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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2016-CP-26-06592

RONALD L. LEGG,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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Transcript of Record

MARCH 28, 2019

B E F O R E:

Honorable Bentley Price
Horry County Courthouse
Conway, South Carolina

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

Johnny James, Jr., Esquire
Attorney for State

Sallie Beth Todd
Circuit Court Reporter

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I N D E X

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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SCOTT JOYE

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By Mr. Legg 9 22

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By Mr. James 11

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WILLIAM ISAAC DIGGS

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By Mr. Legg 36 140

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By Mr. James 126

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MARTIN SPRATLIN

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By Mr. Legg 156 164

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By Mr. Spratlin 157

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Certificate of Court Reporter

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(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

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1 **THE COURT:** Alright. Good morning.

2 **MR. JAMES:** Good morning, Your Honor.

3 **THE COURT:** How are you?

4 **MR. JAMES:** Good.

5 **THE COURT:** I am Bentley Price. I am a Circuit Court
6 Judge. I am a Resident Judge in Charleston and will be
7 conducting today's hearing, okay, just for the record so you
8 know who I am. Alright.

9 **MR. JAMES:** Thank you, Your Honor.

10 **THE COURT:** Are you ready to proceed?

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

12 **THE COURT:** Alright. Yes, sir, call your case.

13 **MR. JAMES:** If it may please the Court, Your Honor. This
14 is the matter of Ronald L. Legg versus State of South Carolina
15 docket number 2016-CP-26-06592. Mr. Legg is present here in
16 the courtroom today and is proceeding pro se. He was advised
17 of his Ferretta Rights at the previous term of Post Conviction
18 Relief in this circuit if I recall correctly. Mr. Legg, is
19 that accurate to your recollection?

20 **MR. LEGG:** Yes, sir.

21 **THE COURT:** And you understand what a Ferretta Warning
22 is?

23 **MR. LEGG:** Yes.

24 **THE COURT:** It's all of the warnings and pitfalls that
25 are associated with representing yourself without an attorney.

1 **MR. LEGG:** Yes, sir.

2 **THE COURT:** And you understand that right?

3 **MR. LEGG:** Yes, sir.

4 **THE COURT:** And you're waiving that right here today?

5 **MR. LEGG:** Yes, sir.

6 **THE COURT:** And you want to proceed forward pro se?

7 **MR. LEGG:** Yes, sir.

8 **THE COURT:** Okay. I find that he's freely and
9 voluntarily waived that right and he wants to proceed forward
10 pro se and will allow it.

11 **MR. JAMES:** Mr. Legg was indicted at the October 2011
12 term of the Grand Jury for Lewd Act on a Minor Child. He was
13 ultimately represented on that charge by Mr. Bill Diggs,
14 Esquire, who is also present here in the courtroom today.
15 That case was prosecuted by Mr. Martin B. Spratlin of the 15th
16 Circuit Solicitor's Office, who is also present here in the
17 courtroom here today. Your Honor, there was also a number of
18 other attorneys who at one point or another represented Mr.
19 Legg over the course of his prosecution. I have indicated all
20 of those attorneys in the footnote on page 1 of the State's
21 Return which is provided in the Judge's packet on the bench
22 before you. In addition to Mr. Diggs, Mr. Scott Joye is also
23 present here in the courtroom today and previously represented
24 Mr. Legg.

25 Your Honor, Mr. Legg proceeded to trial on March 10, 2013

1 before the Honorable Edward B. Cottingham and a jury. That
2 jury found him guilty on March 12, 2013 and on March 13th,
3 2013 Judge Cottingham sentenced Mr. Legg to imprisonment for a
4 term of 12 years. Mr. Legg has completed that term of
5 incarceration and is now here free and of his own accord.

6 Mr. Legg filed a Notice of Appeal and that Appeal was
7 perfected by Mr. Robert Dudek of the Office of Appellate
8 Defense. The South Carolina Supreme Court certified that
9 appeal by Order dated May 29, 2015. The parties proceeded to
10 oral argument before the Supreme Court on February 9th, 2016.
11 The Supreme Court affirmed the conviction by Opinion decided
12 April 20th, 2016. The Remittitur was handed down May 6th,
13 2016. Subsequently on October 13th, 2016 his application for
14 Post Conviction Relief was filed.

15 Your Honor, Mr. Legg was previously represented on this
16 Post Conviction Relief Appeal by Mr. Daniel Selwa. He was
17 relieved and he was advised on his Ferretta Rights that Your
18 Honor went over again just now. There was still a pending
19 Motion for a More Definite Statement. In response to that Mr.
20 Legg provided, dated January 11th, 2019, a lengthy amendment
21 to his application for relief. I have endeavored in my own
22 notes to try to summarize those allegations, but Mr. Legg may
23 wish to do so at the outset so that all present know in which
24 direction we're going.

25 Additionally, Your Honor, as a scheduling matter, Mr.

1 Scott Joye who is here subject to the State's subpoena has a
2 conflict later this afternoon. I've advised Mr. Legg of this
3 and that Mr. Joye as a practical matter really needs to be
4 called first, either as his witness or if he does not intend
5 to call Mr. Joye, the State respectfully requests to call him
6 out of order so that he can go ahead and catch his flight.

7 **THE COURT:** We will certainly accommodate that. That's
8 not a problem whatsoever.

9 **MR. JAMES:** Alright. With that procedural history set
10 forth, unless there are further questions, I'll give the floor
11 over to Mr. Legg to proceed with his case.

12 **THE COURT:** Mr. Legg, real briefly before we begin, you
13 understand what we're doing here today; correct?

14 **MR. LEGG:** Yes, sir.

15 **THE COURT:** Alright. And in a Post Conviction Relief,
16 this is obviously a very unique scenario, whereby there's only
17 two options in a PCR which is one, if I grant it you go back
18 and start over, okay. You go back and start over, okay. You
19 begin your entire case back over basically from the day that
20 you were arrested, indicted that's where you start. Do you
21 understand that?

22 **MR. LEGG:** Yes, sir.

23 **THE COURT:** Okay. And if I deny it, the normal course of
24 action would be that you would go back to prison and you would
25 serve the remaining course of your term of imprisonment.

1 However, you have already served that term of imprisonment.

2 MR. LEGG: Yes, sir.

3 THE COURT: Okay. So, you understand that by going
4 forward here today if I in fact find that there is good cause
5 to grant your petition that you will go back to where you
6 started and you potentially may have to serve greater time and
7 be reincarcerated. Do you understand that?

8 MR. LEGG: I understand that, Your Honor.

9 THE COURT: And do you wish to go forward here today?

10 MR. LEGG: Yes, sir.

11 THE COURT: And you wish to go forward here today pro se.

12 MR. LEGG: Yes, sir.

13 THE COURT: And you've already acknowledged that you
14 understand your Ferretta Warnings. You acknowledge those?

15 MR. LEGG: Yes, sir.

16 THE COURT: Alright. Mr. Legg, this is a unique aspect,
17 I don't really want to know -- you have every right to present
18 your case in the manner in which you want to present it, but
19 there is a situation whereby one of the attorneys has a
20 conflict. Do you intent on calling Mr. Scott Joye as one of
21 your witnesses in your case in chief?

22 MR. LEGG: Yes, sir.

23 THE COURT: You do?

24 MR. LEGG: Yes, sir.

25 THE COURT: The State has asked me if it's okay with you

1 because you are the petitioner, if you want to call him would
2 you call him first as one of your witnesses which would be
3 unique because it would be potentially out of order in
4 whatever order in which you have set out for your petition.

5 **MR. LEGG:** Yes, sir. We can accommodate him.

6 **THE COURT:** Okay. Thank you so very much. Well, go
7 ahead and call your first witness then.

8 **MR. LEGG:** I'd like to call Mr. Scott Joye.

9 **THE COURT:** Alright. Mr. Joye.

10 **SCOTT JOYE, HAVING BEEN FIRST**
11 **DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **THE CLERK:** Please have a seat and state your name for
13 the Court.

14 **MR. LEGG:** Do I need to go to the podium?

15 **MR. JAMES:** You can if you wish to.

16 **MR. JOYE:** Richard Scott Joye. J-O-Y-E.

17 **THE COURT:** Alright. Mr. Legg, let's do this. Because
18 you have all of your notes and everything at your table, how
19 about you just stand behind the table. We won't even worry
20 with the podium today, okay.

21 **MR. LEGG:** Okay. Thank you.

22 **THE COURT:** That will make it easier for everybody. That
23 way you don't have to walk back and forth. Okay?

24 **MR. LEGG:** Yes.

25 **MR. JAMES:** I appreciate that as well, Your Honor.

1 **THE COURT:** Absolutely, not a problem. You've got all of
2 your stuff there so let's just do that. Alright. Yes, sir,
3 proceed.

4 **DIRECT EXAMINATION OF MR. JOYE BY MR. LEGG:**

5 Q: Mr. Joye, you represented me at one time.

6 A: I did.

7 Q: And I have a problem. I've had several accounts where the
8 State has claimed that I've had problems with lawyers, I've
9 gone through four or five of them, which keep coming up on the
10 record. And it makes me kind of look back because it makes me
11 look like I'm problematic and you're very familiar with an
12 accusation like that. When you first represented me, you came
13 to visit me in the county jail. I remember speaking to you
14 and the problem that I originally had with you was that you
15 came at me as if you were like a prosecutor and you prejudged
16 me and I felt very oppressed by you. I didn't feel like you
17 were giving me any moral support. And the statements that you
18 made to me was like I was standing in court and I was standing
19 before a prosecutor rather than ---

20 **MR. JAMES:** I must respectfully object. I haven't heard
21 a question yet. It appears that ---

22 **MR. LEGG:** Well, I'm setting that up ---

23 **THE COURT:** Mr. Legg, give me one second. Let me rule on
24 his -- I'm going to sustain his objection. If you don't mind,
25 let's just keep it -- you ask a question, allow him to

1 respond. I'll give him more than ample opportunity to respond
2 and then I'll give you more than ample time to ask another
3 question, but let's try to keep it to the question answer.

4 **MR. LEGG:** Okay.

5 **BY MR. LEGG:**

6 Q: My problem was that you never counseled me about the
7 trial. You remember you went before Judge Hyman and ordered a
8 mental health evaluation on me; is that correct.

9 A: I did ask for a mental health evaluation.

10 Q: Okay. Can you explain why you did that?

11 A: Sure. Because if you were convicted, I felt it was going
12 to problematic at some point in time because you never seemed
13 to comprehend anything I was trying to tell you. I'd had, I
14 believe at that time, something like 15 years of trial
15 experience both as a prosecutor and as a defense attorney. I
16 wasn't there for moral support; I was there to represent you
17 legally. I didn't -- and my job is not to judge whether you
18 are guilty or not guilty. My job is to represent you to the
19 best of my ability. I thought there were a number of problems
20 with the case, not the least of which was ---

21 Q: Well, Mr. Joye, I respect that but that's going overboard
22 and for saving time.

23 A: Okay.

24 Q: The reason I brought that up is since you said you had 15
25 years' experience, the motion that you asked the Court to

1 order for mental health evaluation, were you aware that action
2 was illegal? That was not appropriate according to the law.
3 You don't order or ask the Court to order a mental health
4 evaluation on your client just because you feel that you're
5 not communicating well with your client. That's basically
6 what it boils down to. And I just wanted to make it clear
7 that the reason that I opposed that is because I spent an
8 extraordinary amount of time because of that mental health
9 evaluation and it was basically illegal. Are you aware of
10 that?

11 A: I do not believe it was illegal.

12 Q: Okay. That's all I have for you today, Mr. Joye.

13 **CROSS EXAMINATION OF MR. JOYE BY MR. JAMES:**

14 Q: Good morning, Mr. Joye.

15 A: Good morning.

16 Q: Thank you for kindly joining us here today. You
17 mentioned your experience. When were you initially licensed
18 as a member of the South Carolina Bar?

19 A: May of 1996.

20 Q: And since May of 1996 about how much of your practice has
21 been criminal?

22 A: Ninety-eight percent.

23 Q: How did you come to represent Mr. Legg?

24 A: I was contacted by Orrie West, who is the chief public
25 defender here. She said that a conflict had arisen between

1 Mr. Legg and his first trial counsel, Tom Floyd. And I
2 believe a grievance had been filed against Tom. And as a
3 result, she had appointed Johnny Gardner; however, Mr. Gardner
4 had some conflict. He never actually got involved in the
5 case. And I agreed to represent Mr. Legg. Ms. West knows
6 because I have told her on occasion that I am looking for
7 trials. I want cases that are going to trial, not ---

8 Q: You prefer to try cases not plead cases.

9 A: If I'm going to take an appointed case, it seems most of
10 my practice now tends to focus on DUI and my folks want a
11 deal. So yeah, I really do, I mean I enjoy trial work. You
12 know, it's kind of like going to another planet for a little
13 while because you really don't, you really don't focus on
14 anything else but your trial while you're in trial.

15 Q: Do you recall about how many times you met with Mr. Legg
16 in your course of your representation of him?

17 A: Several. I don't know, maybe six, seven, something like
18 that.

19 Q: In the course of those meetings did you explain to him
20 all of his constitutional rights like his right to a jury
21 trial?

22 A: Yes, I did. And what I typically want to point out to
23 anyone first, right from the start, is the good, the bad, and
24 the ugly so I try to give them an objective overview of the
25 case. Because it's their case, they're so wrapped up in it

1 that they don't see it from outside of the box. I try to get
2 a client to imagine they were in the jury and they were seeing
3 the trial.

4 Q: And I was going to get to it a little bit later but since
5 we've already gone down that path a little bit I'll go ahead
6 and ask you now. What was the good, the bad, the ugly in Mr.
7 Legg's case?

8 A: The good was there really was no physical evidence other
9 than kind of circumstantial stuff that would have been
10 discovered in his mobile home. I told him I did not know the
11 young lady. I had never seen her before in life. I did not
12 know how she was going to come across on the stand, whether
13 that would have been good, bad, or whatever. I told him that
14 I thought that his statement to the police was problematic.
15 It had some issues.

16 Q: What statement did he give to law enforcement?

17 A: He gave a very long statement. Detective Frebowitz
18 basically sat back and let him talk. He told me that he was
19 going to testify as an expert in the field of Attention
20 Deficit Disorder and Attention Deficit Hyperactive Disorder
21 which he believed the young lady, the victim, suffered from.
22 I told him I was -- has asked me if I was familiar with the
23 condition. I told him I was, my own son had been diagnosed
24 ADD and ADHD. In fact, his pediatrician, who is the former
25 head of the pediatric section of the AMA couldn't stand still

1 when he was telling me because he suffers from ADD. He
2 basically said that he thought I had a conflict and he also
3 thought I was ADD. I told him that I thought that most of the
4 good trial attorneys I knew were somewhat ADD. But just
5 because you are ADD did not necessarily mean you make false
6 accusations.

7 Q: Okay. And was that the nature in which this Detention
8 Deficit Disorder came into relevance initially in his mind?

9 A: From the immediate -- from the very first meeting, yes.

10 Q: So, he felt that the victim suffered from Attention
11 Deficit Disorder and therefore had a propensity to lie?

12 A: That's correct.

13 Q: Okay.

14 A: And, in fact, she was lying in this case. I didn't make
15 any judgments about Mr. Legg and what actions he took or
16 didn't take. I made a judgment based on what I saw as the
17 evidence. And one of the problems that I saw immediately was
18 that he had claimed he was Donald Legg, who was his brother
19 and as I came to understand was a registered sex offender.

20 **MR. LEGG:** I object to that, Your Honor. That's
21 incorrect information.

22 **MR. JAMES:** Your Honor, I would just respect ---

23 **THE COURT:** I'm sorry, go ahead.

24 **MR. JAMES:** If I may?

25 **THE COURT:** Yes.

1 **MR. JAMES:** I would just respectfully submit that
2 testimony is not offered to prove the truth of the matter
3 asserted, but rather to reflect the lawyers understanding of
4 the facts and how he took them into consideration in
5 representing his client.

6 **THE COURT:** Well, I don't believe it was hearsay to begin
7 with. He didn't say what someone else said. He said through
8 his investigation he came to realize that someone associated
9 with Mr. Legg was in fact also on the registry. So, it's not
10 hearsay. State your objection.

11 **MR. LEGG:** The objection is he's claiming that I was
12 claiming ---

13 **THE COURT:** Stand up for me.

14 **MR. LEGG:** --- to be my brother which is not true.
15 There's no record to prove that. Claiming that my brother is
16 a sex offender is not true either so both of those are
17 actually not relative to the case and shouldn't be on the
18 record anyway.

19 **THE COURT:** Okay. So, you are objecting as to the
20 relevance of the statement?

21 **MR. LEGG:** Right.

22 **THE COURT:** Okay. I'll -- and that's what your
23 objection is. What is your response to the relevance of the
24 statement?

25 **MR. JAMES:** I think it goes to the -- well, res gestae

1 might not be the perfect description of it, but to the
2 totality of the circumstances of the representation and the
3 relationship between Mr. Joye and his client.

4 **THE COURT:** I agree. I'll overrule your objection.
5 Thank you.

6 **BY MR. JAMES:**

7 Q: Did Mr. Legg ever provide you any documentation or
8 certification or education or any other evidence of that
9 nature to show you that he was in fact an expert in the
10 analysis and diagnosis of Attention Deficit Disorder?

11 A: No, he did not.

12 **MR. LEGG:** Your Honor, I object to this line of
13 questioning.

14 **THE COURT:** Can you please stand up just to make sure
15 that you will be heard.

16 **MR. LEGG:** I believe Mr. Joye here -- I don't understand
17 why it has to do with Post Conviction Relief why he's asking
18 him this line of questions because my complaint is ineffective
19 assistance of counsel, trial counsel against Mr. Diggs
20 himself. The only relevance I see Mr. Joye plays in this was
21 the fact that on record that the State has claimed that I've
22 been problematic with attorneys. Essentially from the
23 beginning I've tried to get attorneys to be sympathy with my
24 defense, which an attorney like Joye never really heard my
25 defense, never counseled me on the defense.

1 **THE COURT:** Okay. So, what -- state your objection.

2 **MR. LEGG:** The objection is the line of question he's
3 asking. He's retrying the case here and it has nothing to do
4 with ineffective assistance of trial counsel.

5 **THE COURT:** Okay. So, your objection is to relevance?

6 **MR. LEGG:** Right.

7 **THE COURT:** Whether the testimony given here today is
8 relevant to the PCR.

9 What I essentially believe he's saying here is you're
10 going outside the scope of his original direct questioning.
11 So, you're kind of going outside of what he intended to prove
12 with this witness. So, let's kind of hone it in if that's
13 okay.

14 **MR. JAMES:** I can tighten it up, Your Honor. Just for
15 the sake of the record, should I treat that objection as
16 sustained or overruled?

17 **THE COURT:** Sustained.

18 **MR. JAMES:** Okay. Thank you, Your Honor.

19 **THE COURT:** I'm sorry. I'll overrule the objection as to
20 the relevance of it. I'm just saying that I understand what
21 his objection is and essentially, he's saying you're going a
22 little bit outside of the scope of his direct.

23 **MR. JAMES:** If I may beg a moment of the Court's
24 indulgence, Your Honor.

25 **THE COURT:** Sure.

1 BY MR. JAMES:

2 Q: Mr. Joye, I am in my own words summarizing an accusation
3 raised against you in the most recent amendment to Mr. Legg's
4 application. He alleges in addition to the mental health
5 evaluation that you gave cover to the State's misfeasance or
6 malfeasance in recovering certain items subject to a search
7 warrant. Do you recall a search warrant being issued and
8 served in this case?

9 A: I do and there was a problem with the search warrant in
10 that there was some boilerplate language from a previous
11 search warrant; however, there was no Scheduling Order set in
12 this particular case. I thought that was great cross
13 examination fodder. I additionally would have made the motion
14 -- you know, sometimes there are problems that the prosecution
15 may have that they may not realize they have. I didn't know
16 whether or not they had figured that out or not, but if you
17 make them aware of it prior to trial a lot of times it can
18 miraculously get cured, whereas if you in fact seat a jury and
19 they're sworn and then there are problems you could very well
20 win on a technicality and double jeopardy would attach. So, a
21 pretrial motion is, if there's no Scheduling Order by the
22 Court, really is much more detrimental when it could actually
23 turn out to be very helpful. And I explained that to him.

24 Q: Did he appear to understand your reasoning when you
25 explained it to him?

1 A: Not really. He never really seemed to understand
2 anything that I had to say, and I was -- I'm not here to be
3 sympathetic to the defense. I'm here to point out what the
4 case is about and what it is. I'm not -- that's my job.
5 That's my roll as I see it. I just want to try to make sure -
6 - I don't want to argue about what I'm trying to tell you in
7 an objective manner because I know what's coming down the
8 pike. I know what a trial is about. I know what's going to
9 happen in a trial and I want you to see that. And I also want
10 you to know where I believe your arguments fail.

11 Q: Did Mr. Diggs ever communicate to you his concerns that
12 delay in addressing the search warrant issue would prejudice
13 him in any way?

14 A: I don't believe Mr. Diggs and I ever ---

15 Q: I apologize if I said Mr. Diggs, I meant Mr. Legg.

16 A: Mr. Legg. I saw no way it could have. I don't
17 specifically remember that. I saw no way whatsoever that
18 raising the issue was going to be beneficial. In fact, I
19 thought it would have been the exact opposite because if they
20 could then try to explain away something and know it's coming
21 versus -- I've found in my career as a defense attorney that
22 prosecutors tend to look at how good their case is and don't
23 look for problems. So, that's usually where we as defense
24 attorneys make hay.

25 Q: Put simply, don't tell them what they're doing wrong.

1 A: Absolutely not.

2 Q: Alright. And did he ever communicate to you his, he
3 being Mr. Legg, did he ever communicate to you his concern
4 that perhaps materials were seized pursuant to that search
5 warrant which were not turned over by law enforcement or the
6 prosecution?

7 A: Yes, but what he was talking about I was not so much
8 concerned with because I failed to see any relevance in how
9 they would be relevant. I don't remember any specific thing.
10 I know that he wanted me to try to get his mobile home back
11 and I couldn't -- it was kind of funny because I talked to his
12 landlords, who I knew. They told me that a tree had fallen on
13 it and that it'd been all the way to the dump.

14 Q: You indicated that he was worried that things were
15 seized, and you expressed your opinion that those items were
16 not relevant. What were those items?

17 A: I honestly don't know, but it wasn't about the case.

18 Q: Okay.

19 A: They were items that belonged to him.

20 Q: Were they papers or writings of Mr. Legg's?

21 A: I don't remember him mentioning any papers or writings
22 that were missing. There were a number of writings. There
23 were a number of papers, all pretty much so pertaining to
24 Attention Deficit Disorder and Attention Deficit Hyperactive
25 Disorder. Not research mind you, but his own writings.

1 Q: Do you recall for how long you represented Mr. Legg on
2 these charges?

3 A: Six months perhaps, nine months, something like that.

4 Q: And why did the attorney/client relationship come to an
5 end?

6 A: Mr. Legg, and I believe I actually made the motions on
7 his behalf, on three separate occasions asked that I be
8 relieved. The third time -- both times the Judge asked me did
9 I not believe that I could perform my duties as his attorney,
10 and I couldn't honestly tell him no. You know, sometimes as
11 lawyers, particularly when we're appointed on cases, it's a
12 tough row to hoe because the client doesn't necessarily
13 believe in you and believe you're an agent of the State. The
14 last time that I went before Judge Hyman I told Judge Hyman
15 that quite frankly that Mr. Legg, that we were in a different
16 situation because he had filed about a 10-page federal
17 complain. Now, I didn't say complaint, I said complain,
18 because a complaint would state a cause of action. But the
19 fact that he had filed against me in Federal Court put us in a
20 different situation and then Judge Hyman relieved me, and
21 other counsel was appointed, eventually Mr. Diggs.

22 Q: Did you ever communication with Mr. Diggs about this case
23 or your representation of Mr. Legg?

24 A: If I did it was very briefly. Mr. Diggs is quite, you
25 know, quite an attorney himself. He certainly didn't need my

1 help and quite frankly I thought he ought to -- I didn't call
2 him and he didn't call me because he should have the benefit
3 of seeing it fresh.

4 Q: And this should seem self-evident, but you no longer
5 represented Mr. Diggs (sic) at the time of trial?

6 A: That's correct.

7 MR. JAMES: I have no further questions for this witness,
8 Your Honor.

9 MR. LEGG: Your Honor, I would like to -- Mr. James
10 brought up some important issues I feel I need to straighten
11 out for the record.

12 THE COURT: Sure.

13 REDIRECT EXAMINATION OF MR. JOYE BY MR. LEGG:

14 Q: Again, Mr. Joye, the issue here is I've had a series of
15 lawyers. My complaint with these lawyers representing my case
16 is their failure basically to entertain my concept of what
17 transpired. So, my issue with you started from the first day
18 and you acknowledged for the Court that you had a son who was
19 Attention Deficit Disorder. He was diagnosed and my roll in
20 this whole case is I was basically into understanding that
21 phenomenon and my interpretation of that was that it was a
22 spiritual (inaudible) which is inherited in families. So,
23 saying that means that I told you when I first met you what I
24 tell all of these lawyers. The first thing I say so they know
25 where I'm coming from I will say these words, Jesus Christ is

1 my Lord and savior. That means that I am biblical. That I am
2 basically Christian based. And that means issues like
3 personality disorders, in my opinion, have to do with
4 spiritual issues. Now, where we ran aground was your failure
5 to entertain that. And it was my opinion during that time
6 that you were bother by that. So bothered that you didn't
7 want to hear anything that I had to say and I can understand
8 that you have a shortness of memory, but I don't to this case
9 or any of these issues. And if you recall, if you notice here
10 I have a ton of papers known as the stack of papers. The time
11 that you came to see me I brought my papers in and within that
12 was my case which was my brief, my witnesses, and the whole
13 issue about the case was there for any lawyer to read to
14 understand my defense from my point of view. Now, of the
15 times that you came to visit me, first thing you did when I
16 introduced those documents, you pushed those aside. And I can
17 bring you back to a date whenever you were highly offended
18 because I was sitting and when I showed you these documents
19 you pushed them aside and I said what's the problem. You just
20 shook your head; you didn't say anything. Then I asked you,
21 Mr. Joye, do you know how to read? Do you remember that?

22 A: Not --- not ---

23 Q: Okay. You were highly offended by it. And I said did
24 you pass the bar exam? So, what you did was you snatched the
25 piece of paper up like this and you began to read it to prove

1 to me that you could read. So, from that instance you still
2 refused to take the papers. You left the conference room,
3 went in to Judge Hyman's chambers, came back about three
4 minutes later. They brought me out and then you went before
5 Judge Hyman and said Your Honor, I would like to order a
6 mental health evaluation on my client. That's basically
7 saying that there was a failure to communicate between you and
8 I and you sit here today and try to raise up all of these
9 issues that I had a lack of understanding of the law, that I
10 did not pay attention to the issues. So, the problem is I
11 appreciate the fact that you said some positive things in my
12 defense. I can really use that. But I just want to first of
13 all straighten this out for the record that our problem was a
14 conflict of interest. There was a controversy about you
15 having a son ADD and if we would have went any further I would
16 have brought that claim to that inherited disposition or
17 personality disorder to your family history. There's no way
18 that you could have -- well, I'm sure you shake your head
19 because I'm sure you have a lack of understanding, but I don't
20 have a lack of understanding. I could sit here all day and I
21 could talk about the personality disorder and I could match up
22 with the AMA or any psychological association on the issue
23 because the problem is before this goes any further into all
24 of those other things that you brought into the record that
25 you should -- I asked you recuse yourself during that time

1 because of that conflict. Now, I view that as a legitimate
2 cause for you to step down. You said I can't recuse myself.
3 A lot of lawyers will say that, I can't recuse myself, but you
4 can. You can go before the Court and say Your Honor, there's
5 a conflict of interest because I cannot represent this mans
6 defense because this man's defense would be in conflict with
7 my own knowledge about what's taken place with my son and ADD.
8 You could not have held -- you could not have made a defense
9 for me regardless of what you say. Alright.

10 Now, the search warrants we have on the record. Why was
11 the search warrants relevant when I brought that up? Well,
12 because later on down the road as you well know ---

13 **MR. JAMES:** I must respectfully object. I've been very
14 flexible and sitting down, but I haven't heard a question
15 asked of the witness yet.

16 **MR. LEGG:** Yes, Your Honor.

17 **THE COURT:** I sustain his objection. As we indicated
18 earlier if you don't mind if you would just ask him a question
19 and give him ample opportunity to respond. I'll let you ask
20 as many questions as you'd like.

21 **MR. LEGG:** I apologize, Your Honor.

22 **THE COURT:** It's okay.

23 **MR. LEGG:** I'm a little nervous.

24 **THE COURT:** It's alright. I understand.

25 **MR. LEGG:** I'm kind of playing off of questions that he

1 already asked him. So, I wrote those down. So, I guess I'll
2 just repeat the question.

3 **BY MR. LEGG:**

4 Q: So, earlier you made a statement that the issue of the
5 search warrant was not relevant. Was that correct?

6 A: No. I did not say that. In fact, what I said was it was
7 a trial issue. When you had -- when you had a jury sworn so
8 that if ---

9 Q: Okay. I understand that. I understand that.

10 A: And I explained that to you at the time that it did not
11 have -- that it was very important that that would be
12 something that we dealt with at trial because we didn't want
13 them, being the prosecution, to have a chance to explain it
14 away or make it less than what it was. So, if we clued them
15 in to where we were going, we took away the element of
16 surprise and surprise was only going to be our friend.

17 Q: Mr. Joye, I appreciate that, but that's kind of going
18 left field here. If you could just focus a little bit here.
19 The issue, would that have required you to do any research or
20 investigation about the property that was removed by this
21 illegal search warrant?

22 A: No, sir, it would not have.

23 Q: Okay. I appreciate that. Later on, it's determined that
24 during the trial Mr. Diggs raised an issue that he didn't, you
25 know, come through with the whole issue about the motion to

1 dismiss the charges based on the police's accountability, lack
2 of accountability for some documents that they recovered from
3 the house. Now, that was just an after affect from your
4 judgment call now saying it wasn't relevant.

5 Now, let me move forward just a minute and I'll show you
6 something. Do you recall during the trial when the Judge
7 asked you if he brought up the issue about wrongdoing by the
8 police officer and a Judge, if it had any relevance to the
9 case? Do you remember what your answer was?

10 A: I don't remember ever being at trial with you.

11 Q: Okay. Well, the trial record says that you said that had
12 no relevance whatsoever to the case, to the history. My
13 accusation that I brought to you, if you remember, you stated
14 that if it's correct with you that you stated that I was
15 coming before you about wrong doing that a detective and a
16 Judge. You told the Court that I wanted you to have them
17 arrested.

18 A: Yeah. I got that. Okay. Yeah. That was something that
19 I believe that you had raised in your complaint to the Judge.
20 I addressed it, look people make mistakes. Having dealt with
21 Magistrate Mayor over a number of years, I did not believe
22 that the Judge had collaborated with someone else to give a
23 fraudulent search warrant. As I understand it, nothing from
24 that search warrant was ever used. There was a problem with
25 the search warrant, always was a problem with the search

1 warrant, but I did not see it as a criminal conspiracy to put
2 you in jail and convict you of a crime. No, I did not.

3 Q: Okay. Now, that was your opinion, correct?

4 A: It's still my opinion.

5 Q: Okay. You told -- how about, are you aware after the
6 fact that Detective Frebowitz was actually fired from the
7 Horry County Police Department?

8 A: I have no earthly idea about Detective Frebowitz. I saw
9 him once about two months ago.

10 Q: Okay. For the record let me state that your opinion,
11 your milquetoast opinion, which you view -- that means that
12 you view the issues that I was trying to tell you as
13 insignificant. But after the fact, as a matter of fact, when
14 the issue I made about Neil Frebowitz which would have
15 required you to not dismiss that complaint and when I was in
16 Court and I tried to raise that issue before the Judge when
17 the Judge asked me Mr. Legg, why are you firing all of these
18 lawyers? And I basically said well, Your Honor, just like Mr.
19 Joye he didn't give me chance to explain that which I thank
20 God I'm having the opportunity now. He refused basically to
21 entertain my defense of any of the issues. And you're stating
22 now that you felt that it was insignificant. So, after the
23 fact when Neil Frebowitz was fired from the police force for
24 irrelevant, you know, behavior to my case, that would have
25 helped my case, but you dismissed that. So, that is why, Mr.

1 Joye, I asked you to recuse yourself for several of those
2 issues.

3 Now, let me ask you one more question. Do you remember
4 me telling you that I had exculpatory evidence in police
5 custody in property? I had my cell phone; I had papers and
6 documents. Do you remember -- do you remember me telling you
7 that?

8 A: And I went through a number of -- a cell phone in and of
9 itself would not be exculpatory. Your writings would not
10 necessarily be exculpatory. The only thing exculpatory would
11 have been something that intended to show you're not guilty.
12 The fact that you ---

13 Q: Mr. Joye, ---

14 A: --- had written documents ---

15 Q: --- simmer down. I know you have to catch an airplane.

16 **THE COURT:** Mr. Legg, as I indicated earlier, I
17 appreciate you asking questions, but then I said I'd give him
18 more than ample opportunity to respond. So, if you ask him a
19 question, let's give him all the time that he needs to
20 respond. Okay.

21 **MR. LEGG:** Okay. Fine. Okay.

22 **THE COURT:** Deal?

23 **MR. LEGG:** Yes, okay.

24 **THE COURT:** Alright. Yes, sir.

25 **BY MR. LEGG:**

1 A: There were several things that I believe you had mention
2 to me that I requested that they said that they didn't have.
3 I can only get what, what actually they had. And I had a
4 property list. Now, some of the things I don't know if they
5 had or didn't have, but I believe that they provided me with
6 everything that they had in their possession.

7 Q: Is that it?

8 A: That's it.

9 Q: I'm just trying to hurry up because I know you have a
10 plane to catch. Well, I thank you for that. Again, after the
11 fact I can prove that the documents that if you would have
12 paid attention to me and you would have went and rescued those
13 exculpatory documents that I had in writing -- see, you're
14 shaking your head like it's irrelevant. Listen, at the trial,
15 the Judge asked Mr. Diggs when he was making a motion to
16 dismiss the charges based on ---

17 **MR. JAMES:** Objection. Relevance. Anything that
18 occurred at trial subsequent to the end of Mr. Joye's
19 testimony or representation, he has no original knowledge of
20 what's ---

21 **MR. LEGG:** Your Honor, Mr. Joye was present during that
22 trial and the record states that -- well, it's on record. The
23 record states that he had these issues that I'm raising to get
24 him to address those is relevant to a series of events that
25 occurred that the attorneys that I had complaints against, as

1 with Mr. Joye, should have intervened showing that they were
2 relevant. The case proves that the issues I raised were all
3 relevant. The documents disappeared from police custody. I
4 had to file a Freedom of Information Act to recover these
5 exculpatory evidence, which Mr. Joye during the time he could
6 have done that as my attorney because of the importance of
7 those documents.

8 **THE COURT:** Okay. I'm going to sustain his objection
9 based on the fact that Mr. Joye was only your attorney for six
10 to nine months and was not present at your trial. I'm not
11 sure which record you're referring to that he was there, but
12 based on that his position is -- as to relevance I agree that
13 it's not relevant as to what happened at your actual trial as
14 Mr. Joye was not present at that trial.

15 **MR. JAMES:** Judge, just to make sure that the record is
16 abundantly clear, Mr. Joye was present for some pretrial
17 motions, but he was not present as far as I'm aware at the
18 actual prosecution of the trial.

19 **THE COURT:** Are you referencing that he was present at
20 those pretrial motions and that's when he potentially could
21 have intervened?

22 **MR. LEGG:** He was in and out during the trial because he
23 sat in the back room. There's three days, he attended that
24 trial for three days. The Judge called him up and the reason
25 I bring this up because in my complaint the word conspiracy,

1 which a lot of individuals seem not to have a good
2 interpretation of that means. It means that he was called by
3 the State to give testimony as to why he was dismissed and
4 it's relative because I had filed a motion before the Court to
5 dismiss Mr. Diggs before the trial. Now, he was called as a
6 witness to oppose that motion. So, that's why anything he has
7 to say is relevant to my trial. And he was attended because I
8 looked back in the back of the courtroom and I thought he's
9 evidently interested in the case because he was there.

10 **THE COURT:** Okay. So, you're saying ---

11 **MR. JAMES:** The gist of what I'm hearing, Your Honor, is
12 that he's referring to this pretrial motion that is set forth
13 roughly on pages 24 and 25 of the trial transcript. If that
14 is to what he is referring, then I will go ahead and withdraw
15 my objection.

16 **THE COURT:** Okay. He's withdrawing his objection.
17 Restate your question for Mr. Joye and allow him ample
18 opportunity to answer please.

19 **BY MR. LEGG:**

20 Q: Okay. The question was about exculpatory papers that the
21 police had in their possession because I didn't raise bail. I
22 stayed in jail for three years. You represented me for about
23 -- you were there, I couldn't get you off my case for -- I had
24 to stay a whole year in jail for that matter. Based on the
25 papers that were exculpatory, I had the first, second, or

1 third day, look I have evidence on my behalf. I had writings
2 from this individual basically making statements that she was
3 pretty much going to do what she did. And to you arguing that
4 that wasn't relative to my case and the point I'm making is
5 that the Judge brought up to Mr. Diggs when he filed the
6 motion to dismiss the charges based on the police and the lack
7 of accountability when they broke into my house illegally and
8 took some papers out and those papers were missing. The Judge
9 asked if they had any evidence of those writings. Those
10 writings basically were there and the issue I'm raising that
11 the Court never allowed me to entertain was why I dismissed
12 you. So, the only thing I'm saying for the Court record is
13 it's brought up that I've had four or five lawyers, and nobody
14 understands why they were dismissed. And that brings to the
15 issue that you failed to entertain my defense when you took
16 over the offense for my defense and forced me to take an
17 illegal mental health evaluation. And that's basically the
18 nature of the attorneys that I attempted to scrutinize after
19 Mr. Joye in resulting of which I felt a lack of loyalty of Mr.
20 Diggs and filed a motion based on that. So, I appreciate
21 having the opportunity to get that on the record, Your Honor.

22 **THE COURT:** Okay. Alright. Do you have any other
23 questions of Mr. Joye before I excuse him?

24 **MR. LEGG:** No, sir.

25 **THE COURT:** Alright. One questions, Mr. Joye, just real

1 quickly. When you asked for the mental health evaluation was
2 it ordered during your representation?

3 **MR. JOYE:** Yes, sir.

4 **THE COURT:** Okay. That's all I have. Alright. Any
5 objection to Mr. Joye being excused?

6 **MR. JAMES:** No objection, Your Honor.

7 **MR. LEGG:** No objection, Your Honor.

8 **MR. JOYE:** Thank you, Your Honor.

9 **THE COURT:** Alright. Enjoy the rest of your day.

10 **MR. JOYE:** Good to see you.

11 **THE COURT:** Yes, sir. You as always.

12 Alright. Mr. Legg, call your next witness.

13 **MR. LEGG:** Your Honor, I had to call Mr. Joye for the
14 sake of ---

15 **THE COURT:** Right. I appreciate it. We appreciate you
16 allowing him to go first because I know he has somewhere to
17 go.

18 **MR. LEGG:** He has to get to the airport and all of that.
19 I guess we jumped the gun because of that but I do have a
20 motion that is called a Rule 59E Motion that I would like the
21 Court to make sure that the Court has.

22 **THE COURT:** Okay. Give me one second and let me take a
23 look at it.

24 **MR. LEGG:** For the record.

25 **THE COURT:** Have you seen this, Mr. James?

1 **MR. JAMES:** Not that I'm aware of, Your Honor.

2 **THE COURT:** Alright. For the record, Mr. Legg has
3 submitted a motion under Rule 59E which states a Motion to
4 Alter or Amend the Judgment shall be served not later than 10
5 days of receipt of written notice of entry of the order. And
6 what are you intending to ---

7 **MR. LEGG:** Your Honor, that motion, if I'm correct, I'm
8 requesting that the Court make a ruling on every issue that I
9 raised in the complaint.

10 **THE COURT:** In your petition or your Application for PCR?

11 **MR. LEGG:** Yes, sir.

12 **THE COURT:** Okay.

13 **MR. LEGG:** There's numerous issues which the State
14 actually wanted me to whittle down for the sake of the
15 timeliness of the Court but my motion was raised that it's
16 necessary for all of those issues to be heard and ruled on
17 because as you can see the purpose of that is there's a series
18 of errors that are too numerous to ignore has taken place in
19 my case.

20 **THE COURT:** I'm just going to take your motion under
21 advisement, and I'll rule on it later. Okay. We're just
22 making sure that we're doing this correctly, okay.

23 **MR. LEGG:** Sure.

24 **THE COURT:** I understand what you are asking the Court to
25 do.

1 **MR. LEGG:** Right.

2 **THE COURT:** But I'm not sure if this is the correct
3 manner in which to ask for it, but I'll still need to rule on
4 your motion. At this point in time I'm just going to take it
5 under advisement. Okay.

6 **MR. LEGG:** Okay.

7 **THE COURT:** It does not stop or preclude you from moving
8 forward with your case, so you can call your next witness.
9 Okay.

10 **MR. LEGG:** Okay. Thank you.

11 **THE COURT:** You're welcome.

12 **MR. LEGG:** I'd like to call Mr. Isaac Diggs to the stand.

13 **THE COURT:** Okay. Mr. Diggs.

14 **WILLIAM ISAAC DIGGS, HAVING BEEN**
15 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **THE CLERK:** Please have a seat and state your name for
17 the Court, please.

18 **MR. DIGGS:** My name is Williams Isaac Diggs. D-I-G-G-S.

19 **THE COURT:** Thank you very much.

20 Yes, sir. You may proceed.

21 **DIRECT EXAMINATION OF MR. DIGGS BY MR. LEGG:**

22 Q: Mr. Diggs, I think you're a decent fellow. I always like
23 your demeanor and all.

24 A: Thank you.

25 Q: And I read a little bit about your disbarment and I'm

1 sorry for that. But I'm going to have to dredge that up a
2 little bit because of my case.

3 A: It's your case.

4 Q: Can you please state for the record as briefly as you can
5 about the disbarment?

6 A: We used money out of the trust account to cover office
7 expenses. It occurred during a difficult time in my life. I
8 don't know how much detail you want in that respect.

9 Q: Well, I think that -- to help you out, what's relative to
10 my case ---

11 A: Right.

12 Q: I know you heard me talk to Mr. Joye.

13 A: Yes.

14 Q: Being a Christian I told all my lawyers that first thing
15 I say is Jesus Christ is my Lord and savior. That means I'm
16 trying to introduce the fact of moral issues about my defense.
17 And because of your disbarment which had to do with issues
18 during a time that you were representing me. Essentially, to
19 make it simple, I just feel that because you were involved in
20 immoral activities that ---

21 A: Well, can I respond to that? At that time, you may be
22 aware that my wife was critically ill. Just give me a second.
23 That's a responsibility that was on me to take care of her.
24 We had the office operation; we had the representation of
25 clients. What I should have done, now realizing looking back

1 I was in over my head. It was too much going on. I couldn't
2 handle everything responsibly. Now, I'm going to say I did
3 devote time to your case. I thought that was important at
4 that moment.

5 Q: I'm sorry, I didn't hear that.

6 A: I did devote time to your case. But when you're ongoing
7 -- I look back on it now, I should have closed my office, but
8 I had hundreds of cases ongoing and it's difficult to just
9 extract yourself out of that operation under those
10 circumstances. It was very, it was difficult. I didn't
11 handle it properly and here's the result. But even now, you
12 know, I'm the primary caregiver of a spouse. She's been in
13 bed for five years and it's a burden. And let me tell you
14 something, you learn in life, you know, when you have those
15 kinds of challenges. But, going back and looking at our
16 representation in your case, Ron, I felt like we did a good, a
17 credible job. But I'm here as a witness in your case and I'm
18 ready to respond to any kind of question that you have.

19 Q: Okay. I thank you for that. Now, I just want to go -- I
20 understand that you had a reason for doing what you were doing
21 but I'm just going to play hardball with you on this. Like I
22 said, I like you and I can sympathize with you. But the
23 Supreme Court basically, if I can read before the Court in
24 just a second, if you could address the question that I'm
25 going to ask you.

1 A: Sure.

2 Q: Was that they disbarred you to protect the public from
3 you.

4 A: Right.

5 Q: And do you remember the language that they used?

6 A: I don't remember.

7 Q: You don't remember?

8 A: No

9 Q: Well, I do know that they -- that you didn't show up to
10 make a defense. That you basically just said hey you were ---

11 A: Well, that's true. There were things going on. Believe
12 it or not, there were things going on in my life that were
13 more important than those proceedings. I know that sounds
14 incredible, but there were.

15 Q: I understand. But their language basically says, if I
16 could read this Supreme Court's Ruling. It says that the
17 hearing panel carefully considered all of the different forms
18 of discipline available to it. That's basically stating what
19 they're going to come to a conclusion about was all of these
20 issues that were so egregious for a lawyer like you with such
21 an impeccable reputation, you know, many years of service and
22 all of that. According to them, it made it worse because you
23 were -- had high standards as an attorney but yet you failed.
24 So, the language became worse because of that because of the
25 respect that the public had for your office and all of that.

1 A: Can I respond to that point?

2 Q: Yes.

3 A: We had a lot of mitigating evidence that could have been
4 presented but I didn't present it.

5 Q: I just want to ask if you could agree to this or not.

6 This is page six of 10 of my amendment in my complain. It
7 says that these reasons, their finding was because the intent
8 of the defendant to commit acts where harm or potential harm
9 is foreseeable. Do you agree with that?

10 A: I don't, you know, looking back on that I didn't have any
11 intent -- there was a -- it was like a train that was out of
12 control from my perspective in terms of my practice. I didn't
13 have any intent. You know, it's not like we took that money
14 and went on a vacation to Italy.

15 Q: That's kind of like you can't see the train wreck coming.
16 Right?

17 A: If you -- if it's out of control you may see it coming
18 but there's not really anything you can do about it.

19 Q: Okay. And then B says circumstances reflecting
20 defendant's lack of honesty ---

21 **MR. JAMES:** I'm going to respectfully object. We're
22 getting pretty far field in extrinsic evidence being used to
23 impeach the witness on the stand at this time.

24 **MR. LEGG:** Your Honor, I feel this is totally relevant
25 here because we're talking about competency of the trial

1 attorney. The merit of this is based on I was convicted,
2 wrongly convicted. I have a life sentence. I have to
3 register as a sex offender. So, this is not about some
4 mediocre case about divorce and so forth. This has to do with
5 the mental state of this attorney. I'd like to ask him these
6 questions. This is a ruling on the Supreme Court which weighs
7 heavily upon your ability to make a clear decision to whether
8 or not he was competent.

9 **THE COURT:** I completely agree with Mr. Legg. It
10 certainly goes to what was transpiring during that course of
11 time during the trial of Mr. Legg's case. And I believe Mr.
12 Diggs is being completely honest about what was transpiring
13 during that time. And I certainly think it goes to the
14 competency of relevancy of the representation that was given
15 to Mr. Diggs case, I mean Mr. Legg's case at that time, so
16 I'll allow it.

17 **MR. LEGG:** Thank you, Your Honor.

18 **MR. JAMES:** Thank you, Your Honor.

19 **BY MR. LEGG:**

20 Q: Now, my last question was circumstances reflecting the
21 defendant's lack of honesty, trustworthiness or integrity. Is
22 that a yes or?

23 A: I don't understand that question.

24 Q: Well, they were making this evaluation.

25 A: I think that they made that evaluation based on a lack of

1 mitigating evidence that could have been presented. There was
2 a time when we were actually homeless during that period of
3 time. Try handling that with a spouse who is bedridden, so I
4 didn't -- you know, if I had gone up and participated in the
5 proceedings we could presented all of that evidence and it
6 might have been different. But I can certainly understand
7 where the Court is coming from based on what the record was
8 before them at the time. But that doesn't mean that I'm
9 agreeing with everything that they say. It may be accurate
10 based on what they knew, but, you know, that's what they had
11 available to them and that's their determination.

12 Q: It's basically saying that you had trust of ---

13 A: Of course, of course.

14 Q: You know, I read this and the research on it. I don't
15 know the facts involved in the case but let me ask you this
16 while we're on this subject. Were you ever arrested for this
17 crime?

18 A: No.

19 Q: Charged? You weren't?

20 A: No.

21 Q: So there's some kind of protectionism going on?

22 A: I don't think so. I think, you know, when you go back
23 and you look at the facts of the case, and I would prefer not
24 to get into them in detail. They're not relevant here. But
25 understand there was not an intent on my part expressly. Now,

1 I take responsibility. I should have stopped that. Okay. I
2 should have gone to the bar, explained I've got to retire.
3 I've got things going on that are out of control.

4 Q: So, you're saying, Mr. Diggs, that you had no self-
5 control?

6 A: I'm saying that things were beyond my ability to manage
7 them.

8 Q: Right. So, I would say my interpretation of that would
9 be just pretty much the same?

10 A: No. I don't agree.

11 Q: Okay. Alright. Let me read this here. It says
12 elevation of defendant's own interest above those of his
13 clients.

14 A: That's absurd. With all due respect to the Court, again
15 it was a life and death situation from my perspective so I
16 would disagree. Again, the Court didn't have an opportunity
17 to understand the context of what was going on in my life.

18 Q: Because they called you to come and give a defense and
19 you refused, didn't you?

20 A: I don't recall. I don't recall getting ---

21 Q: They called you ---

22 A: --- let me again say ---

23 Q: They called you; they wanted to hear your side of the
24 story.

25 A: I did not hear from them because I don't believe I ever

1 received the pleadings from them. And again, back in that
2 time frame we were basically living out of a car and so it's -
3 - so there were times, there were times that we didn't get ---

4 Q: Trust me, I can sympathize with that. I was in a county
5 jail while people were stealing my home. So I was homeless
6 and I was eating jailhouse food and meanwhile I was living in
7 an environment of a bunch of people that probably wanted to
8 kill me because they heard a lie, which that's another issue
9 I'd like to bring up in just a moment. But so, I can
10 sympathize with you on that.

11 A: No, I was just trying to explain to you why I might not
12 have gotten the mail delivery at that time because we lost a
13 home also at that point.

14 Q: I can understand, me too so we have that in common. How
15 about now, I'm reading this as if this is me on this end of
16 these children basically that you've took money from. So,
17 that would be like me being a victim of you, same thing as my
18 defense. I'm asking for a defense in what I'm going through
19 in Court. I'm trying to establish your mental state during
20 the time that you were representing me and the fact that you
21 were in this frame of mind and you did not have the capacity -
22 --

23 A: No, that -- let me explain. I'm sorry, go ahead and
24 finish.

25 Q: Okay. Well, there's a few of them here. I'm saying what

1 they're doing is they're giving a personality assessment of
2 you, Mr. Diggs, as a trial attorney during this time you're
3 representing me.

4 A: Well, they don't know what's going on and again to defend
5 the Court's language, they didn't have a fully developed
6 record to make that determination. They had to make that
7 determination based on what was before them.

8 Q: Well, I think they're up there and they can have a broad
9 view. They can see the forest and they're not too close to
10 trees to see the forest. So, they would look at your actions
11 and they would make a determination from years of experience
12 what was going on with you.

13 How about this? It says acts of dishonesty,
14 misrepresentation, deceit, or fabrication.

15 A: What about it?

16 Q: I'm asking you that because you heard when Mr. Joye was
17 here, I asked Mr. Joye about entertaining my defense so when
18 you came to visit me you never heard any defense. You were
19 there for two or three minutes. You did the same thing with
20 my documents, you pushed them back.

21 A: Well, I don't agree with that at all. You can look at
22 the jailhouse records and see how long I was there.

23 Q: I understand but let me make my interpretation of that.

24 A: Alright. Okay.

25 Q: You had hundreds of cases, and actually I know how you

1 guys work. You go in and you visit 10 inmates at the same
2 time, you've got just a -- you want to establish a record
3 proving that you were there.

4 A: You can -- you can look at the records at the jail and
5 see.

6 Q: Do you remember the day of trial, Mr. Diggs, when you
7 came, and you told me well guess what? You're going to trial
8 today, and I said what? But, Mr. Diggs, you haven't even had
9 consultation with me about -- I had no knowledge this was
10 coming up.

11 A: That conversation didn't take place.

12 Q: Okay. How about if we go with what the Supreme Court
13 ruled? I'm sure you can respect the ruling.

14 A: I don't think they witnessed the conversation.

15 Q: It says acts of dishonesty, misrepresentation, deceit or
16 fabrication. Now that's only about six out of 15 here. Are
17 you being dishonest with us today or have you overcome this
18 person that you were?

19 A: I don't -- I haven't been dishonest today, and I don't
20 think the Court based that language on a fully developed
21 record.

22 Q: It says misappropriation of conversion of assets of any
23 kind to which defendant recipient was not entitled, whether
24 from a client or any other sources. Now, how do you address
25 that? Yes or no?

1 A: I think that there's general language you can apply to my
2 situation that on the surface might be applicable, but I think
3 that if you have a fully developed record some of it I think
4 would fall off as not being applicable to that situation.

5 Q: Well, let me tell you this ---

6 A: Listen, listen. I'm not denying, I have responsibility
7 for what happened in my office and it really -- I can't undo
8 it. But, you know, in terms of what affect that might have
9 had on my representation of you, you know, I don't see the
10 connection. Because when I was going back and I was looking
11 at the trial transcript here, I think we did a credible job
12 and you acknowledged that, you know. If I'm not mistaken it
13 was in this courtroom.

14 Q: Were you doing a good job when you told the jury I was
15 guilty?

16 A: I didn't.

17 Q: You didn't read that in the record?

18 A: No.

19 Q: When you told the alleged victim that she deserved all of
20 the help that she could get from the government treatment
21 programs, that's implying that she was abused ---

22 A: Well, I don't agree.

23 Q: --- when she wasn't.

24 A: I don't agree that it implies that you're guilty. I
25 think that it implies that she needs help.

1 Q: Well, let's get into the record and we'll get into my
2 argument and why it was different than yours. Now, let me
3 just get to this point here. Let me make an example for you
4 so you can answer this question. I had an attorney, six
5 months ago I had him dismissed because I found his amendment
6 and I brought these issues up and every time your name comes
7 up a lot of attorneys don't want to take my case for some
8 reason.

9 A: His wife was one of my wife's therapists, Selwa is that
10 the name?

11 Q: Selwa, yeah. Well, he did not bring that up. I'm glad
12 you brought that up.

13 A: He was mildly familiar with the case.

14 Q: Because he said because I raised these issues up, he did
15 not want to make the amendment because of the consequences to
16 him. Do you have any idea what that might mean?

17 A: I don't. I'm not following you.

18 Q: Well, he didn't want -- he didn't want me to stand here
19 and raise these issues with you because he feared the
20 consequences to him. I wrote a letter to Mr. James and asked
21 him to have a court hearing based on that. We didn't have to;
22 he was dismissed.

23 A: Based on my reaction or what, if I could ask?

24 Q: No, because your name came up and I'm making this issue
25 now about incompetency and ---

1 A: Okay.

2 Q: --- and ineffective assistance of counsel and all of
3 these other issues about this conspiracy going on that I
4 raised at ---

5 A: Alright. I'm sorry. Go ahead.

6 Q: Okay. Now, factor D, which these are alphabetized, but
7 commission of a felon. Now, did you or did you not commit a
8 felony?

9 A: I'm not going to answer that. I'm going to plead the
10 fifth actually.

11 Q: Alright. I respect that. Now, factor I no prior record
12 of disciplinary offenses. I guess you'd been pretty slick for
13 a while. It says that you had a dishonest or selfish motive.
14 Now, would that be ---

15 A: And again, I think my response is going to be the same to
16 every one of those. There was mitigating evidence I could
17 have presented.

18 Q: But you didn't bring that to the Supreme Court.

19 A: I didn't, that's right. So, it gave the Court an
20 incomplete record and they were justified I think in making
21 all of those findings based on the evidence that was before
22 them. But that doesn't mean, at least in my mind, that they
23 were accurate across the board. Mitigating evidence, I think,
24 is always something that should be considered before reaching
25 the bottom-line conclusion. I'm certainly not blaming the

1 Court for that. I should have or certainly the process is
2 such that I could have made mitigating evidence available to
3 them. The timing of the hearing, circumstances going on in my
4 life ---

5 Q: Mr. Diggs, you're a lawyer and the law reads that when
6 you don't show up that's basically an admission of guilt.

7 A: I'm sorry.

8 Q: When you don't show up ---

9 A: I think if you have notice of the hearing and you choose
10 not to show up that's a reasonable conclusion.

11 Q: Don't you think that this is such, you know, you were
12 disbarred from ever arguing before the Federal Supreme Court.
13 Don't you think that's a big thing that they would cross all
14 of their T's and dot their I's.

15 A: I think, I think it's a big thing but, you know, as I
16 said a few minutes ago believe it or not it wasn't even the
17 biggest thing going on at the time.

18 Q: Alright. How about K factor F, these are all called
19 factors, a pattern of misconduct?

20 A: I think that my response would be the same.

21 Q: Now, there was two, there was two sets of children that
22 you had care of their estate, right? And so, you took money
23 out of both of those sets of kids.

24 A: It was one account, but I'm not going to go into the
25 details.

1 Q: Alright. Factor G, multiple offenses, we'll skip over
2 that. And M, which they claim here, and I think basically the
3 absence of any guilt on your part which is pretty obvious to
4 see now to the extreme. But they say factor K is absence of
5 full and free disclosure to the hearing panel, which you've
6 already addressed that, right? But N ---

7 A: I never have appeared before a hearing panel, it's true.

8 Q: How about, like I said if I'm reading this as me. Here I
9 am, I'm arrested for this heinous crime that I have to give
10 answer to, and I don't have any attorneys coming up and saying
11 well okay, you know, here's how this goes. Nobody said that.
12 It was all prejudgment on it. But I consider myself a
13 vulnerable individual and I became victim because I trusted
14 the system was going to work for me, it was going to be fair.
15 And I had these attorneys that were going to fight for me
16 basically for justice and for right regardless of what the
17 State was saying, whatever or however ugly they made the
18 picture. So, here they have factor R, vulnerability of the
19 victims. So, the victims are vulnerable. I'm vulnerable.
20 So, I'm trusting you as a lawyer to do that right thing and I
21 feel all of this time you're trying to coerce me into a plea
22 deal which that's entirely wrong for somebody who is innocent.
23 And you never let that go all of the way to the last minute.
24 And I remember telling you one time, I will plead to child
25 abuse by using an F word which they accuse me of saying, you

1 know it's spelled out, but I've never really said that the way
2 it's spelled out. I've always used other words. And I was
3 willing to plead guilty for that, but not these other charges.
4 So, I was vulnerable. Never had any basically consultation
5 from you of how to proceed in this trial.

6 A: Well, I disagree with you on that.

7 Q: Because you know why? Because just like Mr. Joye who
8 just left here, he never had counsel with me. I go in there
9 naked, never knowing what to expect, never knowing who to call
10 for witnesses for sure, never having consultation about that.
11 But at the same time do you remember you telling the Judge you
12 called all of the witnesses?

13 A: I don't -- I'm not following your question.

14 Q: Okay. Well, we'll get to that in a minute. Okay. We're
15 down here. A substantial degree of experience in the practice
16 of law, right? That's you, do you agree to that?

17 A: Are you quoting the Court?

18 Q: I'm quoting the Court. It's all the Court here. This is
19 factor S.

20 A: I think that what I'm going to do is not answer any
21 questions that you have pertaining to it. I think what I'm
22 trying to do is address that situation. I've explained to you
23 what was occurring, why I didn't appear at any kind of
24 hearing. So, that's going to have to speak for itself.

25 Q: Well, what puzzles me before I go onto these others.

1 What if you could tell me, you're a lawyer, you've been in
2 this field for a long time, why are you -- are you under some
3 kind of protectionism from this jurisdiction because you were
4 never arrested? Is it because of your reputation, your
5 impeccable reputation as an assistant US attorney, not US
6 attorney but State Attorney General?

7 A: I'm not going to answer that.

8 Q: Really?

9 A: Of course not.

10 Q: Don't you think that you should have been arrested or at
11 least arraigned?

12 A: I'm not going to answer that.

13 Q: Well, that's highly suspicious on my part and I'm just
14 saying that's my opinion as to why I've experienced this
15 failure to be able to find an attorney to represent me.
16 That's why I'm as dumb as rocks when it comes to law.

17 A: No, you're not. Listen, my response would be ---

18 Q: Listen, whenever a boulder falls on my foot I'm going to
19 scream and that's all I know how to do.

20 A: My response would be -- can I call you Ron, Ronald or Mr.
21 Legg?

22 Q: Mr. Legg.

23 A: Alright. I would cite the transcript. I think we did a
24 credible job. You and I worked together on the case
25 regardless of what you're saying ---

1 Q: Excuse me, I ---

2 A: --- but I think when you read that transcript it was a
3 credible defense.

4 Q: Well, I beg to differ with you on that because I see it
5 entirely differently.

6 A: Alright.

7 Q: Now, let me go to the trial transcript record. Now, as
8 you may recall, I had written a motion to dismiss these
9 charges and I had offered that to you. Okay. There was two
10 motions that I filed. One was to have you dismissed and there
11 was a grounds ---

12 A: Yes, I remember that.

13 Q: --- but eight days before that trial date you filed a
14 motion, an Ex Parte Motion for an Expert Witness. A lot of
15 the issue was that I had -- there was nobody investigating the
16 veracity of this alleged victim. There was no social witness
17 to come up and to expose what I was trying to explain to
18 everybody that basically the kid was wacked out. So, you
19 filed a motion and we went before Judge John and Judge John
20 just said he recited some real high law language saying that
21 your motion was not competent. It just wouldn't fly. Do you
22 recall that?

23 A: I don't recall that particular characterization of it. I
24 think that it's probably in the record somewhere and you could
25 look at it.

1 Q: Well, during that day, and I'm asking you, if you recall
2 telling me that Judge John was speaking some kind of secret
3 language as we walked out of court?

4 A: I was not. No. I wouldn't agree with that.

5 Q: Well, you stated on the record that Judge John, that you
6 asked for more time because you had another case and Judge
7 John obviously would not give you more time. Is that correct?

8 A: If you're -- I don't have any immediate recollection of
9 that right now, but I'm not challenging the accuracy of what
10 you're saying. I just don't recall.

11 Q: Okay. Now, at the beginning of the trial, I know the
12 Court has that record and will probably study that later.
13 But, at the beginning of trial when I filed the motion to have
14 you dismissed; do you remember why I was asking for you to be
15 dismissed in that motion?

16 A: I don't recall off the top of my head at this point.

17 Q: Okay. Now, do you recall that the Judge asked you if you
18 investigated the case. Do you remember what your answer was?

19 A: I'm going to have to look at the record.

20 Q: The Judge asked you if you called all witnesses. Do you
21 remember what your answer was?

22 A: I don't understand that question. I think you hit on
23 that question earlier and I'm not completely following. What
24 do you mean have I called all of the witnesses?

25 Q: That's what the Judge asked you in Court record.

1 **MR. JAMES:** Your Honor, if I may offer in order to try to
2 clarify the proceedings a little bit, I have a copy of the
3 trial transcript here that I can provide to the witness if Mr.
4 Legg would like to direct him ---

5 **MR. LEGG:** Sure.

6 **MR. JAMES:** May I approach the witness?

7 **THE COURT:** Absolutely.

8 **MR. DIGGS:** I have a copy of the transcript.

9 **THE COURT:** Mr. Legg, what the prosecutor is saying is if
10 you will just refer to the part of the record in which you are
11 referencing and you could ask the witness to refresh his
12 recollection by referring to that section and then he could
13 maybe better answer your questions. Is that okay.

14 **MR. LEGG:** Yes, sir.

15 **THE COURT:** Alright.

16 **MR. LEGG:** I just want to say for the record that I was
17 trying for the sake of all of these pages, I was trying to do
18 a Readers Digest version of it, but I guess ---

19 **THE COURT:** Well, that's okay. You certainly are more
20 than welcome to ask him a question and if he says he doesn't
21 not recall and you want to move to the next question and
22 you're okay with that answer then you're more than welcome to
23 continue with your questioning.

24 **MR. LEGG:** Thank you, sir.

25 **THE COURT:** Yes, sir.

1 **BY MR. LEGG:**

2 Q: Okay. I'll skip to what I have in my notes here which
3 has that I pointed out is that Diggs failed to investigate the
4 case which by measure or the lack thereof affected the
5 relevant substance of that need. By fact of trial transcript
6 for sustainable facts and for the following through one the
7 motions he raised before the Court he therefore failed to
8 appeal the Court's ruling on them. Diggs thereby created what
9 I call confusion on the motion to dismiss, Jackson versus
10 Denno new trial, directed verdict and filed to file a motion
11 for continuance by not being prepared. Now, on the trial
12 transcript I think it's page 49 which would be verse 9, the
13 Court said -- well, it's actually in 8 and 9. Mr. Spratlin
14 says: Yes, sir. Thank you, Your Honor. And addressing ---
15 A: Are you looking at the trial transcript or the record on
16 appeal?

17 Q: Trial transcript. Beg your pardon.

18 A: I'm confused because I'm not seeing that.

19 Q: Okay. Let me make sure I've got these right.

20 A: Alright.

21 Q: If you look on page 49 this is pretrial motions.

22 **MR. JAMES:** Page 49 of the trial transcript line 8 reads:

23 Mr. Spratlin: Yes, sir. Thank you, Your Honor.

24 **MR. DIGGS:** Yes, I see that.

25 **BY MR. LEGG:**

1 Q: And the Court says: And that would be his motion to
2 dismiss the indictment. Right?

3 A: That's what it says.

4 Q: Mr. Spratlin says: Yes, sir. But we're going to go
5 down. That's just introducing what he's talking about. We're
6 going to go to page 51. The Court asked you on line 9, 10 and
7 11, the Court says: Have you got any evidence other than his
8 assertion that this stuff existed? Now, what we were talking
9 about by this bringing to your recollection.

10 A: Right.

11 Q: My idea of the motion was because I had documents which
12 was basically a biography of this alleged victim making these
13 claims against me and this clearly showed her mental state.

14 A: Was that the missing material that ---

15 Q: Missing, right.

16 A: Okay. And I explained that here that we had some other
17 materials that were available similar to what was missing but
18 we didn't have the particular materials.

19 Q: Okay. That would be an incorrect statement.

20 A: Okay. Correct me.

21 Q: You were clearly saying that Your Honor, I don't have it.

22 A: Then I was following up with saying that I had a sample.
23 What I was saying was we had other material.

24 Q: I don't think so. I think you were referring to a
25 placard or whatever in that misstatement. But you were asked

1 several times, now listen this is the whole key to my case
2 would be that here I'm taken to trial for this accusation that
3 I touched this alleged victim. And I, basically everybody
4 says that I'm an expert on ADD and I've done all of this
5 research and all of that Attention Deficit Disorder. That
6 means a study, I was engaged in a study and I had all of these
7 handwritings from this kid who had been writing all of these
8 statements and stuff that I had that when the police came the
9 first time I showed them that. There was a basket full of her
10 stuff pertaining to any allegations she would make. That
11 would have exonerated me, period. Now, the police have a
12 search warrant saying that they went to my house to retrieve
13 writings between me and the alleged victims. Now, those
14 writings never showed up. Now, with the history that I was
15 making of my case because of the illegal search warrant and
16 the police and later them turning over documents that were in
17 my house that were not in discovery that showed up to me that
18 I was searching for. That was the whole nucleus of why I was
19 asking for the charges to be dismissed. Now, relevant to that
20 I'm saying that there were documents, there were writings,
21 there were papers that are exculpatory that I'm asking the
22 State to be accountable for, the police's malfeasance, their
23 actions showed a distrust on their part. That was a motion
24 that I wrote. So, the Judge says to you, he said: Well, he
25 could make that up. Do you have any evidence that these

1 writings existed? Did you or did you not clearly state: No,
2 Your Honor, I don't have any evidence of those writings?
3 A: If that's what the records says.
4 Q: That's what the record says. But later on, who comes
5 forth and it comes up, did you -- to this alleged victim, what
6 were you doing at this house? She said well I was writing
7 things. What were you writing? Well, about misbehavior,
8 misdeeds. So, she confirms, and her mother confirms what was
9 she doing over there. Well, he had her write stuff. I was
10 literally writing misbehaviors so they could see that so that
11 could be documented and that was my defense and you said none
12 existed. So, during the trial the witness was there. Three
13 witnesses stating the facts, not just me, that these writings
14 did exist and you never recovered that motion asking the Court
15 that there's the evidence and I would like for you to review
16 your denial for my motions because of that issue. Now, and
17 the reason I bring that up was also the Court asked you: Mr.
18 Diggs, are you ready to go to trial? When I said I would like
19 to have this lawyer recused. Why? Because he has failed to
20 investigate. He has failed to call witnesses. Right? He has
21 failed to consult with me on the case. And you said: Yes,
22 sir. What?
23 A: I have no idea.
24 Q: Okay. Well ---
25 A: I'm not following you. I don't mean to be, I mean, I'm

1 trying to follow you, Mr. Legg.

2 Q: Well, I hope ---

3 A: But I recall we looked at all of the evidence that had --
4 that the State had in its possession and we looked at all of
5 the evidence that you made available to us.

6 Q: And I didn't ---

7 A: That you made available.

8 Q: Did I make any evidence ---

9 A: That you had produced.

10 Q: Can you tell the Court what that was?

11 A: I know your writings that you produced. The ones that
12 you've mentioned here in this hearing today. We looked at
13 that and I felt that the case came down to the child's
14 credibility. So, you know, that's the way that we approached
15 the case.

16 Q: Well, to correct the record, I don't think you had any
17 evidence because the record doesn't show it at trial.

18 A: Well, I'm telling you we went and looked at the evidence
19 that the State had in its possession. We did that several
20 days in advance of the trial.

21 Q: Well, let me ask you this.

22 A: Okay.

23 Q: Let me ask you this. The State brought up as I recall, I
24 can dig it out but I'm sure you probably remember a little bit
25 that we talked about the stepfather. And you said on record

1 stepfather, we didn't hear anything about that. I didn't know
2 there was a stepfather. I didn't know there was another man
3 in the house. So, you're saying that you relied on the
4 State's evidence rather than your own investigation because
5 that clearly showed don't you think? Here's a 10-year-old
6 child accusing this adult man who lived next door of these
7 heinous acts of touching her. No physical evidence by the
8 way, just touching. That if there was another man in the
9 house don't you think that he would be a key witness,
10 important to the case to bring forward to see or to go and ask
11 him and investigate the veracity of this child, the social
12 history of this child? Do you know anything? You know, I'm
13 defending my client about this case. Do you know -- I know
14 him personally. I know exactly what the person would have
15 said if you would have called him as a witness. I know
16 exactly what he would have said, he was an honest man. He was
17 an illegal immigrant and his motive for not lying because the
18 law says that if you're here and you commit a crime you will
19 be deported. He would have told the truth on the stand. He's
20 probably one of the ultimate most witnesses that would have
21 been in my case, but yet he didn't even know he existed. So,
22 I want to ask you Mr. Diggs, do you think that would fall into
23 your failure to investigate the case?

24 A: I think if he'd been a witness, you know, with respect to
25 the allegations that were made in your case it would certainly

1 be relevant and I should have investigated that.

2 Q: Thank you for that.

3 A: But it's my understanding that he wasn't and, you know, I
4 think that the record shows that we did a credible job in
5 defending you. And again, you weren't forthcoming, Mr. Legg,
6 you know, with respect to your own situation. You could have
7 helped more, but I felt like, you know, by not allowing me to
8 talk to your family, misrepresenting your status and your
9 brother's status. I don't remember exactly how that came up,
10 but I was aware of that as well. But, you know, you make a
11 point. This gentleman might have, maybe he was there that day
12 and saw what happened and it wasn't the way the child
13 described it. And if that's the case then I think you've got
14 a point.

15 Q: Thank you, Mr. Diggs. I appreciate that.

16 **THE COURT:** Mr. Legg, if it's okay. We've been going for
17 about an hour and 35 minutes and there's been a lot of ongoing
18 colloquy that the court reporter has to take down. So, let's
19 just take about a 5-minute break. Mr. Legg, take this
20 opportunity to just kind of get your remaining questions
21 together for us if you would please and we'll just take about
22 a 5-minute recess. Okay. Alright.

23 **MR. JAMES:** Thank you, Your Honor.

24 **THE COURT:** Yes, sir.

25 **(COURT IN RECESS)**

1 **THE COURT:** Alright. Mr. Legg. Mr. Diggs, of course
2 you're still under oath and so we'll just continue with the
3 questioning of Mr. Diggs. Mr. Legg.

4 **MR. LEGG:** Yes, sir.

5 **BY MR. LEGG:**

6 Q: Mr. Diggs, on the Supreme Court's ruling on the issues,
7 there basically is two things. They said they disbarred you
8 to protect the public from you. Do you have any knowledge of
9 that?

10 A: Well, it speaks for itself. You know, I didn't
11 participate in the proceeding.

12 Q: Okay.

13 A: In fact, well, I don't think I've even seen it. Whatever
14 that document says, you know, it's going to have to stand for
15 itself.

16 Q: We'll be going down the same road, so I'll try to get
17 into another issue and try to speed this up. Now, one other
18 thing which is important that you should know. Do you
19 remember representing Bradley Mullins murder trial? And Ray,
20 what's his name, was a witness? Anthony Ray? Do you
21 remember that?

22 A: I do ---

23 **MR. JAMES:** Objection. Relevance. We're not getting
24 into Bradley Gerald Mullins or any other trials.

25 **MR. LEGG:** Your Honor, it has to do with this case. I'm

1 asking -- it has to do with his competence during this time.
2 I'll just ask him one question and we'll sum that up.

3 **THE COURT:** What is your position? Is it still the same?

4 **MR. JAMES:** My position is still the same, Your Honor.

5 **THE COURT:** I'm going to agree with him. I'm going to
6 sustain his objection. We're not getting into anything else
7 except for what happened in this trial and your case at hand.
8 Okay.

9 **MR. LEGG:** Well, it has to do with during the trial while
10 he's representing me. I think it's a relevant issue about Mr.
11 Diggs competency during the time. My name was brought up in a
12 trial and I wanted to ask him if he could acknowledge why he
13 brought that up. My name was brought up in a murder trial and
14 as a result of that because my name was brought up, I ended up
15 getting a hit. I was attacked by this gang that had to do
16 with this trial in which Mr. Diggs inadvertently brought my
17 name up, which I felt he shouldn't -- he basically contributed
18 to that. I felt that was incompetent on his part during that
19 time.

20 **THE COURT:** Were you convicted at this point in time or
21 was this still while you were incarcerated awaiting trial?

22 **MR. LEGG:** I was under his representation. I was
23 awaiting trial. And he basically had this murder trial and
24 the State's witness against this man, Mr. Diggs had asked this
25 man if he knew me by my name. And that acknowledged that I

1 had given some information to Mr. Diggs about this man. And
2 later on, when I was sentenced to prison I was attacked by
3 this person's gang, known as the Folk Gang. Now, that
4 directly tied into this individual who was testifying in this
5 murder trial. So, the result thereof is I'm trying to
6 establish Mr. Diggs incompetency at the time to actually do
7 that knowing that my life was in jeopardy as a result of that.
8 And I do have a scar where I was attacked and hit in the head.
9 I had to go to the hospital.

10 **THE COURT:** Alright. I'll allow one question as to just
11 solely that one issue, his state of mind at the time he was
12 representing you in which your case was outstanding, and he
13 brought your name up in another trial. Just solely to that
14 issue.

15 **MR. LEGG:** Okay.

16 **BY MR. LEGG:**

17 Q: Is that correct, Mr. Diggs?

18 A: Yeah. I just don't have any recollection of it. I'm
19 sorry about that. I would have to look at the transcript of
20 the trial to see.

21 Q: Okay. Alright. Now, back to the issue of lack of
22 investigation in the case. There would have been another
23 witness, which as you recall the girl's, the alleged victim's
24 brother. I think he was 12 at the time. Do you remember that
25 he had made some accusations against his father about sexual

1 molestation? Do you recall that?

2 A: I do recall that.

3 Q: And Detective Frebowitz investigated that case also.

4 A: I don't recall.

5 Q: Okay. So, do you feel that that child's real father not
6 living at home, with the stepfather living at home, so he made
7 an accusation against the real father. Do you not feel that
8 that real father would have been a relevant key witness in my
9 case to show the propensity of those kids to do something? As
10 it turned out, the boy's accusation turned out to be non-
11 substantiated because they didn't bring a case against him.
12 Do you feel that that man should have been called as a
13 witness?

14 A: I think that what we did at the time was investigated the
15 facts we thought were pertinent to the case and I didn't
16 pursue that particular line.

17 Q: Well, during that time you stated on the record that you
18 didn't know where the real father was.

19 A: Whatever the record shows about that. I don't have any
20 independent recollection of it.

21 Q: Now, one of the issues I want to try to get into is
22 showing that basically your statements on the record is what I
23 call like duplicity. In other words, you say one thing and
24 then over here say something that's entirely different but
25 meaning the same thing, that's being duplicitous. In other

1 words, it's like being a hypocrite or you're making a
2 statement to the jury, you made a statement to the jury well
3 he's guilty. You just flat out said he's guilty. Then later
4 on you come back and you try to clean that up. I felt that
5 was a very harmful statement when you said that. But the ---
6 where I'm going here ---

7 A: Can I ask you what part of the record you're talking
8 about? What you're referring too.

9 Q: Hold on a minute. I'm going to get into that. I'm going
10 to show you the record.

11 A: Alright.

12 Q: But I'm leading up to something I'm going to ask you, is
13 that I feel, you know, I brought up this issue about Detective
14 Frebowitz. And you and all of these other lawyers never
15 really pursued any of that information that I had, which is
16 more than is even on the record. And I'm not really at
17 liberty to elaborate on it further but the fact of it is that
18 I brought up the issue of wrongdoings on these people and it
19 was never investigated. It was just squashed by you and
20 everybody else. But later it turned out that Detective
21 Frebowitz was fired from the police department. Now, the
22 point is that neither you nor Mr. Spratlin brought up the fact
23 that Detective Frebowitz was fired and his order of -- of when
24 they fired him was signed by Chief Rhodes the same day that I
25 was convicted. So, in other words, Detective Frebowitz was on

1 trial and he was a key witness on my case. It's very
2 prejudicial and it's very, very harmful everything he had to
3 say. He appeared in plain clothes and the man who took his
4 job was Detective Lynch. So, some way or the other Frebowitz
5 was demoted, which I didn't know at the time until I did
6 research on it through the Freedom of Information Act, and
7 thank God for Chief Rhodes who gave me the information as to
8 why this man was fired, terminated. The funny thing about it
9 was do you think, Mr. Diggs, that that would have been
10 relative if it was known that Mr. Fredowitz was fired from the
11 police department?

12 A: I think what was important in the case was the child's
13 testimony and I don't think anything flowing out of the arrest
14 warrant -- the search warrant or anything he did was relevant
15 to the issue in your case. Now, I can understand where you're
16 coming from because I know that there was missing property and
17 that kind of thing that you were certainly interested in,
18 rightfully so following after the trial and even before the
19 trial. But I didn't see the importance, I didn't see that as
20 prejudicial to your case. What I saw was that child's
21 credibility and I think that was the issue that we had to deal
22 with, that we tried to deal with in your defense.

23 Q: Okay. Clearly, you're making several statements saying
24 that the issues that I'm bringing up were not big issues.

25 A: No. I'm not saying they weren't big issues. There are

1 issues in a case that are relevant to the trial as I see it
2 and they may differ. The way I see it, I think, might differ
3 from the way you see it. I'm not saying they're not big
4 issues. But I think that your conviction rested on the
5 child's credibility and that's what we were trying to assail
6 at some point during the trial. It's a difficult thing to do
7 to challenge the credibility of a little girl ---

8 Q: Did you do an investigation on her social history, Mr.
9 Diggs, to establish that for my defense?

10 A: Not beyond what we had available ---

11 Q: Did you do ---

12 A: --- in the discovery material.

13 Q: Mr. Diggs, did you do any investigation for me into this
14 little girl's social history to determine her veracity? Did
15 you interview any of the neighbors? Did you have, as a matter
16 of fact, did you have a detective investigate the case, go to
17 the school to search out or investigate any of her peers to
18 see if maybe she had some kind of a victimization
19 psychological issue or she sought out and made stories up to
20 other people ---

21 A: No. No, I didn't do that. I didn't do that.

22 Q: Okay. Thank you. Now, so you're saying that you didn't
23 investigate the case?

24 A: I'm saying I didn't do what you just described.

25 Q: Okay. Do you think that would have been important for

1 her veracity?

2 A: I think it would, it -- of course her veracity is
3 important, but I didn't do the activities that you're
4 describing in your question.

5 Q: The social history.

6 A: At her school, correct.

7 Q: Okay. Well, I'll get to the record where it says that
8 you even acknowledged in the trial transcript that we didn't
9 do -- we didn't investigate that. You said that several
10 times, we don't know anything about her veracity so that would
11 be established in it, correct?

12 A: Whatever the transcript says I would say is probably
13 reliable.

14 Q: Okay. But that would go against you saying the
15 transcript says you did a credible defense. So, it's starting
16 to add up towards ---

17 A: I think we did a credible defense.

18 Q: Okay. See, that's a duplicitous statement there. So, as
19 many times as I've brought this up, you're agreeing with me
20 that the issue that you didn't investigate that would have
21 been relevant, it would have been important to my case.
22 You're saying yes it was, so now you're over here being
23 duplicitous and you're saying well we did a credible case.
24 So, that's the point I'm trying to make about duplicity,
25 correct?

1 A: I'm not going to agree with what you just said.

2 Q: Okay. Well, that's what happened before the jury. See,
3 the jury looked at it like this, Mr. Diggs, come on now. I
4 was entitled to the benefit of doubt. Did you bring any up?
5 Of course not. No benefit of doubt; no case for the benefit
6 of doubt.

7 So, now, here's another issue. You were basically, let's
8 say put it this way if you agree me or not in a question, the
9 hound dogs, blood hounds were on your trail because you were
10 actually doing something over here that was against the law.
11 You said you didn't see that train wreck coming. You didn't
12 have self-control. So, in your mind during that time anybody
13 that commits criminal acts has to be aware, now listen ---

14 A: I'm not going to answer that question. I'm not going to
15 answer any questions relating to my activities and my frame of
16 mind with respect to that.

17 Q: Your frame of mind during the trial, which is what ---

18 A: No. I'm talking about the disbarment issues that you
19 keep referring to.

20 Q: Okay. Well, let's say we'll put the disbarment issue
21 over here. So, here's the Detective Frebowitz, right? And
22 he's what? Horry County? How would you describe his position
23 at the time when he was actually lawfully working at the
24 police department? What was he called?

25 A: I have no idea what he was called.

1 Q: Lead detective.

2 A: I would have to go back and look at what his job title
3 was.

4 Q: So, the reason I'm putting this -- I'm phrasing this
5 question this way, you basically are committing a crime. You
6 don't have to answer that, but I'm saying I'll get you to
7 answer the question that I'm leading to tell me that you're
8 commit a crime. Now, of course you don't want to make the
9 police mad or even the solicitor angry at you to be suspicious
10 of anything to perhaps maybe investigate you for your crimes
11 during that time; is that correct?

12 **MR. JAMES:** Objection. Leading.

13 **BY MR. LEGG:**

14 A: I'm not going to answer your question anyway.

15 Q: Alright. Well ---

16 **THE COURT:** He's made an objection, okay. And he
17 objected to leading which means that you are giving a --
18 you're eliciting a response that you want, which means that
19 essentially you are testifying as to the answer in which you
20 want. So, I am going to sustain his objection. Mr. Legg, I
21 have given you a ton, a ton of leeway here. I think you would
22 agree.

23 **MR. LEGG:** Yes, sir.

24 **THE COURT:** Okay. But, I'm going to have to ask that, I
25 gave you an opportunity to kind of collect your questions for

1 Mr. Diggs and to try to proceed forward. I'm going to have to
2 ask that you start asking a little bit more concise questions.
3 Again, Mr. Diggs has been extremely honest with you and I
4 believe that he is testifying as truthfully and honestly as he
5 possibly can. Now, I'm going to have to ask you to try to
6 start formulating a little bit more questions. I'm going to
7 tighten you up a little bit more on the leading and testifying
8 currently. You're going to have more than ample time to call
9 yourself as a witness. I'm going to let you take the stand if
10 that's you want to do, you certainly don't have to. You can
11 testify all you want at that point in time. But, for purposes
12 of asking Mr. Diggs questions, let's go ahead ask and illicit
13 all of the information that you want from him and then you can
14 take everything that's been given to you when you take the
15 stand and you can testify on your own behalf. Is that fair?

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

17 **THE COURT:** Okay. Let's try that.

18 **MR. LEGG:** I appreciate your patience, Your Honor.

19 **THE COURT:** Absolutely.

20 **BY MR. LEGG:**

21 Q: Okay. A more direct question, did you play softball with
22 Detective Frebowitz?

23 A: I don't -- I don't have any recollection of it.

24 Q: Okay. Because that was one of the issues I raised in the
25 complaint, you know, I've got an attorney that's committing

1 crimes and he's not going to anger ---

2 A: Can you give me a time frame?

3 Q: During the trial?

4 A: Oh, of course not.

5 Q: Or during the investigation?

6 A: Maybe 30 years ago.

7 Q: Okay. Now, we're going to get to the issues about where
8 you actually asked the alleged witness how many times did you
9 write statements, and she said quite a bit. And you said okay
10 a lot? And she said yes. Now, putting a variant on that, do
11 you remember I raised the issue about the, about the motion to
12 dismiss the charges based on an improper handling of the
13 documents removed from my house, correct? And then the Judge
14 says to you: Okay, Mr. Diggs, do you have any evidence that
15 these even existed. Right? So, later on in the trial there's
16 evidence that existed, correct?

17 A: I don't know. I don't know what you're referring to.

18 Q: Okay. Well, ---

19 A: If you could direct me to it.

20 Q: On page 263, line 1, 2, all the way down to 10 here and
21 then -- and I'll get another one.

22 A: Okay. Yes, I'm cross examining her.

23 Q: Right. But you actually start on -- if you go back to
24 262 the bottom line, number 25.

25 A: Okay.

1 Q: It's kind of like the entry into the question and you're
2 asking this individual, the alleged victim: But did he have
3 you from time to time write in the notebooks? Right? And
4 then the answer was: Like he would tear the paper out. How
5 many times did you write statements? And she said: Quite a
6 bit. And then you said: Okay. A lot? And she said: Yes.
7 So, in your mind what is that saying?

8 A: I'll take it at face value.

9 Q: I'm sorry. I didn't hear you.

10 A: I'll take it at face value that she did what she's
11 testifying to.

12 Q: That there were writings?

13 A: Yes.

14 Q: Okay. But, you said earlier during the motion in the
15 Jackson ---

16 A: Well, I didn't have any of those.

17 Q: But you didn't have no knowledge of any writings for that
18 motion. So, here at the very beginning the pretrial motions
19 were filed, like my motion which was never heard, and it
20 basically highlighted this that there were writings that were
21 exculpatory and would have exonerated me showing this
22 individuals state of mind, correlating my relationship to her
23 with everything I say, that would prove everything I'm saying
24 is true, that I wasn't capable of doing what I was charged
25 because my mind was over here on this because it shows a whole

1 different person. So, I was asking the Court to dismiss the
2 charges based on the police mishandling because those
3 documents disappeared. Now, the point is, and you as a lawyer
4 know, this illegal search warrant stated that the police went
5 to retrieve writings between the defendant and the alleged
6 victim, right? When I left my house, those writings were
7 there. When I came back, those writings were not there. So,
8 I filed a motion because they never showed up in discovery to
9 hold the police accountable to find out and to investigate
10 that, where are the writings. And the Court asked you
11 specifically: Mr. Diggs, do you have any evidence that these
12 writings existed. Right? So, here is your evidence later on
13 in the trial. Here's your evidence. Did you go back and ask
14 the Judge to review the Motion to Dismiss now that you have
15 evidence because you have witnesses that testified ---

16 A: Well, no I didn't go back and revisit the motion. I
17 don't see the -- I'm not drawing the connection that you are
18 with it. I'll just leave it there. I didn't go back and
19 revisit the motion and I don't see that as really providing
20 evidence that's favorable to the defense specifically.

21 Q: But that was the motion based on that.

22 A: Well, I'm talking about her testimony here.

23 Q: So, you're saying her testimony there is not prevalent?

24 A: No. I'm saying we don't know specifically what the
25 writings wre.

1 Q: So, you're saying you did not follow up to find out
2 specifically what the writings were?

3 A: At this point in the trial ---

4 Q: Okay. But the issue ---

5 A: --- I think that's where we left it.

6 Q: --- but the issue at this point was not the ingredients
7 in the writings, but the fact that writings existed between
8 her and ---

9 A: Well, in my mind the subject matter, the actual language
10 in the writings would have been important.

11 Q: Okay.

12 A: The fact that some writing existed wasn't the issue in my
13 mind at that point.

14 Q: Okay. I'm going to try to speed through this. Diggs
15 failed to make a Motion for Continuance. Issue was raised
16 after two days without my sleep, too late to resolve and was
17 never resolved. Do you remember me coming to you and saying,
18 you know, last night, the night before I couldn't sleep, and I
19 thought it was just stress? But the second night the same
20 thing, pattern repeated. They were giving me medication at
21 night and I didn't realize it until the second night that I
22 couldn't sleep, and I told the guard to be witness to that.
23 So, I came and told you the next day, you know, that's two
24 days, 48 hours that I've went without sleep and I don't think
25 there's anyway I can take the stand. And I asked you to bring

1 that to the Court's attention and ask for a continuance based
2 on that. Do you think that would have been a good reason?

3 A: You know, I don't recall having those conversations. But
4 let me say this, had it occurred the way you're describing, I
5 would have followed up on it and brought that to the Court's
6 attention. I don't recall that happening ---

7 Q: Okay.

8 A: --- the way you're describing.

9 Q: Page 313, line number 8 all of the way down to 25 to
10 refresh your memory there. You're talking about -- you're
11 bringing the issue up to the Court. It says, well maybe you
12 can read that Mr. Diggs.

13 **THE COURT:** While he does that, Mr. Legg, I apologize for
14 interrupting you. I'm going to give him some time. They just
15 informed us that the Court is going to have a hearing at 1 and
16 this court reporter will have to be involved in that and I
17 need to give her an opportunity to go to lunch. So, how much
18 longer do you think you will have with Mr. Diggs?

19 **MR. LEGG:** A good while. I'd say at least an hour. I'm
20 going to try to run through these.

21 **THE COURT:** Okay.

22 **MR. LEGG:** Unless he wants to break down and admit to the
23 Court that he was incompetent during that time, we could
24 conclude with all of this I do believe if he could convince
25 you ---

1 **THE COURT:** Okay. Well, hold on. Let's do this, I want
2 to give her ample time to have lunch and do some things that
3 she needs to do because when we start back at 1 then we're
4 going to be proceeding right after that and she won't have an
5 opportunity to have a break. So, let's go ahead and break now
6 for lunch. There's going to be a hearing in here at 1. We're
7 going to start back here to be safe at 2. Alright. And we'll
8 just continue with Mr. Diggs' testimony. Mr. Diggs, obviously
9 you're fully aware you're still under oath. Do not discuss
10 anything with Mr. Diggs. Obviously, you understand that, but
11 you can't talk to him at all. You can't discuss anything
12 with him, he's still under oath. Okay. So, Mr. Legg, just to
13 let you know where my head's at when we begin back at 2, let's
14 -- why don't you take this opportunity to get you some good
15 concise questions down? And again, as I indicated before, I'm
16 going to let you ask Mr. Diggs as many questions as you want.
17 We'll be here until you're done asking questions, but I want
18 you to get to asking questions. Whatever testimony is
19 elicited from him, I will then give you the opportunity to
20 make your argument to me, okay, if you would like to take the
21 stand. But making the argument with him for my purposes, you
22 don't want to do it twice, okay. If you don't have any
23 intention of taking the stand, that's completely fine. But
24 let's get to a little bit more of the question and answer,
25 okay, just so I can get some information that I'll need to be

1 able to make a proper ruling. Okay.

2 **MR. LEGG:** I appreciate your patience.

3 **THE COURT:** You're more than welcome. We'll reconvene
4 back here at 2 o'clock.

5 **MR. JAMES:** Your Honor, in light of the pending motion,
6 should the State clear the material from the table here? I
7 don't know how involved the hearing is.

8 **THE COURT:** It's a Motion to Reconsider. I don't think
9 that it's going to be anything overly -- Mr. Legg, you're
10 going to want to make sure that your papers are off the table.
11 Certainly, keep them in order, but you're not going to want
12 anybody to kind of see what you're dealing with so let's just
13 remove that. And again, y'all probably just might want to do
14 the same, just put it on the floor or something.

15 **MR. JAMES:** Alright. Thank you very much.

16 **THE COURT:** Okay. You're more than welcome.

17 **(COURT IN RECESS)**

18 **THE COURT:** Alright. Let's go back on the record for Mr.
19 Legg. Alright. I hope everybody had a good lunch. Mr. Legg,
20 did you have an opportunity to get some good, clear, concise
21 questions together for Mr. Diggs?

22 **MR. LEGG:** Yes, sir.

23 **THE COURT:** Alright. How much longer do you think you
24 have with Mr. Diggs, just for planning purposes?

25 **MR. LEGG:** I'm going to try to rush through this.

1 **THE COURT:** Well, don't rush. I just want you to get
2 back to answering -- ask and answer questions.

3 **MR. LEGG:** Right. Probably an hour and a half at the
4 most.

5 **THE COURT:** And then as to --- are you planning on
6 calling Mr. Spratlin?

7 **MR. LEGG:** Yes, sir.

8 **THE COURT:** And are you planning on testifying yourself?

9 **MR. LEGG:** Probably not.

10 **THE COURT:** Okay. Then that's fair enough. Alright.

11 Mr. Diggs, if you'll come right back up. Alright. Mr.
12 Diggs, as you are fully aware, you're still under oath, so no
13 need to re-swear the witness. So, you can go ahead and begin
14 whenever you are ready, Mr. Legg.

15 **BY MR. LEGG:**

16 Q: Okay. I want to try to do this as briefly as possible on
17 these questions. We've already went over this issue, but the
18 question, the question I wanted to get a clear concise answer
19 from you was the issue of the Motion to Dismiss based on the
20 missing documents, the writings. And I just wanted to know if
21 you felt in a better interpretation whether those missing
22 writings would have been relevant to the dismissal of the
23 charges in the case?

24 A: It's hard to know that without having seen the writings.

25 Q: Okay.

1 A: You know, the substance of the writings. Of course, you
2 know, if they were on point it's a whole range from not
3 relevant at all to exactly what you needed as a defense.

4 Q: Okay. So, you're saying you failed to investigate that
5 substance?

6 A: The substance of the writing?

7 Q: Right. You failed to investigate that?

8 A: I didn't investigate the substance of the writing.

9 Q: Okay.

10 A: I think that probably you and I would have had
11 discussions about it.

12 Q: Okay. I just want to read this what the Court said, and
13 this is on page 463, lines 8 through 14. And the Court says
14 to you: Thoroughly you mentioned some alleged missing
15 evidence. There's no testimony to what that evidence would
16 have been. There's no testimony at all that it would be
17 inculpatory or exculpatory. There's no evidence that it would
18 help or hurt the defendant. There's no evidence of what it
19 was and there's certainly no evidence of misconduct by the
20 arresting authorities. Now, the reason I read that, as you
21 well know, later on in the trial it came up and there were
22 witnesses that were testifying that those writings did exist;
23 especially the alleged victim said she did write writings and
24 what was the general contact of that was because she was
25 writing about her misbehavior and things forth that I had her

1 to write. So, ---

2 A: The -- I'm sorry.

3 Q: In that light would him stating that you don't have any
4 of that so that showed up in trial, but my question is did you
5 feel that you failed to go back and use that to answer these
6 direct question from the Court?

7 A: I think that we had a problem with knowing what the
8 substance of the writing was. And we were in a position that
9 we wouldn't ever know what it was. It was based on what your
10 recollection would have been.

11 Q: But you had the opportunity right there with the witness
12 on the stand to question her, you know, about the content of
13 those writings.

14 A: And I didn't have any idea what she would say.

15 Q: Okay. Fine. Thank you. Now, we left off when I was
16 referring to 48 hours without sleep. I will ask you why you
17 did not ask the Judge for a continuance based on that?

18 A: The only -- you know, thinking back on it I don't have,
19 you know, I'm relying on what you're telling me. I don't have
20 recollection of use having that conversation.

21 Q: Right.

22 A: I don't dispute what you're saying. But, the only thing
23 I could say is it didn't strike me as something that needed to
24 be done and I'm not being critical on you at all, but if you
25 like hit me in the head and said Bill I can't do this, I need

1 to take a break or I need this medicine and why don't we try
2 to continue this thing. You know, it just didn't come across
3 to me in that fashion at the time.

4 Q: Okay. For your recollection, on page 313 of the trial
5 transcript, lines 8 through 25 you are stating to the Court:
6 He's supposed to take that in the morning, but they are giving
7 it to him in the evening and when he takes -- when he does
8 that it interrupts his sleep and he can't two nights in a row
9 he's not been able to get to sleep. And to the extent that
10 Your Honor can help get that regulated, I would ask that the
11 faculty out there, the medical people, get that to him in the
12 morning. The Court: Well, they have medical professionals
13 out there. I would not substitute my judgment for them. I
14 would ask that the guard or whoever at the detention center,
15 ask them to look into that issue for me. But, please, I'm not
16 telling them to do it or not do it, that's their call. So,
17 let them know that this is requesting that the medication be
18 taken in the morning. Now, there may be some good medical
19 reason why they do it at night. That is because it might have
20 him less attentive at the trial during the daytime. DO you
21 understand? Now, I would question that the Judge is basically
22 ---

23 A: Right.

24 Q: --- his quoted colloquy regarding them basically
25 medicating me with the intention of having something to do

1 with my attention during the day. Now, I would put the brakes
2 on and said wait a minute here, you know, Your Honor, the man
3 hasn't slept for 48 hours and now you're trying to imply that
4 they drugged him so he would have attention during the trial.
5 Don't you think you as a lawyer, you would have said I need to
6 put the brakes on this here. I need to ask for a continuance.
7 We need to investigate this.

8 A: I'm not getting that at all the way you are interpreting
9 it. I think the record demonstrates what my understanding of
10 the situation was at the time. I felt like we needed to get
11 you the medication. But let me tell you, it would have been
12 my practice, it would have been very easy for me to ask for a
13 continuance, you know, if that had occurred to me that that's
14 where you wanted to go and that's what needed to be done.
15 That's not the impression that I had right there. You know,
16 looking at this record now it kind of supports what I'm
17 saying. If I had felt like at all, you know, that we needed
18 to break here and give you an opportunity, you know, to
19 collect yourself with the medications and so forth I would
20 have done it. That's the not the impression that I had.

21 Q: Well, for the record it had nothing to do with mental
22 stability. That was allergy medication because I had dry
23 skin.

24 A: Okay.

25 Q: If you recall, I told you that ---

1 A: Well ---

2 Q: --- they gave me the wrong mediation and it caused me to
3 be up for 48 hours, two days in a row. So here comes up me to
4 take the stand to testify. Okay.

5 I want to ask you a question. Do you think I would have
6 been cohesive, competent after 48 hours of no sleep ---

7 A: Well ---

8 Q: --- plus the stress? Do you think I would have been
9 capable of going on the stand and making a good defense?
10 Since there is none, the only defense relies on me to be
11 absent of any nervousness at all. Do you think I could have
12 accomplished that task with any reasonable ---

13 A: If I had seen you -- in my opinion, if I had seen you in
14 that condition I certainly would have pursued that, but that,
15 you know, you didn't come across that way to me.

16 Q: Well, let me also say that you looked at me and you said
17 I can see it in your face. You said that you could see the
18 sleeplessness in my face. Now, anybody will tell you that 48
19 hours without sleep is going to show somehow in your mental
20 capacity, your endurance, your ability to be cross examined by
21 this expert Rottweiler back here. There's no way knowing him,
22 seeing him in action, no way I could have withstood any of his
23 treachery and tricks in the courtroom.

24 A: I would just say, you know, there's no reason why I
25 wouldn't have made that motion if I'd had that impression.

1 Q: Okay. So, you're saying you didn't have the impression.
2 Okay. That's fine. So, let me ask you this here, do you
3 think just from where we gone so far, do you think that -- you
4 know in the transcript it comes up the Bible was made
5 reference to, basically implying that I was a Christian and
6 I've been doing this moral behavior and so forth and it was
7 part of my case because this child had this, you know,
8 personality disorder and the family was dysfunctional. It had
9 to do with human motivation and behavior. It had to do with
10 Christian based understanding of that and being able to
11 interpret that. Now, do you think that under the
12 circumstances since you were disbarred, I just want to ask you
13 a direct question, do you think that you were competent enough
14 to prepare a moral defense for me based on that underlying ---
15 A: You mean putting your character at issue in the case?
16 Q: I beg your pardon.
17 A: Putting your character at issue in the case, is that what
18 you're asking?
19 Q: Exactly.
20 A: Well, you had misrepresented your identity. You didn't
21 want me to talk to your family ---
22 Q: Excuse me.
23 A: --- and so I didn't ---
24 Q: Excuse me.
25 A: --- want to go in that direction.

1 Q: Is that on record? Is there proof that I used
2 misrepresentation of my identity?

3 A: I recall it ---

4 Q: Well, you ---

5 A: --- in fact, I think you might have told me. You might
6 have been the one who told me.

7 Q: No. You got that from the State.

8 A: No.

9 Q: Well ---

10 A: Let me -- I'm not sure where I got it.

11 Q: Thank you.

12 A: But you and I discussed it and it wasn't a big deal. It
13 had been corrected and so we move on.

14 Q: So, you're basically saying I'm immoral?

15 A: Did I -- no, I didn't say that.

16 Q: Okay. Well, let me read you this ---

17 A: I'm saying there -- it's risky when you put a person's
18 character at issue in a case.

19 Q: And that was part of my defense. But let me read this
20 here.

21 A: Okay.

22 Q: It has to do with competency of a lawyer in a trial,
23 whether he has a moral conscience or not. So, this will come
24 from legal writing, but not mine, it says ---

25 **THE COURT:** Mr. Legg. Mr. Legg, I'm not going to allow

1 you to just read something into the record. If you'll state a
2 question for the witness, I'll be happy -- we can entertain
3 that, but I'm not just going to let you read something into
4 the record. Okay.

5 **THE COURT:** Okay. Fine. Okay.

6 **BY MR. LEGG:**

7 Q: That would be my argument that I would contest that.
8 That you could not prepare a moral defense on my behalf
9 because of your incompetency during the trial.

10 Now, the Jackson versus Denno hearing, I want to ask you,
11 can you recall with clarity you did not never fulfill really
12 the motion on the Jackson versus Denno hearing on that, it was
13 just kicked down the road. What was your intent on bringing
14 up the issue of the Jackson versus Denno hearing?

15 A: I can't recall.

16 Q: Okay. Did you know that Detective Frebowitz said that he
17 was a policeman on the metropolitan police department for 25
18 years?

19 A: Did I know that, or did I hear that?

20 Q: He stated that on record.

21 A: I don't recall him saying that.

22 Q: Okay. He stated that on record and I asked you to
23 investigate that and I've got a letter from metropolitan
24 police department stating he never worked there.

25 A: I don't believe his testimony was what convicted you. I

1 think it was the young girl. The way I viewed the case
2 rightly or not, it came down to her credibility and the way
3 the State tried to bolster her testimony during the trial.
4 And, you know, that's the way we approached the case. Now,
5 with respect to the Detective, I don't think he had any direct
6 evidence personally that was incriminating.

7 Q: Well, you're basically saying here's a 10-year-old girl
8 gets up on the stand and she sounds credible.

9 A: No. I'm saying her credibility is the issue in the case.

10 Q: Right. So, in other words, you never had any
11 investigation for the social history to challenge her
12 credibility.

13 A: Well, you know ---

14 Q: When it's there.

15 A: I don't know what the social history was that you're
16 talking about.

17 Q: Because you didn't investigate?

18 A: Well, we didn't -- you and I talked about the case. We
19 talked about the child ---

20 Q: But you did not investigate?

21 A: --- and it was an issue that you and I discussed. It's
22 not something that was on your mind at the time.

23 Q: Well, the stack of documents that I tried to get you to
24 discover ---

25 A: To find?

1 Q: --- it was there before you every time we met.

2 A: Is that the material that you had written?

3 Q: Yes. Alright. So, basically what you're saying is your
4 credibility for representing me is on the trial transcript,
5 right? It prevails and the only issue that you think
6 convicted me was the fact that ---

7 A: Her testimony.

8 Q: --- her testimony.

9 A: Yes.

10 Q: Alright. Now, let me ask you this. You supplied the
11 yellow shirt, which normally a lot of defendant's go in to
12 trial they get a suit and a tie and all of that to look kind
13 of representable.

14 A: That -- those clothing articles came from the Public
15 Defendant's Office, I believe.

16 Q: Do you remember the collar of that shirt?

17 A: I don't remember.

18 Q: It was a bright yellow shirt.

19 A: I think that it looked presentable.

20 Q: Like this color here is a bright green.

21 A: Right.

22 Q: It was about as intense as this; it was a bright yellow.
23 So, that's all I had, I just had -- I didn't have a jacket.
24 As a lawyer, do you know the psychological factor a collar
25 plays ---

1 A: With a jury?

2 Q: --- in a lot of these trials?

3 A: I think that you looked presentable. Let me tell you
4 this, if I had felt like that you didn't look presentable, I
5 would have made an issue out of it.

6 Q: Well, normally when you tell a child whenever they're
7 crossing the street and they see a light, what's the first
8 thing that they see? They recognize green, right, as go.
9 What does yellow represent?

10 A: In a streetlight, a stop light?

11 Q: Right.

12 A: It represents caution.

13 Q: Thank you.

14 A: I've never heard that though with respect to a shirt.

15 Q: Well, when you investigate cases like this here and you
16 pay attention to all of these things ---

17 A: Well, yours wasn't the first case that I've worked on.

18 Q: And I'll tell you how it worked in my case because the
19 solicitor happened to point out, you know, this monster over
20 here in this bright yellow shirt.

21 A: Did he say that? I don't recall.

22 Q: That plays a roll before the jury.

23 A: I don't recall him saying that.

24 Q: Well, we have it in court record, the trial transcript.

25 A: A monster?

1 Q: Well, under all of these circumstances I think anybody
2 can tell in this courtroom I'm a pretty reasonable person if I
3 didn't have to fight for this hearing. I do a lot of
4 articulating messages with people. I'm very open. We can sit
5 and discuss and talk about a lot of things. And I don't think
6 anyone can find any proof that I would in a courtroom be
7 suspect of any kind of about nature of overturning tables and
8 stuff like that, it's just not in my character. Now, the
9 Judge made on the court record, that because he asked me a
10 question and I just told him I just wanted do process. He
11 brought that up and made me wear a 40,000-watt ankle bracelet.
12 So, over here is the deputy or sheriff with his hand on a
13 button about like a bomber that he could push off at any time.
14 And you were aware of that, correct?

15 A: I don't recall it.

16 Q: I'm not in a courtroom for three days and I'm not going
17 to bring to your attention that I have an ankle monitor right
18 there, the ankle bracelet 40,000-watt.

19 A: You and I haven't met since the trial and so I'm not
20 familiar with the circumstances.

21 Q: I brought that up to you and you failed to object to that.
22 That was just totally wrong. That also impinged on my ability
23 to basically be without any kind of stress or duress from the
24 State. You never once brought that up to the Court that it
25 was wrong for them to do that.

1 A: I'm confused about it. Can you like give me the context
2 of where that happened, where I should have objected?

3 Q: The first time when I pointed it out. I sat there and
4 you're over here and I said look at what they done. They made
5 me wear a 40,000-watt ankle bracelet. The guy is sitting over
6 there with the trigger, all they've got to do is if I say the
7 wrong thing as far as I'm concerned ---

8 A: I don't recall us having that conversation. You were
9 incarcerated at the time of the trial, correct?

10 Q: That's correct.

11 A: And so, they put the monitor on you during the trial.

12 Q: That's correct.

13 A: Is that what you're saying?

14 Q: And it's wrong.

15 A: I don't remember. I really do not remember us having
16 that conversation.

17 Q: The rulings will state that that's just wrong. They have
18 a hearing on it. So, I would say as my attorney you failed to
19 ask the Court for a hearing to justify why I had to wear that
20 monitor.

21 A: If you had made that issue with me, I would have made it
22 to the Court.

23 Q: Okay. Well, I did and we're over that, but you didn't.

24 So, now, at the end of the trial did you not tell me that
25 you were going to come get me for the appeals. At the end of

1 the trial you said, well if we're going to have the motion for
2 the appeals ---

3 A: That would have been a post-trial motion.

4 Q: --- I'll come and get you, right? Did you say that?

5 A: I don't recall that. Normally, I think my preference
6 would have been to have you here. I don't make that call. I
7 mean, someone made a determination. If you weren't here that
8 determination wasn't made by me, it was made by somebody else.

9 Q: Okay. Well, the court records shows that the Judge asked
10 you and you said that you denied, you waived your defendant's
11 presence for the post-trial motions. The court record says
12 that.

13 A: Can you show me that?

14 Q: Okay. I'll dig it out. We'll get to that.

15 A: Alright.

16 Q: Now, the reason I brought that up is because you know
17 actually what happens because I didn't hear from you I said
18 well I've got 10 days to file a motion so I'm going to file a
19 motion and send it to the Clerk of Court because I didn't want
20 that time to lapse and invalidate my right to an appeal. So,
21 I did file an appeal and it was on top of yours. But I didn't
22 know and didn't recognize it until later, but there's an
23 important issue to that. Now, the -- on the appeal's court --
24 on your appeal, because you appealed the motion ---

25 A: Well, I did a post-trial motion. I didn't do the appeal.

1 Q: Right. So, you just -- you appealed that one?

2 A: We did a post-trial motion. I don't have it in front of
3 me at the time.

4 Q: Okay. And Dudek carried your motion carried your motion,
5 but he also raised a secondary issue. Now, my point there is
6 also for incompetence of trial attorney was that they could
7 dispute this according to the law, but they would say that you
8 can't raise a ineffective assistance of counsel in a direct
9 appeal. Now, the reason they say that, and I'll ask you what
10 do you have to say about that, is because I can't go to the
11 direct appeal as opposed to going to PCR court for that
12 ineffective assistance of counsel. But, on the other hand,
13 the appellate attorney can raise the issue of ineffective
14 assistance of counsel by raising an issue that he feels has
15 merit. I'm sure -- are you aware of any of that?

16 A: Not in South Carolina.

17 Q: Okay. Well, I did read that anyway studying the law ---

18 A: I think if the issue is raised at the trial court and
19 it's been pursued in some fashion it can be reviewed at the
20 Appellate Court, that's possible, but I think that would be
21 extremely rare in South Carolina.

22 Q: Okay. Well the issue is relevant. The reason I bring
23 that up is because when I filed my appeal ---

24 A: Uh-huh. (Affirmative response)

25 Q: --- they hauled me into court down here and of course I

1 didn't have an attorney to represent me at that time so they
2 dismissed it because I said that I had -- I didn't know it
3 until Mr. -- the State man back there had given me a copy of
4 it, but the South Carolina Supreme Court had recognized my
5 appeal and held it in abeyance until another court ruling was
6 issued on State versus Antonio Anderson which had to do with
7 issues in my case. So, what I'm saying is the appellate
8 attorney raised that issue, but the Appellate Court said we
9 can't hear that because the trial attorney did not raise that
10 in his appeals.

11 A: I'm not familiar with the opinion that you're talking
12 about. Are you asking me to respond to it?

13 Q: Well, I'm asking you if you felt that there was another
14 issue that you could have made a motion for an appeal on?

15 A: I think that at the time we made an issue -- we made a
16 motion, post-trial motion based on what we thought the
17 meritorious issues were in the case.

18 Q: Okay.

19 A: And let me just say for the record, I've probably done
20 1,000 appeals.

21 Q: Okay. I understand that and -- now, Judge John -- you
22 filed an Ex Parte Motion for an expert's services, we briefly
23 touched on that, and Mr. Spratlin attended that hearing. And
24 this is why I have to recall on this, can you explain to me
25 what ex parte meant? Can you tell the Court what that means?

1 A: Right now, I'm trying to recall the nature of the hearing
2 that we're talking about.

3 Q: It was for a motion.

4 A: Ex parte is without the other side present.

5 Q: Right. But he did show up, correct?

6 A: I don't know. I don't recall.

7 **MR. LEGG:** Mr. Spratlin, do you recall?

8 **THE COURT:** You can't --- go ahead.

9 **MR. JAMES:** Objection.

10 **THE COURT:** I'll sustain his objection. He's not on the
11 witness stand.

12 **MR. LEGG:** Okay.

13 **BY MR. LEGG:**

14 Q: Now, I just want to ask, most of my issues having you
15 represent me is in the layman's language, I didn't get a fair
16 trial which I felt I had plenty of defense which I couldn't
17 get to, my hand's were tied every which way I turned, bad luck
18 or whatever. So, actually my complaint based on procedural
19 was a lot of that, which is why a lot of this is so lengthy
20 because when you get into the arguments about due process, you
21 know, it could be depending on the case itself, but the fixed
22 parameter basically is procedural.

23 So, all of these issues that I raised like the 40,000-
24 watt ankle bracelet, the yellow shirt, to me that all ties
25 into as procedural, which I would have expected you as an

1 attorney to be more competent and more focused on how the
2 environment was taking shape, everything from the illegal
3 search warrants not raising, you know, the proper arguments on
4 that.

5 Which when we get into the illegal search warrant, I want
6 to ask you if you recall at all bringing up the statutes which
7 governs the processing of an illegal or legal search warrants,
8 arrest warrants and so forth.

9 A: Are you asking me a question?

10 Q: Yes, sir.

11 A: I don't recall.

12 Q: Okay. Okay. So, I hope we're not going to bogged down
13 with a memory failure here. So, I just want to kind of --
14 okay. Now, there was another issue which I felt was kind of a
15 thorn in the whole process. Do you remember by any change
16 bringing up the issue of the search warrants and who was
17 culpable for the property inside the house during that time?
18 An issue was brought up, Mr. Spratlin brought it up and they
19 argued this. That there was a date that was affixed to when
20 that search warrant was actually executed and the time of
21 which I was actually arrested which state -- Mr. Spratlin made
22 the argument that Your Honor they executed this illegal search
23 warrant but Mr. Legg was in the residence during that time a
24 full 24 hours so any missing property that has to go to his
25 accountability. Do you remember that?

1 A: I'd have to look at the transcript.

2 Q: Okay. And then the date was fixed that they were trying
3 to say that I was there on the day and so forth, like the
4 17th. But if you look at the discovery, all of the evidence,
5 the documents I have was I was arrested basically on the day
6 that they tried to claim that I was free.

7 A: Okay. What's your question?

8 Q: Did you feel that -- is there a void in your
9 representation during that time to say wait a minute Your
10 Honor let's look at the record and let's fix this correctly.
11 Yet, you just set it out and let them come up with a false
12 date. It was a fictitious date to get out of ---

13 A: I think I would have to rely on what the record shows
14 about that. I don't remember you and I having discussions
15 about it ---

16 Q: Alright.

17 A: --- beyond what I would have reflected in the record that
18 was developed.

19 Q: Okay. It clearly stated that it's wrong what they're
20 saying. They're saying that I was basically free when I said
21 all you had to do was ---

22 A: Well, I remember them denying that they had taken any of
23 your property. I remember that was an issue in your case,
24 that you had claimed that there were missing documents and
25 evidence that you needed, you felt like would be helpful to

1 your defense. And I remember the State saying, well we don't
2 have that. And I remember there was also -- didn't your
3 family come in and take the material property out of your
4 house at some point? I mean, the way I recall ---

5 Q: It was way after.

6 A: Okay. But you know, I think Mr. Legg, I would have to
7 review that transcript and look at what was said at the time
8 about that issue.

9 Q: What we would go over that per se every word.

10 A: Well, I'm telling you what I recall off of the top of my
11 head at this time.

12 Q: Okay. So, if you're looking at the transcript would that
13 help you? Basically, because I'm going to ask you ---

14 A: It might. It might, it might not. It depends on what it
15 says.

16 Q: Now, we're going to go into this whole thing about
17 Detective Frebowitz and the relevance of -- we can go into --
18 we brought that up that here is just a bad cop, right? And
19 so, sure, you know they're going to say, yeah, you're claiming
20 a bad cop, right? Okay. Now, this is after the fact, they
21 found what he was doing. He would do things. He would try to
22 coerce people into filling out these affidavits by using
23 pictures that were illegal and he had pornographic pictures
24 and so forth. Now, ---

25 **MR. JAMES:** Objection. Hearsay.

1 **MR. LEGG:** Oh, I have the ---

2 **THE COURT:** Hold on. Let me rule. What is the out of
3 court statement?

4 **MR. JAMES:** He's describing things that are certainly
5 beyond his personal knowledge or the witness' personal
6 knowledge about the nature and circumstances of Detective Neil
7 Frebowitz's termination with the Horry County Police
8 Department.

9 **MR. LEGG:** And ---

10 **THE COURT:** Hold on. Well, it wouldn't be hearsay
11 because he's not stating what someone else said. He is just
12 trying to characterize what happened outside of what you are
13 saying is in his knowledge and purview ---

14 **MR. JAMES:** Perhaps more accurately phrased as facts not
15 in evidence.

16 **THE COURT:** Alright. What's your argument?

17 **MR. LEGG:** Well, my argument is I do have from the Horry
18 County Police Department, the record stating exactly why Neil
19 Frebowitz was terminated. So, the language that I'm using
20 comes out of those records. That is in my Amended Complaint.

21 **THE COURT:** Okay. I'm going to overrule the objection.
22 But what you just said ---

23 **MR. LEGG:** Right.

24 **THE COURT:** --- just ask him.

25 **MR. LEGG:** Okay.

1 **BY MR. LEGG:**

2 Q: Now, the reason I ask that is because this fruit of a
3 poisonous tree ---

4 A: I'm not understanding what you asked. Can you repeat
5 that?

6 Q: The reason I'm asking is because there were issues that
7 came up which I, and like we referred earlier that Detective
8 Frebowitz was fired from the police department, that had to be
9 knowledge of the State, right? Which I don't know if you knew
10 that or not, but you certainly danced around that on the
11 record. You even asked him like in a quiet manner, that's why
12 I brought up the issue of protectionism of your own interest.
13 You asked him specifically, now there was an affidavit Mr.
14 Frebowitz that you filled out but I'm not going to go there
15 blah, blah, blah for the jury. So, you kind of like swept
16 that under the carpet. So, there was an issue of fruit of a
17 poisonous tree every since whenever he had the illegal search
18 warrant ---

19 A: Can I ask you what evidence you're talking about? What's
20 the fruit of the poisonous tree here? I'm not following that.

21 Q: Fruit of the poisonous tree is a bad cop and anything he
22 does is contagious.

23 A: That's not what convicted you. I think what was
24 important in your case was the child's testimony and that's --
25 I don't see that as fruit of the poisonous tree.

1 Q: Okay. But I understand you're kicking that down the
2 road, but my point I'm making is the reason I was convicted
3 was because the ineffective assistance of counsel based on
4 incompetence. It has nothing to do -- you can take any kid to
5 go up and say that, but the defense would have to come with
6 the trial counsel. These issues were too numerous to ignore.
7 It was in your hands ---

8 **THE COURT:** Mr. Legg, again, this is a statement made by
9 yourself as opposed to a question to the witness. I'd ask
10 that you state a question, please.

11 **MR. LEGG:** Okay.

12 **BY MR. LEGG:**

13 Q: Fruit of the poisonous tree, I'm asking you why you did
14 not pursue the fruit of the poisonous tree of a bad cop and
15 everything ---

16 A: I don't think it was pertinent to the defense. I don't
17 think it was a way of attacking the child's credibility.

18 Q: Okay. Now, Mr. Diggs, page 268 I want to ask you
19 specifically to what this mysterious document is that's
20 bantered around between the Court and you on lines 14 through
21 19, page 268. It says: He's claimed I opened the door. I
22 mean, if he wants to introduce that document, that's fine.
23 No, sir, says the Court. I'll tell you what, I'm not going
24 there. I'm not going to do that. You're getting into a whole
25 other area and you're getting where you're going to get

1 reversed if you do. So, here's the Court trying to warn you
2 about a reversal.

3 A: I think he was warning the solicitor.

4 Q: Okay. Alright. The mysterious document comes up time
5 and again in the trial transcript.

6 A: I don't recall what it was, but I think what the Court's
7 saying there is if he goes in that direction he's going to put
8 some reversible error in the record and he doesn't want that
9 to happen.

10 Q: And page 58, the Court says ---

11 A: Fifty-eight?

12 Q: Yes, sir. The reason I asked you about the fruit of the
13 poisonous tree is it comes up and you're silent on the issue
14 in most cases in the trial transcript.

15 A: Okay.

16 Q: Alright. The Court says: I understand. I'm not sure
17 I'm going to let you put anything, the fruits of a poisonous
18 tree either, even in rebuttal.

19 A: What line are you on?

20 Q: That's 3 through 5. And I would like to ask you, does
21 that raise a red flag for you that you should demand a hearing
22 on this?

23 A: I think -- I don't recall specifically what it is that
24 was at issue in this particular comment by the Judge, but it
25 must, you know, it's something that's going to come into the

1 trial. I mean, it would raise -- it would be a red flag, you
2 know, if it actually comes into evidence and is used by the
3 State against you. I'm not sure where we're going here with
4 that one?

5 Q: Well, it's clear to me that the Court is shooting you
6 down to try to keep you from this fruit of a poisonous tree
7 argument.

8 A: I think he's expressing that to the solicitor. I'm not
9 the one trying to introduce that. I think the State is.

10 Q: Well, admittedly -- just let me ask you this question.
11 Never mind, I'll just skip that, and I'll just go on. There's
12 basically a lot of issues that I want you to answer as opposed
13 to the attacks from the Court, from the Judge, upon you. In
14 my opinion, what was said there was silencing you, you had no
15 fightback. Now, that's all through the record, the trial
16 transcript.

17 A: If you could show me examples, I will try to address
18 them.

19 Q: Okay.

20 A: But that's typically not my character, especially with
21 Judge Cottingham. We were usually quite active, you know, in
22 our exchanges.

23 Q: Okay. Let me ask you this, Detective Frebowitz made a
24 recording shortly after my arrest, statements. Did you ever
25 interview me in regards to that recording?

1 A: Uh-uh. (Negative response) I don't have any
2 recollection. I think that typically when you and I would
3 discuss the case there weren't any limitations on it and it
4 was pretty free willing. So, you know, at that -- if you
5 could maybe go a little bit further, what is it in the
6 recording that you want to address it might help me remember
7 what it is that you're trying to get to?

8 Q: So, in other words, you're saying that you didn't think
9 that it was important to have a conversation with me about how
10 that might have been set up?

11 A: Recording you? Are you talking about without your
12 knowledge?

13 Q: No. I had my knowledge. I'm talking about ---

14 A: You're talking about he interviewed you and recorded you?

15 Q: Yes.

16 A: Okay. That was pretty typical.

17 Q: So, you just like left it at that and never once
18 interviewed me or asked me?

19 A: I think, I think you and I -- what you do in that
20 situation as a defense attorney is to see if there was a
21 voluntary statement or you were read rights and that kind of
22 thing. But any time -- it was quite routine for detectives to
23 record all of your statements, and it is, it is.

24 Q: So, would you have any interest to know, fish around from
25 the guy who he just interviewed ---

1 A: Beyond the substance of the statement ---

2 Q: --- that's really interrogation, isn't it? Instead of a
3 kind word like interview, it's more of an interrogation.

4 A: I think what I would do is look at the waiver of rights,
5 you know, what the circumstances were, did you have an
6 attorney, which amendment applied, fifth or sixth.

7 Q: And that's it?

8 A: And the substance. If it was a voluntary statement, I
9 think we're pretty much bound by what you decided to do at the
10 time that you gave the statement.

11 Q: After the fact, when you found out that this man is
12 terminated.

13 A: Well, I don't know that that would have any influence on,
14 you know, the -- did he trick you into getting you to make the
15 statement? I think maybe is that where you're going?

16 Q: Are you asking me that now?

17 A: Yes.

18 Q: Okay. Now, you've never asked me that before, right?

19 A: Well, you've never asked me that question about it. You
20 made a decision at that time that you were going to make a
21 statement. I don't know that it matters whether he recorded
22 it or not. He's going to write down notes of what you said.

23 Q: Well, if you read a lot of cases, you'll find that the
24 police are not 100 percent trustworthy. They do have some
25 fall through the cracks. And some of these interrogation

1 interviews do -- are problematic. But as far as -- you're
2 making the stand that you just went ahead and went with the
3 State in everything in the case. You never bothered to ask me
4 if I was tricked or manipulated in any way and here come to
5 find out later, this is the type of man that that is.

6 A: Do you -- are you saying now that they tricked you into
7 making the statement?

8 Q: Well, I'm not going to make a statement now that has to
9 do with my trial if that's -- but I'm asking you specifically
10 would you ---

11 A: What I would do is look at the record and discuss it with
12 you. I don't recall you ever saying, listen that wasn't a
13 voluntary statement. They tricked me into waiving my rights
14 and I think ---

15 Q: You never? It's because you never counseled me on
16 anything. You just admitted that you never asked me.

17 A: If we could look at the jail records and see when I
18 visited you. There weren't any limitations on what you and I
19 discussed about your case.

20 Q: To the point and straight, I want to ask you this, do you
21 think it was relative at all that this detective went in, took
22 writings out of my residence and he did that with the intent
23 of getting into my mind so he could later use that in his
24 trial preparation and the language is there in the transcript
25 wherein you just go along with all of this stuff. And you

1 asked him, said -- page 89, 2 through 12: With respect to
2 your interview with the defendant in this case, did you have a
3 chance to look at any of the items taken from his home and
4 review those items prior to the interview with him? And what
5 did he say?

6 A: He said: Yes, sir.

7 Q: Okay. Now, would that basically be a clue that he's
8 researching this so that he could set up an interview and
9 record it for trial preparation, would that be a clue?

10 A: Are you ---

11 Q: Fruit of the poisonous tree, that he may have seeded
12 words into the interview that, in his experience, effect the
13 jury's ears? They hear certain words. Never once did you ---

14 A: You're saying he used the fruit of a poisonous tree to
15 educate himself about what he was going to investigate? I
16 think that's an interesting issue.

17 Q: Say that again.

18 A: I think that's an interesting issue. I don't recall
19 thinking about it at the time.

20 Q: Well, that's one of my complaints is that I've never had
21 the opportunity ---

22 A: There's wasn't a -- well, you did have an opportunity.
23 We never had any limitations on what you and I discussed ---

24 Q: Because ---

25 **THE COURT:** Hold on. Hold on. Mr. Legg, when he's

1 speaking ---

2 **MR. LEGG:** Okay. I'm sorry.

3 **THE COURT:** --- we're all going to be -- let him finish.
4 Okay. You asked him a question, as I indicated with Mr. Joye,
5 he's going to have more than ample opportunity, you're going
6 to have more than ample opportunity to answer your questions.
7 So, let's allow him to answer the question, please.

8 **BY MR. LEGG:**

9 A: I think it's an interesting issue that you raise. It's
10 an interesting question, but I don't think that it resulted in
11 any evidence, fruit of the poisonous tree evidence, that went
12 into the jury ---

13 Q: Went into the jury ---

14 A: I think what convicted you was the child's testimony.

15 Q: Okay. Alright. Here's a statement from the Court which
16 is on page 27. I'm going to try to go through these this way,
17 when I asked you if you had an opportunity to object to
18 anything that the Court was doing, and it goes, the Court:
19 Well, that may or may not, but -- alright, Mr. Legg, listen to
20 me carefully. I am not going to dismiss this distinguished
21 attorney. Your record indicates that you like to think that
22 you can continue to delay this case and manipulate our court
23 proceedings by firing attorneys. That, sir, is over. Now,
24 Mr. Legg -- on page 29 -- before the jury gets here, let me --
25 on Friday you deliberately interrupted my proceedings by

1 bursting out I'm entitled to a fair trial. I did not say
2 anything at that time. I urge you it would be very serious,
3 do not do that. That would jeopardize your case in the
4 presence of the jury. Your entitled to a fair trial and you
5 will get one. Do not interrupt the proceedings because my
6 experience has been over the years that this sort of conduct
7 may alienate the jury and you don't want to do that. So, let
8 Mr. Diggs handle these proceedings. Do you understand that?

9 That was the 40,000-watt ankle bracelet, so you're taking
10 over now. So, he just handed your case over to you, to which
11 I have nothing to say. That's the way I understood that. So,
12 anything I had to say you just rolled your eyes because you
13 were being shielded by the Court during that time.

14 Now, let's see -- now, the particular harm is I
15 researched this, I know you want to keep saying you did a
16 credible defense but I really want to get to the statements
17 that you made. The harm is before the jury if I can get to
18 that. Now, my complaint is that -- I'm trying to see, if you
19 can just be patient with me. Okay. I'll just read this here.

20 **THE COURT:** Hold on. Mr. Legg, I'm not just going to
21 allow you to read something into the record. If you'd like to
22 state it in the form of a question in which he can respond to
23 I'll be happy to allow you to do that. Again, if you want to
24 summarize your position as to the ineffectiveness at the close
25 of your case, I'm happy to hear from you at that point in time

1 when you can surmise all of these things that you're
2 extracting from all of these witnesses. As I indicated
3 previously, you elicit the testimony, then at the end,
4 essentially like you saw in the closing arguments, I'll be
5 happy to hear from you and you can make those arguments. But,
6 at this point in time I'm going to have to ask you that you
7 put it in the form of a question.

8 **MR. LEGG:** It's just difficult, you know, to ---

9 **THE COURT:** We're doing the best we can. I agree we're
10 all trying to get through this together.

11 **MR. LEGG:** That refers to anything that's in the
12 Complaint?

13 **THE COURT:** I'm sorry?

14 **MR. LEGG:** These writings, these particular ones, like
15 this is in my Complaint in the amendment and so forth.

16 **THE COURT:** Then that's been made a part of the court
17 record. That will be consider by the Court. That will be
18 read by me, considered by me. You certainly don't need to
19 read it back into the record. It's already a part of the
20 record. So, if you'd like to ask him a question then
21 certainly feel free to ask him as many questions as you'd
22 like.

23 **MR. LEGG:** Okay. Just bear with me a little bit and I'll
24 try to get that right. Most of these issues, there's a total
25 of 64 issues that I've raised and ---

1 **THE COURT:** Mr. Legg, let me stop you there. On the 64
2 that you've raised in your Complaint, how many of those are
3 you addressing with Mr. Diggs?

4 **MR. LEGG:** Probably everyone.

5 **THE COURT:** Okay. And what number are we currently on?

6 **MR. LEGG:** Okay. Well, actually we were on the -- I was
7 kind of going through this because I assumed that you would
8 have this on record like ---

9 **THE COURT:** You're correct. I mean, you filed it, we
10 have it. I mean, I'll show you.

11 **MR. LEGG:** I believe you've got it.

12 **THE COURT:** I've got it right here.

13 **MR. LEGG:** I just wanted to say when I first wrote that I
14 did the best I could and later on I learned kind of how to
15 whittle it down. Like the issue of the -- the second issue
16 that was raised by the Appellate Court, that was issue 64.

17 **THE COURT:** Okay. My question quickly was, I'm just
18 asking you of the ones that you'd like to address with Mr.
19 Diggs, you indicated to the Court there was 64. I simply
20 asked, just what number are we currently on?

21 **MR. LEGG:** I don't know because I'm lost in it.

22 **THE COURT:** Gotcha. I apologize. Go ahead.

23 **MR. LEGG:** I'm trying to expediate the process.

24 **THE COURT:** Take your time.

25 **MR. LEGG:** Okay.

1 **BY MR. LEGG:**

2 Q: I'm going to go down to -- I think I can pick up on some
3 of these issues and come up with a number. Okay. One of my
4 complaints early on was that the first attorney shared
5 lawyer/client confidentiality with the State based on the
6 illegal search warrant that the attorney shared with the State
7 and then two days after the initial discovery he came back
8 with a new discovery. He tried to claim that that was an
9 office organization and discovery. This search warrant is
10 wrong. It had a typographical error in it. Do you remember
11 that?

12 A: What your discussions were with your prior attorneys?

13 Q: Yes.

14 A: No. I don't remember that.

15 Q: But then I relayed that over to you about the illegal
16 search warrant.

17 A: Well again, you know, I don't think that we had any
18 evidence at the trial of the case that was the fruit of an
19 illegal search. I think what convicted you was the child's
20 testimony and, you know, the experts who were introduced to
21 try to support what she was saying.

22 Q: Okay. So, you're clearly saying that for the search
23 warrant, illegal search warrant, the missing documents,
24 statements, testimony from the alleged victim child, those
25 were not relevant?

1 A: I didn't say that.

2 Q: Well, you're saying that I was convicted on her testimony
3 and nothing else. That's what you're saying.

4 A: I think I was saying that I think the jury verdict rested
5 on the credibility of the child.

6 Q: Well, let me ask you this. During the time, I'm sure
7 maybe I could get your attention on this date here. I have,
8 this is a police report if I could show that to Mr. Diggs
9 pertaining to that date in which you would have had, you would
10 have had that when they made an argument about the date of my
11 arrest. You would have had those dates there. When the issue
12 was brought up about the illegal search warrant and documents
13 actually taken by the police out of my house.

14 A: Well, are you talking about -- can I ask you, are you
15 talking about the alleged missing documents?

16 Q: Right. So, you look down at the bottom and you can see
17 the dates there, right?

18 **MR. JAMES:** If I may consult with Mr. Legg briefly to
19 confirm that I have the document he's showing to the ---

20 **THE COURT:** Sure. And just for the record, real quick
21 Mr. Legg, are you utilizing this to refresh his recollection
22 or for identification purposes only or do you want to make
23 this part of the record?

24 **MR. LEGG:** Just recollection. It's already in the
25 Complaint.

1 **THE COURT:** But you can make it as another exhibit if
2 that's what you'd like to do, but you're utilizing this just
3 for his purposes of refreshing his recollection?

4 **MR. LEGG:** Just for his purpose of the date.

5 **THE COURT:** Okay. Yes. Take your time.

6 **MR. LEGG:** Yes, sir.

7 **BY MR. LEGG:**

8 Q: Down at the bottom you see June 17th, right?

9 A: Yes.

10 Q: Okay. Now, the State made the argument that I was
11 arrested on the 18th and that was in open court. That was an
12 opportunity time while we were contesting basically the
13 missing evidence so the Court went into this big rehearsal
14 with the State and you sat there and let them do that because
15 he wanted to make his argument ---

16 **THE COURT:** Mr. Legg, ask him a question.

17 **MR. LEGG:** Okay.

18 **BY MR. LEGG:**

19 Q: At what time did you just decide that you were going to
20 bow out of that argument? Did you make that decision, or did
21 you just not even want to bother to check the date when it was
22 such a big issue?

23 A: I don't understand what you're getting at in the
24 question. I think anything that -- I think based on your
25 testimony or your statements to me, we knew that some

1 documents were missing. The State denied they had the
2 documents. I don't know, you know, to be honest with you, I
3 don't know what we could have done to locate them. You know,
4 we asked -- we asked and made inquiries about it. We were
5 told that we had everything that they took. And, you know,
6 that's the hand that we were dealt. So, you know, again
7 you're saying that the child wrote some documents that
8 indicated that you were innocent. Is that your statement,
9 your position?

10 Q: No, sir. I'm saying that a hearing was being held on the
11 issue and I'm asking you why you bowed out of the hearing by
12 not just reaching over and getting the document that clearly
13 would have clarified the appropriate date? So, the State used
14 the fact that I was there on the 16th or the 17 -- no, on the
15 17th when those search warrants were issued and therefore I
16 had all day to do, be guard of the documents and I wasn't
17 arrested until the 18th. So, what that did is that satisfied
18 the Judge and he closed down the hearing on that issue, closed
19 it out. Because he made a ruling ---

20 **THE COURT:** Mr. Legg, please don't indicate what you
21 speculate what the Judge was attempting to do. Please just
22 ask Mr. Diggs a question.

23 **MR. LEGG:** Okay. Well, I can get the record on that, the
24 trial transcript, and show what the Court is saying. Can I
25 use the trial transcript?

1 **THE COURT:** Sure.

2 **MR. LEGG:** Okay.

3 **BY MR. LEGG:**

4 Q: So, that was early on. So, my question was basically
5 regarding the importance ---

6 **THE COURT:** Hold on. Mr. Legg.

7 **MR. LEGG:** Yes, sir.

8 **THE COURT:** Don't just keep putting this things in the
9 record. Feel free to get what you'd like for Mr. Diggs to
10 review, find it and ask him a question pertaining to it,
11 please.

12 **MR. LEGG:** Okay. Well, let me see if I can discover that
13 in the process here and I'll go back to it if that's okay with
14 you.

15 **THE COURT:** Sure.

16 **MR. LEGG:** Instead of taking the time to dig it out.

17 **THE COURT:** Okay.

18 **MR. LEGG:** I'm trying to go through these.

19 **MR. DIGGS:** Your Honor, can I take a break for a second?

20 **THE COURT:** Absolutely. We'll just take a 5-minute
21 break, okay. Is that okay with you? Okay. A 5-minute break.

22 Mr. -- you can stay on the record. Mr. Legg, how about
23 take this opportunity to get your final questions for this
24 witness. For the record, it's 3:05. We're going to take a
25 break until 3:10 and you still have Mr. James to examine this

1 witness and you still have, I'm assuming, may have another
2 witness to call and you can still call yourself. So, we're
3 getting tight on time.

4 **MR. LEGG:** Okay.

5 **THE COURT:** Yes, sir. Okay. We'll take a 5-minute
6 break.

7 **(COURT IN RECESS)**

8 **THE COURT:** Mr. Diggs?

9 **MR. DIGGS:** Yes, sir.

10 **THE COURT:** Are you ready to go?

11 **MR. DIGGS:** Yes, sir.

12 **THE COURT:** Okay. Mr. James, do we need to wait on
13 anybody?

14 **MR. JAMES:** No, sir. We can go ahead with the
15 proceeding.

16 **THE COURT:** Alright. We'll go back on the record. Mr.
17 Legg, briefly I just wanted to let you know I believe that we
18 would all agree that Mr. James has only objected very
19 periodically and I've been very lenient in allowing you to
20 question the witnesses. This is your day in court, it's yours
21 and I want you to have it.

22 **MR. LEGG:** Okay.

23 **THE COURT:** Alright. You are a pro se applicant and in
24 doing so I've given you a lot of leeway. I would say probably
25 a million times more than what I would give an attorney

1 because you're not an attorney. You've acknowledged that you
2 understand what the pitfalls are of moving forward. But the
3 rules don't allow, or make me, or force me I should say to
4 treat you any differently. You are held to the same standards
5 as an attorney is. Okay. That's the rule when you represent
6 yourself pro se. I have not held you to that standard. I've
7 allowed you to do a lot more things than I would certainly
8 ever allow an attorney to. I think you've done a fine job in
9 representing yourself, but I'm going to hold you to those
10 standards now. Okay.

11 **MR. LEGG:** Alright.

12 **THE COURT:** It's time. You ask a question; he'll give
13 you an answer. You'll wait for him to complete his response
14 and then you'll ask another question. I'm not going to let
15 you go off script anymore. Okay.

16 **MR. LEGG:** Okay.

17 **THE COURT:** Do you think that's fair?

18 **MR. LEGG:** Yes, sir.

19 **THE COURT:** Okay.

20 **MR. LEGG:** I believe the word is you've been liberal with
21 me on that. Thank you.

22 **THE COURT:** Liberal, I would -- you're more than welcome
23 and that's fine. I'll be happy to utilize those terms, I've
24 been liberal with you. So, please just feel free to being
25 your questioning.

1 **MR. LEGG:** Well, I just want to say right now that ---

2 **THE COURT:** Well, hold on. You just started what we said
3 we weren't going to do which is you want to say something.
4 What you want to do is ask something. So, ask him a question
5 and allow him to answer.

6 **MR. LEGG:** I just wanted to ---

7 **BY MR. LEGG:**

8 Q: I asked you earlier about the relevance of the arrest
9 date. So, I just wanted to bring to your attention to
10 recollect your memory if you could help me address this. ON
11 page 101 of the trial transcript, lines 20 and 21. The State
12 says -- the Court says: That is the way I understand it, the
13 17th is the search warrant, arrested the 18th, and the report
14 was finished on the 23rd. But he was in the residence for a
15 day after he was first interviewed. I just wanted to make
16 sure that you answered this for me, that by the State going
17 through all of this trouble with this date which they did on
18 the trial transcript and you bowed out and you're again saying
19 ---

20 **THE COURT:** Ask, ask a question, Mr. Legg.

21 **BY MR. LEGG:**

22 Q: Did you feel that the date was not an important thing to
23 pursue?

24 A: That's the way I'm looking at it right now. I mean, help
25 me pin it down. I mean, what are we -- what's the problem

1 with the discrepancy if I could ask in terms of trying to
2 clarify my understanding.

3 **MR. LEGG:** Okay. If I could answer that?

4 **THE COURT:** Absolutely.

5 **BY MR. LEGG:**

6 Q: I would say because the State went out of their way for
7 misinformation to make a misstatement on the date

8 A: What was the purpose?

9 Q: Well, you'd have to ask them what their motive was, but
10 you went along with that is what I'm saying. Did you ---

11 A: Apparently, apparently I didn't see anything that was --
12 I might have agreed with you, you know, there's a discrepancy
13 here, but I didn't, you know, realize any importance there
14 beyond, you know, the fact that there was a discrepancy. I
15 didn't see what affect it would have on our case.

16 Q: Okay. So, let me ask you this. Are you being kind to
17 the State by calling that a discrepancy?

18 A: You mean today? Am I being ---

19 Q: Today, yes.

20 A: I don't, I don't know the detective. I don't think the
21 solicitor lied to me and I don't think that he would lie to
22 the Court. That's just my opinion about it, but I'm not going
23 out of my way to be kind to them. I'm telling you what my
24 opinion is.

25 **MR. LEGG:** Your Honor?

1 **THE COURT:** Yes, sir.

2 **MR. LEGG:** I don't think I really need to consume much
3 more time with this witness because I think he's giving me a
4 lot of pleading the fifth, bad memory. So, we're not really
5 gaining anything other than the record already back that
6 already over the record. So, I'm a little washed trying to
7 get him to cooperate and trying to satisfy the Court. But I
8 think that once you read the Complaint and you get into that
9 you can understand the issues that the trial transcript itself
10 will verify the issues that I raise rather than have the
11 witness kind of song and dance to the issues and kind of fade
12 out on it. So, it's making it difficult to keep up and to
13 give him some good questions to prove my point. My point
14 basically is the incompetence of trial counsel and I think
15 he's exhibiting that through this questioning. So, I would
16 like to kind of rest on that.

17 **THE COURT:** Okay. I'll accept your statement and I -- so
18 you have no further questions for this witness, it's certainly
19 your witness.

20 **MR. LEGG:** No. I think it's frugal --- fruitless to do
21 that.

22 **THE COURT:** Alright. Well, thank you so very much. Mr.
23 James.

24 **MR. JAMES:** If I may utilize the podium, Your Honor? I'm
25 going to take notes as I ask questions.

1 **THE COURT:** Absolutely.

2 **CROSS EXAMINATION OF MR. DIGGS BY MR. JAMES:**

3 Q: Mr. Diggs, I will preface this very briefly, normally I
4 would walk through specific portions of the transcript of the
5 trial record in order to go over your decision making
6 throughout trial. But because time is of the essence and
7 because the entire record is before the Court, we're going to
8 go over some of the high concept considerations in your
9 representation of your client Mr. Legg.

10 A: Okay.

11 Q: So, first and foremost, we touched on this earlier in the
12 direct examination. When were you originally licensed by the
13 South Carolina Bar?

14 A: 1980.

15 Q: Alright. And from that date until the date of your
16 disbarment, about what portion of your practice was criminal?

17 A: Seventy five percent.

18 Q: Okay. How did you originally come to represent Mr. Legg?

19 A: I was court appointed I believe.

20 Q: Okay. And after that appointment on a number of
21 occasions he attempted to relieve you of representation,
22 correct?

23 A: Eventually, I think he did.

24 Q: But ultimately you ended up representing him through the
25 course of the trial?

1 A: I did. And I think the Judge makes it clear on the
2 record why he didn't relieve me. The Judge felt like the case
3 had been pending for quite some time and that it should go to
4 trial. And so, you know, I was not relieved.

5 Q: When you took over representation of Mr. Legg did you
6 file motions under pursuant to Rule 5 and Brady?

7 A: I think if they hadn't been done -- I would have to go
8 back and look. I think so, my practice would have been to do
9 that.

10 Q: And did you receive materials responsive?

11 A: Yes, yes.

12 Q: Did you review those materials yourself?

13 A: Yes.

14 Q: Did you review those materials with Mr. Legg?

15 A: All of the materials that were available to review, the
16 answer to that would be yes.

17 Q: What sort of materials would have been excluded from
18 that?

19 A: I can't recall. I just remember there may have been an
20 item or two that was taken out of the residence that was in
21 the possession of the police department, but I didn't see the
22 relevance to the case. I would have discussed that with Mr.
23 Legg, but I wouldn't have reviewed that with him at the police
24 department.

25 Q: So, perhaps physical evidence that you couldn't take to

1 him?

2 A: Yes, yes. Correct.

3 Q: Okay. Did you conduct any sort of independent
4 investigation, either personally or through a private
5 investigator?

6 A: I did it personally. I didn't hire an investigator in
7 the case, but I went to the area and observed, tried to get a
8 handle on where this occurred and of course, reviewed the
9 materials that we had available to us; and I did have
10 discussions with Mr. Legg. In terms of investigating, you
11 know, I've stated I didn't go into the background, the child's
12 background at school or anything like that because in my
13 opinion we were looking at the child's credibility, what she
14 was going to say on the stand. You know, trying to develop a
15 strategy to best handle that, to approach it, to try to
16 discredit her but at the same time not offend the jury, you
17 know, by attacking this child who is testifying, who had been
18 the victim allegedly and who the jury concluded was the
19 victim.

20 Q: You would agree that it's a delicate balance?

21 A: It is a very delicate -- you know, it wasn't the first
22 one that I'd had. There were some other cases, both at the
23 trial level and at the appellate level involving this kind of
24 case. But I felt like in my mind that it was going to come
25 down to that child's credibility and whether or not we could

1 call that into question, convince the jury that there might be
2 a question about the accuracy of what she was saying.

3 Q: Did Mr. Legg provide you any witnesses, character
4 witnesses or leads follow up on?

5 A: No. No. Mr. Legg didn't want me to pursue that kind of
6 material, in my opinion. I mean, that's the way I recall the
7 case. He didn't want me to speak with his family and so no.
8 And I didn't make an issue out of his character as I alluded
9 to earlier in my testimony. I didn't think that he had been
10 truthful completely at times during the prosecution of the
11 case. I'm not being critical ---

12 Q: To clarify, do you believe that he had not been truthful
13 to law enforcement or not been truthful to you?

14 A: To me.

15 Q: Okay.

16 A: And let me say to me, and/or law enforcement, and/or
17 prior attorneys. And let me -- well, I'll leave it there.

18 Q: You may go ahead if you wanted to expand on that.

19 A: You know, I didn't formulate any kind of judgment against
20 Mr. Legg. You know, I tried to understand the position that
21 he was in and I didn't think what he had said was really
22 outrageous, giving an incorrect name for example. I mean, I
23 didn't think that had a lot of bearing on the facts of this
24 case, but I think it did question in my mind whether or not we
25 wanted to go in the direction of putting up character in terms

1 of a defense.

2 Q: Ultimately, what trial strategy did you decide to pursue?

3 A: Just to try to question the child's credibility and
4 attach, I think, you know really even try to attack the adult.
5 I can't remember the name of the lady that came in from child
6 services to try to support the child. I think we really
7 attacked her. I think you can do that much more easily with
8 an adult than you can with a child.

9 Q: Where there particular -- do you recall particular means
10 by which you attacked the child's credibility?

11 A: I don't know. I would have to go back and look at the
12 specific questions that were asked in the cross examination.

13 Q: Okay. Mr. Legg informed you that he believed there were
14 documents seized by law enforcement from his residence,
15 correct?

16 A: Well, yeah, he did that, but ---

17 Q: Did he ever communicate to you at least in summary what
18 the contents of those writings would have been?

19 A: No.

20 Q: Okay. And were these only his writings or did this
21 include the writings referenced at trial made by the child
22 victim at his behest?

23 A: I'm not following the question. I think, clarify the
24 question for me because I'm confused now between his writings
25 and the child's writings.

1 Q: My apologies. It's a little bit of confusion on my part
2 as well. There are the writings that Mr. Legg refers to that
3 he believes that law enforcement seized and kept, lost, or
4 misplaced, or destroyed or whatever.

5 A: These writings supposedly by the child that indicates
6 that she is not telling the truth?

7 Q: Well that's what I'm asking, are the writings that he
8 believes that were lost were they just Mr. Legg's writings or
9 did he assert that they included writings by the child?

10 A: It could have been both. I just don't recall. Most of
11 the writings that I was familiar with and I understood to
12 exist were those that he did. He said that the child had
13 certain writings. She indicated that did, but we didn't
14 pursue really what the substance was. And I didn't want to
15 give the child a chance on the stand really to expound on
16 that.

17 Q: And indeed, even touching the writings at all during
18 trial ---

19 A: Correct.

20 Q: --- if you recall correctly ---

21 A: Yes.

22 Q: --- that she indicated that -- she started to talk about
23 some of the reasons that she would be made to write, correct?

24 A: Yes.

25 Q: And one of those reasons was that Mr. Legg would get

1 angry if she called her own mother, correct?

2 A: Right.

3 Q: Okay. And then you terminated the questioning on that
4 line pretty quickly.

5 A: Yes.

6 Q: Okay. Were you aware of any controversies around
7 Detective Frebowitz at the time of trial?

8 A: I might have been, but it wasn't anything that directly
9 impacted our case in my opinion at the time.

10 **MR. JAMES:** If I may beg a moment of the Court's
11 indulgence.

12 **THE COURT:** Absolutely.

13 **BY MR. JAMES:**

14 Q: And Mr. Legg, this -- not Mr. Legg, counsel ---

15 A: Mr. Diggs.

16 Q: --- Mr. Diggs, my apologies. It's been a lengthy day.
17 This is not an allegation that Mr. Legg went over with you in
18 direct, however it is raised in the amended application. Do
19 you have a copy of the transcript before you?

20 A: The trial transcript?

21 Q: The trial transcript, yes.

22 A: Yes.

23 Q: Would you please for me, flip over to page 184?

24 A: Okay.

25 Q: From lines 1 to 8, I'm going to read aloud and I want you

1 to read along silently with me.

2 A: Okay.

3 Q: And this is the testimony of Danita Whipple. So, she
4 stayed on the phone for a second and she, she was crying, and
5 I said -- this is a redacted transcript, so it says victim ---

6 A: Okay.

7 Q: --- victim what's wrong. Is there something else wrong?
8 She said yes. I said well tell me. And she said that Don had
9 spread her legs and she told him to stop and he had put his
10 hands, his fingers down her butt crack and before she could
11 tell me anything else I said just hold on and I'll be right
12 there in 15 minutes. Did you consider objecting to that
13 testimony?

14 A: I can't recall. It may be, if this is a separate
15 occurrence, you know, to be honest with you I can't recall.

16 Q: You can't recall if there was any strategic reason?

17 A: I do not, I don't recall.

18 Q: And at the risk of sounding as though I'm arguing against
19 myself, would you agree that that is beyond the time and the
20 place of the abuse?

21 A: As I understand it, it would be.

22 **MR. JAMES:** I beg a moment of the Court's indulgence.

23 **THE COURT:** Absolutely.

24 **BY MR. JAMES:**

25 Q: Did you ever consider pursuing a strategy of third party

1 guilt in this case?

2 A: No. Well, you know, in terms of other men in the house
3 and that kind of thing?

4 Q: Correct.

5 A: Not really. It didn't -- I would say no. There was a
6 lot of evidence that the relationship that Mr. Legg had with
7 the child, he spent a lot of time with her. You know, I think
8 they went swimming. You know, it's just not the type of case
9 that third-party guilt came into my mind about. It just, it
10 never, it never surfaced as an issue in my mind.

11 Q: Okay. These are going to sound as though they're a bit
12 afield from the subject matter of this PCR initially but I'm
13 going to bring it back around. When you practiced law did you
14 enjoy the practice of law?

15 A: Yes.

16 Q: Did you find it stressful or did you find it rewarding?

17 A: I think it was rewarding. I enjoyed it and I especially
18 liked the part of doing the appellate work. I enjoyed the
19 library and that kind of this. I know it sounds strange. But
20 then as I did more trial work it was, it was fun, and I felt
21 like the State needed to be challenged. And that's why I
22 enjoyed being a defense attorney.

23 Q: Would you agree that from time to time the practice of
24 law provides you with an escape from some of the other
25 stresses of life.

1 A: I never looked at it like that, but I wouldn't disagree
2 with that. See, my wife had been disabled since 1989. So,
3 the basically the whole time I was in private practice and she
4 deteriorated over the course of time. But it didn't really
5 begin to impact my practice until 2013 just prior to my
6 representation of Ronald, or Mr. Legg. I'm sorry, I meant Mr.
7 Legg. And one thing I tried to do was focus on the
8 representation that I provided to make sure that we were
9 prepared for the trials, you know, that we adequately and
10 properly represented those clients. And I think that we did
11 that in this case. But there's no doubt that her condition
12 distracted my attention from the practice, you know, from the
13 business aspect of the practice and I, I've thought a lot of
14 times maybe I should go to the bar association and say look
15 maybe I have something to offer here in the form of CLE. You
16 know, for practicing attorneys to say look this is something
17 that can happen.

18 Q: I said I was going to bring it back around, but I believe
19 you have already done so, so I'll move on. Mr. Legg suggested
20 that you should have sought a continuance in the middle of
21 trial. Would you agree with me that it is difficult to
22 continue a trial once it has already begun?

23 A: Yes, certainly. But, you know, that's an issue that I
24 would not have hesitated to bring up had I felt like it was
25 needed. The discussions that we had at the time, you know, my

1 discussions with my client at that time just didn't strike me
2 as such that we need to continue this case. I felt like the
3 medication was the issue, that he needed that for his personal
4 comfort and that's why I addressed that with the Judge. But
5 it never rose to the height that it was going to interfere
6 with his ability to participate in a trial.

7 Q: Was Mr. Legg able to consult with you over the course of
8 the trial?

9 A: Yes. Absolutely.

10 Q: And so, you could ask him questions?

11 A: Yes.

12 Q: And he could answer them?

13 A: Yes.

14 Q: And he didn't get electrocuted while he was answering
15 them?

16 A: No.

17 **MR. JAMES:** I beg one last moment of the Court's
18 indulgence.

19 **THE COURT:** Take your time.

20 **BY MR. JAMES:**

21 Q: Earlier there was testimony to the fact that Mr. Legg
22 misrepresented his status and his identity perhaps to law
23 enforcement. In what way did he misrepresent his status and
24 identity?

25 A: I think initially he gave his brother's name, you know,

1 as his own name. I don't recall exactly how I became aware of
2 that, but I did become aware of it. I didn't learn it, I did
3 not learn that from discussions with previous attorneys. It
4 was from some other source, but I don't recall exactly how I
5 learned it. It may have been Mr. Legg himself.

6 Q: And was it your belief, at or about that time, that this
7 brother was a registered sex offender?

8 A: I don't remember that part about the story. My
9 understanding was it was in an effort to mislead his true
10 identity at least briefly.

11 Q: Do you recall broadly the evidence the State had against
12 your client?

13 A: Yes. I believe so.

14 Q: Okay. Do you recall what their theory of the case was?

15 A: Basically, that he'd just improperly touched the child.

16 Q: Okay. Could you briefly articulate what the State's
17 evidence was against your client? Was it simply just the
18 child's statements or was there anything in addition?

19 A: I think it was similar to what this witness testified to
20 at the trial. And to be honest with you, it's been a -- just
21 recently I've moved and been through a lot of -- I haven't had
22 an opportunity to actually read the transcript. I did read
23 the transcript a couple of times, but it's been, this case has
24 been delayed a couple of times so I can't remember the details
25 going back without looking at her testimony as to what it was,

1 but it was something similar to what was testified to here in
2 this case. And to be honest with you, I can't remember if it
3 was in the truck on the way home from swimming or some other
4 occasion. I would need to look at her testimony again just to
5 look at the specifics.

6 Q: Mr. Legg examined you on the subject of investigating the
7 child's social background and you also additionally indicated
8 in the cross examination earlier that you did not do so. Is
9 that something that you would typically look in to?

10 A: The way I look at it, you know, this is a child and
11 regardless unless -- if there was something that was extreme,
12 some extreme conduct on the part of the child perhaps, but
13 ordinarily, you know, the way I view that it's just going to
14 come down -- children say stories, you know, put stories
15 together, everyone knows that. But I felt like it was going
16 to come down to what that child did on the stand in the trial,
17 you know, how she came across to the jury and that's, that was
18 what we had to deal with.

19 Q: So, if I may rephrase that, am I understanding correctly?
20 You didn't feel it to be particularly helpful unless there was
21 something just truly ---

22 A: Correct. Correct.

23 Q: Mr. Legg suggested, and it could be that I misunderstood
24 him in the course of his direct examination, that he wanted
25 you to pursue a strategy of challenging the child's

1 credibility based on a diagnosis of ADD.

2 A: Correct. Right.

3 Q: Why did you not pursue that strategy?

4 A: I didn't feel like there was enough evidence, and I'm not
5 being disrespectful to Mr. Legg, but I didn't, I didn't feel
6 like there was enough evidence to pursue it. And again, you
7 know regardless, let's say that what he's saying is true,
8 okay, and she had that. It's going to come down to what the
9 jury believes on the stand. And I think, you know, the
10 credibility is at issues, you know, in terms of trying to --
11 let's focus over here at the detective, let's focus over here
12 on the warrant, let's focus over here on some kind of
13 psychological problem that the child has. I think it's very
14 easy for a jury to see that as an effort to divert attention.
15 It's going to come down to what her believability is when she
16 testifies. And in this case, I made the determination based
17 in my, in my opinion and I had practiced for 33 years. I felt
18 like it was just trying to challenge her reliability of her
19 statement in the case.

20 Q: You challenged the admissibility of the forensic
21 interview video, correct?

22 A: I think so. I would have to go back and look at the
23 transcript and I'm sorry. With regard to specifics ---

24 Q: We can let the record speak for itself on that.

25 A: Okay.

1 **MR. JAMES:** I have no further questions for this witness.

2 **THE COURT:** Okay. Alright. Mr. Legg, would you like to
3 briefly respond?

4 **MR. LEGG:** Yes, sir, just briefly.

5 **THE COURT:** Okay.

6 **REDIRECT EXAMINATION OF MR. DIGGS BY MR. LEGG:**

7 Q: Mr. Diggs, I would like to know, my brother's name was
8 brought up as a sex offender. I would like to know where you
9 got that information?

10 A: I didn't get that information. I heard it for the first
11 time today in the courtroom.

12 Q: Okay. Well, I'll just tell you for a fact for the
13 record, he's not. I know my brother so ---

14 A: Okay. I had never heard that before.

15 Q: Well, it's kind of offensive. I have -- you have to
16 respect the fact that I'm defending him ---

17 **THE COURT:** Mr. Legg.

18 **MR. LEGG:** Yes, sir.

19 **THE COURT:** He admitted that he did not hear that until
20 today. That was not his testimony, it was the former attorney
21 that indicated that.

22 **MR. LEGG:** Well, I had heard him say he had heard it from
23 somebody else.

24 **BY MR. LEGG:**

25 A: No. I heard, I heard that you had misrepresented your

1 identity.

2 Q: Okay.

3 A: I have never heard anything about him being a sex
4 offender.

5 Q: Okay. Now, where did you hear that I misrepresented my
6 identity?

7 A: I can't -- it might have been from you. The only thing I
8 can say this afternoon as I sit here is, I knew that about
9 you, but I didn't discuss the case with Mr. Joye. I got the
10 records, you know, the materials that he had acquired, but
11 that was even done through staff at my office. I don't think
12 I ever directly spoke with him about the case. So, it's most
13 likely that I learned it from you that you had misrepresented
14 your identity.

15 Q: Do you remember the State bringing that in before the
16 jury and that argument was that I gave a false name to the
17 police, that I was arrested under my brother's name?

18 A: Well again, I would have to look at the record.

19 Q: Yeah, well the record says ---

20 A: If that's what it says, then that's what it says.

21 Q: --- the record says that I was arrested under Ronnie
22 Legg, not Don Legg. The arrest record proves that. Anyway,
23 do you believe that the State aided the imagination of this
24 alleged victim?

25 A: I think, you know, I think that that's the point I might

1 have been trying to make in the way I attacked the expert that
2 they had from the child services office, department. But we
3 really -- I think that we tried to challenge the concept that
4 they were trying to enforce the child and not really talk
5 about what the facts were of what her testimony was if you
6 follow what I'm saying.

7 Q: No, I don't but that's fine.

8 A: Okay. What I'm saying ---

9 Q: Now, I want to ask you, you told Mr. James that I didn't
10 elaborate on the content of the writings, what they were
11 about.

12 A: Right.

13 Q: Okay. Now, do you remember any of the -- during the day
14 of, the couple of days before the trial you did get a stack of
15 my writings. Do you remember any of those writings that
16 pertained to what's known as a brief that I wrote for the
17 defense?

18 A: No. You have -- you write a lot of material and there
19 were hundreds of pages of materials that you had written in
20 your case. It was difficult to go through that and have an
21 understanding, you know, of everything that you were trying to
22 convey in those materials. And I remember we spent a lot of
23 time, I spent a lot of time trying go, just understand the
24 point you were trying to make when you were engaged in that
25 process.

1 Q: But you remember the discovery, not just my writings of
2 this particular association with the alleged victim. There
3 was a photograph of a chalk board in my living room.

4 A: Yes.

5 Q: There was the placard that they had used as some kind of
6 evidence. Do you remember anything that would show, because
7 you told Mr. James here that I did not give you any clue about
8 what the writings were, but do you remember any of the
9 psychological factors in my writings and discovery that would
10 have shown that I was basically into behavior modification?

11 A: I knew that you were very interested in that. You spent
12 a lot of time working on it. I'm not in a position to gauge,
13 you know, your competency in that area. You're an intelligent
14 man. You probably were accurate in a lot of the materials, a
15 lot of the work that you did. But refresh my memory again
16 what the question was.

17 Q: Okay. We're talking about number one, your selective
18 recall on some things but you can't recall on others. But
19 this particular issues was I sat here and Mr. James asked you
20 if I was to give you any sort of notation or description about
21 the writings which were involved which pertained to the issue
22 of the dismissal of the case because it was exculpatory
23 evidence. You told him that I did not tell you about any of
24 those that you could have used basically for a defense.
25 That's what it comes across as.

1 A: If I understand your question correctly, that's true. I
2 don't recall you giving me anything with specific information
3 that would have done that.

4 Q: Now, I wonder if you could tell me, you also told Mr.
5 James that I had sat in trial and I had asked you questions
6 backwards and forth, that's what you implied.

7 A: Well, you had an opportunity to discuss any issue in the
8 case ---

9 Q: Was there an opportunity ---

10 **THE COURT:** Mr. Legg.

11 **MR. LEGG:** Yes, sir.

12 **THE COURT:** When he's speaking, she can't speak for two
13 people into that machine.

14 **MR. LEGG:** I'm sorry.

15 **THE COURT:** You have to let him finish and I'll give you
16 ample opportunity to ask another question.

17 **MR. LEGG:** I'm sorry.

18 **THE COURT:** You're okay.

19 **BY MR. LEGG:**

20 A: We had an opportunity to discuss every issue, and we did
21 I think, that you brought up. I don't read your mind, of
22 course, and so I was, you know, I would discuss issues as you
23 raised them and I don't remember ever cutting you off and
24 denying you an opportunity to do that.

25 Q: Okay. I'm trying to narrow this down because you could

1 of course say that, and anybody could read things into that.
2 But can you tell me what kind of conversation that we had
3 since you're claiming that I -- we had during the trial. Can
4 you, can you say what it was?

5 A: Well, certainly not. You know, that was a number of
6 years ago. I don't remember specific conversations that we
7 had. But I do know that I never said hush, you know, we don't
8 need to do that, we don't need to discuss it. I was always
9 open to listening to anything that you had to say, any input
10 that you wanted to have into the case.

11 Q: Well again, I'm claiming and maybe you can tell me why
12 you have select hearing on some things. You can make a broad
13 statement, but you can't back it up. So, it's important,
14 you're making a statement for the record and it's making me
15 look like ---

16 A: Well, Mr. Legg, I mean, I'm trying to recall the best
17 that I can when you ask me questions. And when you talk about
18 specific conversations that we had during the course of the
19 trial I don't recall with any specificity what it was we
20 discussed. But I know that we had free communication back and
21 forth during the course of that trial. And I never did
22 anything knowingly that would prohibit you from having access
23 to me in terms of what your thoughts were.

24 Q: Let me ask you also, now you claim that you had several
25 visits to me here in the county jail.

1 A: Yes.

2 Q: That you'd pull me out.

3 A: Yes.

4 Q: Can you tell me what the embodiment of those visitations
5 consisted of?

6 A: I don't, I don't know what you mean. We talked about the
7 case. I answered questions that you had about the case. It
8 was a typical attorney/client interview and meeting,
9 discussion about the evidence in the case, discussions about
10 the alleged facts, and those kinds of conversations.

11 Q: Let me say this and maybe I can help you out a little
12 bit.

13 A: Alright.

14 Q: Why is it, I don't have a problem remembering these
15 specific details of all of these events precisely and I don't
16 understand why people's memories are foggy unless they chose
17 to be. But I remember most of your visits that you came in
18 with your assistant and you worked this double time bait and
19 switch ---

20 THE COURT: Mr. Legg.

21 MR. LEGG: Yes, sir.

22 THE COURT: Question please.

23 MR. LEGG: Okay.

24 BY MR. LEGG:

25 Q: Was it a predominant thing for you to pursue a plead deal

1 as opposed to going to trial?

2 A: I always pursue the plea deal if I thought it was the
3 best likely outcome of the case, but it's not something I
4 would pressure a client to do. It was always left to the
5 client to make that decision.

6 Q: Okay. Now, I filed the motion now knowing the reason
7 behind filing this motion. I wrote a four- or five-page
8 motion for the Court to dismiss you. Now, during the trial
9 date I brought that motion before the Judge and I was never
10 allowed to address that. You were my attorney then on my
11 behalf. You brought it up, Mr. Legg has a motion to have me
12 dismissed. Now, I'm asking you now that the Court suppressed
13 me and kept me from reading that motion and addressing that
14 motion. He just threw things out there.

15 A: He ruled that he wasn't going to delay the trial anymore
16 and that you were going to go to trial because it was like a
17 three-year-old case if I'm not mistaken.

18 Q: Well, you're saying that I'm being disqualified for that
19 motion rather than you being my attorney.

20 A: No. I'm saying that the Judge ruled on the motion. And
21 a lot of times you get in trouble when you re-argue the same
22 motion, you know, again. It's not something that you do, that
23 you are permitted to do.

24 Q: Well, for the record, for the record I would like to get
25 you to make a clear statement on the question that I just

1 asked you because you just, you mumbled things that are
2 incoherent to the details. I asked you specifically, you're
3 representing me as my attorney, and I filed a motion before
4 the Court. Now, should you not represent me on that motion to
5 ask for a hearing for the Judge to entertain the motion rather
6 than you saying what the Judge decided to do. I'm asking you
7 as part of your duty as an officer of the court representing
8 me, to see that the interested and procedural rights and all
9 of that are followed. I filed a motion and traditionally
10 anybody that files a motion they go into Court, they ask the
11 Judge to entertain, to hear that motion. That would have been
12 your responsibility, correct, to object to the ---

13 A: Let me, let me say that I think the issue was put to
14 Judge and I think the Judge ruled on it. Okay. And I think
15 you and I ---

16 Q: Mr. Diggs.

17 A: --- have a difference of opinion ---

18 Q: Mr. Diggs.

19 A: --- about that matter.

20 Q: Okay. The only reason I'm interfering is because you're
21 saying the same thing over.

22 A: Well, it's the same question.

23 **THE COURT:** Mr. Legg, when you ask him a question and he
24 answer it, in these types of proceedings unfortunately you're
25 going to be stuck with the answer he gives. Unfortunately if

1 you don't like it it's still his answer. Okay.

2 **MR. LEGG:** Okay. Gotcha.

3 **THE COURT:** Alright. Next question please.

4 **BY MR. LEGG:**

5 Q: You stated to Mr. James also that I never had any
6 witnesses. Is that correct?

7 A: What my testimony was I don't know; I don't recall you
8 outlining any particular witnesses that I should investigate
9 and ask to come and testify.

10 Q: Let me ask you this. Do you remember the day of the
11 hearing I brought papers in with me? I had a list of names of
12 witnesses and you mumbled what? Too late?

13 A: I don't remember mumbling anything.

14 Q: Okay.

15 A: I don't recall the conversation that you're discussing.

16 Q: Okay. Okay. I guess that's about all that I have for
17 you, Mr. Diggs.

18 **THE COURT:** Alright. Thank you so very much. Any
19 objection to having Mr. Diggs be excused?

20 **MR. JAMES:** Certainly not.

21 **THE COURT:** Mr. Legg, any -- can he be excused? He's
22 free to go?

23 **MR. LEGG:** Yes, sir.

24 **THE COURT:** Alright. Thank you so very much for being
25 here, Mr. Diggs. We do appreciate it.

1 **MR. DIGGS:** Thank you.

2 **THE COURT:** You are excused.

3 Alright. Let me grab our witness list. We'll stand in
4 recess. Okay.

5 Hold on. We're going to stand in recess for just a
6 couple seconds. Are y'all discussing something for tomorrow?

7 **MR. JAMES:** Yes, Your Honor.

8 **THE COURT:** Okay.

9 **MR. JAMES:** My apologies.

10 **THE COURT:** That's okay. We'll be in recess.

11 **(COURT IN RECESS)**

12 **THE COURT:** Alright. Let's go back on the record.

13 Alright. Mr. Legg, you have had four witnesses
14 subpoenaed. The one remaining that I see that is present here
15 in the courtroom is Martin Spratlin. Mr. Diggs (SIC), just as
16 an aside, you understand that this is an ineffective
17 assistance of counsel hearing of which Mr. Spratlin had no
18 representation in your case.

19 **MR. LEGG:** Right.

20 **THE COURT:** He was the prosecutor in your case.

21 **MR. LEGG:** Right.

22 **THE COURT:** I don't know for what purpose you would call
23 the prosecutor in reference to the ineffective assistance of
24 counsel of your prior attorneys of which both have testified
25 in this hearing. You have indicated that you weren't sure

1 whether you wanted to testify or not, obviously I would give
2 you that opportunity. But I've never seen the prosecutor be
3 called in a PCR hearing and I'm not sure what type of
4 testimony you intend on eliciting. What would you be trying
5 to elicit from that witness?

6 **MR. LEGG:** Well, there's an action that he partook of
7 which I felt was read by the jury as him having some inside
8 information, his actions. And I would like to -- it's not,
9 it's an action that he took, it's not on the record, but I
10 would like to have him verbalize that so it would be establish
11 for the record which means that my attorney during the time
12 should have objected to that and made a censorship from that
13 from the Court.

14 **THE COURT:** Okay. Let me stop you there and make sure
15 I'm with you.

16 **MR. LEGG:** Alright.

17 **THE COURT:** Was it something that was read to the jury or
18 was it in some type of motions hearing just in front of the
19 Judge? What type of information ---

20 **MR. LEGG:** Well, essentially what he did was he was
21 standing there before the jury and I'm sitting over there by
22 lonesome and he came over and stuck his finger in my face and
23 called me a monster before the jury. I felt that was very
24 offensive and very pointedly ---

25 **THE COURT:** Okay. Let me stop ---

1 **MR. LEGG:** --- a message to the jury that ---

2 **THE COURT:** Okay. Let me stop you there. Was this
3 during the course of the trial?

4 **MR. LEGG:** Yes, sir.

5 **THE COURT:** And you said you were sitting by your
6 lonesome, you don't mean -- your attorney was present though,
7 correct?

8 **MR. LEGG:** Well, he was sitting here, but, you know, I
9 was targeted.

10 **THE COURT:** Okay. And would I be correct if I were to
11 guess that this was either in his opening statement or in his
12 closing argument?

13 **MR. LEGG:** Closing argument before the jury.

14 **THE COURT:** Okay. And that would be in the trial
15 transcript as a part of the record brought here today,
16 correct?

17 **MR. LEGG:** Well, not the action because it's visual as
18 opposed to verbiage so I didn't ---

19 **THE COURT:** Well, unfortunately the court reporter can
20 only take down what is stated, not any type of gestures that
21 may or not have been made.

22 **MR. LEGG:** Right. Well, that's why I was relying on his
23 testimony to acknowledge that gesture if he's honest about
24 that.

25 **THE COURT:** Okay. And you want to put that in the

1 record?

2 **MR. LEGG:** Yes, sir.

3 **THE COURT:** And your contention is that for purposes of
4 ineffective assistance of counsel that your counsel should
5 have objected to him doing that?

6 **MR. LEGG:** Should have objected and asked for an
7 explanation before the jury to censor that. You know, as far
8 as him calling me a monster that would be as if he had some
9 inside information. That was very offensive to do that during
10 closing argument. And to walk from there several paces with
11 the intent, I know he had in mind of doing that, and it's not
12 out of anger, it's personal.

13 **THE COURT:** Well, Mr. Legg, I want you to have a clean
14 record and if you're calling him just for him to acknowledge
15 that, I don't see any prejudice that that may have on your
16 record. Do you see what I'm saying?

17 **MR. LEGG:** Right.

18 **THE COURT:** For you maintaining an accurate record
19 throughout these proceedings. What is your position, Mr.
20 James?

21 **MR. JAMES:** The State -- just to clarify, the listed
22 subpoenaed witness on the roster are the State's subpoenaed
23 witnesses. My understanding is that Mr. Legg actually wanted
24 perhaps the presence of additional persons, but I can't
25 subpoena witnesses for him. I can only subpoena the witnesses

1 that I believe are going to be relevant to the State's case to
2 the resolution of the PCR. So, I subpoenaed these four
3 individuals, then upon subsequent review contacted Mr. Dudek
4 and told him that I did not believe his presence would be
5 necessary and that if for whatever reason we determined it
6 would be, then we could potentially call him and have him
7 testify by telephone as is frequently the case for appellate
8 counsel.

9 **THE COURT:** Okay.

10 **MR. JAMES:** Mr. Spratlin is specifically here because of
11 the allegations that the State potentially seized property
12 that was not returned to or disclosed to Mr. Legg. So, I only
13 briefly wanted to put him on the stand to very briefly address
14 those allegations.

15 **THE COURT:** Okay. So, your contention is that its not
16 even a witness for Mr. Legg to even call because he did not
17 subpoena him.

18 **MR. JAMES:** He can -- I don't believe I have a basis to
19 stop him from calling him. But he is here under State's
20 subpoena.

21 **THE COURT:** Okay. And understanding that, Mr. Spratlin
22 (SIC), you want to condense or confirm your questioning into
23 what I assume is now going to be just two isolated questions.

24 **MR. LEGG:** Correct. Your Honor, I had submitted a list
25 of witnesses that I wanted to subpoena, and I talked to Mr.

1 James about that. But I assume that since he was, he was
2 subpoenaing those witnesses that I would just rely on them
3 being here and it wouldn't be necessary ---

4 **THE COURT:** And I think you were correct in doing so
5 because he was able to subpoena them and have them here.

6 I don't see any prejudice to having him testify to that.
7 Again, I think the record speaks for itself. I don't want to
8 snuff out Mr. Legg's ability to maintain a clean record that
9 he wants to try to establish or build. Do you see any
10 prejudice in having him testify potentially to that?

11 **MR. JAMES:** I don't see any prejudice regarding it. I
12 think either way both of us are going to get out the necessary
13 information from the witness so when he takes the stand
14 whether he's his witness or mine ---

15 **THE COURT:** I would agree with you. Mr. Legg, call your
16 next witness.

17 **MR. LEGG:** I'd like to call Mr. Spratlin.

18 **THE COURT:** You don't need to bring all of that you here,
19 do you?

20 **MR. SPRATLIN:** Just in case.

21 **THE COURT:** Okay. I was just trying to save you the
22 trip.

23 **MR. SPRATLIN:** Just in case.

24 **THE COURT:** You never know.

25 **MARTIN SPRATLIN, HAVING BEEN FIRST**

1 **DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **THE CLERK:** Please state your name for the Court.

3 **MR. SPRATLIN:** Martin Dale Spratlin.

4 **THE COURT:** Could you spell your last name for us?

5 **MR. SPRATLIN:** S-P-R-A-T-L-I-N.

6 **THE COURT:** Alright. Thank you so very much. Mr. Legg.

7 **DIRECT EXAMINATION OF MR. SPRATLIN BY MR. LEGG:**

8 Q: Mr. Spratlin, you heard us in discussion about the
9 question I'm going to ask you.

10 A: Yes, sir.

11 Q: I just want to ask you; can you tell me how tall you are
12 and how much you weigh?

13 A: Now or at the time?

14 Q: As you are now.

15 A: As I am now, well still 6'3. I'm a little bit heavier
16 now, about 248 right now.

17 Q: Now, do you recall by any chance you doing a motion that
18 I just talked about? You came over and you pointed your
19 finger at me?

20 A: I do not recall specifically, but I do not doubt that I
21 did point at you to some point during the trial. It is
22 something that I have done during several trials.

23 Q: I appreciate your honesty on that, truly. But my issue
24 with that is, you're a domineering force. I've watched you in
25 action. You hop around and you're very confident and all of

1 that. My concern was of course anything that convinced the
2 jury of guilt as opposed to innocence. And I'm just drawing
3 attention to the fact that my attorney should have recognized
4 that you were sending that improper signal to the jury as if
5 you had some inside knowledge or whatever of course your
6 personal opinion on that and that weighed heavily on the
7 jury's decision ---

8 **THE COURT:** Alright.

9 **BY MR. LEGG:**

10 Q: --- because you did that.

11 **THE COURT:** Alright. Mr. Legg, have you elicited what
12 you needed to elicit?

13 **MR. LEGG:** Yes, sir.

14 **THE COURT:** Alright. Thank you so very much.

15 Anything from you, Mr. James?

16 **MR. JAMES:** Yes, Your Honor. If I may go ahead on cross-
17 examination and get to materials beyond that in the interest
18 of time?

19 **THE COURT:** Okay.

20 **CROSS EXAMINATION OF MR. SPRATLIN BY MR. JAMES:**

21 Q: Mr. Spratlin, thank you for being here today.

22 A: Yes, sir.

23 Q: And for waiting around all day.

24 A: Yes, sir.

25 Q: You were the prosecutor assigned to this case, correct?

1 A: I was. I was not the original prosecutor assigned to the
2 case, but I took it over in I think February 2013.

3 Q: And that was as part of your employment with the 15th
4 Circuit Solicitor's Office?

5 A: Yes, sir.

6 Q: In the course of your prosecuting this case did you
7 receive from law enforcement, or receive notice from law
8 enforcement that they had obtained certain materials from Mr.
9 Legg's property?

10 A: Yes. In the discovery provided to me and in my
11 conversations with law enforcement I was aware of stuff that
12 was taken from the property.

13 Q: Okay. Do you recall generally the nature of the stuff
14 that was taken?

15 A: I would best -- the way I could characterize it would be
16 voluminous writings on behalf of Mr. Legg. There were also I
17 believe some photographs taken from the residence as well.

18 Q: Did you ever have an opportunity to review those
19 writings?

20 A: I did. I know I did. Also, there was another -- I don't
21 believe she had passed the bar yet, but there was someone
22 assisting me on this case who eventually became employed by
23 our office, Monica Wooten. I know that she also went out
24 there and viewed those documents along with Mr. Diggs. I was
25 not present for the meeting with Mr. Diggs, but I have had a

1 chance to see the large stacks of papers.

2 Q: So, those voluminous writings were made available to Mr.
3 Diggs?

4 A: Yes, sir. And I believe, I do not have exact firsthand
5 knowledge of this, but I believe the former prosecutor on the
6 case before me, Candice Lively, had even made a copy of those
7 documents and provided them to Mr. Joye when he was the
8 attorney of record. I don't know if those were then passed to
9 Mr. Diggs, according to her records anyway.

10 Q: So, it was your understanding that Mr. Diggs had both
11 been provided a physical copy of the voluminous writings and
12 also the opportunity to come and review the originals in your
13 possession.

14 A: I cannot say for certain if he was provided the
15 voluminous amount, or the documents himself, but he definitely
16 had a chance to come look through them.

17 Q: Did any of the voluminous writings ever go missing to
18 your knowledge?

19 A: To my knowledge, no.

20 Q: Were any of them ever trashed?

21 A: To my knowledge, no.

22 Q: Do you recall, understanding that they were voluminous,
23 thematically what the content was of those writings?

24 A: Honestly, not to a great extent. I never anticipated
25 using them in my case in chief. I do know that there were

1 writings on ADHD. Based on my understanding as well as I
2 still have several of the photographs in my file that were
3 taken from the bulletin, from the chalkboard excuse me, that
4 was set up in Mr. Legg's house. But I believe they were, and
5 I might be recalling this from the audio tape between
6 Detective Frebowitz and Mr. Legg, but I believe they were
7 mostly in regards to ADHD type research on behalf of Mr. Legg.

8 Q: Were there any other materials in the State's possession
9 that were not either turned over or made available to Mr.
10 Diggs?

11 A: No, sir. I would have set up a meeting, and that was in
12 fact the meeting where all of the evidence would have been
13 available for review.

14 Q: Were you aware of any controversies regarding Detective
15 Frebowitz at the time of trial?

16 A: At the time of trial I was not aware of any
17 controversies.

18 Q: Alright. Were you aware of any deficiencies or defective
19 characteristics in the search warrant of Mr. Legg's property?

20 A: Yes.

21 Q: And what were they?

22 A: There was a -- may I get the document to refresh my
23 recollection?

24 Q: Absolutely. We'll put that big ole box you brought up to
25 the stand to use.

1 A: Exactly. Now I feel justified. Essentially, there was a
2 part of the search warrant which referred to a grand larceny
3 in the affidavit section of the search warrant. At the time
4 that this all occurred back on June 23rd, or around June of
5 2011. I think it was June 17th the search warrant was
6 submitted and someone I believe had caught that there was an
7 issue with the affidavit provision of the search warrant back
8 around June 23rd because they then go Judge Mayer to sign a
9 document stating basically that on June 17th, 2011 Detective
10 Neil Frebowitz initially presented an affidavit for a search
11 warrant and orally reviewed the facts of the case with me.
12 The search warrant was signed and served. It was later
13 discovered that the document was determined to be defective.
14 Essentially, there was some debate on whether or not we could
15 still go forward on the search warrant based upon the -- even
16 the affidavit being itself defective but it being supplemented
17 by the oral testimony of Detective Frebowitz. However, I made
18 a judgment decision based upon the large amount of evidence
19 that I felt I had including the statement that Mr. Legg had
20 given to Detective Frebowitz, that I did not need any of the
21 documents for my trial so I chose not to use any of them and
22 agreed not to use any of them. Because obviously the
23 affidavit -- the affidavit to me was so deficient that there
24 basically was not an affidavit at all.

25 Q: And so the documents seized were not introduced at trial?

1 A: To my knowledge, no. There was one that I recall being
2 marked for evidence and I can't recall if it was one of the
3 documents or if it was a photograph. But it was actually
4 marked I believe by the defense.

5 Q: Alright.

6 A: Because it was marked for ID purposes only, I believe
7 there was some concern by the defense obviously about losing
8 last close and not wanting to introduce any documents. But
9 there was either a photograph or something marked for
10 identification purposes only.

11 **MR. JAMES:** I have no further questions for this witness.

12 **THE COURT:** Alright. Just briefly. You indicated that,
13 and I got lost just briefly so bear with me, that Mr. Diggs
14 and you had a pretrial meeting whereby these documents that we
15 have discussed throughout this proceeding were made available
16 for his review.

17 **MR. SPRATLIN:** It was actually another attorney in our
18 office. At that point I'm not sure if she had passed the bar
19 or not, but Monica Wooten went with Mr. Diggs to review. But
20 to my knowledge everything was review.

21 **THE COURT:** Okay.

22 **MR. SPRATLIN:** Everything was available.

23 **THE COURT:** Okay.

24 **MR. SPRATLIN:** And I have had my own opportunity to
25 review it.

1 **THE COURT:** And are you aware if Mr. Diggs either took a
2 copy of these voluminous documents or if one was made, was
3 simply made available to him? Do you know if he ever copied
4 them and actually took them into his own possession?

5 **MR. SPRATLIN:** I do not know if he copied them. What I
6 do know according to the records from the previous prosecutor
7 on the case, Candice Lively, that a copy of those documents
8 was made for Attorney Joye, Scott Joye. Now, whether or not
9 those copies were since given to Mr. Diggs, I do not know.

10 **THE COURT:** Okay.

11 **MR. SPRATLIN:** But they were made available for his
12 review.

13 **THE COURT:** And what you're indicating to me is that the
14 issues that have been brought to the Court's attention
15 pertaining to this search warrant potentially would be moot
16 because anything that was seized as a part of it was not
17 introduced to the jury at trial?

18 **MR. SPRATLIN:** No, sir. I specifically, in fact I
19 believe Judge Cottingham and the way Judge Cottingham always
20 did it, instructed me very clearly not to ---

21 **THE COURT:** I understand.

22 **MR. SPRATLIN:** --- use any of those documents.

23 **THE COURT:** That just clarifies some of the information.
24 Thank you so very much.

25 Mr. Legg, would you like to briefly ask him any more?

1 **MR. LEGG:** Yes, sir.

2 **THE COURT:** Remember keep it to what Mr. James has
3 addressed.

4 **MR. LEGG:** Okay.

5 **THE COURT:** Thank you very much.

6 **REDIRECT EXAMINATION OF MR. SPRATLIN BY MR. LEGG:**

7 Q: Now, Mr. James had asked you about some information
8 regarding transcript of the forensic interview.

9 A: The transcript of forensic interview would have been
10 provided to Mr. Diggs as well. I don't believe that's what we
11 were referring to though.

12 Q: Okay. You mentioned several times that you had, that
13 there was a previous solicitor which I'm aware of her. And in
14 the trial transcript you mentioned that the transcript that
15 you received have been redacted and redacted several times.
16 And y'all just lost the original transcript, am I correct?

17 A: What I believe you're referring to and correct me if I'm
18 wrong on this is there was a transcript of the forensic
19 interview done by my office. That being the interview of the
20 child taken at the Children's Recovery Center.

21 A: Right.

22 Q: That transcript was intact completely. I provided a copy
23 to Mr. Diggs in an effort to allow us to agree what portions
24 needed to be redacted under whatever relevant case law because
25 there's certain things in those interviews that the jury -- it

1 was proper to ask at the time that the interview was conducted
2 in 2010 I believe it was, but would not have been proper in
3 2014 after State v Kromah for the jury to hear. So, we
4 actually, me and Mr. Diggs, he told me what he wanted redacted
5 and what he felt was inappropriate and I either agreed or we
6 were going to have to take it up to Judge Cottingham, the
7 trial Judge. That's actually why there were two disks entered
8 into evidence in your trial, one of which was the unredacted
9 copy of the forensic interview and the other one was a
10 redacted copy.

11 Q: Well, you stated on the trial transcript record that
12 those versions were redacted before you actually received a
13 copy.

14 A: If we're talking about the transcript of the forensic
15 interview, no, sir.

16 Q: Okay. Well, I'll go back on that, on that record because
17 there was some confusion on that.

18 A: And I might be confusing what transcript you're referring
19 to, but there was a transcript of the forensic interview which
20 is the only transcript that I'm aware of that was at issue in
21 your trial.

22 Q: Well, there would only be one and that would be the
23 forensic interview transcript.

24 A: To my knowledge, and possibly your, an interview of your
25 statement to Detective Frebowitz may have been done as well.

1 Q: Well, that's a separate issue. I'm aware of that being
2 redacted too. So, now during the trial when this issue came
3 up about missing documents that were removed from the house by
4 the police. You're aware of course that one probable cause
5 mentioned that the detective was in search of writings between
6 the defendant and the alleged victim, correct?

7 A: That was part of the invalid search warrant, yes.

8 Q: Okay. Now, the documents that you received that showed
9 up in discovery, can you tell me if those writings, or
10 documents, or papers had anything pertaining to writings
11 between the alleged victim and Mr. Legg?

12 A: I honestly could not tell you, Mr. Legg. I don't recall
13 the contents of the writings. I believe there was a letter
14 and I believe it was a picture that the victim in this case
15 had written to you. And I believe it was a picture of the
16 letter, I don't recall if that's actually in evidence at Horry
17 County PD or not. I do not recall that.

18 Q: What you're referring to is called a placard which is a
19 laminated blown up piece of paper ---

20 A: I don't recall if it was laminated or not. I don't
21 recall ever seeing it in person.

22 Q: Well, we'll just say that the record reflects that there
23 was none of the documents that were in search of by the
24 detective backed by the search warrant showed up, those
25 particular writings. Okay. Now, you did mention, correct me

1 if I'm wrong, during the trial that you had possession of the
2 purple journal. The color purple came up. Do you recall that
3 at all?

4 A: I do not recall that with any specificity. If you show
5 me where in the -- I don't recall if it's in there or not. I
6 don't.

7 Q: Okay. Now, I just wanted to say that you brought up
8 during the trial that I got all of my expertise of ADD from
9 reading Psychology Today, but I just want to say that I've
10 never read it before. I just knew one day I would see you and
11 say that so excuse me on that. But so, you say that you were
12 not aware of Frebowitz improprieties at all or any suspicion
13 about his misdeeds that he was doing during this time? Or
14 most importantly you stated that to Mr. James, but I want to
15 ask you specifically did Horry County Police Department notice
16 you that Mr. Frebowitz was about to be terminated and the
17 reason they would do that is so you would have a heads up in
18 case he was on any cases. Did that occur?

19 A: I do, I do not recall that. If that occurred, I do not
20 have any recollection of that. I remember hearing that
21 Detective Frebowitz was let go and I believe it was shortly
22 after your trial. But I do not recall having any prior
23 knowledge of that fact. To the best of my recollection on the
24 stand I do not recall.

25 Q: Chief Rhodes acknowledged that she did give you

1 communication on that.

2 A: Gave me directly?

3 Q: The solicitor's office, not you personally.

4 A: If it was given to my supervisor, I don't recall it ever
5 being told to me.

6 Q: Okay. Alright. Fine. Now, I just want to ask you this,
7 during the trial to me it was a big issue about the search
8 warrant and I'll just tell you why and the reason I want to
9 ask you the question.

10 **THE COURT:** Will you just ask him the question please.

11 **MR. LEGG:** Okay.

12 **THE COURT:** Thank you.

13 **BY MR. LEGG:**

14 Q: Did you, do you feel it would be relevant for an attorney
15 to bring up the statutes governing the search warrants, the
16 return, I forget the number on the statutes but there's two
17 which governs, basically polices the propriety procedures of
18 the search warrants. Are you familiar with those statutes?

19 **MR. JAMES:** I must respectfully object. He's calling
20 upon the solicitor to get expert legal testimony and I don't
21 think that's appropriate.

22 **THE COURT:** He's also asking him to speculate as to what
23 the attorney was thinking at the time and so I'm going to
24 sustain your objection. You just move on to your next
25 question please.

1 **MR. LEGG:** Okay. Alright. Could I rephrase the
2 question?

3 **THE COURT:** Sure. Rephrase it and we'll determine
4 whether we have the same objection.

5 **MR. LEGG:** Okay.

6 **BY MR. LEGG:**

7 Q: I just want to ask you as the solicitor would it be
8 proper when you're contesting a search warrant to bring up the
9 statute that tells you how you could -- a citizen could
10 validate the authenticity of that search warrant. There's a
11 statute that governs that. As the solicitor would you
12 recognize that?

13 A: In regards to the case -- sorry, Mr. James.

14 **THE COURT:** Go ahead.

15 **MR. JAMES:** I was going to say I'm not sure I can
16 discern how that question was really different from the first
17 one.

18 **THE COURT:** Mr. Legg, you're asking him to speculate as
19 to what a defense attorney's position should be and you're
20 asking a prosecutor who has the opposite intentions in trial.
21 So, I don't think that question is proper. I don't think he
22 can speculate as to what a defense attorney should or
23 shouldn't be doing in the trial of your case or in the
24 prosecution of your case certainly inside of these
25 proceedings.

1 **MR. LEGG:** I understand where you're coming from, but I
2 was just trying to get around that.

3 **THE COURT:** I understand. So, I'm going to sustain your
4 objection. Let's move to the next one. Okay.

5 **MR. LEGG:** Okay. Alright.

6 **BY MR. LEGG:**

7 Q: Did -- you're aware maybe that Attorney Joye had bothered
8 himself with forcing me to get a mental health evaluation. I
9 think I've seen you with the papers in your hands.

10 A: I was aware. I think the evaluation actually was ordered
11 while either Ms. Lively or somebody who was filling in for her
12 before I took over her case load. And then it actually came
13 back while I was the prosecutor assigned to your case.

14 Q: I just want to ask you did you get a chance to read that?

15 A: Yes, sir.

16 Q: Okay. So, you saw the documents that were put forward,
17 the writings and so forth?

18 A: I read the examiner's report.

19 Q: Alright.

20 A: I did not read any accompanying documents or anything
21 other than the examiner's report.

22 Q: Well, I just wanted to say that ---

23 **THE COURT:** Hold on. We're not going to make any more
24 statements. I want you to ask a question. And to be honest
25 with you, I think you're getting outside of the -- in your

1 redirect as to the cross of the witness. I think you're
2 getting kind of outside of that. We're getting back to what
3 Mr. Joye was talking about earlier. That's the first I've
4 heard his name.

5 **MR. LEGG:** Okay.

6 **THE COURT:** Okay.

7 **MR. LEGG:** Alright. Okay. Let's see. I'm doing my best
8 here to keep up. I'm trying to stay on track on issues that
9 Mr. James brought up.

10 **THE COURT:** Take your time.

11 **MR. LEGG:** I'm digging, and I know it's a valuable asset
12 with all of this experience we have up here. But I think
13 that's about all I can think of Mr. Spratlin.

14 **THE COURT:** Alright. Well, we appreciate it. Thank you
15 so very much.

16 You don't have anything further?

17 **MR. JAMES:** Nothing further, Your Honor. May this
18 witness please be excused?

19 **THE COURT:** Absolutely. No objection, Mr. Legg?

20 **MR. LEGG:** No objection.

21 **THE COURT:** Alright. You're free to go. Thank you so
22 very much.

23 **MR. SPRATLIN:** Thank you, Your Honor.

24 **THE COURT:** Absolutely. Alright.

25 Mr. Legg, do you have any more witnesses?

1 **MR. LEGG:** No, sir. I do not.

2 **THE COURT:** Okay. You just wish to close?

3 **MR. LEGG:** Yes.

4 **THE COURT:** Okay. Nothing further, Mr. James?

5 **MR. JAMES:** There will be no further witnesses called by
6 the State, Your Honor.

7 **THE COURT:** Okay. Alright. I want to address one last
8 issue that we have. Mr. Legg, you filed a Rule 59(e) motion.
9 And essentially on the motion it says that Mr. Legg comes
10 before the Honorable Court to hear this Rule 59(e) motion for
11 ruling on all issues. Rule 59(e) is when there has been a
12 judgement entered. There has not been a judgment entered in
13 this case, so this filing is just premature. I can certainly
14 make it a part of the record if you just want to go ahead and
15 have the motion just stay with the record, but there will be
16 no ruling on my behalf or my part at this point as it's an
17 early motion, you know, the motion is not ripe yet.

18 **MR. LEGG:** Well, let me say, what it comes from is I had
19 worked at a law library for about three years in the prison I
20 was at.

21 **THE COURT:** Okay.

22 **MR. LEGG:** And the issue had come up that a lot of
23 attorneys failed to file a Rule 59 (e) motion.

24 **THE COURT:** Okay.

25 **MR. LEGG:** So, a lot of times the Court's would take

1 advantage of that and they may have 12 issues and so that
2 Judge would just, just rule on three of them out of respect to
3 the time of course. And then that person would file an appeal
4 saying that he filed 12 motions and the Court say well you
5 didn't file a Rule 59 (e) motion.

6 **THE COURT:** Well, Mr. Legg, you have since filed your
7 Rule 59(e) motion and it will become a part of the record, so
8 you won't have that issue later on once the actual judgment is
9 issued.

10 **MR. LEGG:** Right.

11 **THE COURT:** Any concerns?

12 **MR. JAMES:** I was just going to add to that, that has --
13 that was a reoccurring issue has been very firmly brought to
14 the attention to both the Bench and State Attorney General's
15 Office who is very frequently been made responsible to draft
16 orders when there is a denial of relief. So, certainly the
17 Court is aware and certainly the State is aware that any order
18 that comes out of this post-conviction relief hearing will
19 specifically address each and every one of the issues that
20 have been raised. I think that will certainly be done. If
21 the State has any input to it, I have the upmost confidence
22 that the Court will address any and all of the issues to
23 whatever extent it drafts an order.

24 **THE COURT:** I will. And just so you know, I will not be
25 ruling on the motion but I'll make it a part of the record.

1 **MR. LEGG:** Okay. Thank you.

2 **THE COURT:** Alright. Anything further from either side?
3 Alright. Well, thank y'all so very much. I appreciate it. I
4 am going to take this under advisement, and I will issue my
5 ruling soon.

6 **MR. LEGG:** Do we make a closing on the -- make any kind
7 of closing, a statement for the Court for what we're trying to
8 accomplish here today. Is that entertainable or is it
9 necessary?

10 **THE COURT:** Yeah. I don't have a problem with you making
11 a brief closing. I don't have a problem with that and then
12 I'll certainly give Mr. James the opportunity to make a brief
13 closing as well. Just keep an -- obviously I've been here
14 throughout the entire proceedings and I am fully aware of what
15 was elicited and what's gone on in here. I've payed close
16 attention, so just certainly for the record surmise what you'd
17 like for the Court to take into consideration when reviewing
18 your application.

19 **MR. LEGG:** Okay.

20 **THE COURT:** Alright.

21 **MR. JAMES:** If I may before he begins?

22 **THE COURT:** Sure.

23 **MR. JAMES:** Could I simply suggest perhaps a time
24 limitation on arguments since it is late in the afternoon.

25 **THE COURT:** Sure. Not a problem. I'll give both sides 5

1 minutes.

2 **MR. LEGG:** It won't be long, Your Honor.

3 **THE COURT:** Okay. Thank you.

4 **MR. LEGG:** I just wanted to say that I'm here basically
5 under duress. I think you've heard some of the testimony from
6 Joye and from Mr. Diggs that I've had a problem by getting
7 lawyers to be responsive basically to what I felt was
8 important issues to argue. And this, this case has come a
9 long way from -- there was an event that occurred here in
10 Horry County with local corruption. I'm sure you're familiar
11 with Detective Large and Frebowitz and all of that. Well, I
12 have had information that I tried to get attorneys to address.
13 You've heard some of that and the court trial transcript
14 addresses some of that at the beginning. And the reason I'm
15 here pro se is not out of my pride, it's just basically out of
16 necessity. So, I've had several lawyers that I've had has
17 been reluctant basically because of the environment they're in
18 for whatever reason they justify. Mr. James knows that I
19 wrote him a letter from the last attorney, and I had filed
20 giving him this amendment. And he made a specific statement
21 to me that he refused to file those because he was concerned
22 about the consequences to him. Now, that was specific
23 language and he ended up getting dismissed from the case as a
24 result of that. So, I'm just saying I'm basically handicapped
25 as a layman here trying to represent myself. It may not be

1 perfect, but I don't have any alternative. I was released
2 from prison. I had sexual offender registry. I had to go to
3 Ohio in order to get jobs. So, it has been difficult to raise
4 money to hire an attorney. And usually, you know, even the
5 State will tell you to go out of the jurisdiction, Charleston,
6 some place like that. Well, that just ups the cost for an
7 attorney. So, it's just been ridiculous. So, it's out of
8 despair that I'm here representing myself. And I hope that I
9 was able to establish to the Court that my attorney, Mr. Diggs
10 has been duplicitous in the things that he is sayings. He's
11 not clear. He's been very deceptive. And I just hope that
12 that weighs heavily upon your decision to see that all I'm
13 asking for is just a fair trial. I'm asking for the
14 opportunity to have this trial to clear my name, to make a
15 good honest defense out of the case and be done with it. You
16 know, just let justice be served that way. And the whole
17 trial I basically scorned Mr. James and asked him a couple of
18 times, I said look this thing keeps snow balling and it gets
19 worse and worse and it gets harder for me to come out from
20 under this. They keep fighting the case. It's obvious, you
21 know, that I didn't get a fair trial and this thing just keeps
22 adding and adding and adding. And when it comes to someone
23 like me trying to dig out from under that pile it's almost
24 impossible, you know, to make my case.

25

1 And the ineffective assistance of counsel according to
2 Strickland versus Washington under normal reasonable
3 standards, I've researched the case. And because Mr. Diggs
4 was disbarred because of this personality issue that he had,
5 disfunction or whatever you want to call it during that time.
6 He comes across as stating he made a credible defense on the
7 record, but it's just absolutely not true. When you digest it
8 to the case, you can see he's making statements and lacking
9 defense and he's telling me that, you know, he called all of
10 the witnesses when I gave him a list of witnesses that were
11 never called. And it's absurd to think that somebody would be
12 in my situation and this thing happens to have absolutely no
13 witnesses, none whatsoever. Not even neighbors, not even a
14 schoolteacher or someone who could come forward and shed light
15 on my story. So, I'm just asking that you take all of that
16 into consideration. I know I haven't perfected this. I've
17 written at length trying to express myself the best way that I
18 can. And I think, I just hope you rely on the incompetence
19 that Mr. Diggs showed today. His reluctance to come forward
20 on issues that he really needed to on something that he did.

21 **THE COURT:** Mr. Legg, I think you did a good job today
22 representing yourself. So, I commend you on that. I
23 appreciate you understanding my position on, you know, certain
24 issue that come along and along and I appreciate your
25 attentiveness to everything. And I will certainly take

1 everything that you have indicated into consideration.

2 **MR. LEGG:** I appreciate that, Your Honor.

3 **THE COURT:** Yes, sir. Thank you.

4 **MR. JAMES:** I'll open with a similar accommodation to
5 Mr. Legg that he has supported himself civility throughout the
6 proceedings here today. Part of the challenge of being a pro
7 se litigant is you raise a innumerable number of allegations,
8 and this is coming across as a pro se litigant that I've had
9 pleasure of attending court with, is that they raise a large
10 number of allegations. Some of which to the lay person seem
11 important but they simply just do not have any merit or weight
12 in a court of law. And then sometimes whether knowingly or
13 intentionally or by accident come across allegations that even
14 a skilled attorney would immediately seize upon.

15 The overwhelming majority of the allegations that Mr.
16 Legg has raised are of just facially no merit and no impact of
17 the outcome of his trial. Respectfully, nobody was aware of
18 the controversies regarding Detective Frebowitz at the time of
19 trial. And certainly, whatever his errors in conducting
20 himself with honor and dignity in the course of his employment
21 did not rise to the level of affecting this trial with any
22 degree of unfairness. Certainly, the search warrant was
23 heavily defective, and the solicitor recognized that and
24 didn't use any of the materials pulled from that search
25 warrant. Mr. Legg advances a rather novel theory that

1 ultimately the knowledge that Detective Frebowitz had and
2 utilized in the course of his interrogation of Mr. Legg was in
3 and of itself fruit of a poisonous tree. The State would
4 simply submit that that's too attenuated to make any kind of
5 objection upon in this or any other Court or any other
6 jurisdiction of which the State of South Carolina is presently
7 aware.

8 Your Honor, Mr. Legg (SIC) accurately testified that this
9 case came down to the credibility of the child witness and he
10 zeroed all of his efforts in on trying to delicately balance
11 the art of challenging the credibility of that child witness
12 without looking like a bully. It is the State's position that
13 Mr. Diggs, along with the other prior attorneys who had
14 represented Mr. Legg, gave competent, thorough representation
15 to him over the course of the trial. The State's position is
16 to the extent that they made any minor errors or hiccups
17 throughout the course of the trial, that it did not affect the
18 ultimate outcome. By those arguments the State's position is
19 that Mr. Legg has failed to show a deficiency of his counsels.
20 He has failed to show the (inaudible) from their performance
21 and accordingly under Strickland versus Washington the
22 application for relief should be denied.

23 Additionally, Your Honor, there has been sort of the hint
24 but maybe not the explicit declaration of a Brady violation.
25 That is why we put the solicitor up on the stand to testify

1 that everything was turned over to Mr. Legg's attorneys and
2 since there has been no showing of any exculpatory information
3 that wasn't turned over Mr. Legg cannot meet his burden today.
4 So, on so many of the allegations that we've heard today there
5 was simply no evidence actually introduced to show what, if
6 anything, would have been generated given further
7 investigation or calling on certain witnesses or what have
8 you, as required in a post-conviction relief action.

9 So, for all of those reasons, Your Honor, I respectfully
10 request that the Application for Post-Conviction Relief be
11 denied.

12 **THE COURT:** Alright. And similarly, I had some questions
13 as to those Brady issues as well to try to clarify the record.
14 I do want to thank both of you. I tend to agree, y'all's
15 civility is something to be commended. Mr. Legg, you as well.
16 Not all lawyers can always get together and be as civil as
17 y'all have. Apparently, y'all have actually had some
18 conversations prior to this hearing and it sounds like y'all
19 have both been able to work together to get to where we are
20 today. You both have opposing sides, but I appreciate your
21 civility in this hearing. Alright.

22 I'll rule as soon as I can. Okay. Thank y'all so very
23 much. Have a wonderful day.

24 **MR. LEGG:** Thank you.

25 **MR. JAMES:** Thank you, Your Honor.

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(COURT IS ADJOURNED)

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