

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
R. Scott Sprouse, Circuit Court Judge

RECEIVED

Aug 28 2024

S.C. SUPREME COURT

Appellate Case No. 2024-00627

Dwayne C. Tallent, #357180 ,..... Petitioner,
v.
State of South Carolina,..... Respondent.

APPENDIX

VOLUME I

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Petitioner

September 28, 2024.

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PCR PETITION FOR WRIT APPENDIX PAGE 1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Dwayne C. Tallent, #357180,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2022-CP-23-00973
)

) **ORDER OF DISMISSAL**
)

) **ENTERED COMPUTER**
)

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Brice Garrett COC GVL SC

This matter comes before the Court by way of an application for post-conviction relief filed by Dwayne C. Tallent on February 22, 2022. Respondent filed the Return and Motion for a More Definite Statement June 20, 2022.¹

An evidentiary hearing was scheduled for January 17, 2024, at the Greenville County Courthouse. Applicant and his appointed counsel, J. Falkner Wilkes, Esq., were present. Assistant Attorney General W. Joesph Maye represented the Respondent. After reviewing the pleadings, materials submitted, testimony, arguments of counsel, and the applicable law, the Court finds that the Applicant has failed to meet his burden of proof. Accordingly, the Application for Post Conviction Relief is DENIED.

Procedural History

Applicant is presently imprisoned in the South Carolina Department of Corrections, Broad River Correctional Institution, pursuant to orders of commitment of the Greenville County Clerk of Court. During its January of 2015 term, the Greenville County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2014-GS-23-011873). During its December of 2016 term, the Grand Jury true-billed amended indictments for first-degree

¹ Counsel for Applicant submitted an email to Respondent on December 19, 2023, making Applicant's claims definite and certain. Respondent accepted the clarification and deemed the motion satisfied.

PLS

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criminal sexual conduct with a minor (2014-GS-23-011873), second-degree criminal sexual conduct with a minor (2014-GS-23-011877), lewd act upon a child (2014-GS-23-011875), and contributing to the delinquency of a minor (2014-GS-23-011874).

On July 17-19, 2017, Applicant proceeded to a jury trial, with the Honorable Robin B. Stilwell presiding. Matthew J. Kappel represented Applicant at trial, and Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor's Office prosecuted the case. At the conclusion of trial, the jury found Applicant guilty as indicted. The trial court sentenced Applicant as follows: for contributing to the delinquency of a minor, imprisonment for three years; for lewd act on a minor, imprisonment for 15 years; for second-degree criminal sexual conduct with a minor, imprisonment for twenty years; and for first-degree criminal sexual conduct with a minor, imprisonment for thirty years. All sentences were ordered to run concurrently with credit for time served.

Trial counsel filed a timely notice of appeal. J. Falkner Wilkes ("appellate counsel") later filed a notice of appearance indicating that he would be co-counsel on appeal with trial counsel. Appellate counsel argued on appeal that the trial court erred: (1) in denying trial counsel's motion to sever the charge of contributing to the delinquency of a minor from the charges of criminal sexual conduct with a minor and lewd act on a minor; and (2) in admitting evidence of Applicant's manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine. The South Carolina Court of Appeals affirmed the convictions and sentences, finding that "[t]he trial court did not abuse its discretion in denying [Applicant's] motion to sever and in admitting evidence related to drug use and manufacturing." *State v. Tallent*, 430 S.C. 438, 449, 845 S.E.2d 508, 514 (Ct. App. 2020). The Court of Appeals later denied appellate counsel's petition for rehearing. The South Carolina Supreme Court then denied appellate counsel's petition for a writ

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of certiorari. *State v. Tallent*, S.C. Sup. Ct. Order filed March 9, 2021. The remittitur was issued on March 15, 2021.

Claims Raised

The original *pro se* application was filed on February 2, 2022, and raised the following claims:

1. Trial counsel was constitutionally ineffective for failing to properly prepare and investigate;
2. Trial counsel was constitutionally ineffective for failing to make necessary objections to preserve issues for appeal;
3. Trial counsel was constitutionally ineffective for failing to make necessary motions to suppress evidence and testimony;
4. Trial counsel was constitutionally ineffective for failing to adequately cross-examine witnesses;
5. Trial counsel was constitutionally ineffective for failing to communicate all plea offers to Applicant in a timely fashion and to give accurate and adequate advice to Applicant in regards to said offers; and
6. Trial counsel was constitutionally ineffective for failing to conduct adequate discovery, to offer relevant evidence, to make adequate argument to the jury, and to present an adequate defense.

On December 19, 2023, Applicant, through counsel, provided response to Respondent's Motion for a More Definite Statement alleging:

1. "FAILURE OF COUNSEL to introduce evidence that contradicted key state witness on his being an eyewitness (Christopher Greco) to abuse by viewing through a keyhole. I will present the testimony of Russell Brinson, a long-time friend of the Applicant's to show that he has personal knowledge that there was no keyhole on the bedroom door. Also, the Applicant's family are still searching for family photos of the house that might show the door or doors in the home. This is unlikely to happen but I'm always hopeful. The Applicant's mother Lenior Brissey may testify to the lack of keyholes as well. hole."
2. "FAILURE OF COUNSEL to object to the admission of other bad acts. C.R. [REDACTED] C.R. [REDACTED] was offered as the State's last witness to testify

that the Appellant abused her and that she was traumatized by it. This was objectionable as the other bad acts did not meet the test to admissible. The issue was not properly preserved for appeal.”

3. “FAILURE OF COUNSEL to properly advise client on potential of conviction if other bad act evidence was introduced such that he would have taken the plea offer for 7 years. (I’m not certain but the plea offer may have expired by the time Matt Kappel learned of the State’s intent to present the C.R. evidence of other bad acts).”
4. “FAILURE OF COUNSEL to present evidence contradicting testimony about eyewitness bending over and peeping through a keyhole (that didn’t exist). Witness had a broken back at that time and was in a brace that prevented him from being able to bend over. Applicant’s mother, Lenior Brissey, will testify to that fact, and she is a retired RN. By Matt’s cross and closing it seems to sound like he was going to or thought he had offered evidence on the impossibility of the events given the witnesses’ broken back and being in a brace at that time.”
5. “FAILURE OF COUNSEL to impeach Christopher Greco Shoplifting conviction 2013. Greco alleged that he was an “eyewitness” to the abuse and therefore his impeachment was critical to the defense of the case.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance Claims

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine

confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

Applicant called trial counsel, Mr. Kappel, to give testimony regarding his representation of Applicant. Applicant did not testify on his own behalf. After considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant failed to meet his burden of proof.

General Summary of Relevant Facts from Trial

The Victim in this case was twenty-nine years old at trial. She was around five years old when Applicant began sexually abusing her. (Trial Tr. pp. 146-47). Applicant was a father figure to the Victim and was in her life from when she was eighteen months old until the time she moved away at fourteen. (Trial Tr. pp.133-134). At trial, the Victim described numerous accounts of Applicant’s sexual abuse, including oral sex acts and penetration. (Trial Tr. pp. 150-161). Around the age of eleven, Christopher and Joesph, the Victim’s brothers, moved into the home with Applicant, Victim’s mother, and victim. (Trial Tr. p. 136, pp. 140-41). The abuse continued until Victim moved in with her biological father at the age of fourteen. (Trial Tr. p. 168).

Christopher and Joesph testified at trial as to witnessing Applicant’s sexual abuse of the victim. On one account, Christopher looked through the keyhole of the bedroom and saw Tallent and Victim under the covers. Tallent was touching himself and Victim with his other hand. He told her “that is how you do it.” Christopher kicked open the door and demanded to know how

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long it had been going on. He called Tallent sick. Tallent “freaked out” and jumped out of bed. Tallent chased Christopher outside, threw coolers at him, and told Christopher that Christopher could ruin his whole world. (Trial Tr. p. 260; p. 274). When asked if they were clothed, Christopher testified Tallent was in his boxers, he could not tell whether Victim was dressed or not. (Trial Tr. p. 262). Christopher and his brother moved out afterwards. They told their father and Christopher told DSS about what happened. (Trial Tr. p. 261).

CR provided *Lyle* testimony. She was fifteen years old when she testified at trial. Her and her mother moved in with Tallent. Tallent was a father figure in CR’s life. At the time of trial, she lived with her sister’s grandfather since being placed there by DSS. (Trial Tr. p. 331). She lived at both Tallent’s mother’s farmhouse and Tallent’s doublewide trailer. At the time, she was close to Tallent’s mother. She is not anymore.

Tallent started touching CR when she was around five years old, and she did not know it was wrong. As she later realized the abuse was wrong, she kept it to herself because she was scared. (Trial Tr. pp. 336-38). She explained she still loved Tallent and even told the jury Tallent is a good person. Nonetheless, she explained Tallent would touch around her vagina. The abuse would continue until Tallent moved away when CR was eleven years old. (Trial Tr. pp. 339-40). Tallent also touched CR’s chest and kissed her on the lips. (Trial Tr., pp. 340-41). Sometimes the abuse occurred with the clothes on and sometimes Tallent took her clothes off. (Trial Tr. p. 341). Tallent told her not to tell because nobody would understand it and that nobody would understand his love for her. (Trial Tr. p. 343). She explained she did not want to tell anyone because she was worried she would lose the only family she had, and she noted that is exactly what happened, she lost her family after she disclosed the abuse and began living with her sister’s grandfather. (Trial Tr. p. 343).

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Allegation I & IV: Failure to Call Witnesses

As to Applicant's claims regarding the existence of a keyhole, and the likelihood that the witness was physically able to see Applicant and victim through the keyhole, the Court finds that Applicant failed to satisfy his burden of proof under *Strickland*.

Mr. Kappel was not examined by Applicant or the State regarding matters in relation to the existence of keyhole, or to the physical incapacities Applicant claimed an eyewitness suffered rendering his trial testimony impossible. Applicant has not produced any testimony or evidence to substantiate these claims, and thus has not established any prejudice from the failure to call witnesses at trial. *Dalton v. State*, 376 S.C. 142-43, 654 S.E.2d 876-77 (Ct. App. 2007). There is no credible evidence to support these allegations, and no testimony to support or refute the allegations. Thus, Applicant failed to show deficient representation.

Applicant has failed to satisfy his burden of proof of showing *Strickland* deficient performance and prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). See also *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (where "witnesses" the Applicant "claimed could have provided an alibi defense did not testify at the PCR hearing," the Applicant "could not establish any prejudice from counsel's failure to contact these witnesses."). Accord *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) ("conjecture" as to testimony insufficient to show omission "would probably change if a new trial" granted).

Applicant is required to prove his PCR allegations by a preponderance of the evidence and Applicant failed to show any deficiency or prejudice by counsel in regard to the alleged witnesses. Thus, Applicant is not entitled to any relief on these claims.

Allegation II: Failure to Object

The singular issue for which Mr. Kappel was examined, and the sole issue which the

parties provided argument, was whether counsel was constitutionally ineffective under *Strickland* for failing to preserve for appeal the issue of the trial court's admitting of C.R.'s testimony that Applicant abused and traumatized her. This Court finds neither error on part of counsel nor prejudice.

Applicant argued that the failure to make a contemporaneous objection following the pretrial ruling was conclusively a failure to preserve the issue, and in light of the change in the law that came *after* trial under *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020), that alleged error was prejudicial under *Strickland*. Respondent argued that the admission of the 404(b) evidence was not contrary to the controlling law at the time under *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009), overruled by *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020), and that the trial court's ruling was in alignment with other precedent about the interpretation and application of *Wallace*. See *State v. Scott*, 405 S.C. 489, 500, 748 S.E.2d 236,242 (Ct. App. 2013). Applying *Wallace* to the specific set of circumstances in this case, the trial judge found C.R.'s testimony to be relevant, that the similarities of the Applicant's abuse toward both victims outweighed the differences, and that the probative value outweighed the prejudicial effect. (Trial Tr. pp. 89-90).

On direct examination, Mr. Kappel testified that his failure to renew the 404(b) objection was an oversight that he believed to be prejudicial to the Applicant. On cross examination, Mr. Kappel testified that he recognized the controlling authority at the time of the objection and cited what he believed to be the relevant law. The record shows that Mr. Kappel referenced *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923) and *State v. Rogers*, 293 S.C. 505, 362 S.E.2d 7 (1987), overruled by *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993) on the matter, distinguishing from *Wallace* that in this case there were two separate victims with different types

of sexual misconduct. (Trial Tr. 76-79). At the hearing Mr. Kappel expressed disagreement as to how the court weighed the evidence under the factors provided by *Wallace* but he did not identify an error of law by the court.

Generally, a motion in *limine* is not a final determination; a contemporaneous objection must be made when the evidence is introduced at trial to be preserved for appellate review. *State v. Wiles*, 383 S.C. 151, 679 S.E.2d 172 (2009). However, there is an exception to this general rule when a ruling on the motion in *limine* is made “immediately prior to the introduction of the evidence in question.” *Id.* This exception is based on the fact that when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection. *Id.* (citing *State v. Mueller*, 319 S.C. 266, 268–69, 460 S.E.2d 409, 410 (Ct.App.1995)). *Wiles* has identified a party's reference to a pretrial motion issue during opening statements as a factor to consider in judging the finality of a ruling. (See *State v. Wiles*, 383 S.C. 151, 679 S.E.2d 172 (2009)). Further, if no evidence is offered between a preliminary ruling and the admission of the evidence ruled upon, then “the decision is final” and there is no need for an additional objection. *State v. Morales*, 439 S.C. 600, 889 S.E.2d 551 (2023) (citing *State v. Jones* 435 S.C. at 144, 866 S.E.2d at 56).

Here, both the parties relied upon the ruling of the court as a final ruling on the matter when they referenced C.R. and the purpose of her testimony to the jury during opening arguments. (see *State v. Wiles*, 383 S.C. 151, 679 S.E.2d 172 (2009) (see also Trial Tr. pp. 109-110, p.116, p. 120). As such, no further objection was needed at the time of C.R.'s testimony.

Applicant's allegation incorrectly operates under the presumption that trial counsel failed to preserve the issue on appeal, however there is support for the argument that had this issue been raised, it would have been preserved for review. Additionally, appellate counsel is not

prohibited from raising claims that may be dismissed due to lack of preservation, and Applicant cannot guarantee the State would have argued a lack of preservation of this issue as a defense had the issue been raised. Applicant bears the burden of proof in post-conviction relief matters, and he has failed to demonstrate that this alleged 404(b) claim was not raised on appeal because appellate counsel believed it to be unpreserved. Applicant has failed to call and examine appellate counsel as to the reason why this issue was not raised, and in the absence of such testimony or evidence, the court cannot speculate as to what an unrepresented witness might have said. Such is definitively insufficient for establishing prejudice under *Strickland*. See *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 810 (1998).

Applicant has failed to show trial counsel's deficiency. As an initial matter, based on case law precedent, the issue likely would have been deemed preserved on appeal. Applicant cannot conclusively determine the outcome if the issue had been raised nor can he depend on the testimony of appellate counsel as he has not been produced as a witness. *Perry* overruled *Wallace* in 2020, nearly five years after the Applicant's trial, and the court must consider the law as it existed at the time of trial and "not as it has evolved today" See e.g. *Chappell v. State*, 429 S.C. 68, 79, 837 S.E.2d 496, 501 (Ct. App. 2019). Accordingly, trial counsel will not be found deficient for failing "to be clairvoyant or anticipate changes in the law" *Id.* Therefore, this Court finds that Applicant failed to satisfy his burden of proof under *Strickland*.

Allegation III: Failure to Properly Advise

As to Applicant's claim that counsel failed to properly advise him on the potential of a conviction if other bad act evidence were introduced and alleging that he would have taken the State's offer of seven (7) years instead of proceeding with trial, this Court finds that Applicant failed to establish deficiency and prejudice under *Strickland*.

Mr. Kappel was not questioned on the issue, and Applicant offered no supporting evidence or testimony to satisfy the burden of proof for this claim. Applicant cannot satisfy the deficiency prong of *Strickland*, as there is no testimony from Mr. Kappel or Applicant, nor any corroborating evidence to show deficient representation in this matter. Applicant's mere dissatisfaction with the trial outcome cannot be blamed on counsel's defense when in hindsight, a plea deal rendering a lesser sentence was more favorable to Applicant. *Strickland*, 466 U.S. 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "To show prejudice under *Strickland*, a defendant must demonstrate a reasonable probability that: (1) he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" *Collins v. State*, at 262, 810 S.E.2d at 877 (quoting *Frye*, 566 U.S. at 147). Applicant presented no evidence or testimony to overcome his burden of proof. As such, Applicant has not shown deficiency in Mr. Kappel's representation regarding this matter, and cannot, at any rate, show resulting prejudice. E.g., *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998).

Allegation V: Failure to Impeach

Applicant alleges counsel was ineffective for failing to impeach Christopher Greco, a central witness, with a 2013 shoplifting conviction. As discussed above, trial counsel was not questioned on matters related to this claim, and Applicant has not produced any testimony or evidence to substantiate this claim. He thus has not established any prejudice from the failure to impeach Greco at trial. *Dalton v. State*, 376 S.C. 142-43, 654 S.E.2d 876-77 (Ct. App. 2007). Therefore, Applicant has not satisfied his burden under *Strickland*.

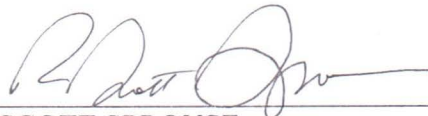
CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of proof. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 12 day of March, 2024.



R. SCOTT SPROUSE
Presiding Judge

PCR PETITION FOR WRIT APPENDIX PAGE 13



ALAN WILSON
ATTORNEY GENERAL

March 18, 2024

The Honorable Brice Garrett
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Dwayne C. Tallent, #357180 v. State of South Carolina
Case No. 2022-CP-23-973

Dear Ms. Garrett:

Enclosed please find the original Order of Dismissal signed by the Honorable R. Scott Sprouse in reference to the above-mentioned case for filing in your office.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

W. Joseph Maye
Assistant Attorney General

WJM/abb
Enclosure

cc: J. Falkner Wilkes, Esquire (with copy of enclosure)

Copy mailed to	WJM
Attorney General	Jeff Wilkes
on	3 / 25 / 2024

24 MAR 22 PM 1:54
Brice Garrett COO@GCL.SC

PCR PETITION FOR WRIT APPENDIX PAGE 14

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

DWAYNE C. TALLENT, (00357180)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-23-

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CRIM COURT
PAUL B. BECKWITH
CLERK
GREENVILLE, SC
2022 FEB 22 PM 1:39

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution

4460 Broad River Road Columbia, SC 29210 (803) 896-2234

2. Name and location of Court which imposed sentence General Sessions, Greenville
County, South Carolina

3. Name(s) of co-defendant(s) (if any) n/a

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2014-GS-23-11873 Criminal Sexual Conduct with a Minor 1st Degree

(b) 2014-GS-23-11874 Contributing to the Delinquency of a Minor

(c) 2014-GS-23-11875 Lewd Act Upon a Child

(d) 2014-GS-23-11877 Criminal Sexual Conduct with a Minor 2nd Degree

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5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 19, 2017 - 30 years concurrent
 - (b) July 19, 2017 - 3 years concurrent
 - (c) July 19, 2017 - 15 years concurrent
 - (d) July 19, 2017 - 20 years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. South Carolina Supreme Court
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. affirmed
 - ii. petition for certiorari denied
 - iii. _____
 - (c) the date of each such result:
 - i. June 10, 2020
 - ii. March 9, 2021
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Opinion No. 5729
 - ii. Order dated March 9, 2021
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____

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- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to properly prepare and investigate the case. Trial counsel failed to make necessary objections to preserve issues for appeal. Trial counsel failed to make necessary motions to suppress evidence and testimony. Trial counsel failed to adequately cross-examine witnesses. Failure of counsel to communicate all plea offers timely and to give accurate and adequate advice in regard to said offers. Trial counsel failed to conduct adequate discovery, offer relevant evidence, make adequate argument to the jury and present an adequate defense.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____

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ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Revised 3/2003

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Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

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

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

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

i. Matthew J. Kappel, 114 Whitsett Street, Greenville, SC 29601

ii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601

iii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601

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

i. Trial

ii. Appeal

iii. PCR

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

To have the conviction and sentence set aside and reversed and a new trial granted.

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

No

PCR PETITION FOR WRIT APPENDIX PAGE 19

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

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

Dwayne Tallent

SWORN to and subscribed before me this 9th
day of February, 2022

Kongera Johnson (L.S.)
Notary Public

My Commission Expires: 8/4/2024

PCR PETITION FOR WRIT APPENDIX PAGE 20

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

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

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

Dwayne Tallent
Applicant

SWORN or affirmed to and subscribed before me this

9th day of February, 2022

Kinson Robinson
Notary Public

My Commission Expires: 8/4/2024

PCR PETITION FOR WRIT APPENDIX PAGE 21



ALAN WILSON
ATTORNEY GENERAL

June 20, 2022

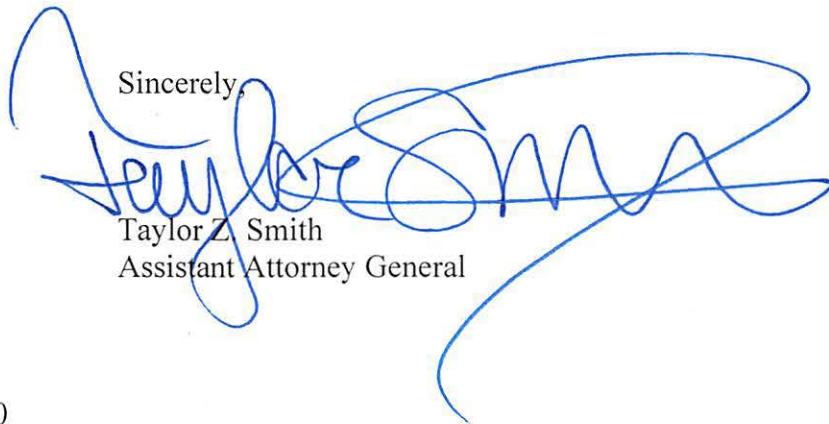
The Honorable Paul B. Wickensimer
Clerk of Court - Greenville County
305 E North St
Greenville, SC 29601-2121

Re: Dwayne C. Tallent, #357180 v. State of South Carolina
2022-CP-23-00973

Dear Mr. Wickensimer:

Enclosed for filing please find Respondent's original Return to the Application for Post-Conviction Relief of the above-captioned case. Please let me know if anything additional is needed at this time.

Sincerely,


Taylor Z. Smith
Assistant Attorney General

TZS/wjc
Enclosure

cc: Dwayne C. Tallent, #357180

PCR PETITION FOR WRIT APPENDIX PAGE 22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Dwayne C. Tallent, #357180,	)	Case No.: 2022-CP-23-00973
	)	
Applicant,	)	
	)	
v.	)	RETURN TO APPLICATION AND
	)	MOTION FOR A MORE DEFINITE
State of South Carolina,	)	STATEMENT
	)	
Respondent.	)	

The State of South Carolina (“Respondent”), making its return to the application for post-conviction relief filed by Dwayne C. Tallent (“Applicant”) on February 22, 2022, would respectfully show this Court:

I. Procedural History

Applicant is presently imprisoned in the South Carolina Department of Corrections. During its January of 2015 term, the Greenville County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2014-GS-23-011873). During its December of 2016 term, the Grand Jury true-billed amended indictments for first-degree criminal sexual conduct with a minor (2014-GS-23-011873), second-degree criminal sexual conduct with a minor (2014-GS-23-011877), lewd act upon a child (2014-GS-23-011875), and contributing to the delinquency of a minor (2014-GS-23-011874). On July 17-19, 2017, Applicant proceeded to a jury trial, with the Honorable Robin B. Stilwell (“the trial court”) presiding. Matthew J. Kappel (“trial counsel”) represented Applicant at that trial, and Assistant Solicitor L. Mark Moyer (“the solicitor”) of the Thirteenth Circuit Solicitor’s Office prosecuted him. At the conclusion of trial, the jury found Applicant guilty as indicted. The trial court sentenced Applicant as follows: for contributing to the delinquency of a minor, to imprisonment for three years; for lewd act on a minor, to imprisonment for 15 years; for second-degree criminal sexual conduct with a minor, to imprisonment for twenty

years; and for first-degree criminal sexual conduct with a minor, to imprisonment for thirty years; with all sentences running concurrently; and with credit for time served.

Trial counsel filed a timely notice of appeal, and J. Falkner Wilkes (“appellate counsel”) later filed a notice of appearance, indicating that he would be co-counsel on appeal with trial counsel. Appellate counsel argued on appeal that the trial court erred: (1) in denying trial counsel’s motion to sever the charge of contributing to the delinquency of a minor from the charges of criminal sexual conduct with a minor and lewd act on a minor; and (2) in admitting evidence of Applicant’s manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine. The South Carolina Court of Appeals affirmed the convictions and sentences, finding that “[t]he trial court did not abuse its discretion in denying [Applicant’s] motion to sever and in admitting evidence related to drug use and manufacturing.” State v. Tallent, 430 S.C. 438, 449, 845 S.E.2d 508, 514 (Ct. App. 2020). The Court of Appeals later denied appellate counsel’s petition for rehearing. The South Carolina Supreme Court then denied appellate counsel’s petition for a writ of certiorari. State v. Tallent, S.C. Sup. Ct. Order filed March 9, 2021. The remittitur was issued on March 15, 2021.

II. Current Application

In his application for post-conviction relief, filed on February 22, 2022, Applicant argues he is entitled to relief based upon multiple claims, which Respondent interprets as follows: (1) trial counsel was constitutionally ineffective for failing to properly prepare and investigate; (2) trial counsel was constitutionally ineffective for failing to make necessary objections to preserve issues for appeal; (3) trial counsel was constitutionally ineffective for failing to make necessary motions to suppress evidence and testimony; (4) trial counsel was constitutionally ineffective for failing to adequately cross-examine witnesses; (5) trial counsel was constitutionally ineffective for failing to communicate all plea offers to Applicant in a timely fashion and to give accurate and adequate

advice to Applicant in regards to said offers; and (6) trial counsel was constitutionally ineffective for failing to conduct adequate discovery, to offer relevant evidence, to make adequate argument to the jury, and to present an adequate defense. Applicant prays that the Court would vacate his convictions and grant him a new trial.

Attached to this return and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding Applicant's convictions and sentences; the transcript from Applicant's trial; Applicant's records from the South Carolina Department of Corrections; and the direct appeal records, including the notice of appeal, the notice of appearance, the record on appeal, the parties final briefs filed in the Court of Appeals, the Court of Appeals' dispositive opinion, the petition for rehearing, the order denying the petition for rehearing, the petition for a writ of certiorari, the return to the petition for a writ of certiorari, the Supreme Court's order denying the petition for a writ of certiorari, and the remittitur. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Motion for a More Definite Statement

Respondent moves for a more definite statement as to some of Applicant's claims. Applicant fails to set forth with specificity the facts and circumstances upon which some of his claims are based. For example, Applicant raises a claim that trial counsel was constitutionally ineffective for failing to properly prepare and investigate, but fails to specify what preparation and investigation trial counsel should have done that he did not do, and fails to explain how there is a reasonable likelihood that the outcome of trial would have been different had trial counsel done that additional preparation and investigation. Applicant raises a claim that trial counsel was constitutionally ineffective for failing to make necessary objections to preserve issues for appeal, but fails to specify what objections trial counsel should have made that he did not, and fails to explain how there is a reasonable likelihood that the outcome of trial would have been different if

trial counsel had made those objections. Applicant raises a claim that trial counsel was constitutionally ineffective for failing to make necessary motions to suppress evidence and testimony, but fails to specify what evidence that trial counsel should have moved to suppress and upon what basis, and fails to explain how there is a reasonable likelihood that the outcome of trial would have been different had those motions been made. Applicant raises a claim that trial counsel was constitutionally ineffective for failing to adequately cross-examine witnesses, but fails to identify which witnesses were allegedly not cross-examined in an adequate fashion, fails to explain what questions trial counsel should have asked of those witnesses, and fails to explain how there is a reasonable likelihood that the outcome of trial would have been different had trial counsel done his cross-examination in the manner delineated by Applicant. Applicant raises a claim that trial counsel was constitutionally ineffective for failing to conduct adequate discovery, to offer relevant evidence, to make adequate argument to the jury, and to present an adequate defense, but Applicant fails to explain in what way trial counsel's handling of the discovery was inadequate, fails to identify the allegedly relevant evidence that trial counsel should have offered, fails to identify the argument that Applicant thinks was inadequate, fails to identify the argument that Applicant feels that should have been made, fails to explain how trial counsel's defense of Applicant was inadequate, and fails to explain how there is a reasonable likelihood that the outcome of trial would have been different had trial counsel's performance not been so allegedly deficient.

The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon an applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d

PCR PETITION FOR WRIT APPENDIX PAGE 26

455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of the aforementioned claims. As it stands, Respondent is unable to provide an effective response to the claims identified in this motion. Respondent moves to require Applicant to file an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

IV. Response to Applicant’s Remaining Claim

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer “so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in Strickland. First, the applicant must prove that the performance of his lawyer was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland).

Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Id. (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting Strickland). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the

proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense.” Hill v. Lockhart, 474 U.S. 52, 58 (1985) (quotation omitted).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 697. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

Applicant raises a claim that trial counsel was constitutionally ineffective for failing to communicate all plea offers to Applicant in a timely fashion and to give accurate and adequate advice to Applicant in regards to said offers. “[A] defendant has the right to effective assistance of counsel during the plea bargaining process.” Bell v. State, 410 S.C. 436, 440-41, 765 S.E.2d 4, 6 (Ct. App. 2014) (quoting Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). A defense attorney “has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that

may be favorable to the accused.” Bell, at 441, 765 S.E.2d at 6 (quoting Missouri v. Frye, 566 U.S. 134 (2012)). During Applicant’s trial, the solicitor informed the trial court of the history of the parties’ plea negotiations, including his understanding that Applicant had rejected multiple plea offers. Trial Tran. 126-27. Trial counsel informed the trial court that he had informed Applicant of plea offers and that Applicant “made it very clear . . . throughout that he was not going to accept” those offers.” Trial Tran. 127. Respondent submits that Applicant likely cannot show that he is entitled to post-conviction relief based upon this claim, but requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

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

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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Pursuant to S.C. Code Ann. § 17-27-150(a) (2008), an applicant in a non-capital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good cause, Respondent will oppose those attempts.

VII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to file an amended application well in advance of any evidentiary hearing in order to provide a more definite statement of his claims as requested in the motion for a more definite statement included in this return, and then convene an evidentiary hearing on the claims raised in the application.

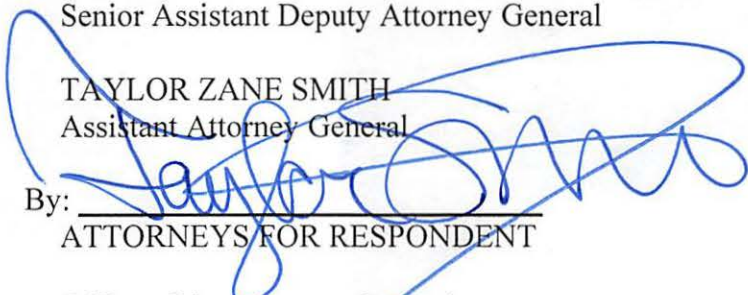
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 20, 2022

PCR PETITION FOR WRIT APPENDIX PAGE 31

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Dwayne C. Tallent, #357180

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2022-CP-23-00973

CERTIFICATE OF SERVICE BY MAIL

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

Dwayne C. Tallent, #357180 (MAB-0174-A)
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

DATED this the 20th day of June, 2022.



William Corbett, Jr., Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2022-CP-23-973
)
)
)
DWAYNE TALLENT)
) APPLICANT)
) vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
) RESPONDENT)

January 17, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE, Judge.

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

J. FAULKNER WILKES, ESQ.
Attorney for the Applicant

JOE MAYE, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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1 THE COURT: Okay, we are ready to go. Call the
2 first case.

3 MR. MAYE: May it please the Court, first on the
4 docket today is the PCR matter of Dewayne Tallent vs.
5 State of South Carolina. It is case number
6 22-CP-23-973. The application was filed on
7 February 22nd of 2022, the return was served on
8 June 20th of 2022. Just a brief procedural history,
9 Your Honor. Mr. Tallent was indicted for first
10 degree criminal sexual conduct with a minor, second
11 degree; CSC with a minor; lewd act upon a child and
12 contributing to the delinquency of a minor. He
13 proceeded to a jury trial on July 17th before the
14 Honorable Robin B. Stilwell and was represented by
15 attorney Matthew Kappel.

16 He was convicted on all charges and received
17 respective sentences of 30 years, 20 years, 15 years
18 and three years, all to be served concurrently. He
19 appealed his convictions but the Court of Appeals
20 affirmed and certiorari was denied at the Supreme
21 Court. As I've already said, on February 22nd he
22 filed his present action seeking post-conviction
23 relief on various grounds of ineffective assistance
24 of counsel. And with that, I'll turn it over to
25 Mr. Wilkes.

MATTHEW KAPPEL-DIRECT BY MR. WILKES

1 THE COURT: All right, Mr. Wilkes.

2 MR. WILKES: Thank you, Your Honor, may it
3 please the Court. Our primary issue, Your Honor, is
4 the failure to object to 404(b) evidence. And I have
5 prepared a memorandum, a 13-page memorandum, for The
6 Court that outlines my argument, which I will rely
7 on. I will say it out loud as much as you need me to
8 but I think that the memo, if The Court will accept
9 that, pretty much takes care of my argument. We
10 would start by calling Mr. Kappel, Matthew Kappel.

11 THE CLERK: Please place your left hand on the
12 Bible, raise your right hand.

13 MATTHEW KAPPEL, after being duly sworn,
14 testified as follows:

15 THE CLERK: Thank you, you may be seated and
16 please state your full name for the record.

17 THE WITNESS: My name is Matthew J. Kappel.

18 DIRECT EXAMINATION

19 BY MR. WILKES:

20 Q Mr. Kappel, you represented Mr. Tallent in his
21 criminal trial?

22 A I did.

23 Q And do you recall that trial?

24 A I do.

25 Q During that trial, do you recall making a rather

MATTHEW KAPPEL-DIRECT BY MR. WILKES

1 brilliant argument in the suppression motion to suppress
2 404(b) evidence of a second of a alleged -- another
3 alleged victim?

4 A I do.

5 Q And that motion was denied at the suppression
6 hearing; correct?

7 A That's correct.

8 Q Subsequent to that there was additional evidence
9 that the trial had been continued and toward the end of
10 the trial the 404(b) witness was called; do you recall
11 that?

12 A I do.

13 Q And when the 404(b) witness was called, you did
14 not raise or renew the objection or the argument you had
15 made in the suppression hearing; is that correct?

16 A That's correct.

17 Q So the question is was that intentional or was
18 that an unfortunate oversight?

19 A It was an unfortunate oversight, frankly.

20 Q Okay.

21 A It wouldn't have made sense to file a motion and
22 have a full blown hearing on the 404(b) evidence and then
23 not preserve an objection.

24 Q And from your recollection of the trial, as you
25 argued it at the suppression hearing, in your opinion, was

MATTHEW KAPPEL-CROSS BY MR. MAYE

1 the additional 404(b) witnesses testimony highly
2 prejudicial to the case?

3 A I believed it to be highly prejudicial. And
4 that's why I took the time to file the motion to try to
5 keep it out.

6 MR. WILKES: Very good.

7 I have no further questions of Mr. Kappel.

8 THE COURT: Okay.

9 Mr. Maye?

10 CROSS-EXAMINATION

11 BY MR. MAYE:

12 Q Mr. Kappel, in making your 404 argument, your
13 intent was to keep out the testimony of the witness C.R.,
14 the initials C.R.?

15 A You know honestly I can't remember the
16 specifics. My intention was to keep out the testimony of
17 another alleged victim.

18 Q Okay.

19 A That I didn't feel that met the requirements of
20 404(b).

21 Q So in your opinion, the facts relating to the
22 similarities did not satisfy the law, at that time, that
23 was your opinion?

24 A My opinion was is that the testimony that was
25 offered or going to be offered was critical -- was

MATTHEW KAPPEL-CROSS BY MR. MAYE

1 critical to keep it out and I didn't believe it met the
2 404(b) rule, that's why I filed the motion.

3 Q Okay. At the time of trial, were you aware of
4 the case that was controlling authority on that issue?

5 A You know, I'd like to say yes. I was looking
6 for the motion in my file. I could put my hands on it. I
7 researched it and filed whatever I thought was the
8 appropriate law to keep the testimony out.

9 Q Sure. Just to speed things along, if I were to
10 suggest to you to that it was the Wallace case that was
11 the controlling authority on that issue, would you have
12 any issue to find that not to be the case?

13 A I'm not going to answer that. I'm just going to
14 say that I cited what I thought was the relevant law to my
15 motion that was current at the time. You know, obviously,
16 that I thought was up-to-date and current. I'm sure the
17 motion's in the record somewhere, so.

18 Q Okay. When The Court -- after you were done
19 making your argument and The State was done making its
20 argument, and The Court handed down its ruling, was The
21 Court's reference of the legal standard, did you appear
22 to -- did you find anything in error in the statement of
23 the legal standard that was to be applied? Not regarding
24 how you think the facts may have applied but rather the
25 legal standard was an error?

MATTHEW KAPPEL-CROSS BY MR. MAYE

1 A So you're asking me for what my thought was or
2 what I said on the record?

3 Q What The Court said in its ruling in applying
4 the law as legal standard, did you identify anything in
5 error with the law that The Court cited?

6 A Well, all I can tell you is that The Court
7 disagreed with me. So I disagreed with what The Court
8 decided. And therefore, I disagreed with The Court's
9 reasoning in how it applied 404(b) in admitting this
10 evidence.

11 Q But going back to the -- did you identify any
12 legal standard error on part of The Court?

13 A Well, I'm not sure how else I can answer it.
14 You know, when we all know what 404(b) is, we all know
15 language of 404(b).

16 Q Can you provide that to The Court today?

17 A I don't have my evidence book. So if you want
18 to hand me a evidence book I can read it. But we all --
19 we all know the 404(b) evidence, rule of evidence, 404(b),
20 and I think The Judge misapplied it. I did not believe it
21 should come in. And I did not agree with his decision.

22 Q Would you have any reason to disagree if The
23 Court said, I find clearly in this instance that the
24 similarities outweigh the dissimilarities in the case?
25 Would you have any reason to say that that was not what

MATTHEW KAPPEL-CROSS BY MR. MAYE

1 was stated by The Court?

2 A I mean, that might be what I would disagree
3 with, you know. If that's what The Court -- that's what
4 The Court said. I think I was arguing that the
5 similarities weren't sufficient.

6 MR. MAYE: And just for The Court's record,
7 that's on Page 90 of the transcript of the record.

8 BY MR. MAYE:

9 Q In your opinion -- well, one further question
10 before I move on from that particular topic. Are you ware
11 of the case of State vs. Scott, 405 S.C. 489?

12 A Is that the case subsequent to our trial that
13 amplified or modified the 404(b)?

14 Q It is not, this is a 2013 case.

15 A Okay. I'm not, you know, I don't have that in
16 front of me, I don't know it.

17 Q Okay. Would you have any reason to disagree
18 that that case cites Wallace and says that the close
19 degree of similarity is determined when there are
20 similarities that outweigh the dissimilarities? Would you
21 have any reason to disagree with that?

22 A I don't think I can answer that question. If
23 you want me to -- if you want to take a break and I can
24 read these opinions, I can do that and may be come back
25 and answer them for you.

MATTHEW KAPPEL-CROSS BY MR. MAYE

1 Q That's all right. When the -- when the motion
2 was done and the ruling was given, did you include in your
3 opening statement, reference to the testimony that would
4 be coming in?

5 A I can't remember, I'm sorry.

6 Q If I were to suggest to you that you did, would
7 have any reason to disagree with that?

8 A I would simply rely on the transcript, I'm
9 sorry, I don't remember.

10 Q Do you have any recollection that The State also
11 referenced the testimony of C.R. as part of its opening
12 statement?

13 A Once again, I rely on the transcript, I can't
14 remember.

15 Q All right. Just some basic information, when
16 were you -- were you assigned or hired as private counsel?

17 A I was retained.

18 Q Retained. Do you recall when you were retained?

19 A I think I have it in my contract if you want me
20 to look it up. I mean, obviously, in advance of trial.
21 Many, many months in advance of trial.

22 Q You said many months in advance?

23 A Yeah.

24 Q Did you have time to prepare?

25 A Yes and we did prepare.

MATTHEW KAPPEL-CROSS BY MR. MAYE

1 MR. MAYE: One moment, Your Honor. Your Honor,
2 that's all I have at the moment. If other issues are
3 explored through other witnesses, I will reserve the
4 right to recall Mr. Kappel for those purposes.

5 THE COURT: So noted.

6 MR. MAYE: Thank you, Your Honor.

7 THE COURT: Mr. Wilkes, any redirect?

8 MR. WILKES: None, your Honor.

9 THE COURT: Thank you, Mr. Kappel.

10 THE WITNESS: So I interpret that that I am not
11 excused at this point?

12 THE COURT: At this point.

13 THE WITNESS: Okay, thank you.

14 THE COURT: Thank you, Mr. Kappel.

15 THE WITNESS: Thank you, Your Honor.

16 MR. WILKES: Your Honor, that would be our case.
17 I do have the argument in response to the questions
18 that have been asked and I would like to make some
19 arguments. This case is just that simple. There's a
20 missed objection and on appeal he was denied.

21 THE COURT: Let me hear, does The State have any
22 other witnesses?

23 MR. MAYE: If that's the extent of The
24 Applicant's case, then we have no need to call anyone
25 further.

1 THE COURT: All right. Well each side can make
2 a summation. Start with The State and give
3 Mr. Wilkes the last argument.

4 CLOSING STATEMENT

5 MR. MAYE: May it please the Court, Your Honor.
6 Your Honor, to the single issue that's been brought
7 to The Court's attention, trial counsel identified
8 the issue, raised the correct argument and argued it
9 strenuously. The trial court understood the argument
10 under 404, recognized the clear and convincing
11 standard within the record. Recognized the
12 controlling authority at that time; which is what
13 controls matters under the Wallace case for the
14 admissibility of a common plan or scheme. And it
15 ruled that it had -- it, clearly, had similarities
16 that outweighed the dissimilarities.

17 And under the existing case law, at the time,
18 The State v. Scott, uses that precise phrase for its
19 interpretation of law. So that finding was proper
20 under the law. We would argue that counsel's
21 disagreement is strictly one on how he weighs the
22 facts versus how The Court weights the facts.

23 But more to the point, there was simply nothing
24 further to object, at that point. The ruling was in,
25 The Court made the proper legal standard, The Court

1 weighed the factors. There wasn't a need for a
2 further objection. And the need for contemporaneous
3 objection is only when there is not a final ruling on
4 a matter. And in State vs. Wiles, Supreme Court case
5 of 2009, 679 S.E.2d 172, the Supreme Court said that
6 that, In instances -- and it gave two reasons.

7 In instances where there is reason to believe
8 that the ruling was final, there isn't a need for a
9 contemporaneous objection. And The Court cited
10 first, in that case, that The Court had commented
11 upon the disputed evidence at the outset of trial.
12 And it also commented on the fact that The State
13 relied upon the ruling and cited to the disputed
14 evidence as part of its opening statement.

15 In this case, both The State and The Defense
16 cited to C.R.'s disputed testimony in their opening,
17 demonstrating that everyone in the court and both
18 parties felt that this was a final ruling. So there
19 wouldn't be a need for a contemporaneous objection.
20 In addition to that, there was a, as is commonly done
21 at the end of The State's case in chief, a renewed
22 objection to all motions made. So counsel was not
23 ineffective in not furthering this objection effort.
24 Any further objection would be futile.

25 One moment, Your Honor, just make sure I covered

1 all my bases.

2 Moreover, in the topics of when contemporaneous
3 objections are necessary, that issue is almost always
4 linked to whether there is a need -- if there's
5 something substantial that has changed, that might
6 have impacted The Court's ruling at a later point in
7 trial. And, in this case, both witnesses were fully
8 proffered before The Court. It heard everything and
9 nothing changed between -- substantively between what
10 was done pretrial versus what was presented at trial.
11 There was no basis for a different ruling later on.
12 And for that reason, we would argue that the ruling
13 was final.

14 So in summation, the ruling was final, there was
15 no need for an objection. And it's certainly not
16 ineffective assistance to not further object under
17 the circumstances and under the reliance that the
18 court and both parties relied upon.

19 THE COURT: Thank you.

20 MR. MAYE: Thank you.

21 THE COURT: Mr. Wilkes.

22 CLOSING STATEMENT

23 MR. WILKES: Your Honor, I think the case law
24 and the appellate rules are very clear, I believe I
25 cited them in the memo. You cannot raise an issue on

1 appeal unless there's a contemporaneous objection
2 made at the time offered evidence in front of the
3 jury. There is case law and I won't look for it but
4 I cited it in my memorandum. That says quite
5 clearly, it's a suppression motion, objection is
6 suppression motion raised in the suppression issue is
7 insufficient to preserve the issue for appeal. There
8 must be a contemporaneous objection at the time the
9 evidence is offered.

10 Mr. Kappel didn't make that objection. And that
11 was just an oversight, it happens a lot. When you
12 think you argued something and presented it and then
13 it comes back up that it wasn't. It's one of those
14 things that happens. But the rule is very clear and
15 the case law is absolutely crystal clear, he could
16 not appeal that issue if it was not preserved. The
17 argument -- and that is the essence of that PCR
18 issue.

19 He's entitled to be able to have his direct
20 appeal on that issue through the PCR process. We've
21 included the legal arguments, as The Court can see,
22 that it is a valid argument. And what I've done is I
23 have made an argument in 2016, during that time
24 period of that trial, I have made that argument,
25 under Wallace. And I think The Court can see, if it

1 reviews the memorandum and looks at those cases, I
2 think The Court will see that even the argument under
3 Wallace would have prevailed. Show have prevailed.
4 And that the trial Judge was in error.

5 But whether we today think that's the case, does
6 not stop the fact that -- or does not change the fact
7 that he's entitled to that direct appeal on that
8 issue. I briefed it as far as the old law, which was
9 Wallace. And even under Wallace, if you look at the
10 facts -- and I won't recite all the facts between the
11 two victims, the victim was the 404(b) witness. But
12 they are vastly different. There is virtually
13 nothing wrong. And even under Wallace, he would have
14 prevailed on appeal.

15 The most interesting thing in the case is that
16 had his issue been preserved and he appealed at that
17 time, Wallace was reversed by State v. Parker. While
18 his appeal was pending. So he would have had the
19 benefit of arguing State, I think State v. Parker,
20 which reversed Wallace and just said that's --
21 Wallace is just bad, bad law. It got so far away
22 from State v. Lyle that Judge Few's opinion is very
23 detailed as to how bad Wallace got in its progeny and
24 the reason it was reversed.

25 So if his issue had been preserved so that it

1 could be appealed, he would have no doubt, absolutely
2 no doubt, prevailed in his direct appeal because he
3 would have had the benefit of State v. Parker; which
4 was issued prior to his direct appeal and remittitur.
5 So it's just a simple, simple issue. I think from a
6 PCR standpoint. Objection -- the contemporaneous
7 objection was missed, that was presented for direct
8 appeal.

9 We submit that the direct appeal would have
10 prevailed even under Wallace. And that's arguable.
11 That would be a close call given how bad Wallace was
12 and how out of control it had gotten. But still,
13 that would have been a issue for the appellate court
14 that he was entitled to raise. And he certainly
15 would have prevailed on State v. Parker.

16 THE COURT: Was is Parker or Perry?

17 MR. WILKES: Perry. May have been Perry, I'm so
18 sorry. It's in my memo, if I try to fumble for it,
19 look for it, I'll get even more confused.

20 THE COURT: It starts with a P.

21 MR. WILKES: It starts with a P.

22 THE COURT: Okay.

23 MR. WILKES: But once that case came out, he was
24 still pending on appeal. He would have prevailed.
25 He would have a new trial. So for the purpose of the

1 PCR today, missing that contemporaneous objection is
2 what has been the issue for being appealed. That's
3 why he should have the PCR granted to allow them to
4 present that issue.

5 THE COURT: Thank you, Mr. Wilkes.

6 MR. WILKES: Thank you, Judge.

7 MR. MAYE: Your Honor, may I have a brief reply.

8 THE COURT: I gave him the last word, he has the
9 burden of proof. I understand the issue. And what
10 I'm going to do is I'm going to look at these cases
11 and read the transcript. So I'm going to take this
12 under advisement. And I'll have my law clerk send
13 you a decision.

14 MR. WILKES: Thank you, Your Honor.

15 MR. MAYE: Your Honor, would it be permissible
16 to file for this trial brief?

17 THE COURT: If you have any additional cases or
18 anything you'd like for me to look at, I'll let you
19 submit that.

20 MR. MAYE: Just strictly application standard
21 language--

22 THE COURT: That's fine.

23 MR. MAYE: Thank you, Your Honor.

24 THE COURT: And, Mr. Wilkes, if you have any
25 additional law or anything in response, you can send

1 me that as well.

2 MR. WILKES: Thank you, Your Honor. But I think
3 13 pages is about the best I can do.

4 THE COURT: Okay, okay. Well, I'll give you
5 that opportunity.

6 MR. WILKES: Thank you.

7 THE COURT: If The State wants to submit an
8 additional brief, that's fine.

9 MR. MAYE: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
17th day of January, 2024.

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

July 16, 2024

*April P. Herron*_____

APRIL P. HERRON, Court Reporter

PCR PETITION FOR WRIT APPENDIX PAGE 52

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	2022-CP-23-00973
	)	
Dwayne C. Tallent, 00357180	)	
Applicant	)	PCR HEARING MEMORANDUM
v.	)	OF THE APPLICANT
	)	
State of South Carolina,	)	
Respondent.	)	

I. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE A CONTEMPORANEOUS OBJECTION AT THE TIME OVERLY PREJUDICIAL EVIDENCE OF OTHER BAD ACTS WAS OFFERED.

Trial counsel moved to suppress the testimony of a 404(b) witness on the basis that the testimony failed to meet the test under State v. Lyle, and was overly prejudicial. T. 42. T. 76-77.

A suppression hearing was held outside of the presence of the jury at which the prosecutrix testified as well as the 404(b) witness. T. 49-91.

The prosecutrix testified when she was around five she went in his room and jumped on top of him while he was in bed and he began rubbing genitals up against me through the blanket while she was clothed. She testified that Applicant would touch her with hands and rub up against her. This progressed to oral sex and full penetration when she was nine. On couch he rubbed his penis between her legs. When she was fourteen years old, she claimed he fully penetrated her rectum, that he would masturbate in front of her and use his fingers to penetrate her. There was him touching her genitals and her touching his and him masturbating in front of her. That they performed oral sex on each other “dozens and dozens and dozens” of times T. 62. The prosecutrix testified that the overwhelming majority of occasions were digital and penile

penetration. She also testified that they “French” kissed. Most of this occurred in the Applicant’s bedroom and once in her room when she was fourteen. T. 49-68.

The 404(b) witness testified that the Applicant touched around her with his hand, private parts, her vagina, and on backside although not as much. That the touching occurred both under and over her clothes. She testified that the Applicant’s fingers never went inside of her and that the Applicant never touched her with his penis. The touching occurred in both her parent’s and her room. She also testified that she asked him about kissing one time and that he showed her. She testified that the Applicant told her that nobody would understand the love he had for her. T. 49-75.

Given the vast differences in the testimony trial counsel properly argued that the requirements of Rule 404, SCRE and State v. Lyle had not been met to allow what was clearly no more than propensity evidence. Counsel correctly cited State v. Tutton and State v. Rogers, arguing that there was a lack of a close degree of similarity between the acts described by the prosecutrix and those of the 404(b) witness. At the suppression hearing the Court found only that the “similarities outweigh the dissimilarities”. T. 90. (This was error as even Wallace required “a close degree of similarity” as a threshold for admissibility.) When the testimony of the 404(b) witness was presented before the jury trial counsel failed to make a contemporaneous objection and renew his argument from the suppression hearing. (330-331). The issue was therefore not preserved for appeal. “Generally, a motion *in limine* is not a final determination; a contemporaneous objection must be made when the evidence is introduced.” State v. Jones, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021). “To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court.” Burke v. AnMed Health, 393

S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011)..." State v. Cantrell, 2023-UP-383, Appellate Case 2021-001144 (S.C. App. Dec 06, 2023). The failure to make a contemporaneous objection at the time the evidence was offered was therefore error on the part of trial counsel. The first prong of Strickland is met. The second prong of Strickland requires a showing of prejudice. Prejudice is established by an analysis of the issue had it been raised and preserved for direct appeal.

The 2017 argument under Wallace:

A. THE COURT ERRED IN ALLOWING EVIDENCE OF PRIOR BAD ACTS UNDER STATE V. LYLE, 125 S.C. 406, 118 S.E. 803 (1923), RULE 404(b), SCRE, AND STATE V. WALLACE.

In this case the Appellant is charged with multiple counts of criminal sexual conduct and lewd act involving a single individual, the prosecutrix in this case. Over the defense's objection the state introduced evidence of other bad acts with a second individual, who was about the same age as the prosecutrix. Over the defense objection, the testimony of the witness was allowed as other bad act evidence under the common plan or scheme exception to Lyle and Rule 404. This was error.

Generally, "evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged." Lyle, 125 S.C. at 415, 118 S.E. at 807. However, there are certain well-established

exceptions to this general rule:

[E]vidence of other crimes is competent to prove the specific crime charged when it tends to establish, (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; (5) the identity of the person charged with the commission of the crime on trial. Lyle, 125 S.C. at 415, 118 S.E. at 807; Rule 404(b), SCRE (“Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.”). State v. Fonseca, 681 S.E.2d 1, 383 S.C. 640 (S.C. App., 2009).

Motive was not made a material issue at trial and the occurrence of physical contact was denied by the defendant. The introduction of the prior bad act is therefore unsupported under the motive and intent exceptions provided in Lyle and Rule 404. State v. Fonseca, 681 S.E.2d 1, 383 S.C. 640 (S.C. App., 2009). Likewise, neither mistake, accident nor identity were at issue in the trial. The introduction of the prior bad act evidence is therefore equally unsupported by related exceptions under Lyle or Rule 404. Common plan or scheme was the only

exception argued by the state as its basis for the admission of the Rule 404 evidence.

Common Plan or Scheme

[E]vidence of other crimes is competent to prove the specific crime charged when it tends to establish a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others. Lyle; Rule 404(b). "When determining whether evidence is admissible as [a] common scheme or plan [under Rule 404(b)], the [circuit] court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity." Wallace, 384 S.C. at 433, 683 S.E.2d at 277-78. "A close degree of similarity exists when the similarities outweigh the dissimilarities." State v. Scott, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (Ct. App. 2013) (*quoting Wallace*, 384 S.C. at 433, 683 S.E.2d at 278).

"The common scheme or plan exception 'is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged ... is held admissible as tending to show continued illicit intercourse between the same parties.'" Kirton, 381 S.C. at 10, 671 S.E.2d at 117 *citing State v. Whitener*, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955). Here the other bad act evidence is not between the same parties, instead it involves a third party, and is

alleged to have occurred prior to the offenses charged. Other than the occurrence of touching, the alleged offenses and the other bad act evidence bear little material resemblance.

Due to the lack of substantial similarities in this case between the testimony of the prosecutrix and the 404(b) witness, the probative value of the other bad act evidence is slight. *See State v. Kirton*, 381 S.C. 7, 9, 671 S.E.2d 107, 117 (Ct.App.2008) (holding a common scheme or plan requires similarity between the prior act and the charged act that increases the probative value of the evidence); *State v. Aiken*, 322 S.C. 177, 180, 470 S.E.2d 404, 406 (Ct.App.1996) (noting the more similar the prior act is to the charged act, the more likely the evidence will be admissible); *State v. McClellan*, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (finding prior bad acts are admissible when close similarity between the acts enhances the probative value of the evidence so as to outweigh the prejudice).

In this case there are no more than generic similarities between the offenses for which the defendant was charged and those alleged by the 404(b) witness. Other than some similarity generally in the allegation of “touching” there the allegations of the prosecutrix and 404(b) witness are nothing alike. The connection between the prior bad act and the crime must be more than just a

general similarity. State v. Timmons, 327 S.C. 48, 488 S.E.2d 323 (1997); State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct.App.2004); State v. Stokes, 279 S.C. 191, 304 S.E.2d 814, 815 (1983). Generic similarities fail to meet the standard necessary for admissibility. A *close degree of similarity* or connection between the prior bad act and the crime for which the defendant is on trial is required to support admissibility under the common scheme or plan exception. State v. Cheeseboro, 346 S.C. 526, 546, 552 S.E.2d 300, 311 (2001); State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct.App.1999) *emphasis added*.

The prior bad acts alleged through the testimony of the witness fail to establish any common scheme or plan, much less raise to the level of *modus operandi* as argued by the state. “Clear and convincing evidence of prior crimes or bad acts that is logically relevant is ... admissible to prove ... a common scheme or plan that embraces several previous crimes so closely related to each other that proof of one tends to establish the other.” State v. Moultrie, 316 S.C. 547, 554, 451 S.E.2d 34, 39 (Ct.App.1994). Here, the prior bad acts fail to do more than establish evidence of propensity and bad character, which is clearly impermissible: “It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual.” State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987); *see also* State v. Beck, 342 S.C.

129, 536 S.E.2d 679 (2000) (finding that evidence of prior crimes or bad acts is inadmissible to prove bad character of defendant or that he acted in conformity therewith).

In Fonseca the court rejected the State's argument that two incidents that occurred in Fonseca's marital home while his wife was in the other room, demonstrated that the Fonseca had a common scheme or plan to attack the victim while his wife was not present or was in the other room. Fonseca, which was adopted by the supreme court as well reasoned¹, appeared to be the first sign of a slowing of the Wallace juggernaut. Despite the court's ruling in Fonseca, the rule of Lyle and 404 against the use of propensity evidence has continued to be eroded, virtually to the point of non-existence in criminal sexual abuse cases, especially those involving minors. As pointed out by the dissent in Wallace:

[O]ur cases holding that evidence of other acts of sexual misconduct is admissible in a trial for criminal sexual conduct with a minor as a "common scheme or plan" under Rule 404(b), SCRE, have, in effect, created an exception to the rule's exclusion of propensity evidence. *Compare, e.g., Vogel v. State*, 315 Md. 458, 554 A.2d 1231 (Ct.App.1989). We have repeatedly held in non-sexual offense cases that, "the mere presence of similarity only serves to enhance the potential for prejudice," State v. Tuffour, 364 S.C. 497, 613 S.E.2d 814 (Ct.App.2005) vacated on other grounds 371 S.C. 511, 641 S.E.2d 24 (2007) internal citations omitted, yet under the majority's view, similarity is the touchstone of admissibility in child sexual offense cases. In my view, if we are to permit the admission of propensity evidence in these types of cases, then we should propose a new

¹State v. Fonseca, 393 S.C. 229, 711 S.E.2d 906 (S.C. 2011).

rule of evidence, and encourage public comment. *See e.g.* Rules 413 and 414, Fed.R.Evid.; Rule 404(c), Az. R. Evid. In light of the controversy engendered by these rules in other jurisdictions,⁷ I believe that thorough scrutiny is warranted.

State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) *Justice Pleconies, dissenting*.

In this case, the 404(b) testimony was nothing more than bad character and propensity evidence. Any similarities were merely generic and far outweighed by dissimilarities between the facts surrounding the prosecutrix and the 404(b) witness. The State never argued that the testimony of the 404(b) witness proved anything. It just argued that the 404(b) evidence was “very similar” and therefore admissible. It never argued nor articulated how the 404(b) testimony established some unique plan or scheme necessary to prove motive, intent, etc., under Lyle. If there was some pattern or scheme of manipulation of the prosecutrix, there was no evidence that the 404(b) witness was similarly manipulated. What it did show was that the defendant had touched a young girl before, therefore allowing the jury to infer that the defendant had the propensity to commit the offenses charged. In any other type of case, evidence of this nature would have immediately been judged too dissimilar under Lyle and Rule 404.

Even if the other bad act evidence were admissible under Rule 404(b), the testimony of the 404(b) witness should have nevertheless been excluded, as its probative value was substantially outweighed by the danger of unfair prejudice

to the defendant. State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); Beck, 342 S.C. at 135-36, 536 S.E.2d at 683; *see also* Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”). Unfair prejudice means an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one. State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct.App.). State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (S.C. App., 2005) The testimony of The witness was unnecessary to any element in the state’s case and overly prejudicial. As a result, the 404(b) evidence in this case should have been excluded under both Rules 404 and 403. Its admission was therefore error.

Harmless Error Analysis

To deem an error harmless, this court must determine “beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.” Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993) (*citing Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)) (*internal quotations omitted*). Due to the prejudicial tendency of admitting prior bad act testimony it cannot be said that beyond a reasonable doubt the verdict was not affected by the evidence. *See Fosneca, supra*. Therefore, the erroneous admission of evidence

under 404(b) in the defendant's case constitutes reversible error. Failure to raise the issue at trial contemporaneous with its offer constitutes error. Because the 404(b) evidence and the crime charged failed to show "a close degree of similarity" Tallent would have either prevailed in having the evidence excluded or would have prevailed on direct appeal. The outcome of the case would have been different and therefore both prongs of Strickland v. Washington have been met.

B. STATE V. PERRY WOULD BE CONTROLLING AND REQUIRES REVERSAL.

In addition to the viability of the argument under Wallace, had the issue been properly preserved the Applicant's case would have been pending when Wallace was reversed, making the admission of the 404(b) evidence in this case clearly reversible error. Wallace was reversed by State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (S.C. 2020). Perry was based facts so similar to the Applicant's case that Perry would be controlling in Applicant's case, requiring a reversal. In Perry the Court noted that: "In any criminal case, however, evidence the defendant committed similar criminal acts has the inherent tendency to show this propensity. In the words of Rule 404(b), it "prove[s] the character of [the] person" and "shows[s] action in conformity" with that character. Perry. The Perry Court recognized that historically, evidence of other crimes required a logical relevancy

or connection between the other crime and some disputed fact or element of the crime charged. Perry. Exactly as in the present case, the State in Perry did not offer any argument that the stepdaughter's testimony served a legitimate purpose, or that a logical connection exists between Perry's abuse of his stepdaughter and the current charges. The State simply relied on Wallace, and argued what it called substantial similarities between the two crimes outweighed any dissimilarities. Therefore, the State argued, the stepdaughter's testimony was admissible. While the Court in Perry found that there were similarities between the crime charged and the 404(b) evidence, it reasoned that:

Rather, in our significant collective experience dealing with crimes of this nature, a very high percentage of sexual crimes against children are committed just like Perry's alleged crimes: by father figures, in the home, in a bedroom, beginning in the prepubescent years. The fact Perry's crimes fit this general pattern does not give Perry a "monopoly" on his criminal method.

State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (S.C. 2020).

Perry was filed May 6, 2020. The direct appeal in the Applicant's case was not rule on by the court of appeals until June 10, 2020, after Perry. The remittitur was not entered in the Applicant's case until March 15, 2021. The Applicant would have been able to rely on Perry, which is almost identical in facts, in his direct appeal had the issue been properly raised and preserved for appeal.

The failure to properly raise and preserve the issue constitutes error. But

for that error the outcome of the Applicant's case would have been different. The two prong test of Strickland v. Washington has therefore been met.

Respectfully submitted,
s/ J. Falkner Wilkes
J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalknerwilkes@gmail.com
Counsel for Applicant,
Dwayne C. Tallent

January 17, 2024.

PCR PETITION FOR WRIT APPENDIX PAGE 65

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Dwayne C. Tallent, #357180,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2022-CP-23-00973
)

) **POST-HEARING MEMORANDUM**
) **OF RESPONDENT**
)
)
)
)

On January 17, 2024, Applicant proceeded to an evidentiary hearing before the Honorable Judge R. Scott Sprouse. Following the conclusion of the hearing, the Court granted Respondent an opportunity to file an accompanying memorandum as to the grounds for denial of relief. Respondent herein submits this Post-hearing Memorandum of Respondent, and argues as follows:

ARGUMENT

Though Applicant did not testify himself, he put forth the testimony of trial counsel Matthew Kappel. The singular issue for which Mr. Kappel was questioned and the sole issue alleged at the hearing was whether counsel was constitutionally ineffective under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), for failing to preserve for appeal the issue of the trial court's admitting C.R.'s testimony pursuant to Rule 404(b). Arguments were made by both parties to this issue. Applicant argued that the failure to make a contemporaneous objection following the pretrial ruling was conclusively a failure to preserve the issue, and in light of the change in the law that came *after* trial under *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020), that alleged error was prejudicial under *Strickland*.

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Respondent argued that the ruling was not contrary to the controlling law *at the time* under *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009), overruled by *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020), and that the trial court's ruling was in keeping with other precedent about the interpretation and application of *Wallace*. See *State v. Scott*, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (Ct. App. 2013). In cross examination, Respondent cast the issue as one being merely a disagreement as to the weighing of the factors, not an error of law by the court, and counsel are not expected to be clairvoyant to future changes in the law. See e.g. *Chappell v. State*, 429 S.C. 68, 79, 837 S.E.2d 496, 501 (Ct. App. 2019). As such, there was no basis in which to renew an objection and that further objection would have been futile.

Respondent also demonstrated that both the solicitor and trial counsel relied upon the ruling of the court as a final ruling on the matter when they referenced C.R. and the purpose of her testimony to the jury during opening arguments. Respondent noted that in the context of determining the preservation of a pretrial issue on appeal, the South Carolina Supreme Court has identified a party's reference to a pretrial motion issue during opening statements as a factor to consider in judging the finality of a ruling. See *State v. Wiles*, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009). As both parties here made such references during their opening arguments, the ruling was considered final by the parties and the court, and no further objection was needed.

Applicant's argument for relief is based entirely upon a *presumption* of a lack of preservation of the appellate issue. That presumption is faulty for multiple reasons, each leaving Applicant unable to meet his burden of proof.

First, there is no appellate court ruling definitively establishing the claim as unpreserved, and as discussed above, there is a well-grounded argument that the claim would have been found preserved had it been raised. Applicant cannot satisfy his burden by presuming otherwise.

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Second, appellate counsel are not prohibited from raising claims that they think may be unpreserved, and Applicant cannot guarantee that the State would have argued a lack of preservation of the issue as a defense had the issue been raised.

Third, Applicant bears the burden of proof in post-conviction relief matters, and he has failed to demonstrate that this alleged 404(b) claim was not raised on appeal *because* appellate counsel believed it to be unpreserved. Applicant has failed to call and examine appellate counsel as to the reason why this issue was not raised, and in the absence of such testimony or evidence, the court cannot speculate as to what an unrepresented witness might have said. Such is definitively insufficient for establishing prejudice under *Strickland*. See *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 810 (1998).

CONCLUSION

WHEREFORE, having set forth its arguments at the evidentiary hearing and supplemented those arguments by the above memorandum, Respondent submits that post-conviction relief should be denied. Petitioner has demonstrated neither error nor resulting prejudice under *Strickland*.

(Signature block on following page)

PCR PETITION FOR WRIT APPENDIX PAGE 68

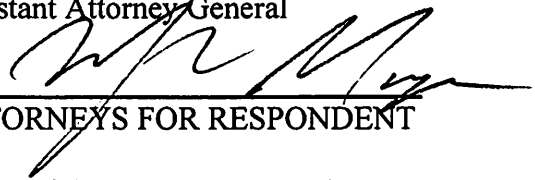
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3131

January 26, 2024

PCR PETITION FOR WRIT APPENDIX PAGE 69

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Dwayne C. Tallent, #357180,	)	Case No.: 2022-CP-23-00973
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

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

J. Falkner Wilkes, Esq.
248 Deerwood Park Drive
Oakland, MS 38948

DATED: this 26th day of January, 2024.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
W. Joseph Maye



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org

March 4, 2022

Office of the Attorney General
PCR Division
P.O. Box 11549
Columbia, SC 29211

Dear Assistant Attorney General:

Enclosed please find PCR application 2022-CP-23-0973 for Dwayne C. Tallent #357180. He was found guilty of four charges and four were dismissed. Related case documents will be emailed to you.

<u>Warrant</u>	<u>Indictment</u>	<u>Disposition</u>	<u>Disposition Date</u>
2014A2330208081	2014-GS-23-11873	Trial Guilty	07/19/2017
2014A2330208082	2014-GS-23-11874	Trial Guilty	07/19/2017
2014A2330208083	2014-GS-23-11875	Trial Guilty	07/19/2017
2014A2330208085	2014-GS-23-11877	Trial Guilty	07/19/2017
2014A2330208084	2014-GS-23-11876	Dismissed	07/20/2017
2014A2330208086	Not Indicted	Dismissed	07/20/2017
2014A2330208087	Not Indicted	Dismissed	07/20/2017
2014A2330208088	2014-GS-23-11872	Dismissed	07/20/2017

Sincerely,

Mary Troup
Administrative Assistant
Criminal Records
864-467-8768
mtroup@greenvillecounty.org

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

DWAYNE C. TALLENT, (00357180)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-23- 00973

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
4460 Broad River Road Columbia, SC 29210 (803) 896-2234
2. Name and location of Court which imposed sentence General Sessions, Greenville
County, South Carolina
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-23-11873 Criminal Sexual Conduct with a Minor 1st Degree
 - (b) 2014-GS-23-11874 Contributing to the Delinquency of a Minor
 - (c) 2014-GS-23-11875 Lewd Act Upon a Child
 - (d) 2014-GS-23-11877 Criminal Sexual Conduct with a Minor 2nd Degree

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 19, 2017 - 30 years concurrent
 - (b) July 19, 2017 - 3 years concurrent
 - (c) July 19, 2017 - 15 years concurrent
 - (d) July 19, 2017 - 20 years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. South Carolina Supreme Court
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. affirmed
 - ii. petition for certiorari denied
 - iii. _____
 - (c) the date of each such result:
 - i. June 10, 2020
 - ii. March 9, 2021
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Opinion No. 5729
 - ii. Order dated March 9, 2021
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to properly prepare and investigate the case. Trial counsel failed to make necessary objections to preserve issues for appeal. Trial counsel failed to make necessary motions to suppress evidence and testimony. Trial counsel failed to adequately cross-examine witnesses. Failure of counsel to communicate all plea offers timely and to give accurate and adequate advice in regard to said offers. Trial counsel failed to conduct adequate discovery, offer relevant evidence, make adequate argument to the jury and present an adequate defense.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Matthew J. Kappel, 114 Whitsett Street, Greenville, SC 29601
 - ii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601
 - iii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeal
 - iii. PCR

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

To have the conviction and sentence set aside and reversed and a new trial granted.

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

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

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

Dwayne Tallent

SWORN to and subscribed before me this 9th
day of February, 2022

Konzen Johnson (L.S.)
Notary Public

My Commission Expires: 8/4/2024

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

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

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

Dwayne Tallent
Applicant

SWORN or affirmed to and subscribed before me this

9th day of February, 2022

Kayla Robinson
Notary Public

My Commission Expires: 8/4/2024

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

Dunne Tallent

Plaintiff(s)

vs.

State

Defendant(s)

Submitted By: J. Falkner Wilkes
Address: 114 Whitsett
Greenville SC 29601

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2022-CP-23-00943

SC Bar #: 12893
Telephone #: 864 421 4618
Fax #:
Other:
E-mail: j.falknerwilkes@gmail.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature: J. Falkner Wilkes

Date: 022222

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Dwayne C. Tallent,)
Defendant.)

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(s). 2014A2330208081,
2014A2330208082, 2014A2330208083,
2014A2330208084,, 2014A2330208085,
2014A2330208086, 2014A2330208087,
2014A2330208088

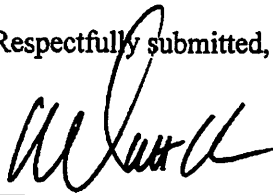
Motion For Bond

2014 NOV 14 PM 9:40

Defendant was scheduled for a bond hearing in the Circuit Court on Friday, November 14, 2014 but withdrew the motion because the Solicitor's Office indicated that new charges were likely to be brought against the Defendant. The Defendant remains incarcerated in the Greenville County Detention Center for the warrants listed above with NO BOND.

It appears now, the parties cannot agree on setting bond, and therefore, the defendant by and through his attorney move this Court for bond.

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC SCB 15390
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Greenville, SC
November 20, 2014

ARREST WARRANT

PCR PETITION FOR WRIT APPENDIX PAGE 80

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

2014A2330208084

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-14-117781

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: _____ SSN: _____
 Sex: M Race: W Height: 6 Weight: 250
 DL State: SC DL #: _____
 DOB: _____ Agency ORI #: SC0230000
 Prosecuting Agency: Greenville County Sheriffs Office
 Prosecuting Officer: W W Richter - 0724
 Offense: Sex / Incest

Offense Code: 0090
 Code/Ordinance Sec: 16-15-0020

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant on _____

Signature of Constable/Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
 305 E. North Street
 Greenville County Courthouse
 Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richterbeing duly sworn deposes and says that defendant Dwayne C Tallentdid within this county and state on or about 6/6/1995State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Incest

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

That the Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence that implicates the
 defendant in this crime. That the defendant did knowingly and wilfully have carnal sexual intercourse with the victim, a minor child
 between 1992 and 2003. That the victim is the defendant's step-daughter or that they are otherwise related as prohibited by this
 statute. This incident did occur in Greenville County, South Carolina.

COMPUTER ENTERED

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-
 Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/1995 defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Incest

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable.
 Sworn to and subscribed before me
 on 9/2/2014

Signature of Issuing Judge (L.S.)
Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-Judge's Telephone (864)963-3457

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

BAIL set by

PCR PETITION FOR WRIT-APPENDIX PAGE 81



Judge Wes
on 10-30-14
Type and Amount: 1000000
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

Clerk of Court
Greenville County

NOV 03 2014

RECEIVED

PCR PETITION FOR WRIT APPENDIX PAGE 82

GCDC/SCDC

General Sessions Tracking Sheet Indictment # 0000GS23

Name: Tallent, Dwayne C

Warrant/Ticket #: 2014A2330208084

KA:

Date of Arrest: 10/30/2014

Addr: 430 Oaklawn Road
Pelzer, SC 29669

Date of Offense: 06/06/1995

Date Rcv by Clerk 11/04/2014

Magistrate: Cagle, Diane Day

Counts: Code: 0090/Sex / Incest

SSN#

Sex: M Race: W

DOB:

DL# SC/

Indictment # 0000GS23

2014-GS-23-11876

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 7/20/17

FILED

JUL 21 2017

Clerk of Court
Greenville County

- Disposition
1. Guilty plea
 2. Trial - guilty
 3. Trial - not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain: Prosecutorial discretion

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: Matt Kappel

Solicitor: Mark Mager 64155

Counts: _____ Code: _____

Sentence: _____

PCR PETITION FOR WRIT APPENDIX PAGE 83

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER

2014A2330208084

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2014

THE STATE

vs.

DWAYNE C. TALLENT

Indictment for

0090

INCEST

VIOLATION § 16-15-0020

FILED

DEC 29 2014

**Clerk of Court
Greenville County**

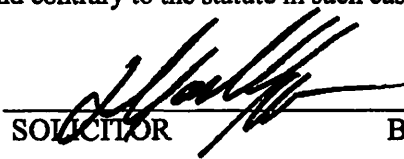
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
INCEST

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and December 31, 2003,
have carnal intercourse with E. F. G. who is within the degree of relationship prohibited by §16-15-20 (1) or (2).
This is in violation of §16-15-20 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

BAR # 64155

2014A2330208086

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-2014-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: SSN: [REDACTED]

Sex: M Race: W Height: 6 Weight: 250

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: W W Richter - 0724

Offense: Retired / No Longer Used / Sex / Lewd Act,
committing or attempting lewd act upon child

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant onSEP 5 14 AM '14
Dwayne Tallent
10-30-14
M. M. [REDACTED] 511/4336

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Cagle J.M. Smith

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

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ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter

who

being duly sworn deposes and says that defendant Dwayne C Tallent

did within this county and state on or about 6/6/2000

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16
(June 4, 1996)I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:The Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence that implicates the defendant
in this crime. That between 1998 and 2003 the defendant did wilfully and lewdly commit lewd or lascivious acts upon or with the
body, or its parts, of the victim, a person under sixteen years of age. This incident did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/2000 defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below.DESCRIPTION OF OFFENSE: Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16
(June 4, 1996)Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 9/2/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone (864)963-3457

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit



Judge Wll
 on 10 30 14
 Type and Amount: 1003000
 Name of Surety: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Telephone: _____

Name: _____
 Address: _____

Decision: _____

Name: _____
 Address: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Telephone: _____

Name: _____
 Address: _____

Disposition: _____

Telephone: _____

Name: _____
 Address: _____

Sentence: _____

Telephone: _____

JURORS

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

CODEFENDANTS

RECEIVED
 NOV 03 2014
 Clerk of Court
 Greenville County

PCR PETITION FOR WRIT APPENDIX PAGE 87

GCDC/SCDC

General Sessions Tracking Sheet Indictment # 0000GS23

Name: Tallent, Dwayne C

Warrant/Ticket #: 2014A2330208086

KA:

Date of Arrest: 10/30/2014

Addr: 430 Oaklawn Road
Pelzer, SC 29669

Date of Offense: 06/06/2000

Date Rcv by Clerk 11/04/2014

Magistrate: Cagle, Diane Day

SSN# [REDACTED]

Counts: Code: 2468/Retired / No Longer Used / Sex /
Lewd Act, committing or attempting lewd act
upon child under 16 (June 4, 1996)

Sex: M Race: W

DOB: [REDACTED]

DL# SC [REDACTED]

Indictment # 0000GS23

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 7/20/17

FILED

JUL 21 2017

Clerk of Court
Greenville County

- Disposition
1. Guilty plea
 2. Trial -- guilty
 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain: Prosecutorial discretion

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: Matt Koppel

Solicitor: L. Mark Meyer 64155

Counts: _____ Code: _____

Sentence: _____

ARREST WARRANT

2014A2330208087

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-14-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: SSN: 257-47-4001
Sex: M Race: W Height: 6 Weight: 250

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: W W Richter - 0724

Offense: Minor / Contributing to the delinquency of a minor

Offense Code: 0048

Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

PCR-PETITION FOR WRIT APPENDIX PAGE 88

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter

being duly sworn deposes and says that defendant Dwayne C Tallent

did within this county and state on or about 6/6/2000

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That the Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence that implicates the defendant in this crime. That between 1998 and 2003 the defendant did knowingly and wilfully encourage, aid, or cause the minor victim to associate with immoral or vicious persons and/or to so deport herself as to wilfully injure or endanger his or her morals or health or the morals or health of others, and/or to otherwise violate the terms of this statute. This incident did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/2000

defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me
on 9/2/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone (864)963-3457

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

BAIL set by

PCR PETITION FOR WRIT APPENDIX PAGE 89



Judge WLS
on 10-30-14
Type and Amount: RD Bond
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

RECEIVED
NOV 03 2014
Clerk of Court
Greenville County

PCR PETITION FOR WRIT APPENDIX PAGE 90

GCPC/SCPC

General Sessions Tracking Sheet Indictment # 0000GS23

Name: Tallent, Dwayne C

Warrant/Ticket #: 2014A2330208087

KA:

Date of Arrest: 10/30/2014

Addr: 430 Oaklawn Road
Pelzer, SC 29669

Date of Offense: 06/06/2000

Date Rcv by Clerk 11/04/2014

Magistrate: Cagle, Diane Day

SSN# [REDACTED]

Counts: Code: 0048/Minor / Contributing to the
delinquency of a minor

Sex: M Race: W

DOB: [REDACTED]

DL# SC/ [REDACTED]

Indictment # 0000GS23

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 7/20/17

FILED

JUL 20 2017

Clerk of Court
Greenville County

FILED

JUL 21 2017

Clerk of Court
Greenville County

- Disposition
1. Guilty plea
 2. Trial - guilty
 3. Trial - not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain: Prosecutorial discretion

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: Matt Kappel

Solicitor: L. Mark Moyer 64155

Counts: _____ Code: _____

Sentence: _____

ARREST WARRANT

2014A2330208088

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

1-14-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: SSN: 251-49-4001

Sex: M Race: W Height: 6 Weight: 250

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: W W Richter - 0724

Offense: Buggery / Buggery

Offense Code: 0038

Code/Ordinance Sec: 16-15-0120

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant on

on

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter

being duly sworn deposes and says that defendant Dwayne C Tallent

did within this county and state on or about 6/6/2002

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following, particulars:

DESCRIPTION OF OFFENSE: Buggery / Buggery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence which implicates the defendant in this crime. That on or about June 6, 2002, the defendant did carnally copulate against the natural order with another person or a beast by engaging the minor victim in anal intercourse. This incident occurred in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/2002 defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Buggery / Buggery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 9/2/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone (864)963-3457

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

BAIL set by

PCR PETITION FOR WRIT APPENDIX PAGE 92



Judge Wells
on 10-30-14
Type and Amount: 1003000
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

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Name: _____
Address: _____

Telephone: _____

CODEFENDANTS

RECEIVED
NOV 03 2014
Clerk of Court
Greenville County

PCR PETITION FOR WRIT APPENDIX PAGE 93

GCP/SCC

General Sessions Tracking Sheet Indictment # 0000GS23

Name: Tallent, Dwayne C

Warrant/Ticket #: 2014A2330208088

KA:

Date of Arrest: 10/30/2014

Addr: 430 Oaklawn Road
Pelzer, SC 29669

Date of Offense: 06/06/2002

Date Rcv by Clerk 11/04/2014

Magistrate: Cagle, Diane Day

SSN#

Counts: Code: 0038/Buggery / Buggery

Sex: M Race: W

DOB:

DL# SC/

Indictment # 0000GS23

204-0553-11872

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 7/20/17

FILED

JUL 20 2017

Clerk of Court
Greenville County

~~FILED~~

~~JUL 21 2017~~

~~Clerk of Court
Greenville County~~

- Disposition
1. Guilty plea
 2. Trial -- guilty
 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 5. Judicial Commitment
 6. Judicial Dismissal
 7. Remanded
 8. Dismissed at Prelim
 8. No Bill
 9. Failure to Appear
 10. Other

Explain: Prosecutorial Discretion

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: Matt Koppel

Solicitor: L. Mark Moyer 64155

Counts: _____ Code: _____

Sentence: _____

ARREST WARRANT

2014A2330208081

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

1-14-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: _____ SSN: _____
Sex: M Race: W Height: 6 Weight: 250DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0230000Prosecuting Agency: Greenville County Sheriffs OfficeProsecuting Officer: W W Richter - 0724Offense: Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First degreeOffense Code: 0385Code/Ordinance Sec: 16-03-0655(A)(1)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter whobeing duly sworn deposes and says that defendant Dwayne C Tallentdid within this county and state on or about 6/6/1995State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degreeI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That the Affiant is an Investigator for the Greenville County Sheriff's Office. That the affiant has documented evidence that
implicates the defendant in this crime. That when the victim was a minor child between the ages of 5 and age 10, between
approximately 1992 and 1998, the defendant did intentionally commit sexual battery against the victim on multiple occasions. That
the defendant is more than 21 years older than the victim. This incident did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-4709

COMPUTER ENTERED

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/1995 defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below.DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degreeHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 9/2/2014

Signature of Issuing Judge (L.S.)

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone

(864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit



Judge Woo
 on 10-30-14
 Type and Amount: 1000000
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

Telephone: _____

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Name: _____
 Address: _____

Telephone: _____

CODEFENDANTS

RECEIVED
 NOV 03 2014
 Clerk of Court
 Greenlee County

PCR PETITION FOR WRIT APPENDIX PAGE 96

STATE OF SOUTH CAROLINA)
COUNTY/CITY OF GREENVILLE)

Dwayne C Tallent)
Name of Defendant)

CHECKLIST

TRIAL COURT:

- ☒ GENERAL SESSIONS COURT
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT

CASE NUMBER/CHARGE:

- 2014A2330208081 Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
X 2014A2330208082 Minor / Contributing to the delinquency of a minor
2014A2330208083 Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
2014A2330208084 Sex / Incest
2014A2330208085 Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
2014A2330208086 Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
X 2014A2330208087 Minor / Contributing to the delinquency of a minor
2014A2330208088 Buggery / Buggery

CHECKLIST FOR MAGISTRATE AND MUNICIPAL JUDGES

DIRECTIONS: Magistrate and Municipal Court Judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

☒ BAIL PROCEEDING/☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
X a. Bond Form I (personal recognizance)
X b. Bond Form II (surety, cash, percentage)
X c. None (Non-Bailable Offense)
charge carries a penalty of life or death; or
defendant charged with violent offense while bonded out on violent offense
2. For cases in which bond was set, defendant was informed:
X a. Warrant for arrest will be issued for violation of any condition of bail bond order.
X b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
X c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
X a. Orally
X b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
X a. Charges against defendant and nature of the charges.
X b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
X c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before
The Greenville County Public Defender's Office located at the Greenville County Courthouse, 305 E. North Street, Greenville, SC 29601 for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

October 30, 2014
Bond Hearing Date

JUDGE'S SIGNATURE

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	WARRANT NO(s) 2014A2330208081,
	)	2014A2330208082, 2014A2330208083,
	)	2014A2330208084, 2014A2330208085,
	)	2014A2330208086, 2014A2330208087,
	)	2014A2330208088
	)	
vs.	)	
	)	BRADY REQUEST
DWAYNE C TALLENT	)	MOTION FOR THE PRODUCTION
	)	AND INSPECTION OF EVIDENCE
	)	AND INFORMATION WHICH MAY
Defendant.	)	LEAD TO EVIDENCE

You will please take notice that as legal counsel for the Defendant, Dwayne C Tallent, I am requesting, under the authority of Brady v. Maryland, 373 U.S. 83 (1963); Napue v. Illinois, 360 U.S. 364 (1959); Alcorta v. Texas, 355 U.S. 28 (1957); Mooney v. Holohan, 294 U.S. 103 (1935); Giglio v. U.S., 405 U.S. 150 (1972); and Moore v. Illinois, 408 U.S. 786 (1972), that your office supply to me, or make available for inspection, all evidence which may be favorable to the Defendant with regard to the offense with which he has been charged. The Defendant is requesting access to such favorable information as is in your custody as well as that being held by investigating officers or agencies. Such information would include, but not be confined, to the following:

1. All written and verbal statements of the Defendant, whether signed or unsigned;
2. All written and verbal statements made by the witnesses or any other persons, whether signed or unsigned, which relate to this case.
3. All tape recordings made by witnesses or any other persons in connection with this case.
4. Any and all written reports from the State Law Enforcement Division (SLED) Crime Laboratory; Federal Bureau of Investigation Laboratories; City of Greenville Police Department, Greenville County Sheriff's Office or any other Law Enforcement Agencies concerning an

PCR PETITION FOR WRIT APPENDIX PAGE 98

examination made by said laboratories and/or personnel thereof, of any physical, photographic, or written evidence concerned with the investigation of this case.

5. Photographs of latent fingerprints found at the scene or in vehicles, and latent fingerprints discovered and lifted at the scene of the incident, or upon any objects alleged to have been used in the crime alleged; any written reports of comparisons made; and also any copies of fingerprints in your possession of the alleged victim and his family.

6. Any and all photographs taken of the Defendant on any portion of his body.

7. Any and all photographs taken at the scene of the alleged crime and/or the victim, or otherwise relating to this case.

8. Photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the name and addresses of the person(s) to whom the photographs were shown.

9. Handwritten notes or memoranda of same made by police or other investigating officers of their conversations with the Defendant.

10. Handwritten notes made by the police or other investigating officers of their conversations or interviews with the witnesses.

11. All transcripts made of tape recorded statements made by the accused and by potential prosecution witnesses, as well as any handwritten notes.

12. Names and addresses of all witnesses having knowledge of the offense charged who have been interviewed by the F.B.I. or any government agency, including the Office of the Circuit Solicitor, its investigators, its staff or the investigating officers, whether subpoenaed or not, in the crime charged.

13. In addition to the lab reports requested in Paragraph 4 above, a copy of the crime report, together with copies of all reports written by officers investigating the crime involved in the above-entitled action.

14. Right to inspect and/or copy or photograph all items of any kind and nature seized and removed as a result of any search of the Defendant and/or Co-Defendants, of any premises formerly occupied by the Defendant and/or Co-Defendants, if any, or any vehicle associated with the alleged crime.

15. Names and addresses of any persons interviewed by the Circuit Solicitor's Office, its investigators or agents, or any other law enforcement agency known to the State or its representatives in relation to this case.

16. Record of arrests and convictions of any (all Defendants) and of all witnesses named pursuant to Paragraph 13 above, furnished to the investigating or prosecuting agency by the F.B.I. or any other law enforcement agency known to the Circuit Solicitor's Office in relation to this case.

17. All notes or memoranda, by police officers or other investigating officers of their conversations with persons who appeared before any Grand Jury proceedings in connection with this case, or personnel the State expects to or has called before any such Grand Jury.

18. All notes or memoranda, by police officers or other investigating officers, and psychiatrists or other connected medical and mental health examiners, of their conversations with the Defendant.

19. Autopsy reports and pathologist's reports to include any and all photographs of the remains or any portion thereof; patient records provided to the pathologists; histological reports; toxicological reports; hospital admission records; emergency room records (including notations as to any medications administered as well as resuscitative measures instituted, if any).

20. All reports from the State Law Enforcement Division, Sheriff's Office, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprints checked in connection with this case.

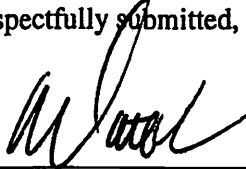
21. Any physical or tangible item in the possession of the Circuit Solicitor's Office which may be relevant to the guilt or innocence of this Defendant. Any lab reports or results of tests

performed upon items within this paragraph requested in Paragraph 4 above.

Recognizing that Brady v. Maryland, supra, and other authorities cited require that only information favorable to the Defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the Court Order provide for an in camera inspection of the items sought to be discovered should you feel that such items are not favorable to the Defendant. By permitting the Court to examine the items requested, the legitimate interests of the State will be protected in that no disclosure in excess of Brady, et al, will occur. Further, it will be requested of the Court that said Order will be a continuing one, providing that in the event any items sought to be discovered herein become available subsequent to the making of the order pursuant to this Motion, said items will be made available to the Defendant's attorney forthwith if discovered during trial, or no later than 12:00 Noon on the first Court day following its acquisition if discovered before trial.

The purpose of said Motion is to enable the Defendant herein to properly prepare for the examination of any witnesses who may testify in this case. Defendant would show that the failure to produce any of the foregoing evidence or information by the law enforcement agency involved would result in a violation of the Fifth, Sixth and Fourteenth Amendments of the Federal Constitution of the United States.

Respectfully submitted,



Matthew J. Kappel, P.C.
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
Voice: (864) 467-9595
Facsimile: (864) 467-1945

Greenville, SC
November 3, 2014

PCR PETITION FOR WRIT APPENDIX PAGE 101

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	WARRANT NO(s). 2014A2330208081,
	)	2014A2330208082, 2014A2330208083,
	)	2014A2330208084, 2014A2330208085,
	)	2014A2330208086, 2014A2330208087,
	)	2014A2330208088
	)	
vs.	)	
	)	CERTIFICATE OF SERVICE
Dwayne C Tallent	)	
	)	
	)	
Defendant.	)	
_____	)	

The undersigned hereby certifies that he did this day serve upon the Solicitor's
Office a copy of defendant's motion for a Discovery by hand delivering a copy of same to the
following address:

Solicitor's Office
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601.



Jimmy Interiano
LAW OFFICE OF MATTHEW J. KAPPEL, P.C.
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595

Greenville, SC
November 7, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Dwayne C. Tallent,)
Defendant.)

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(s). 2014A2330208081,
2014A2330208082, 2014A2330208083,
2014A2330208084,, 2014A2330208085,
2014A2330208086, 2014A2330208087,
2014A2330208088

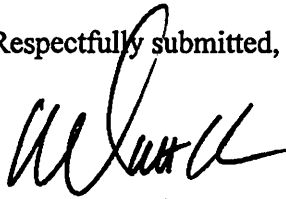
Motion For Bond

2014 NOV 20 AM 9:40

Defendant was scheduled for a bond hearing in the Circuit Court on Friday, November 14, 2014 but withdrew the motion because the Solicitor's Office indicated that new charges were likely to be brought against the Defendant. The Defendant remains incarcerated in the Greenville County Detention Center for the warrants listed above with NO BOND.

It appears now, the parties cannot agree on setting bond, and therefore, the defendant by and through his attorney move this Court for bond.

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC SCB 15390
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Greenville, SC
November 20, 2014

STATE OF SOUTH CAROLINA)

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

State of South Carolina)

WARRANT NO(s). 2014A2330208081,
2014A2330208082, 2014A2330208083,
2014A2330208084,, 2014A2330208085,
2014A2330208086, 2014A2330208087,
2014A2330208088

v.)

Certificate of Service

Dwayne C. Tallent,)

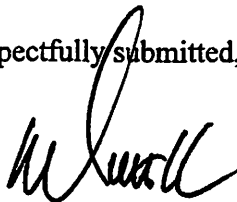
Defendant.)
_____)

The undersigned hereby certifies that he did this day serve one copy of Defendant

Motion to Set Bond this day by hand delivering the same to the following address:

Solicitor's Office
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, L.L.C.
P.O. Box 10334
Greenville, SC 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

November 20, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Dwayne C. Tallent,)
Defendant.)
_____)

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

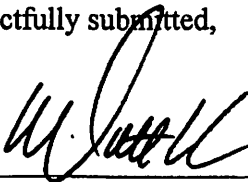
WARRANT NO(s). 2014A2330208081,
2014A2330208082, 2014A2330208083,
2014A2330208084,, 2014A2330208085,
2014A2330208086, 2014A2330208087,
2014A2330208088

Motion For Bond

2014 OCT 31 PM 4: 15

The defendant is presently incarcerated in the Greenville County Detention Center for the warrants listed above and bond was DENIED. It appears now, the parties cannot agree on a reasonable bond, and therefore, the Defendant by and through his attorney move this Court for a bond hearing.

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, PC
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Greenville, SC
October 31, 2014

PCR PETITION FOR WRIT APPENDIX PAGE 105

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina,
vs

ORDER FOR BAIL

Dunne C. Talbot

Defendant, Jail ID # 1067

DOB _____ SSN: _____

IN RE: CHARGE(S)

WARRANT NUMBER(S)

CSC of a minor under 11; Ransom
CSC of a minor under 16; Incest
Lewd Act; Lewd Act

2014 A23 302 08081
2014 A23 302 08082
2014 A23 302 08083
2014 A23 302 08084

2014 A23 302 08085
2014 A23 302 08086
2014 A23 302 08087
2014 A23 302 08088

Contrib. Del of a minor; Contrib. to del. minor
This matter is before me on application for bail. The Defendant is now confined in the Greenville County Detention Center under the above warrant(s) charging the Defendant with the offense(s) listed above. It appears to the Court that bail may be granted for said offense(s).

The Defendant moves and the State consents to a Bond as set forth below on the basis that the State's evaluation and investigation of the case to date indicates no substantial likelihood of the Defendant being a flight risk or danger to the community such that would not be protected by said sum.

NOW THEREFORE, on Motion of the Defendant.

IT IS SO ORDERED that the Defendant be and is hereby granted bail in the amount of

\$ 75,000.00 with one or more sufficient sureties to approved by the:

☐ Clerk of Court
☒ Magistrate
☐ City Recorder

and a recognizance bond in the amount of \$ 0 to be signed by the Defendant.

IT IS FURTHER ORDERED that as a special condition of this bail:

NO Victim Contact
NO Contact With Any Minor Under 17 y.o.A.

SO. P.W. MCB
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

Greenville, South Carolina

11/25, 2003

I SO MOVE:

Matthew Kappel

Print Name/Telephone Number

I CONSENT:

Andrew Collins

Print Name

Jail/BC

Page
4 of 5

PCR PETITION FOR WRIT APPENDIX PAGE 106

Clerk of Court for Greenville County

Application for Pledge of Real Estate for Surety Bond

1. Name of [REDACTED]

3. Name of Defendant: Dwayne C. Tallent

4. Warrant Numbers and Charges: 2014A2330208081; 2014A2330208082;
2014A2330208083; 2014A2330208084; 2014A2330208085;
2014A2330208086; 2014A2330208087; 2014A2330208088

5. Bond Amount: \$75000.00

6. Charging County: Greenville

 I hereby request a "Certificate of Value of Real Estate for Bond" and "Notice of Pledge of Real Estate" forms for the purpose of using my property as surety for the above named defendant.

 I understand that I must retain a S.C. Bar member attorney to complete the above referenced forms for the purpose of using my property as surety for the above named defendant.

 I understand that should the above named defendant fail to be present when his/her case is called that I will be held responsible and may be required to go through estreatment proceedings which could result in a fine or in my loss of the above named property.

Signed: Leanne B. [Signature] (Property Owner(s))

Date: 11-26-14



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Leanore I. Tallent)

To)

Paul B. Wickensimer, Clerk of)
Court of Greenville County)
or his successor in office)

**NOTICE OF PLEDGE
OF REAL ESTATE**

KNOW ALL MEN BY THESE PRESENTS THAT Leanore I. Tallent, Owner, do hereby pledge the below described real estate to Paul B. Wickensimer, Clerk of Court for Greenville County or his successor in office, as collateral for the approval of a surety bond in the amount of \$75,000.00.
Tax Map No. 0584.01-01-003.12

SEE ATTACHED "EXHIBIT A" FOR LEGAL DESCRIPTION

Net Worth of Real Estate after Liens \$135,000.00

In consideration of the issuance of approval of a surety bond by Paul B. Wickensimer, Clerk of Court for Greenville County, the undersigned does agree that said real estate would not be transferred, conveyed or encumbered without written permission by the said Paul B. Wickensimer, Clerk of Court for Greenville County.

This pledge shall remain in full force and effect until cancelled or released by instrument filed in the Register of Deeds Office for Greenville County.

IN THE PRESENCE OF:

Cynthia M Rosado

[Signature]

Leanore I Tallent

Leanore I. Tallent

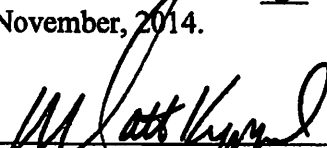
2014085883
MISC/MTG Book: MO 5276 Page: 1578 - 1586 9 Pgs
November 26, 2014 09:44:41 AM
Rec: \$15.00
FILED IN GREENVILLE COUNTY, SC *Timothy J. Manning*

PCR PETITION FOR WRIT APPENDIX PAGE 109

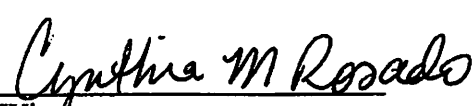
State of South Carolina)
)
County of Greenville)

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Leanore I. Tallent sign, seal and as his act and deed deliver the within written instrument and that s/he, with the other witness subscribed above, witnessed the execution thereof.

Sworn to before me this 26 day
of November, 2014.



Notary Public for South Carolina
My Commission Expires: 5/19/19



Witness

EXHIBIT A

All that certain piece, parcel or tract of land, situate, lying and being in the County of Greenville, State of South Carolina, and according to a survey prepared of the property by Carolina Surveying Company, April 14, 1980, and which said plat is recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 7-U, at Page 84, having the following courses and distances, to-wit:

BEGINNING at an old nail and cap in or near the center of Ferguson Road, joint front corner with property now or formerly belonging to Jerry Paul and Adrith Kerry Kelley and running thence N. 23-19 W. 804.9 feet to an iron pin on the edge of the creek; thence running with the center of the creek as the line, the traverse being: N. 69-08 E. 83.2 feet, N. 52-38 E. 150.2 feet and N. 35-16 E. 100 feet, to an iron pin on the edge of said creek; thence S. 28-55 E. 906.3 feet to an old axle; thence, S. 22-36 E. 33.1 feet to an iron pin in or near the center of Ferguson Road; thence running with the center of said Road, S. 73-02 W. 405.8 feet to a point in or near the center of said road, the point of Beginning.

LESS:

All that certain piece, parcel or lot of land in the County of Greenville, State of South Carolina, on the northerly side of Ferguson Road, and being shown as a 1.0 acre tract on plat prepared by R.B. Bruce, RLS, on January 4, 1985, entitled Survey for Michael Alan Cervantes and Debra Marie Cervantes, & Leonore I. Tallent, and having according to said plat the following metes and bounds, to-wit:

BEGINNING at an old nail and cap in the center line of Ferguson Road, said point being 2968 feet east of the intersection of Ferguson Road and Fork Shoals Road, and running thence along property of Kelly, N. 23-19 W., 587.6 feet to an iron pin at corner of Riddle property; thence N. 73-02 E., 100 feet to an iron pin; thence with other property of grantors, S. 23-19 E., 387.6 feet to an iron pin; thence S. 73-02 W., 74.8 feet to an iron pin; thence S. 23-19 E., 200 feet to a spike in the center line of Ferguson Road; thence with the center line of Ferguson Road, S. 73-02 W., 25.2 feet to a nail and cap, the point of BEGINNING.

TMS# 0584.01-01-003.12

This being a portion of the same property conveyed to Hugh Tallent, Jr. and Leanore I. Tallent by deed of H. Michael Gainey dated and recorded May 9, 1984 in the RMC Office for Greenville County, South Carolina in Book 1214 at Page 836. See also that Deed of Distribution from the Estate of Hugh Tallent to Leanore Tallent recorded on April 13, 2014 in Book 2083 at Page 1418.

PCR PETITION FOR WRIT APPENDIX PAGE 111

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF VALUE
COUNTY OF GREENVILLE) FOR BOND

This is to certify that title to the real estate designated as:

Tax Map #0584.01-01-003.12
77 Ferguson Road, Piedmont, SC 29673

is vested in the name of Leanore I. Tallent and is situate in the County of Greenville, State of South Carolina, the derivation of which is a Deed from the Estate of Hugh Tallent, recorded on April 13, 2004 in Book 2083 at Page 1418 in the Office of the Register of Deeds for Greenville County; less that 1.0 acre parcel conveyed out by Leanore I. Tallent and Hugh Tallent Jr. by deed recorded on January 4, 1985 in Book 1231 at Page 602. This certificate of value is being issued so that Leanore I. Tallent may pledge the real estate described herein as collateral for a surety bond in the amount of \$75,000.00; and this is to certify that after deducting the amount due under the liens affecting the property and not including the value of any mobile home which may be situate on the property, that the value of the property is equal to at least \$135,000.00 (Greenville County Taxable Market Value of \$268,170.00, less Mortgage recorded in Book 1741 at Page 293 to August Kohn & Co. Inc. in the amount of \$30,000.00 and Mortgage recorded in Book 4365 at Page 296 to Wachovia Bank in the amount of \$100,000.00 and 2014 Greenville County Property Taxes).

I, William J. McDonald, hereby certify that the foregoing document is correct and that I have conducted a title search tracing title back 62 years from the current date on said property and under penalty of law certify the property is valued at the amount listed above. A copy of the legal description is attached as Exhibit A.

Date: November 26, 2014



Signature of Attorney
William J. McDonald, SC Bar #68356
Bannister & Wyatt, LLC
2 Whitsett Street
Greenville, SC 29601
(864)-298-0084

EXHIBIT A

All that certain piece, parcel or tract of land, situate, lying and being in the County of Greenville, State of South Carolina, and according to a survey prepared of the property by Carolina Surveying Company, April 14, 1980, and which said plat is recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 7-U, at Page 84, having the following courses and distances, to-wit:

BEGINNING at an old nail and cap in or near the center of Ferguson Road, joint front corner with property now or formerly belonging to Jerry Paul and Adrith Kerry Kelley and running thence N. 23-19 W. 804.9 feet to an iron pin on the edge of the creek; thence running with the center of the creek as the line, the traverse being: N. 69-08 E. 83.2 feet, N. 52-38 E. 150.2 feet and N. 35-16 E. 100 feet, to an iron pin on the edge of said creek; thence S. 28-55 E. 906.3 feet to an old axle; thence, S. 22-36 E. 33.1 feet to an iron pin in or near the center of Ferguson Road; thence running with the center of said Road, S. 73-02 W. 405.8 feet to a point in or near the center of said road, the point of Beginning.

LESS:

All that certain piece, parcel or lot of land in the County of Greenville, State of South Carolina, on the northerly side of Ferguson Road, and being shown as a 1.0 acre tract on plat prepared by R.B. Bruce, RLS, on January 4, 1985, entitled Survey for Michael Alan Cervantes and Debra Marie Cervantes, & Leonore I. Tallent, and having according to said plat the following metes and bounds, to-wit:

BEGINNING at an old nail and cap in the center line of Ferguson Road, said point being 2968 feet east of the intersection of Ferguson Road and Fork Shoals Road, and running thence along property of Kelly, N. 23-19 W., 587.6 feet to an iron pin at corner of Riddle property; thence N. 73-02 E., 100 feet to an iron pin; thence with other property of grantors, S. 23-19 E., 387.6 feet to an iron pin; thence S. 73-02 W., 74.8 feet to an iron pin; thence S. 23-19 E., 200 feet to a spike in the center line of Ferguson Road; thence with the center line of Ferguson Road, S. 73-02 W., 25.2 feet to a nail and cap, the point of BEGINNING.

TMS# 0584.01-01-003.12

This being a portion of the same property conveyed to Hugh Tallent, Jr. and Leanore I. Tallent by deed of H. Michael Gainey dated and recorded May 9, 1984 in the RMC Office for Greenville County, South Carolina in Book 1214 at Page 836. See also that Deed of Distribution from the Estate of Hugh Tallent to Leanore Tallent recorded on April 13, 2014 in Book 2083 at Page 1418.

PCR PETITION FOR WRIT APPENDIX PAGE 114

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED
GREENVILLE, SC

BOOK 2083 PAGE 1418

PROBATE COURT

2004 APR 13 A 9 25

IN THE MATTER OF: HUGH TALLENT - DECEASED

CASE NUMBER: 03ES2300024

JUDY G. HIN
REGISTER OF DEEDS

DEED OF DISTRIBUTION

EXEMPT

APR 13 2004

WHEREAS, the decedent died on 12/24/02; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Greenville County, South Carolina in File # 03ES2300024; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and, as confirmed by Probate Court seal or by affidavit of licensed South Carolina attorney pursuant to S.C. Code of Laws, 62-3-907; and

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name:

[REDACTED]

the following described property:

See exhibit A

(19) 46 - 584.1 - 1 - 3.12

31381

PCR PETITION FOR WRIT APPENDIX PAGE 115

BOOK 2083 PAGE 1419

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Grantee(s) named above, and the Grantee's(s') heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 13 day of April, 2004.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Estate of: HUGH TALLENT
by Signature: Leanne Tallett

LEANORE TALLENT

Witness: Synthia A. Howard
Witness: Patricia R. Mulk

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with the other witness above witnessed the execution thereof.

SWORN to before me this 13 day of

Witness Signature:

April 2004.

Synthia A. Howard

Patricia R. Mulk

Notary Public for South Carolina

My Commission Expires: 6-10-2010

PCR PETITION FOR WRIT APPENDIX PAGE 116

MORTGAGE OF REAL ESTATE.

BOOK

91 PAGE 1525

VOL 1667 PAGE 596

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE CO. S.C.

MORTGAGE OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

JUN 14 10 43 AM '84

BOOK 2083 PAGE 1420

DONNIE C. TANKERSLEY

WHEREAS, Hugh Tallent, Jr. and Leanore I. Tallent

(hereinafter referred to as Mortgagor) is well and truly indebted unto H. Michael Gainey

(hereinafter referred to as Mortgagee) as evidenced by the Mortgagor's promissory note of even date herewith, the terms of which are incorporated herein by reference, in the sum of

Thirteen Thousand Nine Hundred Ninety-Five and No/100----- Dollars (\$13,995.00----) due and payable on the fifteenth day of each month beginning June 15, 1984 and continuing on like day for a total of Thirty - Six(36) consecutive months. The thirty-five (35) initial payments to be in the amount of \$192.78 each. The final payment in the amount of \$11,259.07 is due and payable on or before May 15, 1987.

with interest thereon from May 9, 1984 at the rate of 11.00 per centum per annum, to be paid: as above stated.

WHEREAS, the Mortgagor may hereafter become indebted to the said Mortgagee for such further sums as may be advanced to or for the Mortgagor's account for taxes, insurance premiums, public assessments, repairs, or for any other purposes:

NOW, KNOW ALL MEN, That the Mortgagor, in consideration of the aforesaid debt, and in order to secure the payment thereof, and of any other and further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for his account by the Mortgagee, and also in consideration of the further sum of Three Dollars (\$3.00) to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Mortgagee, its successors and assigns:

"ALL that certain piece, parcel or lot of land, with all improvements thereon, or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of GREENVILLE

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Greenville, State of South Carolina, and according to a survey prepared of the property by Carolina Surveying Company, April 14, 1980, and which said plat is recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 7-U, at Page 84, having the following courses and distances, to-wit:

BEGINNING at an old nail and cap in or near the center of Ferguson Road, joint front corner with property now or formerly belonging to Jerry Paul and Adrith Kerry Kelley and running thence, N. 23-19 W. 804.9 feet to an iron pin on the edge of the creek; thence running with the center of the creek as the line, the traverse being: N. 69-08 E. 83.2 feet, N. 52-38 E. 150.2 feet and N. 35-16 E. 100 feet, to an iron pin on the edge of said creek; thence S. 28-55 E. 906.3 feet to an old axle; thence, S. 22-36 E. 33.1 feet to an iron pin in or near the center of Ferguson Road; thence running with the center of said Road, S. 73-02 W. 405.8 feet to a point in or near the center of said road, the point of Beginning.

The within property is conveyed subject to all easements, rights of way, restrictive covenants, and zoning ordinances, recorded or unrecorded.

This is the same property conveyed to Mortgagor by deed of H. Michael Gainey dated May 9, 1984 and recorded in the RMC Office for Greenville County, South Carolina in Deed Book 1214 at Page 336 of even date herewith.

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 09:25 AM
04 13 04 RECORDED IN DEED
BOOK 2083 PAGE 1418 THRU 1420
DOC # 2004031381

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY
STAMP
1305.60

1305 SAID IN FULL AND SATISFIED THIS
1496 day of October, 1985

WITNESS:

Gainey

11-15-85

PCR PETITION FOR WRIT APPENDIX PAGE 117

REAL PROPERTY SUMMARY SCREEN

11/25/14

12:46:33

MAP NO: 0584010100312 YEAR: 2014

MH:

OWNER1: BRISSEY LEANORE

OWNER2:

POWNER: TALLENT HUGH JR

C/O :

M-ADDR: 77 FERGUSON RD

CITY : PIEDMONT

SC

DESC: NONE

ZIP CD: 29673

ZIP4: 8607

DIST : 046

JURISDICTION: 1

ZONING: RS

LAND USE: 1100

CURR DEED REF: DDBK

DDPG

DATE

WILL

AMOUNT

HMST

2083

1418

20040413

*

LOC: 77 FERGUSON RD

ACREAGE: 6.000 PLAT REF: BK 7U-

PG 0084

COUNTY STORM

25.65

FAIR MARKET VALUE... 307,290

TOT ROLLBACK

ASSMT CLASS

TAXABLE MARKET VALUE 268,170

7,405.87 LR

AGRI

CURRENT YEAR TAXES:

805.35

ACCT NO: 201400003232788001 DTPD:

YRS OUTSTANDING:

ACCT NO

AMT OUTSTANDING

REM03 A=Print Agri Spec Assess Appl F5=See Tax Bills

P=Print Appeal Form
Enter to Return F3 Exit

REAL PROPERTY SERVICES
301 UNIVERSITY RIDGE
SUITE 1000
GREENVILLE, SC 29601

11/25/14
LDMAUP

PCR PETITION FOR WRIT APPENDIX PAGE 118

12-3-14

Criminal Charging Document No.

BAIL PROCEEDING FORM II

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

IN THE Greenville General Sessions

JB

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Tallent, Dwayne C

NAME OF DEFENDANT

Offense Charged: Buggery / Buggery-[2014A2330208088]; Minor / Contributing to the delinquency of a minor-[2014A2330208082, 2014A2330208087]; Sex / Incest-[2014A2330208084]; Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree-[2014A2330208081]; Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.-[2014A2330208085]; Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)-[2014A2330208083, 2014A2330208086]

At a bail proceeding conducted by the undersigned judge for the defendant named above it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community

This determination was based upon the following findings of fact _____

Nature of Circumstances of Offense; Must Notify Court Immediately of Change of Address _____

[Considerations: Nature and Circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings]

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior
- That the above named defendant be released from custody provided as follow (check all that apply):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order this sum of money is subject to being forfeited to the State

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \$ _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond deposits \$ _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order the full amount shall be levied on his real and personal property for the use of the state.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved by the court in the form hereinafter set forth in this Order acknowledging an indebtedness to the State in the amount of \$ 75,000.00

3. That the defendant shall appear at (check one):

- ☒ the term of COURT OF GENERAL SESSIONS beginning on January 30, 2015 at 9:00 o'clock, A.M., at Greenville General Sessions - 305 E. North Street/Greenville County Courthouse/Greenville, SC 29601-2120 / (864) 467-8647 and remain there throughout that term of court. If no disposition is made during that term the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case unless otherwise ordered by the court

- ☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____ at _____

If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court

Bond Amount(s): \$75,000.00 (SB)

per order for bail - no victim contact, no contact with any minor under 17 y.o.a

INITIALS OF DEFENDANT

X D C T

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order

Dany Kelly for Skidmore
SIGNATURE OF JUDGE

DATE

11/26/14

RECEIVED
DEC 3 2014

Clerk of Court
Greenville County

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order a warrant for my arrest will be issued

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court the trial will proceed in my absence

It has been explained to me that if I fail to appear before the court as required a warrant for my arrest will be issued

430 Oaklawn Road 79 Ferguson Road
 ADDRESS
 Pelzer, SC 29669 Piedmont 29073
 CITY/STATE/ZIP
 SOCIAL SECURITY NUMBER
 DRIVER'S LICENSE OR ID NUMBER
 TELEPHONE
 (SC)
 ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of _____
 NAME OF PERSON OR ORGANIZATION

ADDRESS CITY/STATE ZIP TELEPHONE
 who agrees (1) to supervise the defendant as set forth by the court (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears

SIGNATURE OF CUSTODIAN (IF APPROVED) DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions _____

c. ☐ Part-time Release. The defendant will be released from custody from _____ o' clock, _____ AM/PM to _____ o' clock, _____ AM/PM

on _____ DATE(S) on condition that he return to the custody of _____ NAME OF PERSON OR ORGANIZATION

at _____ LOCATION as designated.

d. ☐ Other conditions. The defendant will comply with the following other conditions of release _____
 per order for bail - no victim contact, no contact with any minor under 17 y.o.a

APPEARANCE RECOGNIZANCE WITH SURETY

On the 26th day of November, 2014, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina in the sum of \$ 75,000.00, such sum to be levied on his real and personal property for the use of the State should named defendant fail in performing the conditions of this Order

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution

Leanne I Brissey (864) 907-5214

NAME OF SURETY BONDSMAN COMPANY TELEPHONE

77 Ferguson Rd

ADDRESS OF SURETY BONDSMAN

Piedmont, SC 29673

CITY/STATE/ZIP

NAME OF INSURANCE COMPANY

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP

SIGNATURE OF SURETY BONDSMAN

SIGNATURE OF JUDGE

DATE

PCR PETITION FOR WRIT APPENDIX PAGE 120

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina,
vs

ORDER FOR BAIL

Dwayne C. Tallent
Defendant, Jail ID # 1067

DOB _____ SSN: _____

IN RE: CHARGE(S)

WARRANT NUMBER(S)

CSC of a minor under 11; Incest
CSC of a Minor under 16; Incest
Lewd Act; Lewd Act
Contrib. Del of a minor; Contributing del. minor

2014 A23 302 08081
2014 A23 302 08082
2014 A23 302 08083
2014 A23 302 08084
2014 A23 302 08085
2014 A23 302 08086
2014 A23 302 08087
2014 A23 302 08088

This matter is before me on application for bail. The Defendant is now confined in the Greenville County Detention Center under the above warrant(s) charging the Defendant with the offense(s) listed above. It appears to the Court that bail may be granted for said offense(s).

The Defendant moves and the State consents to a Bond as set forth below on the basis that the State's evaluation and investigation of the case to date indicates no substantial likelihood of the Defendant being a flight risk or danger to the community such that would not be protected by said sum.

NOW THEREFORE, on Motion of the Defendant.

IT IS SO ORDERED that the Defendant be and is hereby granted bail in the amount of

\$ 75,000.00 with one or more sufficient sureties to approved by the:

- ☐ Clerk of Court
☒ Magistrate
☐ City Recorder

and a recognizance bond in the amount of \$ 0 to be signed by the Defendant.

IT IS FURTHER ORDERED that as a special condition of this bail:

NO Victim Contact
NO CONTACT WITH ANY MINOR UNDER 17 Y.O.A.

SO. P.W. MCG
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

Greenville, South Carolina
11/25, 2003

I SO MOVE:

Matthew Kappel
Matthew Kappel
Print Name/Telephone Number

I CONSENT:

Andrew Collins
Andrew Collins
Print Name

Page

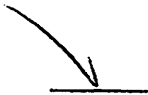
4 of 5

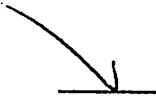
PCR PETITION FOR WRIT APPENDIX PAGE 121

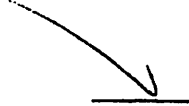
Clerk of Court for Greenville County

Application for Pledge of Real Estate for Surety Bond

1. Name of Property Owner(s): Leanne Brissey
2. Property Address: 77 Ferguson Rd Piedmont, SC 29673
3. Name of Defendant: Dwayne C Talley
4. Warrant Numbers and Charges: 2014A2330208081; 2014A2330208082;
2014A2330208083; 2014A2330208084; 2014A2330208085;
2014A2330208086; 2014A2330208087; 2014A2330208088
5. Bond Amount: \$75000.00
6. Charging County: Greenville

 I hereby request a "Certificate of Value of Real Estate for Bond" and "Notice of Pledge of Real Estate" forms for the purpose of using my property as surety for the above named defendant.

 I understand that I must retain a S.C. Bar member attorney to complete the above referenced forms for the purpose of using my property as surety for the above named defendant.

 I understand that should the above named defendant fail to be present when his/her case is called that I will be held responsible and may be required to go through estreatment proceedings which could result in a fine or in my loss of the above named property.

Signed: Leanne Brissey (Property Owner(s))

Date: 11-26-14

SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

NOTICE OF PLEDGE
OF REAL ESTATE

Leanore I. Tallent)

To)

Paul B. Wickensimer, Clerk of)
Court of Greenville County)
or his successor in office)

2014 NOV 26 AM 10:02

KNOW ALL MEN BY THESE PRESENTS THAT Leanore I. Tallent, Owner, do hereby pledge the below described real estate to Paul B. Wickensimer, Clerk of Court for Greenville County or his successor in office, as collateral for the approval of a surety bond in the amount of \$75,000.00.
Tax Map No. 0584.01-01-003.12

SEE ATTACHED "EXHIBIT A" FOR LEGAL DESCRIPTION

Net Worth of Real Estate after Liens \$135,000.00

In consideration of the issuance of approval of a surety bond by Paul B. Wickensimer, Clerk of Court for Greenville County, the undersigned does agree that said real estate would not be transferred, conveyed or encumbered without written permission by the said Paul B. Wickensimer, Clerk of Court for Greenville County.

This pledge shall remain in full force and effect until cancelled or released by instrument filed in the Register of Deeds Office for Greenville County.

IN THE PRESENCE OF:

Cynthia M Rosado

[Signature]

Leanore I Tallent
Leanore I. Tallent

2014085883
MISC/MTG Book: MO 5276 Page: 1578 - 1586 9 Pgs
November 26, 2014 09:44:41 AM
Rec: \$15.00
FILED IN GREENVILLE COUNTY, SC

PCR PETITION FOR WRIT APPENDIX PAGE 123

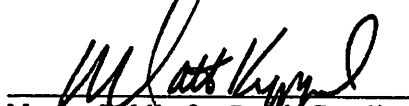
State of South Carolina)

)

County of Greenville)

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Leanore I. Tallent sign, seal and as his act and deed deliver the within written instrument and that s/he, with the other witness subscribed above, witnessed the execution thereof.

Sworn to before me this 26 day
of November, 2014.


Notary Public for South Carolina

My Commission Expires: 5/19/19


Witness

EXHIBIT A

All that certain piece, parcel or tract of land, situate, lying and being in the County of Greenville, State of South Carolina, and according to a survey prepared of the property by Carolina Surveying Company, April 14, 1980, and which said plat is recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 7-U, at Page 84, having the following courses and distances, to-wit:

BEGINNING at an old nail and cap in or near the center of Ferguson Road, joint front corner with property now or formerly belonging to Jerry Paul and Adrith Kerry Kelley and running thence N. 23-19 W. 804.9 feet to an iron pin on the edge of the creek; thence running with the center of the creek as the line, the traverse being: N. 69-08 E. 83.2 feet, N. 52-38 E. 150.2 feet and N. 35-16 E. 100 feet, to an iron pin on the edge of said creek; thence S. 28-55 E. 906.3 feet to an old axle; thence, S. 22-36 E. 33.1 feet to an iron pin in or near the center of Ferguson Road; thence running with the center of said Road, S. 73-02 W. 405.8 feet to a point in or near the center of said road, the point of Beginning.

LESS:

All that certain piece, parcel or lot of land in the County of Greenville, State of South Carolina, on the northerly side of Ferguson Road, and being shown as a 1.0 acre tract on plat prepared by R.B. Bruce, RLS, on January 4, 1985, entitled Survey for Michael Alan Cervantes and Debra Marie Cervantes, & Leonore I. Tallent, and having according to said plat the following metes and bounds, to-wit:

BEGINNING at an old nail and cap in the center line of Ferguson Road, said point being 2968 feet east of the intersection of Ferguson Road and Fork Shoals Road, and running thence along property of Kelly, N. 23-19 W., 587.6 feet to an iron pin at corner of Riddle property; thence N. 73-02 E., 100 feet to an iron pin; thence with other property of grantors, S. 23-19 E., 387.6 feet to an iron pin; thence S. 73-02 W., 74.8 feet to an iron pin; thence S. 23-19 E., 200 feet to a spike in the center line of Ferguson Road; thence with the center line of Ferguson Road, S. 73-02 W., 25.2 feet to a nail and cap, the point of BEGINNING.

TMS# 0584.01-01-003.12

This being a portion of the same property conveyed to Hugh Tallent, Jr. and Leanore I. Tallent by deed of H. Michael Gainey dated and recorded May 9, 1984 in the RMC Office for Greenville County, South Carolina in Book 1214 at Page 836. See also that Deed of Distribution from the Estate of Hugh Tallent to Leanore Tallent recorded on April 13, 2014 in Book 2083 at Page 1418.

PCR PETITION FOR WRIT APPENDIX PAGE 125

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF VALUE
COUNTY OF GREENVILLE) FOR BOND

This is to certify that title to the real estate designated as:

Tax Map #0584.01-01-003.12
77 Ferguson Road, Piedmont, SC 29673

is vested in the name of Leanore I. Tallent and is situate in the County of Greenville, State of South Carolina, the derivation of which is a Deed from the Estate of Hugh Tallent, recorded on April 13, 2004 in Book 2083 at Page 1418 in the Office of the Register of Deeds for Greenville County; less that 1.0 acre parcel conveyed out by Leanore I. Tallent and Hugh Tallent Jr. by deed recorded on January 4, 1985 in Book 1231 at Page 602. This certificate of value is being issued so that Leanore I. Tallent may pledge the real estate described herein as collateral for a surety bond in the amount of \$75,000.00; and this is to certify that after deducting the amount due under the liens affecting the property and not including the value of any mobile home which may be situate on the property, that the value of the property is equal to at least \$135,000.00 (Greenville County Taxable Market Value of \$268,170.00, less Mortgage recorded in Book 1741 at Page 293 to August Kohn & Co. Inc. in the amount of \$30,000.00 and Mortgage recorded in Book 4365 at Page 296 to Wachovia Bank in the amount of \$100,000.00 and 2014 Greenville County Property Taxes).

I, William J. McDonald, hereby certify that the foregoing document is correct and that I have conducted a title search tracing title back 62 years from the current date on said property and under penalty of law certify the property is valued at the amount listed above. A copy of the legal description is attached as Exhibit A.

Date: November 26, 2014



Signature of Attorney
William J. McDonald, SC Bar #68356
Bannister & Wyatt, LLC
2 Whitsett Street
Greenville, SC 29601
(864)-298-0084

EXHIBIT A

All that certain piece, parcel or tract of land, situate, lying and being in the County of Greenville, State of South Carolina, and according to a survey prepared of the property by Carolina Surveying Company, April 14, 1980, and which said plat is recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 7-U, at Page 84, having the following courses and distances, to-wit:

BEGINNING at an old nail and cap in or near the center of Ferguson Road, joint front corner with property now or formerly belonging to Jerry Paul and Adrith Kerry Kelley and running thence N. 23-19 W. 804.9 feet to an iron pin on the edge of the creek; thence running with the center of the creek as the line, the traverse being: N. 69-08 E. 83.2 feet, N. 52-38 E. 150.2 feet and N. 35-16 E. 100 feet, to an iron pin on the edge of said creek; thence S. 28-55 E. 906.3 feet to an old axle; thence, S. 22-36 E. 33.1 feet to an iron pin in or near the center of Ferguson Road; thence running with the center of said Road, S. 73-02 W. 405.8 feet to a point in or near the center of said road, the point of Beginning.

LESS:

All that certain piece, parcel or lot of land in the County of Greenville, State of South Carolina, on the northerly side of Ferguson Road, and being shown as a 1.0 acre tract on plat prepared by R.B. Bruce, RLS, on January 4, 1985, entitled Survey for Michael Alan Cervantes and Debra Marie Cervantes, & Leonore I. Tallent, and having according to said plat the following metes and bounds, to-wit:

BEGINNING at an old nail and cap in the center line of Ferguson Road, said point being 2968 feet east of the intersection of Ferguson Road and Fork Shoals Road, and running thence along property of Kelly, N. 23-19 W., 587.6 feet to an iron pin at corner of Riddle property; thence N. 73-02 E., 100 feet to an iron pin; thence with other property of grantors, S. 23-19 E., 387.6 feet to an iron pin; thence S. 73-02 W., 74.8 feet to an iron pin; thence S. 23-19 E., 200 feet to a spike in the center line of Ferguson Road; thence with the center line of Ferguson Road, S. 73-02 W., 25.2 feet to a nail and cap, the point of BEGINNING.

TMS# 0584.01-01-003.12

This being a portion of the same property conveyed to Hugh Tallent, Jr. and Leanore I. Tallent by deed of H. Michael Gainey dated and recorded May 9, 1984 in the RMC Office for Greenville County, South Carolina in Book 1214 at Page 836. See also that Deed of Distribution from the Estate of Hugh Tallent to Leanore Tallent recorded on April 13, 2014 in Book 2083 at Page 1418.

PCR PETITION FOR WRIT APPENDIX PAGE 128

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED
GREENVILLE, SC

BOOK 2083 PAGE 1418

PROBATE COURT

2004 APR 13 A 9 25

IN THE MATTER OF: HUGH TALLENT - DECEASED

CASE NUMBER: 03ES2300024

JUDY G. HILL
REGISTER OF DEEDS

DEED OF DISTRIBUTION

EXEMPT

APR 13 2004

WHEREAS, the decedent died on 12/24/02; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Greenville County, South Carolina in File # 03ES2300024; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and, as confirmed by Probate Court seal or by affidavit of licensed South Carolina attorney pursuant to S.C. Code of Laws, 62-3-907; and

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: George Tallent
Address: 77 Edgusson Rd
Greenville, S.C. 29673

the following described property:

See exhibit A

(19) 46 - 584.1 - 1 - 3.12

31381

PCR PETITION FOR WRIT APPENDIX PAGE 129

BOOK 2083 PAGE 1419

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Grantee(s) named above, and the Grantee's(s') heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 13 day of April, 2004.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Estate of: HUGH TALLENT
by Signature: Leanne Tallett
LEANORE TALLENT

Witness: Synthia A. Howard

Witness: Patricia R. Melh

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with the other witness above witnessed the execution thereof.

SWORN to before me this 13 day of

April 2004.

Witness Signature:

Synthia A. Howard

Patricia R. Melh

Notary Public for South Carolina

My Commission Expires: 6-10-2010

PCR PETITION FOR WRIT APPENDIX PAGE 130

MORTGAGE OF REAL ESTATE.

BOOK

91 PAGE 525

VOL 1687 PAGE 598

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE CO. S.C.

MORTGAGE OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

JUN 14 10 43 AM '84

BOOK 2083 PAGE 1420

DONNIE C. TANKERSLEY

WHEREAS, Hugh Tallent, Jr. and Leanore I. Tallent

(hereinafter referred to as Mortgagor) is well and truly indebted unto H. Michael Gainey

(hereinafter referred to as Mortgagee) as evidenced by the Mortgagor's promissory note of even date herewith, the terms of which are incorporated herein by reference, in the sum of

Thirteen Thousand Nine Hundred Ninety-Five and No/100----- Dollars (\$ 13,995.00----) due and payable on the fifteenth day of each month beginning June 15, 1984 and continuing on like day for a total of Thirty - Six(36) consecutive months. The thirty-five (35) initial payments to be in the amount of \$192.78 each. The final payment in the amount of \$11,259.07 is due and payable on or before May 15, 1987.

with interest thereon from May 9, 1984 at the rate of 11.00 per centum per annum, to be paid: as above stated.

WHEREAS, the Mortgagor may hereafter become indebted to the said Mortgagee for such further sums as may be advanced to or for the Mortgagor's account for taxes, insurance premiums, public assessments, repairs, or for any other purposes:

NOW, KNOW ALL MEN, That the Mortgagor, in consideration of the aforesaid debt, and in order to secure the payment thereof, and of any other and further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for his account by the Mortgagee, and also in consideration of the further sum of Three Dollars (\$3.00) to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Mortgagee, its successors and assigns:

"ALL that certain piece, parcel or lot of land, with all improvements thereon, or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of GREENVILLE

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Greenville, State of South Carolina, and according to a survey prepared of the property by Carolina Surveying Company, April 14, 1980, and which said plat is recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 7-U, at Page 84, having the following courses and distances, to-wit:

BEGINNING at an old nail and cap in or near the center of Ferguson Road, joint front corner with property now or formerly belonging to Jerry Paul and Adrith Kerry Kelley and running thence, N. 23-19 W. 804.9 feet to an iron pin on the edge of the creek; thence running with the center of the creek as the line, the traverse being: N. 69-08 E. 83.2 feet, N. 52-38 E. 150.2 feet and N. 35-16 E. 100 feet, to an iron pin on the edge of said creek; thence S. 28-55 E. 906.3 feet to an old axle; thence, S. 22-36 E. 33.1 feet to an iron pin in or near the center of Ferguson Road; thence running with the center of said Road, S. 73-02 W. 405.8 feet to a point in or near the center of said road, the point of Beginning.

The within property is conveyed subject to all easements, rights of way, restrictive covenants, and zoning ordinances, recorded or unrecorded.

This is the same property conveyed to Mortgagor by deed of H. Michael Gainey dated May 9, 1984 and recorded in the RMC Office for Greenville County, South Carolina in Deed Book 1214 at Page 336 of even date herewith.

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 09:25 AM
04 13 04 RECORDED IN DEED
BOOK 2083 PAGE 1418 THRU 1420
DQC# 2004031381

Judy A. Hix

1305 PAID IN FULL AND SATISFIED THIS
14th day of October, 1985

H. Michael Gainey

WITNESS:

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY
STAMP
12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

PCR PETITION FOR WRIT APPENDIX PAGE 131

REAL PROPERTY SUMMARY SCREEN

11/25/14

12:46:33

MAP NO: 0584010100312 YEAR: 2014

MH:

OWNER1: BRISSEY LEANORE

OWNER2:

POWNER: TALLENT HUGH JR

C/O :

M-ADDR: 77 FERGUSON RD

CITY : PIEDMONT

SC

DESC: NONE

ZIP CD: 29673

ZIP4: 8607

DIST : 046

JURISDICTION: 1

ZONING: RS

LAND USE: 1100

CURR DEED REF: DDBK

DDPG

DATE

WILL

AMOUNT

HMST

2083

1418

20040413

*

LOC: 77 FERGUSON RD

ACREAGE: 6.000 PLAT REF: BK 7U-

PG 0084

COUNTY STORM

25.65

FAIR MARKET VALUE... 307,290

TOT ROLLBACK

ASSMT CLASS

TAXABLE MARKET VALUE 268,170

7,405.87

LR

AGRI

CURRENT YEAR TAXES:

805.35

ACCT NO: 201400003232788001 DTPD:

YRS OUTSTANDING:

ACCT NO

AMT OUTSTANDING

A=Print Agri Spec Assess Appl F5=See Tax Bills P=Print Appeal Form
REM03 S=Print Spec Assess Appl F10 Check for MH Enter to Return F3 Exit

REAL PROPERTY SERVICES
301 UNIVERSITY RIDGE
SUITE 1000
GREENVILLE, SC 29601

11/25/14
Ldmanup

PCR PETITION FOR WRIT APPENDIX PAGE 132



PCR PETITION FOR WRIT APPENDIX PAGE 133

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208081

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23- 011873

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2014

THE STATE

vs.

DWAYNE C. TALLENT

Indictment for

0385

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE**

VIOLATION § 16-03-0655(A)(1)

FILED

DEC 29 2014

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE**

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and December 31, 1998, commit a sexual battery on E. F. G., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

BAR # 64155

PCR PETITION FOR WRIT APPENDIX PAGE 135

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER

2014A2330208081

ACTION OF GRAND JURY

TRUE BILL

Wayne C. Tallet
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

LMM

011873

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

2015
TERM 2014

THE STATE

vs.

DWAYNE C. TALLENT

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

FILED

DEC 29 2014

Clerk of Court
Greenville County

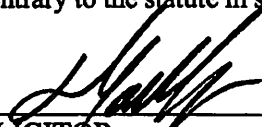
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **JAN 06 2015** the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and December 31,
1998, commit a sexual battery on E. F. G., who was less than eleven years of age. This is in violation of
§16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

BAR # 64155

14-11873

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 State of South Carolina)
)
 v.)
)
)
)
 Dwayne C. Tallent,)
)
 Defendant.)
)

IN THE GENERAL SESSIONS COURT
 THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(s). 2014A2330208081,
 2014A2330208082, 2014A2330208083,
 2014A2330208084,, 2014A2330208085,
 2014A2330208086, 2014A2330208087,
 2014A2330208088

MOTION FOR PRODUCTION

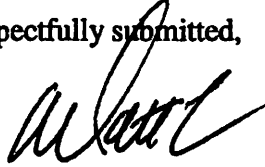
Defendant by and through counsel moved this court for the production of evidence pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure. The State responded by providing all material the State believed to be relevant. Subsequent to the State's production, the Defense requested additional discovery. Specifically, the Defense requests this court execute an Order pursuant to the Health Insurance Portability and Accountability Act ("HIPPA") requiring all mental health professionals to produce all records, notes, prescriptions, diagnosis regarding the mental health treatment of the alleged victim and two principal witnesses accusing the Defendant.

Specifically, the alleged victim, her brother and cousin each gave statements in August 2014 regarding the alleged misconduct which occurred between 1992-1998. The only evidence in the case are these statements. The Defense believes each have a significant mental illness history and alcohol and drug abuse. To properly prepare the defense, counsel will need to review all mental health records regarding alleged victim and the two additional witnesses. Of

2016 JUN 21 AM 10:35
 FILED
 CLERK OF COURT
 GREENVILLE, SOUTH CAROLINA

course, the Defense will agree to a protective order regarding the dissemination of these records.

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Greenville, SC
June 20, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Dwayne C. Tallent,)
Defendant.)
_____)

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(s). 2014A2330208081,
2014A2330208082, 2014A2330208083,
2014A2330208084,, 2014A2330208085,
2014A2330208086, 2014A2330208087,
2014A2330208088

Certificate of Service

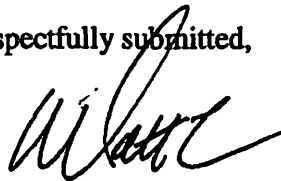
2016 JUN 21 AM 10:06
FILED-CLERK OF COURT
JAMES H. HARRIS, JR.
GREENVILLE CO. SC

The undersigned hereby certifies that he did this day serve one copy of Defendant

Motion For Production of additional material this day by hand delivering the same to the
following address:

Solicitor's Office
c/o Asst. Solicitor Mark Moyer
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, L.L.C.
P.O. Box 10334
Greenville, SC 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

June 21, 2016
Greenville, South Carolina

L 1777

2014A 2330208085
2014A 2330208083
2014A 2330208081
2014A 2330208082

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

Indictment Number 2014-GS-23-11877,
11875, 11873, 11874

The State

-vs-

Dwayne C. Tallent,
Defendants.

MOTION

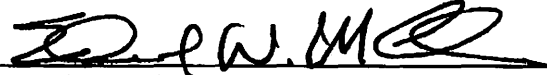
ED-CLERK OF COURT
JUL 27 2016
GREENVILLE CO. SC

2016 AUG 17 PM 3:03

This matter comes before me upon motion of the Defendant.

IT APPEARS TO THIS COURT THAT the Defendant, Dwayne Tallent, is on the trial docket Wednesday, September 7, 2016. Based upon the late production of some discovery by the State, the Defendant is in need of more time to adequately prepare for trial. THEREFORE, the defendant moves for and is granted a continuance of his trial on September 7, 2016.

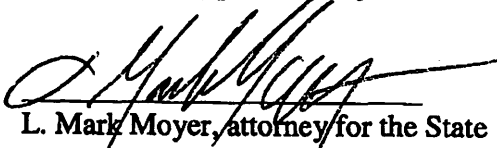
IT IS SO ORDERED.


Presiding Judge

Greenville, South Carolina

Dated: 8/17/16

I so move: 
Matthew J. Kappel, attorney for Defendant

I consent: 
L. Mark Moyer, attorney for the State

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	WARRANT NO(s). 2014A2330208081,
	)	2014A2330208082, 2014A2330208083,
	)	2014A2330208084,, 2014A2330208085,
v.	)	2014A2330208086, 2014A2330208087,
	)	2014A2330208088
	)	
	)	Supplemental Motion For Production
Dwayne C. Tallent,	)	
	)	
Defendant.	)	

2016 SEP -7 AM 9:20
 FILED
 CLERK OF COURT
 GREENVILLE CO. SC

On June 21, 2016, the Defendant filed a motion requesting this court Order the production of evidence pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure relating to the mental history of the alleged victim and her brother and cousin. Each are expected to testify against the Defendant and each have extensive mental health history. The Solicitor has in his possession medical documents, mental health documents and records from the Department of Social Services. The Defense wishes to have copies of all documents to prepare for trial.

Initially, the Solicitor's Office set a hearing on the June 21 motion on July 26, 2016. The Assistant Solicitor, however, was on vacation that week and the hearing was canceled. The Solicitor's Office made these records available to counsel in August to inspect in their offices. The Solicitor's Office, however, has not permitted counsel to have a copy of them.

The Defense requests this court Order the Solicitor's Office to provide copies of all records they have obtained through medical and mental health providers and the SC Department of Social Services. The purpose of this request to permit the Defense to review and consult with mental health experts and to prepare for trial. To resolve this issue, the Defendant

has offered to sign a protective Order prohibiting the dissemination of the material to anyone other than a potential expert witness.

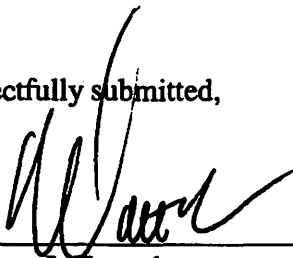
Finally, the Defense requests this court Order the Solicitor's Office determine all mental health providers that have treated the alleged victim and each of the witnesses expected to appear on behalf of the State. This material is critical for the Defense for properly preparing for trial.

In support of this motion, the Defense relies upon Rule 5 of the South Carolina Rules of Criminal Procedure, South Carolina Rules of Evidence and the Confrontation Clause of the United States Constitution.

Rule 5(C) states "the prosecution shall permit the defendant to inspect and copy . . . papers, documents which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense"

Rule 5(D) states "the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations . . . which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense"

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC
Attorney for Defendant
P.O. Box 10334, F.S.

Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

September 9, 2016
Greenville, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 State of South Carolina)
)
 v.)
)
)
)
 Dwayne C. Tallent,)
)
 Defendant.)
 _____)

IN THE GENERAL SESSIONS COURT
 THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(s). 2014A2330208081,
 2014A2330208082, 2014A2330208083,
 2014A2330208084,, 2014A2330208085,
 2014A2330208086, 2014A2330208087,
 2014A2330208088

MOTION FOR CONTINUANCE

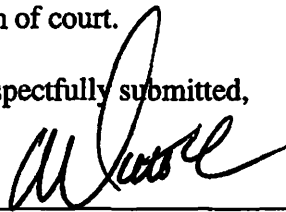
RECEIVED
 2016 OCT 10 11:31 AM
 13

This matter is set for trial on Monday, October 10, 2016. Counsel, however, wishes to celebrate the Jewish holiday of Yom Kippur which begins Tuesday, October 11 and ends Wednesday, October 12th. Yom Kippur services are Tuesday evening and Wednesday. In addition, the holiday requires a twenty-four hour period of fasting.

The State does not object to this motion.

Based upon the above, counsel respectfully wishes this court continue the above referenced case from the October 10 term of court.

Respectfully submitted,



Matthew J. Kappel
 Law Office of Matthew J. Kappel, PC
 Attorney for Defendant
 P.O. Box 10334, F.S.
 Greenville, South Carolina 29603
 (864) 467-9595 (voice)
 (864) 467-1945 (fax)

September 14, 2016
 Greenville, SC

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	WARRANT NO(s). 2014A2330208081,
	)	2014A2330208082, 2014A2330208083,
	)	2014A2330208084,, 2014A2330208085,
v.	)	2014A2330208086, 2014A2330208087,
	)	2014A2330208088
	)	
	)	Certificate of Service
Dwayne C. Tallent,	)	
	)	
Defendant.	)	

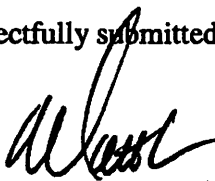
2016 SEP 17 10:30 AM
CLERK OF COURT
GREENVILLE, SC 29601

The undersigned herby certifies that he did this day serve one copy of

Defendant's Motion For Continuance this day by hand delivering the same to the following
address:

Solicitor's Office
c/o Mark Moyer
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, L.L.C.
P.O. Box 10334
Greenville, SC 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

September 14, 2016
Greenville, South Carolina

PCR PETITION FOR WRIT APPENDIX PAGE 146

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208081

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Price
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011873

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

Amended Indictment for
0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on
County present upon their oath:

DEC 13 2016

the Grand Jurors of Greenville

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 7, 1998, commit a sexual battery on E. F. G., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

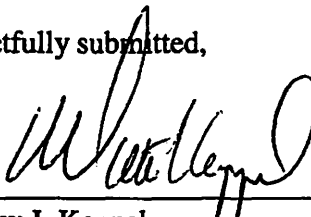
BAR # 64155

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	INDICTMENT NO(s). 2014-GS-23-11872
	)	THROUGH 2014-GS-23-11877
v.	)	
	)	
	)	MOTION TO EXCLUDE EVIDENCE
Dwayne C. Tallent,	)	UNDER SC RULE OF EVID. 404(b)
	)	
Defendant.	)	
_____	)	

COMES NOW, the Defendant, by and through his counsel and moves this court to exclude evidence from his trial. The State seeks to introduce a variety of alleged prior bad acts under South Carolina Rule of Evidence 404(b).

The Defendant wishes the court conduct an evidentiary hearing in camera prior to ruling on this motion. This motion is based in part on 404(b) and relevant South Carolina case law.

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Jan 13, 2017
~~December 5, 2016~~
Greenville, SC

FILED
JAN 13 2017
CLERK OF COURT
JAN 13 2017
JAN 13 2017

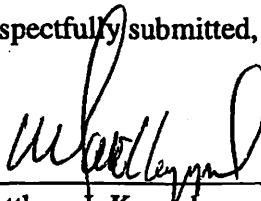
2017 JAN 13 PM 4:28

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	INDICTMENT NO(s). 2014-GS-23-11872
	)	THROUGH 2014-GS-23-11877
v.	)	
	)	
	)	
Dwayne C. Tallent,	)	CERTIFICATE OF SERVICE
	)	
Defendant.	)	
_____	)	

The Defendant hereby certifies that he did this day hand deliver one copy of Defendant's MOTION TO EXCLUDE EVIDENCE to the following address:

Mark Moyer
Asst. Solicitor
305 E. North Street, Suite 325
Greenville, SC 29601

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Jan 13, 2017
~~December 5, 2016~~
Greenville, SC

2017 JAN 13 PM 4:28
RECEIVED
CLERK OF COURT
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SC

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina	)	WARRANT NO(s). 2014A2330208081,
	)	2014A2330208082, 2014A2330208083,
	)	2014A2330208084,, 2014A2330208085,
v.	)	2014A2330208086, 2014A2330208087,
	)	2014A2330208088
	)	
	)	ORDER GRANTING CONTINUANCE
Dwayne C. Tallent,	)	
	)	
Defendant.	)	

2017 MAR 14 AM 10:13
FILED-CLERK OF COURT
PAUL B. VICKENBINE
GREENVILLE, SC

This matter is set for trial on Monday, March 20, 2017. The State recently uncovered additional discovery. The State provided the material to the Defense on or about March 8, 2017. The new discovery substantially changes the nature of the trial. Defense counsel has moved for a continuance to allow sufficient time to review the new material and properly prepare for trial.

Based upon the above, I find it is in the best interest of justice to continue the matter from the March 20, 2017 trial date..

IT IS SO ORDERED.



The Honorable Letitia H. Verdin
Circuit Court Judge

March 14, 2017
Greenville, SC

7377

PCR PETITION FOR WRIT APPENDIX PAGE 151

WEST
509

Greenville General Sessions
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

Date
Served _____

BENCH WARRANT

2017B2300100770

Served
By _____

THE STATE

VS.

Or

Dwayne C Tallent

79 Ferguson Road
Piedmont, SC 29673

(Last known address)

Date
Returned _____

Reason for
Return _____

BENCH WARRANT STAMPED IN RED IS ORIGINAL
PLEASE RETURN TO GCSO
WARRANTS DIVISION

Bench Warrant No. 2017B2300100770

Case No. 2014GS2311873
2014A2330208081

Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First
degree

Date Issued April 20, 2017

DL No. _____ DL State _____

01-17-803056

White 1139/1578
White

PCR PETITION FOR WRIT APPENDIX PAGE 152

THE STATE OF SOUTH CAROLINA

COUNTY OF Greenville

BENCH WARRANT
Failure to Appear-Plea

THE STATE
VS.
Dwayne C Tallent

2014GS2311873

2014A2330208081

Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First
degree

To all and Singular the Sheriffs Deputy Sheriffs Constables and other Peace Officers of the said State Greeting:

WHEREAS, at the Term of Court of General Sessions County Court for the County aforesaid, it was among other things Ordained
that a Bench Warrant should be issued for the arrest of Dwayne C Tallent

THESE ARE, THEREFORE, to command you and every one of you to make diligent search after the said above named and him
to take and safely keep until he be delivered to the keeper of the Common Jail of the County or discharged by due course of law. And
this shall be a good and sufficient warrant for you doing so, and for the keeper of said Jail receiving said above named from you and
keeping him safely until he be discharged by due course of law.

WITNESS, Paul B. Wickensimer, Clerk of Court of General Sessions and Common Pleas for the County of Greenville,

April 20, 2017.

Paul B. Wickensimer
Judge 13th Judicial Circuit / Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
THE STATE OF SOUTH CAROLINA

VS.

DWAYNE C TALLENT,
DEFENDANT.

SS#: [REDACTED] DOB: [REDACTED]
Race: W Sex: M
Hair: brown Eyes: blue
Weight: 244 Height: 6'1"

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

WARRANT # 2014A2330208081-^{15, 88}
INDICTMENT # 2014GS2311872-7

ORDER FOR BENCH WARRANT

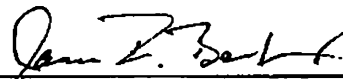
APR 10 2017
PM 9 25

This matter comes before me for () trial or (X) plea on April 10, 2017. The

Defendant's name was sounded and the defendant did not appear. Representation was made by
the State that proper notice was given to the defendant.

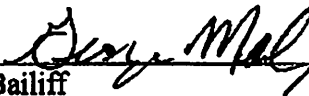
THEREFORE, IT IS ORDERED that a bench warrant be issued for the defendant.

IT IS SO ORDERED

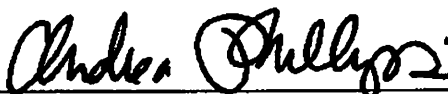

Presiding Judge

Date: 4/10/17
Greenville, South Carolina

I certify that the defendant's name was sounded and that the defendant did not appear.


Bailiff

I certify that proper notice was given to the defendant that he/she was required to be in court
today.


Investigator or Prosecutor

Assistant Solicitor Mark Moyer

FAILURE TO APPEAR AFFIDAVIT

NAME OF DEFENDANT: DWAYNE C TALLENT

JUDGE: Barber

DATE THAT THE DEFENDANT FAILED TO APPEAR: Monday, April 10, 2017

ADDRESS NOTIFICATION SENT TO: 79 Ferguson Road, Piedmont, SC 29673

BONDSMAN/COMPANY: [REDACTED]

TYPE OF BOND: surety

AMOUNT OF BOND: 75,000

DATE OF BOND: 11/26/14

CHARGE	WARRANT #	INDICTMENT #
Criminal Sexual Conduct With a Minor 1 st Degree	2014A2330208081	2014-GS-23-11873
Contributing to the Delinquency of a Minor	2014A2330208082	2014-GS-23-11874
Lewd Act on a Minor	2014A2330208083	2014-GS-23-11875
Incest	2014A2330208084	2014-GS-23-11876
Criminal Sexual Conduct With a Minor 2 nd Degree	2014A2330208085	2014-GS-23-11877
Buggery	2014A2330208088	2014-GS-23-11872

DATE OF ARREST: October 30, 2014

OFFICER: W.W. Richter

MAGISTRATE: Hudson

ASSISTANT SOLICITOR: Mark Moyer

DEFENDANTS DESCRIPTION/SSN#: [REDACTED] DOB: [REDACTED]

OTHER DETAILS/INFORMATION:

Defendant failed to appear for General Sessions Court on 04/03/17 and 04/10/17.

AFFIANT: Anderson Phillips

DATE: Monday, April 10, 2017

SWORN BEFORE ME ON: 04/10/17
Rita R. Carter
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 11-21-2026

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: DWAYNE C TALLENT

Indictment # : 2014GS2311873

Address: 79 Ferguson Road

Warrant/Ticket # 2014A2330208081

City: Piedmont State: SC ZIP :29673

No Warrant: _____

SS#: Sex: M Race: W

Offense Code: 0385

Date of Birth:

Offense Name: Sex, Crim Sex Cond, 1st D

State: SC Driver's License #:

Date of Arrest: October 30, 2014

FILED

DATE OF DISPOSITION: 04/10/17

APR 28 2017

Clerk of Court
Greenville County

DISPOSITION:

____ 1. Guilty Plea

* ____ 7. Remanded

____ 2. Trial (Guilty)

____ 8. Dismissed at Prelim

____ 3. Trial (Not Guilty)

____ 8. No Bill

* ____ 4. Dism/Nol Pros/Pros Ended

* X 9. Failure to Appear

* ____ 5. Judicial Commitment

* ____ 10. Other

____ 6. Judicial Dismissal

* Explain: Bench Warrant

Judge: Barber

Ct. Reporter: _____

Defense Attorney: KAPPEL, MATTHEW

Solicitor: Mark Moyer **LMM**

Bar #: 64155

Offense Code: 0385

Offense Name: Criminal Sexual Conduct w/ Minor 1st Degree

Sentence: _____

PCR PETITION FOR WRIT APPENDIX PAGE 156

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER

2014A2330208081

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED INDICTMENT

DOCKET NO. 2014-GS-23-011873

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

Amended Indictment for
0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE**

At a Court of General Sessions, convened on

DEC 13 2016

the Grand Jurors of Greenville

County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 7, 1998, commit a sexual battery on E. F. G., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

PCR PETITION FOR WRIT APPENDIX PAGE 158

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Dwayne C Tallent

INDICTMENT/CASE#: 2014GS2311873
A/W#: 2014A2330208081
Date of Offense: 6/6/1995
S.C. Code § : 16-03-0655(A)(1)
CDR Code #: 0385

AKA:
Sex: M Age: 47
DOB: SS#:
Address: 79 Ferguson Road
City, State, Zip: Piedmont, SC 29673
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Criminal sexual conduct with a minor, first degree

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 15390
Defendant KAPPEL, MATTHEW SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
the State Department of Corrections. 103 days.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickens
Court Reporter: Herron
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 2158
Sentence Date: 7-18-17

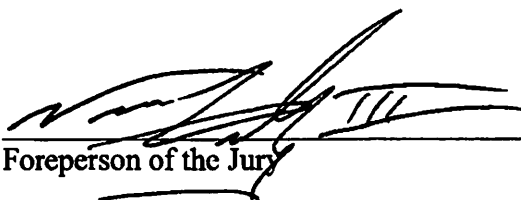
PCR PETITION FOR WRIT APPENDIX PAGE 159

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	VERDICT
	)	Criminal Sexual Conduct with a Minor
vs.	)	1st Degree
	)	
Dwayne C. Tallent,	)	
	)	
Defendant.	)	C.A. No.: 2014-GS-23-11873

We, the Jury, by unanimous agreement, find the Defendant:

☐ Not Guilty

☒ Guilty



Foreperson of the Jury
July 19, 2017

PCR PETITION FOR WRIT APPENDIX PAGE 160

2014A2530208081, 8082, 8083, 8084, 8085

Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME: Stillwell Robin B.

TRIAL TYPE: Criminal

PANEL ID: STILWELL 7/17/7

COURTROOM CRT6

2014-GS-23-11873, 11874, 11875, 11877

State vs Dwayne C. Tallant (M. Kappel)

DESCRIPTION: STILWELL 7/17/7

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
~~D 1 Stafford, Nikki S~~	~~173~~	A	F	()	(1)	()	<u>En Camera Hearing:</u>
~~D 2 Minard, Christopher A~~	~~117~~	W	M	()	(2)	()	1) <u>Elizabeth Hues</u>
3 Williams, Jennifer I	189	B	F	()	()	()	2) <u>Christina Rosado</u>
~~S 4 Sinieropi, Nicholas A~~	~~168~~	W	M	(1)	()	()	
~~D 5 Miller, Cynthia M~~	~~115~~	W	F	()	(3)	()	<u>Trial:</u>
6 Stenhouse, Doris D	174	B	F	()	()	()	<u>State's Witness:</u>
~~D 7 Shunkwiler, Howard E II~~	~~166~~	W	M	()	(4)	()	1) <u>Elizabeth Hues</u>
~~D 8 Henson, Jennifer A~~	~~74~~	W	F	()	(5)	()	2) <u>Jess Hues</u>
~~9 Ramsey, Bobby W~~	~~146~~	W	M	()	()	()	3) <u>Christopher Hues</u>
~~EXCUSED - Replaced by A-1~~							
10 Saunders, Kimberly	158	W	F	()	()	()	4) <u>Dep. Will Richter</u>
11 Bowman, Melanie S	23	W	F	()	()	()	5) <u>Christina Rosado</u>
12 Smith, Lakisha S	170	B	F	()	()	()	
~~D 13 Deese, Kerry M~~	~~44~~	W	F	()	(6)	()	<u>Defense Witness:</u>
~~D 14 Nemikos, Alisa Dawn~~	~~124~~	W	F	()	(7)	()	1) <u>Selina Brunson</u>
15 Gourley, Norman W III	64	W	M	()	()	()	2) <u>Tenore Brisson</u>
~~D 16 Hoyle, John D Sr~~	~~84~~	W	M	()	(8)	()	3) <u>Deana Rogers</u>
~~D 17 Jenkins, Jordan L~~	~~92~~	W	F	()	(9)	()	4) <u>Debbie Seymore</u>
~~C 18 Hudson, Cindy L~~	~~85~~	W	F	()	()	(X)	
19 Martin, Marianne S	108	W	F	()	()	()	<u>En Camera Hearing:</u>
~~S 20 Martin, Thomas M~~	~~109~~	W	M	(2)	()	()	<u>Cynthia Rosado</u>
21 Herring, Michael W	77	W	M	()	()	()	
22 Eguigure, Maura	54	H	F	()	()	()	
~~D 23 Seely, Claire A~~	~~161~~	W	F	()	(10)	()	
~~S 24 Gosnell, Linda P~~	~~63~~	W	F	(3)	()	()	

Start Fax: /
End Fax:

Start: 11:20 7-17-17

PCR PETITION FOR WRIT APPENDIX PAGE 161

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Stillwell Robin B.

TRIAL TYPE : Criminal

PANEL ID : STILWELL 7/17/7

COURTROOM CRT6

DESCRIPTION : STILWELL 7/17/7

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Dieterle, Brynne L	47	(11) W	F	()	()	()	
~~C 26 Brelsford, Vernita R~~	~~26~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
27 Killen, Elizabeth K	98	(12) W	F	()	()	()	
28 Evans, Xavier	58	(A1) B	M	()	()	()	
~~D 29 All, Raymond A III~~	~~3~~	~~W~~	~~M~~	~~()~~	~~(11)~~	~~()~~	
30 Allen, Kimberly W	5	(A2) W	F	()	()	()	
31 Dunbar, Bryon R	50	B	M	()	()	()	
~~C 32 Odumodu, Judy K~~	~~127~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
33 Tollison, James A	180	W	M	()	()	()	
34 Banks, Keona D	12	B	F	()	()	()	
35 Russell, Alan A	193	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

PCR PETITION FOR WRIT APPENDIX PAGE 162

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

The State)

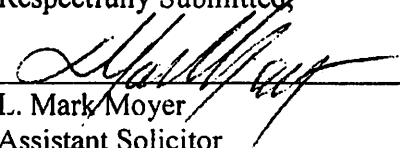
-vs-)

Dwayne Tallent,
Defendant.)

STATE'S POTENTIAL
WITNESSES

Hearing	Trial
#1	#1 1. [REDACTED]
	2. Eric Cervantes
	#3 3. Christopher Greco
	#2 4. Joey Greco
#2	#5 5. [REDACTED]
	6. Sherry Tallent
	#4 7. Will Richter, Greenville County Sheriff's Office
	8. Jill Finley

Respectfully Submitted,


L. Mark Moyer
Assistant Solicitor

Greenville, South Carolina

WITNESS LIST

On behalf of Dwayne Tallent

Hearing	TRIAL
	1. TL Patton
	2. Andrea R. Rogers Rowe
#1	3. Selena Brunson
	3. Russell Brunson
#2	4. Lenore Brissey
#4	5. Debbie Seymore
#3	6. Diana Rogers
	7. Michael Cervantes
	8. Denise Baker
	~~9. Karen Garrett~~
9.	10. Pam Massey
#1	C. R.

MR

2014A2330208081

8082
8083
8084
8085

FORM 4
NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Case Nos. 2014-GS-23-11874; 2014-GS-23-11877;
2014-GS-23-11873; 2014-GS-23-11875

The State,

Respondent,

v.

Dwayne C. Tallent,

Appellant.

NOTICE OF APPEAL

Dwayne C. Tallent appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Robin B. Stilwell on July 19, 2017.

July 19, 2017


Dwayne C. Tallent

Other Counsel of Record:
Mark Moyer
Assistant Solicitor
305 E. North Street, Suite 325
Greenville, SC 29601
864-467-8647

AP:✓
EXD:✓

**FORM 4
NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS**

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

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

**Case Nos. 2014-GS-23-11874; 2014-GS-23-11877;
2014-GS-23-11873; 2014-GS-23-11875**

The State,

Respondent,

v.

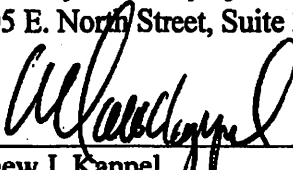
Dwayne C. Tallent,

Appellant.

PROOF OF SERVICE

The undersigned certifies that he did this day serve on copy of Mr. Tallent's Notice Of Appeal upon Asst. Solicitor Mark Moyer this day by hand delivering of copy of the same to Asst. Solicitor Mark Moyer, 305 E. North Street, Suite 325, Greenville, SC 29601.

July 20, 2017


Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
864-467-9595

**Other Counsel of Record:
Mark Moyer
Assistant Solicitor
305 E. North Street, Suite 325
Greenville, SC 29601
864-467-8647**

2017 JUL 20 PM 1:12

2014A2330208081

14-11874

8082

14-11877

8083

14-11873

8084

8085

14-11875

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

August 2, 2017

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

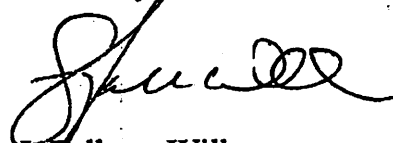
FILED
AUG 14 2017
Clerk of Court
Greenville County

Re: State, Respondent v. Dwayne Cameron Tallent, Appellant
Appellate Case No.: 2017-001585

Dear Ms. Kitchings,

I have joined Matthew J. Kappel in representation of Mr. Tallent on the appeal of this case. Mr. Kappel has ordered the transcript and a copy of that letter is enclosed.

Sincerely,


J. Falkner Wilkes

c:

The Honorable Rosalyn W. Frierson
Director, South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

PCR PETITION FOR WRIT APPENDIX PAGE 167

Alan Wilson, Attorney General
P.O. Box 11549
Columbia, SC 29211

Paul B. Wickensimer
Courthouse
305 E North Street
Greenville, SC 29601-2121

Robert M. Dudek
SCCID/ Appellate Defense
P.O.B. 11589
Columbia, SC 29211-1589

Matthew J. Kappel
P.O.B. 10334
Greenville, SC 29603



2014A 233020 8081
2014A 23 30208082
2014A 23 30208083
2014 A 23 30208084
2014 A 23 30208085

"21 MAR 19 PM 3:48
Paul Wickensimer COC GUL SC

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1838
www.sccourts.org

March 15, 2021

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Dwayne C. Tallent
Lower Court Case No. 2014GS2311873, 2014GS2311874,
2014GS2311875, 2014GS2311877
Appellate Case No. 2017-001585

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Matthew J. Kappel, Esquire
J. Falkner Wilkes, Esquire
David A. Spencer, Esquire
William Walter Wilkins, III, Esquire

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

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

Appellate Case No. 2017-001585

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

Opinion No. 5729
Heard March 17, 2020 – Filed June 10, 2020

AFFIRMED

Matthew J. Kappel, of Law Office of Matthew J. Kappel,
PC, and J. Falkner Wilkes, both of Greenville, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

HEWITT, J.: This case is chiefly about whether the trial court abused its discretion in declining to sever criminal charges from being tried together. The State alleged that Dwayne C. Tallent sexually abused his minor stepdaughter for several years and he gave her and one of her brothers (the only brother who was a minor at the time) illegal drugs and alcohol after the brothers moved into the house Tallent shared with the siblings' mother. Tallent was charged with first and second

'21 MAR 19 PM 3:48
Paul Wickensiner COC GUL SC

degree criminal sexual conduct with a minor; lewd act upon a child; and a single count of contributing to the delinquency of stepdaughter and brother. A jury convicted him of the charges. The trial court ordered concurrent sentences of thirty years' imprisonment.

Here, Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge from the other charges. He also argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine. In his view, allowing the more egregious drug-related testimony into evidence violated Rule 403 of the South Carolina Rules of Evidence.

We reject these arguments for the same basic reason: both decisions are reviewed under the abuse of discretion standard, and the record reveals no abuse of discretion. Thus, we affirm.

FACTS

This was a delayed reporting case. The abuse allegedly began in the early 1990s when stepdaughter was five or so years old. Stepdaughter testified Tallent's abusive conduct escalated over several years. Details of the abuse need not be repeated here.

Stepdaughter said the abuse ended when she was approximately fourteen years old and went to live with her biological father. She reported the abuse to authorities when she was twenty-six.

Stepdaughter also recalled being around illegal drugs in the household as early as five years old. She testified Tallent let her try marijuana when she was twelve and continued providing her with marijuana and alcohol until she moved out. Stepdaughter also testified crack cocaine and other drugs were present in the home.

The brothers moved into the home some years after their sister. Tallent allegedly exposed both brothers to illegal drugs and alcohol. Both brothers also testified to witnessing Tallent's odd behavior with their sister and, eventually, his abuse of her.

For example, the younger brother stated marijuana use was common in the house. He recalled that Tallent provided all of the children with marijuana, gave the brothers cocaine and other drugs, and taught the brothers how to make crack cocaine.

The younger brother also recalled Tallent frequently touched stepdaughter and rubbed her inner thigh in ways that seemed awkward and inappropriate. He stated it was not uncommon for stepdaughter to be in bed with Tallent. He additionally testified that on one occasion he looked through the keyhole of the bedroom door, witnessed Tallent sexually abusing stepdaughter, kicked the door open, and confronted Tallent.

Older brother corroborated this account about the illegal drug activity and the episode where younger brother witnessed his sister being sexually abused.

Before trial, Tallent moved to sever the contributing to the delinquency of a minor charge from the remaining charges on the ground that trying the charges together would cause undue prejudice by allowing evidence that would otherwise be inadmissible if the trial only involved the CSC and lewd act charges. Tallent argued his involvement in manufacturing, selling, and using cocaine, crack cocaine, and methamphetamine had no substantial connection to the CSC or lewd act charges and would have never passed the probative versus prejudicial threshold if offered as "prior bad acts" in a trial solely concerning the alleged sexual abuse.

The trial court disagreed and found that the charges were interconnected and interwoven. Therefore, the court determined it was appropriate to try them together. The court nevertheless reserved the right to exclude certain testimony if it was unduly prejudicial and specifically mentioned that it was not ruling evidence of drug *transactions* and *manufacturing* would be admitted.

Prior to stepdaughter's testimony regarding drug activity in the house, the State requested that the jury be sent out of the courtroom to seek clarification on the trial court's ruling. The State said it planned to introduce testimony that Tallent provided stepdaughter with marijuana and alcohol, provided cocaine and other drugs to other people in the household, and manufactured crack cocaine in front of stepdaughter. The State argued this evidence was relevant to the contributing to the delinquency of a minor charge.

Tallent objected, arguing the drug evidence was so prejudicial that he would not be able to receive a fair trial and its admission would violate Rule 403. Tallent acknowledged evidence that he gave stepdaughter marijuana and alcohol was relevant to the contributing to the delinquency of a minor charge and admissible. However, Tallent claimed testimony and evidence regarding drug manufacturing, drug transactions, extortion, and firearms was more prejudicial than probative and inadmissible.

The trial court held testimony regarding drug activity was relevant to the contributing to the delinquency of a minor charge and admissible. However, and as before, the court noted Tallent should object if he felt specific testimony violated Rule 403 or went "beyond simply proving the elements of contributing to the delinquency of a minor."

The trial court and the parties continued addressing this issue throughout the trial as various drug-related testimony came out. The court generally allowed testimony regarding drug use and manufacturing in which stepdaughter and her brothers were personally involved. The court also sustained objections and provided curative instructions as to testimony of drug transactions with third parties and other evidence not directly related to Tallent's charges.

Multiple witnesses testified in Tallent's defense, generally stating they did not witness any inappropriate conduct by Tallent toward stepdaughter or other minors. The jury convicted Tallent of all four charges.

SEVERANCE

Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge. Tallent contends this charge was not "the same general kind of charge, or related in kind, place or character sufficiently to be tried with the sexual offense charges." Additionally, Tallent claims the evidence related to his manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine was unrelated and overly prejudicial with regard to the CSC and lewd act charges. In his view, the court improperly focused on whether the drug-related evidence was relevant to the contributing to the delinquency of a minor charge rather than asking whether this evidence would be admissible if the CSC and lewd act charges were tried alone.

In simple terms, the law explains that multiple charges can be tried together when they have a logical relationship to each other and when there is no prejudice. The "test" is that the charges must "(1) arise out of a single chain of circumstances, (2) [be] proved by the same evidence, [and] (3) [be] of the same general nature" *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). Further, no real right of the defendant can be prejudiced. *Id.* "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's

substantive rights would not be prejudiced." *State v. Rice*, 368 S.C. 610, 614, 629 S.E.2d 393, 395 (Ct. App. 2006).

Decisions on severance and joinder are reviewed under a deferential standard. These rulings "should not be disturbed unless an abuse of discretion is shown." *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Rice*, 368 S.C. at 613, 629 S.E.2d at 395.

Cases use variants of the same general language to describe when the joinder of charges is appropriate. Recent precedent describes joinder as being appropriate for crimes that involve "connected transactions closely related in kind, place, and character." *State v. Beekman*, 415 S.C. 632, 637, 785 S.E.2d 202, 205 (2016) (quoting *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005)). This same decision rejected a restrictive reading of the phrase "a single chain of circumstances." *Beekman*, 415 S.C. at 636, 785 S.E.2d at 204.

"Offenses are considered to be of the same general nature where they are interconnected." *Rice*, 368 S.C. at 614, 629 S.E.2d at 395. "Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." *Id.*

Mindful of these principles, we do not see an abuse of the trial court's discretion in denying Tallent's motion to sever the charges. In our view, one can sensibly say that these charges arose out of a single chain of circumstances, were proved by the same evidence, and were of the same general nature and Tallent was not unfairly prejudiced. *See Tucker*, 324 S.C. at 164, 478 S.E.2d at 265.

First, Tallent's abuse of stepdaughter covered a period of years in various homes where the family lived. During parts of this same period, Tallent supplied stepdaughter and her brothers with illegal drugs and alcohol. He also taught the brothers how to manufacture crack cocaine during this same time period. Although the charges did not arise out of a single isolated incident, the CSC, lewd act, and contributing to the delinquency of a minor charges "arose from, in substance, a single course of conduct or connected transactions." *Beekman*, 415 S.C. at 636-37, 785 S.E.2d at 204 (quoting *State v. Beekman*, 405 S.C. 225, 231, 746 S.E.2d 483, 486 (Ct. App. 2013)). In short, there was evidence that this improper conduct was continuous and spanned several years.

Second, the charges were proved by common evidence. All four charges were proved by the same witnesses—stepdaughter and her brothers. *See Beekman*, 415 S.C. at 638, 785 S.E.2d at 205 (stating that although the defendant's charges were distinct crimes, testimony from many of the same witnesses was used to prove both charges, and rejecting the defendant's argument that joinder required the charges to rely on identical evidence).

Third, the charges were of the same general nature. *See Rice*, 368 S.C. at 614, 629 S.E.2d at 395 ("Offenses are considered to be of the same general nature where they are interconnected."). The State presented evidence showing Tallent abused stepdaughter in the same locations and during the same time periods that he supplied her and her younger brother (the only brother mentioned in the indictment) with drugs and alcohol.

The State's witnesses also testified Tallent's providing stepdaughter with marijuana and alcohol was evidence of Tallent "grooming" stepdaughter so he could abuse her. Although the charges in this case technically differ from each other in that some were sexual in nature and the contributing to the delinquency of a minor charge was drug-related, all are more broadly of the same general nature and could be fairly characterized as involving abusive conduct toward minors.

Fourth, and critically, it is hard to say the joinder of these charges caused unfair prejudice. Tallent contends he was harmed by the drug evidence because it was not relevant to the CSC and lewd act charges. But the test is not so narrow, and precedent says "there may be evidence that is relevant to one or more, but not all, of the charges." *Beekman*, 415 S.C. at 638, 785 S.E.2d at 205. Additionally, and as discussed below, we fail to see how evidence of Tallent's use, manufacture, and sale of cocaine, crack cocaine, and methamphetamine would have a tendency to suggest an improper basis upon which a jury would rely upon in finding he committed CSC or a lewd act. The evidence was harmful to be sure. But we do not think it was unfairly harmful.

In addition to *Beekman*, the present case strikes us as fairly similar to *State v. Davis*, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018). There, the defendant was charged with a property crime—burglary—and possession of methamphetamine with intent to distribute. *Id.* at 476, 812 S.E.2d at 426. The charges stemmed from an incident in which the defendant broke into a home, fled the scene, but left a vehicle behind. *Id.* at 477, 812 S.E.2d at 426. When officers searched the vehicle, they discovered drug paraphernalia and two bags of methamphetamine. *Id.* at 478, 812 S.E.2d at 426-27.

Davis argued the charges should have been severed because the methamphetamine was unrelated to the burglary, not proved by the same evidence, and the joinder of the charges would cause significant prejudice. *Id.* at 481, 812 S.E.2d at 428. This court disagreed, finding the possession with intent to distribute charge arose from the same chain of circumstances as the burglary and was proved through testimony of many of the same witnesses and the defendant did not suffer any prejudice due to the joinder. *Id.* at 481-82, 812 S.E.2d at 428-29.

If there was no winning case for joinder causing unfair prejudice in *Davis*, we think there is not a winning case for unfair prejudice here. Tallent's basic argument seems to be that certain types of especially harmful drug-related evidence would necessarily sway a jury to improperly convict a defendant on charges that are not drug-related. Although that may be true in some individual cases, we respectfully disagree with such a blanket proposition and note that if it were true, the result in *Davis* would be different.

ADMISSION OF DRUG EVIDENCE

Tallent argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine because the danger of unfair prejudice from this evidence substantially outweighed its probative value.

Rule 403, SCRE, is a familiar one and provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Precedent explains "[u]nfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Huckabee*, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (Ct. App. 2017) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)).

As already noted, a deferential standard of review applies here as well. "A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." *Id.* (quoting *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)).

We find the trial court acted within its discretion in admitting evidence of Tallent's use, manufacture, and sale of cocaine, crack cocaine, and methamphetamine.

Tallent was charged with contributing to the delinquency of stepdaughter and one of her brothers. The statute says it is unlawful "for any person over eighteen years of age to . . . cause or influence a minor: (1) [t]o violate any law or any municipal ordinance" S.C. Code Ann. § 16-17-490 (2015). Stepdaughter and both brothers testified Tallent provided them with various drugs and taught the brothers how to make crack cocaine.

This testimony was obviously probative of the contributing to the delinquency charge. Indeed, we are unable to formulate a sensible argument that this testimony is not probative.

Tallent's core argument is unfair prejudice, but we think the danger of unfair prejudice from this testimony was relatively low. Although evidence of drug activity is admittedly not relevant to the elements of the CSC and lewd act charges, we fail to see how evidence of drug-related activity would have a tendency to suggest an improper basis for the jury to convict Tallent of CSC or committing a lewd act. *See Huckabee*, 419 S.C. at 423, 798 S.E.2d at 589 ("Unfair prejudice means an undue tendency to suggest a decision on an improper basis." (quoting *Lyles*, 379 S.C. at 338, 665 S.E.2d at 206)). Nothing suggests the jury would be tempted to find Tallent guilty of sexual abuse if it believed Tallent exposed stepdaughter and her brothers to drugs and alcohol.

A holding in Tallent's favor here would be tantamount to a holding that certain drug-related evidence that is probative on one charge inherently causes unfair prejudice on other charges that are not drug-related. We are not aware of any support for that proposition. Accordingly, we find the trial court did not abuse its discretion in admitting testimony regarding Tallent's drug activity.

CONCLUSION

The trial court did not abuse its discretion in denying Tallent's motion to sever and in admitting evidence related to drug use and manufacturing. Thus, Tallent's convictions and sentences are

AFFIRMED.

LOCKEMY, C.J., and GEATHERS, J., concur.

PCR PETITION FOR WRIT APPENDIX PAGE 177



ALAN WILSON
ATTORNEY GENERAL

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2014A2330208084
2014A2330208085

21 MAR 23 AM 8:37
Paul Wickensimer CDC GUL SC

March 16, 2021

The Honorable William W. Wilkins, III
Thirteenth Circuit Solicitor
305 East North Street, Suite 325
Greenville, South Carolina 29601

RE: State v. Dwayne C. Tallent
2014-GS-23-11873; 11874, 11875 and 11877

Dear Solicitor Wilkins:

In its opinion No. 5729, filed on June 1, 2020 the South Carolina Court of Appeals affirmed Dwayne C. Tallent's Greenville County conviction of CSC with a minor, lewd act upon a child and contributing to the delinquency of a minor. The subsequent Petition for Writ of Certiorari was denied on March 09, 2021. The Remittitur has been sent to the Greenville County Clerk of Court. Therefore, with this letter, we are closing our direct appeal file in this matter.

This Office has verified through the South Carolina Department of Corrections' website that Tallent is presently incarcerated.

Sincerely,

David Spencer
Senior Assistant Attorney General
Bar No. 68571

DS/ssm
Enclosure

cc: The Honorable Paul B. Wickensimer
Barton J. Vincent, Esquire
Alexandra Perez-Caballero, SLED CJIS
Victim Advocacy Division



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 15, 2021

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Dwayne C. Tallent
Lower Court Case No. 2014GS2311873, 2014GS2311874,
2014GS2311875, 2014GS2311877
Appellate Case No. 2017-001585

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Matthew J. Kappel, Esquire
J. Falkner Wilkes, Esquire
David A. Spencer, Esquire
William Walter Wilkins, III, Esquire

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

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

Appellate Case No. 2017-001585

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

Opinion No. 5729
Heard March 17, 2020 – Filed June 10, 2020

AFFIRMED

Matthew J. Kappel, of Law Office of Matthew J. Kappel,
PC, and J. Falkner Wilkes, both of Greenville, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

HEWITT, J.: This case is chiefly about whether the trial court abused its discretion in declining to sever criminal charges from being tried together. The State alleged that Dwayne C. Tallent sexually abused his minor stepdaughter for several years and he gave her and one of her brothers (the only brother who was a minor at the time) illegal drugs and alcohol after the brothers moved into the house Tallent shared with the siblings' mother. Tallent was charged with first and second

degree criminal sexual conduct with a minor; lewd act upon a child; and a single count of contributing to the delinquency of stepdaughter and brother. A jury convicted him of the charges. The trial court ordered concurrent sentences of thirty years' imprisonment.

Here, Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge from the other charges. He also argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine. In his view, allowing the more egregious drug-related testimony into evidence violated Rule 403 of the South Carolina Rules of Evidence.

We reject these arguments for the same basic reason: both decisions are reviewed under the abuse of discretion standard, and the record reveals no abuse of discretion. Thus, we affirm.

FACTS

This was a delayed reporting case. The abuse allegedly began in the early 1990s when stepdaughter was five or so years old. Stepdaughter testified Tallent's abusive conduct escalated over several years. Details of the abuse need not be repeated here.

Stepdaughter said the abuse ended when she was approximately fourteen years old and went to live with her biological father. She reported the abuse to authorities when she was twenty-six.

Stepdaughter also recalled being around illegal drugs in the household as early as five years old. She testified Tallent let her try marijuana when she was twelve and continued providing her with marijuana and alcohol until she moved out. Stepdaughter also testified crack cocaine and other drugs were present in the home.

The brothers moved into the home some years after their sister. Tallent allegedly exposed both brothers to illegal drugs and alcohol. Both brothers also testified to witnessing Tallent's odd behavior with their sister and, eventually, his abuse of her.

For example, the younger brother stated marijuana use was common in the house. He recalled that Tallent provided all of the children with marijuana, gave the brothers cocaine and other drugs, and taught the brothers how to make crack cocaine.

The younger brother also recalled Tallent frequently touched stepdaughter and rubbed her inner thigh in ways that seemed awkward and inappropriate. He stated it was not uncommon for stepdaughter to be in bed with Tallent. He additionally testified that on one occasion he looked through the keyhole of the bedroom door, witnessed Tallent sexually abusing stepdaughter, kicked the door open, and confronted Tallent.

Older brother corroborated this account about the illegal drug activity and the episode where younger brother witnessed his sister being sexually abused.

Before trial, Tallent moved to sever the contributing to the delinquency of a minor charge from the remaining charges on the ground that trying the charges together would cause undue prejudice by allowing evidence that would otherwise be inadmissible if the trial only involved the CSC and lewd act charges. Tallent argued his involvement in manufacturing, selling, and using cocaine, crack cocaine, and methamphetamine had no substantial connection to the CSC or lewd act charges and would have never passed the probative versus prejudicial threshold if offered as "prior bad acts" in a trial solely concerning the alleged sexual abuse.

The trial court disagreed and found that the charges were interconnected and interwoven. Therefore, the court determined it was appropriate to try them together. The court nevertheless reserved the right to exclude certain testimony if it was unduly prejudicial and specifically mentioned that it was not ruling evidence of drug *transactions* and *manufacturing* would be admitted.

Prior to stepdaughter's testimony regarding drug activity in the house, the State requested that the jury be sent out of the courtroom to seek clarification on the trial court's ruling. The State said it planned to introduce testimony that Tallent provided stepdaughter with marijuana and alcohol, provided cocaine and other drugs to other people in the household, and manufactured crack cocaine in front of stepdaughter. The State argued this evidence was relevant to the contributing to the delinquency of a minor charge.

Tallent objected, arguing the drug evidence was so prejudicial that he would not be able to receive a fair trial and its admission would violate Rule 403. Tallent acknowledged evidence that he gave stepdaughter marijuana and alcohol was relevant to the contributing to the delinquency of a minor charge and admissible. However, Tallent claimed testimony and evidence regarding drug manufacturing, drug transactions, extortion, and firearms was more prejudicial than probative and inadmissible.

The trial court held testimony regarding drug activity was relevant to the contributing to the delinquency of a minor charge and admissible. However, and as before, the court noted Tallent should object if he felt specific testimony violated Rule 403 or went "beyond simply proving the elements of contributing to the delinquency of a minor."

The trial court and the parties continued addressing this issue throughout the trial as various drug-related testimony came out. The court generally allowed testimony regarding drug use and manufacturing in which stepdaughter and her brothers were personally involved. The court also sustained objections and provided curative instructions as to testimony of drug transactions with third parties and other evidence not directly related to Tallent's charges.

Multiple witnesses testified in Tallent's defense, generally stating they did not witness any inappropriate conduct by Tallent toward stepdaughter or other minors. The jury convicted Tallent of all four charges.

SEVERANCE

Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge. Tallent contends this charge was not "the same general kind of charge, or related in kind, place or character sufficiently to be tried with the sexual offense charges." Additionally, Tallent claims the evidence related to his manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine was unrelated and overly prejudicial with regard to the CSC and lewd act charges. In his view, the court improperly focused on whether the drug-related evidence was relevant to the contributing to the delinquency of a minor charge rather than asking whether this evidence would be admissible if the CSC and lewd act charges were tried alone.

In simple terms, the law explains that multiple charges can be tried together when they have a logical relationship to each other and when there is no prejudice. The "test" is that the charges must "(1) arise out of a single chain of circumstances, (2) [be] proved by the same evidence, [and] (3) [be] of the same general nature" *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). Further, no real right of the defendant can be prejudiced. *Id.* "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's

substantive rights would not be prejudiced." *State v. Rice*, 368 S.C. 610, 614, 629 S.E.2d 393, 395 (Ct. App. 2006).

Decisions on severance and joinder are reviewed under a deferential standard. These rulings "should not be disturbed unless an abuse of discretion is shown." *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Rice*, 368 S.C. at 613, 629 S.E.2d at 395.

Cases use variants of the same general language to describe when the joinder of charges is appropriate. Recent precedent describes joinder as being appropriate for crimes that involve "connected transactions closely related in kind, place, and character." *State v. Beekman*, 415 S.C. 632, 637, 785 S.E.2d 202, 205 (2016) (quoting *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005)). This same decision rejected a restrictive reading of the phrase "a single chain of circumstances." *Beekman*, 415 S.C. at 636, 785 S.E.2d at 204.

"Offenses are considered to be of the same general nature where they are interconnected." *Rice*, 368 S.C. at 614, 629 S.E.2d at 395. "Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." *Id.*

Mindful of these principles, we do not see an abuse of the trial court's discretion in denying Tallent's motion to sever the charges. In our view, one can sensibly say that these charges arose out of a single chain of circumstances, were proved by the same evidence, and were of the same general nature and Tallent was not unfairly prejudiced. *See Tucker*, 324 S.C. at 164, 478 S.E.2d at 265.

First, Tallent's abuse of stepdaughter covered a period of years in various homes where the family lived. During parts of this same period, Tallent supplied stepdaughter and her brothers with illegal drugs and alcohol. He also taught the brothers how to manufacture crack cocaine during this same time period. Although the charges did not arise out of a single isolated incident, the CSC, lewd act, and contributing to the delinquency of a minor charges "arose from, in substance, a single course of conduct or connected transactions." *Beekman*, 415 S.C. at 636-37, 785 S.E.2d at 204 (quoting *State v. Beekman*, 405 S.C. 225, 231, 746 S.E.2d 483, 486 (Ct. App. 2013)). In short, there was evidence that this improper conduct was continuous and spanned several years.

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Third, the charges were of the same general nature. *See Rice*, 368 S.C. at 614, 629 S.E.2d at 395 ("Offenses are considered to be of the same general nature where they are interconnected."). The State presented evidence showing Tallent abused stepdaughter in the same locations and during the same time periods that he supplied her and her younger brother (the only brother mentioned in the indictment) with drugs and alcohol.

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Fourth, and critically, it is hard to say the joinder of these charges caused unfair prejudice. Tallent contends he was harmed by the drug evidence because it was not relevant to the CSC and lewd act charges. But the test is not so narrow, and precedent says "there may be evidence that is relevant to one or more, but not all, of the charges." *Beekman*, 415 S.C. at 638, 785 S.E.2d at 205. Additionally, and as discussed below, we fail to see how evidence of Tallent's use, manufacture, and sale of cocaine, crack cocaine, and methamphetamine would have a tendency to suggest an improper basis upon which a jury would rely upon in finding he committed CSC or a lewd act. The evidence was harmful to be sure. But we do not think it was unfairly harmful.

In addition to *Beekman*, the present case strikes us as fairly similar to *State v. Davis*, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018). There, the defendant was charged with a property crime—burglary—and possession of methamphetamine with intent to distribute. *Id.* at 476, 812 S.E.2d at 426. The charges stemmed from an incident in which the defendant broke into a home, fled the scene, but left a vehicle behind. *Id.* at 477, 812 S.E.2d at 426. When officers searched the vehicle, they discovered drug paraphernalia and two bags of methamphetamine. *Id.* at 478, 812 S.E.2d at 426-27.

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Tallent argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine because the danger of unfair prejudice from this evidence substantially outweighed its probative value.

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We find the trial court acted within its discretion in admitting evidence of Tallent's use, manufacture, and sale of cocaine, crack cocaine, and methamphetamine. Tallent was charged with contributing to the delinquency of stepdaughter and one of her brothers. The statute says it is unlawful "for any person over eighteen years of age to . . . cause or influence a minor: (1) [t]o violate any law or any municipal ordinance" S.C. Code Ann. § 16-17-490 (2015). Stepdaughter and both brothers testified Tallent provided them with various drugs and taught the brothers how to make crack cocaine.

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A holding in Tallent's favor here would be tantamount to a holding that certain drug-related evidence that is probative on one charge inherently causes unfair prejudice on other charges that are not drug-related. We are not aware of any support for that proposition. Accordingly, we find the trial court did not abuse its discretion in admitting testimony regarding Tallent's drug activity.

CONCLUSION

The trial court did not abuse its discretion in denying Tallent's motion to sever and in admitting evidence related to drug use and manufacturing. Thus, Tallent's convictions and sentences are

AFFIRMED.

LOCKEMY, C.J., and GEATHERS, J., concur.

ARREST WARRANT

PCR PETITION FOR WRIT APPENDIX PAGE 187

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

2014A2330208082

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

1-14-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: _____ SSN: 256-47-4001

Sex: M Race: W Height: 6 Weight: 250

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: W W Richter - 0724

Offense: Minor / Contributing to the delinquency of a minor

Offense Code: 0048

Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant on

CH 10/20/14

P. Calhoun

Signature of Constable/Law Enforcement Officer

5300/1003

RETURN WARRANT TO:

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter

being duly sworn deposes and says that defendant Dwayne C Tallent

did within this county and state on or about 6/6/1995

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville

in the following particulars:

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

Further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That the Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence that implicates the defendant in this crime. That between 1992 and 1998 the defendant did knowingly and wilfully encourage, aid, or cause the minor victim to associate with immoral or vicious persons and/or to so deport herself as to wilfully injure or endanger his or her morals or health or the morals or health of others, and/or to otherwise violate the terms of this statute. This incident did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/1995 defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 9/2/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone

(864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Ballot set by

PCR PETITION FOR WRIT APPENDIX PAGE 188



Judge 4 [signature]
on 10-30-14
Type and Amount: 15000/15000
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

RECEIVED
NOV 03 2014
Clerk of Court
Greenville County

PCR PETITION FOR WRIT APPENDIX PAGE 189

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208082

ACTION OF GRAND JURY
TRUE BILL

Thomas J. Pridemore
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011874

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

0048 ✓ **Amended Indictment for**

**CONTRIBUTING TO THE DELINQUENCY OF A
MINOR**

VIOLATION § 16-17-0490

**ENTERED
ACCT.** *LBH*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

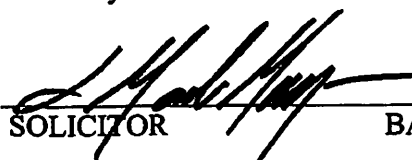
**AMENDED INDICTMENT FOR
CONTRIBUTING TO THE DELINQUENCY OF A MINOR**

At a Court of General Sessions, convened on **DEC 13 2016** the Grand Jurors of Greenville

County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 8, 2002, knowingly and willfully encourage, aid, or cause E. F. G. and/or C. L. G., minors, to violate a law or municipal ordinance, to engage in an occupation that is in violation of law, to associate with immoral or vicious persons, to frequent a place the existence of which is in violation of law, and/or to deport themselves so as to willfully injure or endanger their morals or health. This is in violation of §16-17-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

PCR PETITION FOR WRIT APPENDIX PAGE 191

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE VS.

Dwayne C Tallent

AKA:

Sex: M Age: 47

DOB: SS#:

Address: 79 Ferguson Road

City, State, Zip: Piedmont, SC 29673

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Contributing to the delinquency of a minor

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2311874

A/W#: 2014A2330208082

Date of Offense: 6/6/1995

S.C. Code § : 16-17-0490

CDR Code #: 0048

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

6455 SC Bar#

Defendant

KAPREL, MATTHEW

15390

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections. 103 days.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

\$ 128.75

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Paul B. Wickensimer

Hanon

Presiding Judge

Judge Code:

Sentence Date:

2158

7/19/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	VERDICT
	)	Contributing to the Delinquency of a
vs.	)	Minor
	)	
Dwayne C. Tallent,	)	
	)	
Defendant.	)	C.A. No.: 2014-GS-23-11874
	)	

We, the Jury, by unanimous agreement, find the Defendant:

☐ Not Guilty
☒ Guilty



Foreperson of the Jury

July 19, 2017

PCR PETITION FOR WRIT APPENDIX PAGE 193

2014-2530208081, 8082, 8083, 8084, 8085

Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME: Stillwell Robin B.

TRIAL TYPE: Criminal

PANEL ID: STILWELL 7/17/7

COURTROOM CRT6

2014-GS-23-11873, 11874, 11875, 11877

State vs Dwayne C. Tallant (M. Kappel)

(A. Mayer) DESCRIPTION: STILWELL 7/17/7

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
~~D 1 Stafford, Nikki S~~	~~173~~	A	F	()	(1)	()	<u>En Camera Hearing:</u>
~~D 2 Minard, Christopher A~~	~~117~~	W	M	()	(2)	()	<u>1) Elizabeth Greco</u>
3 Williams, Jennifer I	189	(1)	B	F	()	()	<u>2) Christina Rosado</u>
~~S 4 Simieropi, Nicholas A~~	~~168~~	W	M	(1)	()	()	
~~D 5 Miller, Cynthia M~~	~~115~~	W	F	()	(3)	()	<u>Trial:</u>
6 Stenhouse, Doris D	174	(2)	B	F	()	()	<u>State's Witness:</u>
~~D 7 Shunkwiler, Howard E H~~	~~166~~	W	M	()	(4)	()	<u>1) Elizabeth Greco</u>
~~D 8 Henson, Jennifer A~~	~~74~~	W	F	()	(5)	()	<u>2) Jocy Greco</u>
~~9 Ramsey, Bobby W~~	~~146~~	W	M	()	()	()	<u>3) Christopher Greco</u>
~~Excused - Replaced by A-1~~							
10 Saunders, Kimberly	158	(4)	W	F	()	()	<u>4) Dep. Will Richter</u>
11 Bowman, Melanie S	23	(5)	W	F	()	()	<u>5) Christina Rosado</u>
12 Smith, Lakisha S	170	(6)	B	F	()	()	
~~D 13 Deese, Kerry M~~	~~44~~	W	F	()	(6)	()	<u>Defense Witnesses:</u>
~~D 14 Nemikos, Alisa Dawn~~	~~124~~	W	F	()	(7)	()	<u>1) Selina Brunson</u>
15 Gourley, Norman W III	64	(7)	W	M	()	()	<u>2) Tenore Brisson</u>
~~D 16 Hoyle, John D Sr~~	~~84~~	W	M	()	(8)	()	<u>3) Deana Rogers</u>
~~D 17 Jenkins, Jordan L~~	~~92~~	W	F	()	(9)	()	<u>4) Debbie Seymore</u>
~~C 18 Hudson, Cindy L~~	~~85~~	W	F	()	()	(X)	
19 Martin, Marianne S	108	(8)	W	F	()	()	<u>En Camera Hearing:</u>
~~S 20 Martin, Thomas M~~	~~109~~	W	M	(2)	()	()	<u>Cynthia Rosado</u>
21 Herring, Michael W	77	(9)	W	M	()	()	
22 Eguigure, Maura	54	(10)	H	F	()	()	
~~D 23 Seely, Claire A~~	~~161~~	W	F	()	(10)	()	
~~S 24 Gosnell, Linda P~~	~~63~~	W	F	(3)	()	()	

Start Fax: /
End Fax:

Start: 11:20 7-17-17

PCR PETITION FOR WRIT APPENDIX PAGE 194

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Stillwell Robin B.

TRIAL TYPE : Criminal

PANEL ID : STILWELL 7/17/7

COURTROOM CRT6

DESCRIPTION : STILWELL 7/17/7

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Dieterle, Brynne L	47	(11) W	F	()	()	()	
~~C 26 Brelsford, Vernita R~~	~~26~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
27 Killen, Elizabeth K	98	(12) W	F	()	()	()	
28 Evans, Xavier	58	(A1) B	M	()	()	()	
~~D 29 All, Raymond A III~~	~~3~~	~~W~~	~~M~~	~~()~~	~~(1)~~	~~()~~	
30 Allen, Kimberly W	5	(A2) W	F	()	()	()	
31 Dunbar, Bryon R	50	B	M	()	()	()	
~~C 32 Odumodu, Judy K~~	~~127~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
33 Tollison, James A	180	W	M	()	()	()	
34 Banks, Keona D	12	B	F	()	()	()	
35 Russell, Alan A	193	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

The State)

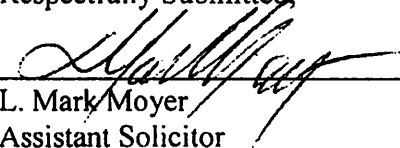
-vs-)

Dwayne Tallent,
Defendant.)

STATE'S POTENTIAL
 WITNESSES

Hearing	Trial
#1	#1 1. E. G. [REDACTED]
	2. Eric Cervantes
	#3 3. Christopher Greco
	#2 4. Joey Greco
#2	#5 5. C. R. [REDACTED] C.R. [REDACTED]
	6. Sherry Tallent
	#4 7. Will Richter, Greenville County Sheriff's Office
	8. Jill Finley

Respectfully Submitted,


 L. Mark Moyer
 Assistant Solicitor

Greenville, South Carolina

WITNESS LIST

On behalf of Dwayne Tallent

Hearing	TRIAL
	1. TL Patton
	2. Andrea R. Rogers Rowe
#1	3. Selena Brunson
	3. Russell Brunson
#2	4. Lenore Brissey
#4	5. Debbie Seymore
#3	6. Diana Rogers
	7. Michael Cervantes
	8. Denise Baker
	~~9. Karen Garrett~~
9.	10. Pam Massey
#1	C. R.

MR

2014A2330208083

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

1-14-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: SSN: 251-474001

Sex: M Race: W Height: 6 Weight: 250

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: W W Richter - 0724

Offense: Retired / No Longer Used / Sex / Lewd Act,
committing or attempting lewd act upon child

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter

being duly sworn deposes and says that defendant Dwayne C Tallent

did within this county and state on or about 6/6/1995

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16
(June 4, 1996)I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:The Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence that implicates the defendant
in this crime. That between 1992 and 1998 the defendant did willfully and lewdly commit lewd or lascivious acts upon or with the
body, or its parts, of the victim, a person under sixteen years of age. This incident did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/6/1995

defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Retired / No Longer Used / Sex / Lewd Act, committing or attempting lewd act upon child under 16
(June 4, 1996)Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 9/2/2014

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone (864)963-3457

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit



Judge 100-3014
 on 100-3014
 Type and Amount: Not Bonded
 Name of Surety: _____

Name: _____
 Address: _____
 Telephone: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Name: _____
 Address: _____
 Telephone: _____

Disposition: _____
 Sentence: _____

Name: _____
 Address: _____
 Telephone: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

RECEIVED
 NOV 03 2014
 Clerk of Court
 Greenville County

PCR PETITION FOR WRIT APPENDIX PAGE 199

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER
2014A2330208083

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pridemore
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED INDICTMENT

DOCKET NO. 2014-GS-23-011875

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2016

THE STATE

vs.

DWAYNE C. TALLENT

2468 ✓

Amended Indictment for

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

**ENTERED
ACCT.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

DEC 13 2016

the Grand Jurors of Greenville

County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1991 and September 8, 2002, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of E. F. G., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-0140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

0-15 years

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 Dwayne C Tallent)
 AKA:)
 Sex: M Age: 47)
 DOB: SS#: 251-47-4001)
 Address: 79 Ferguson Road)
 City, State, Zip: Piedmont, SC 29673)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2311875
 A/W#: 2014A2330208083
 Date of Offense: 6/6/1995
 S.C. Code § : 16-15-140
 CDR Code #: 2468

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Lewd act on a minor

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 15390 Defendant KAPPEL, MATTHEW SC Bar# 15390

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 the State Department of Corrections. 183 0415

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS

PTUP
 days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$ 128.75

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickens
 Court Reporter: Amos
 SCCA/217 (07/2016)

Presiding Judge
 Judge Code: 2156
 Sentence Date: 7/19/17

ARREST WARRANT

PCR PETITION FOR WRIT APPENDIX PAGE 202

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

2014A2330208085

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

1-14-117791

against

Dwayne C Tallent

Address: 430 Oaklawn Road

Pelzer, SC 29669-

Phone: SSN:
 Sex: M Race: W Height: 6 Weight: 250DL State: SC DL #:
 DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: W W Richter - 0724

Offense: Sex / Criminal sexual conduct with minor, or

Attempt - victim 11 to 14 yrs of age inclusive -

Offense Code: 0396

Code/Ordinance Sec: 16-03-0655(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant W W Richter

being duly sworn deposes and says that defendant Dwayne C Tallent

did within this county and state on or about 6/ 6/2000

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That the Affiant is an Investigator with the Greenville County Sheriff's Office and has documented evidence that implicates the defendant in this crime. That the victim was a minor child between the ages of 11 and 14, between approximately 1998-2001 the defendant did intentionally commit sexual battery against the victim on multiple occasions. The defendant is more than 21 years older than the victim. This incident did occur in Greenville County, South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-4709

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/ 6/2000

defendant Dwayne C Tallent

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 9/ 2/2014Signature of Issuing Judge (L.S.)
Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone (864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

FILE set by

PCR PETITION FOR WRIT APPENDIX PAGE 203

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

RECEIVED
NOV 03 2014
Clerk of Court
Greenville County

PCR PETITION FOR WRIT APPENDIX PAGE 204

WITNESSES

W W Richter

Greenville County Sheriffs Office

10/30/2014

ARREST WARRANT NUMBER

2014A2330208085

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED INDICTMENT
DOCKET NO. 2014-GS-23-011877

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2016

December

THE STATE

vs.

DWAYNE C. TALLENT

0396 ✓

Amended Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE

VIOLATION § 16-03-0655(B)(4)

ENTERED
ACCT.
LQH

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

At a Court of General Sessions, convened on **DEC 13 2016** the Grand Jurors of Greenville
County present upon their oath:

That DWAYNE C. TALLENT did in Greenville County, between September 8, 1998 and September 8,
2002, commit a sexual battery on E. F. G., who was fourteen years of age or less but who was at least
eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South
Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

PCR PETITION FOR WRIT APPENDIX PAGE 206

0-20 years

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Dwayne C Tallent)
AKA:)
Sex: M Age: 47)
DOB: SS#:)
Address: 79 Ferguson Road)
City, State, Zip: Piedmont, SC 29673)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2311877
A/W#: 2014A2330208085
Date of Offense: 6/6/2000
S.C. Code § : 16-03-0655(B)
CDR Code #: 0396

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Criminal sexual conduct with a minor, second degree

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Moyer, Mark SC Bar# 64155 Defendant KAPPEL, MATTHEW SC Bar# 15390

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
the State Department of Corrections. 103 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$ 7
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickens
Court Reporter: Herron
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 2158
Sentence Date: 7-19-17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	VERDICT
	)	Criminal Sexual Conduct with a Minor
vs.	)	2nd Degree
	)	
Dwayne C. Tallent,	)	
	)	
Defendant.	)	C.A. No.: 2014-GS-23-11877
	)	

We, the Jury, by unanimous agreement, find the Defendant:

☐ Not Guilty

☒ Guilty



Foreperson of the Jury

July 19, 2017

PCR PETITION FOR WRIT APPENDIX PAGE 208

Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME: Stillwell Robin B.

TRIAL TYPE: Criminal

PANEL ID: STILWELL 7/17/7

COURTROOM CRT6

2014-GS-23-11873, 11874, 11875, 11877

State vs Dwayne C. Tallent

Ch. MURDER (M. Kapp)

DESCRIPTION: STILWELL 7/17/7

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
~~D 1 Stafford, Nikki S~~	~~173~~	A	F	()	(1)	()	En Camera Hearing:
~~D 2 Minard, Christopher A~~	~~117~~	W	M	()	(2)	()	1) Elizabeth Greco
3 Williams, Jennifer I	189	(1)	B	F	()	()	2) Christina Rosado
~~S 4 Simieropi, Nicholas A~~	~~168~~	W	M	(1)	()	()	
~~D 5 Miller, Cynthia M~~	~~115~~	W	F	()	(3)	()	Trial:
6 Stenhouse, Doris D	174	(2)	B	F	()	()	State's Witness:
~~D 7 Shunkwiler, Howard E H~~	~~166~~	W	M	()	(4)	()	1) Elizabeth Greco
~~D 8 Henson, Jennifer A~~	~~74~~	W	F	()	(5)	()	2) Joey Greco
~~9 Ramsey, Bobby W~~	~~146~~	(3)	W	M	()	()	3) Christopher Greco
~~EXCUSED - Replaced by A-1~~							
10 Saunders, Kimberly	158	(4)	W	F	()	()	4) Dep. Will Richter
11 Bowman, Melanie S	23	(5)	W	F	()	()	5) Christina Rosado
12 Smith, Lakisha S	170	(6)	B	F	()	()	
~~D 13 Deese, Kerry M~~	~~44~~	W	F	()	(6)	()	Defense Witness:
~~D 14 Nemikos, Alisa Dawn~~	~~124~~	W	F	()	(7)	()	1) Selina Brunson
15 Gourley, Norman W III	64	(7)	W	M	()	()	2) Denise Brinson
~~D 16 Hoyle, John D Sr~~	~~84~~	W	M	()	(8)	()	3) Diana Rogers
~~D 17 Jenkins, Jordan L~~	~~92~~	W	F	()	(9)	()	4) Debbie Seymore
~~C 18 Hudson, Cindy L~~	~~85~~	W	F	()	()	(X)	
19 Martin, Marianne S	108	(8)	W	F	()	()	En Camera Hearing:
~~S 20 Martin, Thomas M~~	~~109~~	W	M	(2)	()	()	Cynthia Rosado
21 Herring, Michael W	77	(9)	W	M	()	()	
22 Eguigure, Maura	54	(10)	H	F	()	()	
~~D 23 Seely, Claire A~~	~~161~~	W	F	()	(10)	()	
~~S 24 Gosnell, Linda P~~	~~63~~	W	F	(3)	()	()	

Start Fax: /
End Fax:

Start: 11:20 7-17-17

PCR PETITION FOR WRIT APPENDIX PAGE 209

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Stillwell Robin B.
TRIAL TYPE : Criminal
PANEL ID : STILWELL 7/17/7
COURTROOM CRT6

DESCRIPTION : STILWELL 7/17/7

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Dieterle, Brynne L	47	(11) W	F	()	()	()	
~~C 26 Brelsford, Vernita R~~	~~26~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
27 Killen, Elizabeth K	98	(12) W	F	()	()	()	
28 Evans, Xavier	58	(A1) B	M	()	()	()	
~~D 29 All, Raymond A III~~	~~3~~	~~W~~	~~M~~	~~()~~	~~(1)~~	~~()~~	
30 Allen, Kimberly W	5	(A2) W	F	()	()	()	
31 Dunbar, Bryon R	50	B	M	()	()	()	
~~C 32 Odumodu, Judy K~~	~~127~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
33 Tollison, James A	180	W	M	()	()	()	
34 Banks, Keona D	12	B	F	()	()	()	
35 Russell, Alan A	193	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

PCR PETITION FOR WRIT APPENDIX PAGE 210

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

The State)

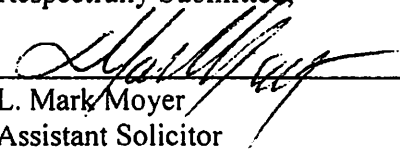
-vs-)

Dwayne Tallent,
Defendant.)

STATE'S POTENTIAL
WITNESSES

Hearing	Trial
#1	#1 1. E. G. [REDACTED]
	2. Eric Cervantes
	#3 3. Christopher Greco
	#2 4. Joey Greco
#2	#5 5. Christina C.R. [REDACTED]
	6. Sherry Tallent
	#4 7. Will Richter, Greenville County Sheriff's Office
	8. Jill Finley

Respectfully Submitted,


L. Mark Moyer
Assistant Solicitor

Greenville, South Carolina

WITNESS LIST

On behalf of Dwayne Tallent

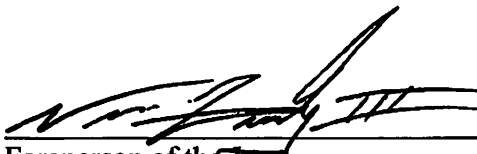
Hearing	TRML
	1. TL Patton
	2. Andrea R. Rogers Rowe
#1	3. Selena Brunson
	3. Russell Brunson
#2	4. Lenore Brissey
#4	5. Debbie Seymore
#3	6. Diana Rogers
	7. Michael Cervantes
	8. Denise Baker
	~~9. Karen Garrett~~
9.	~~10.~~ Pam Massey
#1	C. R. [REDACTED]

ML

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	VERDICT
	)	Lewd Act Upon a Child
vs.	)	
	)	
Dwayne C. Tallent,	)	
	)	
Defendant.	)	C.A. No.: 2014-GS-23-11875
	)	

We, the Jury, by unanimous agreement, find the Defendant:

☐ Not Guilty
☒ Guilty



Foreperson of the Jury

July 19, 2017

PCR PETITION FOR WRIT APPENDIX PAGE 213

2014A2530208081, 8082, 8083, 8084, 8085

Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME: Stillwell Robin B. 2014-GS-23-11873, 11874, 11875, 11877
 TRIAL TYPE: Criminal State vs Dwayne C. Tallent (m. Kappel)
 PANEL ID: STILWELL 7/17/7 (u. MNYR)
 COURTROOM CRT6 DESCRIPTION: STILWELL 7/17/7

Sorted by: Random Nbr
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
D 1 ~~Stafford, Nikki S~~	173	A	F	()	(1)	()	En Camera Hearing:
D 2 ~~Minard, Christopher A~~	117	W	M	()	(2)	()	1) Elizabeth Greco
3 Williams, Jennifer I	189	(1) B	F	()	()	()	2) Christina Rosado
S 4 ~~Simieropi, Nicholas A~~	168	W	M	(1)	()	()	
D 5 ~~Miller, Cynthia M~~	115	W	F	()	(3)	()	Trial:
6 Stenhouse, Doris D	174	(2) B	F	()	()	()	State's Witness:
D 7 ~~Shunkwiler, Howard E H~~	166	W	M	()	(4)	()	1) Elizabeth Greco
D 8 ~~Henson, Jennifer A~~	74	W	F	()	(5)	()	2) Tony Greco
9 ~~Ramsey, Bobby W~~ Excused - Replaced by A-1	146	(3) W	M	()	()	()	3) Christopher Greco
10 Saunders, Kimberly	158	(4) W	F	()	()	()	4) Dep. Laill Richter
11 Bowman, Melanie S	23	(5) W	F	()	()	()	5) Christina Rosado
12 Smith, Lakisha S	170	(6) B	F	()	()	()	
D 13 ~~Deese, Kerry M~~	44	W	F	()	(6)	()	Defense Witness:
D 14 ~~Nemikos, Alisa Dawn~~	124	W	F	()	(7)	()	1) Selina Brunson
15 Gourley, Norman W III	64	(7) W	M	()	()	()	2) Tenore Brisson
D 16 ~~Hoyle, John D Sr~~	84	W	M	()	(8)	()	3) Deana Rogers
D 17 ~~Jenkins, Jordan L~~	92	W	F	()	(9)	()	4) Debbie Seymore
C 18 ~~Hudson, Cindy L~~	85	W	F	()	()	(X)	
19 Martin, Marianne S	108	(8) W	F	()	()	()	En Camera Hearing:
S 20 ~~Martin, Thomas M~~	109	W	M	(2)	()	()	Cynthia Rosado
21 Herring, Michael W	77	(9) W	M	()	()	()	
22 Eguigure, Maura	54	(10) H	F	()	()	()	
D 23 ~~Seely, Claire A~~	161	W	F	()	(10)	()	
S 24 ~~Gosnell, Linda P~~	63	W	F	(3)	()	()	

Start Fax: /
 End Fax:

Start: 11:20 7-17-17

PCR PETITION FOR WRIT APPENDIX PAGE 214

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Stillwell Robin B.
TRIAL TYPE : Criminal
PANEL ID : STILWELL 7/17/7
COURTROOM CRT6

DESCRIPTION : STILWELL 7/17/7

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Dieterle, Brynne L	47 (11)	W	F	()	()	()	
~~C 26 Brelsford, Vernita R~~	~~26~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
27 Killen, Elizabeth K	98 (12)	W	F	()	()	()	
28 Evans, Xavier <i>Replaced Betty Ramsey</i>	58 (A) 1	B	M	()	()	()	
~~D 29 All, Raymond A III~~	~~3~~	~~W~~	~~M~~	~~()~~	~~(1)~~	~~()~~	
30 Allen, Kimberly W	5 (A) 2	W	F	()	()	()	
31 Dunbar, Bryon R	50	B	M	()	()	()	
~~C 32 Odumodu, Judy K~~	~~127~~	~~W~~	~~F~~	~~()~~	~~()~~	~~(X)~~	
33 Tollison, James A	180	W	M	()	()	()	
34 Banks, Keona D	12	B	F	()	()	()	
35 Russell, Alan A	193	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

PCR PETITION FOR WRIT APPENDIX PAGE 215

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

The State)

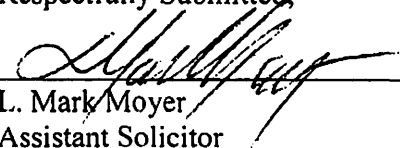
-vs-)

Dwayne Tallent,
Defendant.)

STATE'S POTENTIAL
WITNESSES

Hearing	Trial
#1	#1 1. [REDACTED]
	2. Eric Cervantes
	#3 3. Christopher Greco
	#2 4. Joey Greco
#2	#5 5. [REDACTED]
	6. Sherry Tallent
	#4 7. Will Richter, Greenville County Sheriff's Office
	8. Jill Finley

Respectfully Submitted,


L. Mark Moyer
Assistant Solicitor

Greenville, South Carolina

WITNESS LIST

On behalf of Dwayne Tallent

Hearing	TRML
	1. TL Patton
	2. Andrea R. Rogers Rowe
#1	3. Selena Brunson
	3. Russell Brunson
#2	4. Lenore Brissey
#4	5. Debbie Seymore
#3	6. Diana Rogers
	7. Michael Cervantes
	8. Denise Baker
	~~9. Karen Garrett~~
9.	10. Pam Massey
#1	C. R.

MR

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Dwayne C. Tallent,)
Defendant.)

IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(s). 2014A2330208081,
2014A2330208082, 2014A2330208083,
2014A2330208084,, 2014A2330208085,
2014A2330208086, 2014A2330208087,
2014A2330208088

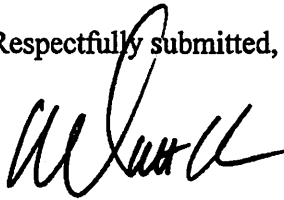
Motion For Bond

2014 NOV 20 AM 9:40

Defendant was scheduled for a bond hearing in the Circuit Court on Friday, November 14, 2014 but withdrew the motion because the Solicitor's Office indicated that new charges were likely to be brought against the Defendant. The Defendant remains incarcerated in the Greenville County Detention Center for the warrants listed above with NO BOND.

It appears now, the parties cannot agree on setting bond, and therefore, the defendant by and through his attorney move this Court for bond.

Respectfully submitted,



Matthew J. Kappel
Law Office of Matthew J. Kappel, LLC
Attorney for Defendant
P.O. Box 10334, F.S.
Greenville, South Carolina 29603
(864) 467-9595 (voice)
(864) 467-1945 (fax)

Greenville, SC
November 20, 2014

PCR PETITION FOR WRIT APPENDIX PAGE 218

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/29/22

C0667

TALLEN, DWAYNE C FBI # 797545JB0 SID# SC01238916 SCDC # 00357180

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: BROAD RIVER CORR. INST.

DORM.....: MAB0174A

SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE

RACE....:W SEX...:M

CURR INCARC SENT...: 20 YRS 0 MOS 0 DYS

PROJ MAXOUT DATE: 04/03/2034

CENTRAL MONITORING.: YES

PROJ PAROLE DATE: 00/00/0000

SOCIAL SECURITY #... [REDACTED]

EWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

CURRENT PROGRAM...: CHARACTER-BASED PROGRAMS

EWC LEVEL: 2F5 EEC LEVEL:

AGE...: [REDACTED] DATE OF BIRTH...: [REDACTED]

ASSIGNMENT...: ASST WARD KEEPER

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
CRIM SEX COND.W/MINOR(2N	20 0 0	GREENVILLE	4/ 7/2017	V	4
CONTRIB DELINQ MINOR	3 0 0	GREENVILLE	4/ 6/2017	N	2
LEWD ACT/CHILD UNDER 16	15 0 0	GREENVILLE	4/ 6/2017	N	4
CRIM SEX COND.W/MINOR(1S	30 0 0	GREENVILLE	4/ 6/2017	V	5

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
DIST., ETC METH. 1ST	0 28 0	GREENVILLE	9/15/2013	N	4

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINERS (HOLD, WANTED, NOTIFY):

CODE NOT IN TABLE	HOLD	IRO	CATEG: 4
RESISTING OFFICER	WANTED	PRESIDING JUDGE	CATEG: 3
POSS METH/COC BASE 1ST	WANTED	PRESIDING JUDGE	CATEG: 2
NARC EQUIP POSSESS	WANTED	JUDGE FISHER	CATEG: 2
CRIM SEX COND.W/MINOR(1S	WANTED	STEVE WORTKOETTER	CATEG: 5

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

3/20/18	BROAD RIVER	INCARCERATED	RETURN FROM COURT
3/20/18	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
1/ 8/18	BROAD RIVER	INCARCERATED	RETURN FROM COURT
1/ 8/18	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
10/12/17	BROAD RIVER	INCARCERATED	RETURN FROM COURT
10/12/17	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
10/11/17	BROAD RIVER	INCARCERATED	RETURN FROM COURT
10/11/17	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
9/14/17	BROAD RIVER	INCARCERATED	RETURN FROM COURT
9/14/17	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
9/ 6/17	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
7/24/17	KIRKLAND	INCARCERATED	R&E PROCESSING
7/24/17	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REV
10/31/14	GREENVILLE CO	PROBATION	RELEASED TO PROBATION
10/30/14	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
8/27/14	PERRY	INCARCERATED	DISCIPLINARY
8/ 5/14	LIVESAY	INCARCERATED	ADMINISTRATIVE

PCR PETITION FOR WRIT APPENDIX PAGE 219

TALLEN, DWAYNE C FBI # 797545JB0 SID# SC01238916 SCDC # 00357180 (CONTINUED)

5/27/14	LIVESAY	INCARCERATED	ADMINISTRATIVE
12/11/13	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
11/12/13	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
9/25/13	KIRKLAND	INCARCERATED	R&E PROCESSING
9/25/13	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	09/26/17	0/ 0/ 0		2F5
FOOD SERVICE AIDE	08/28/14	10/31/14	RELEASED/PAROLED	2F5
SR VEGETABLE PREP OP	05/29/14	8/27/14	DISCIPLINARY/LOCK-UP	2F5
WARDKEEPER	05/16/14	5/27/14	INSTIT TRANSFER	2F5
WARDKEEPER	05/15/14	5/15/14	MI ELIGIBLE FOR LEVEL 2	3F5
SPICE PROGRAM	12/12/13	5/14/14	LATERAL TRANSFER	2F7
DAIRY HELPER	11/13/13	12/11/13	INSTIT TRANSFER	2F7

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
-----------------	------------	----------	--------------------

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

PCR PETITION FOR WRIT APPENDIX PAGE 220

COUNTY OF
STATE

Greenville

VS.

Dwayne C Tallent

AKA:

Sex: M Age: 47

DOB: SS#:

Address: 79 Ferguson Road

City, State, Zip: Piedmont, SC 29673

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal sexual conduct with a minor, second degree

INDICTMENT/CASE#: 2014GS2311877

A/W#: 2014A2330208085

Date of Offense: 6/6/2000

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant KAPPEL, MATTHEW SC Bar# 15390

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections. 103 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 61.6 (Public Def/Probation)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$

JTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Herron

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2158

Sentence Date: 7-19-12

COUNTY OF
STATE

PCR PETITION FOR WRIT APPENDIX PAGE 221

Greenville

VS.

Dwayne C Tallent

AKA:

INDICTMENT/CASE#: 2014GS2311874

A/W#: 2014A2330208082

Date of Offense: 6/6/1995

S.C. Code § : 16-17-0490

CDR Code #: 0048

Sex: M Age: 47

DOB: SS#:

Address: 79 Ferguson Road

City, State, Zip: Piedmont, SC 29673

DL#: SID#:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADS

TO: Contributing to the delinquency of a minor

in violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

SC Bar# 64155

Defendant Dwayne C Tallent

KAPREL, MATTHEW

15390

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
the State Department of Corrections. 103 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL

\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Paul B. Wickensimer

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2158Sentence Date: 7/19/17

PCR PETITION FOR WRIT APPENDIX PAGE 222

COUNTY OF
STATE

Greenville

VS.

Dwayne C Tallent

AKA:

Sex: M Age: 47

DOB: SS#: [REDACTED]

Address: 79 Ferguson Road

City, State, Zip: Piedmont, SC 29673

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Lewd act on a minor

INDICTMENT/CASE#: 2014GS2311875

A/W#: 2014A2330208083

Date of Offense: 6/6/1995

S.C. Code §: 16-15-140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

SC Bar#

Defendant

KAPPEL, MATTHEW

15390

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
the State Department of Corrections. 183 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2158Sentence Date: 7/19/17

PCR PETITION FOR WRIT APPENDIX PAGE 223

#868

COUNTY OF
STATE

Greenville

VS.

Dwayne C Tallent

AKA:

Sex: M Age: 47

DOB: [REDACTED] SS#: [REDACTED]

Address: 79 Ferguson Road

City, State, Zip: Piedmont, SC 29673

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal sexual conduct with a minor, first degree

INDICTMENT/CASE#: 2014GS2311873

A/W#: 2014A2330208081

Date of Offense: 6/6/1995

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

SC Bar# 14155

Defendant

KAPPEL, MATTHEW

15390

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
the State Department of Corrections. 103 DAYS.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Herron

SCCA/217 (07/2016)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2158Sentence Date: 7-19-17

APPEAL TO SOUTH CAROLINA SUPREME COURT, GREENVILLE COUNTY
PCR PETITION FOR WRIT APPENDIX PAGE 224

Please mail with copies of NOTICE OF APPEAL, PROOF OF SERVICE, INDICTMENT(s) and SENTENCING SHEET(S) to:

CHARLES H. RICHARDSON, ESQUIRE
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

MAILED TO AG
7/21/17

SENT TO CLERK
7/21/17

THE STATE v. DWAYNE C TALLENT

NAME(S) OF CO-DEFENDANT(S):

INDICTMENT(S) NO: 2014-11873, 11874, 11875, 11877

CRIME(S) CHARGED: LSC with minor 1st, LSC with minor 2nd, Lewd act, Contributing to delinquency of minor

TRIAL JUDGE: ROBIN STILWELL

COURT REPORTER: APRIL HERRON

DATE(S) OF TRIAL: July 19, 2017

CRIME(S) CONVICTED OF: all the above

WAS THIS A GUILTY PLEA: NO

DATE AND LENGTH OF SENTENCE: 30 YRS

DATE NOTICE OF APPEAL SERVED: 7/20/17

APPELLANT IS: (1) IN JAIL ☒
(2) FREE ON BOND ☐
(3) ON PROBATION ☐

APPELLANT'S ATTORNEY IS: (1) PUBLIC DEFENDER ☐
(2) COURT APPOINTED ☐
(3) RETAINED COUNSEL ☒

NAME OF ATTORNEY: KAPPEL, MATTHEW

IF RETAINED COUNSEL, APPELLANT'S ATTORNEY ADDRESS IS:
114 Whitsett St., Greenville, SC 29601

ATTORNEY FOR THE STATE: MARK MOYER, Assistant Solicitor
305 E. North Street, Suite 325
Greenville, SC 29601

RECEIVED

JUL 25 2017

ATTORNEY GENERAL'S
OFFICE

open CA

JBa

FORM 4
NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Case Nos. 2014-GS-23-11874; 2014-GS-23-11877;
2014-GS-23-11873; 2014-GS-23-11875

The State,

Respondent,

v.

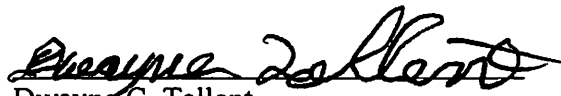
Dwayne C. Tallent,

Appellant.

NOTICE OF APPEAL

Dwayne C. Tallent appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Robin B. Stilwell on July 19, 2017.

July 19, 2017


Dwayne C. Tallent

Other Counsel of Record:

Mark Moyer

Assistant Solicitor

305 E. North Street, Suite 325

Greenville, SC 29601

864-467-8647

2017 JUL 20 PM 1:30

RECEIVED

**FORM 4
NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Case Nos. 2014-GS-23-11874; 2014-GS-23-11877;
2014-GS-23-11873; 2014-GS-23-11875

The State,

Respondent,

v.

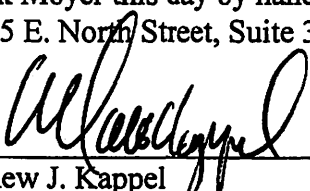
Dwayne C. Tallent,

Appellant.

PROOF OF SERVICE

The undersigned certifies that he did this day serve on copy of Mr. Tallent's Notice Of Appeal upon Asst. Solicitor Mark Moyer this day by hand delivering of copy of the same to Asst. Solicitor Mark Moyer, 305 E. North Street, Suite 325, Greenville, SC 29601.

July 20, 2017



Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
864-467-9595

Other Counsel of Record:
Mark Moyer
Assistant Solicitor
305 E. North Street, Suite 325
Greenville, SC 29601
864-467-8647

2017 JUL 20 PM 1:12

PCR PETITION FOR WRIT APPENDIX PAGE 227

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

August 2, 2017

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

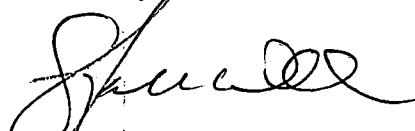
RECEIVED
AUG 07 2017
SC Court of Appeals

Re: State, Respondent v. Dwayne Cameron Tallent, Appellant
Appellate Case No.: 2017-001585

Dear Ms. Kitchings,

I have joined Matthew J. Kappel in representation of Mr. Tallent on the appeal of this case. Mr. Kappel has ordered the transcript and a copy of that letter is enclosed.

Sincerely,



J. Falkner Wilkes

c:

The Honorable Rosalyn W. Frierson
Director, South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

PCR PETITION FOR WRIT APPENDIX PAGE 228

Alan Wilson, Attorney General
P.O. Box 11549
Columbia, SC 29211

Paul B. Wickensimer
Courthouse
305 E North Street
Greenville, SC 29601-2121

Robert M. Dudek
SCCID/ Appellate Defense
P.O.B. 11589
Columbia, SC 29211-1589

Matthew J. Kappel
P.O.B. 10334
Greenville, SC 29603

PCR PETITION FOR WRIT APPENDIX PAGE 229

J. Falkner Wilkes
Attorney at Law
114 Whitsett Street
Greenville, SC 29601

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211



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AUG 07 2017

SC Court of Appeals



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

The State, ... Appellant,

v.

Dwayne Cameron Tallent, ... Respondents.

RECORD ON APPEAL

Alan McCrory Wilson
Attorney General
David A. Spencer
Senior Asst. Atty. General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Attorneys for Respondent

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

RECEIVED
JAN 31 2019
SC Court of Appeals

The State, ... Respondent,

v.

Dwayne Cameron Tallent, ... Appellant.

FINAL BRIEF OF APPELLANT

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

The State, ... Respondent,

v.

Dwayne Cameron Tallent, ... Appellant.

FINAL BRIEF OF APPELLANT

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

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ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO GRANT A SEVERANCE OF CHARGES AND THE RESULTING ADMISSION OF PREJUDICIAL EVIDENCE OF APPELLANT'S MANUFACTURE, USE, AND SALE OF COCAINE, CRACK COCAINE, AND METHAMPHETAMINE.	3
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TABLE OF AUTHORITIES

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STATEMENT OF THE ISSUES

1. Did the trial court err in denying the Appellant's motion to sever the charge of contributing to the delinquency of a minor from the trial of CSC and Lewd Act?
2. Did the trial court err in admitting evidence of the Appellant's manufacture, sale and use of cocaine, crack cocaine, and methamphetamine?

STATEMENT OF THE CASE

The Appellant was indicted by grand jury in Greenville County for Criminal Sexual Conduct With a Minor, First Degree (2014-GS-23-11873); Contributing to the Delinquency of a Minor (2014-GS-23-11874); Lewd Act Upon a Child (2014-23-CP-11875); and Criminal Sexual Conduct with a Minor, Second Degree (2014-23-GS-11877). A jury trial was held on July 17-19, 2017, the Honorable Robin B. Stilwell, presiding. The State was represented by Mark Moyer, Assistant Solicitor. The Appellant was represented at trial by Matthew J. Kappel. The jury returned a verdict of guilty on all charges and the Appellant sentenced to: CSC, 1st thirty years; CSC, 2nd twenty years; Lewd Act on a Minor fifteen years; Contributing to the Delinquency of a Minor three years. All sentences were concurrent. A timely notice of appeal was filed. J. Falkner Wilkes joined in the representation of the Appellant on appeal and this brief follows:

STATEMENT OF FACTS

The Appellant was tried on charges of CSC1st, CSC 2nd, and lewd act based on allegations of sexual acts committed against the prosecutrix over an period of approximately eleven years. R. 498-505. The Appellant was also tried on a fourth indictment on a charge of contributing to the delinquency of a minor involving the prosecutrix and one of her two brothers. R. 500-501. The Appellant moved to sever the contributing charge on the ground that it would cause undue prejudice by allowing in evidence that would be highly prejudicial on the far more serious charges involving criminal sexual conduct. R. p. 6-7. Of particular concern was the potential for the state to introduce highly inflammatory evidence of the Appellant's bad character through his involvement in the manufacture, sales and use of cocaine, crack cocaine, and methamphetamine, as well as other acts that had no substantial connection to the CSC or lewd act charges. R. p. 36-42. The trial court denied the Appellant's motion *in limine* to sever the contributing charge and allowed the State to proceed at trial on all charges. R. 41-42.

Prior to its admission before the jury the defense argued against the introduction of the Appellant's drug related activity. R. 169-174. The trial court again conducted an analysis but focused only on whether the drug related evidence would be admissible to support the elements of the contributing charge, rather than its prejudicial impact on the CSC and lewd act charges. R. 169-174. At the first introduction of the evidence the defense raised a contemporaneous objection which the court overruled but allowed to be considered as a continuing objection throughout the trial. R. 176; 264. (Additional facts in Argument).

ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO GRANT A SEVERANCE OF CHARGES AND ADMISSION OF PREJUDICIAL EVIDENCE OF THE APPELLANT'S MANUFACTURE, USE, AND SALE OF COCAINE, CRACK COCAINE, AND METHAMPHETAMINE.

At the beginning of the trial the defense moved to sever the contributing to the delinquency of a minor charge arguing that evidence of the Appellant's unrelated drug activity that the State intended to offer under the contributing charge would create undue prejudice as to the other, and far more serious, CSC and lewd act charges. R. p. 6-7; 36; 169-177; 264. "A motion for severance is addressed to the sound discretion of the trial court." State v. Rice, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006). "The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion." *Id.* "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* at 613, 629 S.E.2d at 395. In analyzing the issue in the Appellant's case the trial court failed to properly apply the law. The denial of the Appellant's motion therefore constitutes an error of law.

Under appropriate circumstances separate indictments can be tried together. Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced. State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981); State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974). Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together. *See, e.g., State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986) (holding although prison escapee committed two murders within a few miles of each other and

attempted an armed robbery, the trial judge erred in consolidating the charges for one trial where the crimes did not arise out of a single chain of circumstances and they required different evidence); State v. Tate, 286 S.C. 462, 334 S.E.2d 289 (Ct.App.1985) (finding that joint trial on identical but unrelated forgeries violated defendant's right to a fair trial). Here, given the evidence that was offered, the record fails to show how the contributing charge is the same general kind of charge, or related in kind, place or character sufficiently to be tried with the sexual offense charges.

The majority of the evidence offered under the contributing charge related to the Appellant's manufacture, sales, and use of cocaine, crack cocaine and methamphetamine. Although arguably relevant to the contributing charge, this evidence was unrelated and overly prejudicial in regards to the CSC and lewd act charges. Pursuant to the defense's motion to sever the trial court was required to conduct an analysis of the evidence in relation to the CSC and lewd act charges separate and apart from contributing charge. "In cases where the defendant argues prejudice from the admission of evidence of the other charges tried in the same case, our courts have analyzed whether evidence of one or more charges would be admissible in a trial involving only the other charge." State v. McGaha, 404 S.C. 289, 298–99, 744 S.E.2d 602, 606–07 (Ct. App. 2013). Here, rather than determining whether the Appellant's drug related activity would be admissible if the CSC or lewd act charges were tried alone, the trial court looked only to see whether the drug related evidence would be admissible to establish elements of the contributing to the delinquency of a minor charge. R. 172-173. As a result, the court held that all of the evidence proving the Appellant's drug related activity, including the manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine, was admissible as it proved the elements of contributing to the delinquency of a minor. R. p. 173. This was clear error.

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At issue was an overwhelming amount of evidence that would have been inadmissible in the CSC or lewd act cases had they been tried separately from the contributing charge. At the onset of the Appellant's trial the state announced its intention to introduce evidence of "manufacturing drugs in the home" and "drug sales in the home" and "open drug use in the home by the Defendant." R. p. 40. The solicitor specifically stated "it is the State's intention to go into all of that testimony" on the claiming that it was "certainly relevant to support this charge." "This charge" clearly being the contributing to the delinquency of a minor. Then during the direct examination of the prosecutrix the State announced to the court that it was about to start getting into the drug activity discussed previously which was related to the contributing charge. R. 169-170. This included everything from using drugs in front of the prosecutrix to the manufacture, use and sales of drugs which later turned out to be cocaine, crack cocaine and methamphetamine. The defense again objected pointing out that even if admissible to the contributing charge, the evidence would not be admissible as to the other charges and served only to place the defendant's bad character in front of the jury on the CSC and lewd act charges. R. p. 169. The defense specifically raised the issue as to what the drug evidence was intended to prove as to the CSC and lewd act charges. R. p. 170-171. The state's response was that the testimony of sexual abuse "creates such a high level of putting the Defendant in such a bad light ... the fact that drugs being in the home are really -- doesn't take it too much to a greater level." R. p. 172. Despite the trial court indicating some difficulty with accepting the State's argument, it nevertheless allowed the testimony without conducting the proper analysis.

The vast majority of drug related evidence in the Appellant's case has no relevance to the CSC and lewd act charges. The one minor exception to the overall lack of probative value of any

of the drug related evidence to the CSC and lewd act charges involves testimony that the Appellant gave the prosecutrix marijuana and alcohol. And even this is tenuous. While the State argued that the jury could “take” that the Appellant provided drugs and alcohol to the prosecutrix as “part of the grooming process” to make her more compliant with the “sexual favors he was getting,” it failed to offer any testimony that would support such a conclusion. R. p. 171. Yet even assuming *arguendo* that providing marijuana and alcohol to the prosecutrix were relevant to the CSC and lewd act charges, evidence of the Appellant’s manufacturing, sales and use of cocaine, crack cocaine, and methamphetamine, and other bad acts involving others remain inadmissible under a proper State v. McGaha and 403/404 analysis.

In its analysis, while the trial court seemed to recognize that the drug related evidence would not be appropriate if to show action and conformity with the defendant’s character, the court held that evidence of drug activity would be admissible to establish the offense of contributing to the delinquency of a minor. R. p. 172. The court failed to go further and determine whether that evidence would be admissible if the CSC and lewd act were tried separately from the contributing charge, which is the required analysis. *See State v. McGaha*, 404 S.C. 289, 298–99, 744 S.E.2d 602, 606–07 (Ct. App. 2013). Had the trial court conducted the proper analysis under McGaha the evidence would have been excluded as the record fails to show how evidence of the Appellant’s manufacture, use and sale of cocaine, crack cocaine, and/or methamphetamine involving third parties would be admissible in a separate trial on the CSC and lewd act charges alone. As a result, the trial court’s ruling on the Appellant’s motion to sever the contributing charge was based on an error of law, and as a result, wrong.

The record in this case fails to show any relevance in the Appellant’s manufacture, sales and use of cocaine, crack cocaine, and methamphetamine to the CSC and lewd act charges. As to

the CSC and lewd act charges, the drug evidence is simply evidence of the Appellant's bad character. "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." SCRE 404(B). Under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), clear and convincing evidence of other relevant crimes is admissible to prove: 1) motive; 2) intent; 3) absence of mistake or accident; 4) a common scheme or plan that embraces several previous crimes so closely related to each other that proof of one tends to establish the other; or 5) identity. Regardless of any relevance it may have to the contributing charge, the drug evidence fails at issue fails to prove any of the foregoing as to the CSC and lewd act charges. But even if it did have some relevance, it would still fail when any probative value is weighed against its prejudicial effect as to the CSC and lewd act charges. *See State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993).

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct.App.1998). "Once bad act evidence is found admissible under Rule 404(b), the trial court must then conduct the prejudice analysis required by Rule 403, SCRE." State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278 (2009) (*emphasis added*). The court may exclude the 404(b) evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.* State v. Spears, 403 S.C. 247, 252–53, 742 S.E.2d 878, 880–81 (Ct. App. 2013).

The prejudicial effect of evidence is evident where it stands to suggest a decision on an

improper basis. By potentially insinuating that the Appellant is a drug dealer the testimony could unfairly impugn the Appellant's character and cloud the issues. The risk of confusion or misdirection therefore required an analysis under Rule 403, SCRE, which the trial court failed to perform. Given the tenuous probative link between the drug related evidence and the CSC and lewd act charges, the prejudicial effect of proving the Appellant a drug dealer outweighs any value the evidence may hold. *See State v. Lyles*, 379 S.C. 328, 340, 665 S.E.2d 201, 207–08 (Ct. App. 2008).

Here the trial court failed to properly consider the prejudicial effect of the drug related testimony in relation to the CSC and lewd act charges in isolation of the contributing charge. The trial court made no specific findings on the record as to why the drug related testimony had probative value as to the CSC and lewd act charges, the nature of the unfair prejudice, or whether the probative value of the testimony was substantially outweighed by the danger of unfair prejudice. Given the record it is neither implicit or apparent that the trial court considered whether the probative value of the cocaine, crack cocaine and methamphetamine manufacturing, sales and use testimony was substantially outweighed by unfair prejudice. The trial court gave no indication that it considered Rule 403 solely in regards to the CSC and lewd act charges. The court's failure to conduct a proper on-the-record Rule 403 balancing test constitutes an error of law requiring remand or reversal. *See State v. Spears*, 403 S.C. 247, 254, 742 S.E.2d 878, 881 (Ct. App. 2013).

Given the record as a whole the error in the Appellant's case can not be considered harmless. In the Appellant's case there was no physical evidence offered in the case as to the sexual offense charges. The case was made on the testimony of the prosecutrix and a 404(b) witness, along with testimony of the prosecutrix's two brothers. But for the issue of undue

prejudice, the allegations based on sexual misconduct would have turned on the credibility of witnesses. As to credibility, there was evidence offered that could have caused the jury to doubt the testimony of State's witnesses. The record shows that prosecutrix had multiple opportunities to report the allegations yet did not. The prosecutrix was interviewed by the police in January of 2002 and denied that any abuse had occurred. R. 194-195. She was later interviewed by DSS and again denied any sexual abuse. R. p. 198. Approximately ten years after the alleged abuse when the allegations were made the prosecutrix was present during the police interview with her brother where she repeatedly corrected her brother and added statements for her brother to agree with throughout the entire interview. R. p. 310-326. The 404(B) witness, who also claimed sexual abuse by the defendant, also had extensive contact with DSS over the course of many years and yet never disclosed any of alleged sexual abuse by the Appellant despite numerous opportunities to do so. R. p. 345-358. The 404(B) witness further testified that she had been contacted by the prosecutrix prior to trial, and as a result had been communicating with her prior to making her own allegations of abuse. R. p. 344. Given the record as a whole, the evidence of guilt can not be said to be overwhelming. The prejudicial impact of the evidence showing the Appellant's bad character is therefore substantial. Absent physical evidence, given the repeated denials of abuse by the prosecutrix, and the case turning on the credibility of the State's witnesses the trial court's improper admission of drug related evidence can not be deemed harmless error. *See State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94-95 (2011).

Here the trial court failed to conduct a proper analysis and determine whether the evidence offered under the contributing charge would also be admissible in a separate trial for CSC and lewd act. This includes the failure to place on the record its analysis and findings as to the probative value versus the prejudicial impact of the drug related testimony as to the CSC and

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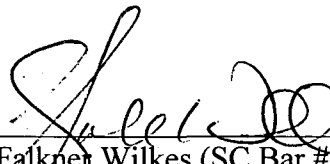
lewd act charges, separate and apart from the contributing to the delinquency of a minor charge.

As a result, the trial court erred in denying the Appellant's motion for a severance. The Appellant was prejudiced by the court's erroneous ruling by the admission of evidence that was unduly prejudicial, and therefore, the Appellant's convictions should be reversed. *See State v. Smith*, 322 S.C. 107, 109–11, 470 S.E.2d 364, 365–66 (1996).

CONCLUSION

Based on the foregoing the convictions and sentences of the Appellant should be reversed and set aside.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

January 16, 2019.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

RECEIVED

JAN 31 2019

SC Court of Appeals

Appellate Case No. 2017-001585

The State, ... Respondent,

v.

Dwayne Cameron Tallent, ... Appellant.

CERTIFICATE OF COUNSEL

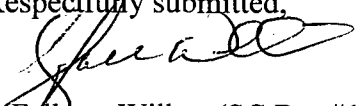
I certify that on January 30, 2019, I served the Final Brief of Appellant and the Final Reply Brief of the Appellant on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below, and to others if so indicated:

David A. Spencer, Asst. Atty. General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

and to:

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Respectfully submitted,


J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellant

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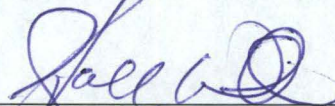
v.

Dwayne Cameron Tallent, ... Appellant.

CERTIFICATE

I certify that the Final Brief of Appellant is in compliance with Rule 211(b).

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellant

January 16, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Robin B. Stillwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

DWAYNE CAMERON TALLENT,

Appellant.

Appellate Case No. 2017-001585

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Because the offenses were offenses against minors and therefore of the same nature, and evidence for the offenses relied primarily on the same three witnesses, and mostly occurred during the same time period in the same household, the trial court did not abuse its discretion by denying the motion for severance.

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant Tallent for criminal sexual conduct with a minor in the first degree, criminal sexual conduct with a minor in the second degree, lewd act on a child, and contributing to the delinquency of a minor. A jury convicted Tallent of all charges following trial on July 17-19, 2017, before the Honorable Robin B. Stillwell. Judge Stillwell sentenced Tallent to thirty years imprisonment for CSC 1st, and concurrent sentences of twenty years imprisonment for CSC 2nd, fifteen years imprisonment for lewd act, and three years for contributing to the delinquency of a minor.

STATEMENT OF FACTS

Victim was twenty-nine years old at the time of trial. She was around five years old when Tallent began sexually abusing her. R. pp. 146-47. Victim testified it began when she was little and she was bored. She ran into the bedroom and plopped down on him. Tallent had an erection and began to rub up against Victim through the blanket. R. p. 147. This occurred in a trailer in Deer Road Run. R. pp. 134-35. Victim's biological mother and father divorced before she was two years old and he had a limited role in her life. On the other hand, Tallent was her father figure from when she was eighteen months old until she would finally move away at fourteen years old. R. pp. 133-34.

Victim was already sexually abused by someone else before Tallent began sexually abusing her. Victim explained a family friend named "Mikey" stayed at the house sometimes when the family lived at Deer Run Road. Mikey would take her from her bed at night and lay her on his sleeping bag and rub his genitals against Victim. Tallent somehow learned about the abuse and in later years told Victim that he beat Mikey up back then. She does not know Mikey's last name or where he is, although she told law enforcement about it years later. R. pp. 142-45.

Victim testified the family later moved to Seneca, where Tallent continued to abuse her. She remembered him masturbating while Victim was in the room, but she found it hard to remember details. R. pp. 149-50. The family moved to Tallent's mother's farmhouse when she was eight or nine years old; they lived in an attachment to the house. Tr. pp. 138-39. Subsequently, when by her estimate she was ten or eleven years old, Tallent, Victim, and her mother moved to a doublewide trailer on the same property. R. pp. 138-39.

Victim testified she was nine years old when Tallent masturbated while touching, but not

penetrating, Victim's vagina. R. p. 150. Victim explained it became a normal thing that he would massage her vagina while he masturbated. R. p. 151. Eventually, he began to rub his penis between Victim's legs without entering her body. He used her thighs against her genitals to ejaculate. R. pp. 151-52.

The contact escalated to him putting either his fingers or the tip of his penis in her rectum. He would also kiss Victim's breasts and perform oral sex on Victim while masturbating. Tallent started making Victim perform oral sex on him. All this conduct began before Victim turned eleven years old and continued thereafter. R. pp. 152-53. She specifically recalled the first time he made her perform oral sex on him, she had to put her mouth on him and he told her to "just suck on it like a sucker." R. p. 159.

She recounted an incident when she was nine years old and Tallent was on top of her. She was face down and Tallent rubbed his penis between her legs and it brushed up against her vagina. It slipped and went in her vagina to the extent it hurt and she bled. R. pp. 160-61.

She testified at this age, she did not know any better. She loved and cared for Tallent. Tallent wasn't always bad. He was caring and took the family camping and fishing. R. pp. 153-54. Tallent told her the conduct was their secret. R. p. 155, lines 9-11.

Victim told Tallent's sister about the abuse once. The sister ran after Tallent. Tallent later glared at Victim as if she were in trouble. He later told her people would not understand and it was their secret. It was something special they had. R. pp. 155-56.

When she was about eleven years old, her two brothers, Christopher and Joseph, moved into the doublewide. Her brothers were not in her life much before then: for several years they lived in

Nevada, and later, compliance for their visitation with her mother was sporadic. R. p. 136; pp. 140-41. After her brothers moved in, the sexual abuse continued despite the challenges for Tallent to find opportunities. However, the abuse would occur when her mother was gone. It usually still happened at least once a week. R. pp. 157-58.

As Victim was older, she began to realize what was happening was wrong, but explained, “I didn’t know how to stop it because the older I got, the more of a girlfriend to him is the relationship that was created. And I would – I was scared to tell him that I didn’t want that, so I played along.” R. p. 162, lines 10-13.

Victim was not allowed to be alone with the brothers unless Tallent was present: “He kept me around him.” R. p. 163, lines 9-17. Victim recalled being around marijuana in the household as early as five years old. Victim was curious and Tallent let her try marijuana when she was twelve years old. From that point on, she continued to smoke marijuana provided by Tallent. He also let her drink alcohol. R. pp. 76-79. Crack cocaine and other kinds of drugs were present in the household. She described what she saw:

I seen them make little white rocks out of little glass vials. I remember them making stuff in the kitchen. They were scraping it out of a bowl, a white substance. And they would snort stuff, too. They would walk around with the little tin foils and smoke it.

R. p. 179, lines 7-11. Tallent made crack cocaine and showed her brothers how to make crack too. Strangers came into the house to use crack cocaine. Tallent used the drugs in front of Victim. R. p. 179, lines 13-24; p. 180, lines 2-9.

One day, Tallent was masturbating and rubbing Victim’s vagina in the bedroom when her brother walked in the room. He asked, “[H]ow long has this been going on?” Then Tallent chased

him out of the room. Later officers came to the house and Victim told them nothing happened. R. pp. 163-65. She explained why:

I was scared of any and all consequences that could – I didn't want people to know. I feared what people would have thought of me. I feared at what if they didn't believe me, and whether or not if I said something and they didn't believe, he would try to hurt people I cared about.

R. p. 165, lines 13-18. She also admitted at the time she felt some blame for what was happening.

R. p. 165, lines 19-22. She later denied abuse to law enforcement and to a forensic interviewer, but she explained she was not telling the truth back then. R. pp. 166-67.

Victim and mother moved to a house on Painter Road when she was fourteen years old. One day, Tallent came to their home after she stayed home from school. Tallent “fully put himself, his penis, in [Victim's] rectum.” R. p. 162, line 24 – p. 163, line 3. Several months later Tallent also moved in and he continued sexually abusing Victim. R. pp. 167-68. The abuse ended when she moved in with her biological father. It was the last time she saw Tallent until trial. R. p. 168.

Victim reported the abuse when she was twenty-six years old. R. p. 180, line 25 – p. 181, line 4. She also was with her brother when he spoke with law enforcement. Refuting a defense claim, she testified she did not tell the brother what to say. R. p. 181. She explained the reason she reported: “It got to a point where, really, it was over-willing me. I was having nightmares. I just – I couldn't put it behind me and I couldn't keep it closed.” R. p. 182, lines 1-3.

Joseph Greco, Victim's oldest brother, testified his parents separated when he was six or seven years old. He lived with his father until he moved in with his mother and Tallent in tenth grade. At the time, Tallent seemed alright, and he enjoyed going camping with him. R. pp. 230-33.

Joseph noticed Tallent hugged Victim alot and always had “skin” contact. “He’d always have his hands on her.” R. p. 234. He would pat her on the butt. Tallent spent a lot of time in the bedroom with Victim and always called for her. Tr. pp. 234-35. Joseph told the jury all Tallent did was lay in bed. R. p. 238, lines 10-11. He might call Joseph and his brother in the bedroom to smoke a cigarette or marijuana. Joseph testified everyone smoked marijuana around Victim. R. pp. 235-36. Victim usually wore a nightgown-type of tee-shirt. R. p. 237.

One time he walked into the bedroom and Tallent “shot up like a deer in the headlights, you know, wide-eyed, like didn’t know I was there.” R. p. 236, lines 20-24. Joseph explained before Tallent shot up, Victim was on the bed and Tallent was on top of her, towards her feet. R. pp. 236-37. He also recalled on another occasion seeing them both under the covers and Tallent moving his hand “pretty funny” around his crotch area, which “weirded” Joseph out. R. p. 238.

Joseph’s brother was in a car wreck and came into a lot of money. Another friend also came into the house with a lot of money. They started using the money to buy cocaine and methamphetamine. They gave Tallent the money and he would buy the drugs. Tr. p. 243. They started to freebase cocaine but their noses started bleeding. R. pp. 243-44. Tallent then taught them how to make crack cocaine, which they made right in the kitchen. R. pp. 244-45. Vicitm was there while it was made and while it was used. R. p. 245.

Things changed the day Joseph’s brother walked into Tallent’s bedroom and Joseph heard him shout and come out of the room with Tallent chasing him out of the house. R. p. 239. On the way out he said, “Dude, Dwayne’s molesting [Victim].” R. p. 240, lines 12-13. The brothers moved out of the house afterwards. Joseph would not see Tallent again for another fifteen years. Joseph

and his brother told their father about the incident. Their father reported it to law enforcement, and the brothers told law enforcement what they saw. R. pp. 240-41.

Christopher Greco testified he and his brother moved in with Tallent around the time he turned eleven years old. Christopher had trouble getting along with Tallent. Tallent seemed awkward and distant. Christopher noticed Tallent always touched Victim, rubbing her inner thigh. He found it awkward and inappropriate. R. pp. 256-57. He testified it was not uncommon for Victim to be in bed with Tallent. R. p. 258. The only time Christopher was invited into the bedroom was to use drugs. R. p. 259.

Christopher described the marijuana use in the household as all day, every day. R. p. 263. He saw Tallent give Victim and her friend marijuana one time. R. p. 264. Tallent also gave marijuana to Christopher from the time he was eleven. He confirmed they consumed other drugs and converted cocaine to crack cocaine. They were using cocaine when he was seventeen years old, but they did not start manufacturing crack until he was eighteen. R. pp. 264-66.

Christopher was up to use the bathroom when he heard a slight moaning. He looked through the keyhole of the bedroom and saw Tallent and Victim under the covers. Tallent was touching himself and Victim with his other hand. He told her “that is how you do it.” Christopher kicked open the door and demanded to know how long it had been going on. He called Tallent sick. Tallent “freaked out” and jumped out of bed. Tallent chased Christopher outside, threw coolers at him, and told Christopher that Christopher could ruin his whole world. R. p. 260; p. 274, lines 18-24 (direct quote). When asked if they were clothed, Christopher testified Tallent was in his boxers, he could not tell whether Victim was dressed or not. R. p. 262. Christopher and his brother moved out

afterwards. They told their father and Christopher told DSS about what happened. R. p. 261.

CR provided Lyle testimony. She was fifteen years old when she testified at trial. Her and her mother moved in with Tallent. Tallent was a father figure in CR's life. At the time of trial, she lived with her sister's grandfather since being placed there by DSS. R. p. 331. She lived at both Tallent's mother's farmhouse and Tallent's doublewide trailer. At the time, she was close to Tallent's mother. She is not anymore. Tallent started touching CR when she was around five years old, and she did not know it was wrong. As she later realized the abuse was wrong, she kept it to herself because she was scared. R. pp. 336-38. She explained she still loved Tallent and even told the jury Tallent is a good person. Nonetheless, she explained Tallent would touch around her vagina. The abuse would continue until Tallent moved away when CR was eleven years old. R. pp. 339-40. Tallent also touched CR's chest and kissed her on the lips. R. pp. 340-41. Sometimes the abuse occurred with the clothes on and sometimes Tallent took her clothes off. R. p. 341. Tallent told her not to tell because nobody would understand it and that nobody would understand his love for her. R. p. 343, lines 7-9. She explained she did not want to tell anyone because she was worried she would lose the only family she had, and she noted that is exactly what happened, she lost her family after she disclosed and was living with her sister's grandfather. R. p. 343.

Deputy Richter visited her at school – she did not know he was going to visit. Although tempted to disclose the abuse, she decided she did not want to tell Richter because it would ruin her school day, and ruin her family. R. pp. 344-45. She later disclosed the abuse to a DSS caseworker. R. pp. 345-46.

The prosecutor asked if her life was easier or harder since she disclosed, and she replied, "It

was so much harder on me.” Tr. p. 349, lines 9-11. She explained why:

Because knowing that I came out, I knew that right then and there, the place that I was at as not a safe environment. I knew that I would be [taken] from my home. I knew that I would be [taken] away from my family, which I, basically, have been.

R. p. 349, lines 13-23. CR explained she was afraid she would lose her family, and in the end, it was worse than she feared. She admitted Tallent’s family put pressure on her to change her story. R. p. 350, lines 1-15.

The first defense witness, Selena Brunson, and her future husband lived with Tallent for four months in 1991 when she was seventeen or eighteen. She said she never saw anything wrong and testified there was no “Mikey” living there at the time. R. pp. 364-75.

Lenore Brissey, Tallent’s mother, testified. She used to go horseback riding with Victim. She testified when Victim and her mother left Tallent, Victim told her she did not want to leave and hugged her. Tr. pp. 383-88. Victim never told her Tallent was doing anything. Brissey testified if she did, Brissey would have called the police. R. p. 389. Brissey testified she also had a close relationship with CR. R. pp. 390-91. CR never told her Tallent was touching her inappropriately either. R. p. 398.

Tallent’s sister, Diana Rogers, testified Victim never disclosed any abuse to her. R. p. 404. Likewise, Tallent’s other sister, Debbie Seymore, testified she did not see any inappropriate touching and Victim never disclosed abuse to her. R. p. 411.

ARGUMENT

Because the offenses were offenses against minors and therefore of the same nature, and evidence for the offenses relied primarily on the same three witnesses, and mostly occurred during the same time period in the same household, the trial court did not abuse its discretion by denying the motion for severance.

Tallent complains the trial court erred in denying his motion for severance. However, Victim was a victim in all four charges, and her brother was also a victim for the contributing charge. Victim and her brother were the primary witnesses for the sexual assault offenses and the contributing charge. The evidence comprising the contributing charge occurred while Tallent was still sexually abusing Victim and occurred in the same household. The offenses were proved by the same evidence. The offenses, all against minors, were of the same general nature and no real right of Tallent's was infringed upon. Therefore, the trial court did not abuse its discretion.

Standard of Review

A motion for severance is addressed to the sound discretion of the trial court. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); McCrary v. State, 249 S.C. 14, 152 S.E.2d 235 (1967); State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996); State v. Anderson, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). The court's ruling will not be disturbed on appeal absent an abuse of that discretion. Tucker, 324 S.C. at 164, 478 S.E.2d at 265; State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); State v. Deal, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995); see also State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002) (stating a motion for severance is addressed to the trial court and should not be disturbed unless abuse of discretion is shown). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.

State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005).

Pre-trial and in camera arguments

During Tallent's pretrial motion to sever, the trial court expressly indicated it was not addressing testimony of drug manufacture or drug transactions being admissible under Rule 403 analysis, but noted "given what I know as I sit here that it was all part of a continuing relationship between the Defendant and all these other persons. And they are interconnected and interwoven that it is appropriate to try them together." R. p. 41, line 18 – p. 42, line 14. The trial court noted certain testimony might be excluded if it was unduly prejudicial. R. p. 42, lines 11-14.

During trial, in the middle of Victim's direct-examination, the prosecution requested the jury be sent out of the courtroom, and to seek clarification on the trial court's ruling regarding testimony about illegal drugs. The prosecution noted the evidence concerning the illegal drugs included testimony Tallent provided her with marijuana, drugs were used in her presence, drugs were shared with other people visiting the house, and crack cocaine was made in the home. R. pp. 169-70. In response, Tallent's counsel argued the drug evidence was too prejudicial under Rule 403, SCRE, and his client would not have a fair trial. R. pp. 170-71. In response, the prosecution noted some of the drug activity was relevant to the grooming process and it was all relevant to the charge of contributing to the delinquency of a minor for both Victim and Christopher. R. p. 171. The trial court found, based on the proffer, the evidence was admissible to prove contributing to the delinquency of a minor. He advised defense counsel that defense counsel would need to make specific objections to any evidence he believed was too prejudicial. R. p. 174, lines 3-8. Trial counsel indicated he would object to whatever comes in, and argued evidence of providing marijuana

and alcohol should be sufficient to prove the elements of contributing to the delinquency of a minor without evidence of the other drugs. R. p. 174, lines 9-18.

When Victim subsequently testified about marijuana being present in the house as early as five years old, defense counsel objected and asked for a continuing objection, to which the trial court indicated “was fine by me.” R. p. 176, lines 15- 25. When counsel objected to testimony about drug deals, the trial court sustained the objected and provided a curative instruction. R. p. 180, lines 17-23.

Discussion

Criminal charges may be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant’s substantive rights would not be prejudiced. State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005); State v. Sullivan, 277 S.C. 35, 43-44, 282 S.E.2d 838, 843 (1981) (where offenses charged in separate indictments are of same general nature, involving connected transactions closely related in kind, place and character, the trial judge has authority, in his discretion, to order indictments tried together over the objection of the defendant absent a showing that the defendant’s substantive rights were violated); McCrary v. State, 249 S.C. 14, 36, 152 S.E.2d 235, 246 (1967) (stating “[t]he two offenses were of the same general nature, involving connected transactions closely related in time, place and character; and the

trial judge had power, in his discretion, to order them tried together over objection by the defendant in the absence of a showing that the latter's substantive rights would have been thereby prejudiced."").

In State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996), the Supreme Court found the charges of murder and burglary were interconnected because the reason Tucker burglarized a church was to avoid capture for the murder charge. The Court found severance was not warranted because the crimes arose out of a single chain of circumstances, evidence of the break-ins were admissible as evidence of flight and identity for the murder, and the crimes were of the same general nature.

Recently, this Court found joinder of charges for first-degree burglary and possession with intent to distribute methamphetamine proper because the burglar's vehicle was parked on the burglarized property and during an inventory search of the vehicle, officers found methamphetamine in the vehicle and the burglar in the house. State v. Davis, 422 S.C. 472, 482, 812 S.E.2d 423, 429 (Ct. App. 2018). This Court noted the offenses originated from the same chain of events and required the same witnesses. Id.

In State v. McGaha, 404 S.C. 289, 297, 744 S.E.2d 602, 606 (Ct. App. 2013), this Court found, "Thus a substantial portion of the testimony the State presented at trial to prove the crimes against one child was the same evidence it would have used to prove the crimes against the other. Even though some of the evidence related only to one child, we find the evidence described above supports the trial court's determination that the separate charges would be proven by the same evidence."

In the instant case, the offenses are of the same general nature: they are offenses against

children. Further, all the offenses rely on the same three principle witnesses, Victim and her brothers. The brothers were witnesses to sexual abuse and provided probative evidence of the nature of the relationship between Tallent and Victim. They also witnessed a portion of the evidence constituting the contributing to delinquency of a minor charge as to Victim. Victim was a witness to the evidence constituting contributing to the delinquency of a minor against Christopher. Further, the offenses were closely related in time. The sexual abuse continued while the brothers lived in the home and the drug-use proving contributing to the delinquency of a minor was ongoing during this time.

Additionally, the drug evidence was admissible as *res gestae*. Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). Under the *res gestae* theory, evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘*res gestae*’ “ or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be

fully shown without proving the other ... '[and is thus] part of the res gestae of the crime charged.' And where evidence is admissible to provide this 'full presentation' of the offense," [t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)).

Tallent concedes the probative worth of Victim's marijuana and alcohol use. The use and manufacture of other drugs in the household is likewise relevant and admissible as res gestae evidence because it constitutes the environment Victim lived in before the brothers left the household. The brothers were only allowed in the bedroom to smoke drugs. Victim was shoed away at least some of the time in a half-hearted attempt to shield her from the household environment of heavier drugs. It also explains the limitations on the brothers' limited opportunity to observe sexual abuse of Victim.

In the instant case, the trial court did not err in denying the motion to sever the charges. Victim and the two brothers were the primary witnesses for both the sexual and the drug-related offenses. The offenses were of the same character, both involved offenses against minors who were in Tallent's custody. The sexual assaults were ongoing at the time the brothers moved in and the use of drugs occurred at the same time after the brothers moved into the house. The offenses also all occurred at the same location, Tallent's home. Tallent begrudgingly concedes the probative value of testimony he shared marijuana and alcohol with Victim. This evidence is admissible for both the sexual assault charges and the contributing to Victim's delinquency and therefore is admissible evidence in both cases. The use of cocaine and methamphetamine, the production of crack cocaine,

and allowance of strangers to use drugs inside the house all are probative evidence of the contributing charge. They also provide the context of the responsible-parent free environment in which Victim was always in Tallent's bedroom in a nightgown, Tallent lay in bed all day, drugs were freely used by the children, and Victim filled the role of Tallent's girlfriend.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 15, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Robin B. Stillwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

DWAYNE CAMERON TALLENT,

Appellant.

Appellate Case No. 2017-001585

CERTIFICATE OF COUNSEL

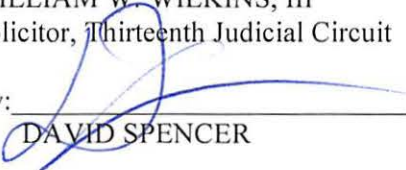
The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

By: 

DAVID SPENCER

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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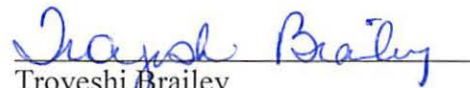
Appellate Case No. 2017-001585

PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Final Brief of Respondent*, dated January 15, 2019, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

J. Falkner Wilkes, Esquire
Matthew J. Kappel, Esquire
114 Whitsett Street
Greenville, South Carolina 29601

I further certified that all parties required by Rule to be served have been served. This 15th day of January, 2019.


Troyeshi Brailey
Legal Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

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

The State, Respondent,

v.

Dwayne Cameron Tallent, Appellant.

Appellate Case No. 2017-001585

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

Opinion No. 5729
Heard March 17, 2020 – Filed June 10, 2020

AFFIRMED

Matthew J. Kappel, of Law Office of Matthew J. Kappel,
PC, and J. Falkner Wilkes, both of Greenville, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

HEWITT, J.: This case is chiefly about whether the trial court abused its discretion in declining to sever criminal charges from being tried together. The State alleged that Dwayne C. Tallent sexually abused his minor stepdaughter for several years and he gave her and one of her brothers (the only brother who was a minor at the time) illegal drugs and alcohol after the brothers moved into the house Tallent shared with the siblings' mother. Tallent was charged with first and second

degree criminal sexual conduct with a minor; lewd act upon a child; and a single count of contributing to the delinquency of stepdaughter and brother. A jury convicted him of the charges. The trial court ordered concurrent sentences of thirty years' imprisonment.

Here, Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge from the other charges. He also argues the trial court erred in admitting evidence of his manufacture, sale, and use of cocaine, crack cocaine, and methamphetamine. In his view, allowing the more egregious drug-related testimony into evidence violated Rule 403 of the South Carolina Rules of Evidence.

We reject these arguments for the same basic reason: both decisions are reviewed under the abuse of discretion standard, and the record reveals no abuse of discretion. Thus, we affirm.

FACTS

This was a delayed reporting case. The abuse allegedly began in the early 1990s when stepdaughter was five or so years old. Stepdaughter testified Tallent's abusive conduct escalated over several years. Details of the abuse need not be repeated here.

Stepdaughter said the abuse ended when she was approximately fourteen years old and went to live with her biological father. She reported the abuse to authorities when she was twenty-six.

Stepdaughter also recalled being around illegal drugs in the household as early as five years old. She testified Tallent let her try marijuana when she was twelve and continued providing her with marijuana and alcohol until she moved out. Stepdaughter also testified crack cocaine and other drugs were present in the home.

The brothers moved into the home some years after their sister. Tallent allegedly exposed both brothers to illegal drugs and alcohol. Both brothers also testified to witnessing Tallent's odd behavior with their sister and, eventually, his abuse of her.

For example, the younger brother stated marijuana use was common in the house. He recalled that Tallent provided all of the children with marijuana, gave the brothers cocaine and other drugs, and taught the brothers how to make crack cocaine.

The younger brother also recalled Tallent frequently touched stepdaughter and rubbed her inner thigh in ways that seemed awkward and inappropriate. He stated it was not uncommon for stepdaughter to be in bed with Tallent. He additionally testified that on one occasion he looked through the keyhole of the bedroom door, witnessed Tallent sexually abusing stepdaughter, kicked the door open, and confronted Tallent.

Older brother corroborated this account about the illegal drug activity and the episode where younger brother witnessed his sister being sexually abused.

Before trial, Tallent moved to sever the contributing to the delinquency of a minor charge from the remaining charges on the ground that trying the charges together would cause undue prejudice by allowing evidence that would otherwise be inadmissible if the trial only involved the CSC and lewd act charges. Tallent argued his involvement in manufacturing, selling, and using cocaine, crack cocaine, and methamphetamine had no substantial connection to the CSC or lewd act charges and would have never passed the probative versus prejudicial threshold if offered as "prior bad acts" in a trial solely concerning the alleged sexual abuse.

The trial court disagreed and found that the charges were interconnected and interwoven. Therefore, the court determined it was appropriate to try them together. The court nevertheless reserved the right to exclude certain testimony if it was unduly prejudicial and specifically mentioned that it was not ruling evidence of drug *transactions* and *manufacturing* would be admitted.

Prior to stepdaughter's testimony regarding drug activity in the house, the State requested that the jury be sent out of the courtroom to seek clarification on the trial court's ruling. The State said it planned to introduce testimony that Tallent provided stepdaughter with marijuana and alcohol, provided cocaine and other drugs to other people in the household, and manufactured crack cocaine in front of stepdaughter. The State argued this evidence was relevant to the contributing to the delinquency of a minor charge.

Tallent objected, arguing the drug evidence was so prejudicial that he would not be able to receive a fair trial and its admission would violate Rule 403. Tallent acknowledged evidence that he gave stepdaughter marijuana and alcohol was relevant to the contributing to the delinquency of a minor charge and admissible. However, Tallent claimed testimony and evidence regarding drug manufacturing, drug transactions, extortion, and firearms was more prejudicial than probative and inadmissible.

The trial court held testimony regarding drug activity was relevant to the contributing to the delinquency of a minor charge and admissible. However, and as before, the court noted Tallent should object if he felt specific testimony violated Rule 403 or went "beyond simply proving the elements of contributing to the delinquency of a minor."

The trial court and the parties continued addressing this issue throughout the trial as various drug-related testimony came out. The court generally allowed testimony regarding drug use and manufacturing in which stepdaughter and her brothers were personally involved. The court also sustained objections and provided curative instructions as to testimony of drug transactions with third parties and other evidence not directly related to Tallent's charges.

Multiple witnesses testified in Tallent's defense, generally stating they did not witness any inappropriate conduct by Tallent toward stepdaughter or other minors. The jury convicted Tallent of all four charges.

SEVERANCE

Tallent argues the trial court erred in denying his motion to sever the contributing to the delinquency of a minor charge. Tallent contends this charge was not "the same general kind of charge, or related in kind, place or character sufficiently to be tried with the sexual offense charges." Additionally, Tallent claims the evidence related to his manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine was unrelated and overly prejudicial with regard to the CSC and lewd act charges. In his view, the court improperly focused on whether the drug-related evidence was relevant to the contributing to the delinquency of a minor charge rather than asking whether this evidence would be admissible if the CSC and lewd act charges were tried alone.

In simple terms, the law explains that multiple charges can be tried together when they have a logical relationship to each other and when there is no prejudice. The "test" is that the charges must "(1) arise out of a single chain of circumstances, (2) [be] proved by the same evidence, [and] (3) [be] of the same general nature" *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). Further, no real right of the defendant can be prejudiced. *Id.* "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's