 received that indicated the other two girls were
13 involved with the alcohol. They didn't indicate
14 have sex, no advances, no nothing. It's just the
15 one victim. And it's just the one time. So
16 you're looking at sentencing a guy for something
17 that two lapses in judgment. I'm putting that in
18 front of you because I think it is also important
19 to look at two things. One, what they've done
20 since this happened. And what he tells, me,
21 judge, his period of life, in his words, he was
22 going through some pressure, because his marriage
23 had never worked out. There was an annulment
24 after they had been married for 6 months. She
25 immediately went to Iraq. It was never

1 consummated. It was therefore annulled when she
2 returned some 6 months later. That was dissolved.
3 He was drinking significantly during this time.

4 His family are who can attest to that,
5 because he was calling under a state of
6 drunkenness. Since that time, he tells me that he
7 has quit drinking altogether. He won't touch it,
8 because he thinks that's part of what lead to him
9 standing in front of you today. The other thing,
10 judge, there has been a lot of talk about the fact
11 that he is a law enforcement officer. Everybody in
12 this matter is somehow connected to law
13 enforcement.

14 I'd just ask the Court to remember that
15 although it is true; that we do hold law
16 enforcement to a higher standard. And it is a
17 somewhat more significant when they do break the
18 law. But I think you need to take -- I do think
19 it is fair to them to remember that they also did
20 a good while they were law enforcement officers.
21 Good things that they brought to this community.
22 And Mr. Boulware himself brought to this community
23 while he was an active law enforcement officer.

24 With that being said, judge, since this
25 has happened, he is going back to college. He has

1 got two associates degrees. He is working on his
2 bachelor. He is on the dean's list. He and his
3 father tell me, I didn't see the transcript. But
4 he and his father tell me he's on the dean's list.
5 He is missing class to be here today.

6 And, Your Honor, he went to high school.
7 He's from North Carolina. He's moved back to
8 North Carolina. So he has absented himself from
9 this community. He hasn't been in trouble here or
10 anywhere else as far as I know since this arrest.
11 He got his Associates of Art from Pitts College in
12 Greenville, North Carolina. He got that honors,
13 Your Honor. And I understand that you have got
14 to make a decision as to what is the appropriate
15 punishment for Mr. Boulware. I am going to ask
16 you to keep in mind a couple of things that
17 regardless of what you pronounce; that will follow
18 Mr. Boulware the rest of his life.

19 He knows that he is going to be on the sex
20 offender registry for the rest of his life. He
21 knows that he's going to be on the central
22 registry for child abuse for the rest of his life.

23 Your Honor, he was military. He's still
24 in the National Guard today. This is going to
25 cause him, this guilty plea, regardless of your

1 sentence, cause him to be dishonorably discharged
2 from the National Guard. Which he has had 6 or 8
3 years, I believe.

4 Your Honor, since this time he is also
5 remarried. His wife Kelly is sitting right here
6 on the second row. And he was completely honest
7 with her, which to my surprise, completely honest
8 with her about this situation. And they decided
9 to go ahead and get married. He has done
10 everything that you would hope, that I as an
11 attorney stand here and hope that my client would
12 do to try to make amends and move on with his
13 life.

14 There was some discussion about whether it
15 was a serious or most serious offense, which will
16 effect him should he get in trouble again. And I
17 don't believe this is concerning knowing him the
18 way that I do, I don't think we are going to have
19 any trouble. He -- they all promise that they are
20 not going to get in trouble again. And he has
21 promised that there won't be any trouble. I don't
22 think there is going to be any trouble out of him
23 anymore. And I think he has tried. He has proven
24 to me more than most of my clients that have tried
25 to put it behind him. Tried to make the amends

1 that he can make after making a horrible mistake.

2 I don't presume to try to tell you what
3 you should do in your capacity. I would invite
4 you and ask you to give what, would spare
5 Mr. Boulware from the Department of Corrections.
6 I think you can load him up on time. Suspended on
7 the full probation. And I would have no concerns
8 about that. I will tell you and I think it's
9 important that a law officer in jail is some of
10 the worse kinds. And I have communication with
11 the Department of Corrections. They like to have
12 them done in what is called a super controlled
13 situation. Which basically is solitary. It's the
14 only way that they can protect them and get that
15 to the law enforcement officer. So whatever, if
16 he does end up in the Department of Corrections,
17 that's going to be the hardest time that there is.

18 And for those reasons, and because I am
19 convinced that I don't think he's going to be a
20 problem. And because regardless of your sentence,
21 he's suffered some rough hardships for somebody to
22 have to go through the rest of his life on these
23 charges. And for the registry that he's going to
24 have to do. I would just ask that you give him a
25 sentence that is fair and impartial.

1 THE COURT: Anything you would like to
2 say, sir?

3 THE DEFENDANT: Your Honor, I made some
4 poor choices. I regret those choices. I think I
5 hurt many people involved in this. I tried to
6 move forward. I've tried to make amends. I don't
7 know what else I can do to correct this. The
8 mistake I made, but I am doing everything in my
9 power to.

10 MR. DONNALD: Your Honor, I forgot. I was
11 bad about this when I was in the other side of the
12 courtroom. I also have family members in the
13 courtroom. I've got his father, his mother. And
14 his wife and his two brothers are here. They are
15 all from North Carolina. He's been living in
16 North Carolina and intends to return to North
17 Carolina should you let him. They are available
18 if you want them.

19 MR. DONNALD: His mother and father had
20 mentioned to me yesterday. I think he wanted to
21 make sure I said all the right things. You want
22 to say anything?

23 THE COURT: Anyone who wants to, you can
24 come on up as well.

25 MR. DONNALD: Your Honor, this is Walter

1 Boulware.

2 THE COURT: Mr. Boulware, I will be glad
3 to hear from you.

4 MR. BOULWARE: I appreciate it. Michael
5 he has made a terrible mistake. He made a mistake
6 with his marriage. He made a real bad decision.
7 There is no excuse for that. I not asking for
8 anything for that. I would beg the court that he
9 finish school. He flunked out when he first got
10 out of high school. He decided to go in the Air
11 Force for 4 years. He went in the Air Force and
12 served his time and got out. He went back to
13 school. He decided to get in law enforcement and
14 then all this occurred. And since his arrest,
15 he's been going to school for the last 3
16 semesters. He's 3 months in to this semester.
17 He lacks 3 or 4 weeks of completing this semester.

18 If he is sentenced today, he has to pay
19 back all of his stuff to be out on this procedure
20 this semester. And he also fails all the classes
21 he has taken this semester. He was accepted back
22 in by the school he failed out of when he first
23 got out of high school. And it took him 4 years
24 of going part time and full time in order to get
25 his GPA up to where he could re-enroll in that

1 same college. And I would ask you if there is any
2 way possible if he can continue for the next 3 or
3 4 weeks until he can take his exams and stuff, so
4 that he will be able to return after all of this
5 is over, and have some kind of life where he can
6 continue his education and be a productive member
7 of society. I sincerely ask you that. That's it.
8 I appreciate the Court's indulgence.

9 THE COURT: And your name, please?

10 MS. BOULWARE: Kelly Boulware.

11 THE COURT: Kelly Boulware?

12 MS. BOULWARE: Yes, I have known Michael
13 for a little over year. And I met him where I
14 worked at. We started out as friends. I can
15 honestly say I he never lied to me. I knew about
16 this before we got married. But I know what kind
17 of person Michael is and I love him. And he is my
18 husband. I am proud of him every day he goes to
19 school. He takes care of me. And we just got
20 married last month. And we just moved in to an
21 apartment together a week and a half ago. We are
22 trying to start our life. He is doing everything
23 in his power to move forward. And I just want to
24 spend my life with him. I love him. We want our
25 own family. We just want to move forward from

1 this.

2 THE COURT: Thank you. Anything else,
3 Mr. Donnald?

4 MR. DONNARD: No, Your Honor.

5 THE COURT: Ms. Mayes, anything else from
6 the State in response to anything they may have
7 said?

8 MS. MAYES: No, sir, Your Honor.

9 THE COURT: Does the State have any
10 particular position on sentencing at all?

11 MS. MAYES: No, sir, Your Honor. It is a
12 straight up plea.

13 THE COURT: Have a seat there,
14 Mr. Boulware. I will be right back out. Give me
15 about two minutes, okay.

16 (Whereupon, the Court breaks.)

17 THE COURT: Come back up, Mr. Boulware.
18 As much as this might be turned over in my mind it
19 keeps coming back to two things. Two primary
20 points: 14-years-old and a sheriff's deputy.
21 Everything that I think about comes back to that.
22 I typically say that in situations like this,
23 sentencing is the hardest thing for any judge to
24 do. Frankly, whatever the charge is, it's just
25 not even because we are human. And I know the

1 victim, the CSC victim, is in a state. Got to
2 be. And I know Mr. Boulware, I don't think
3 anybody on my right hand side of the courtroom
4 will dispute the fact that he is probably
5 extremely remorseful. That doesn't diminish what
6 he did, but it makes a difference to me. But that
7 little lady who is now how old, 16, 17?

8 MS. MAYES: 16, Your Honor.

9 THE COURT: I don't think understands that
10 the legislature's thinking when it took the words
11 consensual or nonconsensual in that statute about
12 the most serious before it took. I do in layman's
13 context, based on what Ms. Mayes, Prosecutor
14 Mayes, told me, that the sequence of events was
15 consensual on the part of a 14 year old. It is
16 hard for me to even spit that out, because the law
17 doesn't recognize that except in that backward
18 way, in that statute that evidently in Title 16.
19 Mr. Boulware, I don't know whether you have
20 delusions of any short sentences, I just can't
21 give one. I struggle, I really struggled with it
22 because you evidently are somebody that had a lot
23 going for you. I guess my main question,
24 rhetorical question. I am not asking for an
25 answer. But what in the world were you thinking?

1 This is a situation where a 26-year-old man and a
2 17, or 18-year-old girl socially in the prime of
3 life. But perhaps not legally, but socially. But
4 14?

5 I forgot one other thing that sticks in my
6 mind, she was your niece. And so your are a
7 sheriff's deputy. Sworn to uphold the law. A
8 14-year-old niece that you had sex with. It is
9 something I can't just ignore. I don't think I
10 would be doing anybody any service to give you
11 probation. That's just not going to happen. That
12 is not going to happen. I was struck by your
13 father's, your father is a fine man. He spoke
14 very well for you. I just can't gave him what he
15 requested me to give you. And that was to give
16 you 3 weeks to complete your schooling. It is
17 just going to stop right now. This has gone on
18 since about a year and a half. And now it comes
19 down to me giving a sentence that is supposed to
20 be wise. I don't think it is going to give
21 anybody any comfort. There will be 2 concurrent
22 sentences. You are committed to the State
23 Department of Corrections on contributing to the
24 delinquency of a minor for a period of 3 years.
25 And on the criminal sexual conduct with a minor in

1 the second degree, you are committed to the State
2 Department of Corrections for a period of 12
3 years. You get credit for the time your have
4 served. And whether I pass that sentence, I'm not
5 doing this with any pleasure or with any
6 vengeance. I am just doing what I think that is
7 mandated by the circumstances and by the lawyer.

8 All right what we will do now is we are
9 going to take a break, and I am going to leave it
10 up to the officers to my left and in the
11 courtroom to decide how these folks will depart,
12 because we are in the small courtroom. And I just
13 don't want there to be -- I know there won't be
14 any difficulty. But since we are in such close
15 quarters, I leave it to up Ms. Mayes, Prosecutor
16 Mayes, and Mr. Harriett to deal with that. And
17 then we will -- I will be back in 10 minutes. And
18 having said that, Mr. Boulware, I don't take any
19 pleasure at all in doing this. I really don't.
20 And, ma'am, I appreciate you speaking for your
21 daughter. I wish everybody the best of luck.
22 Thank you.

23 MS. MAYES: Thank Your Honor.

24 ---End of Requested Transcript of Record---

25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of General Sessions on November 8, 2010, in Sumter County, Sumter, South Carolina.

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

2-24-11
DATE

Margaret T. Sullivan
COURT REPORTER

My Commission expires: 10-03-11

EXHIBIT 5

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2011-CP-43-01192

Michael Boulware,)
Plaintiff)

vs.)

Transcript of Record

State of South Carolina)
Defendant.)

December 12, 2012
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge

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

Meghan E. Harrigan, Esq.
Attorney for the Defendant

Joseph J. Watson, Esq.
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

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- NO EXHIBITS -

1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, the next case is *Michael*
4 *Boulware vs. The State of South Carolina*, Docket No. 2011-
5 CP-43-1192. The applicant was indicted at the September,
6 2010 term of the Sumter County Grand Jury for criminal
7 sexual conduct with a minor in the second degree, lewd act
8 on a child, and contributing to the delinquency of a minor.
9 Edgar R. Donnald, Jr. represented him in all charges.

10 On November 8, 2010, the applicant appeared before the
11 Honorable George C. James, Jr., where he pled guilty to
12 contributing to the delinquency of a minor and to criminal
13 sexual conduct with a minor in the second degree.

14 He was sentenced to three years imprisonment to
15 contributing to the delinquency of a minor charge and to 12
16 years imprisonment for the criminal sexual conduct with a
17 minor in the second degree charge, with both sentences to
18 be served concurrently.

19 The lewd act on a minor charge was nolle prossed
20 pursuant to the plea. The applicant did not appeal his
21 pleas or sentences. He, however, did file a timely
22 application for post-conviction relief on June 17, 2011.
23 The State made it's return on September 19, 2011, and he's
24 represented in this action by Joseph Watson.

25 THE COURT: Okay.

1 MR. WATSON: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. WATSON: We call Michael Boulware.

4 THE COURT: Okay. And if you'd come around, please,
5 sir, and have the bailiff swear you in.

6 MICHAEL BOULWARE, having been
7 first duly sworn, testifies as follows:

8 THE BAILIFF: State your name, please, and spell your
9 first and last name for the record.

10 THE APPLICANT: Michael Boulware; M-i-c-h-a-e-l, B-o-
11 u-l-w-a-r-e.

12 DIRECT EXAMINATION BY MR. WATSON:

13 Q All right. Michael, I got some water here if you need
14 it. I don't think you're going to be on the stand that
15 long.

16 Let me just get a little background information. How
17 old are you, sir?

18 A 29.

19 Q And tell me a little bit about your education. How
20 far did you go in school?

21 A I have two associates degrees. I have a associates in
22 art and an associates in science.

23 Q Where were you born and raised?

24 A I was born and raised in North Carolina, the Charlotte
25 area.

1 Q Eventually you became a police officer here in Sumter.

2 A That is correct.

3 Q What -- what led to that? How did you get to Sumter
4 in the first place?

5 A After high school, I went to college, University of
6 North Carolina-Charlotte. Ended up dropping out and joined
7 the Air Force.

8 Q Okay.

9 A Did my time in Texas, overseas; did a year in Korea.
10 Ended up assigned to Shaw Air Force Base. Stayed in the
11 Air Force until 2006. Left after being with the Guard and
12 joined the Sumter County Sheriff's Office.

13 Q All right. Did you have any special duties when you
14 were in the Guard?

15 A With the Guard and on active duty, I was assigned to
16 the Honor Guard doing military funerals and -- and
17 ceremonial details sometimes.

18 Q All right. Other than Korea, did you have deployment
19 overseas anywhere?

20 A I have been to Iraq, yes, sir.

21 Q To Iraq?

22 A Yes, sir.

23 Q And when you were discharged from the Air Force, and
24 when did you -- I assume it was an honorable discharge?

25 A Yes, sir.

1 Q And then when -- when was that? About what year was
2 that?

3 A August, 2006.

4 Q And is that when you joined the Sheriff's Office here?

5 A Roughly the same time, yes, sir.

6 Q Okay. In December of '08, did you meet and -- and end
7 up marrying someone? If so, tell me who that was.

8 A Christina Collins.

9 Q Okay.

10 A That was her maiden name. She got it -- she was
11 married -- her married name was Christina Papania.

12 Q Okay.

13 THE COURT REPORTER: I'm sorry?

14 THE APPLICANT: Christina Papania.

15 MR. WATSON: Go ahead and spell it.

16 THE APPLICANT: P-a-p-a-n-i-a.

17 Q Okay. All right. And -- and she was a Collins.

18 A Yes.

19 Q I'm going to go a little bit to the Collins family
20 because they're all part of this, just so the judge will
21 know. Did Christina have other siblings?

22 A Yes, sir. She had two sisters and a brother.

23 Q All right. And who were the sisters?

24 A Wendy Collins, Cindy Collins, and her brother was
25 Donnie Collins, Jr.

1 Q Okay. Now, the victim on the CSC indictment is a
2 minor . Who is she and how is she
3 related to your former wife Chrissie.

4 A She is my former wife's niece by her brother, by
5 Donnie Collins.

6 Q Okay. All right. In the spring of '09, you and
7 Chrissie married.

8 A Yes, sir.

9 Q All right. Tell me a little bit about that marriage
10 and -- and how long it lasted.

11 A We got married. As soon as we got married, she left
12 to go to Texas. She was cross-training. She was a Guard
13 member. Went to Texas, had a lot of rough time. She was -
14 - I was informed she was being promiscuous while she was
15 down there.

16 When she came back, we tried to work the marriage out.
17 She ended up leaving to go to Kuwait, and I was notified by
18 her supervisor that she was doing the same thing over
19 there. At that point we more or less decided the marriage
20 was -- was over.

21 Q Okay. And that -- we're talking now -- you got
22 married in the Spring of '09.

23 A We're talking less than six months.

24 Q Okay. Less than six months. All right.

25 And was the marriage -- did you divorce her or was the

1 marriage annulled?

2 A It was annulled.

3 Q Okay. Who was your attorney in that annulment?

4 A The attorney was Mr. Edgar Donnald.

5 Q Okay. And did you know Mr. Donnald from being in the
6 Sheriff's Office, being around the courthouse, being around
7 town? How did you -- how did you end up hiring him?

8 A I had actually met him through a mutual -- former
9 client of his, and he had presided -- he had actually taken
10 care of a divorce for me previously.

11 Q Okay. What was your relationship with the Collins
12 family?

13 A Awkward.

14 Q Awkward?

15 A Awkward.

16 Q Okay.

17 A Yes, sir.

18 Q Did you have a good relationship with anybody in the
19 family?

20 A The brother, Donnie Collins, Jr. I had spent quite a
21 bit of time with him.

22 Q And that would have been ~~minor~~ 's dad.

23 A Yes, sir.

24 Q Okay. Now, somewhere along in here did Donnie Collins
25 die?

1 A Yes, sir. He -- he took his own life on the Fourth of
2 July, I believe, 2010.

3 Q Okay.

4 A It was either 2009 or 2010.

5 Q All right. Now, the -- the prosecutor read out the --
6 the two charges you entered a plea to. One was for
7 providing alcohol to a minor; is that correct?

8 A Yes, sir.

9 Q All right. Did you admit that you had provided
10 alcohol to a minor when confronted by law enforcement?

11 A Yes, sir.

12 Q Okay. Did you actually admit to it before they even
13 arrested you to another officer?

14 A I did.

15 Q Okay. Now, as far as the minor that you provided
16 alcohol to, who -- was that Bailey C. ?

17 A Yes, sir.

18 Q Okay. Not *minor*

19 A No, sir.

20 Q All right.

21 A Her cousin.

22 Q All right. And the -- I think the -- the indictment
23 alleges Bailey C. . I think in the -- in the guilty
24 plea, they -- they also mention an Allie B. and a Molly

25 D.

1 A Yes, sir.

2 Q -- as -- as -- as you providing alcohol to.

3 A Yes, sir.

4 THE COURT REPORTER: Molly? Last name, please.

5 MR. WATSON: Molly D; ; .

6 Q Is that correct, Michael?

7 A I believe so, sir.

8 Q And Allie B ?

9 A Yes, sir.

10 Q Okay. Was ~~minor~~ one of the people that
11 alleged you provided alcohol to?

12 A No, sir.

13 Q Okay. Now, when you were arrested -- do you remember
14 when you were arrested on that alcohol charge?

15 A I don't remember exactly the date.

16 Q Was it -- were -- were you are arrested on both
17 charges at the same time or ---

18 A Yes, sir.

19 Q Okay. All right. Were you arrested for the alcohol
20 charge first?

21 A Yes, sir.

22 Q It was sometime during the summer of '09.

23 A Yes, sir.

24 Q Okay.

25 A That's the general time frame.

1 Q All right. And then were you subsequently arrested
2 for the CSC charge involving -- involving *minor* ?

3 A Yes, sir.

4 Q All right. Approximately how long after the alcohol
5 charge were you arrested for the CSC charge?

6 A Four, maybe six weeks.

7 Q Okay.

8 A It was a matter of weeks.

9 Q Both during the summer of '09.

10 A Yes, sir.

11 Q All right. When you arrest -- backing up to the
12 alcohol charge, when you were arrested for the alcohol
13 charge, did you hire an attorney, and if so, who?

14 A Yes, sir. I hired Edgar Donnald.

15 Q Okay. And then when you were arrested on the CSC
16 charge, did he continue to represent you both ---

17 A Yes.

18 Q --- on that charge also?

19 A Yes, he did.

20 Q And he represented you on those charges, up to your
21 guilty plea on November the ninth of 2010.

22 A Yes, sir.

23 Q Okay. As to the -- the charge of the CSC with *minor*
24 , did you ever admit any involvement in that charge?
25 Did you ever give a statement to law enforcement?

1 A In regards to the CSC charge?

2 Q Yes.

3 A Yes, sir.

4 Q Okay. Did you ever admit that you had done that to
5 her?

6 A No, sir.

7 Q That you committed that crime?

8 A (No audible response.)

9 Q Okay. Were they any witnesses other than *minor*
10 and you?

11 A No, sir.

12 Q Okay. Was there any forensic evidence involved ---

13 A None to my knowledge.

14 Q All right. Now, I want to briefly go over meetings
15 that you had with Mr. Donnald, and some of the things that
16 were said. Do you recall when your first meeting with Mr.
17 Donnald was?

18 A It was the day I was released from the Sumter County
19 Detention Center for the contributing to the delinquency of
20 a minor charge.

21 Q What about the alcohol charges? You had to hire him
22 on that. Did you talk to him about that?

23 A Yes, sir. That's -- that's ---

24 Q Okay. All the contributing.

25 A Yes, sir.

1 Q Okay. All right. So you talked to him then. Then
2 you were rearrested later on the CSC charge.

3 A Correct.

4 Q Did you have a conversation with him then?

5 A I did. I met with him after that.

6 Q All right. And the fee to represent you on both those
7 charges was how much?

8 A \$15,000, I believe.

9 Q Okay. And when -- was that fee paid?

10 A Yes, sir.

11 Q Okay. Did you -- I'm not going to go into all the
12 meetings and the conversations with him -- that you had
13 with your attorney. But sometime -- I'm just going to jump
14 ahead. Sometime in the early fall of 2010, did you have a
15 conversation with Mr. Donnald about this case?

16 A I believe so. Yes, sir.

17 Q Okay. Do you recall what led to that meeting?

18 A Trying to remember which meeting it was.

19 Q Well, did -- let me -- if -- if you pled in November
20 of '10 --

21 A Uh-huh.

22 Q -- okay -- did you meet with him -- would -- did you
23 meet with Mr. Donnald the day of the plea?

24 A Yes, sir. I met up with him that morning.

25 Q Okay. Did you meet with him the day before the plea?

1 A Yes, sir.

2 Q Okay. Backing up, when was the last time you met with
3 him before that?

4 A It would have been sometime during October.

5 Q Of 2010.

6 A Yes, sir.

7 Q Okay. So a month or so before the plea.

8 A Yes, sir.

9 Q All right. Your recollection is who was -- who was at
10 that meeting?

11 A That would have been myself, my father, my mother, and
12 -- and my wife.

13 Q Okay. And was -- was -- you say "your wife." Who --
14 you -- we're not talking about Chrissie at the meeting.

15 A Oh. No, sir. Kelly Sosebee.

16 Q All right. All right. So was -- was she your wife at
17 that time?

18 A No, sir.

19 Q Okay. So you -- your recollection is your girlfriend
20 Kelly was there.

21 A Yes, sir.

22 Q Okay. All right. And at that point in time, was
23 there a conversation about whether you had a court date,
24 what you should do with this case? Tell me about what
25 conversations you had with Mr. Donnalld.

1 A Basically, I was informed by Mr. Donald that it was
2 going to be coming to court some time; that he was
3 recommending that I was probably going to need to plea;
4 that there was no way that he could walk into -- his actual
5 words was that there was no way he could walk into a
6 courtroom and tell the jury that I did some -- one thing
7 and not -- I didn't do the other; that I was going to be
8 charged -- basically convicted of all the charges.

9 Q Okay. Did you ever talk about what sentence you would
10 receive at this meeting?

11 A Yes, sir.

12 Q Okay.

13 A He told me that no more than three years.

14 Q All right. Did he say that as a -- a promise or as a
15 -- what he thought you would get? I mean, how did he say
16 that?

17 A I understood him as -- as an -- as some type of plea
18 agreement.

19 Q Okay. And so your understanding was you would get no
20 more than three years.

21 A Yes, sir.

22 Q Was there any other discussion of what the sentence
23 might be?

24 A Possibly probation.

25 Q Okay. Did -- did he -- did Mr. Donald tell you

1 anything about the judge that you were going to appear in
2 front of?

3 A He told me that we would be appearing before Judge
4 James, that he was personal friends with the judge; that he
5 had helped get him elected, played golf with him on a
6 regular basis, and -- and was owed a favor.

7 Q Okay. Based on that -- your understanding that you
8 would get no more than three years and -- and possibly get
9 probation, did you make any decisions with regard to you
10 and Kelly?

11 A Yes, sir. We decided to go ahead and get married.

12 Q And when did y'all get married?

13 A October 15, here.

14 Q Okay. So that would have been after this meeting, but
15 before the plea.

16 A Yes, sir.

17 Q Okay. Now, did you also meet with Mr. -- you
18 mentioned that you met with him the day before the plea.

19 A Yes, sir.

20 Q That would have been on what day?

21 A Sunday.

22 Q Who was in that meeting?

23 A That was myself, Kelly, my father, and my mother. And
24 my brother was there, but he wasn't in the actual meeting.

25 Q Okay. Did you talk again about what sentence you

1 would receive?

2 A It was still the three years.

3 Q Okay. And again, was that a guaranteed three years --

4 -

5 A That was my understanding, yes, sir.

6 Q Okay. Was there any discussion that you might still
7 get probation on it?

8 A Yes, sir.

9 Q All right. On the day of the plea, did you meet with
10 Mr. Donald?

11 A Yes, sir.

12 Q Okay. Where -- where did those meetings take place?

13 A That was in the attorney's library here in the
14 courthouse.

15 Q Okay. At that point in time, did -- did -- was there
16 some discussion about whether Mr. -- whether Judge James
17 thought y'all were part of some Boulware family or
18 something like that? Do you remember that discussion?

- 19 A I remember Mr. Donald coming in and asking if I was
20 related to an individual whose last name was Boulware, and
21 I told him not to my knowledge.

22 Q Okay.

23 A Apparently the judge had asked him.

24 Q All right. And did you -- did you ever have any
25 discussions with Mr. Donald about the questions the judge

1 would ask and how you should answer those questions?

2 A Yes, sir. He -- I was told that I would be asked if I
3 was being forced to make a plea and --

4 Q What did you say?

5 A I said I wasn't forced to make the plea.

6 The -- he told me that the judge may want me to
7 explain to him why I was pleading guilty and what happened.
8 And I raised the question, "Should I tell the truth?"

9 Q And what did Mr. Donnald say?

10 A He said, "No. Don't worry about it. I'll take care
11 of that. I'll -- I'll speak with the judge."

12 Q Okay. Were you -- did you -- were you ever told that
13 this case was actually on a trial docket?

14 A No, sir.

15 Q Okay. Did you ever talk about going to trial with Mr.
16 Donnald?

17 A No, sir.

18 Q Did you ever talk about defenses or anything like that
19 with Mr. Donnald?

20 A I know initially we had spoken about hiring a private
21 investigator and -- and several other things, but nothing
22 ever -- ever came of it.

23 Q Okay. So when did you know -- when did you first know
24 the case was actually going to be called on November the
25 ninth? Would that have been the meeting three or four

1 weeks before?

2 A No. I found out that I actually had to be in court on
3 that -- that morning, the Friday before.

4 Q Okay. And was that by direct conversation? by
5 telephone?

6 A That was by telephone.

7 Q Okay. Is that when y'all decided to meet on the
8 Sunday?

9 A Yes, sir.

10 Q Okay. Now, were you ever told whether or not these
11 cases could be severed, the -- the alcohol case versus the
12 CSC case?

13 A No, sir.

14 Q Did you ever discuss a severance with Mr. Donnald
15 about ---

16 A No, sir.

17 Q --- these cases?

18 All right. Did the judge ever tell you during his
19 colloquy with you that you could have separate trials on
20 these cases?

21 A No, sir.

22 Q All right. Would you have pled to the CSC if you knew
23 that the two cases could not be tried together?

24 A No, sir.

25 Q Would you have pled, even with the guarantee of a

1 three-year cap, if you had known the cases could not be
2 tried together?

3 A No, sir.

4 Q Why not?

5 A From the very beginning, you know, I -- I openly
6 admitted to the -- to the contributing to the delinquency,
7 the alcohol charge.

8 Q Uh-huh.

9 A But I'd never given a statement or anything else in
10 regards to the sex crime.

11 Q Okay. Now, the last thing I want to touch base with
12 you with is Christina Papania testified at your sentencing;
13 is that correct?

14 A Yes, sir.

15 Q All right. Now, she was your ex-wife.

16 A Yes, sir.

17 Q But the marriage had been annulled at that point in
18 time.

19 A Correct.

20 Q And she was not the mother of *Minor*, the --
21 the victim of the CSC.

22 A No, sir.

23 Q She was not the mother of Bailey C. the -- the
24 victim of the contributing.

25 A No, sir.

1 Q She was the aunt of both girls.

2 A Correct.

3 Q Okay. Did she testify in her capacity as the aunt, or
4 did she testify about something completely different?

5 A She testified in the capacity of her children.

6 Q Okay. And her children ---

7 A Her two daughters.

8 Q --- were not victims in this case, no -- never any
9 allegations that they were victims ---

10 A No, sir.

11 Q --- of anything.

12 Did Mr. Donnald object to that?

13 A No, sir.

14 Q Okay. Do you think that he should have objected to
15 her giving testimony at your plea that was irrelevant to
16 the case?

17 A I do, yes, sir.

18 Q Did you think that Mr. Donnald had a special
19 relationship with the judge in this case?

20 A I did.

21 Q Did you think that you were guaranteed a specific
22 sentence, that is, a maximum of three years with the
23 possibility of probation?

24 A Yes, sir.

25 Q Would you have pled without that guaranteed sentence?

1 A No, sir.

2 Q You were asking during -- you were asked during the
3 plea were any promises made, and you said "no." Why did
4 you say "no"?

5 A Because I thought it was an agreement. I -- it wasn't
6 -- in my opinion, I didn't see it as a promise being made.
7 I thought it had been worked out between the attorneys.

8 Q You were asked if you were satisfied with your
9 attorney. At the point you were asked that question, were
10 you satisfied with your attorney?

11 A I was.

12 Q All right. Why were you satisfied?

13 A He represented me, to my understanding, to the best of
14 his ability.

15 Q You thought there was a three-year cap agreement at
16 this point in time.

17 A Yes, sir.

18 MR. WATSON: I think that's it. Answer any questions
19 the prosecutor has.

20 CROSS-EXAMINATION BY MS. HARRIGAN:

21 Q Mr. Boulware, how many times did you meet with Eddie
22 Donald before your guilty plea?

23 A Off the top of my head, I couldn't give an exact
24 number, ma'am.

25 Q More than five?

1 A Possibly, yes, ma'am.

2 Q More than 10?

3 A I don't believe it'd be that many, no, ma'am.

4 Q And your testimony was that Mr. Donnald had
5 represented you on your divorce action prior.

6 A Correct.

7 Q And you came back to seek his services again for these
8 criminal charges.

9 A Yeah, I did.

10 Q So were you satisfied with his representation during
11 your divorce?

12 A I was.

13 Q In this case, there was an auto-recording between you
14 -- and audio recording between you and the 14-year-old
15 victim, correct?

16 A Yes, ma'am.

17 Q And during that conversation, you admitting --
18 admitted to having sexual relations with this 14-year-old
19 minor, correct?

20 A No, ma'am.

21 Q You did not.

22 A I did not admit to anything in the recording.

23 Q But you're aware there are audio recordings ---

24 A Yes, ma'am. There are ---

25 Q --- you're just disputing that you admit to having

1 sexual relations during this audio recording. Okay.

2 Did your attorney ever offer to let you listen to
3 these audio recordings?

4 A Yes.

5 Q Did you listen to these audio recordings?

6 A I did.

7 Q And during your guilty plea, the Court was made aware
8 of these audio recordings, and the fact that you were heard
9 on these audio recordings, admitting to having sexual
10 relations with this minor, correct?

11 A There -- the audio recordings were mentioned during
12 the plea, yes, ma'am.

13 Q Okay. And specifically that you admitted to having
14 sexual relations during --

15 A That is the implication.

16 Q All right. And your plea was without any
17 recommendations or negotiations from the State, correct?

18 A To my knowledge, he had negotiated with the
19 prosecutor.

20 Q Do you recall signing two separate plea sheets in this
21 case?

22 A I do.

23 Q And do you recall that both of them were checked that
24 they're without any negotiations or recommendations?

25 A And I actually asked my attorney about that when I

1 signed them.

2 Q And you are aware that, at least on the sentencing
3 sheet, there was no recommendation from the State or
4 negotiation?

5 A Yes, ma'am.

6 Q And you recall the solicitor stating to the judge that
7 there were no recommendations or negotiations, correct?

8 A I believe so. Yes, ma'am.

9 Q And the judge asked you if you were aware that there
10 were no negotiations or recommendations, correct?

11 A Uh-huh.

12 Q But your testimony here today is that your attorney
13 told you you wouldn't receive more than three years,
14 correct?

15 A Yes, ma'am.

16 Q And your attorney, Mr. Donnald, told you it was
17 because he had a close ---

18 A Personal connection ---

19 Q --- close, personal ---

20 A --- with the judge.

21 Q --- connection with the judge, correct?

22 A Yes, ma'am.

23 Q And I believe your testimony was that he was golfing
24 buddies with Judge James?

25 A I believe -- I believe golfing buddies and also

1 possibly church buddies.

2 Q Okay.

3 THE COURT REPORTER: I'm sorry?

4 THE APPLICANT: Church. Religious.

5 Q But you signed the plea sheet, knowing that it was
6 checked it was without any negotiations or recommendations,
7 correct?

8 A I did.

9 Q And the charge of criminal sexual conduct with a minor
10 in the second degree, are you aware that that charge
11 carried up to 20 years?

12 A Yes, ma'am.

13 Q And the judge -- Judge James advised you that the
14 sentence carried up to 20 years, correct?

15 A Yes, ma'am.

16 Q And your other charge, contributing to the delinquency
17 of a minor, that carries up to three years, correct?

18 A Yes, ma'am.

19 Q And those sentences could have been run back to back;
20 you're aware of that, right?

21 A Yes, ma'am.

22 Q So you could have received an aggregate total of 23
23 years in prison, correct?

24 A Yes, ma'am.

25 Q And the State also dismissed a lewd act with a child

1 charge as a result of your plea, correct?

2 A I believe so. Yes, ma'am.

3 Q And Judge James didn't sentence -- sentence you to the
4 maximum, did he?

5 A No, ma'am.

6 Q You received 12 years concurrent, correct?

7 A Yes.

8 Q Okay. During your plea, you admitted your guilt to
9 Judge James, correct?

10 A I did.

11 Q So you are guilty of the CSC with a minor in the
12 second degree.

13 A I was told by my attorney that if I did not plead
14 guilty, then some -- that basically the case was going to
15 be thrown out, and I would end going back before a jury.

16 Q And you were aware that during your plea, you were
17 under oath, correct?

18 A Yes.

19 Q So your testimony here today is that you, indeed, are
20 not guilty of the criminal sexual conduct with a minor in
21 the second degree.

22 A Yes.

23 Q So you lied under oath to Judge James during your
24 plea.

25 A I was instructed by my attorney as to what to say when

1 I was asked about ---

2 Q You were instructed by your attorney to lie under
3 oath.

4 A Yes, ma'am.

5 Q And you did indeed lie under oath during your guilty
6 plea.

7 A Yes, ma'am.

8 Q You were questioned by Judge James another time.
9 Specifically, he asked if you did have sex with this girl
10 when she was 14, on page 24 of the transcript. And your
11 reply was, "Yes, Your Honor."

12 So you admitted more than once during your guilty plea
13 that you had indeed had sex with this 14-year-old minor,
14 correct?

15 A I believe -- if that's what the transcript says, yes,
16 ma'am.

17 Q And this was only at the advice of your attorney
18 requesting you to lie to Judge James.

19 A I was told that if -- in order to get this agreement,
20 that this -- this three year promise, that I was going to
21 have to plead guilty to that charge.

22 Q And I believe your testimony was that you never wanted
23 to enter a guilty plea to the criminal sexual conduct
24 charge, correct.

25 A No. No, I didn't want ---

1 Q Then why did you end up deciding to plead guilty to
2 the CSC with a minor in the second degree?

3 A Because I was told by my attorney that if I went to
4 trial, there was no way he could stand in front of a jury
5 and tell the jury that I committed one act and didn't
6 commit the other.

7 MS. HARRIGAN: Court's indulgence.

8 (Brief pause.)

9 MS. HARRIGAN: No additional questions, Your Honor.

10 THE COURT: Okay. Anything further.

11 MR. WATSON: Nothing on redirect.

12 THE COURT: All right. You can step down.

13 (The applicant exits the stand.)

14 MR. WATSON: Kelly.

15 KELLY SOSEBEE, having been first
16 duly sworn, testifies as follows:

17 THE BAILIFF: State your name, please, and spell your
18 first and last name for the record.

19 THE WITNESS: Kelly Sosebee; K-e-l-l-y, S-o-s-e-b-e-e.

20 DIRECT EXAMINATION BY MR. WATSON:

21 Q Okay. You are married to Michael Boulware?

22 A Yes.

23 Q Okay. You ever testified before?

24 A No.

25 Q You nervous?

1 A Yes.

2 Q All right. I'm going to be -- where do you live now?

3 A I live up in North Carolina, close to the Dobson area.

4 Q Okay. You're going to have to speak up and speak
5 clearly ---

6 A Okay.

7 Q --- because this lady's taking down everything you
8 say.

9 Were you in here when Michael testified --

10 A Yes.

11 Q -- just now?

12 A Yes.

13 Q All right. I'm going to direct you to a Sunday at --
14 the day before the plea, at Mr. Donnald's office. Were you
15 present at that meeting?

16 A Yes, I was.

17 Q Okay. Tell the Court your recollection of -- of who
18 met with him, with Mr. Donnald, and what was said.

19 A Okay. We all came down on that Sunday, Michael, his
20 dad, mom, and brother. His brother was outside with his
21 mom and dad. Michael and I went in first to meet with Mr.
22 Donnald.

23 He introduced me to his lawyer. We sat down, we were
24 talking. Mr. Donnald asked me to step out of the room.

25 MS. HARRIGAN: The State would object to any hearsay

1 that might be -- he let her -- going to approach some
2 hearsay statements. The State would like to object to
3 that.

4 THE COURT: I think she just said that the lawyer
5 asked her to step out of the room.

6 MR. WATSON: Yes, sir.

7 THE WITNESS: Yeah.

8 THE COURT: Okay.

9 A The lawyer asked me to step out of the room because
10 they had lawyer/client privileges. So I stepped out, but
11 Mr. Donnald left the door cracked at that point, and I was
12 sitting right outside the door. They ---

13 Q Did you overhear some of the conversation between
14 Michael Boulware and Mr. Donnald?

15 A Yes, I did.

16 Q Okay. Tell me what you heard.

17 A They were talking about the trial and what was going
18 to take place, and that Michael needed to plead guilty.
19 But at most he would get, you know, one to three years.
20 And more than likely he would walk out with probation,
21 because he had just played golf with the judge, and the
22 judge was a friend of his and owed him a favor.

23 Q Okay. Did you ever go back in to meet with Mr.
24 Donnald and Michael?

25 A Yes, I did.

1 Q Okay. Did you have any further conversation with Mr.
2 Donnald about the sentence that -- that Michael would
3 receive?

4 A Yes, I did.

5 Q Tell me ---

6 A I asked what the worst case scenario was, because we
7 had just gotten married. And he said, "At most, it would
8 be one to three years," but more than likely, my husband
9 would be walking out with me with probation.

10 Q Okay. And let me back up. This -- this meeting would
11 have been on, I think, November the 8th. When did y'all
12 get married?

13 A October 15.

14 Q Okay. Were you aware that Michael had had a meeting
15 with Mr. Donnald prior to y'all getting married?

16 A Yes.

17 Q Okay. And based on -- did Michael ever tell you
18 anything about what sentence he would receive coming out of
19 that meeting some month before?

20 A Worst case scenario would be one to three ---

21 Q And based on -- I'm sorry.

22 A --- just probation.

23 Q Okay. And based on -- did you rely on that and make
24 some life decisions based on that?

25 A Yes, I did.

1 Q Okay. And what did you do?

2 A We got married.

3 Q Okay. And you got married based on the fact that you
4 thought he would be in jail for a short while?

5 A I got married based on the fact that he was told he
6 would get probation more than likely, and at worst, would
7 be one to three.

8 Q Okay. All right.

9 MR. WATSON: That's all I have. Answer any questions
10 the prosecutor has.

11 CROSS-EXAMINATION BY MS. HARRIGAN:

12 Q Ms. Sosebee, were you present for the plea?

13 A The trial?

14 Q The -- his guilty plea ---

15 A Yes.

16 Q --- when he came in?

17 And you heard the -- did you hear the judge state that
18 there were no negotiations or recommendations as to a
19 sentence?

20 A I did, but I was also present when -- in the library -
21 --

22 Q In regards to the plea, you heard the judge ask your
23 husband if he was aware that there were no negotiations or
24 recommendations, correct?

25 A Yes.

1 MR. WATSON: I -- I'm going to object, because she
2 interrupted the answer. She answered the question and she
3 was getting ready to explain her answer when the prosecutor
4 ---

5 MS. HARRIGAN: I was just concerned ---

6 MR. WATSON: --- interrupted her.

7 MS. HARRIGAN: --- with the specific amounts of what
8 happened at plea.

9 THE COURT: And you -- you can answer her question.
10 But if you want to explain your answer, you can.

11 THE WITNESS: I can explain?

12 THE COURT: Yeah. I mean, you can ---

13 THE WITNESS: Okay.

14 THE COURT: --- answer. She asked you if you were
15 present when -- when he pled guilty in front of the judge.

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 THE WITNESS: I was present.

19 CROSS-EXAMINATION BY MS. HARRIGAN (continues):

20 Q And during the guilty plea, you heard the judge state
21 -- Judge James state that there were no negotiations or
22 recommendations from the State as to your son's [sic]
23 potential sentences, correct?

24 A Well ---

25 Q During the plea.

1 A During the plea, yes, that was stated. But when we
2 were sitting in the library room and Mr. Donnald came in,
3 my husband asked why does this say "no negotiations" before
4 he signed it that day. And he was -- said that it was
5 because these negotiations were made outside of the
6 courtroom because they were a personal friend.

7 Q So Mr. Donnald indicated to your husband, while you
8 were present, that he had an improper influence on Judge
9 James.

10 A Yes.

11 Q Okay. And you -- did you hear the solicitor, during
12 the plea, also state that there was no negotiation or
13 recommendation from the State?

14 A Yes.

15 Q Okay.

16 MS. HARRIGAN: No further questions.

17 THE COURT: Okay. Anything further?

18 MR. WATSON: You can step down.

19 (The witness exits the stand.)

20 MR. WATSON: Your Honor, can this witness be excused?

21 She drove all the way down from almost Virginia.

22 THE COURT: Any object from the State?

23 MS. HARRIGAN: No.

24 THE COURT: She can.

25 MR. WATSON: Thank you.

1 RICHARD BOULWARE, having been
2 first duly sworn, testifies as follows:

3 THE BAILIFF: State your name, please, and spell your
4 first and last name for the record.

5 THE WITNESS: Richard Boulware; R-i-c-h-a-r-d;
6 Boulware, B-o-u-l-w-a-r-e.

7 DIRECT EXAMINATION BY MR. WATSON:

8 Q All right. You are Michael's brother?

9 A Yes, sir.

10 Q I'm going to direct your attention to -- let me back
11 up. You've been in court while the prior two witnesses
12 testified?

13 A Yes, sir.

14 Q All right. You heard them testify about a meeting at
15 Mr. Donnald's office on Sunday before the guilty plea.

16 A Yes, sir.

17 Q Were you present -- maybe not for the whole meeting,
18 but were you present at Mr. Donnald's office?

19 A Yes, sir, I was.

20 Q Okay. Did you ever have any conversation with Mr.
21 Donnald about the sentence that Michael would receive?

22 A Yes, sir.

23 Q All right. Tell me the circumstances. Where did that
24 conversation take place?

25 A The day before we were to -- Michael was to plea in

1 court, after the meeting with Kelly, Michael's wife, and
2 Michael upstairs and my mother and -- my father, I believe,
3 Mr. Donaldson [sic] and Michael had come back downstairs.
4 Kelly was standing there. It was me, Michael, Kelly, and
5 Mr. Donaldson standing beside -- in between two cars.

6 Q Okay. Outside of his office?

7 A Yes, sir.

8 Q Okay. And did you have any conversation directly with
9 Mr. Donaldson at that time about the sentence that Michael
10 would receive?

11 A Yes, sir.

12 Q All right. Tell me the essence of that conversation.

13 A It was stated that -- my question was is Michael --
14 Michael pleading to something. Mr. Donaldson -- that was
15 the exact question I asked. Mr. Donaldson had instructed
16 me that he had no kind of a defense. That Michael would
17 get no more than three years if he pled guilty.

18 Q And if he didn't plead guilty, what would happen?

19 A That he was looking at ---

20 Q Did -- did he say ---

21 A --- 18 to 21 years.

22 Q Okay. Mr. Donaldson said that to you?

23 A Yes, sir.

24 Q And that was in response to a question you asked him?

25 A Yes, sir. But Michael being present, standing there

1 also, the question was asked in broad, but Mr. Donaldson
2 answered.

3 Q Okay. Were you present in the law library the day of
4 the plea?

5 A Yes, sir, I was.

6 Q Did you overhear conversations with your brother
7 Michael and Mr. Donaldson? Any -- anything more about what
8 should be said at the plea, what sentence he would get,
9 anything like that?

10 A Yes, sir. Mr. Donaldson told Michael -- Michael
11 inquired as to -- to admitting without -- you know, without
12 the plea on paper. Mr. Donaldson told him he had to
13 convince the judge that he was guilty.

14 Q Okay. And what did -- what did Michael say to that,
15 if anything?

16 A Well, the question was is in reference to the three
17 years. Michael admitted that because of the three year --
18 maximum sentence would be three years if he admitted
19 guilty.

20 Q Okay. When you had your conversation the day before
21 with Mr. Donaldson about the sentence that Michael would
22 receive, did you take it as -- as Mr. Donaldson's best guess
23 as to what he would get or a guarantee? How would you
24 classify it?

25 A No, sir. No, sir. It was my understanding is that

1 Michael, most probability, would walk out with probation;
2 that he would do three years active sentence maximum.

3 Q Okay. All right. Answer any questions --

4 CROSS-EXAMINATION BY MS. HARRIGAN:

5 Q Mr. Boulware, so your testimony in this court today is
6 that Mr. Donnald advised your brother to lie to a Court
7 under oath?

8 A It wasn't stated as a lie. He told him he had to
9 convince the judge he was guilty.

10 Q Did your -- you were present -- were you present for
11 the plea?

12 A Yes, ma'am.

13 Q And did you hear Judge James state on the record there
14 were no negotiations or recommendations?

15 A Yes, ma'am. But based on -- on what I had been told
16 by Mr. Donnaldson, I really didn't pay attention to what
17 the judge was saying. It was my understanding that he
18 would get three years maximum, it didn't matter what he
19 - said.

20 Q And this is based on your conversations with Mr.
21 Donnald in which he explained to you as "golfing buddies,"
22 and "good friends" with Judge James, correct?

23 A No. It was -- my understanding was is that it was a
24 plea that was already done, but it was done outside this
25 courtroom; that he would receive a maximum of a three-year

1 sentence. And probability was that he would back in school
2 in North Carolina the following -- the following day to
3 complete courses.

4 MS. HARRIGAN: No further questions, Your Honor.

5 THE COURT: Okay. Anything further?

6 MR. WATSON: You can step down.

7 (The witness complies.)

8 MR. WATSON: Kay Boulware.

9 KAY BOULWARE, having been first
10 duly sworn, testifies as follows:

11 THE BAILIFF: State your name, please, ma'am, and
12 spell your first and last name for the record.

13 THE WITNESS: Kay Boulware; K-a-y, B-o-u-l-w-a-r-e.

14 DIRECT EXAMINATION BY MR. WATSON:

15 Q All right. You are Michael Boulware's mother.

16 A Yes, sir, I am.

17 Q All right. And did you ever have an occasion to meet
18 with Mr. Donnald regarding Michael's case?

19 A Yes. I met with Mr. McDonald [sic] at -- I didn't
20 meet him til September or October of -- of -- prior to the
21 court case.

22 Q Okay.

23 A We called Mr. McDonald many times to see what we could
24 do to help.

25 Q And you ---

1 A To ---

2 Q And when you say "we," who is we?

3 A Walter and myself, his dad.

4 Q Okay.

5 A We never got a phone call return. So we made an
6 appointment and went down. He didn't know it was us til we
7 walked into the room and he saw that it was us.

8 Q All right. And your recollection is that meeting
9 would have been when?

10 A Probably around the first of September. School had
11 already started. Michael was back at UNC. He had
12 transferred from Greenville. He was working on his
13 Batchelor's. So it was after school had started that year.
14 It could have been in August.

15 Q Okay.

16 A But it was the latter part of the summer. Michael had
17 been to the house and he was very stressed out, so ...

18 Q Okay. Who was present at that meeting?

19 A Walter, myself -- self and Mr. McDonald.

20 Q Okay. So Michael was not part of that meeting.

21 A No. No.

22 Q So this ---

23 A He didn't know we had gone.

24 Q Okay. So this wasn't the meeting that was, like,
25 maybe a month before the plea. This would have been ---

1 A No. This was ---

2 Q --- before that?

3 A This was before that.

4 Q Okay. What did y'all -- what did you and Walter talk
5 to Mr. Donald about at that point in time?

6 A We discussed maybe a pay -- to help the girl with --
7 you know, just anything we could do. We were willing to --
8 to give money to the girl to -- you know, to help, if at
9 all possible.

10 We asked about the private attorney -- the private
11 investigator that was supposed to be part of the deal. It
12 never was --

13 Q Okay.

14 A It never fruited ---

15 Q And I don't mean -- I don't mean to jump over that
16 meeting, but at that meeting, had there been a court date
17 set?

18 A No. But he did say he would go talk -- he would go
19 back to the courthouse and find out what was going on with
20 the case, because he had not prepared for the case. He had
21 not -- he had not followed it through. So he was going
22 back.

23 And he would also talk to a judge -- an attorney that
24 he knew that could play the part of the money between us
25 and him. He couldn't do that; we couldn't do that. But he

1 knew someone that could.

2 Q Okay. I'm going to -- I'm going to jump ahead.

3 A Uh-huh.

4 Q There's -- there's been talk of a meeting after the
5 one you're talking about, but before the Sunday meeting,
6 where a lot of family members came down. Were you part --
7 did you go to that meeting?

8 A (No audible response.)

9 Q What -- what led to that meeting?

10 A After we talked to him, he contacted Michael that we
11 needed to come in and talk. So we ---

12 Q All right.

13 A --- picked up -- it was Michael and Kelly -- I think
14 Kelly was there -- and Walter and myself. We never went in
15 together. We always went in twos, except at the very
16 ending.

17 Q Okay. All right. Let me -- let me -- let me ask
18 questions.

19 A Uh-huh.

20 Q I don't want you to just -- just ramble. Feel free to
21 fully answer any questions.

22 But at -- at that particular meeting, do you recall --
23 did -- did you -- you said you all didn't go into the
24 meeting with Mr. Donnald at the same time. Did you -- who
25 went in first?

1 A Michael and Kelly.

2 Q Okay. And then later, did you have an occasion to
3 meet with Mr. Donnald?

4 A Yes, sir. He sent for us to come in, and Walter and I
5 went in.

6 Q Okay. Are Michael and ---

7 A I mean, Walter and I went in.

8 Q All right.

9 A Michael and Kelly may have been in there for part of
10 it, but not all of the meeting because we did it in twos.

11 Q Okay. And did you ever have any conversation with Mr.
12 Donnald about the sentence that Michael would receive at --
13 at ---

14 A Yes, sir.

15 Q --- that meeting. Okay. Tell me -- tell me about
16 that conversation.

17 A One to three, not over three, with a high probability
18 of parole.

19 Q All right. Did he give any sort of assurances as to
20 why he -- why Michael would receive that sentence?

21 A He said Michael was going to declare himself guilty,
22 and Michael, you know, is an adult. But he also was more
23 interested in the \$6,000 that we still owed him at that
24 time.

25 Q Okay. You -- you're jumping around. Did you pay that

1 \$6,000?

2 A Yes, we did.

3 Q Okay. My question was: Was there any conversation
4 about what sentence Michael would receive?

5 A Yes, sir.

6 Q Okay. When -- when -- when Mr. Donnald said "one to
7 three, but probably probation," did you take the "one to
8 three" to be a guaranteed max as far as the sentence?

9 A Yes, sir.

10 Q Okay. And -- and my question was: Did -- did Mr.
11 Donnald give you any assurances as to why that would be the
12 sentence or how he knew that would be the sentence?

13 A He said we got the best judge possibly could get, and
14 that he owed him a favor.

15 Q All right. Now, based on that meeting and what Mr.
16 Donnald said, did you and Walter agree to do anything with
17 regards to Michael and Kelly, and if so, what?

18 A Yes, sir, we did. We -- we agreed that we would pay
19 Michael's part of the expenses for the entire time --
20 whether it was probation up to the three years, that we
21 would pay his half of the -- of the expenses --

22 Q Okay.

23 A -- for Kelly. Because she could not carry any loans
24 alone -- I mean, her bills alone.

25 Q Okay. So you and Walter, Michael's dad and you,

1 agreed to help pay the household bills for Kelly ---

2 A Yes, sir.

3 Q --- if Michael went to jail.

4 A Yes, sir.

5 Q All right. Did -- there's been discussion of a
6 meeting that took place the day before Mr. Donald's
7 office. Were you ---

8 A Yes, sir.

9 Q --- part of that meeting?

10 A Yes, sir.

11 Q Okay. Was there any discussion at that meeting about
12 the sentence, and was -- was there -- was there any
13 discussion about the sentence Michael would receive?

14 A Yes, sir. It was still the same, and he was overly
15 confident that that was the way -- and we were assuming it
16 was a plea bargain. We didn't know it was a guilty plea.
17 From the way he led us, it was a plea bargain.

18 And yes, sir. He was overconfident of the result of
19 the trial.

20 Q All right. All right. Were you present at the law
21 library the morning of the plea?

22 A Yes, sir.

23 Q And did you -- did -- was there any discussion at that
24 time between Mr. Donald and your son about the sentence he
25 would get?

1 A Yes, sir.

2 Q All right. What was said that time?

3 A It was still one to three, I mean, you know, or high
4 possible -- we didn't know until bout end of the trial that
5 the parole was no -- it was not even considered. It was
6 still high possibility ---

7 Q And when you're saying "parole," you mean probation?

8 A Probation. I'm sorry.

9 Q That's fine.

10 A Get those two mixed up.

11 Q Okay. Do you remember some conversation Mr. Donnald
12 asking y'all if y'all were related to somebody named
13 "Boulware"?

14 A Yes, he did. He came in and the judge had had a bad
15 relationship with this Boulware.

16 Q Okay.

17 A And I can't tell you his name, but it was -- it was
18 there. And so, he wanted to know if we were kin, and we
19 said, "Well, Walter's family came from -- from around here,
20 but not that we knew of."

21 And Michael said, "Well, is it good or bad?" And he
22 said, "Bad."

23 Q Okay. But it didn't matter ---

24 A It didn't matter.

25 Q --- because y'all weren't related.

1 A We -- we took it -- it was a joke.

2 Q All right. Did you ever hear any discussion between
3 Mr. Donnald and -- and your son about the way he should
4 answer questions at that Sunday in the library?

5 A He came in and he was talking to Mike. And Mike asked
6 him, "Do you want me to tell the truth?"

7 Q Uh-huh.

8 A And his answer was, "No. You have got to convince him
9 you're guilty."

10 Q Okay.

11 A So it, you know, he -- it was in the library. We
12 stayed in the library a long time.

13 Q Okay. Okay. Answer any questions that the prosecutor
14 has.

15 A Uh-huh.

16 CROSS-EXAMINATION BY MS. HARRIGAN:

17 Q Ms. Boulware, how many times did you meet with Mr.
18 Donnald?

19 A Myself? One, two -- probably four.

20 Q Four times?

21 A Uh-huh.

22 Q And your son wasn't present for all of those meetings?

23 A Well, he never -- he usually took us in in separates.
24 Like I said, he took us in in twos.

25 Q Okay.

1 A And very few -- I think maybe one time, and maybe when
2 I gave him the money, Mike may have been in there. But
3 usually we were in separate.

4 Q And you testified during your direct examination that
5 you asked Mr. Donald if you could provide financial
6 assistance to the minor ---

7 A Yes, ma'am, we did.

8 Q --- victim, correct?

9 A Yes, ma'am.

10 Q Did your son ever deny his guilt to you?

11 A My son has never said he was guilty of anything but
12 the alcohol to us. He admitted the alcohol charge, but
13 never any of the other.

14 Q Then why did you offer to provide financial assistance
15 to the minor child?

16 A Well, anything to help. We were trying to help get
17 this thing settled. Mike was in school; he was having a
18 stressful time. And -- and we thought -- and -- and Eddie
19 went along with us -- excuse me -- Mr. McDonald went along
20 with it. He knew someone that could play the mediator.

21 Q And you were hoping that providing financial
22 assistance ---

23 A Anything.

24 Q --- would make the charges go away or be reduced.

25 A Yes, ma'am.

1 Q And your testimony to this Court is that Mr. Donnald
2 told you that your son would only receive a one to three
3 year sentence ---

4 A Yes, ma'am.

5 Q --- or probation.

6 A Yes, ma'am.

7 Q Do you recall how many times he told you that?

8 A In the last two or three visits, if -- and after we
9 were in the -- the law library, he returned to talk to us.
10 And he said he wasn't shocked that Michael was found
11 guilty, but he was shocked at the timing element.

12 Q And I believe your testimony was that Judge James owed
13 Mr. Donnald a favor --

14 A A favor.

15 Q -- and that is the reason why he would hopefully get
16 one to three years.

17 A Yes, ma'am.

18 Q So you aware -- were aware, based on your
19 conversations with Mr. Donnald, that the sentence of one to
20 three years would be a favor from Judge James.

21 A I thought it was a plea bargain because of the favor,
22 that he had worked out something with Judge James. I --
23 you know, that was my understanding.

24 Q And do you recall what relationship Mr. Donnald told
25 you he had with Judge James?

1 A He said he owed him a favor, that he'd helped with his
2 election, whatever that may be; and he was a golf buddy.
3 But I didn't know about the church. He did not mention the
4 church when I was in there.

5 Q But you remember helping with the election and -- and
6 ---

7 A Yes, ma'am.

8 Q --- the golf buddy.

9 A Yes, ma'am.

10 Q Okay. Did you discuss with your son whether or not to
11 plead guilty?

12 A Yes, ma'am. But Eddie told us the max would be 48
13 years, not 21, but 48. And we were willing to let Michael
14 plead -- actually to -- to say that he did something he did
15 not do, we thought three years was much greater than going
16 to court and facing 48 years.

17 Q But ultimately it was up to your son to decide whether
18 or not to plead guilty, correct?

19 A Yes. But he had our support. I mean, we would not
20 have agreed to pay the bills had he not had our support
21 [sic].

22 Q Were you present for your son's guilty plea?

23 A Yes, ma'am.

24 Q And are you aware that your son was under oath during
25 his guilty plea?

1 A Yes, ma'am.

2 Q And you heard your son acknowledge to Judge James at
3 least two times that he was in fact guilty, correct?

4 A Yes, ma'am. But at that point, we thought we had a
5 plea bargain, and we thought it was part of the plea
6 bargain because he had been told to convince him he was
7 guilty. And so we didn't -- until the sentence came down,
8 we weren't aware.

9 Q And your testimony was that Eddie Donnald advised him
10 to -- I think your exact words were "no," when he asked
11 whether or not to tell the truth -- "no" to convince the
12 judge that you're guilty.

13 A Yes, ma'am.

14 Q So your testimony is that Eddie Donnald asked your son
15 to lie to the Court.

16 A I guess you can put it that way. He said he hadn't
17 had time to prepare the case. He'd had the case two years,
18 but he had not prepared it. He was not ready to go to
19 court.

20 MS. HARRIGAN: No further questions, Your Honor.

21 THE COURT: Okay.

22 MR. WATSON: You can step down.

23 (The witness complies.)

24 MR. WATSON: Walter Boulware.

25 WALTER BOULWARE, having been first

1 duly sworn, testifies as follows:

2 THE BAILIFF: State your name, please, and spell your
3 first and last name for the record.

4 THE WITNESS: Walter Boulware; W-a-l-t-e-r, B-o-u-l-w-
5 a-r-e.

6 DIRECT EXAMINATION BY MR. WATSON:

7 Q All right. I think Kay introduced you as the father
8 of Michael; is that correct?

9 A That's correct.

10 Q All right. And I'm going to talk to you about
11 meetings that you had with Mr. Donald. Do you recall the
12 first time you met Mr. Donald, when that would have been?

13 A Yes. It was the first part of the week after
14 Michael's first arrest for the alcohol charge.

15 Q Okay.

16 A We came down on a -- it happened on a Friday. We came
17 down Friday night as soon as we found out.

18 Michael's neighbor had seen the police cars in the
- 19 yard and called -- she didn't know our phone number,-- so she
20 called my brother. She found my brother's phone number in
21 Michael's Rolodex. And she called my brother, and my
22 brother called me. And I was in Charlotte, and we came
23 down that night.

24 Q Okay. And when did you first meet with Mr. Donald?

25 A I think it was on a Tuesday after that -- after he

1 posted bond on -- on Saturday.

2 Q Okay.

3 A It was that Tuesday.

4 Q All right. And did you help pay Michael's fee in this
5 case?

6 A Yes.

7 Q All right. Did you pay part of the fee at that time,
8 do you recall ---

9 A Not -- we ---

10 Q --- on that Tuesday or ...

11 A The first meeting we had with him he said it was going
12 to cost \$15,000.

13 Q Okay.

14 A And he needed half of it up front. So we -- we paid
15 him that within a week. I don't -- I didn't have it with
16 me.

17 Q Okay. All right. And -- and I don't think these
18 meetings -- now, when's the next time you met with -- with
19 Mr. Donnald?

20 A It was -- it was soon after his second charge, the --
21 the sex charge.

22 Q Okay. And who was present at that meeting?

23 A Michael, myself, and Mr. Donnald.

24 Q Okay. And that would have been in, I guess, July or
25 August ---

1 A It was probably August. Yeah. First of August
2 sometime.

3 Q Okay. Did you ever meet with Mr. Donnald during that
4 next year, the -- the fall ---

5 A I talked to him several times.

6 Q Okay. Did you ever come down here and meet with him
7 until -- until the meeting that's been described ---

8 A No.

9 Q --- in the fall of 2010?

10 A No.

11 Q Okay. Did you come down sometime in late September or
12 October, about a month before the plea, to a meeting at Mr.
13 Donnald's office?

14 A Well, Kay and myself came down one time by ourselves.

15 Q Okay.

16 A And -- and we just -- we'd tried to call Mr. Donnald,
17 and he never returned the call. And Michael was concerned
18 about, you know, what -- what -- what was pending, how the
19 case was.

20 So we just called and made an appointment with his
21 secretary, receptionist, whoever answered the phone. We
22 made an appointment for them, and came down, just the two
23 of us.

24 Q Okay.

25 A That was the third time I met him.

1 Q Okay. And then you met with him where everybody came
2 down.

3 A That's correct.

4 Q That would have been after this meeting with just you
5 and Kay and Mr. Donnald.

6 A That's correct.

7 Q All right. And -- and that would have been a month or
8 so after ---

9 A Yeah. It was -- it was probably a month -- that's --
10 he -- he -- he had a court date then.

11 Q Okay.

12 A He said he had -- had -- had got him a court date.

13 Q And is that what led to this meeting, because ---

14 A Yes.

15 Q --- he had a court date?

16 A Yes.

17 Q Okay. And your recollection is how -- that meeting
18 was about how long before the guilty plea?

19 A A month.

20 Q Okay.

21 A A month, month and a half.

22 Q All right. Did you ever talk to Mr. Donnald about the
23 sentence your son would receive or did you ever overhear
24 Mr. Donnald talking to anyone else in that group about the
25 sentence that ---

1 A Yes. Several times ---

2 Q --- that your son would ---

3 A --- you know ---

4 Q I'm talking about just at this meeting on the -- the
5 month before the -- the plea.

6 A Yeah.

7 Q Okay.

8 A One ---

9 Q Tell me -- tell me what -- what ---

10 A --- one to three years.

11 Q Okay. Tell me exactly what he said. He didn't just
12 say "one to three years." What did he say?

13 A Well, he just said that -- that -- that's when he told
14 us that he had -- he knew who the judge was going to be.
15 He knew the date of the court. And that he was -- he asked
16 Michael, he said, "What do you think about the judge?"

17 And Michael says, "Well, I've testified before him."

18 And he says, "He seems okay." I mean, you know.

19 And he said, "Well, he -- he owes me a favor. I
20 helped him get elected."

21 And that was what I remember then.

22 Q Okay. And did he specifically say what sentence
23 Michael ---

24 A Yes.

25 Q --- would receive?

1 A One to three years. It was -- it was always --

2 Q Okay. And did you take that as a guarantee that it
3 would be one to ---

4 A Yes.

5 Q --- years, or just that that's what he was hoping to
6 get or he thought he ---

7 A No. That's ---

8 Q --- could get.

9 A --- that's what I expected. You know, that's what he
10 said he would get, no more than three years.

11 Q Okay. Who was present at that meeting?

12 A Well, it was Michael, his mom, Kay, myself, and Kelly.

13 Q Okay. All right. Did you also -- were you also at
14 the meeting at Mr. Donnald's office the Sunday before the
15 plea?

16 A Yes.

17 Q Okay.

18 A We all came down.

19 Q Tell me about that meeting.

20 A That -- at first, Kelly and -- and Michael -- he -- he
21 came -- he told us to meet him that Sunday. So we were
22 there, and he -- he -- he wanted Kelly and Michael in
23 first. We stayed in the car.

24 And Michael came out and said that -- this was maybe
25 an hour later or so. And he came out and said, "You -- you

1 and Mama need to come in."

2 And we went in and that's -- you know, there was the
3 four of us in there then.

4 Q Okay. And was anything said at that time about the
5 sentence that Michael ---

6 A Yeah.

7 Q --- would receive?

8 A He -- he said that -- that normally he didn't advise
9 anybody to take a plea, but in Michael's case, that he did;
10 that he hadn't had time to prepare. And that he thought it
11 was in Michael's best interest that he plead guilty.

12 Q Okay. And did he say at that time what the sentence
13 would be?

14 A One to three years.

15 Q Okay.

16 A That's -- that's the only thing I ever heard.

17 Q All right. And then, going to the day of the plea in
18 the law library, were you present ---

19 A Yes, I was.

20 Q --- then? How long were y'all in the law library?

21 A Probably a couple of hours. We were here when the
22 courthouse opened up.

23 He told -- he told us -- that Sunday he -- he said
24 that Michael didn't need to be seen around town, because of
25 him being Sheriff's deputy and the court date was the next

1 day and this kind of thing.

2 So he didn't even go out to eat dinner with us that
3 night. We brought his dinner back to the hotel.

4 And then the next morning, he had told us where to go,
5 told us where the law library was and -- and we were here
6 when the courthouse opened.

7 Q Okay.

8 A And we went to the law library.

9 Q And so you were in the law library for couple of
10 hours.

11 A Couple of hours.

12 Q Was Mr. Donald there the whole time or was he in and
13 out or ...

14 A He was in and out.

15 Q Okay.

16 A Yeah. He -- he ---

17 Q Was there any conversation during that time about the
18 sentence that Michael would receive?

19 A Yes. It was -- it was always one to three, one to
20 three years.

21 Q Okay. Did you hear -- overhear any conversation
22 between Mr. Donald and your son about how to answer any
23 questions the judge may ask?

24 A Yeah. He told him he needed to convince him that what
25 the prosecutor was saying was true. And that -- and

1 Michael asked him -- he asked him if -- if he needed to
2 tell the judge really what happened. And he said, "No.
3 You can't do that." He said, "You gotta convince him that
4 -- that the plea is -- is what actually happened."

5 Q All right. Answer any questions Madam Prosecutor has.

6 MS. HARRIGAN: May it please the Court.

7 THE WITNESS: I have a hard time hearing.

8 MS. HARRIGAN: I'll -- I'll try to speak up for you.

9 THE WITNESS: Thank you very much.

10 MS. HARRIGAN: All right. I realize I can be soft-
11 spoken sometimes.

12 CROSS-EXAMINATION BY MS. HARRIGAN:

13 Q How many times did you meet personally with Mr.
14 Donnalld?

15 A One, two, three, four, five -- I met with him five
16 times before the plea, and -- and once afterwards. We did
17 -- we did talk to him one time after to see if there was
18 anything we could do about the -- the sentence.

19 Q Was your wife present for all of these meetings?

20 A What's what?

21 Q Was your wife, Kay, present ---

22 A She was -- she was present at some of them. The first
23 two it was just Michael and myself. The third one it was
24 just my wife and myself. The fourth one was the -- the
25 four of us: my wife, Michael, his wife, and myself.

1 The fifth one my brother -- my son, Michael's brother,
2 was down. He -- he wasn't in the meeting. I think -- we
3 stayed in the -- in -- in Mr. Donnald's office. They
4 wanted to smoke.

5 All four of them smoked and we didn't. And so they
6 went outside and smoked, and I -- I wasn't present when
7 they went outside. I was present inside.

8 And then we met with him in the law library. Several
9 times he was in and out. And then we -- my wife and myself
10 come down after.

11 And -- and I think Mr. Donnald -- he did file a
12 sentence reduction. That's what we came down that last
13 time for which -- which -- which was granted. And that --
14 that was the last time I saw him.

15 Q Were you present when your wife asked Mr. Donnald if
16 she could provide financial assistance to the minor child
17 in this case?

18 A Yes, I was.

19 Q All right. And did your son ever deny his guilt to
20 you ---

21 A We -- we discussed it. I mean, you know, I -- the --
22 if there's anything we could do. And Mr. -- Mr. Donnald
23 said, "Yes."

24 At first I asked him on the phone. I called him and
25 asked him. And then we came down, when we talked to him

1 then. And -- and he said that he couldn't handle it, that
2 him being Michael's attorney. But he knew somebody that
3 had -- that he would have to get in touch with him and see
4 if that was possible.

5 Q Did your son ever admit his guilt to you in this ---

6 A No.

7 Q --- case?

8 A Never did. He did on the alcohol charge the day --
9 the day I came down and he -- at the magistrate's office,
10 when I posted bond. And in fact, there's a friend of his,
11 well, put up the cash bond then, and I paid him back.

12 But he -- he told me that day that, yeah, he had done
13 that. But that's the only thing he ever admitted to to me.

14 Q And your testimony's that Mr. Donnald told you
15 numerous times that your son would likely receive probation
16 or a one-to-three-year sentence.

17 A That's correct.

18 Q Do you ---

19 A He didn't -- he never said "likely probation" to my
20 knowledge. He said he hoped probation, but then he -- he
21 said a maximum one to three.

22 Q So Mr. Donnald told you anywhere from one to three to
23 probation.

24 A Yes, that's correct.

25 Q But before the plea, you understood he could receive

1 anywhere in that range; you didn't think it was negotiated
2 to a specific sentence, did you?

3 A That's correct.

4 Q And Mr. Donnald told you that Judge James owed him a
5 favor?

6 A Yes, he did.

7 Q And can you categorize the relationship that Mr.
8 Donnald claimed to have with Judge James?

9 A Yes.

10 Q How did he -- how did he state that he knew Judge
11 James?

12 A I couldn't understand you.

13 Q How did he state that he knew Judge James? Why did
14 Judge James ---

15 A He -- he said ---

16 Q --- owe a favor?

17 A --- he helped him get elected.

18 Q Do you recall anything ---

19 A He worked for him.

20 Q --- about being golf buddies?

21 A I don't remember that. I mean, you know, my wife said
22 she did, and -- and you know, I'm not going to get up here
23 and say I did when I really didn't. I didn't hear that.
24 Maybe that was just one of my times when I wasn't hearing
25 real good.

1 Q Did you discuss with your son whether or not he should
2 enter a guilty plea?

3 A No. I told him that it -- it -- it was his decision.
4 But Mr. Donnald did say the total time for the charges they
5 had for him was 48 years. And I think, you take a 27-
6 year-old looking at three years or 48 years, I -- I don't
7 know -- I don't know that that's a big choice.

8 Q But ultimately it was up to -- up to your son ---

9 A It was up to my son. Yes, ma'am.

10 Q Were you present in the courtroom for his guilty plea?

11 A Yes, ma'am, I was.

12 Q And did you hear your son admit to Judge James
13 multiple times that he was guilty?

14 A I did.

15 Q And were you aware that your son was under oath at
16 this time?

17 A I did.

18 Q So you knew at that time that your son was lying to
19 the judge?

20 A I -- I only know that -- what Mr. Donnald told him to
21 do, and that -- I know during one of the meetings, Michael
22 said something to Mr. Donnald about -- you know, he wanted
23 to tell him exactly what happened. And Mr. Donnald said,
24 "Wait a minute." Says, "I don't want to know, because I
25 don't want to have to put you on the stage and knowingly

1 you perjure yourself."

2 So I don't know that he ever asked Michael whether he
3 was guilty or not.

4 Q So your testimony is that Mr. Donald never asked your
5 son, while you were present ---

6 A I -- I ---

7 Q --- if he was guilty.

8 A I just know at the time, that Michael said something
9 about -- he -- he started to try to tell him what actually
10 happened or what -- whatever the situation was. And Mr.
11 Donald says, "No," says, "Because if you say you're
12 guilty, then I can't put you -- knowingly put you on a
13 stand, knowingly that you perjure yourself."

14 So whether Mr. Donald knew whether Michael was guilty
15 or not guilty, I don't know. But I -- I just know, during
16 that one meeting, that's what he said to Michael, that he
17 really didn't want to know whether he was guilty or not.

18 MS. HARRIGAN: Court's indulgence.

19 (Brief pause.)

20 Q And Mr. Boulware, were you -- during the plea, do you
21 recall your son stating to the Court that he had a
22 substance abuse, particularly an alcohol issue, during the
23 incident in question?

24 A Yeah. When he came back from Korea, he -- I -- I
25 guess -- I mean, I -- I spent eight years in the Navy and I

1 know what it can do. And he spent a year in Korea and I
2 guess, you know, he -- he developed it then, because he
3 didn't have a bad alcohol problem before then.

4 I know he said down here he did. You know, we -- we
5 lived in North Carolina; he was down here. I didn't see
6 him that much, and I didn't see him drunk.

7 When he'd come to the house or we'd come down here it
8 -- it wasn't apparent then. But we wasn't -- we wasn't
9 together a whole -- he wasn't living at home or anything
10 like that.

11 MS. HARRIGAN: No further questions, Your Honor.

12 THE COURT: Okay. Anything further?

13 MR. WATSON: That's all I have.

14 THE COURT: You can step down.

15 (The witness complies.)

16 THE COURT: Is that -- is that your case?

17 MR. WATSON: That is my case.

18 THE COURT: All right. We'll take five minutes, then
19 come back and let the State continue.

20 (Off the record from 11:53 a.m. to 11:57 a.m.)

21 MS. HARRIGAN: May it please the Court.

22 THE COURT: Yes, ma'am.

23 MS. HARRIGAN: The State would call Edgar Donnald to
24 the stand.

25 THE COURT: Okay. If you would come around, please,

1 sir, and let them swear you in.

2 EDGAR DONNALD, JR., having been
3 first duly sworn, testifies as follows:

4 THE BAILIFF: State your name, please, and spell your
5 first and last name for the record.

6 THE WITNESS: Edgar Robert Donnalld, Jr. It's E-d-g-a-
7 r, D-o-n-n-a-l-d.

8 DIRECT EXAMINATION BY MS. HARRIGAN:

9 Q Good morning, Mr. Donnalld. How long have you been
10 practicing law?

11 A Ten years.

12 Q At the time you represented Mr. Boulware, where were
13 you employed?

14 A I was -- I was employed for Ken Young. The name of
15 the firm was "Young, Keffer, and Donnalld."

16 Q And what percentage of your practice would you
17 characterize as criminal defense at that point?

18 A Percentage at that point? You mean at that point in
19 time?

20 Q (No audible response.)

21 A Probably not more than 10 or 15 percent at that time.
22 Now, I have been involved in criminal law for my entire --
23 for the entire time I've practiced. I was a assistant
24 attorney general in prosecution for a number of years at
25 the Attorney General's Office; and an assistant solicitor

1 in Richland County before going into private practice; and
2 handled criminal cases the entire time I was in private
3 practice.

4 Q Do you recall how you became involved with Mr.
5 Boulware's case?

6 A I represented -- I represented Mr. Boulware for three
7 cases: this criminal plea; an annulment, which was the
8 only annulment I ever got as a practicing attorney -- or I
9 was ever involved in as a practicing attorney; and a
10 divorce action.

11 Q Have you had an opportunity to review your file prior
12 to coming to court today?

13 A Technically, no. But I think the answer you want is
14 "yes," and I'll tell you why that is: I don't have --
15 because I'm not at the law firm anymore, I don't have
16 access to the files. So I had to go by there and get this
17 file, which I did this morning.

18 Now I have had several hours to review the file today.
19 So I -- I think what you want is "yes." I -- I remember it
20 ---

21 Q I want the truth.

22 A --- very well now, and I have reviewed the file.

23 Q Wonderful. Do you recall the number of times you met
24 with Mr. Boulware?

25 A I don't know the number of times I met with Mr.

1 Boulware with regards to his criminal case. I would
2 suspect it's in the range of 5 to 10.

3 Q And Mr. Boulware was out on bond during your
4 representation of him, correct?

5 A Actually, I represented him at his bond hearing and he
6 did -- he did get out on bond.

7 Dicky Jones, who is an attorney in town, sent me the
8 newspaper clipping, and told me it was a good picture of me
9 from the bond hearing.

10 Q Did you also meet with members of Mr. Boulware's
11 family?

12 A Yes.

13 Q Do you recall how many times you met with members of
14 his family?

15 A Three ---

16 Q Approximately?

17 A Three or four times.

18 Q During your meetings with Mr. Boulware, were you able
19 to go over the indictments of the three counts he was
20 facing and discuss these charges with him?

21 A Yes.

22 Q Did you advise him of potential sentences he might
23 receive?

24 A Yes.

25 Q Did you talk to him about whether he wanted to go

1 trial or enter this as a guilty plea?

2 A We discussed it, but we never -- Mr. Boulware told me
3 from the beginning of the case that he wanted me to work
4 out some type of plea. He stated to me that because he was
5 a law enforcement officer and who was involved in this case
6 -- and everybody in this case was law -- was -- was -- most
7 -- a lot of the people involved in the case, or at least
8 the adults involved in the case, were law enforcement or
9 closely related to law enforcement.

10 And from the very beginning, from the very -- at start
11 -- when I started representing him on these charges, I
12 didn't know about the criminal sexual conduct charge. I
13 only knew about the lewd act charge. At that time he was
14 not saying I need a plea.

15 But he did tell me, as early as the annulment hearing
16 -- and all this happened at about the same time -- that
17 there was some more trouble that was about to happen; that
18 he was afraid he was going to be arrested for something.
19 But he didn't tell me exactly what.

20 But as soon as he was arrested on the criminal sexual
21 conduct charge and we had the bond hearing -- and he came
22 to see me shortly thereafter -- was when he told me we were
23 going to have to work out some kind of agreement because he
24 could not go trial on this case.

25 Q He never indicated he wanted a trial.

1 A Never indicated to me he wanted a trial, but that
2 doesn't mean that I did not anticipate a trial. But he
3 indicated to me from the first instant that he wanted some
4 kind of a plea, for me to try to work out some kind of a
5 plea agreement.

6 Q Did you try to work out some sort of a plea
7 negotiation with the State?

8 A Yes.

9 Q Can you categorize what efforts were made in this
10 regard and the State's response?

11 A Mr. Boulware kind of caught a bad break in that the
12 Solicitor's Office conflicted his case out because he was a
13 Sheriff's deputy at the time he was charged. And they
14 referred it to the Commission on Prosecution Coordination;
15 and it was being prosecuted by Suzanne Mayes, who
16 specialized, at the time -- I don't believe she still does.

17 I'm not sure where Ms. Mayes is, but at the time, she
18 specialized in prosecuting criminal sexual conduct cases.
19 And she was unwilling to negotiate in any way whatsoever.
20 She was -- she informed me in no uncertain terms that I
21 could plead as charged, but she was not going to reduce
22 charges.

23 Q And make no recommendations.

24 A Make no recommendation.

25 Q Did you explain this to your client?

1 A Yes.

2 Q Did he ever indicate that he didn't understand there
3 was no negotiation or recommendation?

4 A No.

5 Q Did you ever advise your client that the maximum he
6 would receive was three years on these charges?

7 A No.

8 Q Did you ever advise him he would likely get probation
9 on these charges?

10 A No.

11 Q Did you advise him you -- that it was without any
12 negotiation or recommendation, it was going to go before
13 the judge; and Judge James would sentence him to what he --

14 A I didn't understand that. Start over.

15 Q Sorry. It was -- it was a rambling statement. Strike
16 that.

17 Did you advise Mr. Boulware that when he went in front
18 of the judge, the judge could sentence him from anything
19 from probation up to the maximum on these charges?

20 A Yes.

21 Q Do you recall what the maximum would've been on these
22 three separate charges?

23 A As he stood, it was 23 years. That would have been 20
24 years for the CSC, and 3 years for the contributing to the
25 delinquency of a minor.

1 Now, that's not the only thing I ever told him,
2 because a lewd act was thrown out. So when I advised him
3 as to what the maximum I -- he could have gotten, prior to
4 the day that we were standing in front of the judge, it
5 would have included that lewd act as well.

6 Q So based on your recollection, you never promised your
7 client he would only receive three years?

8 A I have never promised Mr. Boulware or any client that
9 they would receive any particular sentence from any
10 particular judge.

11 Even if it were negotiated -- even -- even if it were
12 a negotiated sentence, I wouldn't have guaranteed him that
13 he was only going to get a set amount of time.

14 Q Did you ever indicate to members of his family that he
15 would receive a specific sentence?

16 A No.

17 Q Did you ever advise members of his family of a
18 potential sentence he might receive if he entered a guilty
19 plea?

20 A There was no offer on the table. To answer your
21 question, yes, I did say what the potential sentences were.
22 But that was only because there was no recommendation as to
23 sentencing.

24 What I told them was that -- and -- and where the
25 numbers that I've heard in court today come from is that I

1 went and looked up a similar-type case that Judge James had
2 taken as a guilty plea. And he sentenced somebody to seven
3 years, as -- as best as I recall. It was either seven or
4 five years.

5 The three years would have come from me telling him if
6 I -- if you were sentenced to five years, under 85 percent,
7 you'd have to do about three years active time on that.

8 But I never would have -- I -- in no way would I have
9 ever couched it in terms of a guarantee or -- or inform
10 anybody that that's what he was going to get.

11 I did tell him, also, that I intended to ask for
12 probation, which from my review of the transcript and from
13 my recollection, I -- I asked the judge to sentence him to
14 a probationary sentence.

15 While we're on that subject, it was stated a little
16 bit earlier that my representation ended at the end of this
17 guilty plea, and that's not actually correct. My
18 representation of Mr. Boulware went through to March of the
19 following year, which is -- March or April -- which is when
20 we had a hearing on my motion to reconsider the sentence.

21 So actually, even after this guilty plea, I appeared
22 again for Mr. Boulware at a motion to reconsider hearing.

23 Q And was that in front of Judge James?

24 A Yes. It would have had to have been in front of Judge
25 James, because he was the sentencing judge. But yes, it

1 was in front of Judge James.

2 Q Was the sentence changed at all as a result?

3 A No. No.

4 Q In regards to the allegations that you had what may be
5 characterized as an "improper influence" or a
6 "relationship" with Judge James, did you ever indicate to
7 Mr. Boulware that you had such a relationship with Judge
8 James?

9 A No.

10 Q Did you ever indicate to members of his family you had
11 such a relationship?

12 A No. I have no such relationship with Judge James. I
13 don't golf. I haven't golfed -- I have tried to golf, but
14 I haven't golfed in five or six years. And I've never
15 golfed with Judge James, nor do I have -- nor did I help
16 him with his election or have the ability to help any judge
17 get elected. And I would not have said that I did, and I
18 have no recollection of saying anything of the sort.

19 Q In regards to the allegation that you asked your
20 client to lie to the Court, did you ever ask Mr. Boulware
21 not to tell the truth?

22 A No. I did not ask Mr. Boulware not to tell the truth.
23 I've never asked anyone not to tell the truth in court.
24 The answer's "no, I did not."

25 Q In regards to the allegation that his ex-wife,

1 Christina, made some defamatory comments -- I -- I believe
2 they were in regards to having her daughters examined in
3 regards to this incident, did you find these comments to be
4 objectionable?

5 A No. He -- no, I didn't find them to be objectionable.
6 I re-read the transcript. I'd actually forgotten about
7 that until I re-read the transcript.

8 What she said was that she had to have her own two
9 daughters forensically interviewed, and that it wasn't
10 right for a -- for -- that -- the fact that these two young
11 girls had to be forensically interviewed.

12 I did address that at the guilty plea. I didn't
13 object at the time it was said. But if you turn a couple
14 of pages back to where I'm speaking to the judge at the
15 sentencing, I addressed that very issue and said that it
16 was not related to this case, that it didn't have anything
17 to do with this case. I'm paraphrasing, but it's in the
18 transcript.

19 And that it really didn't have anything to do with
20 this case, and I didn't think it should be held against Mr.
21 Boulware. In fact, I specifically said there is one victim
22 to this crime and one instance that we're talking about.

23 I was trying to drive home the idea for Judge James
24 that he was sentencing somebody with a lifelong record of
25 service based on the one incident date and one victim.

1 Q And the minor child victim in this case was related
2 through marriage to Mr. Boulware, correct?

3 A That is a very difficult question to answer because
4 the marriage was annulled. So legally, it never happened.
5 However, at the time, they were married. So, yes, at the
6 time, she would have been related by marriage.

7 MS. HARRIGAN: Court's indulgence.

8 (Brief pause.)

9 Q In regards to the allegation that you didn't advise
10 your client he was entitled to two separate trials, did you
11 feel any need to advise him of this, as he indicated from
12 the beginning it was going to be a guilty plea?

13 A I don't have any recollection of any conversation with
14 regard to severing his two trials. So I -- I -- I will
15 state that I did not advise him that he could have had his
16 trials severed at any time.

17 I don't -- in -- in the way that the case broke down,
18 I don't think it matters, because there was no discussion
19 of going to trial between myself and Ms. Mayes on the
20 contributing to the delinquency of a minor anyway.

21 The only discussions that we ever had would have been
22 related to going to trial on the criminal sexual conduct
23 case.

24 And because of my conversations with Mr. Boulware, the
25 cases were interrelated anyway. Any -- anything that was

1 going to come out at the trial for contributing to the
2 delinquency would have come out at the trial for criminal
3 sexual conduct anyway.

4 Q Did you ever advise your client that you weren't
5 prepared to take this case to trial?

6 A No.

7 Q Did you ever advise members of his family that you
8 weren't -- you weren't prepared to take the case trial?

9 A No. What I did tell them was that I had no defense to
10 present on behalf of Mr. Boulware. And that is because up
11 until the time of his plea, what he told me was if it
12 happened, he was so drunk at the time, he didn't remember
13 what happened.

14 So I didn't have any story as to what had happened
15 when the case was put on the trial list by Ms. Mayes. I
16 had no way of presenting a case for Michael. No way of
17 presenting that it did happen or that it didn't happen.

18 So what I said, and I think what -- when he said --
19 when -- when testimony earlier today was that I had no way
20 of standing in front of the jury and saying two different
21 things happened, what I in fact said was I can't stand in
22 front of a jury and say, "Here's one recorded statement
23 where you admit to having sex with the fourteen-year-old
24 girl, and I don't have anything to say other than you don't
25 remember what happened." I said, "I don't want to stand in

1 front of a jury with that kind of case. That's not much of
2 a trial."

3 So what I did in fact say was that as we stood, I knew
4 of no defense to present on Mr. Boulware's behalf.

5 Q In regards to this audio recording, did you have an
6 opportunity to listen to it?

7 A I did listen to it. I provided Mr. Boulware with a
8 copy, and he actually refused to listen to it. He -- he --
9 I don't recall whether he ultimately listened to it prior
10 to the guilty plea. I remember insisting that he needed to
11 listen to it, and he stated to me repeatedly he did not
12 want to listen to it.

13 And ultimately, I think I just mailed him a copy. And
14 prior to the guilty plea, I think he told me that he did
15 listen to it. But I can't remember for sure.

16 I -- I do remember that when I set up a time at the
17 courthouse for him to come listen to the audio tape, he
18 refused, and I ended up sitting there, listening to it by
19 myself.

20 Q Did you recognize the voice of Mr. Boulware in that
21 audio recording?

22 A Yes.

23 MS. HARRIGAN: No further questions, Your Honor.

24 THE COURT: Okay. Mr. Watson?

25 MR. WATSON: Yes, sir.

1 CROSS-EXAMINATION BY MR. WATSON:

2 Q Mr. Donnald, let me just start with the -- the fact
3 that -- can't call her ex-wife -- the annulled former wife
4 --

5 A Yes, sir.

6 Q -- you said you didn't think you needed to object to
7 that. She was not the mother of any of the victims in this
8 case; is that correct?

9 A Depends on what you mean by "this case." I mean, from
10 her perspective, her children were -- and I can't -- I
11 can't look into her mind. I don't know what her
12 perspective was.

13 Her testimony at the guilty plea was that her
14 daughters had to be forensically interviewed. She thought
15 that had a negative impact.

16 Q On -- on her and on her daughters.

17 A On her. When I'm in the middle of a guilty -- when I
18 say I didn't object, I -- I don't -- I didn't object, and I
19 wouldn't have objected, because I wasn't trying -- I don't
20 think it would have been a very good -- very effectual for
21 Judge James for me to say, "You need to ignore these people
22 who are standing up here telling you how this has affected
23 their lives."

24 Q You wouldn't have been telling him to ignore anybody
25 but the person that was talking; is that correct?

1 A That's correct.

2 Q Okay. And she -- although she was the aunt of both
3 victims, she was not talking about her capacity with those
4 girls -- the impact of this on those victims; is that
5 correct?

6 A Not on the actual victims for which -- that were named
7 in the indictment.

8 Q She was talking about the effect on her and her two
9 very much younger daughters.

10 A Yes.

11 Q Why was that relevant to the sentence issue received
12 in this case?

13 A I don't think it was relevant. That's why in the
14 guilty plea I said to the judge, "These aren't victims."

15 Q Okay.

16 (Mr. Watson and the witness talk simultaneously.)

17 A I mean, in the transcript, I address that very issue -
18 --

19 Q Okay.

20 A --- with the judge, said these are not victims.

21 Q And that was really ---

22 A Don't use that against them -- don't use that against
23 Mr. Boulware.

24 Q And -- and that was going to be my first question ---

25 A Yes.

1 Q --- because as you were testifying about that, I was
2 trying to find it. And -- and just help me find that if
3 you would.

4 A Yes, sir.

5 (Mr. Watson hands a document to the witness.)

6 Q I think that's part of your colloquy.

7 (Mr. Watson confers with Ms. Harrigan.)

8 Q I'd help you, but you've got my only copy.

9 A What I'm referring to was on page 34.

10 Q Okay. Well, just go ahead and publish it for the
11 record.

12 A Sure. Starting at line -- the first full sentence on
13 line 1 (as read): "Some of what we're talking about,
14 Judge, there are two -- incredibly committed these actions
15 and lapses in judgement on his part. I won't talk about
16 that. There were some discussions with other girls and
17 other family members, everybody in this man -- this matter,
18 underage female, was talked to and investigated. That's
19 not a good thing, but there's no indication that anything
20 happened with anybody else."

21 Q Okay. And I guess I did read that. But there were
22 other girl -- actually, you were not referring to
23 Chrissie's two minor girls. You were talking about the
24 other girls that had received alcohol, were you not?

25 A No. I was referring to the entire world with which

1 nothing else had happened.

2 Q Well, you said that these girls were talked to. Tell
3 me when law enforcement talked to Chrissie's two young
4 children.

5 A I don't know when that happened. I don't even know if
6 that happened.

7 Q Okay. Then why would you say that it happened?

8 A I said that law enforcement had talked with every --

9 Q Okay. What -- let me just set the record straight.

10 A Okay.

11 Q Did -- did -- there were other 15-year-old girls that
12 Michael admitted giving alcohol to; is that correct?

13 A That is correct.

14 Q Those girls were talked to by SLED; is that correct?

15 A No.

16 Q They gave written statements.

17 A Yes.

18 Q Okay. And those girls were asked specifically if
19 Michael had ever had sex with them or if he had ever tried
20 to have sex with them.

21 A Right.

22 Q And they said "absolutely not."

23 A Right.

24 Q Isn't that what you're referring to when you talk
25 about talking to other girls?

1 A That probably is specifically what I was referring to.
2 I didn't know about the daughters being forensically
3 interviewed until the time of the guilty plea.

4 Q And you certainly didn't know if they had talked to
5 the police. There's no evidence ---

6 A I haven't ---

7 Q --- of them talking ---

8 A No. I don't have any -- any information now or then
9 that they talked to the police. But my point was that
10 there was only one victim with regard to what we were
11 pleading guilty to.

12 Q Okay. But you didn't object to -- to Christie [sic]
13 talking about her daughters who were not victims in this
14 case.

15 A I did not object to that.

16 Q Okay. Now, let's -- let's go to the issue of the
17 separate trials. You said that in your opinion, that the
18 evidence of the alcohol would have come up in a separate
19 trial for the CSC.

20 A That's true.

21 Q Why?

22 A Because up until the guilty plea, up until the
23 colloquy between the judge and Mr. Boulware, he had
24 informed me that everything with regard to any of the time
25 frames of these allegations would have been under a haze of

1 drunkenness; that he didn't have any specific recollection
2 of having sex with the girl; that he did provide alcohol to
3 all the girls. And that if it happened, it happened at
4 that time, at a time when he was providing alcohol to the
5 girls. And that's when -- if -- if he had sex with her,
6 that's when he would have had sex with her.

7 Q Okay. He would have had to have gotten on the stand
8 for that evidence to -- to come out, I assume?

9 A No, I don't think so. I think that if -- assuming
10 that that's true, that would have been part of the corpus
11 delicti of the -- of the CSC, because it would have set the
12 scene for the sexual relationship that happened.

13 If -- assuming that that's true and the victim takes
14 the stand to explain what happened, then that would have
15 been the build up to the sexual intercourse.

16 Q Okay. Do you admit that Minor, the victim of
17 the CSC, was never named as a victim of any of the
18 distribution of alcohol to minors?

19 A I do admit that she was never -- no, I don't admit
20 that.

21 Q Okay.

22 A She was named by Mr. Boulware, because he told me they
23 were all in it together.

24 Q Okay.

25 A But she was never part of any criminal charge.

1 Q Okay. She was never part of any criminal charge,
2 never part of any criminal indictment.

3 A Right.

4 Q Okay. And so tell -- and so your -- your opinion is
5 that these cases could not -- would not have been severed;
6 they'd been tried together?

7 A I probably could have gotten the charges severed, but
8 ---

9 Q Okay.

10 A --- the story would have been the same at both trials.

11 Q Okay.

12 A And it never was called for trial anyway, which is
13 when I would have made that motion.

14 Q Okay. Well, was it on the trial docket?

15 A Yes.

16 Q Okay. Were you ready to try it?

17 A I was as -- I had no defense other than "I don't know
18 what happened."

19 Q Okay.

20 A So other than that, yes, I was ready to ---

21 Q Okay.

22 A --- try it.

23 Q So you were ready to try it.

24 A Yes. Yes.

25 Q Okay. So you had prepared voir dire questions.

1 A No, I had not.

2 Q Request jury charges?

3 A No, I had not ---

4 Q Sent subpoenas to witnesses?

5 A No, I hadn't done that.

6 Q Prepared any witness to testify as a character witness
7 for the defendant?

8 A No.

9 Q So how were you prepared to try it?

10 A I hadn't -- I was as prepared -- I -- in light of the
11 fact that Mr. Boulware had not provided me with any
12 witness, he had not provided me with any testimony as to
13 what had happened, had -- had informed me that he had no
14 recollection as to what had happened, I knew because I -- I
15 would not have been overly concerned about getting
16 character witnesses, because I -- they would have been his
17 family and they probably would not have required a subpoena
18 to appear.

19 At the time of this guilty plea, we would have still
20 been at least three to four weeks off from the calling of
21 the case.

22 Q Okay. And maybe I don't understand how the docket
23 works here, because -- cause -- cause it was on a trial
24 docket.

25 A The docket works -- the docket works here where -- in

1 different ways, depending on who's prosecuting the case.

2 And this is handled a little bit differently because it was
3 the prosecution -- the Commission on Prosecution
4 Coordination. Suzanne Mayes handled it -- where she wrote
5 me a letter to tell me she was putting it on the upcoming
6 trial docket; which I then sent to Mr. Boulware.

7 Q Okay. So this would have been three weeks before the
8 court date.

9 A Yes, approximately. I don't remember the exact dates
10 ---

11 Q Whatever.

12 A But approximately. But you also have to know, with
13 regard to how it worked in this courthouse and in this
14 courtroom, is that we had a situation at that time where we
15 had one judge who was routinely giving people the maximum
16 sentence, regardless of whether it was a plea or a trial.
17 And we had one judge ---

18 Q Was his ---

19 A --- who was not ---

20 Q --- was his name "James"?

21 A No, sir.

22 Q Okay.

23 A Judge James was the judge who did not routinely give
24 people the maximum sentence regardless -- or at least by
25 reputation in the local community -- did not routinely give

1 people a sentence based on -- regardless of whether they
2 went -- they were -- it was a plea or a trial.

3 Q Uh-huh.

4 A And so what I was trying to do, with regard to the
5 date we showed up, was plan Mr. Boulware's plea in front of
6 a judge who I did not think would give him the maximum
7 sentence regardless of whether it was a plea or a trial.

8 Q Okay. So when it was -- when the judge says "this is
9 on the trial docket," he doesn't mean it's on the trial
10 docket for this week?

11 A Back then and even now and until February, the judges
12 had -- did not place any trial on the trial docket. The
13 solicitor themselves would have done that.

14 Q I understand that. But in -- in -- I wasn't there.
15 It's just in the record where the judge says, "This is --
16 this case is on the trial docket." And Ms. Mayes said,
17 "Yes."

18 A It was placed on the trial docket for several weeks of
19 -- several different terms of court.

20 Q Okay. So if he had backed out of his plea, it
21 wouldn't have been tried that day?

22 A No.

23 Q Okay. Was there a jury ---

24 A No.

25 Q --- venire there -- the -- the big jury?

1 A No.

2 Q Okay.

3 A In fact, there probably wasn't even a jury impaneled.
4 I don't remember specifically, but this -- the way they do
5 it here is they do a week of pleas and then a week of
6 trials. There was probably not even a jury impaneled that
7 week.

8 Q I just want to put it in the record; I don't want to
9 beat a dead horse: But on the alcohol cases, the -- the --
10 the -- the victim was Baily Co. , not *Minor* ; is
11 that correct?

12 A The victim in the indictment was, yes.

13 Q Okay. And then in the investigation, it named two
14 other victims. But neither one of them was *Minor* .

15 A That's correct.

16 Q And I think even in the plea soliloquy there were --
17 those two girls were mentioned, but neither one of them
18 were *Minor* .

19 A That's correct.

20 Q And the time frame of the alcohol case was prior to
21 the CSC, as far as at least in range of the indictment.

22 A I don't think so. I think ---

23 Q Okay.

24 A I think the time frame -- to my recollection, as best
25 as I recall, the time frame from the alcohol indictment

1 overlapped the earliest time frame from the CSC indictment.

2 Q Okay. And -- and -- and conceding that that might be
3 true, it's your position that -- that the evidence of
4 giving alcohol to other people would have come up at a
5 separate trial for Michael Boulware on the CSC. If he did
6 not testify, it would still come up.

7 A If what he had told me with regard to the case was
8 true, *Minor* was also in the group of girls he gave
9 alcohol to. So even though she was not named in the
10 indictment, that would have been the story at the -- at the
11 CSC trial, was that he was giving alcohol to *minor*

12 who he also had sex with, and the three other
13 girls who are named in the other indictment.

14 Q Okay. That would only be if he testified.

15 A No. If *Minor* took the stand, she would --
16 assuming that that's ---

17 Q Okay.

18 A --- what happened, my assumption is that she would
19 have testified to that.

20 Q Okay. And because she testified to that, you think
21 the others would have come in also, giving minors to other
22 girls would come in also.

23 A I don't know that it would have.

24 Q Okay. All right. And -- and regardless, there's --
25 you did not advise Mr. Boulware that he'd be entitled to

1 separate trials on these cases; is that ---

2 A I never advised him that he'd be entitled to separate
3 trials.

4 Q And you've read the transcript, and the judge never
5 advised him he'd be entitled to separate trials.

6 A I didn't see where that was in the transcript.

7 Q All right. And you would agree with me that -- that
8 Mr. Boulware did admit his guilt to law enforcement on the
9 alcohol case.

10 A Yes.

11 Q Okay. And there were multiple witnesses against him
12 on the alcohol case.

13 A Yes.

14 Q Okay. As opposed to the CSC case, he never gave a
15 statement to the police admitting that; is that correct?

16 A No, he never gave a statement to the police.

17 Q There was no forensic evidence in the case inculpatng
18 him in the CSC.

19 A There was no scientific forensic evidence. There was
20 a forensic interview that was performed on the *minor* --
21 the young *minor* girl.

22 Q All right.

23 MR. WATSON: Judge, could I have just like a minute to
24 go over my notes?

25 THE COURT: Yes, sir.

1 (Brief pause.)

2 CROSS-EXAMINATION BY MR. WATSON (continues):

3 Q All right. And never told anybody in the family that
4 you were friends with the judge.

5 A No.

6 Q Never told them that -- that you ---

7 A Well, let me -- let me back that up. I don't recall
8 whether I told them I was friends with the judge or not. I
9 don't mean to sit here and say now that I'm not friends
10 with the judge.

11 I do go to church with the judge. I know the judge
12 socially, but I do not have any kind of special
13 relationship.

14 Q Okay.

15 A Nor can I imagine that I would have intimated that I
16 do.

17 Q Okay. You heard one of the witness testify that they
18 -- that -- that you told them you went to church with the
19 judge.

20 A I did hear that. Yes.

21 Q Okay.

22 A And that -- that is actually true.

23 Q That is true.

24 A Yes.

25 Q Why would you tell them that?

1 A I -- I have no idea how that came up to be honest with
2 you.

3 Q But obviously you did tell them, because they knew it.

4 A Yes. I -- I don't doubt that I did tell them we
5 attend the same church.

6 Q All right. As far as the sentence, you never told
7 them -- let -- let me back up. Your testimony is that the
8 only way that three years would have come up would be your
9 research of another case where somebody got between --
10 either five or seven years; and that the parole eligibility
11 on that would be somewhere in the three-year range.

12 A That's -- that's the only way I can think of the three
13 year. My specific recollection is that I told him anything
14 in the 3-to-7-year range would be something that I think
15 would be acceptable.

16 But I never told him three; I never told him seven; I
17 never told him five. I never told him that there was any
18 specific sentence that he was going to get.

19 Q Okay. I understand you're saying there's no specific
20 sentence, but you -- but you do now say that -- that --
21 that from your research, the range could be between three
22 and seven, that would be a reasonable range ---

23 A I did say that.

24 Q --- to expect.

25 A Absolutely.

1 Q And whether they relied on your statement that you
2 went to church with the judge as a reasonable reliance of
3 your relationship with him, you -- you wouldn't field a
4 comment on that, I guess.

5 A I couldn't speculate as to what they thought of that
6 statement.

7 Q All right. That's all I have.

8 MR. WATSON: That's all I have.

9 THE COURT: Anything further?

10 MS. HARRIGAN: No additional ---

11 THE COURT: Okay.

12 MS. HARRIGAN: --- questions.

13 THE COURT: You can step down.

14 (The witness complies.)

15 MR. WATSON: Nothing in reply.

16 THE COURT: All right. Then I'll review the file and
17 the transcript, and let y'all know.

18 MR. WATSON: Okay.

19 MS. HARRIGAN: Thank you, Your Honor.

20 -- END OF TRANSCRIPT OF RECORD --

21

22

23

24

25

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth 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 hearing of the captioned cause, relative to appeal, in the Third Circuit for Sumter County, South Carolina, on the 12th day of December, 2012.

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

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

June 20, 2013

EXHIBIT 6

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

Minor / Contributing to the delinquency of a minor

At a Court of General Sessions, convened on September 2, 2010 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE

That Michael Boulware, a person over the age of eighteen years, did in Sumter County, on or about March 1, 2009 through June 30, 2009, knowingly and willfully encourage, aid, or cause, or influence a minor to violate the law or so deport herself as to willfully injure or endanger his or her morals or health, to wit: did aid ~~the~~ *Victim*, date of birth 1994, in the possession and/or acquisition and/or consumption of alcohol in violation of S.C. Code Section 16-17-490, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson

SOLICITOR

DOCKET NO. 2010-GS-43-1140

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2010

THE STATE

vs.

MICHAEL J. BOULWARE

Indictment for

Minor / Contributing to the delinquency of a minor

C. KELLY JACKSON, SOLICITOR

WITNESSES

Sumter County Sheriff's Office

ARREST WARRANT NUMBER

DIR00041

ACTION OF GRAND JURY

True Bill

Forfeiture of Grand Jury
Date: 9-2-10

VERDICT

Foreperson of Petit Jury

Date:

EXHIBIT 7

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

Sex / Criminal sexual conduct with minor, or Attempt - victim
under 16 years of age - Second degree ; Lewd Act upon a Child

At a Court of General Sessions, convened on September 2, 2010 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR

That Michael Boulware, did in Sumter County, on or about the month of June, 2009, willfully and unlawfully
commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who
was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: minor, date of
birth: 1994, and the Defendant was older than the victim, in violation of Section 16-3-655(B)(2), S.C.
Code of Laws (1976), as amended.

COUNT TWO - LEWD ACT UPON A CHILD

That Michael Boulware, a person over the age of fourteen (14) years, did in Sumter County, on or about the month
of June, 2009, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or
any part or member thereof, of a child under the age of sixteen (16) years, to wit: minor, date of birth
, 1994, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of
himself or of said child, in violation of Section 16-15-140, S.C. Code Of Laws 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.

P. Kelly Jackson

SOLICITOR

WITNESSES

State Law Enforcement Division

DUCKETT INV. 2010-0070-1100

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2010

THE STATE

VS.

MICHAEL J. BOULWARE

ARREST WARRANT NUMBER

M194074 DIR00042

ACTION OF GRAND JURY

True Bill

John D. Thompson
Foreperson of Grand Jury
Date: 9-2-10

VERDICT

Indictment for

Sex / Criminal sexual conduct with minor, or Attempt -
victim under 16 years of age - Second degree ; Lewd Act
upon a Child

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

EXHIBIT 8

M-194074

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Sumter

THE STATE
against 33090190

Michael J Boulware

Address: Cayman Ct

Sumter, SC 29154

Phone: (803) 436-1111 SSN: _____

Sex: M Race: W Height: 6 Weight: 165

DL State: SC DL #: 101130530

DOB: 4/30/1983 Agency ORI #: SCLIED0000

Prosecuting Agency: State Law Enforcement Division

Prosecuting Officer: Kathy Bass - 0212

Offense: Sex / Criminal sexual conduct with minor, or

Attempt - victim under 16 yrs of age - Second

Offense Code: 0397

Code/Ordinance Sec: 16-03-0655(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be
dealt with according to the law. The accused

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Michael J. Boulware
on July 30, 2009

A. B. Haines
Signature of County Law Enforcement Officer

RETURN WARRANT TO:

Sumter County General Sessions
141 N. Main St., Rm 308
Sumter, SC 29150

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

Form 400A
S.C. App. 2
April 21, 2004
SCCA 516

Personally appeared before me the affiant Kathy Bass
being duly-sworn, deposes and says that defendant Michael J Boulware
did within this county and state on or about 06/01/2009
State of South Carolina (or ordinance, of Sumter
in the following particulars: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 yrs of age - Second degree
violate the criminal la

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 yrs of age - Second degree

STATE OF SOUTH CAROLINA

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 on/between June 1, 2009 and June 30, 2009 one Michael J Boulware, who is more than eighteen yoa, did commit the act of
Criminal Sexual Conduct in the 2nd degree in that he did engage in sexual battery by having sexual intercourse with a 14 yoa
female victim near the Wedgfield community in Sumter County, SC. Probable cause based on investigation by the South Carolina
Law Enforcement Division and statement of the victim.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Sumter

Affiant's Address P.O. Box 56

Effingham, SC 29541

Affiant's Telephone (803)206-5940

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 6/1/2009
did violate the criminal laws of the State of South Carolina (or ordinance of Sumter
☒ County/ ☐ Municipality of

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 yrs of age - Second degree
() as set forth below:

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 07/30/2009

Signature of Issuing Judge (L.S.)

Bryan Keith Griffin

Judge Code: 5043

Judge's Address 115 N. Harvin St.

Sumter, SC 29151-1423

Judge's Telephone (803)436-2280

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

EXHIBIT 9

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Michael Boulware

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2011 JUN 17 PM 2:11 IN THE COURT OF COMMON PLEAS

J. L. WELL
CLERK
COURT
SUMTER
COUNTY, S.C.

2010-CP-43-1192

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TO
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**DEPUTY CLERK
SUMTER
SOUTH CAROLINA

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC
2. Name and location of Court which imposed sentence General Sessions Court, Sumter County, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-43-1137 - Criminal Sexual Conduct with a Minor
 - (b) 2010-GS-43-1140 - Contributing to the Delinquency of a Minor
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/8/2010 - 12 years - CSC and 3 years concurrent - Contributing to Delinquency

Revised 3/2003

- 7
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not sure why trial counsel did not file an appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

7
custody unlawfully:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Advised would receive a certain sentence

(b) Failure to advise of all of constitutional rights

(c) Failure to investigate and inadequate preparation

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? _____
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Edgar R. Donald, Jr., 23 West Calhoun Street, Sumter, SC 29150
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea, Sentencing, Motion for Reconsideration
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

)

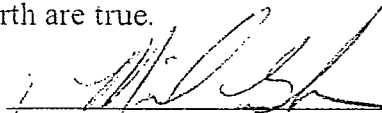
VERIFICATION

)

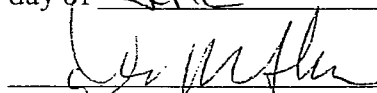
County of

)

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



SWORN to and subscribed before me this 13th
day of June, 2011.



Notary Public (L.S.)

My Commission Expires: 3/1/2014

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

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

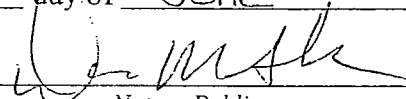
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

13th day of June, 2011.



Notary Public

My Commission Expires: 3/1/2014

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2011-CP-43-1192

Michael Boulware,

Petitioner,

v.

State of South Carolina,

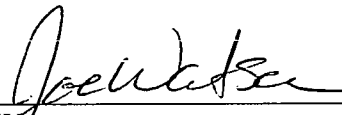
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Petitioner's Petition for Writ of Certiorari and Appendix on the following:

The Honorable Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

Megan E. Harrigan
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211



Joe Watson
650 E. Washington Street
Greenville, South Carolina 29601
(864) 467-0380 (phone)
(864) 672-1406 (fax)

Dated this 20 day of August, 2013
Greenville, South Carolina