

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Allendale County

S.C. SUPREME COURT

Honorable Roger M. Young, Circuit Court Judge

BOBBY JONES, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000633

APPENDIX

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CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 talk about --

2 MR. CULLER: Objection, Your Honor, we are
3 having pitting potentially.

4 THE COURT: Overruled. Go ahead.

5 BY MS. LUTTRELL:

6 Q You heard a lot of the witnesses testify
7 that Emily told them about the vibrator, right?

8 A I did.

9 Q You and your wife have been married for
10 how long?

11 A This will be our eleventh year.

12 Q This happened five years ago, so you guys
13 have stayed married this whole time, right?

14 A Yes.

15 Q You guys live in the same house?

16 A No. I know you heard that earlier today
17 that we don't live in the same house. She just told
18 you that when she was on the stand.

19 Q Y'all are happily married for the last
20 five years and you don't even live together?

21 A Well, happily married for the last five
22 years not living together, if you got to live
23 together to be happy, then you ain't really happy.

24 Q And your wife, she's stuck by you the
25 whole last five years while this is pending?

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 A Yeah, because, see, circumstances cause
2 you not to be together. My point is, if you are
3 still married and love each other, then a lot of
4 times, it grows stronger because of adversity. So
5 it wasn't that we had any kind of friction between
6 us. So, yes, I would say, in my opinion, we are
7 happier now than we were before this happened.

8 Q Okay. You talked a little bit earlier
9 about mentoring a lot of kids and having this DJJ
10 program, right?

11 A Right.

12 Q Do you still have that program?

13 A No, they took it. You can't be a felon
14 and have that program. They took it. 2013, they
15 cut it.

16 Q Okay. You told the jury you've been in
17 Allendale your whole life, right?

18 A Born and raised.

19 Q Everyone knows you, right?

20 A No, not everyone. We got implants. You
21 don't know me.

22 Q Everyone from Allendale knows you?

23 A Yes. Yes.

24 Q You're like a local celebrity kind of,
25 right?

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 A No, I'm not a celebrity, no. I'm just
2 a -- let me tell you what I am, I'm a local preacher
3 that loves people and I spend time with people. The
4 people that other people don't want to spend time
5 with, the drug dealers, the drug addicts and those
6 people what we call are out there, I spend a lot of
7 time with those people, yes. I'm in the street a
8 lot because that's where the trouble is.

9 Q Back in 2013 when you went to pick Emily
10 up from school and Sheriff Carter pulled you aside,
11 you were picking Emily up from school that day,
12 right?

13 A Yes.

14 Q And your wife was out of town; is that
15 right?

16 A At a funeral.

17 Q How long had she been out of town?

18 A She just went that day and came back that
19 night.

20 Q Okay. So she -- it was a 24-hour trip?

21 A No, it wasn't a 24-hour trip. She went
22 that morning and came back that evening. The
23 funeral was that day. She didn't stay overnight.

24 Q Back in 2013, when Sheriff Carter pulled
25 you into a room and said, Bobby, something is going

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 on that's not good. You told Sheriff Carter that
2 you used a vibrator on your stepdaughter, Emily
3 Flowers; isn't that right?

4 A No, look at the way he testified --

5 MS. LUTTRELL: Your Honor, unresponsive.

6 THE WITNESS: No, I didn't.

7 MR. CULLER: Your Honor, he's allowed to
8 explain his answer.

9 THE COURT: He answered the question.

10 BY MS. LUTTRELL:

11 Q And back in 2013, Mary Carter met with you
12 several times and you told Mary Carter that you used
13 a vibrator on your stepdaughter, Emily Flowers;
14 isn't that right?

15 A I did not. But you going to let me
16 explain this time?

17 Q You did or did not tell Mary Carter that?

18 A No, I did not. But you going to let me
19 explain?

20 Q Your defense counsel will get to stand
21 back up and ask you some clarification questions.

22 MR. CULLER: Your Honor, I would argue to
23 the Court he's allowed to --

24 THE COURT: I'll let him explain it.

25 Go ahead.

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 THE WITNESS: Thank you.

2 Mary Carter that sit on this stand
3 today -- she ain't here today, she gone
4 somewhere, but she should be. She lied. She
5 said she been in Allendale 10 years, she didn't
6 know Bobby Jones. She knew me and I knew her.
7 She came to our church because we do social
8 programs. She came to our church to bring a
9 client and to get clothing because of our
10 clothes --

11 MS. LUTTRELL: Your Honor --

12 THE WITNESS: She came there, got the
13 clothes and then asked if she could get clothes
14 for herself. And then she trying to act like
15 she don't know me.

16 THE COURT: The objection is
17 nonresponsive?

18 MS. LUTTRELL: Nonresponsive and pitting
19 himself against the witness and commenting on
20 the credibility of another witness.

21 THE COURT: I will sustain the objection.

22 MS. LUTTRELL: We'd also ask that you
23 strike -- move to strike that for the record,
24 Your Honor.

25 THE COURT: The last response will be

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 stricken from the record and disregarded by the
2 jury.

3 MS. LUTTRELL: Your Honor, may I approach
4 the witness?

5 THE COURT: Certainly.

6 BY MS. LUTTRELL:

7 Q Mr. Jones, I'm showing you what's been
8 entered into evidence as State's Exhibit 4?

9 A Okay.

10 Q Do you recognize any of the names on that
11 document?

12 A Mary Carter.

13 Q Do you see your wife's name on that
14 document?

15 A On this side, yeah.

16 Q Do you see your name on that document?

17 A My name, my wife's, Levi, Emily, and
18 Kirby -- well, we call him Kirby, his name is Levi,
19 Jr.

20 Q Your stepson?

21 A Yeah.

22 Q You were aware of the Family Court
23 proceeding that happened back in June through August
24 of 2013?

25 A Of course.

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 Q Did you attend that court hearing?

2 A I did.

3 Q Were you present for the judge's order and
4 findings during that court hearing?

5 A I was.

6 Q Isn't it true that during that court
7 hearing, the judge found that based on all of the
8 evidence he heard, including Emily's testimony, that
9 judge found that you needed to register -- or you
10 needed to register into the central registry for
11 child abuse and he found a finding of sexual abuse
12 by you; is that true?

13 A No, I was already arrested during this
14 time, already had a charge of sexual abuse at this
15 time. So, of course, he didn't have to find it, it
16 was already there.

17 Q But that was a Family Court hearing,
18 right?

19 A Right, but I was charged already when they
20 got to Family Court and he knew this. So he had no
21 other option but to do that.

22 Q Okay, but the Family Court judge made a
23 finding of sexual abuse by you; is that right?

24 A You'll have to ask him. I don't know why
25 he made the finding. I mean, you know, I can't say

CROSS EXAMINATION OF BOBBY JONES, SR. BY MS.
LUTTRELL

1 the judge made a finding on me because of that. All
2 I can say is that when the case was over, that's
3 what he said. But he had already been aware that I
4 am -- I was already arrested.

5 MS. LUTTRELL: Thank you, Your Honor, no
6 further questions.

7 MR. CULLER: Nothing further.

8 THE COURT: Thank you. You may step down.
9 Call your next witness.

10 MR. WALTERS: Your Honor, the defense
11 rests at this time.

12 THE COURT: The defense rests.
13 Anything in reply?

14 MS. LUTTRELL: Yes, Your Honor. May we
15 have a five-minute recess to figure that out?
16 I believe we do have some rebuttal witnesses,
17 but we need to make sure they are present.

18 THE COURT: All right, ladies and
19 gentlemen, we'll take a short five-minute
20 recess. I ask you to step in the jury room. I
21 remind you it's too early to discuss the case.

22 (WHEREUPON, the jury exits the courtroom.)

23 (WHEREUPON, a short break was taken.)

24 THE COURT: The solicitor says they have
25 no plans to recall anybody. So my suggestion

COLLOQUY

1 is bring the jury in and say you also rest. I
2 will tell them it's looks like it's going to be
3 5:30 before they get the case if we push
4 forward. I don't want to do that. So we'll
5 bring them back at 9:30 in the morning. And
6 after they leave, we'll talk about things that
7 we need to talk about.

8 MR. CULLER: Yes, Your Honor.

9 MS. LUTTRELL: Yes, Your Honor.

10 THE COURT: Let's bring the jury back.

11 (WHEREUPON, the jury enters the
12 courtroom.)

13 THE COURT: Welcome back, ladies and
14 gentlemen. I believe the State is also getting
15 ready to rest.

16 MS. LUTTRELL: Your Honor, the State has
17 decided not to call any rebuttal witnesses and
18 we do rest.

19 THE COURT: That means that you have now
20 received, heard, seen all of the evidence that
21 you're going to see or receive. There won't be
22 any other new evidence given to you to assist
23 you in making your deliberations. What remains
24 to be done is I have to have a meeting with the
25 attorneys. I'm estimating that's about 20,

INSTRUCTIONS TO THE JURY BY THE COURT

1 maybe 30 minutes, and then the attorneys will
2 make their closing arguments to you, then I
3 give you the law that applies in the case, it's
4 about an hour and a half. So, it's possibly up
5 to two hours before you begin deliberating if
6 we started right now, which would put you at
7 close to 6:00 before we start deliberating. So
8 I've decided that we'll come back in the
9 morning and do all of this instead of putting
10 you in a bind at 6:00 at night.

11 So, ladies and gentlemen, we're going to
12 recess until 9:30 in the morning. I'll remind
13 you, don't let anybody talk to you about the
14 case, you don't talk to anybody about the case.
15 Don't do any research about the case. See you
16 back at 9:30 in the morning, ladies and
17 gentlemen. You're excused.

18 (WHEREUPON, the jury exits the courtroom
19 at 3:45 p.m.)

20 THE COURT: Any motions?

21 MR. CULLER: We renew the motion on the
22 same grounds as earlier.

23 THE COURT: The Court understands that
24 motion and does not see any reason to change
25 its opinion and denies that.

MOTIONS

1 MR. CULLER: Thank you, Your Honor.

2 THE COURT: The jury charges we are
3 talking about --

4 MR. CULLER: I think I was using Judge
5 Irwin's book and you were using Judge
6 Anderson's book and you probably have your own
7 set, so --

8 THE COURT: Well, you know, I've got a
9 charge on presumption of innocence, two
10 separate charges on reasonable doubt, duties of
11 the judge and jury, direct and circumstantial
12 evidence, credibility of witnesses. I do have
13 a question for everybody concerning the charge
14 on second degree. Maybe I'm -- maybe I'm
15 reading it wrong. The statute talks about
16 sections two and three. One section deals with
17 at least 11, but no more than 14. No more than
18 14. The next section deals with less than 16,
19 but at least 14.

20 MS. LUTTRELL: Yes, Your Honor, we -- the
21 indictment that the State charged is under the
22 Subsection (b)(1), the actor engages in
23 sexually battery with the victim who is 14
24 years of age or less, but who is at least 11
25 years of age.

MOTIONS

1 THE COURT: Okay. So, not the custodial
2 official duty section?

3 MS. LUTTRELL: No, Your Honor. The
4 indictment that we charged, that was under
5 (b) (1).

6 THE COURT: Any lesser included thoughts?

7 MR. CULLER: No, Your Honor. With regard
8 to reasonable doubt, State V. Manning versus
9 Nebraska. We would obviously like State V.
10 Manning.

11 THE COURT: I have two. I give two. I
12 give the hesitate to act charge.

13 MR. CULLER: Yes, Your Honor.

14 THE COURT: And then also a more lengthy
15 one about proof beyond a reasonable doubt.

16 MR. CULLER: Yes, Your Honor.

17 THE COURT: I do both, so. What other
18 specific charges does anybody want? Expert
19 witness charge.

20 MS. LUTTRELL: Yes, Your --

21 THE COURT: Does anybody have an
22 objection -- I'm sorry, go ahead.

23 MS. LUTTRELL: Go ahead, Your Honor.

24 THE COURT: I was going to ask does
25 anybody have an objection to -- if there's no

MOTIONS

1 lesser included, does anybody have an objection
2 to the Court using the indictment and have the
3 foreperson sign the indictment guilty or not
4 guilty, which is the way that it was done
5 forever and ever?

6 MR. CULLER: I would agree with the Court.

7 MS. LUTTRELL: We have no objection to
8 that.

9 THE COURT: I have had a few people object
10 to it when there's language in the indictment
11 that was inflammatory and not proven. What
12 else do we need to do?

13 MS. LUTTRELL: Your Honor, I -- I believe
14 we would ask for the expert witness charge. I
15 don't know if I heard you say that or not.

16 THE COURT: Expert? Yes. An expert
17 witness charge.

18 MS. LUTTRELL: Okay.

19 THE COURT: Any disagreement over who's
20 arguing when? Closing?

21 MS. LUTTRELL: Your Honor, the State's
22 position is that we would open on the law and
23 fact, defense would do their closing and then
24 the State would have the opportunity to rebut
25 the defense closing.

MOTIONS

1 MR. CULLER: The law is sort of moving in
2 different directions. The last that I
3 understood is that it was up to the Court. I
4 understand what the solicitor is saying.

5 THE COURT: Well, y'all educate me. Does
6 the State V. Beatty not say in this case, the
7 defense can require the State to open in full?

8 MS. LUTTRELL: We are reviewing it again,
9 Your Honor. But it was our understanding, that
10 even under Beatty, if defense puts on a case,
11 that the State should open on the law and the
12 fact, but we would still get the opportunity to
13 present a rebuttal, a rebutting argument.

14 MS. STAGGS: Judge, if I may. So, in
15 cases in which a defendant introduces evidence,
16 trial judges have the authority to require the
17 State to open in full on the facts and the law
18 and have the authority to restrict their
19 argument to matters raised by the defense in
20 closing. I mean, that's the second to last
21 paragraph of the Beatty opinion.

22 MR. CULLER: I think that's a more
23 articulate way of expressing what I was saying.

24 THE COURT: Is that also what it says? I
25 want to hear what you say?

MOTIONS

1 MS. STAGGS: That it is in the discretion
2 of the Court, Judge, but that is the typical
3 procedure as we understand it at this point
4 after Beatty if one side requests for that.

5 THE COURT: Is that what you're asking
6 for?

7 MR. CULLER: I would agree, Your Honor.

8 THE COURT: All right. Then, we'll do
9 that then. Opening in full, still have the
10 right to reply, but not raise new matters.

11 Anything else we can do?

12 MR. CULLER: I don't think so, Your Honor.

13 MS. LUTTRELL: Nothing from the State,
14 Your Honor.

15 THE COURT: Let's adjourn until 9:30
16 tomorrow morning.

17 MS. STAGGS: Thank you, Your Honor.

18 (WHEREUPON, the court adjourns for the
19 day.)

20

21

22

23

24

25

MOTIONS

1 7-12-2018 PROCEEDINGS

2 THE COURT: Is the State ready for the
3 jury?

4 MS. LUTTRELL: Yes, Your Honor.

5 THE COURT: Let's bring the jury.

6 (WHEREUPON, the jury enters the courtroom at
7 9:35 a.m.)

8 THE COURT: Good morning and welcome back.

9 THE JURY: Good morning.

10 THE COURT: I believe we are ready to
11 proceed this morning with the closing arguments
12 from the attorneys. Let me remind you of one
13 thing I told you earlier again, that is what
14 the attorneys might say to you in closing
15 arguments is not evidence. If your collective
16 memory is different than what an attorney says
17 they remember it, then your collective memory
18 would trump, so to speak, the statement of an
19 attorney, if you disagree with it. And I've
20 also limited each side to a certain number of
21 minutes, so if I start doing that, I'll be
22 notifying the attorneys that they are close to
23 exceeding their allotted time.

24 And we will begin with the State,
25 Solicitor.

CLOSING ARGUMENT BY THE STATE

1 CLOSING ARGUMENT BY THE STATE

2 MS. LUTTRELL: Thank, Your Honor, may it
3 please the Court.

4 Opposing counsel.

5 Members of the jury, I want to start out
6 by thanking you for the attention that you have
7 all given over the last three and a half days.
8 I know it's been a long week. There's been a
9 lot of witnesses and a lot of testimony, a lot
10 of you going in and out. But we appreciate the
11 attention that you have given to each and every
12 witness that has testified in this case.

13 As the judge said, these are closing
14 arguments, we have made it to the end. It's my
15 last time to talk with you and I'm going to go
16 over the facts and testimony that you've heard
17 and talk a little bit about how the State has
18 proven this case beyond a reasonable doubt.

19 Bobby Jones is charged in this case with
20 criminal sexual conduct with a minor, second
21 degree. And in a few moments, the judge will
22 instruct you on the law. He will go over
23 several jury instructions with you. But this
24 is the statute that he is charged with. To
25 prove this charge, the State must prove beyond

CLOSING ARGUMENT BY THE STATE

1 a reasonable doubt that Bobby Jones, Sr.
2 engaged in a sexual battery with Emily Flowers,
3 and at the time, Emily Flowers was 14 years of
4 age or less, but, at least, 11 years of age.

5 Now, these are the elements that we have
6 to prove. And you will see in here that time
7 is not an element of this defense. The State
8 does not have to prove that this happened on a
9 particular day. We just have to prove that a
10 sexual battery occurred when Emily Flowers was
11 between the ages of 11 and 14 years old. And
12 that's been done in this case. You heard
13 several witnesses testify, including Emily
14 herself that back in January of 2013, she was
15 14 years old. She did not turn 15 until four
16 days after law enforcement even got involved in
17 this case.

18 So, I also want to talk to you about what
19 a sexual battery is. This is the definition of
20 a sexual battery. A sexual battery means
21 sexual intercourse, cunnilingus, fellatio, anal
22 intercourse or any intrusion, however slight,
23 of any part of a person's body or any object
24 into the genital or anal openings of another
25 person's body, except when done for medical

CLOSING ARGUMENT BY THE STATE

1 purposes. Members of the jury, a sexual
2 battery is having sex, intercourse or putting a
3 vibrator into another person. That is a sexual
4 battery.

5 So how did the State prove this with all
6 of those witnesses you heard from? You heard
7 from nine different witnesses testify on the
8 stand about statements Emily made to them over
9 the course of three months. I want to go over
10 that time line with you and, hopefully, clear
11 up when all of these different statements were
12 made. Emily did not tell people one time that
13 the Defendant used a vibrator on her or put his
14 penis inside of her. She told, at least, nine
15 different people over three months that this
16 happened.

17 January 2013, the Defendant had sex with
18 and/or used a vibrator on Emily Flowers. The
19 State does not have to prove one or prove both,
20 we only have to prove one or the other. Both
21 are a sexual battery.

22 That same night, Emily texted her friend,
23 Tanaysia Myers. And I talked to her about that
24 on the stand. She wrote that in her witness
25 statement. The Defendant had sex with her on

CLOSING ARGUMENT BY THE STATE

1 the same night that she texted her friend,
2 Tanaysia Myers.

3 The next day Emily told her mom. You
4 heard from several witnesses that they asked
5 her, everyone asked her, have you told your
6 mom? Does your mama know what's going on? She
7 said, I did, she doesn't believe me, or my mama
8 told me that it didn't happen because she has a
9 better life now that she's married to Bishop
10 Jones.

11 That same day, you heard testimony that
12 the Defendant, when confronted by Ms. Jones,
13 pulled out a gun, put it to his head and said
14 he was going to lose everything if this came
15 out. All he had worked for, all of his
16 preaching, his church, his status in the
17 community was going to be lost if Emily told
18 people what he did.

19 January 23rd, 2013, Emily opened up to
20 someone at school. She found someone that she
21 thought she could trust, someone who wasn't
22 part of her family, someone who she saw
23 everyday as a teacher. And she went to Kenneth
24 Tyler and told him emotional, crying and upset,
25 my stepdad has been climbing into my bed. He

CLOSING ARGUMENT BY THE STATE

1 is showing me what little boys want to do to
2 me. He is touching me. Kenneth Tyler told you
3 he got Carl Howard involved. There was another
4 student there and then they told the guidance
5 counselor and Kenneth Tyler no longer was
6 involved in this case.

7 But we have two more months before law
8 enforcement actually gets involved. February,
9 Emily disclosed to Carolyn Chess. She went
10 again to another teacher at her school. This
11 time, she went to someone who was actually
12 related to Bobby Jones, Sr., Bobby Jones'
13 cousin, Carolyn Chess. And she went to Carolyn
14 Chess and she said, We did it. And Carolyn
15 Chess did not want to hear it. She did not
16 want to be involved then, she did not want to
17 be involved now. She told you, she told Emily
18 to stop talking about that. She told Emily,
19 that is personal business, you need to go talk
20 to your mom about that. She said, I don't want
21 to hear it.

22 You heard from Sitha Patel, family members
23 don't want to know that something like this is
24 going on. They don't want to believe it. They
25 don't want to think about the people that they

CLOSING ARGUMENT BY THE STATE

1 love and people they trust are capable of doing
2 something like this. Carolyn Chess is no
3 different and she was honest about that. I
4 don't want to be involved. That's my family,
5 that's my cousin, I don't want to hear about
6 it.

7 But Emily begged for her help. She kept
8 telling her, this is going on, this happened,
9 don't you believe me? What would you do if it
10 was your daughter? Would you believe your
11 daughter? And that stuck with Carolyn. She
12 thought about it. She took some time. Carolyn
13 Chess is a mandatory reporter, being at a
14 school, and she was conflicted with coming
15 forward with this information. She did not
16 want to get involved in this case.

17 She was not out to get Bobby Jones. But
18 she told you on that witness stand, the reason
19 she was here today, the reason she told other
20 people at the school about this is because in
21 her heart, she knew this girl needed help. In
22 her heart, she knew that no one else was going
23 to protect this girl, including her own mama.
24 And so, she told the principal, she told the
25 guidance counselor.

CLOSING ARGUMENT BY THE STATE

1 March 4th, 2013, that's when Emily told a
2 lot more people. The defense has made a big
3 deal about the fact that she was put in a room
4 and she had to tell her story three or four
5 different times to several different people.
6 The State is not going to deny that maybe
7 that's not the best way to handle a 14-year-old
8 girl talking about this traumatic incident
9 that's happening to her, but even though she
10 was asked to tell her story over and over and
11 over again, she was consistent. She told them
12 all the same thing. Sometimes she used a
13 little bit more detail, but she was consistent.
14 She told the sheriff what happened, she told
15 the SRO, Samuel Holmes, what happened. She
16 told Carolyn Chess a second time, with Kimberly
17 Solomon, the nurse, and Pamela Kinard, the
18 other guidance counselor. And then Mary Carter
19 from DSS got there and asked her what happened
20 and she told her the same thing.

21 After Emily made all those disclosures
22 that day, after law enforcement got involved in
23 this case, Emily wasn't allowed to go home.
24 She had to go stay with her grandma. She
25 wasn't allowed to go home to her mom. She

CLOSING ARGUMENT BY THE STATE

1 wasn't allowed to talk to her stepdad anymore.
2 She knew that her life was about to change and
3 she just wanted everything to go back to
4 normal.

5 Sitha Patel talked a lot about the stages
6 of disclosure. First, you have tentative
7 disclosure, that would be her texting her
8 friend, Tanaysia, that would be her feeling out
9 Kenneth Tyler by telling him that something
10 inappropriate is going on with her stepdad.
11 That would be the things that she did with
12 Nicole Smith, typing on the computer at church,
13 he touched me. Those are tentative
14 disclosures. She's trying to see what people's
15 reactions are going to be.

16 After that, it's a full-on disclosure.
17 That is what she did with Carolyn Chess,
18 crying, telling her, it happened, we did it.
19 And then, again, a few days later, all of these
20 other people.

21 But the next stage was recantation. And
22 Sitha Patel told you that recantation is very
23 common, it happens all the time. And not just
24 with kids, adults do it, too. Because after
25 the truth has come out, after people know

CLOSING ARGUMENT BY THE STATE

1 what's going on, things start to change.
2 People's lives get turned upside down, they are
3 ripped away from the people that they love,
4 they start to get worried about what their
5 family members are going to say, what their
6 family members are going to think and how the
7 people that they love are going to be affected.
8 And that's what happened in this case.

9 But even when Emily started to change her
10 story a little bit, she still had that reaffirm
11 it a couple more times. Even when she talked
12 to Mary Carter again on March 5th, the next
13 day, she told Mary Carter, he did use the
14 vibrator. We didn't have sex, but he did use
15 that vibrator on me. And then again, when she
16 went to her medical exam with Kristin Dalton on
17 March 21st, she told Kristin Dalton, I've never
18 had sex. But when Kristin Dalton said, well,
19 tell me about that vibrator. Who used the
20 vibrator? Again, she's reaffirming, she's
21 telling people a little bit of what happened.
22 He did use that vibrator on me.

23 And the last time she talked about it was
24 with Richard Johnson. Special Agent Johnson
25 from SLED got involved in this case because the

CLOSING ARGUMENT BY THE STATE

1 sheriff of Allendale County was too close. He
2 knew Bobby Jones. They grew up together, they
3 played football together. It was a conflict
4 for him to be on this case. So they brought an
5 independent person in from SLED, who does not
6 live in Allendale County, who is not from here,
7 who does not know the people involved and he
8 did his own investigation, an independent
9 investigation. He talked to 26 people with
10 information about this case. And he talked to
11 Emily Flowers on March 26th, 2013. And even
12 then, she was trying to back away because she
13 didn't want to get her stepdad in trouble, she
14 didn't want her mom to get mad at her. She
15 wanted everything to go back to normal, but she
16 still told him in that written statement, he
17 used a vibrator on me, it was blue. It
18 happened after Christmas. It happened the
19 night that my friend was texting me.

20 These statements have been consistent
21 since 2013, five years ago. The defense has
22 made a big deal that this case has been pending
23 for five years. That's a long time. These
24 cases are complicated cases. They take time to
25 get into court. But you heard us talk about --

CLOSING ARGUMENT BY THE STATE

1 you heard me talk about with the Defendant, the
2 State was ready to try this case two years ago.
3 We were ready to bring this case to trial. The
4 defense got a continuance for two years.

5 MR. WALTERS: Objection, Your Honor. May
6 we approach, Your Honor?

7 THE COURT: Yes.

8 (Off-the-record discussion held.)

9 MS. LUTTRELL: The State was ready to try
10 this case two years ago. We don't want cases
11 sitting around for five years. The cases that
12 sit around for five years, witnesses disappear.
13 There were 26 people interviewed in this case
14 about this and what happened. You heard from
15 nine people. And you heard from several of
16 them that they did not want to be here. We
17 subpoenaed them to come. The State was not
18 postponing this trial so that fabricated
19 evidence could come out within five years. You
20 heard from nine people whose testimony today --
21 or this week was consistent with the statements
22 they made back in 2013.

23 The only statements that changed in this
24 trial were the people who had some stake in
25 this case. The only statements that changed in

CLOSING ARGUMENT BY THE STATE

1 this trial were from Emily Flowers and Bobby
2 Jones himself. Emily Flowers made all of these
3 statements five years ago. She made these
4 written statements that are in evidence.
5 They're all going to go back with you to the
6 jury room, you can read them again, you can
7 hold them, you can look closely at them. And
8 those statements that she wrote five years ago,
9 my stepdad was touching me in places, then we
10 did it, then, after I told my mom and she got
11 mad, he almost killed himself. Sometimes I
12 think that it will happen again and sometimes I
13 don't when I'm around my mom.

14 The second statement, One night after
15 Christmas, me and my stepdad, Bobby Jones, did
16 it. One night, first, he started touching me
17 and I was touching him back and I took off my
18 clothes and lifted my legs up and he put his
19 penis inside of me. I don't want to write any
20 more because I don't want him or my mother or
21 me and my brother to lose everything. I did it
22 because I wanted help, help that I needed.
23 This is the only way she could get help because
24 her mom wasn't helping her. I know that it
25 won't happen again because I'm with my mother

CLOSING ARGUMENT BY THE STATE

1 and she sleeps with me now.

2 Then, to Richard Johnson, He also did use
3 a vibrator on me, only once. We were in my
4 room, my top was on, my bottoms were off. It
5 was a blue vibrator and I got it around
6 January. The time we did it was the night I
7 was texting my friend.

8 These are the statements Emily wrote five
9 years ago right after this happened, the
10 statements that she wrote when she was begging
11 for the help and the protection for the abuse
12 to stop.

13 Five years later, she came into this
14 courtroom and she started saying, I do not
15 recall, I do not recall, I do not recall, I do
16 not recall. Those are her responses to me when
17 I was reading her statements. She didn't say,
18 that's a lie, I didn't mean that. She said, I
19 do not recall. And then she got on the stand a
20 second time, and that time, her response was,
21 If that's what's written down, that's what I
22 said when I was 14, if that's what's on the
23 paper.

24 Sitha Patel talked to you about why people
25 recant and Emily Flowers' situation fits all of

CLOSING ARGUMENT BY THE STATE

1 these things. She had a lack of family
2 support. She told her teachers she had a lack
3 of family support. She even had a little bit
4 of a lack of support when she went to Carolyn
5 Chess at school. It took Carolyn Chess a few
6 days to start supporting her. She had
7 immediate changes to her living arrangements.
8 She had to transfer schools. She couldn't be
9 part of the praise dance team anymore with her
10 friends. She couldn't go to her church. Bobby
11 Jones was her pastor before he was her
12 stepfather. And she couldn't go to church
13 anymore because of what happened and because
14 she was seeking help for it to stop.

15 She had a close relationship with the
16 Defendant, they spent a lot of times together.
17 She confided in him. She thought of him as a
18 counselor. And afterwards, after she told
19 people, she was scared of what was going to
20 happen. Her stepdad and her mother told her,
21 You do not talk about this vibrator to people.
22 And then she did and she was scared about what
23 was going to happen because she was taken out
24 of her home, she was cut off from her mother,
25 she had to go live with her grandmother. She

CLOSING ARGUMENT BY THE STATE

1 was embarrassed and she was worried that she
2 would ruin her mother's life. Her mother told
3 her, We have a good life now that I'm married
4 to Bobby Jones. This did not happen to you.

5 MR. WALTERS: Objection, Your Honor.
6 Objection.

7 THE COURT: All right.

8 (Off-the-record discussion held.)

9 MS. LUTTRELL: The other thing Sitha Patel
10 talked to you about is the grooming process.
11 And that's what we want to talk about when we
12 look at why people recant. The grooming
13 process is something that offenders use when
14 they want access to the victim, they want to
15 build that trust, they want to get that
16 relationship with that victim and even the
17 other people in their family.

18 She said that the grooming is when someone
19 will come into the family, they look at -- the
20 other people in the family will look at that
21 person for trust, for help with financial
22 dependability, with help babysitting kids, with
23 help raising kids, being a mentor to kids. You
24 heard a lot of testimony that Bobby Jones was a
25 mentor to a lot of kids. He came into that

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1 family, he built trust with the victim. He
2 normalized sexual behavior with her by talking
3 to her about sex, by buying her a vibrator,
4 before escalating it to the point where he used
5 that vibrator on her.

6 You heard some evidence about the control
7 and the authority he had in that family. He
8 said he never left his wife's side. They were
9 always together. He always knew where his wife
10 was, he was always checking up on Emily, Emily
11 wasn't allowed to have sleepovers, she wasn't
12 allowed to have a boyfriend, she wasn't allowed
13 to use social media. He went to her school to
14 check up on her to make sure that everything
15 was going fine. When the nurse called to say
16 that Emily was having problems with cramps, her
17 mom didn't respond to the school, Bishop Jones
18 went to the school. That's control in a
19 relationship.

20 Then, the last little piece of evidence
21 that I want to talk about is the Family Court
22 thing. In opening, the defense made a big deal
23 about the fact that we objected when they
24 started talking about a Family Court hearing.
25 He said we were trying to hide something from

CLOSING ARGUMENT BY THE STATE

1 y'all. Typically, in criminal cases, we're not
2 allowed to talk about other court proceedings
3 from a different court. So, after we got
4 clarification that the defense really wanted to
5 get all this in -- really wanted to get into
6 this, we're fine for y'all to hear about the
7 Family Court proceeding. That Family Court
8 proceeding happened three months after Emily
9 was taken out of her home, after her life was
10 turned upside down, after she had thought about
11 how she was going to ruin everyone's life.

12 So, in that Family Court hearing, she got
13 up on the stand and she did exactly what she
14 did in front of y'all. But even after all of
15 that, a Family Court judge entered an order
16 saying the Defendant, Bobby Jones, shall be
17 entered into a central registry of child abuse
18 and neglect for a finding of sexual abuse. And
19 Bobby Jones said, I was there. I heard the
20 judge say that.

21 Members of the jury, the defense wants you
22 to believe that we're here because a rumor got
23 out of hand. They want you to believe that
24 Emily wrote all of those statements and told
25 all of these people because she was going along

CLOSING ARGUMENT BY THE STATE

1 with a rumor, she was mad at her parents.
2 Emily Flowers had nothing to gain five years
3 ago when she made all of these statements. In
4 fact, she had everything to lose. She had
5 relationships to lose, she had her church to
6 lose, she had her home to lose five years ago
7 when she made all of these statements
8 consistently to all these people.

9 One of the jury instructions the judge
10 will instruct you on is about witness
11 credibility. It is your job as jurors to
12 review all of the evidence in this case and
13 listen to all of the testimony and it is your
14 job alone to decide which evidence to believe.
15 You can believe some of the evidence, all of
16 the evidence, none of the evidence. And when
17 there are inconsistent statements from
18 witnesses, you get to decide what statements
19 are more credible, the statements someone made
20 five years ago right after something happened,
21 the statements they made over and over and over
22 again to independent people.

23 Most of these people did not know who
24 Bobby Jones was or had never met them. Most of
25 them were not from Allendale and don't live

CLOSING ARGUMENT BY THE STATE

1 here now. They have no dog in this fight.
2 Some of them, like Carolyn Chess and Nicole
3 Smith did not want to be here. They lost
4 family relationships because of their
5 involvement in this case. Or you can believe
6 what she says five years later after her whole
7 life has changed.

8 The Defendant is the other one who has
9 changed his statement. Five years ago, he made
10 several statements to two different witnesses
11 that were consistent. He told those witnesses,
12 I used a vibrator on my stepdaughter. His
13 statement didn't change until he was in trial,
14 five years later, after he was charged with
15 criminal sexual conduct.

16 The very last thing I want to talk to you
17 about is reasonable doubt. That's the burden
18 that the State has in this case. We have to
19 prove our case beyond a reasonable doubt. The
20 judge is going to read you the law about
21 reasonable doubt, but just listen closely and
22 listen to what it says, reasonable doubt. The
23 State does not have to prove this case beyond
24 all doubt. We do not have to prove this case
25 with absolute certainty. Our burden is a

CLOSING ARGUMENT BY THE STATE

1 reasonable doubt. And if you are firmly
2 convinced in your decision and your belief that
3 he is guilty, then we have met our burden.

4 And after you look at all the evidence in
5 this case and review all the testimony,
6 including these statements that you can take
7 back with you, I am confident that you will
8 find that the State has proven this case beyond
9 a reasonable doubt and return a verdict of
10 guilty. Thank you.

11 THE COURT: Thank you.

CLOSING ARGUMENT BY THE DEFENSE

13 MR. WALTERS: May it please the Court?

14 THE COURT: Certainly.

15 MR. WALTERS: Solicitors.

16 His Honor, when he qualified you as jurors
17 to serve in this particular proceeding, he
18 asked you some questions while you were sitting
19 out there. He wanted to know if you had any
20 friends to reward or enemies to punish. He
21 simply wanted to know if you could listen to
22 the facts and the evidence and what's presented
23 before you and make a decision. Most
24 importantly, when you took that oath behind
25 that bar, you took an oath that you would hold

CLOSING ARGUMENT BY THE DEFENSE

1 the State to their burden of proving their case
2 beyond a reasonable doubt. Not maybe it
3 happened or it could have happened or there's a
4 possibility that we think something may have
5 occurred, but that you would hold the State to
6 their burden of proving their case beyond a
7 reasonable doubt.

8 And if we carefully evaluate the evidence
9 and the testimony and the individuals that have
10 appeared before this court, I believe that you
11 can only reach one conclusion, that the State
12 has failed miserably to prove their case beyond
13 a reasonable doubt.

14 Let's go through each of the witnesses.
15 I'm not going to take you through a graphic and
16 a chart and turn it on, I'll simply talk about
17 the facts and what was presented before you.
18 One of the key witnesses that they presented
19 before you was a lady, Ms. Mary Carter.

20 In this particular case, Ms. Carter came
21 forward, and what did she say? She said, well,
22 when I come in, there's a protocol that I have
23 to follow once I receive a report that
24 something has happened. First of all, I talk
25 to everybody, I determine if there was a

CLOSING ARGUMENT BY THE DEFENSE

1 violation, I talk to the person that possibly
2 could be the perpetrator of this event, and
3 then I make referrals. And these referrals are
4 made to various different agencies, for
5 instance, mental health, Hope Haven. She said
6 ARC is one example of a place that they could
7 go. She also talked about domestic violence.

8 When we look at the evidence and the
9 testimony of the individuals that appeared
10 before the Court, Ms. Carter, after she
11 interviewed people, she simply did one thing,
12 she said, I followed up. This event was
13 supposed to be on March 4th of 2013. She then
14 followed up and she went to a place called Hope
15 Haven. You remember that? And Hope Haven was
16 supposed to be a place that would evaluate what
17 this child said and determine what was there.

18 On March 5th, they went to Hope Haven.
19 But did you notice what the State did in this
20 particular case with regard to that report from
21 Hope Haven, they produced Sitha Patel.
22 Remember her? The lady was sitting right here.
23 There's something important that you need to
24 know about Ms. Patel. Number one, Ms. Patel
25 never talked to Ms. Flowers, Ms. Patel never

CLOSING ARGUMENT BY THE DEFENSE

1 talked to the Joneses, Ms. Patel never talked
2 to the police officers, Ms. Patel never talked
3 to anyone involved in this case. But she
4 appeared before you and they tried to present
5 her as some expert that could say there was
6 some type of sexual abuse that went on.

7 Mr. Culler was cross-examining her, look
8 what we found out. Number one, she has a
9 degree in marketing. You have to ask yourself,
10 what knowledge does a person in marketing have
11 with regards to the child abuse? First of all,
12 she never talked about anybody in the case.
13 It's been close to five years and they just
14 pull this woman out of nowhere. And if you
15 notice in her testimony, she was not employed
16 at Hope Haven at the time that Emily Flowers
17 went there, but they brought her in for you to
18 put on this little show.

19 But Sitha Patel appeared before you. And
20 Mr. Culler, when he cross-examined her, he said
21 your organization made 2.9 million dollars last
22 year. And Ms. Patel said, I don't know
23 anything about that, but we are in all five
24 counties. Then he went on and he said, Well,
25 what other degrees do you have if you're going

CLOSING ARGUMENT BY THE DEFENSE

1 to testify about abuse of children? She said,
2 Well, I've got a degree in social work, a
3 Masters. And Mr. Culler went further, he said,
4 Well, what other degrees do you have? She
5 said, I received some training at MUSC. And
6 this is telling you something about the
7 Solicitor's office. He inquired, he said, What
8 training did you receive at MUSC if you're
9 going to say that Emily was sexually abused and
10 somehow Mr. Jones was involved in it? She said
11 it was a weekend. Then she said, No, it's not
12 a weekend, it's three days. So, the person
13 that testified before you received three days
14 of training in abuse of children.

15 In addition to that, she went on to
16 testify, Well, we follow up. And I'll quote
17 exactly what she said. We get 15 weeks of
18 conference calls. Can you imagine that? You
19 live here in Allendale County and someone is
20 going to come in this courtroom and claim you
21 abused a child and they received a weekend at
22 MUSC, along with 15 conference calls and
23 they're qualified to offer an opinion.

24 But, in addition to that, the State went
25 on ahead and they tried to buttress her

CLOSING ARGUMENT BY THE DEFENSE

1 testimony. They said, How many children have
2 you interviewed? She said, Over 450. Well,
3 I'll ask you one question right now, you may
4 interview 450, but did you interview that child
5 for this case that we're here about today in
6 this courtroom? And what was the answer? No.

7

8 MS. LUTTRELL: Objection, Your Honor, may
9 we approach?

10 THE COURT: Approach on this side.

11 (Off-the-record discussion held.)

12 MR. WALTERS: May I continue, Your Honor?

13 THE COURT: Sure.

14 MR. WALTERS: Sitha Patel is the first
15 expert they produced. As I stated, Sitha Patel
16 never talked to the victim. Sitha Patel
17 received her training with regards to child
18 abuse on the weekend at MUSC. Imagine, put
19 yourself in those shoes, you can become an
20 expert about child abuse by doing a weekend at
21 MUSC and receiving 15 phone calls.

22 She then went on to state I'm not a member
23 of any professional organization. We ask her,
24 Well, when have you ever been qualified to
25 testify in court. One time, she said, in

CLOSING ARGUMENT BY THE DEFENSE

1 Beaufort. In addition to that, she wasn't
2 working there. She had no idea what was going
3 on in this file. The Solicitor's office met
4 with Miss Flowers a week ago. They finally got
5 around to the case. We keep talking about this
6 delay in time, these special lawyers that can
7 come in and get a two-year delay on a case.
8 Draw upon your own common sense. No lawyer you
9 hire in this town or this state can get you a
10 two-year delay. They choose when to prosecute,
11 they choose when they want to try to put you in
12 jail, they tell you when to show up for roll
13 call, they tell you what to do. And they
14 somehow want to mislead you into believing that
15 somehow we walked in here and said put it off
16 for two or three years, we'll get to you.
17 That's nonsense, just like Ms. Sitha Patel.

18 Ms. Sitha Patel went on to testify that
19 sometimes when children are abused, they can
20 behave in a good manner, nothing is said and
21 they keep on thriving, or sometimes children,
22 when they're abused, they perform in a
23 degrading manner. Their grades go down, they
24 become a behavior problem, they have issues in
25 school.

CLOSING ARGUMENT BY THE DEFENSE

1 Mr. Culler said, Ms. Patel, well, tell me,
2 what do we have here? She didn't know.
3 Because she's never read -- she's never ever
4 talked to the victim. She's never talked to
5 anyone involved in this case. But we know one
6 thing, they made 2.9 million dollars appearing
7 in these courtrooms. We know they make 2.9
8 million dollars popping up out of the ground
9 and saying, look, I'm here. I took a course at
10 MUSC for a weekend and I'm ready to testify
11 today. And they expected to pull it over you.
12 See, it's all flashing mirrors and screens, and
13 you're supposed to buy into it.

14 Ms. Sitha Patel was here, and what did she
15 say? I never talked to her. She said it might
16 go this way, it might go that way. Well, guess
17 what we have in this particular case with Emily
18 Flowers? She did well in school. Even after
19 the event and she went to Barnwell, she joined
20 the track team, more friends, more
21 opportunities. She's going to go on and join
22 the U. S. Air Force. Is this the behavior of a
23 child that was sexually abused? They have no
24 idea and they marched someone in here that's
25 supposed to tell you, these are the symptoms

CLOSING ARGUMENT BY THE DEFENSE

1 and this is what could occur, but I've talked
2 to no one with regards to this case.

3 Reasonable doubt, that's their first
4 reasonable doubt, presenting a witness that
5 knows nothing about the case, never talked to
6 anyone and presented them as if they can offer
7 some type of evidence that will assist you in
8 making your decision.

9 Let's move to their second witness, that
10 was Mary Carter was involved in. You remember
11 Mary Carter. She came in here. She's the lady
12 that wore the pearls. You remember Bishop
13 Jones, Bobby Jones talked about her. Remember
14 what he said before she got started. He said,
15 Ms. Carter brought someone to our church and we
16 give free clothes --

17 MS. LUTTRELL: Objection, Your Honor,
18 facts not in evidence.

19 MR. WALTERS: I believe Bishop Jones did
20 testify to that.

21 THE COURT: Overruled. I'll let the jury
22 decide what's in evidence.

23 MR. WALTERS: Bishop Jones testified that
24 this woman appeared in his church with someone
25 else and that person was supposed to receive

CLOSING ARGUMENT BY THE DEFENSE

1 some of the clothing they give to the poor.

2 And Bishop Jones testified on this stand that

3 Mary Carter wanted some of the clothes. And he

4 told her, Those clothes are not for you,

5 they're for the people that are in need. This

6 is the same woman that's investigating him with

7 regards to this particular crime that occurred.

8 But the first person that we're talking is

9 Hope Haven. And we've discussed this woman

10 who's got a financial degree, a marketing

11 degree and a social work degree and three days

12 of education.

13 Let's go to the second expert Mary Carter

14 took Emily to see. First of all, the testimony

15 is that -- and this is from the nurse that saw

16 her, the pediatric nurse, Ms. Dalton. Ms.

17 Dalton, she sat there on that stand, she said,

18 normally, the family member will bring her in.

19 Somebody from the family will bring Emily in

20 and she'll be examined. In this case, it was

21 Ms. Carter. Ms. Carter showed up and she

22 presented the child. In this particular case,

23 Ms. Dalton told you I'm a pediatric nurse. She

24 went on to state her degrees and her

25 credentials. In this particular case, Ms.

CLOSING ARGUMENT BY THE DEFENSE

1 Dalton had the degrees and credentials.

2 In this particular case, she sat down and
3 she talked to the child. Ms. Mary Carter,
4 after preparing this case and talking to the
5 child, what did Ms. Dalton say? Ms. Dalton's
6 testimony, she asked her, Did the vibrator go
7 inside your vagina or outside? Answer was,
8 Inside. Who put it inside you? I did. That
9 was Emily's answer. That's their witness that
10 testified to that.

11 And then guess what happened after that
12 happened? Was it painful? No. Are you
13 noticing any concerning symptoms in your
14 private body parts, such as pain with peeing or
15 unusual discharge? Answer, No. How old were
16 you the first time you had sex? I haven't had
17 sex. That's initially what Emily told the
18 nurse that Ms. Carter took her to.

19 But the nurse went on to state, after the
20 exam, I spoke with Mary Carter. After she
21 spoke with Mary Carter, they took Emily outside
22 of the room. When they took Emily outside of
23 the room and they brought her back in, the
24 story changed. I had Emily come back into the
25 room after meeting with Ms. Carter, telling

CLOSING ARGUMENT BY THE DEFENSE

1 her, I needed her to clean up a discrepancy.
2 So, in other words, that's a game that's played
3 here. Once the child answers the question, we
4 will take you out and we got to clean up this
5 discrepancy and we'll get to it.

6 Then, what happened? I asked her again
7 who put the vibrator on her vagina, and she
8 said both. Reasonable doubt.

9 Reasonable doubt with regards to Sitha
10 Patel, who never saw the child and never
11 examined the child and three days of education
12 on some type of child abuse. Reasonable doubt
13 with regards to Ms. Dalton, who was their
14 expert, who asked her initially, who did this,
15 what went on. She said, I did it. This is all
16 orchestrated by Mary Carter.

17 Well, let's go further into the evidence
18 that's been presented. More reasonable doubt
19 that you can get into. Let's talk about Miss
20 Emily Flowers. She's here today. You've seen
21 her, she's over there. But let's get to the
22 heart of the matter. Emily made statements
23 that were made on March 4th of 2013. And
24 that's what they did with this screen, looks
25 real nice, and they talked about the statements

CLOSING ARGUMENT BY THE DEFENSE

1 she made at the school. But you notice what
2 the chart doesn't address, what was going on at
3 home. What was the testimony? The testimony
4 was she was placing magic markers in her
5 vagina. They were seeing things, anatomy
6 seeing over the Internet. And there was a
7 claim that I've got to have a boyfriend and I'm
8 going to have sex. These parents were put in a
9 position where there was a crisis. You've got
10 a 14-year-old that's telling you, I'm going to
11 do this and I'm going to engage in this
12 behavior and I'm also using magic markers.
13 Now, that's frightening for anyone who has a
14 child, especially a girl to come and say that.

15 And the testimony is that these parents,
16 Ms. Jones and her husband got together and made
17 a decision that we were going to do what, we're
18 going to buy you a vibrator. What was Jones'
19 testimony? Condoms, other things that were
20 being used, the STDs in this community, her
21 mother and I sat down and we agreed that we'll
22 get a vibrator.

23 And you heard Emily's testimony, what was
24 it? She resented the fact that I'm not going
25 to have this boyfriend, all I got is this

CLOSING ARGUMENT BY THE DEFENSE

1 vibrator. I've got an issue here with the
2 magic markers and things of that nature. And
3 these people are sitting down saying, what can
4 we do? What's best under the circumstances to
5 solve our problem? Then she goes to the school
6 and says they bought me a vibrator.

7 And who did she talk to? She talked to
8 Nicole Smith. Now, let's talk about Nicole
9 Smith. Since the Solicitor's office says that
10 we somehow put this off. This case was
11 scheduled for Monday, July 9th. They decided
12 to talk to Nicole Smith while you were sitting
13 inside this room being picked as jurors. And
14 Nicole Smith got on the stand and Mr. Culler,
15 he was cross-examining her, and what did he
16 say? He said, Do you remember today what
17 happened before? She said, No. I've got a
18 better recollection today as opposed to what
19 happened four years and ten months ago.
20 Everyone sort of chuckled because common sense
21 says, I can remember something the day it
22 happened and I can give my recollection of
23 those events the closer that I am to that
24 event. But in this particular case, your
25 Solicitor's office, that claimed we delayed the

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1 case, they waited until you walked in this
2 courtroom and was sitting down to decide to
3 take a statement from her.

4 You've got to ask yourself, can you
5 believe the evidence that's been presented?
6 Does that create reasonable doubt? Yes, it
7 does. When you've got the expert witness that
8 cannot testify that she has met or talked to
9 anyone, that's reasonable doubt. When you've
10 got a nurse practitioner that's sitting down
11 and telling you that she told me when I
12 initially asked her what was going on, she
13 said, I did it. She didn't say anything about
14 Reverend Jones. Everything changed after Mary
15 Carter talked to her and they had to bring her
16 in a second time. Just like the Solicitor's
17 office had to bring her in last week. They
18 said, Why are we here? She said, I don't know.
19 It's a confrontational situation.

20 But let's go further with Emily Flowers
21 and talk about reasonable doubt. Miss Flowers,
22 in June of 2014, they make a lot out of this
23 order, she testified in open court in this
24 courtroom, in front of Judge Smoak. What did
25 she say? It didn't happen. So, the

CLOSING ARGUMENT BY THE DEFENSE

1 Solicitor's office, they got all upset. Why
2 would you reveal that? I'm revealing it
3 because I don't want to waste your time. They
4 knew this child denied the allegations. They
5 knew this child said it didn't happen back in
6 June of 2013, and they've known all along.

7 And what did they do, they went out there
8 and they pulled the order and they said, well,
9 in the order, it says that Reverend Jones had
10 to go on the child abuse registry. What was
11 his testimony? I was charged with criminal
12 sexual conduct. I was at the hearing, the
13 judge had no choice. And what does the order
14 say, it's an order for removal. The order
15 says, look, Jones, you can't stay in the home
16 that you're living in, which is common sense if
17 you're charged with criminal sexual conduct, so
18 he had to move to Barnwell.

19 In addition to that, the order says,
20 you're going on the registry. I don't want you
21 in any programs dealing with any kids, I don't
22 want you involved with anything, because you
23 have criminal sexual conduct hanging over your
24 head. In addition to that, the order goes on
25 and states that Emily and her brother would go

CLOSING ARGUMENT BY THE DEFENSE

1 on and live with the grandparents until we get
2 this issue resolved.

3 See, the story here is about a man that's
4 been separated from his family. Arrested in
5 January 2013, demanded that they go ahead and
6 try this case, please, let's go ahead and put
7 all of the evidence on the table. What did
8 they ask him on cross-examination? Do you
9 still live with your wife? And what was his
10 response? No, I'm still apart from my wife
11 because of that court order. I'm still on that
12 registry until all of this is done. And this
13 had to be done under the circumstances because
14 I was charged with a crime. They somehow want
15 you to believe, well, if that hearing occurred,
16 somehow that resolved the issue. That's just
17 not the case.

18 But let's go further with Emily, Emily not
19 only testified in June of 2013, which is
20 reasonable doubt. Reasonable doubt which would
21 cause you to hesitate to act, because in 2013,
22 she said it didn't happen. Their argument is
23 that she was going to lose something. Please
24 tell me what she was going to lose. They
25 presented no evidence. Was she going to lose

CLOSING ARGUMENT BY THE DEFENSE

1 her car? No. Was she going to lose a house?
2 No. Was her dad going to pay for her to go to
3 college? No. There's nothing that's been
4 presented.

5 When they read that witness list to you
6 sitting in that room right there, when you were
7 sitting there, when they were deciding on
8 jurors, they said, one of our witnesses could
9 be Brenda Jones, could be Brenda Jones, she's
10 the one that's going to lose everything. Have
11 they presented any evidence to show that Brenda
12 Jones was going to lose something? No. Have
13 they presented any evidence that shows that
14 somehow Emily Flowers is going to lose
15 everything? No. The evidence is clear, it
16 simply shows that this child stirred up
17 everything.

18 Now, let's go through the witnesses that
19 they referred to, all right. If we go through
20 the witnesses that they referred to, the school
21 officials, you've got Ms. Chess, Pamela Kinard,
22 Officer Holmes, Nurse Solomon and Kenneth
23 Tyler. These are good people, because a child
24 made an allegation, they followed the protocol,
25 it was mandatory that they report it and it was

CLOSING ARGUMENT BY THE DEFENSE

1 mandatory that they investigate it. The only
2 disagreement we had with them was that the
3 child was taken in at 9:30 and not released
4 until 3 o'clock that evening, she was not
5 provided lunch. Out of that, they obtained two
6 statements. But these school officials are
7 good. If the children are attending school
8 there and they react in that manner, it's good
9 that they have done so.

10 But if we carefully look at the evidence
11 and the testimony that's been presented here,
12 it goes back to Emily again. They knew about
13 the testimony in the hearing that occurred in
14 June of 2013. They also heard the testimony
15 the first day of this trial. They also heard
16 the testimony yesterday of Emily. And each
17 time, she's denied the allegations.

18 And the big question is, why would she do
19 this? And she talked about it. I want to do
20 what I want to do. I was 14 years old. She's
21 20 now, she's got a child. Now, she
22 understands what the world is about. It may be
23 inappropriate to put markers in your vagina.
24 It may be inappropriate to show anatomy on the
25 Internet. It may be inappropriate to be

CLOSING ARGUMENT BY THE DEFENSE

1 rebellious toward your parents. But have they
2 proved that Bobby Jones committed a crime?

3 Let's go further. At the opening of this
4 case, the Solicitor's office came out and they
5 said, he's a rapist. You have to ask yourself,
6 is there any evidence that Bobby Jones raped
7 anyone? There is evidence that there was a
8 dispute within their home on how they were
9 going to deal with a 14-year-old girl and
10 whether she was going to receive some type of
11 punishment. And what did Jones say? I'm a
12 strict person. Bottom line, no boyfriend,
13 we're not having any of this activity here.
14 Bottom line is that it can't happen. And of
15 course, Emily made it clear, I didn't like it.
16 An allegation was made. And what's most
17 important about this case is reasonable doubt.
18 And this is in her own writing, she said, I
19 told a little lie and the little lie became a
20 big lie. And as a result of that, this is
21 what's happened.

22 Can you imagine how embarrassing this is
23 for her? She's 20 years old. She's sitting
24 here having a conversation about her vagina and
25 magic markers, having a conversation about

CLOSING ARGUMENT BY THE DEFENSE

1 anatomy over the Internet, having a
2 conversation about a little lie she told that
3 turned into a big lie that she tried to stop
4 back in 2013, but the Solicitor's office, they
5 never paid attention. So, how many times has
6 she testified? She's testified four different
7 times and simply stated, it didn't happen. I
8 was mad. I was upset.

9 Well, let's go further. Let's create more
10 reasonable doubt and let's look at the facts
11 and the evidence that they presented in this
12 particular case. They've argued in this
13 particular case that, you know, we don't have a
14 dog in this fight. We just produce the
15 evidence. Well, if we sit down and we look at
16 Mr. Bobby Jones, he's never been arrested.
17 Reasonable doubt. He's never been convicted of
18 a crime. Reasonable doubt. He goes on to
19 state --

20 MS. LUTTRELL: Objection, Your Honor, may
21 we approach?

22 THE COURT: You may.

23 (Off-the-record discussion held.)

24 MR. WALTERS: In this particular case, you
25 have to look at Mr. Jones. At the start of the

CLOSING ARGUMENT BY THE DEFENSE

1 trial, they referred to him as a rapist and as
2 an abuser. We have a gentleman here who's
3 never been arrested before, never convicted of
4 a crime. We have a community leader who's
5 worked with the children here. He's not only
6 worked with the children here, he was approved
7 to deal with children that have issues. The
8 Family Court was referring these kids to DJJ
9 and then they referred the children to him, to
10 his diversion program. Never been any report
11 of any abuse where he grabbed a child or
12 touched a child. No report of any wrongdoing
13 on his part. In fact, when they asked about
14 the program, he simply responded. He said it
15 doesn't exist any more. You issued a warrant
16 and I lost everything. I can't administer to
17 these -- I can't minister to these kids. I
18 can't have a program with DJJ. I had to go on
19 the registry because I had to leave that home,
20 I had to get out of there and they prohibited
21 me from being around anyone.

22 When you sit down and look at the facts
23 and circumstances, you have to evaluate the
24 people that are before you. The way I judge a
25 man or a woman is I look at their past because

CLOSING ARGUMENT BY THE DEFENSE

1 their past is indicative of what they'll do in
2 the future. And what we have here is we have a
3 man that is similar to Job, he stood to
4 conquer. Because they've taken everything from
5 him. They said, well, she didn't want to do
6 this because it's a financial hardship. You
7 know the church is destroyed. It's gone.
8 Nobody wants to go there when somebody says oh,
9 he's involved in some type of case involving a
10 vibrator and a child. He's lost the church.
11 He's lost his ministry. He's lost all the
12 programs that come with dealing with these
13 kids. He's lost everything.

14 And they didn't let it go on for one or
15 two months, they let it go on for five years.
16 And believe me, this Solicitor's office, when
17 they call you and say your case is up, you've
18 got to get to Allendale and get ready to go.
19 Draw upon your own life experiences and tell me
20 one person that ever knew you or been part of
21 your life and said I can just get it put off
22 for five years.

23 I ask you to carefully evaluate what he
24 stood for, but most importantly, I ask that you
25 hold them to their burden proving their case

CLOSING ARGUMENT BY THE DEFENSE

1 beyond a reasonable doubt. And if you
2 carefully look at the evidence and the
3 testimony that's been presented in this
4 particular case, the only person that has been
5 consistent for the last five years is Bobby
6 Jones. He showed up for roll call. He denied
7 every allegation made against him. He's
8 testified in court. He's consistently done
9 what he's supposed to. But what's more admiral
10 than that, he's continued to take care of his
11 family even living in Barnwell, even the little
12 girl that started all of this. It takes a big
13 heart to love a woman, but it takes a bigger
14 heart to love a woman and a child that's not
15 your own. But you can see from his life, he
16 essentially says you reap what you sow. I'm
17 the one that's meeting with drug addicts, I'm
18 the one that's meeting with people that have
19 problems. I'm meeting with these children that
20 have babies, I'm meeting with everyone that's
21 suffering. That's where you'll find him.
22 Those were his words.

23 In this particular case, what the
24 Solicitor's office is doing, it is rotten to
25 the core. They do not have evidence to prove

CLOSING ARGUMENT BY THE DEFENSE

1 beyond a reasonable doubt that Bobby Jones
2 committed any type of crime. What they have is
3 speculation and conjecture and a hope and
4 belief that you will buy into it. I ask that
5 when you go in that jury room, you have to ask
6 yourself, has there been enough evidence
7 presented to put this man in jail? A young
8 lady that's confused, that has gone back and
9 forth, back and forth. And the Solicitor's
10 office say, rely on that to put someone in
11 jail. They're asking you to rely on an expert
12 that never ever saw the victim and never talked
13 to anyone and came here and started all kind of
14 ideas. And then at the end, you've got a
15 weekend worth of training. They're asking you
16 to believe a nurse, and I would believe her,
17 that talked to the victim and she said, I did
18 it. Then, after she talked to Mary Carter, it
19 got changed over again.

20 They're asking you to sit down and look at
21 what the school officials did. Well, I tell
22 you up front, I applaud those school officials.
23 They should go through every protocol. If a
24 kid walked in and said someone touched me,
25 follow the protocol and do what you're supposed

CLOSING ARGUMENT BY THE DEFENSE

1 to do. And most importantly, after social
2 services and the Solicitor's office handle the
3 case, should they have a man's life like a
4 tidal wave? We just let it sit out there for
5 five years. And we'll talk to the alleged
6 victim a week before. We'll talk to other
7 witnesses the day of. And then, we'll bring
8 somebody in that can say anything under the
9 sun.

10 And I'll also ask in this particular case,
11 you carefully look at the life that Emily
12 Flowers has at that time. She didn't lose
13 everything, she's normal. She's going to go in
14 the Air Force. She's going to raise her baby.
15 As Reverend Jones said, you don't have to live
16 in the same house to love each other. If
17 that's the case, you really don't have love.
18 To love each other, all you got to do is love.
19 And he's done that from Barnwell.

20 I ask that you return a verdict of not
21 guilty, return this man to his home, return him
22 to his family, return his name. And if you
23 carefully evaluate the evidence that's been
24 submitted by the Solicitor's office, you can
25 only reach one conclusion, they have failed

CLOSING ARGUMENT BY THE DEFENSE

1 miserably to prove their case beyond a
2 reasonable doubt. I simply ask that you do
3 what's right under the circumstances and as
4 Reverend Jones has done, he forgives everyone.
5 He's still paying for the house, still paying
6 for everything, taking care of everybody.
7 Sometimes in life, when you raise children,
8 they disappoint you, but you notice that he
9 hasn't given up on anybody. I ask that you
10 return a verdict of not guilty under the
11 circumstances and most importantly, that you
12 restore Bobby Jones to his name and his family.
13 This nightmare has gone on long enough, for
14 five years, please bring it to an end. Thank
15 you.

16 REBUTTAL CLOSING ARGUMENT BY THE STATE

17 MS. LUTTRELL: Yes, Your Honor.

18 Members of the jury, my cocounsel started
19 off by telling you that the Defendant in this
20 case, Bobby Jones, raped Emily Flowers. There
21 is evidence of rape in this case. That
22 evidence is through Emily Flowers' disclosures,
23 through the statements she wrote and through
24 the Defendant's own admissions that he used a
25 vibrator on his 14-year-old stepdaughter. That

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 is a sexual battery, that is rape.

2 I just want to talk to you a little bit
3 about the expert witnesses the defense talked
4 to you about. Sitha Patel is a neutral
5 witness. She did not talk to the victim in
6 this case. She did not review the victim's
7 file. We did that on purpose so that she could
8 come in here with her experience, her
9 background, those 450 people she's done
10 forensic interviews on, those 150 people she's
11 done therapy for and tell you, overall of those
12 cases, the same characteristics and symptoms
13 she sees. We didn't want her sitting up there
14 and telling you whether or not she believed the
15 victim because she's not allowed to do that.
16 She's not allowed by the Court to do that.

17 What she did do is tell you about
18 recantation, the stages of disclosure. And
19 this case fits all of those things she talked
20 about. This case fits grooming, this case fits
21 tentative disclosure, it fits full disclosure,
22 it fits recantation and reaffirming. That was
23 the point of bringing Sitha Patel in here.
24 They have a big budget the defense wants to
25 talk about. That's to help victims. She was

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 not paid to come in here and testify.

2 The other witness that he talked a lot
3 about, that was Kristin Dalton, the nurse
4 practitioner. Again, independent witness.
5 This is standard protocol. He said that
6 Kristin Dalton testified, usually, the family
7 brings the victim to these medical exams, and
8 that's true. But in this case, there was no
9 family support. She wasn't with her mom
10 anymore, so Mary Carter had to bring her to the
11 medical exam. It's a standard procedure when a
12 victim has said that they have been penetrated
13 by an abuser, and that's what happened in this
14 case. And when she came to Kristin Dalton, she
15 had been out of her home for two and a half
16 weeks, her life had already started to change,
17 so, yes, she changed her statement a little
18 bit. But she still told Kristin Dalton that
19 the Defendant put a vibrator in her. That part
20 was still consistent.

21 The only testimony you heard about what
22 was going on at home was five years later from
23 the Defendant and Emily. Emily even told you
24 that she never told anyone five years ago about
25 all this going on. Mary Carter told you that

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 no one ever showed her Facebook or social media
2 or talked to her about these issues going on in
3 the home. The Defendant didn't even say that
4 five years ago. When the Defendant was asked
5 what was going on in the home five years ago,
6 he said, She has a strong sex desire. She
7 really wants to have sex. So I bought her a
8 vibrator and I showed her how to use it. Five
9 years ago, that's what the Defendant said. It
10 wasn't until he was charged with a criminal
11 offense, had some time to think about it, came
12 into court with his defense attorneys and he
13 sat on that stand and changed his story.

14 All of that testimony and those witness
15 statements, five years ago, when this was going
16 on were consistent. No one said anything about
17 these being rumors, no one said anything about
18 Emily acting out at home and being rebellious
19 and wanting a boyfriend. The first time we all
20 heard that was on this witness stand from the
21 defense.

22 Nicole Smith, the friend in this case that
23 they're trying to blame all these rumors on,
24 she didn't want to be here. And it is true, I
25 did not talk to her until this week. I tried.

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 I made a lot of phone calls. I called her
2 parents. She didn't want to be here. We were
3 able to finally get her here on the day of
4 trial so that I could talk to her for the first
5 time. And then, I made her sit here and wait
6 so that I could get her to get on that stand
7 and tell you what she knew.

8 And she didn't tell you that she had a
9 better memory today than what she said five
10 years ago. What she told you was, I don't
11 remember what I said five years ago, but I
12 remember what Emily told me. I remember
13 sitting at church, the Defendant's church, in a
14 room with a computer next to Emily while she
15 typed, he touched me. And then, she remembers
16 Emily telling her that he was the Defendant,
17 Emily's stepdaddy, Bobby Jones. Nicole Smith
18 has no dog in this fight. She doesn't want to
19 be involved. She wasn't starting rumors. You
20 saw her face when I asked if she started rumors
21 about Emily afterwards, she had no idea what I
22 was talking about.

23 The defense wanted to make a big deal
24 about the fact that Brenda Jones was on our
25 witness list at the beginning of trial and we

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 never called her. She was on the defense
2 witness list, too.

3 MR. WALTERS: Objection, Your Honor,
4 burden shifting.

5 MS. LUTTRELL: Your Honor, it's not burden
6 shifting. The Defendant listed her as a
7 witness, I didn't say anything about they
8 didn't put her up. All I'm saying is that we
9 both listed her and she was never called.

10 MR. WALTERS: Your Honor, we don't have an
11 obligation to put anyone up. We're under the
12 presumption of innocence. We don't have to do
13 anything. They have to prove their case.

14 THE COURT: I'll sustain that objection.

15 MS. LUTTRELL: But you did hear evidence
16 that Emily's life would be ruined. In fact,
17 you heard testimony -- or argument just now
18 from defense counsel that the Defendant's life
19 was ruined. The evidence in this case and
20 Emily's witness statement says that she doesn't
21 want him to get in trouble because everyone's
22 life would be ruined.

23 Carolyn Chess testified that she told her,
24 her mom told her it didn't happen because
25 everything would get taken away and she had a

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 better life after marrying Bobby Jones. The
2 defense just stood up here and told you, since
3 he was charged with this crime, Bobby Jones has
4 lost everything, and yet, he still continues to
5 financially support Emily, he still continues
6 to financially support Brenda. He pays for the
7 house. He pays all the bills.

8 And defense even just told you that
9 sometimes kids can be a disappointment. And
10 that's what happened in this case, Emily sought
11 the help that she needed and realized that she
12 was going to disappoint her stepfather,
13 disappoint her mother who told her that it
14 didn't happen, disappoint her pastor.

15 Bobby Jones thinks he is untouchable out
16 here in Allendale. He told you himself,
17 everyone in Allendale knows him. He is from
18 this community and outsiders like me are coming
19 in here trying to charge him with this crime.
20 He thinks he is above the law.

21 They want to talk a lot about his
22 community outreach, his mentoring children, the
23 fact that he's a man of God, but members of the
24 jury, a man of God is still a man. Men have
25 desires, men sin and men commit crimes. And

REBUTTAL CLOSING ARGUMENT BY THE STATE

1 when men commit crimes, they have to be held
2 accountable for those actions. Bobby Jones is
3 not above the law. In 2013, he went into his
4 stepdaughter's bedroom, he took down her pants
5 and underwear and he put a vibrator into her.
6 He committed a sexual battery. And after
7 reviewing all of this evidence and think about
8 the statements that were made five years ago
9 and compared to who changed their stories, the
10 State is confident that you will return a
11 verdict of guilty. Thank you.

12 THE COURT: Thank you, Solicitor.

13 JURY CHARGE BY THE COURT

14 THE COURT: Thank you.

15 Ladies and gentlemen, I remind you that
16 the fact that the Defendant was arrested,
17 charged and indicted in this case is not
18 evidence and cannot be considered by you as
19 evidence. Nor does it create any presumption
20 of inference or guilt. This document is simply
21 the formal written instrument which contains
22 the charges made against the Defendant. It's
23 the formal document by which the case is
24 brought into court.

25 As you know, the Defendant has pled not

JURY CHARGE BY THE COURT

1 guilty to this indictment, and that plea puts
2 the burden upon the State to prove the
3 Defendant guilty. I tell you that a person
4 charged with committing a criminal offense in
5 South Carolina is never required to prove
6 himself innocent. I further tell you that it
7 is an important rule of law that the defendant
8 in a criminal trial, no matter what the
9 seriousness of the charge may be, will always
10 be presumed to be innocent of the crime for
11 which the indictment was issued, unless guilt
12 has been proven by evidence that satisfies you
13 of that guilt beyond a reasonable doubt.

14 The presumption of innocence does not end
15 when you begin your deliberations, but it
16 accompanies the Defendant throughout the trial
17 until you reach a verdict of guilt based on
18 evidence that satisfies you of that guilt
19 beyond a reasonable doubt. The presumption of
20 innocence is like a robe of righteousness
21 placed about the shoulders of a Defendant,
22 which remains with the Defendant until it has
23 been stripped from the Defendant by evidence
24 that satisfies you of the Defendant's guilt
25 beyond a reasonable doubt.

JURY CHARGE BY THE COURT

1 The presumption of innocence is not mere
2 legal theory, it is not just a legal phrase, it
3 is a substantial right to which every defendant
4 is entitled unless you, the jury, are satisfied
5 from the evidence of the Defendant's guilt
6 beyond a reasonable doubt. A reasonable doubt
7 is the kind of doubt that would cause a
8 reasonable person to hesitate to act.

9 Some of you may have served on juries in
10 civil cases where you were told that it was
11 only necessary to prove that a fact was more
12 likely true than not true by the greater weight
13 or preponderance of the evidence, but in
14 criminal cases the proof must be more powerful
15 than that, it must be beyond a reasonable
16 doubt. Proof beyond a reasonable doubt is
17 proof that leaves you firmly convinced of a
18 Defendant's guilt.

19 But of course there are very few things in
20 this world that we know of with absolute
21 certainty, and in criminal cases the law does
22 not require proof that overcomes every possible
23 doubt. If based on your consideration of the
24 evidence you are firmly convinced that the
25 Defendant is guilty of the crime charged, you

JURY CHARGE BY THE COURT

1 must find the Defendant guilty. If on the
2 other hand you think there's a real possibility
3 that the Defendant is not guilty, you must give
4 the Defendant the benefit of the doubt and find
5 him not guilty.

6 I remind you, during this trial you and I
7 have had different responsibilities. I have
8 been required to rule on the admissibility of
9 evidence during the case. And I tell you that
10 you consider only the competent evidence before
11 you. If there was any testimony ordered
12 stricken from the record during this trial, you
13 must disregard that testimony. You are to
14 consider only the testimony which has been
15 presented from this witness stand and any
16 exhibits that have been made part of the record
17 in this case.

18 I also have the additional duty to tell
19 you or charge you about the law that applies in
20 this case. As the presiding judge, I am the
21 sole judge of the law in this case. And it is
22 your duty as jurors to accept and apply the law
23 as I now state it to you. And if you already
24 have any idea what the law is or what the law
25 should be, and it does not agree with what I

JURY CHARGE BY THE COURT

1 tell you, you must abandon that idea because
2 you are sworn to accept the law and apply the
3 law exactly as I state it to you.

4 In every case tried in this court before a
5 jury, the jury becomes the sole and exclusive
6 judge of the facts of the case. And a trial
7 judge, such as myself, cannot intimate, state,
8 comment on or make any statement to a trial
9 judge about the facts of the case. Since you
10 the jury are the sole judges of the facts of
11 the case, you are not to infer from anything
12 that I may have said during the progress of
13 this trial or in ruling upon the admissibility
14 of evidence or otherwise, or anything that may
15 have happened, that I have an opinion about the
16 facts of the case. Because I have already told
17 you that the law does not allow me to have an
18 opinion about the facts of the case. That is a
19 matter solely for you.

20 It is your duty, ladies and gentlemen, to
21 determine the effect, the value, the weight,
22 the truth of the evidence presented during this
23 trial. Necessarily, you must determine the
24 credibility of the witnesses who have
25 testified. And this simply means the

JURY CHARGE BY THE COURT

1 believability. It becomes your duty as jurors
2 to analyze, to evaluate the evidence and to
3 determine which evidence convinces you of its
4 truth.

5 In determining the believability of the
6 witnesses who have testified, you may believe
7 one witness over several witnesses, or several
8 witnesses over one witness. You may believe
9 part of a testimony of a witness and reject the
10 remaining part of that testimony of that very
11 same witness. You may believe the testimony of
12 a witness in its entirety, or reject the
13 testimony of a witness in its entirety. And
14 you may consider whether the witnesses
15 exhibited to you any interest, any bias,
16 prejudice or any motive in this case, and you
17 may consider the appearance and the manner of a
18 witness while on the stand.

19 The rules of evidence normally do not
20 permit witnesses to testify about their
21 opinions or conclusions, but an exception to
22 that exists for witnesses that are called
23 expert witnesses. That is a witness who by
24 education, experience, or training has become
25 an expert in some art, science, or profession.

JURY CHARGE BY THE COURT

1 And they may state their opinion to any
2 relevant or material matter in which the
3 witness claims to be an expert, and give you
4 the reasons for that opinion.

5 You should consider the -- an expert
6 opinion received as evidence in this case, and
7 like any other evidence, you give it the weight
8 that you believe that it deserves. If you
9 decide that the opinion of an expert is not
10 based on sufficient education and experience,
11 or if you conclude that the -- evidence, excuse
12 me -- if you conclude that the reasons given in
13 support of this opinion is not sound, or that
14 the opinion is outweighed by other evidence,
15 you may disregard the opinion entirely.

16 An expert witness' testimony is to be
17 given no greater weight than that of other
18 witnesses simply because that person is an
19 expert. And further, you are not required to
20 accept an expert's opinion even though it is
21 not contradicted.

22 The Defendant is charged with second
23 degree criminal sexual conduct with a minor.
24 The State must prove, beyond a reasonable
25 doubt, that the defendant engaged in a sexual

JURY CHARGE BY THE COURT

1 battery with the victim.

2 I tell you that sexual battery is sexual
3 intercourse, cunnilingus, fellatio, anal
4 intercourse, or any intrusion, however slight,
5 of any part of a person's body or of any object
6 into the genital or anal openings of another
7 person's body, except when the intrusion is
8 accomplished for medically recognized treatment
9 or diagnosis.

10 The State must prove beyond a reasonable
11 doubt that the victim was at least 11 years
12 old, but not more than 14 years old at the time
13 of the sexual battery. Consent, willingness,
14 indifference, or ignorance on the part of the
15 minor, if any, as to what was taking place does
16 not in any way affect the charge of criminal
17 sexual conduct with a minor, because an
18 unmarried woman under the age of 16 cannot
19 legally consent to sexual intercourse.

20 Ladies and gentlemen, in a few moments you
21 will retire to the jury room to begin your
22 deliberations. For there to be a verdict in
23 this case, the verdict must be unanimous,
24 meaning all of you must agree. And I'm going
25 to ask our foreperson, if she will on behalf of

JURY CHARGE BY THE COURT

1 the jury, when the jury reaches a unanimous
2 verdict, write the verdict on the back of the
3 indictment under the word, Verdict. And of
4 course there are only two possible verdicts,
5 guilty or not guilty.

6 And I'll ask our foreperson to sign her
7 name and date the document. Knock on the door
8 and let the bailiff know that you have reached
9 a verdict and we will receive you back in the
10 courtroom.

11 At this time, I am going to ask all of you
12 to retire to the jury room, including our two
13 alternates. When I'm ready for you to begin
14 deliberating, I'll send to the jury room the
15 exhibits as well as this indictment. And when
16 that's brought to the jury room it will be your
17 queue to begin deliberating and for the two
18 alternate jurors to step back out of the juror
19 room into the courtroom.

20 So if you would, ladies and gentlemen, if
21 you would please retire to jury room and I hope
22 to be in touch with you shortly.

23 (WHEREUPON, the jury exits the courtroom
24 at 10:56 a.m.)

25 THE COURT: Any exceptions from the State?

JURY CHARGE BY THE COURT

1 MS. LUTTRELL: No, Your Honor.

2 THE COURT: From the defense?

3 MR. WALTERS: No, sir, Your Honor.

4 THE COURT: Do we need to put a couple of
5 things on the record about side bars we had
6 during closing arguments? Does anybody wish to
7 do that?

8 MR. WALTERS: No, sir, Your Honor.

9 MS. LUTTRELL: No, Your Honor.

10 THE COURT: All right. Well, let's just
11 make sure we have all the exhibits. Let's give
12 these to the bailiff, along with the verdict
13 form.

14 Take those to the jury, if you would, and
15 ask the alternate jurors if they would please
16 step back in.

17 THE BAILIFF: Yes, sir.

18 (Alternate jurors released.)

19 (Jury deliberations.)

20

21 THE COURT: The bailiff indicates that the
22 jury has reached a verdict in this case. Is
23 the State ready to receive the verdict?

24 MS. LUTTRELL: Yes, Your Honor.

25 THE COURT: The defense?

VERDICT

1 MR. WALTERS: Yes, Your Honor.

2 THE COURT: Let's bring the jury in.

3 (WHEREUPON, the jury enters the
4 courtroom.)

5 THE COURT: Welcome back, ladies and
6 gentlemen.

7 Ms. Meyer, let me ask you as foreperson of
8 the jury, has the jury reached a verdict?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Was it a unanimous verdict?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: Apparently, this is the
13 verdict form I've been handed.

14 THE FOREPERSON: Yes, sir.

15 THE COURT: This is your signature?

16 THE FOREPERSON: Yes, sir.

17 THE COURT: Madam clerk, if I could get
18 you to publish the verdict.

19 THE FOREPERSON: I was just hoping I put
20 it in the right place.

21 THE CLERK: In indictment 2013-GS-03-0039,
22 the State vs. Bobby Jones, Sr., in charge
23 criminal sexual conduct with a minor, second
24 degree, the verdict is guilty.

25 THE COURT: Anything before the jury is

VERDICT

1 discharged from the State?

2 MS. LUTTRELL: No, Your Honor.

3 THE COURT: From the defense?

4 MR. CULLER: No, Your Honor.

5 THE COURT: Would you like the jury
6 polled?

7 MR. WALTERS: No, sir, Your Honor.

8 THE COURT: Ladies and gentlemen, I want
9 to thank you for your service, and tell you a
10 couple of things. Previously, I told you you
11 couldn't talk about this case, but you are now
12 free to talk about it. You're free to talk
13 about not just what happened in the courtroom,
14 you're free to talk about what happened in the
15 jury room, or not. It's totally up to you as
16 to whether you talk about it or not. I don't
17 have any reason to think anybody is going to
18 bug you or bother you about your verdict. I
19 just tell every jury the same thing, you've got
20 the right to talk about it or not talk about
21 it. If anybody bothers you about it or
22 persists after you tell them you don't want to
23 talk to them, report them to the clerk of
24 court, if you would. But I don't think anybody
25 is going to do that, but I just want to let you

DISMISSING THE JURY BY THE COURT

1 know that you have the right to do it or not to
2 do it.

3 I'm getting ready to discharge you and let
4 you go. And you can do one of several things,
5 you can leave the building and go about
6 whatever it is you want to do, or if you would
7 like to stay and see what happens next,
8 normally, in these proceedings, the Court will
9 impose a sentence, probably shortly. Some
10 jurors want to be present for that, others
11 jurors, it's not their business, their business
12 is to decide guilt or innocence. It's my job
13 to impose sentencing, but if you want to stay,
14 I'll ask you to leave, all leave, but then come
15 back in in the back, if you wish to stay. That
16 gives you an opportunity to either stay or to
17 leave.

18 Does anybody have any problems? Any
19 questions? Anything that we can do for you?

20 (No response.)

21 THE COURT: Ladies and gentlemen, you're
22 excused. Thank you for your service.

23 (WHEREUPON, the jury exits the courtroom
24 at 11:45 a.m.)

25 THE COURT: Any motions?

DISMISSING THE JURY BY THE COURT

1 MS. LUTTRELL: Not from the State, Your
2 Honor.

3 MR. WALTERS: Your Honor, we make a motion
4 to suppress the judgment and set aside.

5 THE COURT: I think I understand that.
6 I'm saying the reasons to find the verdict is
7 in the province of the jury and I deny your
8 motion.

9 MR. WALTERS: Thank you.

10 THE COURT: Is there any reason the Court
11 should not go ahead and sentence him?

12 MS. LUTTRELL: No, Your Honor.

13 MR. WALTERS: No, Your Honor.

14 THE COURT: Does the State have a
15 sentencing sheet?

16 MS. LUTTRELL: We do, Your Honor. I'll
17 hand that up to the bench.

18 THE COURT: I'll be glad to hear from the
19 State on the issue of the sentence.

20 MS. LUTTRELL: Yes, Your Honor, may it
21 please the Court. The charge in this case is a
22 violent charge, it's a most serious charge.
23 The potential penalty is 20 years in prison and
24 the State is asking that Your Honor impose the
25 20 years in this case.

SENTENCING

1 This -- Your Honor heard all the evidence
2 in this case, you've heard all the testimony,
3 along with the jury. This case involves the
4 Defendant's stepdaughter. She was only 14
5 years old at the time. There was both
6 allegations of the Defendant having intercourse
7 with her as well as using a vibrator on her.
8 There's a lot of evidence about the Defendant's
9 control of this family, his influence over this
10 family to keep her quiet about it. And
11 eventually, she did try to recant what she told
12 all of those people when she was trying to get
13 help for this case. And the Defendant himself
14 even admitted to the crime, Your Honor back in
15 2013.

16 He abused his position as a pastor in the
17 community, he abused his position as her
18 stepfather. It's an abuse of his power, so we
19 are asking for the 20 years. And in addition,
20 pursuant to statute 23-3-540(b), the Court may
21 require the Defendant to wear electronic
22 monitoring if and when he's released from
23 prison and we also ask that you impose that
24 condition.

25 THE COURT: Before I hear from defense

SENTENCING

1 counsel, will you motion for the jurors who
2 were trying to come in? Please let the jurors
3 come in and sit on this side.

4 And from the defense?

5 MR. WALTERS: May it please the Court,
6 Your Honor, I believe you've heard the
7 testimony in regard to my client and his status
8 in this community, the services that he has
9 performed. He's never been convicted of a
10 crime. I ask that under the circumstance, you
11 consider the life that he's lived. And this
12 particular issue, of course, it's a sad issue,
13 but it's an issue that, unfortunately, that's
14 occurred at this time. I'd ask that you take
15 into consideration that he's never been
16 incarcerated, he's never caused any problems in
17 this community. So, when you look at his prior
18 record, he's been an outstanding citizen.

19 In addition to that, I ask you also
20 consider his age. There's still good in this
21 man and there's still good that he can do. And
22 under the circumstances, this is a very, very
23 serious charge, so we would ask that you take
24 into consideration all of the testimony,
25 especially testimony he's given and good that

SENTENCING

1 he's done to the lives of others. And of
2 course, also, the fact that he does have a
3 family. Thank you.

4 THE COURT: I'm sorry, how old is
5 Mr. Jones?

6 MR. WALTERS: He's 59, Your Honor.

7 THE COURT: Fifty-nine.

8 And does Mr. Jones wish to speak or anyone
9 else?

10 THE DEFENDANT: I just want to say that
11 despite of the verdict, I still feel like I'm a
12 good part of the community. And with that
13 being said, of course, I still deny in spite of
14 the charges, but I appreciate your process.

15 THE COURT: I'm sorry, Mr. Walters, on the
16 issue of the request of electronic monitoring?

17 MR. WALTERS: Your Honor, my client has
18 faithfully appeared before this court for the
19 last five years and released under some form of
20 supervision, I don't think it would be a
21 problem, Your Honor. Even when he was under
22 these circumstances, he's behaved admirably.
23 Of course, if he's released, he will behave
24 admirably and, certainly, will start his
25 ministry again and continue working.

SENTENCING

1 THE COURT: All right. Mr. Jones, I
2 sentence you to the Department of Corrections
3 for a period of 12 years. I will deny the
4 request for electronic monitoring.

5 MR. CULLER: Thank you, Your Honor.

6 MS. LUTTRELL: Thank you, Your Honor.

7 MR. CULLER: Your Honor, may we approach?

8 (Off-the-record discussion held.)

9 MR. CULLER: Your Honor, may it please the
10 Court, we had a sidebar briefly. I did want to
11 put on the record that approximately two years
12 ago, Mr. Walters and I appeared before Judge
13 Buckner in this courtroom and the solicitor at
14 that time was not one of these young ladies, it
15 was Lynorr Musser, and she had extended an
16 offer of assault and battery, third degree with
17 no jail time. My recollection is registry was
18 part of the offer. And the Defendant was
19 present when Mr. Walters and I rejected that
20 offer. I just wanted to put that on the
21 record.

22 MS. LUTTRELL: That is also the State's
23 understanding of the offer at the time.

24 THE COURT: I'm sorry?

25 MS. LUTTRELL: That is also our

SENTENCING

1 understanding of the offer made by the previous
2 solicitor in this case, Judge.

3 THE COURT: All right. Anything else?

4 MR. CULLER: No, Your Honor. Thank you.

5 THE COURT: One thing I would like to say,
6 I probably should have already said it sooner.
7 But all the attorneys involved in this case did
8 an outstanding job and a very professional job
9 and it was my pleasure to preside over this
10 trial.

11 MR. CULLER: Thank you, Your Honor.

12 MS. LUTTRELL: Thank you, Your Honor.

13 (Trial concluded.)

14

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SENTENCING

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 18th day of February, 2019.

9

10

11

Mona L Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

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mmanley@sccourts.org

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FORM 5

STATE OF SOUTH CAROLINA)

County of Allendale)Bobby Jones, SR)Full name and prison number (if any) of Applicant SCDC # 377012)

v.)

State of South Carolina)

Allendale County)

FILED FOR RECORD IN THE COURT OF COMMON PLEAS)

2021 SEP 03 P 12:14)

2021-CP-03-00176)ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale Correctional Institution
P.O. Box 1151, Fairfax, S.C. 29527
2. Name and location of Court which imposed sentence Allendale County General Sessions Court
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 GS 0300039 Criminal Sexual
Conduct w/Minor &
 - (b) Dece.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? *yes.*
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. *Court of Appeals.*
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. *APPEALS COURT STAYED THE CONVICTION.*
- iii. *HEARD Case on 3/4/21 - Filed JULY 7, 2021.*
- (c) the date of each such result: *✓* *✓*
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (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 Counsel. Strickland vs.
 (b) Trial Court lawyer denied my witnesses the right
 (c) Allege Victim NEVER gave support to Prosecutor,

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____
 (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? APPEAL ONLY.
 (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. _____

Washington file AS 668 (1989)
 to testify. See also attached document for #10.

(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) DEFENDANT Lost Case ON APPEALS here!
- (b) DEFENDANT now File a Post Conviction Relief.
- (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.
Counsel Glenn Walters was Ineffective Counsel.
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. Glenn Walters, Esquire, P.O. Box 1346 Orangeburg, SC 29116
- ii. Adam Ruffin, 1330 Lady St., Columbia, SC 29201
Appeals Court lawyer.
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Attorney Glenn Walters - Trial Court
- ii. Attorney Adam S. Ruffin - Appeals Court.
- iii. _____

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

New Trial or Expungement of
ENTIRE Records.

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

No.

STATE OF SOUTH CAROLINA)

County of Allendale.)

VERIFICATION

I, Bobby Jones Sr, 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.

Bobby Jones, Sr

SWORN to and subscribed before me this 7th
 day of September, 2021.

Debbie Phillips (L.S.)
 Notary Public

My Commission Expires: 7-10-2024

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

I, Bobby Jones, Sr., 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.

Bobby Jones Sr.
Applicant

SWORN or affirmed to and subscribed before me this

7th day of September, 2021.

Debbie Phillips
Notary Public

My Commission Expires: 7-10-2024

B J

B J

DATE: AUGUST 28 2021.

FILED FOR RECORD

2021 SEP 13 P 12:15

STATE OF SOUTH CAROLINA

ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.IN THE IN COURT OF COMMON PLEAS

COUNTY OF ALLENDALE

VS.

BOBBY JONES, SR. (SCDC # 377012)

INDICTMENT # 2013 GS 0300039 (CRIMINAL SEXUAL CONDUCT W/MINOR 2ND DEGREECONTINUED POST CONVICTION RELIEF ARGUMENT IN SUPPORT OF FORM 5, PAGES 1-7.

QUOTING: STRICKLAND VS. WASHINGTON 466 U.S. 668 (1984), HOLD CEMENTED TOGETHER THAT THE APPROPRIATE STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL REQUIRES BOTH THAT THE DEFENSE ATTORNEY WAS OBJECTIVELY DEFICIENT, AND THAT THERE WAS A REASONABLE PROBABILITY THAT A COMPETENT ATTORNEY WOULD HAVE LED TO A DIFFERENT OUTCOME.

THE DEFENDANT, BOBBY JONES SR., ARGUES THAT HIS TRIAL ATTORNEY GLENN WALTERS FOR HIS GENERAL SESSIONS COURT TRIAL FAILED TO RENDER REASONABLY EFFECTIVE ASSISTANCE UNDER PREVAILING PROFESSIONAL NORMS; AND COUNSELS DEFICIENT PERFORMANCE PREJUDICED THE APPLICANTS CASE.

1.) QUOTING ... WIGGINS, 539 U.S. 524-525 ... INEFFECTIVE TRIAL DEFENSE COUNSEL FOR BOBBY JONES, SR. HAD A DUTY TO CONDUCT A REASONABLE INVESTIGATION, AND TO PREPARE AN ADEQUATE DEFENSE, THAT WOULD HAVE PROVIDED EVIDENCE TO REBUT EVIDENCE INTRODUCED BY THE STATE. DEFENSE COUNSEL FAILED TO MEET BOTH DUTIES OF REQUIREMENT TO INVESTIGATE AND PREPARE AN ADEQUATE DEFENSE. DEFENSE WITNESSES WANTED TO TESTIFY ON BEHALF OF THE DEFENDANT, BUT DEFENSE COUNSEL REFUSED TO ALLOW THEM TO TESTIFY. TRIAL COUNSEL NEVER INVESTIGATED WITNESS STATEMENTS OF BOTH THE DEFENSE AND THE STATE. HE NEVER DID A DEPOSITION FOR DEFENSE WITNESSES IN SUPPORT OF, NOR DID HE DO DEPOSITIONS ON THE STATE'S WITNESSEES. HAD DEFENSE

B J

B5

B5⁵⁹⁷

COUNSEL PREPARED AN ADEQUATE DEFENSE, HE WOULD HAVE FOUND A SUBSTANTIAL AMOUNT OF CONTRADICTIONS, FLAWS, AND FALSE STATEMENTS IN THE STATE'S CASE THAT WAS MADE AGAINST THE DEFENDANT. COUNSEL FAILED SUPPORT WAS INEFFECTIVE AND DEFICIENT, AND DID CAUSE INJURY TO THE DEFENDANT, AND SUCH SCARS ARE A PART OF THE DEFENDANT FOREVER.

2.) DEFENSE COUNSEL GLENN WALTERS WAS BOTH GROSSLY INEFFECTIVE, AND DEFICIENT, AND THAT HE DID ALLOW ONE OR MORE OF HIS DEFENSE WITNESSES TO BE SUBPOENAED BY THE STATE, KNOWING ALL ALONG THAT THESE DEFENSE WITNESSES WERE TO GIVE SUPPORT TO THE DEFENSE. AND BY DOING SO, COUNSEL DID DEPRIVE THE DEFENSE WITNESS/WITNESSES TO NOT BE ALLOWED TO SPEAK AS A WITNESS ON BEHALF OF THE DEFENSE. COUNSEL DID DEPRIVE DEFENSE WITNESSES THE RIGHT TO TESTIFY. IN ADDITION, COUNSEL DEPRIVED ALL OF THE DEFENDANT'S WITNESSES THE RIGHT TO TESTIFY ON THE DEFENDANT'S BEHALF. IN DOING SO, COUNSEL LEFT DEFENDANT NO OTHER OPTION BUT TO TESTIFY ON HIS OWN BEHALF!! THE DEFENDANT WAS THEN CONVICTED, AND SENTENCED!!

3.) THE STATE HAD THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THE DEFENDANT AUGUES THAT THE STATE DID NOT PROVE Its CASE BEYOND A REASONABLE DOUBT, BECAUSE DEFENSE COUNSEL NEVER OFFERED THE DEFENDANT A FAIR TRIAL FROM THE BEGINNING OF THE TRIAL TO THE END. THE DEFENDANT NEVER WAS ALLOWED TO EXERCISE HIS GOD GIVING CONSTITUTIONAL RIGHTS TO DUE PROCESS, AND EQUAL PROTECTION UNDER THE LAW. ATTORNEY GLENN WALTERS GAVE THE STATE PROSECUTOR A FREE PASS TO FIND THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

4.) TRIAL COUNSEL WAS INEFFECTIVE, BECAUSE HE NEVER MOVED FOR A DISMISSAL, AFTER CLEARLY SEEING THAT THE ALLEGE VICTIM, EMILY FLOWERS, NEVER GAVE SUPPORT TO THE STATE'S CASE DURING THE ENTIRE TRIAL. IN FACT, THE ALLEGE VICTIM NEVER SAT AS A WITNESS FOR THE STATE, AND NEVER SAT ON THE SAME SIDE WITH THE STATE. SHE SAT WITH THE DEFENSE TEAM. THE TRIAL JUDGE, THE PROSECUTOR, AND THE DEFENSE WAS AWARE OF ALL THIS, YET COUNSEL FOR THE DEFENSE NEVER MADE ANY MENTION OF THIS CONCERNING MATTER TO THE COURT, NOR TO THE JURY. IF THE ALLEGE VICTIM IS A VICTIM, THEN HOW CAN SHE BE A VICTIM, WHILE AT THE SAME TIME GIVING A TOTAL 100 PERCENT OF HER TIME TO THE DEFENSE, AND NOT TO THE STATE? DEFENDANT ARGUE THAT TRIAL COUNSEL SHOULD HAVE MADE A MOTION TO DISMISS ON THE GROUNDS THAT THE STATE'S KEY WITNESS NEVER GAVE SUPPORT TO THE STATE'S CASE AND DID NOT TESTIFY IN SUPPORT OF THE STATE. BUT DID TESTIFY ON BEHALF OF THE DEFENSE.

5.) DEFENSE TRIAL COUNSEL WAS INEFFECTIVE AND DEFICIENT, AND PURPOSELY NEVER RAISED NECESSARY OBJECTIONS AGAINST THE STATE'S CASE AND ARGUMENTS, BECAUSE TRIAL

B5

COUNSEL NEVER INTENDED FOR THE DEFENDANT TO HAVE A FAIR TRIAL FROM THE BEGINNING.

6.) TRIAL COUNSEL GLENN WALTERS WAS INEFFECTIVE BECAUSE HE REFUSED TO FILE DEFENDANT'S APPEAL TO THE APPEALS COURT. IN FACT, ATTORNEY FRANCHOT BROWN DID CALL NUMEROUS OF TIMES TO ATTORNEY GLENN WALTERS OFFICE, ADMONISHING HIM TO PROTECT HIS CLIENT'S RIGHTS TO AN APPEAL. ATTORNEY FRANCHOT BROWN EVENTUALLY HAD TO SEND A DEMANDING LETTER TO ATTORNEY GLENN WALTERS REMINDING HIM OF HIS DUTIES AS AN ATTORNEY TO FILE THE NECESSARY APPEAL FOR HIS CLIENT. THE DEFENDANT IS ALSO IN POSSESSION OF THAT LETTER SENT TO ATTORNEY GLENN WALTERS.

7.) TRIAL COUNSEL WAS INEFFECTIVE, BECAUSE HE FAILED TO SUBPOENA WITNESSES OF THE STATE FOR EXAMINATION ON THE WITNESS STAND, UNDER OATH OF PERJURY.

8.) TRIAL COUNSEL WAS INEFFECTIVE, BECAUSE HE FAILED TO ALLOW THE DEFENDANT'S WITNESSES TO TESTIFY ON BEHALF OF THE DEFENDANT.

9.) TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE DEPRIVED THE DEFENDANT THE RIGHT TO BE PROTECTED UNDER THE CONSTITUTIONAL ADMENDMENTS. THAT HE, THE DEFENDANT, WAS NOT AFFORDED DUE PROCESS, NOR EQUAL PROTECTION UNDER THE LAW.

10.) TRIAL COUNSEL WAS INEFFECTIVE BECAUSE UNDER THE RULES OF PROCEDURE FOR ATTORNEY/CLIENT RELATIONSHIP, TRIAL COUNSEL DID NOT REPRESENT HIS CLIENT WITH ZEAL, AND FELL WELL BELOW THE NORMAL STANDARDS OF REPRESENTATION AS A TRIAL LAWYER AND DEPRIVED THE DEFENDANT OF EVIDENCE AND INFORMATION THAT COULD HAVE CAME FORTH TO EXONERATE THE DEFENDANT. TRIAL COUNSEL DEFICIENT BEHAVIOR LEFT DEFENDANT, WHO HAS ALWAYS BEEN A LAW-ABIDING CITIZEN, AND A ROLE MODEL IN THE COMMUNITY, AND COMMUNITIES, AT LARGE.

s/ Bobby Jones, Sr.
BOBBY JONES, SR.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 7th DAY OF September, 2021

MY COMMISSION EXPIRES 10th DAY OF July, 2024.

s/ Debbie Phillips
SIGNATURE OF NOTARY PUBLIC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) FOR THE FOURTEENTH JUDICIAL CIRCUIT

FILED FOR RECORD
2021 DEC 28 AM 11:31

Bobby Jones, Sr., SCDC #377012,) Case No. 2021-CP-03-00176
v.)
Applicant, ELAINE SAGE)
CLERK OF COURT
ALLENDALE COUNTY, S.C.)
State of South Carolina,)
Respondent.)
_____)

**RETURN TO THE APPLICATION
FOR POST-CONVICTION RELIEF,
PARTIAL MOTION TO DISMISS,
AND MOTION FOR A MORE
DEFINITE STATEMENT
(Counsel Already Appointed)**

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Bobby Jones, Sr.,¹ on September 13, 2021, and received by the South Carolina Attorney General's office on September 20, 2021, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its July 2018 term, the Allendale County Grand Jury indicted Applicant for criminal sexual conduct with minor – second degree (2013-GS-03-00039). On July 9, 2018, Applicant proceeded to a jury trial before the Honorable Brooks Goldsmith. Glenn Walters, Esquire and Michael R Culler, Jr., Esquire, represented Applicant. Rebekah Luttrell, Esquire and Leigh Staggs, Esquire of the Fourteenth Circuit Solicitor's Office prosecuted the case. Following a four-day trial, the jury returned a verdict of guilty. Judge Goldsmith sentenced Applicant to twelve years' imprisonment.

Applicant filed a timely notice of appeal and was represented on appeal by Appellate Defender Adam Sinclair Ruffin from the South Carolina Commission on Indigent Defense –

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, James K. Falk, has since been appointed.

Division of Appellate Defense. Appellate Counsel filed a brief on Applicant's behalf and raised two issues:

- 1) Whether the Court erred in granting the state's motion to quash the jury after it alleged [Applicant] used a peremptory strike in violation of Batson v. Kentucky when he struck a juror who identified her profession as being a "housewife" which was a facially race neutral reason and where the state was not required to show pretext by providing evidence that [Applicant] had seated another similarly situated juror?
- 2) Whether the Court erred in qualifying Sitha Patel as an expert in the field of "child sexual abuse dynamics" when her training was limited to a one-week class at the Child First Law Center and a three-day class at MUSC, and where she admitted that she could not determine an error rate for her field and that her only quality control procedures were to follow the Child First protocol?

Following briefing and oral argument, the Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion. *State v. Jones*, 2021-UP-258 (S.C. Ct. App. filed July 7, 2021). The Remittitur was issued on September 8, 2021.

II. Factual Summary

The victim (Victim) in this case was born in 1998. Victim was 14 years old when she was abused by Applicant and 20 years old when the case was called to trial. (R. 127-28). In late 2012 and early 2013, Victim lived with her mother (Mother) and Applicant in Allendale. Applicant is Victim's stepfather. (R. 129). Applicant was the pastor of the New Life House of Love church in Allendale. (R. 445). Victim and Mother attended Applicant's church before he married Mother and became Victim's stepfather. (R. 445-46). At some point in 2013 Victim disclosed to Nicole Smith that Applicant had touched her. (R. 175). Victim communicated this to Smith by typing out a message on a computer screen while they were in Applicant's church. (R. 175). In February 2013, Carolyn Chess, a substitute teacher, overheard Victim discussing her sexual activity with

Applicant with a friend in class. (R. 195). After initially hesitating², Chess decided to report Victim's accusations to the guidance office. Subsequently, Victim wrote on a piece of paper that she and Applicant engaged in sexual intercourse and handed the paper to Chess. (R. 198).

On March 4, 2013, after Chess reported what Victim told her, Victim was called to meet with school counselor Pamela Kinard, school nurse Kimberly Solomon, and school resource officer, Samuel Holmes. (R. 111, 186, 210). Victim provided two written statements to law enforcement on March 4, 2013. (R. 537-39). In her first statement, Victim disclosed that she and Applicant, "did it", and when Victim told Mother about it, Mother confronted Applicant. (R. 537). In response to the confrontation, Applicant "almost killed himself." (R. 537). Victim gave a second more detailed statement to Sheriff Tom Carter. (R. 314, 538-39). Victim disclosed that the abuse took place one night after Christmas. (R. 538-39). Victim also specified that Applicant "put his penis inside me then it started feeling good to me that's why I didn't say anything." (R. 538-39). Victim did not describe the abuse any further and stated that she could not write anymore because she did not want Applicant to get into trouble. (R. 316). Victim insisted that everything was fine at home and begged law enforcement not to say anything about the allegation she made. (R. 538-39).

Later in the day on March 4, 2013, Applicant arrived at school to pick up Victim and take her home. Sheriff Carter informed Applicant that Victim and her brother could not go home with him that day because of the accusations made by Victim. (R. 317-19). After being informed of the accusations, Applicant told Sheriff Carter that he and his wife had concerns about Victim

² Chess is related to Applicant and didn't want to believe the accusations against Applicant. Chess threw away the piece of paper that Victim handed her that contained a written accusation of abuse by Applicant. (R. 198, 200).

masturbating with a magic marker. Because of their concerns, Applicant told Carter that he bought Victim a vibrator and showed her how to use it. (R. 74, 319-20).

Applicant also spoke with DSS employee Mary Carter on March 4, 2013. Applicant told Mary Carter that he showed Victim how to use the vibrator. (R. 336). Applicant also disclosed that Victim's pants and underwear were pulled down when this occurred. The following day, Mary Carter spoke with Mother and Applicant at the DSS office. On this occasion, Applicant again disclosed that he assisted Victim with the vibrator but specified that he used his hand to control the vibrator rather than Victim using the vibrator herself. (R. 341). On a subsequent date, Mary Carter visited Applicant's home. Applicant showed her where he and Victim were sitting in Victim's room when he used the vibrator on her. (R. 343). Applicant also admitted that Mother and Victim's brother were home during this time, but they were asleep in another room and did not know about what occurred between Applicant and Victim. (R. 344).

Victim was referred to Hopeful Horizons for a physical exam on March 21, 2013 where she was examined by Pediatric Nurse Practitioner Kristen Dalton. (R. 376). During the exam, Victim told Dalton that she had never had sex before, but admitted that both she and Applicant had inserted a vibrator into her vagina. (R. 377, 380, 394). On March 26, 2013 Victim met with SLED agent Richard Johnson. Victim gave a statement to Johnson in which she recanted her accusations. (R. 224, 540-41). Victim told Johnson that she used the vibrator on herself and the only time Applicant touched her was when he touched "the top of my chest." (R. 540-41).

Applicant testified in his own defense at trial. Applicant admitted to buying Victim a vibrator, but denied showing her how to use it. (R. 439-40, 445). Applicant also denied having sex with Victim. (R. 441). Victim testified on behalf of the State and Applicant. When Victim was called as a witness by the State, she claimed to remember very little from the relevant time period

and answered most questions by saying “No, I don’t recall”. (R. 127-53). However, when Victim testified on behalf of Applicant, she admitted she received a vibrator from Mother and Applicant. Victim testified that she eventually told Nicole Smith about the vibrator and a rumor about her and Applicant having sex then began. (R. 404-18). At the conclusion of trial, the jury found Applicant guilty of second degree criminal sexual conduct with a minor. (R. 528).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on September 13, 2021. Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Ineffective assistance of counsel;
 - a. Failure to investigate and prepare defense;
 - b. Failed to call witnesses;
 - c. Failure to move for a directed verdict;
 - d. Failure to object; and
 - e. Failure to file a direct appeal.

As requested relief, Applicant states he is seeking “new trial or expungement of entire records.”

Attached herewith and incorporated by reference are the Allendale County Clerk of Court records regarding the subject conviction; Applicant’s records from the South Carolina Department of Corrections; the records from Applicant’s direct appeal, including the trial transcript; and the records of the current post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Partial Motion to Dismiss Allegations Applicant was Denied his Right to Appeal and Trial Counsel Failed to Move for a Directed Verdict

The State submits Applicant’s allegation that trial counsel was ineffective because “he refused to file defendant’s appeal to the appeals court” is meritless, and therefore should be summarily dismissed. Where an accused establishes in a post-conviction relief hearing that he was

unconstitutionally deprived of his statutory right to a direct appeal, the Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40. In this case, trial counsel timely filed a notice of appeal on July 20, 2018. Applicant's appeal was perfected by Appellate Defender Adam Sinclair Ruffin who filed a brief on Applicant's behalf on July 22, 2019.

Following additional briefing and oral argument, the Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion. *State v. Jones*, 2021-UP-258 (S.C. Ct. App. filed July 7, 2021). The Remittitur was issued on September 8, 2021. As such, this allegation is wholly without merit.

Applicant also alleges trial counsel was ineffective for failing to move for a directed verdict on the State's failure to prove its case beyond a reasonable doubt. Applicant contends trial counsel failed to move for dismissal despite Victim's alleged failure to support the State's case. However, the record reflects that trial counsel made a timely directed verdict motion at the close of the State's case:

Mr. Walters: May it please the Court. Your Honor, at this time, for the record, we make a motion for directed verdict. We don't believe the State has proven the essential elements of the offense and as a result, we would ask for a dismissal.

(Tr. Transcript p. 451)³.

In his directed verdict motion, trial counsel argued the State had failed to prove the essential elements of the offense. Therefore, this allegation is wholly without merit and should be summarily dismissed.

³ The Court noted that contradictory testimony existed, but believed that was a matter for the jury to resolve. Therefore, Judge Goldsmith denied Applicant's motion for a directed verdict. (Tr. Transcript p. 451).

V. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of trial counsel. Specifically, Applicant asserts trial counsel was ineffective for failing to conduct a reasonable investigation and prepare an adequate defense; failing to call defense witnesses on Applicant's behalf; and failing to "raise necessary objections" against the State's case and arguments. Respondent submits these claims of ineffective assistance of counsel are without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient

prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense...it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Due to the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions are hallmarked by deference because “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it 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.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances

faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of an attorney’s performance requires 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. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment’s guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. To prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. *See id.* at 695 (Noting that where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

Further, in determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding

if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care—lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

A. Failure to Investigate and Prepare for Trial

It is impossible for Respondent to reply specifically to Applicant’s claims without more specific facts and detail. Therefore, Respondent responds to Applicant’s general and vague claims below and moves for Applicant, through counsel, to file amended allegations.

Applicant claims trial counsel was ineffective for failing to “conduct a reasonable investigation and to prepare an adequate defense”. Applicant alleges witnesses existed that could have testified on Applicant’s behalf. Applicant further alleges trial counsel did not investigate

these witnesses' statements, nor did trial counsel depose any of the defense's or State's witnesses. Applicant contends that if trial counsel had prepared a defense through these supposed witnesses, he would have "found a substantial amount of contradictions, flaws, and false statements in the State's case". The State submits these claims are without merit.

As discussed below, Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what witnesses trial counsel should have investigated or how Applicant was prejudiced.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to

show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (noting that “this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

As discussed, it is impossible for Respondent to reply specifically to Applicant’s claims without more facts and detail. Therefore, Respondent moves for Applicant, through counsel, to file amended allegations.

B. Failure to Call Witnesses

It is impossible for Respondent to reply specifically to Applicant’s claims without more specific facts and detail. Therefore, Respondent responds to Applicant’s general and vague claim below and moves for Applicant, through counsel, to file amended allegations.

Applicant contends trial counsel was ineffective for failing to call witnesses on his behalf. Applicant alleges trial counsel “did allow one or more of his defense witnesses to be subpoenaed by the state, knowing all along that these defense witnesses were to give support to the defense.” Additionally, Applicant contends trial counsel failed to subpoena witnesses of the state and failed

to “allow the defendant’s witnesses to testify on behalf of the defendant.”

As discussed below, Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity who trial counsel should have called as a witnesses or how Applicant was prejudiced by trial counsel’s failure to call these unknown witnesses.

To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

There is a “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2052). Conduct will not be deemed ineffective assistance of counsel when counsel is able to articulate a valid reason for employing their strategy. *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008).

Not calling these supposedly favorable witnesses as suggested by the Applicant could have been part of trial counsel’s strategy for the case. However, even if the court finds trial counsel’s strategy unsound, the Applicant must still meet the burden set forth in *Bannister* in order to show prejudice from the witness’ failure to testify at the trial. Therefore, these witnesses must be produced at the PCR hearing and Applicant must demonstrate how their testimony would have impacted the trial. Applicant cannot satisfy either requirement of *Strickland*.

As discussed, it is impossible for Respondent to reply specifically to Applicant's claims without more facts and detail. Therefore, Respondent moves for Applicant, through counsel, to file amended allegations.

C. Failure to Object and Preserve for Appeal

It is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and detail. Therefore, Respondent responds to Applicant's general and vague claims below and moves for Applicant, through counsel, to file amended allegations.

Applicant contends trial counsel was ineffective for failing to raise "necessary objections against the State's case". As discussed below, Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what trial counsel should have objected to or how Applicant was prejudiced.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800–01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 ("[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court's finding If so, an appellate court would necessarily have affirmed the trial court's [ruling] . . .").

Similarly, "[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was

admitted.” *Id.*; see *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

As discussed, it is impossible for Respondent to reply specifically to Applicant’s claims without more facts and detail. Therefore, Respondent moves for Applicant, through appointed counsel, to file amended allegations.

VI. Motion for a More Definite Statement

Respondent submits Applicant’s claims of ineffective assistance of trial counsel are without merit. However, it is impossible for the State to adequately respond to Applicant’s allegations because Applicant has failed to provide specific facts to support each claim. “[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 [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); see S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); see also Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through appointed counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRPC and the Uniform Post-Conviction Procedure Act.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“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.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)–(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. Response to Any and All Other Allegations

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

IX. Conclusion

WHEREFORE, the State respectfully requests this Court grant its partial motion to dismiss as set forth in section IV. Additionally, Respondent respectfully requests this Court grant its motion for a more definite statement and allow Respondent the opportunity to respond to the more definite statement, if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel.

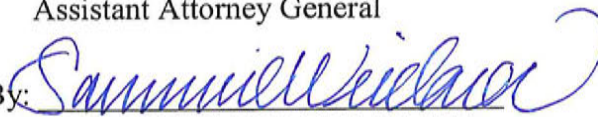
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
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By: 
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December 21, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) FOR THE FOURTEENTH JUDICIAL

Bobby Jones, Sr., #377012

FILED FOR RECORD

2021 DEC 28 A 11:32

Case No.: 202-CP-03-00176

Applicant,

v.

State of South Carolina

Respondent,

CLAUDE SADS
CLERK OF COURT
ALLENDALE COUNTY, S.C.

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 and Partial Motion to Dismiss, and 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:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 21th day of December, 2021.

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) FOR THE FOURTEENTH JUDICIAL CIRCUIT
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v.) ELAINE SABB
State of South Carolina,) CLERK OF COURT
Respondent.) ALLENDALE COUNTY, S.C.
) **APPLICANT'S AMENDED APPLICATION**

NOW COMES Applicant, Bobby Jones, amending his application filed September 13, 2021. In addition to the allegations raised in his initial application, Mr. Olalde-Gonzalez, through PCR Counsel, submits the following:

Amended Application Issues

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”).

Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); see *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains deferential towards defense counsel with a presumption that counsel acted competently. *Strickland*, 466 U.S. at 688-89.

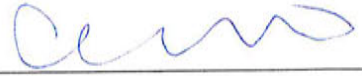
Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. 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. *Strickland*, 466 U.S. at 696.

Mr. Jones submits that Counsel was constitutionally ineffective based upon the following grounds:

1. Counsel was constitutionally ineffective for failure to properly communicate with Mr. Jones about his case.
2. Counsel was constitutionally ineffective for failure to call Mr. Jones' witnesses to testify at trial.
3. Counsel was constitutionally ineffective for failure to properly prepare Mr. Jones to testify at trial.
4. Counsel was constitutionally ineffective for failure to inform Mr. Jones of the State's witness list and what their testimonies would roughly consist of.
5. Counsel was constitutionally ineffective for failure to discuss a time-served plea offer with Mr. Jones that Mr. Jones would have taken.
6. Counsel was constitutionally ineffective for failure to assert a proper defense.
7. Counsel was constitutionally ineffective for failure to discuss the defense and trial strategy with Mr. Jones.
8. Counsel was constitutionally ineffective because of inadequate preparation time before trial.
9. Counsel was constitutionally ineffective for failure to meet with Mr. Jones enough.
10. Counsel was constitutionally ineffective for failure to investigate the State's witnesses and what they would testify to at trial.
11. Counsel was constitutionally ineffective for failure to strike a juror in the second round of jury selections that he struck the first time.
12. Counsel was constitutionally ineffective for failure to mitigate the sentence by highlighting the role Mr. Jones played in the community prior to being charged.

Conclusion

Based upon the above, Mr. Jones requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



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For Applicant Bobby Jones

November 9, 2023

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

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

Bobby Jones, Sr., #377012,
Applicant,

) Case No.: 2021-CP-03-00176

v.

State of South Carolina,
Respondent.

) Affidavit of Service by Mail
)
)
)
)
)

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ELAINESABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Danielle Dixon, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



Attorney for Applicant

November 9, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

FOURTEENTH JUDICIAL CIRCUIT

2021-CP-03-00176

Bobby Jones,

)

)

Plaintiff,

)

)

vs.

)

TRANSCRIPT OF HEARING

)

State of South Carolina,

)

)

Defendant.

)

-----)

November 27, 2023

Colleton, South Carolina

B E F O R E:

The Honorable Roger Young, Judge Presiding

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

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1 P R O C E E D I N G S

2 * * * * *

3 THE COURT: Yes, ma'am?

4 MS. DIXON: May it please the Court?

5 Danielle Dixon, Assistant Attorney General for the
6 State of South Carolina. This is the case of Bobby
7 Jones v. State, Docket Number, sorry, Bobby Jones v.
8 State, Docket Number 2021-CP-03-00176. Mr. Jones is
9 serving a 12-year sentence. July 2018 he was
10 indicted by the Allendale Grand Jury for second
11 degree criminal sexual conduct with a minor. That's
12 Indictment Number 2013-GS-03-00039. These charges
13 arose from an incident that occurred sometime around
14 January of 2013 involving a victim, who I believe
15 was his stepdaughter, that was between the ages of
16 11 and 14-years-old. He proceeded to a jury trial
17 July 9th through 12th, 2018, before the Honorable
18 Brooks Goldsmith. He was represented by Glenn
19 Walters and Michael Culler. Assistant Solicitor
20 Rebekah Luttrell and Leigh Staggs prosecuted the
21 case. He was convicted as indicted. He was
22 sentenced to 12 years imprisonment. He filed a
23 notice of appeal, which was perfected by appellate
24 defender Addison Claire Rufton, who filed a brief
25 arguing the Court erred in finding he violated

1 Batson through the use of preemptory challenges, and
2 the Court erred in qualifying the State's witness as
3 an expert in child sex abuse dynamics. Those were
4 both affirmed on the merits. A remittitur was sent
5 September 8th, 2021. He timely filed this PCR
6 application. The State filed a return. He has
7 since amended his application and is currently
8 alleging counsel was ineffective for failing to
9 communicate, failing to call witnesses, failing to
10 prepare Jones to testify, failing to inform Jones of
11 the State's witness list and what their testimony
12 would consist of, failing to discuss a time time-
13 served plea offer, that he would have taken, failing
14 to assert a proper defense, failing to discuss
15 defense and trial strategy, and adequate prep time,
16 not meeting with him enough, failing to investigate
17 the State's witnesses and what they would testify to
18 at trial, failing to strike a juror in the second
19 round of selections that he struck the first time.
20 And just for your -- there was a Batson challenge by
21 the State, and so the first jury was quashed. And
22 then the last claim he's raising is failing to
23 mitigate the sentence by highlighting the role that
24 Jones played in the community prior to being
25 charged. And with that I'll turn it over to Ms.

1 Marto.

2 MS. MARTO: Judge, we'd call Bobby Jones to
3 the stand.

4 * * * * *

5 Bobby Jones,
6 Having been duly sworn,
7 testifies as follows:

8 * * * * *

9 DIRECT EXAMINATION

10 BY MS. MARTO:

11 Q. Good afternoon, sir.

12 A. How are you?

13 Q. Sir, you went to trial for a CSC 2nd,
14 right?

15 A. Right.

16 Q. And you were represented by Glenn
17 Walters and Michael Culler?

18 A. Correct.

19 Q. Okay. How do you feel he did at trial?

20 A. Well, not an opinion, because I was
21 there, he did nothing.

22 Q. Now, before trial do you feel like they
23 communicated with you enough?

24 A. It took five years. We may have had ten
25 visits in five years.

1 Q. Did you know everything that was going
2 on in your case?

3 A. Absolutely not. As a matter of fact, I
4 went to roll call on my own, because I didn't -- I
5 never was communicated with to say whether I needed
6 to go or not. And when I went there, I went there
7 looking for the attorney, which was in federal court
8 in another case, and when they asked me where he
9 was, I didn't know. I found out later on that he
10 had gone somewhere.

11 Q. Did they discuss trial strategy and a
12 defense with you?

13 A. No, ma'am. No, ma'am. I went in the
14 office after calling trying to make an appointment
15 with my attorney, who I gave \$14,000. I went to the
16 office and made appointments, that's how I had to
17 see him, by -- in between his schedule.

18 Q. Now, you raised in your amendment that
19 you wished counsel had called some witnesses for
20 you; is that correct?

21 A. Correct.

22 Q. Now ---

23 A. I had 20 on my list. Someone would show
24 up in the courtroom, he wasn't there, the witnesses
25 were there, but he wasn't there, and he didn't

1 contact any of my witnesses to find out what they
2 were gonna say, or whether they were gonna show up
3 and need to be subpoenaed, so they could get off
4 their job, none of that happened then.

5 Q. Now, you testified at trial, right?

6 A. I did.

7 Q. Did you feel like you were prepared to
8 testify?

9 A. No, I wasn't, because I was told that I
10 wouldn't have to, because of all the witnesses that
11 I had. And the Thursday, which was the day I was
12 sentenced, that afternoon, Mr. Walters approached me
13 and said, "I'm gonna put you on the stand." Now, I
14 can't say yea or nay because I have no more
15 witnesses, so I had to go up, and so I was
16 definitely not prepared.

17 Q. When did you find out you needed to
18 testify?

19 A. The day of sentencing.

20 Q. Now, did you know what the State's
21 evidence would be against you?

22 A. I didn't. We didn't discuss that.

23 Q. Did you know who they would call as
24 witnesses?

25 A. I didn't.

1 Q. And so do you think counsel should have
2 investigated that?

3 A. Well, reasonably investigating who was
4 going to testify against me, or what they were going
5 to say, so I could prepare myself somehow to defend
6 myself. Basically, it was -- it was really sad,
7 when I looked at the case -- I didn't look at it
8 while I was going through it, because I couldn't
9 really see it, but after I did the transcripts and
10 looked at the -- the law library stuff, I was like,
11 "Oh, my God," I didn't have anyone to -- to advocate
12 for me.

13 Q. And so you think counsel should have
14 done a better job of looking at what the discovery
15 would have been, and looked at what the testimonies
16 would have been?

17 A. Absolutely. Being -- being prepared is
18 what I do. I've been ministering for over 50 years.
19 I know how important it is for people's lives, and
20 my life was important to me, and it still is. I
21 spent over five years in the penitentiary, which I
22 feel is unjust, but at the same time not being
23 familiar with the law, only familiar with the fact.
24 And the fact is, I was not represented at all.

25 Q. Now, what defense did counsel present at

1 trial; do you recall?

2 A. Well, actually, when -- if -- if you --
3 if you'll allow me to elaborate a minute? On the
4 second jury -- well, you ain't got there yet.

5 Q. We're gonna get there. I'm gonna get to
6 that.

7 A. We're gonna get to that. But anyway --
8 the question again?

9 Q. The question is, what defense do you
10 think counsel presented at trial?

11 A. There wasn't no defense.

12 Q. Okay. So what defense do you wish
13 counsel presented at trial?

14 A. My witnesses, the fact that I,
15 basically, was forced to testify unprepared. It was
16 like no one was there for me. No one was there for
17 me, not even my attorney. They were not there for
18 me. As a matter of fact, they're sitting at the
19 table, looking in the law books, trying to find
20 cases that pertained to mine after five years. You
21 don't need no book.

22 Q. Now, what you're talking about, I think,
23 is the victim basically shifted and said you never
24 touched her; is that correct?

25 A. There was actually no shift. If you

1 look at the -- if he would have looked at it and did
2 the investigation, she was 14 years old, we went to
3 Family Court. When we went to Family Court, she
4 made the statement under oath, being warned by Mr.
5 Walters of perjury. She made the statement,
6 "Nothing happened." We have affidavits for that as
7 well, but he didn't get in affidavits or the
8 statements. Now, at 20 years old, this is 2018, we
9 waited five years. I don't even know why we waited
10 that long for the speedy trial, but we did. I have
11 my suspicions, but, you know, I'm not going to
12 speculate, but I live in Allendale, I've been there
13 all my life, so I kind of know the operation.

14 Q. Now, do you recall a time served plea
15 being offered in this case?

16 A. I was standing in the hallway getting
17 ready to go into the courtroom. They come to me and
18 they say, "Here's a plea offer, no writing or
19 nothing," because I'm kind of intelligent a little
20 bit, so I'm not telling you yes to something I
21 didn't do, so if you let me read what you got,
22 whatever the plea is, I didn't get none of that, I
23 was on my way to the courtroom, so I said, "No,
24 because you get them so far, what you want me to do,
25 say I did it, so you can get \$14,000 and take off?

1 No, I need you to fight, I'm -- I'm innocent.

2 Q. So you wouldn't have taken the time
3 served plea; is that what you're saying?

4 A. I would have had it been explained to me
5 properly, perhaps I would have, but not to say I'm
6 guilty of any crime, but that was not explained to
7 me, so I didn't really know the details of -- the
8 one time I was offered that plea -- I think they did
9 it three times. "They're going overseas," he says,
10 "so they want to get the case off the book, so if
11 you plea, they can get the case off the book," that
12 was one Solicitor. Now, here comes another plea,
13 and Mr. Michael Culler, right outside the courtroom,
14 says to me, "Judge Buckner," I'll never forget,
15 "you're facing 25 years," he said, "Judge Buckner
16 said you ought to take the plea." When do a Judge
17 tell a defendant to take a plea? So again I said,
18 "I'll just do the 25 years, I'm not -- you're
19 outside the court -- I don't even know what you're
20 talking about," so that's what happened with that.
21 I was ignorant of whatever it is that they were
22 offering.

23 Q. Now, you're also alleging that counsel
24 was ineffective for failure to strike a jury in the
25 second-round selection, right?

1 A. Right. We had sworn in 14, including
2 the alternate -- alternates. All of them were
3 African-American, which make no difference to me,
4 but the statement was made, it's on the record in
5 the transcript, the Solicitor says, "We don't have
6 enough white ladies on the jury." And she does a
7 Batson challenge, to me it was being prejudicial on
8 me, "We don't have enough white ladies on the jury,"
9 and it's in the transcript, and the Judge allowed --
10 Mr. Walters got up, and he tried to explain why he
11 struck this juror by saying, "She's a housewife."
12 And he spent 30 to 45 minutes just proving how his
13 wife runs the house, and I'm sitting there, I don't
14 know, 'cause I don't know the law, but I know that's
15 ridiculous.

16 Q. So you wish counsel would have struck
17 that juror again the second time, right?

18 A. Well, the second time that juror should
19 have been struck, that juror was upset. He struck
20 this juror, so how was this juror on there to become
21 a part of the jury again, and become the foreman?
22 That wasn't right.

23 Q. Now -- and I think our last allegation,
24 sir, is you wish counsel would have played up your
25 role in the community in sentencing, right?

1 A. Yes, ma'am. I -- I really -- all my
2 life I've been in Allendale. I'm 65-years-old as of
3 March, all I did was work in the community, that's
4 all I did. I worked in the community as a DJJ
5 person that did -- worked with underprivileged
6 children, had an afterschool program. The only one
7 in the county. I did our emergency food shelter,
8 and all the things -- I worked with DSS, all the
9 things that would help the community, afterschool
10 programs and things, I did that. I had a church in
11 the community, I fed people that were hungry. I did
12 my due diligence even in the United Way Chairman.
13 And all I wanted when I looked at this case was to
14 be recognized, not as a somebody who -- who exploits
15 children, something like that, that was terrible.
16 It broke my heart to just not be known by the people
17 that I'm serving. I got the key to the city for 29
18 years of service, but all of a sudden I become a --
19 a -- yeah, so I wish that someone -- I had a
20 character witness who would have said that. I had
21 people who would have got up and said, "This is who
22 this man really is." The jury only saw me as what
23 they accused me of, see, and when the -- when the
24 statement was made by -- I think her name is
25 Solicitor Staggs, when she made the statement about

1 me, she said, simple and plainly, she said, "He
2 thinks he's above the law. And when she was
3 speaking, I was like, okay, you ain't gonna object,
4 do something, I mean object, and -- and tell them
5 who I really am, but there was nothing said. I was
6 not defended as I should have been. And as I said,
7 again, I reiterated, \$14,000 upfront, give me
8 something. I got nothing.

9 Q. And so for all those reasons you just
10 listed, you think you should be granted ---

11 A. Ma'am?

12 Q. For all the reasons you just listed, do
13 you think that this Court should grant you a new
14 trial?

15 A. That's all I want. I want a chance to
16 fight a fair fight. If I can fight a fair fight and
17 I lose, I lost. This was not a fight. There was no
18 adversary against the State. The State was given me
19 on a silver platter, here is, we're not gonna defend
20 him. Look at the -- look at the documents that's
21 before you. If you look at the transcript, you'll
22 see that there was absolutely nothing done. Now, I
23 feel like a second trial is going to give me a
24 chance at least to fight for my life, this is my
25 life. I left my family, 20 grandchildren, two great

1 grandchildren, six kids, a business that would
2 potentially could earn five million dollars. I left
3 everything. I lost everything. I don't have
4 nothing, so at least give me a chance to fight for
5 my life, and then if you take it, I'll give it up
6 for you, but please I need a chance to fight. This
7 was unfair.

8 MS. MARTO: No further questions, Your
9 Honor.

10 THE COURT: Cross?

11 **CROSS-EXAMINATION**

12 BY MS. DIXON:

13 Q. So you just want a chance to fight for
14 your life; is that correct?

15 A. I want a chance to fight for my freedom,
16 yes.

17 Q. And you had a trial, correct?

18 A. Say it again?

19 Q. You had a trial, correct?

20 A. I did.

21 Q. And you think that that wasn't your
22 chance to fight for your life?

23 A. It was if I had the right
24 representation, ma'am.

25 Q. Okay, and going to that, now, one of the

1 things I think you complained about is that your
2 lawyers didn't bring in witnesses to show how
3 upstanding of a community member you are?

4 A. I didn't say I was upstanding, ma'am.

5 Q. Okay, what were the words you used?

6 A. Words I used was I am a part of a
7 community that works hard to try to make sure -- as
8 you know, Allendale County is out of 46 the worst
9 educationally. I worked with the school system.

10 Q. And you testified at your trial,
11 correct?

12 A. I did.

13 Q. And you told the jury that, correct?

14 A. Did I tell the jury that?

15 Q. Uh-huh.

16 A. I told them some of it, but what I'm
17 saying is the person that represents me that I paid
18 should have told them that, that's what I'm saying.
19 It's -- if -- if -- if it was free, and I didn't pay
20 you, I don't look for nothing.

21 Q. So what you're saying is there was more
22 for you to say, but you chose not to say it ---

23 A. No, and I didn't ---

24 Q. -- because you paid your lawyer ---

25 A. No, ma'am, I didn't say that either.

1 Q. Okay.

2 A. What I said was, I was not represented
3 properly by my attorney.

4 Q. Uh-huh.

5 A. What I should or should have said could
6 have been told to me by him prior to me getting to
7 the stand, but since I just got the word that I was
8 going to the stand, maybe an hour before getting on
9 the stand with no coaching, what was I to say?

10 Q. And going back to -- I think you said on
11 direct that your lawyer just suddenly told you you
12 were gonna testify, you were forced to testify,
13 correct?

14 A. Not forced, but ---

15 Q. Not ---

16 A. -- asked.

17 Q. Asked, okay. So do you recall at trial
18 the Judge explaining to you, you can testify if you
19 want to, but you don't have to ---

20 A. I heard him say that.

21 Q. You did hear him say that?

22 A. Yes.

23 Q. Do you recall him saying, "And if you
24 decide not to testify, I will instruct the jurors
25 that they cannot give the fact that you did not

1 testify any consideration whatsoever;" do you recall
2 him saying that?

3 A. No.

4 Q. Page 453, do you have the transcript?

5 A. I don't.

6 Q. But if it's in the script -- transcript
7 would you dispute it?

8 A. I don't remember everything, ma'am, I've
9 been in prison over five years, so I don't remember
10 everything that was ---

11 Q. Gotcha.

12 A. -- said.

13 Q. But this was an important day, correct?

14 A. That was an important day, correct.

15 Q. And you would agree that it was
16 ultimately your decision to testify, correct?

17 A. Ultimately, I trusted my lawyer.

18 Q. You trusted your lawyer, not ---

19 A. I trusted my lawyer.

20 Q. And what are these upstanding -- I'm
21 sorry, what are these things that you did for the
22 community that you wish the jury had heard more of?

23 A. It's okay. But what are these
24 upstanding things, right?

25 Q. I'll use a different word. What are the

1 right ---

2 A. That's okay.

3 Q. -- things that you did for the
4 community?

5 A. It's okay. As a matter of fact, I don't
6 need no paper, because I know what I did. As a
7 matter of fact, I built a new building in Allendale
8 for the purpose of serving the community, it wasn't
9 just the church community. I fed people, emergency
10 food shelter. I worked with DSS, if you would check
11 the records. They would send people that were
12 hungry and needed their bills paid, I did that. We
13 also did an afterschool program, without being
14 prompted to do so. We transported kids in our vans
15 to and from school free of charge, didn't have to
16 pay anything. And, of course, DJJ heard about it,
17 and they could have left it with us, because one of
18 the things I believe in is helping the community.
19 So one of the things that I did that I thought was
20 -- was really good, we would take these at-risk
21 kids, and we would go through a three -- three-part
22 program, parent, teacher, child, and we'd make sure
23 each of them was involved in the child's education.
24 And we came up, and this is record I have at -- at
25 somewhere in the church, but these kids came up from

1 failing grades, failing grades to honor roll. I
2 felt that was great. And we had programs in the
3 summer, and we did keyboards, and I gave keyboards
4 away. Once they learn how to play, I gave them
5 away. So I think one of the things that I did, that
6 I thank God I was able to do is to help.

7 Q. And your testimony today is that if the
8 jury had known all that, you would be an innocent
9 man today?

10 A. I believe that.

11 Q. And why did you choose not to tell the
12 jury that?

13 A. I believe that had the jury known that
14 had I been prompted properly and prepared properly,
15 I would have said all of these things. You've got
16 to understand, ma'am, that coming up to a place like
17 this, the first time ever, I was ignorant actually.
18 I didn't know what to say, so I said ---

19 Q. Were you prompted today as to how to
20 testify to that?

21 A. Today, I did my own research.

22 Q. Okay.

23 A. If I -- if I would have -- if I would
24 have had a chance, I had five -- almost six years to
25 do research, so I -- I -- I was smart enough to go

1 back to look at the transcript myself and do the
2 things I needed to do in the law library.

3 Q. So you're smart enough today ---

4 A. But I wasn't then. Yes, I wasn't then.
5 I didn't have to then, 'cause I was paying somebody
6 to do that.

7 Q. So on the most important day of your
8 life you didn't take the extra step to prepare your
9 testimony and say what you just said to me very
10 eloquently by the way?

11 A. I would be -- I would be a person that
12 would have said this. I understand what your job
13 is, and I -- I'm not knocking you for that. All I'm
14 saying is, I was not treated fairly, and, of course,
15 had I know that I would have to defend myself, I
16 would have prepared, but I paid somebody \$14,000 to
17 defend me. If I knew that that day, I -- I had to
18 defend myself, you know, I did what I needed to do.
19 That's all -- that's the only difference. It was
20 not -- it was not anything different than that.

21 Q. And the minor that made these
22 allegations was your stepdaughter, correct?

23 A. Right.

24 Q. Lived in the home with you, correct?

25 A. Right.

1 Q. And you admit that you bought her a
2 dildo, correct?

3 A. My wife and I.

4 Q. Bought her a dildo, correct?

5 A. Right.

6 Q. Showed her how to use it, correct?

7 A. No.

8 MS. DIXON: Nothing further.

9 BY WITNESS:

10 A: We did not show her how to use it.

11 MS. MARTO: No further -- no redirect, Your
12 Honor.

13 THE COURT: Okay. You can step down. Next
14 witness?

15 MS. MARTO: Judge, we're gonna call Glenn
16 Walters to the stand.

17 MALE VOICE: Mr. Walters is in route and
18 should be here in five minutes.

19 MS. MARTO: We're gonna call Michael Culler
20 to the stand.

21 * * * * *

22 Michael Culler,
23 having been duly sworn,
24 testifies as follows:

25 * * * * *

DIRECT EXAMINATION

BY MS. MARTO:

Q. Good afternoon, sir. So when did you become involved in Mr. Jones' case?

A. Mr. Walters and I do a lot of cases together. Since Mr. Jones referenced the \$14,000, I'll have to talk to Mr. Walters about that, I never got paid to do it, but I brought him on some murders he didn't get paid on too. So probably early when the case was developing, I was at the preliminary hearing, I remember that.

Q. Were you second chair then?

A. Pardon me?

Q. Were you second chair in this case?

A. Well, yeah.

Q. And were you privy to a lot of the conversations between Mr. Jones and I guess y'all?

A. Yeah, absolutely.

Q. Were you involved in all those conversations?

A. I can't say all, but I would say the vast majority.

Q. From your perspective was there anything you didn't communicate to Mr. Jones about his case?

1 A. No, I don't think so.

2 Q. Did you discuss with him witnesses?

3 A. We discussed with him the witnesses,
4 the trial, what would happen. As you've heard, Mr.
5 Jones is very eloquent. He also is very intelligent
6 and asked a lot of questions, and so we went through
7 the normal things one would go through with regard
8 to trial, preparing to testify, or not testify,
9 calling witnesses that might be character witnesses,
10 that sort of thing, statements that may have been
11 made, evidence that would come in against him.

12 Q. Okay, and so ---

13 A. We also discussed, by the way, the
14 offer that was made to him, which both Mr. Walters
15 and I explained. There wasn't a lot to explain, it
16 was a plea to an assault. The problem with it was,
17 it would not be for any jail time, but it would
18 require a registry. And Mr. Jones was -- because of
19 his position, as he's explained in great volume, in
20 the community, and have found that I believe his own
21 church, and was a bishop in that church, he was not
22 willing to, it was our conclusion, lose his status
23 that he had and would not accept that, and so I
24 believe that was with Judge Buckner. When the
25 Solicitor made that offer, of course, I did not tell

1 Mr. Jones that because Judge Buckner thought that
2 was a good option, he should take it. Mr. Walters
3 and I independently told him, "This is not a good
4 fact case for trial, this is a good case to take
5 this plea on." However, he -- I remember him
6 vividly standing in court saying, "Reject," and
7 throwing his hand up. So he well knew what the
8 offer was, the implication to that offer, he
9 rejected it. Now, it is true that the case dwindled
10 and -- for five years, I think probably by Mr.
11 Walters' choreography, with the hopes that it would
12 die, but Solicitor Stone sent in two prosecutors, I
13 don't remember the young lady's name, who all they
14 did was sex offender prosecution, or sex offense
15 prosecutions, but that was sort of the background,
16 the context.

17 Q. Did you discuss Mr. Jones' witnesses
18 and character witnesses with him?

19 A. I'm sure that we did, we always do.

20 Q. Do you know why no one was really
21 called?

22 A. I would expect there was nobody that
23 was gonna help.

24 Q. Now, what did you do to prepare him to
25 testify about?

1 A. Normally, what we do, and I don't
2 remember, because it's been so many years, but,
3 normally, you're gonna talk to your client, either
4 Mr. Walters or I would do direct with him, and then
5 cross him harder than you think the State's gonna
6 cross him, that's normally the prep. And, of
7 course, you discuss the fact that, you know, it's
8 your right to testify or not. And although Mr.
9 Jones seems confused about the decision, at this
10 point he seems very clear on understanding the other
11 things, so I'm puzzled by that statement.

12 Q. And did you discuss the State's witness
13 list with Mr. Jones?

14 A. Normally we would. I don't have any
15 independent recollection. That's something I've
16 done for 34 years.

17 Q. Now, what was your defense at trial?

18 A. The defense? Really we were trying to
19 -- we had the victim in the case, it was his
20 stepdaughter I believe, it was said in discussions
21 with us, that -- and I think at the preliminary
22 hearing, that it was a big mistake, and she wanted
23 to recant the statement. However, when we put her
24 up, or testified, I remembered her stating probably
25 21 times, "Do not recall. Do not recall." She

1 wasn't going to help, which, of course, killed the
2 whole thing. Because if I remember correctly, I
3 think he admitted to Sheriff Tom Carter and the DSS
4 worker about the dildo, vibrator, however you want
5 to characterize it, and his use of that.

6 Q. And did you discuss the trial defense
7 and strategy with Mr. Jones?

8 A. I'm sure we did.

9 Q. Did you feel that you had enough time
10 to prepare the case?

11 A. Well, we had five years, so, yeah.

12 Q. Do you think you could have benefitted
13 from additional meetings?

14 A. No. And let me say this, we didn't
15 meet with him like two or three times. You know, we
16 tried to establish a rapport with the Defendant,
17 particularly, when it's something like you're gonna
18 go to prison for a while; or in this case where a
19 defendant who sees himself as the savior of the
20 community is gonna have his image tarnished
21 significantly. You try to say, "Look, we've got to
22 build a rapport with you, but you've got to
23 understand reality, and this is where we are." And
24 so we attempted to do that all for not, obviously,
25 as it turns out.

1 Q. Now, were there any State's witnesses
2 that caught you by surprise?

3 A. No, there weren't any, we knew
4 everything going in, it was bad. We just wondered,
5 you know, could we have mitigated the testimony from
6 the stepdaughter.

7 Q. Now, do you recall jury selection?

8 A. I remember vaguely. I think there was
9 a Batson motion. Not enough white ladies on the
10 jury, as you know, is not a reason for a Batson
11 motion, but Mr. Walters was the one that did the
12 striking of that for the most part. I'm sure I
13 probably participated, but I don't remember it
14 independently.

15 Q. Now, do you feel like you explained to
16 the jury and to the Judge at sentencing Mr. Jones'
17 role in the community?

18 A. Well, I'm sure that we did. And as
19 he's gone on for several minutes, I'm sure he did
20 too, so it wasn't like a big surprise to anybody
21 about what he'd done in the community, but all of
22 that didn't overcome, you know, what we were left
23 with. In fact, the night before closing arguments
24 Mr. Walters' assistant found a YouTube video, I
25 think it was, of Mr. Jones singing I'm Going Home,

1 and talking about going home, things we didn't think
2 were good to be on YouTube for the jury to
3 potentially see, so I don't know if that was, you
4 know, foreshadowing what he was thinking, or what
5 his deal was there.

6 Q. Are you aware of anything now about his
7 role in the community that would have impacted
8 sentencing at the trial itself?

9 A. I think Judge Goldsmith, I think it was
10 Judge Goldsmith, sentenced him fairly leniently. I
11 was surprised, so I think he took all of that into
12 account.

13 MS. DIXON: Nothing further, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MS. DIXON:

16 Q. Just briefly, Mr. Culler, how are you?

17 A. I'm -- I'm all right. How are you?

18 Q. I'm all right.

19 A. Yep.

20 Q. Thank you.

21 A. Yep.

22 Q. And just tell us real quick what your
23 background is in criminal law.

24 A. I started in the Public Defender's
25 Office in Orangeburg in '91, and after three months

1 the local Bar was so concerned about the Public
2 Defender's Office, they made me the Chief Public
3 Defender, where I stayed for 17 years. Tried, you
4 know, three or four death penalty cases, I can't
5 remember at this point, but tried a lot of cases.

6 Q. So you've got a great extensive trial
7 work in criminal law?

8 A. Yes. Yes.

9 Q. And in terms of -- I believe on direct
10 you said that you met with him more than two to
11 three times ---

12 A. Sure.

13 Q. -- with Mr. -- oh, okay. And during
14 those conversations was he engaged, was he involved?
15 What was his ---

16 A. Yeah, the -- the way I remember Mr.
17 Jones was he's very articulate.

18 Q. Uh-huh.

19 A. He's not stupid by a long shot. Asked
20 appropriate questions, but just, you know, had this
21 belief that because of everything he had done, and
22 he did a lot for that community, there's no
23 question, that that was somehow going to, you know,
24 move the jurors, and this was going to go away
25 miraculously. Just couldn't quite get his head

1 around the reality of it.

2 Q. Gotcha, and ---

3 A. But he did a lot for that community,
4 there's no question. It was recognized I think by
5 DSS and DJJ in court.

6 Q. And in terms of the evidence, is that
7 something y'all reviewed with him?

8 A. Oh, yes.

9 Q. Did you ever have concerns about his
10 concerns about his ability to understand
11 conversations?

12 A. No, we never did.

13 Q. Okay. Let's see, and I think you did
14 discuss an offer. Do you remember what it was that
15 made him decide he didn't want that offer
16 specifically?

17 A. Well, it's the same thing you sort of
18 heard here in the courtroom with him testifying, it
19 was his -- seeing himself in the community as this
20 -- not necessarily a messiah figure, but someone who
21 had turned, you know, with 46, in 46 counties he had
22 established these programs, which had been very
23 good, and done great work, but just could not
24 understand that all that was not gonna help him with
25 this fact pattern, was an assault, you know, but he

1 just couldn't do it. So that was -- and I think Mr.
2 Walters will say the same thing, he just couldn't
3 see himself losing his status.

4 Q. Gotcha. And then in your mind what was
5 the I guess most difficult thing to overcome at
6 trial, in terms of this trial and how it unfolded.

7 A. Well, I mean I think what killed this
8 was, again, the stepdaughter, who we thought albeit
9 perhaps more hopefully then we were entitled to,
10 based on the preliminary hearing testimony, that,
11 you know, things might turn our way and that would
12 give us reasonable doubt, but, again, I do not
13 recall echoed in our minds like 20 times in a row it
14 seems like.

15 Q. All right. Nothing further, thank you.

16 MS. MARTO: No redirect, Your Honor.

17 THE COURT: No redirect?

18 MS. MARTO: No redirect, Your Honor.

19 THE COURT: You may step down.

20 WITNESS: Thank you, Your Honor.

21 THE COURT: Who else?

22 MS. MARTO: Okay, we're gonna call Ms.
23 Pamela Smith.

24 * * * * *

25 Pamela Smith,

1 having been duly sworn,
2 testifies as follows:

3 * * * * *

4 **DIRECT EXAMINATION**

5 BY MS. MARTO:

6 Q. Good afternoon, ma'am, thank you for
7 your patience today?

8 A. Yes, ma'am.

9 Q. So what is your relationship with Mr.
10 Jones? Can you state your name for the record?

11 A. Pamela Smith.

12 Q. And what is your relation to Mr. Jones?

13 A. I am his niece.

14 Q. Okay. And did you talk at Mr. Jones at
15 all prior to this trial concerning the case?

16 A. Yes.

17 Q. Okay, and what did y'all discuss in
18 broad strokes?

19 A. Just when it first came about, and I
20 just told him, "You know, hey, this is what I heard.
21 You know, I'm concerned, is there something going
22 on, you know, in your household that you need to see
23 about," or something like that.

24 Q. Did you talk to the 14-year-old at all?

25 A. I did not, no.

1 Q. And did Mr. Jones, or his attorney, ask
2 you to testify at trial?

3 A. No. From my understanding none of our
4 family was asked to testify.

5 Q. But could you have offered some things
6 in this court concerning his role in the community?

7 A. Yes. Well, I won't want just focus on
8 the community, I would say as a family, 'cause --

9 Q. Okay.

10 A. -- I'm not saying he could get the
11 community, but just as a family, and me being a
12 family member, not just the community.

13 Q. And what could you have said in
14 support?

15 A. As I said, I am his my niece. My
16 grandmother raised me, my mom passed away when I was
17 3 years old. His mother raised me along with him
18 and my other uncles, and so I've known him all my
19 life. Not just him and the character, any of my
20 uncles I've never seen a child molester, or any
21 type, and being around children all the time. My
22 grandmother raised me and four other girls, so we
23 were left alone a lot with my uncles. Not only
24 that, my daughters -- I have daughters, and I would
25 not sit here on the stand today if I felt in my

1 heart that something was done to that child, because
2 I have my own girls, okay, so that's first. The
3 thing is, not only we have a lot of females in our
4 family, but as he said, working with females around
5 DJJ, and females in the afterschool program, you're
6 around females, you're around little boys, you're
7 around little girls all the time over years and
8 years, and this is the first that something like
9 this has ever come about in our family period.

10 Q. And if you were asked to, would you
11 have said that to the Court during sentencing?

12 A. Yes, ma'am.

13 Q. And do you think that would have helped
14 him?

15 A. I'm not sure, because I mean just to
16 say I've been in law enforcement 15 and a half years
17 myself, so I am usually on the opposite side, or
18 bringing people into court and that type of stuff,
19 so I've seen it go many ways, many times, so I mean
20 it just depends on the mindset of the people.

21 MS. MARTO: No further questions, Your
22 Honor.

23 **CROSS-EXAMINATION**

24 BY MS. DIXON:

25 Q. Just briefly, Ms. Smith, how are you

1 today?

2 A. I'm good, how are you?

3 Q. Good, thank you. Now, you did not live
4 with the applicant, did you?

5 A. No, no.

6 Q. You were not living in the home with
7 him and the minor, correct?

8 A. Of course not.

9 Q. So you were not always there when they
10 were there together ---

11 A. No.

12 Q. -- at the house? And you talked about
13 all the things he did with the children. Were you
14 around him every time he was around those other
15 children?

16 A. No, of course not every time.

17 Q. So you don't -- you don't know what
18 happened when you weren't around, correct?

19 A. Of course not.

20 Q. And I think you said on direct that you
21 first went to him about this, because you had heard
22 something. Had you heard rumors about something?

23 A. Right. It was a statement that the
24 young lady made to my stepdaughter, or my daughter,
25 and then she later changed the story, but when I

1 head it I called him and his wife and informed them
2 of what I heard.

3 Q. Gotcha, gotcha.

4 A. Yes.

5 Q. Is your daughter the one that testified
6 at trial? The friend?

7 A. She didn't.

8 Q. No?

9 A. No.

10 Q. Okay. Nothing further, thank you.

11 MS. MARTO: No redirect, Your Honor.

12 THE COURT: You may step down.

13 MS. MARTO: I'm gonna call Ms. Brenda Jones
14 to the stand now.

15 * * * * *

16 Brenda Jones,
17 having been duly sworn,
18 testifies as follows:

19 * * * * *

20 DIRECT EXAMINATION

21 BY MS. MARTO:

22 Q. Good afternoon, ma'am.

23 A. Good evening.

24 Q. So what is your relationship with Mr.
25 Jones?

1 A. I'm his wife.

2 Q. Okay. And did Mr. Jones tell you
3 anything about what was going on in the case at that
4 time?

5 A. He has.

6 Q. Okay, and did you talk to the 14-year-
7 old about the case?

8 A. Yes.

9 Q. Okay, and what is your understanding of
10 what happened?

11 MS. DIXON: Object to the hearsay.

12 THE COURT: Sustained, you can rephrase
13 your question.

14 MS. MARTO: Okay.

15 BY MS. MARTO:

16 Q. And so do you have any personal
17 knowledge of any facts regarding the allegations?

18 A. Yes.

19 Q. What is your personal knowledge?

20 A. That for me, that's my daughter. And
21 we lived together, we stayed together, we do stuff
22 together, we talk, we communicate all the time. And
23 if something like that would have happened, she
24 would have told me that it happened. And I talked
25 to her personally, and I asked her ---

1 MS. DIXON: Objection, hearsay.

2 THE COURT: Sustained.

3 BY MS. MARTO:

4 Q. So don't tell me what she said, but did
5 she ever confide in you about ---

6 MS. DIXON: Objection, hearsay.

7 THE COURT: Sustained.

8 BY MS. MARTO:

9 Q. Now, what could you have testified to
10 if you were called to testify at trial?

11 A. I would have testified to the fact that
12 I know my husband, and I know that he wouldn't do
13 nothing like that, as his niece just was up here
14 talking, I'm saying as well from myself, personally,
15 that he wouldn't do nothing like that. Like being
16 around all the kids, the DJJ program that he has
17 been in, and the afterschool programs, and running
18 the church, you know, we -- we meet those kids 24/7
19 and doing stuff, why now? This is the first, and,
20 you know, nothing like that ever happened before, so
21 why now, you know? And I truly believe my husband.
22 I believe he would never do nothing like that, ever.

23 Q. And you would have said that if you
24 were called to testify?

25 A. Yes, I would have.

1 MS. MARTO: No further questions.

2 MS. DIXON: Nothing from the State. No
3 cross for this witness, yes, sir.

4 THE COURT: Will you call Mr. Walters now?

5 MS. MARTO: And so we would call Mr. Glenn
6 Walters.

7 * * * * *

8 Glenn Walters,
9 having been duly sworn,
10 testifies as follows:

11 * * * * *

12 DIRECT EXAMINATION

13 BY MS. MARTO:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. How long did you have this case before
17 it went to trial?

18 A. I'm not sure, I can't remember, it's
19 been years ago, so it'd be inappropriate for me to
20 give you a time period. It's been a number of
21 years.

22 Q. Okay, so did you represent him over the
23 course of several years; is that right?

24 A. I don't think it was the course of
25 several years. There was a DSS proceeding with

1 regards to the allegation that was being made, and,
2 then, of course, there was a criminal prosecution.

3 Q. Did you represent him on both?

4 A. If memory serves me correct, I'm not
5 exactly sure. I know that with the DSS proceeding,
6 usually, when you have a DSS proceeding, if there is
7 an admission to work things out, you automatically
8 are put on the registry. And then, of course, the
9 issue will be the criminal charge, you know, we
10 represented him in that proceeding.

11 Q. So how many times did you meet with
12 him; do you recall?

13 A. Mr. Jones, probably -- maybe ten or 12
14 times, and then, of course, we met with the family
15 also. At that time I think we had an office in
16 Allendale, so we were back and forth over and over
17 again, and Mr. Jones was constantly meeting with us.
18 And we met with him, met with his wife, we also met
19 with the daughter in this particular case, and we
20 went out to the church. There were a number of
21 visits in the Allendale area.

22 Q. Now, did you discuss with him I guess
23 the facts and the evidence that the State had
24 against him?

25 A. Sure. What's normally done with each

1 defendant, and I'm speaking from the policy inside
2 of my office, the first thing is you get your Rule
3 5, make a copy of it, provide it to the client.
4 Have him carefully read the Rule 5, and then, of
5 course, when there's a candid discussion, a frank
6 discussion, a brutally honest discussion with
7 regards to the criminal defense, and provide the
8 defendant a copy of this Rule 5, and then, of
9 course, rip the Rule 5 apart with the client
10 present, and carefully go through the allegations
11 that have been made. That way they know the
12 strengths and weaknesses of the case itself, where
13 they stand, and this is normal procedure if you
14 represent a defendant.

15 Q. Did you discuss with him the State's
16 witness list?

17 A. Excuse me?

18 Q. Did you discuss with him the State's
19 witness list?

20 A. Sure. I mean the biggest problem we
21 had was -- I wouldn't say it was the State's
22 witnesses, the problem that we had was the
23 admissions that were made by our client, and those
24 were very serious allegations with regards to the
25 little girl. He admitted that he had gone to this

1 sexually explicit book -- bookstore. He admitted
2 that he had purchased the sexual device with regards
3 to the girl, she was a minor. He admitted that they
4 had planned to buy it because they believe she was
5 sexually active. He admitted that he participated
6 in the process of showing the little girl how to use
7 the sexual device. And, of course, his position
8 was, "That I've done nothing wrong."

9 Q. So do you feel like there's anything in
10 this case that you didn't communicate with Mr. Jones
11 about?

12 A. No. With Mr. Jones we were brutally
13 honest. In fact, normally, with every defendant,
14 rake him over the coals, punch him right in the
15 face, say, "This is exactly what you've got." And
16 that way there's no middle ground when they say, "I
17 don't understand something, and you didn't convey it
18 to me." There's a possibility that it's
19 misunderstood. What we do is, we sit down and break
20 down each and every aspect of the case. I tried --
21 I tried this case along with Attorney Culler. We've
22 both been Public Defenders for years, and in
23 addition to that, we also have active criminal
24 practices, but any time you have a defendant, and it
25 involves serious allegations where there's a

1 possibility that things could go south, but you even
2 do that on the simple cases, be as brutally honest
3 as you can, confront them, punch them, knock them
4 down, prepare them. And if you're not doing it with
5 your clients before you go to Court, you don't want
6 to glad hand them, and then they get in the
7 courtroom, and some self-defense lawyer eats him
8 alive. So bottom line is, is that he's informed,
9 he's aware, his eyes are open, he knows exactly
10 what's going on.

11 Q. Now, did Mr. Jones ask you to call any
12 witnesses to speak on his behalf?

13 A. I know that Mr. Jones' primary concern
14 was the little girl, and what she was going to say.
15 And so what happened was, we met with the little
16 girl at that time, and we met with her, along with
17 her mother, and all parties that were involved in
18 the scenario. And when we met with the young lady,
19 first of all we told her, "Do you know the
20 difference between a lie and a truth? Do you know
21 what it means to take an oath?" And most
22 importantly, we're sitting down conducting this
23 process, and your mother's present. So we're not
24 going to influence you in any way, we simply want
25 you to tell us what happened. The biggest problem

1 we had in that particular case was, Jones was
2 primarily the breadwinner for the home, and, of
3 course, what happened was, is that he was supplying
4 the home with money, and they were prospering and
5 doing well. And then this allegation was being
6 made, and, of course, that threatened the stability
7 of the church itself, the community organizations
8 that he was involved in, and the survival of his
9 family. When we met with the young lady with adults
10 being present, she simply skirted around the issue
11 and then she said, "You know, I -- I don't think it
12 happened the way that DSS said it happened." And
13 then, of course, when she testified in Court, it was
14 sometime later. They were afraid that she was
15 sexually active, and by the time she had made it to
16 Court she was already pregnant with the -- and had
17 another -- had a child, the first child. So under
18 the circumstances, the deterrent of buying a -- I
19 think it was a vibrator or something of that nature
20 for the child to prevent her from being sexually
21 active, I don't know where he came up with that
22 idea. And then, of course, she bragged about it at
23 school, and then, of course, that led to Jones being
24 arrested. And then, of course, she subsequently
25 went on to college, and then she came back home, and

1 she's pregnant with a baby. So what happened was is
2 she testified, and when she testified we confronted
3 her just like we did when we met with her, and we
4 said, "These allegations that are being made,
5 they're very serious, and you know the difference
6 between a lie and a truth. We don't want you to
7 embellish, we want you to be brutally honest with
8 us." And her response was, "I don't recall." And
9 at that time we realized we were being played, she
10 played us. All along she was saying, "It just
11 didn't happen," and I don't know what happened
12 between her and Jones during that period of time,
13 but when she got on the stand she would not state
14 that unequivocally, "It never ever happened. He
15 never put that vibrator in me, as far as him doing
16 something for his gratification." What she said was
17 -- I believe her words were, "I don't recall." And
18 she repeated that over and over again, so
19 essentially what happened was, in the middle of the
20 trial the floor caved in.

21 Q. So what was your defense at trial?

22 A. Well, the defense was supposed to be
23 that the young lady was going to come into court,
24 and she said she told us the truth about what
25 happened, that there was no action taken by Jones,

1 or any type of sexual gratification. There was the
2 purchase of this vibrator, I believe it's from the
3 Lion's Den, it was over in Santee, South Carolina,
4 and that was the strange thing about it. It was
5 alleged that Jones and his wife had talked about it,
6 but then Jones left the house on his own and went
7 and purchased the sexual device, brought it back to
8 the house. Then the question was, "Well, who was
9 home when this occurred?" It appeared that there
10 was an exchange between he and the young lady. And,
11 of course, when we talked with the young lady she
12 said that's not what happened what DSS is alleging.
13 Jones had alleged that she was taking magic markers,
14 and things of that nature, and using them as sexual,
15 you know, for gratification and whatever else. And,
16 of course, they said, "This is -- they're making
17 something out of nothing. And the allegations of
18 what was said at the schoolhouse they embellished,
19 and it's just untrue." She said, "That's true,
20 they're just embellishing, and it -- it -- it didn't
21 reach that level. So she essentially was denying
22 the -- the magnitude of what happened. On the other
23 hand, we were sitting down with Jones, and we were
24 telling Jones, "The magnitude of what's occurring
25 here cannot be diminished. This is a minor child,

1 you purchased a sexual device, you in a braggadocios
2 manner to the officials at DSS you made it clear,
3 "Yes, I bought it. Yes, I showed, you know, I
4 showed her how to use it, and things of that
5 nature," and I said, "this is bad, and one thing he
6 -- he needs to face up to." We worked out a plea,
7 where he could have walked out of that courtroom
8 simply for assault, the problem was he could have
9 been -- he had to be put on the sexual registry, but
10 he would have been a free man. He would have walked
11 out of that courtroom. He turned down that plea
12 offer, and he agreed to roll the dice. I think that
13 kid might have been 15 or 14 at that time. He said,
14 "I want to roll the dice on what my stepdaughter's
15 going to say, without me this family can't survive."
16 And, of course, there were of limited means, but by
17 marrying Jones that created status, it brought more
18 money in the home, and things of that nature. All
19 of that was going to disappear. Moreover, if he was
20 on the registry, he couldn't continue the ministry
21 with the church and the social activities, but he
22 had an opportunity to walk out that door after he
23 admitted that he purchased a vibrator, placed it
24 inside of a child, and all he had to do was register
25 and he'd be a free man. He wouldn't have done a day

1 in time, but he made it clear to us that, "I will
2 not accept any plea. I will not go on any registry,
3 and my stepdaughter's going to say that it didn't
4 happen that way. It was not this picture that they
5 painted of someone that simply wanted some sexual
6 gratification." And what happened was, in the
7 middle of the trial we were backdoored. She got on
8 the stand, and she stated, "I can't recall."

9 Q. Did you discuss the trial strategy with
10 Mr. Jones?

11 A. Five or six times. Rolled him over,
12 punched him, punched him here, punched him there,
13 kicked him, said, "Look, these are all the different
14 scenarios of what could happen, if you walk inside
15 of that courtroom, so I want to prepare you for each
16 of those scenarios, and how you're going to address
17 it." He showed up for court that day, and I believe
18 he had a white dinner suit on, and it was strange.
19 I said, "Yeah, it's a dinner suit, it's a tuxedo,
20 and it's not really a suit that you would wear to
21 court." And the other issue was is, when he showed
22 up to court, this young lady showed up, and they
23 said, "Well, she's had the baby, she's gone through
24 some changes," and she was cold, she was distant. I
25 said, "Well, I don't like this. I don't like what

1 this young lady's doing here, and she was cold, and
2 she was distant, and it was a self-fulfilling
3 prophecy, she ended up having the baby anyway. So
4 then what happened was is when we met with the
5 mother of the child and the entire family, and we
6 sat down and we started talking, my first reaction
7 was, "I'm getting a bad read on this. She's gone
8 away for a year, and she's actively had sex with
9 people, and she's had a baby, is she really in your
10 corner Jones, or is this going to fall apart." And
11 his position was, "I will not accept the plea." The
12 Solicitor's Office, in that particular case, they
13 were afraid of Allendale County. They were afraid
14 that Allendale County would allow him to walk. Can
15 you imagine a man that makes an admission, and says,
16 "I bought a vibrator, put it inside of a minor
17 child," and then you're gonna offer an assault
18 charge? I said, "We've got to take this, and let's
19 walk out this door, and all you've got to do is
20 register." He said, "No, I'm gonna turn my back on
21 all of that, put it on the record." So we discussed
22 not only the strategy, we even discussed the ups and
23 downs, the pitfalls of what could occur. There was
24 no confusion about what was going on.

25 Q. Now, do you feel like you had enough

1 time to prepare to try this case?

2 A. Sure.

3 Q. And what were the discussions you had
4 with Mr. Jones about the decision to testify?

5 A. Well, we said, "Let's see the ebb and
6 flow of the trial itself, and how it develops."
7 When you train young lawyers in criminal defense
8 work, you're always under the impression that they
9 have to hear from the defendant in order to set him
10 free, all right? The problem we had here was, is
11 that we had an admission that was made, and the
12 social workers made it clear, number one, he went
13 out and bought a sexual device for a minor child,
14 that was never denied, and he admitted to it, all
15 right? So when we talk about what he's going to
16 testify to, we're getting to the essence of the
17 case, the gravamen of the case itself. And the
18 problem he had in his particular case was the
19 admissions he had already made. He went to the
20 Lion's Den, he did purchase a sexual device, he did
21 put it inside of a kid that was 15 years old. So
22 what I'm saying is, is that he is the architect of
23 his own dilemma, and now he was gonna sit down and
24 somehow explain this to people. I said, "You're not
25 pontificating in the church on Sunday, and

1 somebody's gonna forgive you. You've got a serious
2 problem here, and as far as articulating your
3 position with regards to this case," every time we
4 talked about it I tore his behind apart. Every move
5 he made, everything he had to say, I turned him over
6 ten, 12 times and ripped him apart, and the bottom
7 line is that he was well prepared. The problem he
8 had was is that the set of facts that he was given.
9 Now, some people might not like the way you talk to
10 them, but you prepare them for trial. You curse
11 them out, you can kick him, you can dog him, but
12 when you charge money, you prepare people to go to
13 trial, it's not a job where you glad-hand people,
14 and tell them everything's okay. Your job is to
15 prepare them for anything that may come up in a
16 particular case. And one thing we were ambushed by
17 is, "I don't recall."

18 Q. Were you caught by surprise by anything
19 any of the State's witnesses testified to?

20 A. No. Bottom line is the State's
21 witnesses, the impact was minimal. The bottom line
22 is that we put a star witness. She's 15 years old,
23 you come home from school, and your stepfather pulls
24 out a dildo or vibrator and says, "I'm gonna show
25 you what you should do to make yourself -- to feel

1 some gratification because of the use of this
2 dildo," all right? That's what the problem is.
3 It's not the State's witnesses. His admission and
4 the bravado on the part of the Defendant that, yes,
5 I'm a community leader, I lead the church; but in
6 addition to that, I can show you how to use a
7 vibrator here, a dildo, and I can make sure that you
8 take care of yourself, and you're never pregnant
9 again." There is no program in America where
10 someone advises you to go out and purchase something
11 from the Lion's Den and insert it in a minor child
12 to prevent them from having sex. It was asinine in
13 the beginning to even sit down and push that agenda,
14 and we argued against it over and over and over and
15 over again. I simply put it to him in as mild a
16 manner as I could, and then I finally told him,
17 "You're a caveman going to the opera, and you can't
18 do this. You can't pull this off."

19 Q. Now, do you recall there being a Batson
20 challenge in this case?

21 A. I can't remember. If it was a Batson
22 challenge, Allendale County is predominantly black.
23 This wasn't a case that involved any racial issues.
24 This was a case of intelligence and understanding.
25 And the problem we had here was that it's a primal

1 case. It deals with salacious issues that people
2 love. That's why everybody's on their phone, I want
3 to see something nasty, I want to see something
4 sexual, I want to see something that really turns me
5 inside out, something I really don't want to get
6 into. This case fits into that category, and you're
7 playing with fire when you go in and say, "What will
8 be the reaction of the jury with regards to these
9 issues." Batson, there's no way to play a racial
10 card in that room, and we play racial cards all the
11 time. We pit people against each other, run them
12 into each other. We play sexual issues when it's
13 men and it's women. In this particular case, we're
14 talking about a minor child and the use of a
15 vibrator, and an adult purchased it, who was
16 actually managing the home, paying for the
17 management of the home, was supposed to be
18 supervising the child. The care, maintenance and
19 stewardship of the child was in his hands, and he
20 turns around and pulls out of the bag a sexual
21 device, and says, "I'm gonna solve your problems."

22 Q. So based upon what your testimony has
23 been, do you think that who was on the jury would
24 have influenced the result?

25 A. Excuse me?

1 Q. Based upon the testimony you stated, do
2 you think who was on the jury would have changed the
3 result at trial?

4 A. It was a wild card. So -- so what
5 you've got here is, is that you've got a -- you've
6 got a cornucopia of -- of just wild events, and
7 you're sitting down saying, "We've got a dildo here,
8 a vibrator, we've got a minor child, and we've got a
9 parent that went out and purchased it." Which way
10 could it go? I don't know. The problem is the laws
11 of physics don't apply. You can drop an apple in
12 that room, it'd take off like a rocket. And the
13 problem he had was, he was saying, "I've got it all
14 under control," and that's the problem. As lawyers,
15 we think we have it under control. As pastors, they
16 feel they have it under control. And the problem
17 here is, is that he was betting with his life. He
18 was betting with the time that he could have been
19 free, and he could have walked out that door a free
20 man, when he didn't deserve it.

21 Q. Based upon the transcript, a Batson
22 violation was found for striking too many white
23 juror -- female jurors, and according to my client,
24 he thought you were ineffective for striking a juror
25 the first time without striking them the second

1 time. Do you think that made a difference?

2 A. Well, let's talk about that. So the
3 first issue is, is Batson deals with a racial issue.
4 The problem we have in Allendale County is, at one
5 time they had the distinct honor of being the worst
6 school in South Carolina. And, of course, in South
7 -- and South Carolina was last in the nation.

8 Q. Right.

9 A. So you've got an institution that's
10 actually the last school to educate -- or the
11 poorest school, in other words in terms of
12 intelligence or graduation rates and accomplishments
13 in Allendale County, they were last in America. The
14 next issue was is, of course, we wanted jurors that
15 could relate to Jones, and those were the people who
16 attended a church. Most of those people were not
17 southern and white and women. The most dangerous
18 people in that courtroom would be southern, white
19 women. And the atrocity of what they were alleging
20 in that particular case about going to the Lion's
21 Den, and the purchase being made, we did everything
22 possible to try to pick a jury that would be
23 comparable, to understand exactly what his psyche
24 and what his mind was thinking when he did that.
25 The most dangerous person on that jury would be a

1 southern, white woman. And in this particular case
2 we did our best to try to keep them away from Jones.
3 There was no way he could justify this. And, of
4 course, if someone sat down and said remove racial
5 issues, you can't justify across the board with
6 anyone. It made my wife's skin crawl just to hear,
7 "I went out and bought a vibrator for my daughter."

8 Q. Can you think of a reason why you would
9 have struck the juror the first round, but not the
10 second round?

11 A. I don't know what was going in at that
12 time. I can't remember. I know that we'd gone over
13 the jury numerous times over and over again. The
14 biggest problem we had here is ego, he can't let it
15 go.

16 Q. And the last issue is, he feels that
17 you did not play up the role he had in the community
18 sufficient enough during that trial or during
19 sentencing. Now, do you feel like you established
20 the role he played in the community?

21 A. The role he played in the community is
22 one of the -- one of the issues that caused problems
23 in the case. Because the picture was community
24 leader, afterschool programs, actively involved, I'm
25 involved in civil rights, and all the rights that

1 people should have, and it encompasses all the
2 opportunities of everyone; but the problem was, is
3 that he came off, as many civil rights leaders do,
4 as a Charlatan, and he as accused of sexual behavior
5 that was totally inappropriate. It's one thing if
6 you're having sex with adults, and we don't like
7 you, it's another thing when you're accused of
8 sexual gratification with a minor child. The
9 problem he had was he was well-known within the
10 community. The problem he had was because he was
11 well-known in the community, and the people that he
12 was servicing, they had children that were involved
13 in his programs and things of that nature. His
14 status in the community could not change what he had
15 done, and what he admitted to. He could actually
16 have been Governor, but if he sat down and said, "I
17 went to the Lion's Den, and I looked over the dildos
18 and vibrators, and I bought one for a 15-year-old
19 kid," his status in life would have been nothing.
20 And just to ask that question, it's indicative of
21 how he thinks, if he would put that in your mind.
22 His status is irrelevant. His behavior and his
23 actions have led to his demise, and his behavior and
24 his actions of going and purchasing a sexual device
25 and then inserting it in a kid is exactly why he's

1 sitting here. It had nothing to do with his Bible,
2 it had nothing to do with the church, it had nothing
3 to do with his status and his relationship with the
4 Lord. He willfully and he -- he did it, and he
5 agreed that he did it.

6 MS. MARTO: No other questions, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MS. DIXON:

9 Q. Just a few quick questions, and I'll
10 keep it brief. We talked a lot about the church
11 today. Can you clarify what was his role in that
12 church?

13 A. It's my understanding that Jones was --
14 they refer to him as Bishop Bobby Jones. So what
15 happened was is, you know, you get Baptist churches
16 that pop up out of the ground, and they say, we've
17 got a congregation. You work the money correctly,
18 you organize it correctly, set it up in a hierarchy.
19 You don't incorporate it, so the courts can't get
20 involved, and if the courts can't get involved, then
21 all of a sudden you say, okay, I've got assistant
22 ministers, ministers below that minister, and then
23 I'll be known as a bishop. And then you turn around
24 and you go into these faith-based grants, and start
25 writing programs, and tell me one faith-based

1 program or grant that Allendale wouldn't qualify
2 for. They qualify for all grants across the board,
3 because there's deprivation and poverty. So then
4 you end up in controlling the organization, and you
5 hesitate, number one, to even create a 501(c)3,
6 because you don't want to be regulated. You don't
7 want anybody to know. And then once you're in
8 charge of those organizations, that's where the
9 abuse comes in, and as we say in -- in the black
10 community, that's where the poverty pimps come in,
11 and they come in and claim that they're gonna save
12 the community. And what happened here was, he had
13 done good things, he'd accomplished good things, he
14 had a good name, he was known in the community. The
15 big question is, out of all the things you could do
16 in a community, why would you go buy your daughter a
17 vibrator and then show her how to use it, when she's
18 not even your blood-daughter, she's your
19 stepdaughter. This is -- is just -- it doesn't --
20 it doesn't make any sense. We sat down one day and
21 I said, "Do you know what non compos mentis means?"
22 It means you're crazy, you're not mentally stable.
23 Why would you do that when you had all this on the
24 table? He had the world in his hands, and in that
25 community no one was going to challenge him. And

1 then what do you do? You go out and you go to the
2 Lion's Den, and you're familiar with the place, I
3 don't know what you're doing. You're driving from
4 Allendale all the way to the other side of
5 Orangeburg. And I said, "What are you doing over
6 here? You're driving over an hour. Orangeburg
7 County is big enough where you drive from one end to
8 the other, it takes you over an hour, and you're
9 coming from Allendale. He was doing great things,
10 he was accomplished, people looked up to him, and in
11 that community education and things of that nature
12 don't matter. Some were called, some were sent,
13 some grabbed a Bible and there they went. He was on
14 the road. The problem is that he destroyed himself,
15 not from something he did out in the community, he
16 did it in the four walls he lives in right here.

17 Q. Gotcha. And then just to clarify the
18 jury issue, and I'm just gonna try to kind of go
19 through the transcript real quickly to kind of
20 refresh your recollection. Do you recall that the
21 State challenged your striking of three white women,
22 one of which -- two of which you gave what they
23 considered race neutral explanations; or do you
24 recall getting into a long discussion about how you
25 struck the third one because she was a housewife?

1 A. I can't remember. All I know is, is
2 that in striking a jury, and if it's a racial issue,
3 or if it's a sexual issue, whatever it is, I'm
4 prepared to argue to the end, flip it, turn it, and
5 you go through the jury cards, and you say, "Are you
6 a housewife? Do you have any kids? Where are you
7 employed?" Is she married to someone? Has she ever
8 been sick before? What did she write on that jury
9 card? Whatever we've got there, you take it and you
10 make an argument and present it to help your client.
11 The problem we had here was, is that we got some bad
12 facts, and our client said, "No matter what, I'm not
13 taking a plea, I'm going forward."

14 Q. Gotcha. Now, if the record reflected
15 that the Court struck or quashed the jury, because
16 you could not give a race neutral explanation for
17 juror number 158, if she got called in the second
18 round, would you have a basis to move to strike her?

19 A. I can't remember. Judges throw my
20 strikes out all the time, but it's my job to be a
21 zealous advocate for my client. So every
22 opportunity that you can to advance the interest,
23 you do it. And -- and the problem here was is that
24 we're sort of shooting in the dark saying, how are
25 we gonna fix this? And I have to look in your face,

1 and say, "Would you convict my client, if you knew
2 he bought this type of material, and did it to his
3 stepdaughter?" The first time I looked at you I
4 might say, "Ahh, she seems sort of neutral." The
5 second time, "I don't want to do that." You know,
6 why is she on the phone? She's got kids? She's got
7 to pick them up today? You know -- you know, you
8 meet some people, and they say, "If you drink a six-
9 pack of beer in one night, you're an alcoholic."
10 You've got to be very careful, and it goes off the
11 ebb and vibe and the flow of a trial, and that's
12 determined by getting in the courtroom and actually
13 trying cases, it doesn't run by a textbook. And, of
14 course, a judge will yank a know and tell you, "Get
15 in line and get it done, and make sure you do it
16 correctly," and you have to accept that.

17 MS. DIXON: Nothing further, Your Honor.

18 MS. MARTO: No redirect, Your Honor.

19 THE COURT: Pardon me?

20 MS. MARTO: No redirect.

21 THE COURT: You can step down.

22 MS. MARTO: Our last witness --

23 WITNESS: Thank you, Your Honor.

24 MS. MARTO: -- is Mr. Craig Smith.

25 * * * * *

1 Craig Smith,
2 having been duly sworn,
3 testifies as follows:

4 * * * * *

5 DIRECT EXAMINATION

6 BY MS. MARTO:

7 Q. Good afternoon, sir.

8 A. Good afternoon.

9 Q. Thank you for your patience.

10 A. No problem.

11 Q. So how are you related to Mr. Jones?

12 A. I'm not related to him. First things
13 first, we've heard a whole lot of what Mr. Walters
14 had to say about education was not -- I was born and
15 raised in Allendale County. I've been police
16 officer for 25 years now. My wife, Dina Smith, born
17 in Allendale County. She's Director of the
18 Detention Center, so some of us have an education,
19 but I married into the family.

20 Q. Okay. And did anybody ask you to
21 testify at trial during sentencing?

22 A. No.

23 Q. And could you have said something to
24 the Court about Mr. Jones at that sentencing?

25 A. I sure could.

1 Q. What would you have said about his
2 character?

3 A. I knew Mr. Jones my school years, I
4 played football. He was a coach. He was also a
5 basketball coach. Him and another person at the
6 school taught school, didn't have any kind of
7 problems, would talk to him, he gave good advice.
8 My adult years I married into the family. Dealing
9 with people, you know, it would be a good day. I've
10 been an officer for 25 years, it isn't always a good
11 day. So if I have an issue about something, I have
12 to question myself. I was raised in a house with
13 three boys and one girl, with no father figure. I'd
14 go to him, he'd give me advice.

15 Q. Are you saying -- and you could have
16 testified to that at the trial if asked?

17 A. Most definitely.

18 Q. Okay.

19 A. Without a problem.

20 MS. MARTO: No further questions, Your
21 Honor.

22 COURT REPORTER: Your name?

23 WITNESS: Chris Smith.

24 **CROSS-EXAMINATION**

25 BY MS. DIXON:

1 Q. Just quickly, did you live with Mr.
2 Jones?

3 A. Never did.

4 Q. Never did.

5 MS. DIXON: Nothing further.

6 THE COURT: You may step down.

7 MS. MARTO: No further witnesses, Your
8 Honor.

9 THE COURT: Anything from the State?

10 MS. DIXON: Nothing further.

11 THE COURT: What would you like to say?

12 **CLOSING ARGUMENT BY MS. MARTO**

13 MS. MARTO: Just a brief argument, Your
14 Honor. We would just request you grant relief based
15 upon the allegations that were raised today. Your
16 Honor, my client testified that he didn't know what
17 the witnesses the State was going to call, were
18 going to be able, and were gonna be able to testify
19 to at trial. And he also stated he didn't -- he
20 wasn't given like the full details of the time-
21 served plea offer when he decided to make his
22 decision. Further, we had witnesses come today.
23 Counsel didn't do, from Mr. Jones' perspective,
24 didn't do anything to try and contact these
25 witnesses. These are, you know, there were three

1 witnesses. Mr. Jones alleges he had 20 that were
2 ready to go, and so we would just state that that
3 would have altered the sentence he was given in this
4 case. And so for the reasons addressed today, and
5 because of what Mr. Jones has testified to today, we
6 would just request that this Court grant relief.
7 Thank you.

8 **CLOSING ARGUMENT BY MS. DIXON**

9 MS. DIXON: Your Honor, we submit much of
10 this today is gonna come down to credibility. Both
11 of his lawyers testified extensively about the
12 conversations they had, that they reviewed the
13 evidence with him, that he was intelligent, that he
14 understood these things, but he turned down a plea
15 for time served, because he didn't want to register
16 on the sex offender registry. They had also
17 testified that really what stopped the case for them
18 was when the minor victim testified at trial, and,
19 basically, at that time just said, "I don't recall.
20 I don't recall. I don't recall." So at the end of
21 the day, you know, they've got to work with the
22 facts as they get them, and we submit that they did
23 more than an effective job, went far above and
24 beyond. In terms of -- I do want to point out, in
25 terms of the Batson issue, and, Your Honor, this is

1 all in the record, and the Batson challenge begins
2 at page 73, but it was juror 158 that was,
3 ultimately, the basis for the quashing of the jury,
4 and that juror was later called in the second round
5 and was not -- they didn't move to strike at that
6 time, but I would just submit that based on the fact
7 that the jury had just been quashed, because they
8 could not give a race neutral explanation for
9 striking her, that there was really no legitimate
10 basis at that point to then strike her.

11 **JUDGE'S RULING**

12 THE COURT: All right. Well, ultimately,
13 this boils down to who do you believe, and, frankly,
14 I find that the testimony of two lawyers, and
15 particularly, Mr. Walters, was most persuasive, and
16 I find much more believable. And as a result I
17 think the applicant has failed to meet his burden of
18 proof on any of the charges, and so his application
19 is denied. And the State is to prepare me an order
20 within two weeks.

21 (Whereupon, the hearing was concluded.)

22 - - -END OF TRANSCRIPT- - -

23

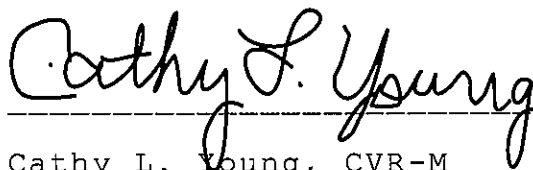
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Colleton County, South Carolina, on the 27th day of
November, 2023.

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

A handwritten signature in cursive script that reads "Cathy L. Young". The signature is written in black ink and is positioned above a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) FOR THE FOURTEENTH JUDICIAL CIRCUIT

FILED FOR RECORD
2024 APR 15 A 11:10

Bobby Jones, Sr., SCDC #377012,) Case No. 2021-CP-03-00176

ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Bobby Jones, Sr. on September 13, 2021. On November 27, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified at the hearing along with trial counsel Michael R. Culler, Jr. and Glen Walters, Sr., Esquires. Applicant also called as character witnesses his wife Brenda Jones; his niece Pamela Smith; and Pamela's husband Craig Smith. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a twelve-year sentence. In July 2018, the Allendale County Grand Jury indicted Applicant for second-degree criminal sexual conduct (CSC) with a minor (2013-GS-03-00039). On July 9, 2018, Applicant proceeded to a jury trial before the Honorable Brooks Goldsmith. Glenn Walters, and Michael R Culler, Jr., Esquires, represented Applicant. Assistant Solicitors Rebekah Luttrell



and Leigh Staggs prosecuted the case. Following a four-day trial, the jury returned a verdict of guilty. Judge Goldsmith sentenced Applicant to twelve years' imprisonment.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Adam Sinclair Ruffin. On appeal, Applicant argued the trial court erred in:

- 1) Granting the State's motion to quash the jury following the State's challenge pursuant to Batson v. Kentucky; and
- 2) Qualifying Sitha Patel as an expert in the field of "child sexual abuse dynamics."

The Court of Appeals affirmed. State v. Jones, 2021-UP-258 (Ct. App. filed July 7, 2021). The remittitur was sent September 8, 2021.

TESTIMONY PRESENTED AT TRIAL

Victim is Applicant's stepdaughter. According to trial testimony, Victim lived with her mother and Applicant when she was fourteen. At some point in 2013, Victim disclosed to Nicole Smith that Applicant had touched her. (R. 175).

In February 2013, Carolyn Chess, a substitute teacher, overheard Victim discussing her sexual activity with Applicant. (R. 195). Chess reported the accusations to the guidance office.

On March 4, 2013, school counselor Pamela Kinard, school nurse Kimberly Solomon, and school resource officer Samuel Holmes met with Victim. (R. 111, 186, 210). That same day Victim provided two written statements. (R. 537-39). In her first statement, Victim disclosed that she and Applicant "did it," and Victim's mother had confronted Applicant about the disclosure, prompting Applicant to "almost kill[] himself." (R. 537). Victim gave a second more detailed statement to Sheriff Tom Carter disclosing that one night after Christmas, Applicant "put his penis inside me." (R. 538-39).

When Applicant was confronted later that day about the accusations, Applicant told Sheriff Carter that he and his wife had concerns about Victim masturbating with a magic marker. Because of their concerns, Applicant told Carter that he bought Victim a vibrator and showed her how to use it. (R. 74, 319-20).

Applicant also spoke with DSS employee Mary Carter and told her that he showed Victim how to use the vibrator while her underwear and pants were pulled down. (R. 336). The following day, Applicant again disclosed to Carter that he assisted Victim with the vibrator and specified that he used his hand to control the vibrator rather than Victim using the vibrator herself. (R. 341). On a subsequent date, Carter visited Applicant's home and Applicant showed her where he and Victim were sitting when he used the vibrator. (R. 343).

On March 26, 2013, Victim met with SLED agent Richard Johnson and recanted her prior accusations. (R. 224, 540-41). Victim told Johnson that she used the vibrator on herself, and the only time Applicant touched her was when he touched "the top of my chest." (R. 540-41).

At trial Victim testified for both the State and Applicant. When the State called Victim to testify, she claimed to remember very little and answered most questions with "I don't recall." (R. 127-53). When Applicant called Victim to testify, she admitted she received a vibrator from Mother and Applicant. Victim testified she eventually told Smith about the vibrator, which prompted a rumor about her and Applicant. (R. 404-18).

Applicant testified in his defense and admitted to buying Victim a vibrator but denied showing her how to use it. (R. 439-40, 445). Applicant also denied having sex with Victim. (R. 441). Ultimately, the jury convicted Applicant of second-degree CSC with a minor. (R. 528).

CURRENT APPLICATION

On September 13, 2021, Applicant timely commenced this PCR action alleging:

1. Ineffective assistance of counsel;
 - a. Failure to investigate and prepare defense;
 - b. Failed to call witnesses;
 - c. Failure to move for a directed verdict;
 - d. Failure to object; and
 - e. Failure to file a direct appeal.

The State filed a return moving to dismiss Applicant's claim related to a direct appeal and requesting an evidentiary hearing on the remaining issues. On November 14, 2023, Applicant filed an amended application alleging counsel was ineffective for:

1. Failing to properly communicate with Applicant about his case;
2. Failing to call Applicant's witnesses to testify at trial;
3. Failing to properly prepare Applicant to testify at trial;
4. Failing to inform Applicant of the State's witness list and what their testimonies would roughly consist of;
5. Failing to discuss a time-served plea offer with Applicant;
6. Failing to assert a proper defense;
7. Failing to discuss defense and trial strategy with Applicant;
8. Inadequate preparation time;
9. Failing to meet with Applicant enough;
10. Failing to investigate the State's witnesses and what they would testify to at trial;
11. Failing to strike a juror in the second round of jury selections that he struck the first time;
12. Failing to mitigate the sentence by highlighting the role Applicant played in the community prior to being charged.

At the evidentiary hearing, Applicant proceeded on the allegations in his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Allendale County Clerk of Court records of the underlying conviction; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records, including the trial transcript; and the records of the current PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland,



466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to communicate¹

Applicant first contends counsel was ineffective for failing to properly communicate with Applicant about his case, failing to inform Applicant of the State’s witness list and what their testimonies would roughly consist of, failing to discuss defense and trial strategy with Applicant; and failing to meet with Applicant enough. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified trial counsel “did nothing.” He stated they met ten times during the five years they represented Applicant but did not discuss trial strategy or his defense. He also stated he did not know what evidence the State had or who they would call as witnesses. Applicant averred he did not have anyone to advocate for him.

Michael Culler testified he assisted Glen Walters with the case and sat second chair. Although he was not involved in every conversation Walters had with Applicant, Culler was involved in the “vast majority” of them. Culler testified they discussed witnesses, trial procedure,

¹ This section addresses allegations one, four, seven, and nine of Applicant’s amended application.

and the State's evidence, and he had no concerns about Applicant's ability to understand the conversations. Although he did not specifically recall discussing the State's witness list, he stated that was something he would generally do as part of his practice. Culler testified Applicant was eloquent and intelligent and asked a lot of questions. He averred the case "dwindled" five years due to Applicant's "choreography."

Walters testified he met with Applicant ten to twelve times and also met with his family—including Victim and Applicant's wife—and visited Applicant's church. He stated they discussed the facts and the State's evidence, and he provided a copy of discovery to Applicant. Walters testified they had candid conversations and explained the strengths and weaknesses of the case with Applicant. He stated they also discussed the State's witness list. Walters testified their biggest hurdle was Applicant's prior admission that he had purchased a dildo for Victim and shown her how to use it. He averred he and Culler were brutally honest with Applicant and broke down every aspect of the case, and Applicant was informed, aware, and knew what was going on. Walters testified they discussed trial strategy five to six times.

This Court finds Culler and Walters' foregoing testimony credible. This Court further finds that based on the foregoing credible testimony, Culler and Walters communicated extensively with Applicant about this case, informed him of the State's witness list and what their testimony would consist of, advised him of the State's discovery, thoroughly discussed defense and trial strategy with Applicant, and met with him sufficient times. Applicant has not set forth what more counsel should have discussed with him and thus did not prove deficiency. Likewise, Applicant has not shown how further discussions would have reasonably changed the outcome, and thus did not prove prejudice. Based on the foregoing, this claim is denied.

Failure to call witnesses²

Applicant next contends counsel was ineffective for failing to call witnesses to testify on his behalf at trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he had twenty witnesses he wanted counsel to contact, but counsel did not contact them. Culler testified they discussed character witnesses with Applicant, but he did not believe any of them were really helpful. He recalled they probably explained to the jury Applicant's role in the community, but Applicant's character could not get around the facts of the case. Ultimately Culler believed Applicant thought his community status would get him acquitted, and Applicant could not grasp the reality that he could be convicted. Walters recalled meeting with Victim and Applicant's wife. He testified that their understanding was Victim would testify that Applicant bought her the dildo but did not use it with her. At trial, however, she repeatedly testified "I do not recall." Walters testified he also visited Applicant's church and spoke to people at the church.

Applicant called three character witnesses at the PCR hearing. Pamela Smith, Applicant's niece, recalled that her daughter (who testified at trial) heard a rumor about Victim and Applicant, which prompted Pamela to ask Applicant about it. However, Pamela did not speak to Victim about it. Pamela stated she had known Applicant all her life and could have testified about his extensive role in the community, but counsel never asked her to testify. She stated Applicant worked with females and was around children all the time. However, this was the first time this came out in their family. Pamela acknowledged she did not live with Applicant, did not know what went on behind closed doors, and was not always around when Applicant was with children.

Brenda Jones, Applicant's wife and Victim's mother, testified Victim would have told her

² This section addresses allegation two of the amended application.



if something happened. She stated she would have testified at trial that she knew Applicant and he would not have done anything. Jones believed Applicant was innocent.

Craig Smith, Pamela's husband, testified he was not asked to testify. He stated he had been a law enforcement officer for twenty-five years and could have testified he knew Applicant from school, Applicant had been his coach, and he saw Applicant as a good father figure. Craig acknowledged he did not live with Applicant.

Initially, this Court finds Culler's and Walker's foregoing testimony credible. This Court finds that based on Walter's testimony about meeting with Victim, Jones, and church members, counsel conducted a reasonable investigation into character witnesses and was not deficient. Further, this Court finds Culler articulated a valid strategy in not calling any additional character witnesses in that they were not helpful. Notably, evidence of Applicant's good character was introduced through many of the State's witnesses, including Minor 2, who testified Applicant was her pastor (Tr. 225); school counselor Pamela Kinard, who testified Applicant did a lot of work with the students through "an after-school mentoring program and was very well—highly thought of and very respected within [the] school" (Tr. 240); substitute teacher Carolyn Chess, who testified she knew Applicant and did not believe he would have done what Victim said he did (Tr. 246, 249); school nurse Kimberly Solomon, who testified she frequently saw Applicant at school and was told "he had a program at his church where he mentored several students" (Tr. 260); Sheriff Tom Carter, who considered Applicant a friend and testified Applicant had school and church programs and worked with children, no one had ever previously made allegations against Applicant, and Sheriff Carter had reservations when Victim first disclosed the abuse because of who Applicant was (Tr. 368-70, 373-74); and Victim herself, who testified Applicant was the pastor of her church. (Tr. 180-81). Applicant likewise testified extensively about his role in the

community, which was never disputed at trial. (Tr. 482-87, 502-03). Based on the foregoing, counsel's decision to not call further character witnesses was reasonable under prevailing professional norms, and Applicant did not prove deficiency.

Likewise, Applicant did not prove prejudice. Although he presented three character witnesses at the PCR hearing, it is not reasonably likely the outcome would have been different had those witnesses testified at trial. Critically, the character witnesses at the PCR hearing presented testimony that was cumulative to what was already before the jury, and Applicant's role in the community involving being a pastor and mentor for children was not disputed at trial. Thus, it is not reasonably likely the outcome would be different had counsel presented these additional witnesses, and this claim is denied.

Failure to prepare Applicant to testify³

Next, Applicant contends counsel was ineffective for failing to properly prepare Applicant to testify at trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he was not prepared to testify. He stated he was told he would *not* have to testify, but he learned an hour before testifying that he would have to testify, and he was forced to testify. Applicant explained his role in the Allendale community, including the church he developed and his community service. He averred that if his good deeds had been known, he would have been acquitted. He admitted he purchased a dildo for Victim.

Culler testified they discussed with Applicant that it was his right to testify. Walters testified Applicant always admitted to buying the dildo, and he had previously admitted to using the dildo on Victim. He stated that every time they discussed his testimony, Walters "tore [Applicant] apart." Walters averred Applicant was well prepared.

³ This section addresses allegation three of the amended application.

This Court finds credible Culler and Walters' foregoing testimony. This Court further finds not credible Applicant's testimony that he was forced to testify, and he learned only an hour before testifying that he would have to testify. Based on Walters' credible testimony that he "tore [Applicant] apart" to prepare him for cross-examination, this Court finds counsels' preparation of Applicant was not deficient. Likewise, Applicant did not set forth what more counsel should have done to prepare his testimony. Although Applicant believed he would have been acquitted if the jury had been aware of his good deeds in the community, this information was before the jury. Finally, Applicant was advised by the Court that it was his decision whether to testify, and Applicant relayed he understood. (Tr. 252-54). Ultimately it was Applicant's decision to testify, and this Court finds Applicant did not prove deficiency or prejudice in regard to counsels' preparation of his testimony. Thus, this claim is denied.

Failure to discuss plea offer⁴

Applicant next asserts counsel was ineffective for failing to discuss a time-served plea offer with Applicant, which Applicant would have accepted. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel advised him about a plea offer and the judge told him to take the plea. Culler stated the State offered a plea to assault with no jail time, but it required Applicant to register on the Sex Offender Registry. He stated they discussed the offer with Applicant, but Applicant did not want to take it because he did not want to lose his status in the community. Culler recalled advising Applicant that this was not a good case for trial, but ultimately Applicant rejected the plea offer in court.

Walters testified solicitors do not generally like to try cases in Allendale county, and he

⁴ This section addresses allegation five of the amended application.

was able to work out a plea deal to assault. However, Applicant did not want to accept the offer because it required him to register on the Sex Offender Registry. He further testified Applicant believed Victim would recant at trial.

This Court finds Culler and Walter's foregoing testimony credible. Based on their testimony, this Court finds Culler and Walters did in fact convey the time-served plea offer to Applicant. Applicant himself acknowledged he was advised about a plea offer. Ultimately, this Court finds counsel relayed the offer to Applicant and were not deficient. Likewise, this Court finds Applicant ultimately rejected the offer because it required him to register on the Sex Offender Registry, and he did not want to lose his status in the community. Based on the foregoing, Applicant did not prove by a reasonable likelihood that he would have accepted this offer (especially when he rejected it in court). Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to assert proper defense⁵

Applicant contends counsel was ineffective for failing to assert a proper defense. This Court finds Applicant has not shown counsel was ineffective in this regard.

Applicant testified counsel did not prepare a defense. He stated Victim testified in family court that nothing happened.

Culler stated Applicant had admitted to DSS that he purchased the dildo for Victim. He testified Victim recanted her statement prior to trial, but at trial she repeatedly testified "I do not recall," which did not help their case. Walters recalled Applicant was primarily concerned about what Victim's testimony would be. He explained Applicant was the primary breadwinner of the family, and the allegations threatened the stability of Applicant's church. Walters met with Victim

⁵ This section addresses allegation six of the amended application.

and stated she recanted her prior statements to DSS, and they believed Victim would testify that nothing happened other than Applicant purchasing the vibrator. At trial, however, Victim repeatedly said, "I do not recall." Walters averred that he and Culler had been played by Victim. He stated the impact of most of the State's witnesses was minimal; it was ultimately Victim repeatedly saying "I do not recall" that devastated their case.

This Court finds counsel's foregoing testimony credible. Further, this Court finds counsels' strategy reasonable under prevailing professional norms and not deficient. Ultimately counsel had to work with the evidence they had—which included Applicant's admission to DSS that he purchased and used the dildo on Applicant. Counsel testified they spoke to Victim and expected her to recant.⁶ Applicant did not set forth a different strategy that would have likely been successful and thus did not prove deficiency or prejudice.⁷ Thus, this claim is denied.

*Inadequate preparation time*⁸

Applicant contends counsel was ineffective because of inadequate preparation time before trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Culler testified they had sufficient time to prepare the case. Likewise, Walters testified they had adequate time to prepare. This Court finds Culler and Walters' foregoing testimony credible. Further, based on this Court's review of the trial transcript, this Court finds counsel was adequately prepared for trial and performed reasonably under prevailing professional norms. Finally, Applicant did not clarify what additional preparation time would have yielded that

⁶ Victim *did* deny that Applicant showed her how to use the vibrator or touched her inappropriately. (Tr. 215-16, 462-63).

⁷ Applicant *did* testify that his "good deeds" should have been presented to the jury. As noted, however, this Court finds Applicant's good character in the community was before the jury, and Applicant did not present anything at the PCR hearing regarding his character that was not already before the jury.

⁸ This section addresses allegation eight of the amended application.

would have reasonably changed the outcome of trial.⁹ Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to investigate State witnesses¹⁰

Applicant asserts counsel was ineffective for failing to investigate the State's witnesses and what they would testify to at trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

Culler testified he was aware of the State's witnesses ahead of trial and there were not any surprise witnesses. Likewise, Walters testified they reviewed discovery with Applicant and met with Victim. This Court finds counsels' foregoing testimony credible. This Court further finds counsel's investigation into the State's witnesses was reasonable under prevailing professional norms. Thus, Applicant did not prove deficiency. Likewise, Applicant did not set forth what a further investigation into the State's witnesses would have produced that would have reasonably changed the outcome of trial and did not prove prejudice. Thus, this claim is denied.

Failure to strike juror¹¹

Applicant contends counsel was ineffective for failing to strike a juror in the second round of jury selections that he struck the first time. This Court finds Applicant has not shown counsel was ineffective in this regard.

After the jury was struck, the State raised a Batson challenge. In attempting to explain why he struck juror 158, a white female, counsel argued he struck her because she was a housewife. (Tr. 76-77). The Court accepted all of counsel's explanations for his strikes other than his

⁹ Again, Applicant's PCR testimony focused on his good character in the community and his belief that that should have led to an acquittal. However, the jury heard evidence of his good character at trial, and Applicant's role in the community was not disputed at trial.

¹⁰ This section addresses allegation ten of the amended application.

¹¹ This section addresses allegation eleven of the amended application.

explanation for juror 158. (Tr. 77). Counsel attempted to argue a basis for striking a housewife. (Tr. 77-78, 81-82, 84-87). Ultimately the Court agreed with the State that counsel did not have an adequate basis for striking juror 158 and quashed the jury panel. (Tr. 87). Thereafter, when the jury panel was selected a second time, counsel did not ask to excuse juror 158.

At the PCR hearing, Applicant recalled counsel trying to explain why he struck the juror. He stated, however, that after the jury panel was quashed, the juror was called and counsel did not move to strike that juror the second time.

This Court finds Applicant did not prove counsel was ineffective for not moving to strike juror 158 when she was called during the second jury selection. Notably, counsel attempted to provide a race-neutral basis for striking juror 158 during the first selection, which the Court did not accept. If counsel was unable to provide a race-neutral basis for striking juror 158 during the first selection, it strains credibility to suggest he was deficient for not moving to excuse her during the second selection. Likewise, it is not reasonably likely the outcome would have been different had counsel moved to excuse juror 158 during the second selection. If counsel was unable to provide a race-neutral basis for striking her the first time, it is not likely he would have been able to provide a race-neutral basis for striking her the second time. Applicant did not set forth any further argument counsel should have made regarding juror 158 and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

*Failure to mitigate*¹²

Finally, Applicant contends counsel was ineffective for failing to mitigate the sentence by highlighting the role Applicant played in the community prior to being charged. This Court finds Applicant has not shown counsel was ineffective in this regard.

¹² This section addresses allegation twelve of the amended application.



At the PCR hearing, Applicant testified about his role in the Allendale community, including the church he created and the community service he performed. Culler acknowledged Applicant had done a lot for the Allendale community. He believed Applicant ultimately received a lenient sentence. Pamela testified she could have told the sentencing judge about all the things Applicant did in the community, but she did not know if that would have helped Applicant.

Initially, counsel *did* discuss Applicant's role in the community during mitigation. (Tr. 584-85). Although no one spoke on Applicant's behalf at sentencing, evidence of Applicant's good character was introduced through many of the State's witnesses at trial, including Minor 2, who testified Applicant was her pastor (Tr. 225); school counselor Pamela Kinard, who testified Applicant did a lot of work with the students through "an after-school mentoring program and was very well—highly thought of and very respected within [the] school" (Tr. 240); substitute teacher Carolyn Chess, who testified she knew Applicant and did not believe he would have done what Victim said he did (Tr. 246, 249); school nurse Kimberly Solomon, who testified she frequently saw Applicant at school and was told "he had a program at his church where he mentored several students" (Tr. 260); Sheriff Tom Carter, who considered Applicant a friend and testified Applicant had school and church programs and worked with children, no one had ever previously made allegations against Applicant, and Sheriff Carter had reservations when Victim first disclosed the abuse because of who Applicant was (Tr. 368-70, 373-74); and Victim herself, who testified Applicant was the pastor of her church. (Tr. 180-81). Applicant likewise testified extensively about his role in the community, which was never disputed. (Tr. 482-87, 502-03). The trial judge—who was present throughout trial—heard this testimony and had this information to consider during sentencing. Thus, this Court finds counsel's mitigation was reasonable within prevailing professional norms and not deficient. Further, this Court finds Applicant's character



witnesses presented testimony about Applicant's role in the community that was cumulative to trial testimony; thus, it is not reasonably likely the outcome would have been different had those witnesses spoken during sentencing. Finally, this Court notes Applicant received a twelve-year sentence on a charge that carries up to twenty years, and this Court agrees with counsel's PCR testimony that Applicant received a lenient sentence. Ultimately, Applicant did not prove deficiency or prejudice, and this claim is denied.

CONCLUSION

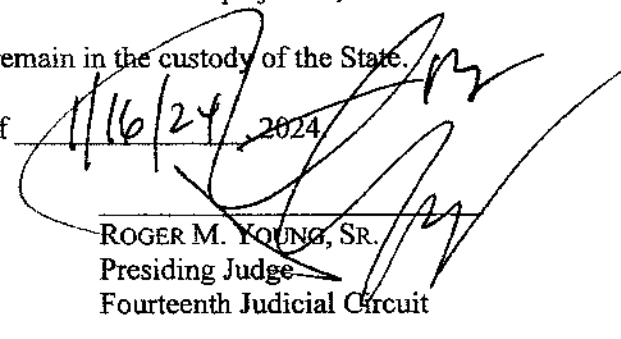
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance on appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to appeal, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71,1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 11/16/24 day of 2024


 ROGER M. YOUNG, SR.
 Presiding Judge
 Fourteenth Judicial Circuit

, South Carolina

WITNESSES

Richard Johnson - South Carolina Law
Enforcement Division

ARREST WARRANT NUMBER

2013A0310100074

ACTION OF GRAND JURY

DOCKET NO. 2013GS0300039

The State of South Carolina

County of Allendale

COURT OF GENERAL SESSIONS

July Term 2018

THE STATE

vs.

Bobby Jones, Sr.

Amended
Indictment ForCriminal Sexual Conduct With Minor,
Second Degree

SC Code: 16-3-655(B)(1)

CDR Code: 0396

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

True Bill

Quinn Peacher

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Bonnie Meepers

Foreperson of Petit Jury

Date: 7-12-2018

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

AMENDED INDICTMENT
2013GS0300039

At a Court of General Sessions, convened on July 5, 2018, the Grand Jurors of Allendale County present upon their oath:

Criminal Sexual Conduct With Minor, Second Degree

That in Allendale County, South Carolina, on or about January 21, 2013, the Defendant, Bobby Jones, Sr., did engage in sexual battery with E.F. who was fourteen years of age or less but who was at least eleven years of age at the time of the sexual battery, all in violation of Section 16-3-655(B)(1), et al. of the Codes of Law of South Carolina.

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



Solicitor

710

(0-20 years)

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Allendale

STATE

VS.

Bobby Jones, Sr.

AKA:

Race: Black Sex: Male Age: 59

DOB: [REDACTED] SS#: [REDACTED]

Address:

DL# * SID#

) INDICTMENT/CASE#: 2013GS0300039

) A/W#: 2013A0310100074

) Date of Offense: 01/21/2013

) S.C. Code §: 16-3-655(B)(1)

) 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 ☒ CONVICTED OF or ☐ PLEADS

TO: Criminal Sexual Conduct with a Minor, Second Degree

In violation of § 16-3-655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ MANDATORY GPS ☐ §17-25-45
(CSC w/minor 1* or CSC w/minor 3*)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

(Solicitor) (SC Bar #) (Defendant) (Attorney for Defendant) (SC Bar #)
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____;
 plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of
 Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/each	\$ _____
3% to County (if paid in installments)	\$	_____

TOTAL

\$ 100.00

Clerk of Court/Deputy Clerk

Court Reporter:

MP-SCCA/217 (04/2018)

☐ 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 requires \$500 be paid to Clerk
 during probation and shall be collected before any other fees.

Presiding Judge:

Judge Code:

Sentence Date:

2139
 July 12, 2018