

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Court of Common Pleas
Alex Kinlaw, Jr. Circuit Court Judge

Appellate Case No. 2019-000907
Lower Case No. 2017-CP-23-5901

Jerald D. Gaskins, Jr. #00362923. Petitioner,

vs.

State of South Carolina Respondent

APPENDIX
VOLUME II

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1 MS. HODGE: -- that I'm asking the Defendant about --

2 THE COURT: Take the jury out.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 2:37 p.m.)

5 MS. HODGE: Your Honor, these are statements that the
6 Defendant was alleged to have made that I think I can ask
7 him in cross-examination, did you make these statements?
8 He can say "yes" or "no." I don't think I can introduce
9 them through this witness. But I have a foundation
10 witness I can call in rebuttal.

11 So I need to be able to ask him did he make the
12 statement. He needs to be able to deny it. Then I can
13 put my witness on the stand to lay the foundation for
14 these text messages, and then move to admit them at that
15 time.

16 THE COURT: Mr. Chambers.

17 MR. CHAMBERS: Well, Your Honor, I think, first of
18 all, there has to be a foundation laid that he -- that --
19 did he send any texts. And I think she's stuck with his
20 answer, whether he says "yes" or whether he says "no." If
21 he says, "yes," then I guess she can follow-up on it.

22 I'm having a little trouble following her logic that
23 there's going to be a rebuttal witness. Because if I
24 understood what she is -- was reading out a few minutes
25 ago, these were texts that supposedly went to this fellow,

1 Walt, who is not on her witness list, and, as far as I
2 know is not going to be called to testify here at trial.

3 So I don't know how anybody else could even lay a
4 foundation if she wanted to talk about those texts.

5 MS. HODGE: Well, rebuttal witnesses don't have to be
6 on the State's witness list because we don't know who
7 we're going to call in rebuttal.

8 But Ms. Mucienko is the person that provided me
9 these. She's the one that had the phone. She can
10 document this was her husband's phone, and this was the
11 Defendant's phone number. And that she took photographs
12 of these and sent them to me, which I provided to Defense
13 in reciprocal -- or in discovery several weeks, if not
14 months, ago.

15 THE COURT: Why can't she ask if he made a statement?

16 MR. CHAMBERS: I think she -- well, she can ask if he
17 makes a statement, Your Honor. But she was, actually,
18 reading the text messages verbatim.

19 THE COURT: Well, but -- I understand it appeared
20 that way. But I don't know any reason why she can't ask
21 him if he made such and such statement.

22 MR. CHAMBERS: Well, obviously, it's your job to
23 rule, Your Honor. So I've made my objection. I'll,
24 obviously, go along with whatever you decide.

25 THE COURT: I mean, I think probably what is

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1 troublesome is it's almost like you're publishing
2 something to the jury that's not in evidence.

3 Is that what you're worried about?

4 MR. CHAMBERS: Yes, sir.

5 THE COURT: But I don't think appearances can keep
6 her from doing that. I mean, she -- just like if she had
7 a legal pad and had it written down.

8 MR. CHAMBERS: But my issue is not necessarily, Your
9 Honor, that she's asking him that. That's fine. But
10 she's, actually, walking up to him, laying these down in
11 front of him as they were -- as though they were a
12 statement that he gave.

13 THE COURT: Yes, I know. That's why I sustained the
14 objection when you objected to that. But, I mean, I think
15 she can ask about alleged previous statements the
16 witness --

17 MR. CHAMBERS: Well, I would agree with that.

18 THE COURT: -- who was a party, made.

19 MR. CHAMBERS: Yeah. I would agree with that, Your
20 Honor.

21 I just -- when she -- she, at first, seemed as though
22 she was, actually, going to have him read it. Then she's
23 questioning him about it while it's laying up there in
24 front of him. And I, clearly, believe that's improper.

25 THE COURT: Well, I overrule the objection.

1 MS. HODGE: Thank you, Your Honor.

2 THE COURT: But I guess the -- if those don't later
3 go into evidence, the jury is going to be real curious
4 about them. But that's neither here nor there.

5 Okay. Let's take about a 10-minute break.

6 (WHEREUPON, a break was taken.)

7 THE COURT: All right. Anything else before we bring
8 the jury in?

9 MS. HODGE: Yes, unfortunately, Your Honor.

10 Were you intending on calling Mr. Gaskins, Sr., as a
11 witness?

12 MR. CHAMBERS: Yes.

13 MS. HODGE: All right. Your Honor, Mr. Gaskins, Sr.,
14 who's on the witness list, the next witness, I was just
15 informed by some of the State's witnesses that the ladies
16 that have been sitting in here watching the trial went
17 outside, told him everything that was going on during the
18 testimony, and what's been going on in court.

19 So I would ask that that witness not be allowed to
20 testify.

21 MR. CHAMBERS: I, certainly, don't have any
22 knowledge, Your Honor, about anything that's going on --

23 MS. HODGE: Would you like to proffer any -- I'd be
24 glad to proffer a witness.

25 MR. CHAMBERS: So what do you want --

1 MS. HODGE: I said I'd be glad to proffer a witness,
2 if you needed that.

3 MR. CHAMBERS: I'm not questioning whether that
4 happened or not. I -- the fact that they were discussing
5 the case out in the hallway, Your Honor, I don't know that
6 that disqualifies him as a witness.

7 THE COURT: Well, let's finish with this witness, and
8 then we'll tackle that.

9 All right. Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 2:54 p.m.)

12 THE COURT: Yes, ma'am. You may continue
13 cross-examination.

14 MS. HODGE: Thank you, Your Honor.

15 CONTINUED CROSS-EXAMINATION

16 BY MS. HODGE:

17 Q All right. Mr. Gaskins, did you text Walt Mucienko
18 on June 21st of 2013, and ask him to drop the charges so
19 y'all could bounce and go hang out with Ian, your higher
20 power God?

21 A No, I did not.

22 Q Who is Ian?

23 A I have no idea.

24 Q What is the higher power God?

25 A I have no idea either.

1 Q Did you text him again on June 22nd of 2013, and ask
2 him, again, about dropping the charges, saying, If not,
3 that's cool, but don't want to hassle with going to court?

4 A No, I did not.

5 Q Okay. So someone is texting Walter. Is this your
6 testimony?

7 A I have no idea. I don't know nothing about text
8 messages to or from Walt after 2013.

9 Q After 2013?

10 A Or in between 2013, beginning of 2013 -- no time in
11 2013 did I or have I texted Walt Mucienko.

12 Q All right. So did you ever text him before?

13 A Way, way, way before.

14 Q All this -- way before?

15 A Way before.

16 Q Okay. What was his -- did he have a sign off or --

17 A I don't recall.

18 Q Was it ghost rider?

19 A I don't recall.

20 Q Okay. So it could have been?

21 A I don't know.

22 Q Okay. Then did you, also, text him on June 26th of
23 2013, saying, If you'll drop these bogus charges, we can
24 go to Oklahoma and make money?

25 A I just said I never texted him throughout 2013, or

1 any time through 2013.

2 Q Okay. So you didn't text him about going to Oklahoma
3 to make some money --

4 A No, ma'am. I did not.

5 Q Okay. And you didn't text him then about, Why have
6 you not dropped this shit on me? And why are you letting
7 Sandy drag it --

8 A Once again, I never texted him from 2013 forwards at
9 all.

10 Q Okay. And so then you didn't text him to say, Sandy
11 must be threatening you, daddy?

12 A No, ma'am. I did not.

13 Q Okay. So did you say you cut off all ties with the
14 Mucienkos, even Jamie?

15 A Ma'am, I cut off all ties. From the time I was
16 arrested in Family Court on November 14th, 2012, at that
17 point in time, all ties with the Mucienkos was done, over
18 with.

19 Why would I hang out with someone or want to talk to
20 anyone that had me arrested on such crazy charges when I
21 know for a fact I did not do it?

22 Q Okay. Do you -- you said that all this was over with
23 them, really, though, October the 5th of 2012, because you
24 were done with them?

25 A November 14th was the day I was arrested.

1 Q Correct. But prior to that, the insurance fraud --

2 A Pretty much from once -- from the insurance fraud,
3 yes.

4 Q Okay. And that you stated in your testimony was what
5 date?

6 A Sometime in -- October 6th, I believe, between the
7 3rd and 6th --

8 Q You said October 5th. You're pretty certain --

9 A Between that time, yes.

10 Q October 5th, 2012?

11 A Yes.

12 Q Do you have the documents from the insurance company
13 showing that they put stuff on you?

14 A Actually, I think I do. I'm not sure.

15 Q Do you or do you not?

16 A I'm not sure. I don't know what my lawyer
17 prepared -- has.

18 Q Did you give them to him? Did you tell him? Did you
19 get them?

20 A Yes, we did. And then -- I mean, I don't -- like I
21 said, I don't know what he has with him is what I'm
22 saying.

23 Q Okay. But they're not here right now. You didn't --

24 A I did not know, ma'am -- I don't know. I do not.

25 Q Okay. And so after October 5th or 6th now, you're

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1 saying you did not communicate with anybody after that?

2 A No. Not once the call was made in and placed to put
3 the vehicles on my vehicle -- or their vehicles on my
4 account, nah. Then after November 14th, me getting locked
5 up in Family Court, a big embarrassment, nah.

6 Q Before that on -- let's see -- October the 2nd, did
7 you and Jamie have some text messages going back and
8 forth?

9 A No.

10 Q No, you didn't. When she -- you sat up here and
11 heard her testify, correct?

12 A I heard her testify, but, no.

13 Q So you did not text her -- or she did not text you
14 asking to go to the Luke Bryan --

15 A No. Actually, her --

16 THE COURT: Y'all wait a minute --

17 THE WITNESS: -- brother called me --

18 THE COURT: Wait. Y'all are going to have to let
19 each other finish. Okay.

20 THE WITNESS: Yes, sir.

21 BY MS. HODGE:

22 Q Did you not text her about only having four tickets
23 to go to the Luke Bryan concert?

24 A No, I did not.

25 Q Okay. And you're saying that you don't like country

1 music?

2 A No, I do not.

3 Q And you don't go to country music concerts --

4 A I do not like country music, ma'am.

5 Q Okay. Did you and your ex-wife, Rachel, get into it
6 at a Brantley Gilbert concert?

7 A No, we did not.

8 Q You did not?

9 A No.

10 Q You did not attend the Brantley Gilbert concert --

11 A No. I did not attend the Brantley Gilbert concert.

12 Q Okay. In November of 2012?

13 A Whenever it was. I'm not sure.

14 Q All right. But you're saying you went to a Kiss and
15 Iron Maiden concert with Walt --

16 A I went to an Iron Maiden concert, yes.

17 Q And that was when?

18 A That was sometime between September of 2011 -- 2012.
19 It's been a couple years ago.

20 Q Okay. And let's get back to you and Jamie texting.
21 You did not text Jamie on October the 7th at 6:49 p.m.
22 telling her, It was good to see everybody and Moose, what
23 you call Moose -- her brother, that you love him like a
24 brother?

25 A Past tense. Not in that text. I never texted Jamie

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1 Mucienko at all.

2 Q Okay. So you wouldn't have texted her about VICTIM
3 being the most favorite --

4 A No, ma'am. I would not have.

5 Q Okay. And did you text her on October 8th that you
6 were painting and waiting to pick up VICTIM from school?

7 A No, ma'am. Once again, I never texted Jamie
8 Mucienko. So what you're reading here is irrelevant. I
9 have not texted her at all from no phone. The phone that
10 you're reading there was in Jamie's name. It was Jamie's
11 contract phone whom her and her brother shared.

12 Q And did you not owe some money on that phone?

13 A Once again, I never texted nor owed her on a contract
14 phone that she had. That was her and her brother's deal,
15 not mine.

16 Q So if she has texts with your name on the top of them
17 as the contact person and your number, that's not you is
18 what you're telling us?

19 A Ma'am, what I'm looking at -- that right there and
20 telling you is that says Jerald. It does not say Jerald
21 Gaskins. It does not say nothing other than Jerald. It
22 could be Jerald Billy Bob. It could be Jerald Williams.

23 Anyone could put a name up there. But you don't see
24 a full name there, ma'am. And the reason why you don't
25 see that full name is the fact that the phone was never

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1 at -- with me. The phone was in her name, a contract
2 phone with her name on it that was used between her and
3 her brother.

4 Q How do you know it was used between her brother --

5 A Because that phone she had had prior when she came
6 from Florida is how I know.

7 Q So you are saying, sir, that you never texted --

8 A I never texted --

9 Q -- with Jamie?

10 A I never texted her.

11 Q You never texted --

12 A She had called --

13 Q -- with Jamie?

14 A -- Rachel once before is how --

15 Q You're saying you never texted Jamie?

16 A I never, yes, ma'am. I never.

17 Q All right. And you would have never texted again
18 about --

19 A No, ma'am.

20 Q -- Sorry, I got a lot on me. I can't see VICTIM
21 again or my kids. Someone is creating conversations, is
22 that what you're saying about your life?

23 A Someone, yes, but not me. And everyone knew about my
24 life because it was posted throughout the Mucienkos and
25 posted throughout the Lanes. They stayed in my business

1 more than anybody with Facebook, texts of me being a
2 pedophile, and everything else.

3 So why don't you ask the Lanes where the texts might
4 have come from? Because they knew more about my life than
5 I even did.

6 Q Well, you had some roommates because you had to
7 have -- verify with people --

8 A Yeah.

9 Q -- around you; right?

10 A But my roommates never ever put out, you know, any
11 type of thing that was negative towards me. They knew the
12 hell I went through in my life. So they wouldn't just
13 throw anything out there to make me look bad or anything
14 like that. Because they wasn't like that.

15 Q Okay. But you said in your testimony that you needed
16 roommates because you were always getting accused of
17 stuff?

18 A When you're at the age I was, yes.

19 Q At what age? My age?

20 A Nah.

21 Q Isn't that what you just said --

22 A At a younger age. When I was growing up as a
23 teenager, I was always being accused of stuff I didn't do.
24 That's why I got the little nickname, I didn't do it,
25 because my middle name was Denton. That's why. Because I

1 got tired of being -- people saying I had done stuff I
2 didn't do.

3 I mean, it got to where I would go out to the store
4 and be accused of talking to somebody I didn't. So, you
5 know, if I had someone around me, then the accusations
6 wouldn't be thrown out there nowhere near as fast as
7 normally they would have.

8 Q So you need people around you just to verify your
9 innocence --

10 A At all times, yes. I kept everybody around me for
11 certain other reasons, also. I mean, that's not the only
12 reason. Like I said, I do have ADHD, which is a problem
13 which makes me very -- sometimes, I'm speedballing,
14 sometimes, I'm not. Sometimes, I'll just pass out for no
15 reason. So I keep people around me for that reason.
16 That's another reason.

17 I don't just -- you know, want to keep people around.
18 But I, actually, like having people around. I love
19 talking. That's just me. I'm an open-minded guy for all
20 kind of thoughts.

21 Q You like to talk?

22 A I do like to talk. I do.

23 Q Good talker?

24 A Not really.

25 Q A good conversationalist?

1 A Not really. I tend to stray away from one -- I'll
2 talk about something and stray away from it. And that's
3 my mental disposition that does that.

4 Q You understand that lots of people have ADHD;
5 correct?

6 A No. It's not a lot of people. Actually, the
7 statistics is like one in every thousand. It's not like
8 you think it is. And it's, actually, a pretty rare case.
9 It's actually -- when I was going to school, I was took
10 out of school. I made it to the eighth grade, the eighth
11 grade, second week in the eighth grade because of my
12 mental condition, because of ADD [sic]. I, actually, went
13 through sixth and seventh grade pretty much -- you know,
14 in a special education class.

15 Q So do you have more than ADHD?

16 A No. I'm just saying because of ADHD. Because I
17 couldn't keep my mind on one thing. It randomly just
18 went.

19 Q Can you keep your mind focused on sex?

20 A Not really.

21 Q Not really. Is that why it only lasts five minutes,
22 10 minutes?

23 A I don't know how long it lasts. I don't look at a
24 time limit when I'm having sex.

25 Q Okay. So for this disability that you have, ADHD,

1 you get \$659 a month?

2 A Yeah.

3 Q And you are keeping up the Mucienkos, giving them
4 phones, paying -- helping them pay bills, food, clothes --

5 A Not all the time, rarely. Not all the time, rarely.

6 Q Keeping up your own house and helping them --

7 A I have my own life to live, yes, ma'am.

8 Q Okay. On \$659 a month?

9 A Yes, ma'am.

10 Q You're not supplementing that by selling pills or
11 pot?

12 A No, ma'am.

13 Q Okay.

14 A Actually, I've never done a drug in my life.

15 Q I didn't ask you if you did drugs.

16 A I've never sold a drug in my life.

17 Q All right. And you guys moved around a lot. You
18 moved from place to place; correct?

19 A (There was no audible response.)

20 Q And you, initially, stated that was to hide from
21 Rachel's vicious, violent stepdad; correct?

22 A Most of the time, yes, ma'am.

23 Q That's why you --

24 A That's where most of my -- it was because of her
25 family.

ROA 442

1 Q Okay. You have some issues with her family because
2 they think they're better than you; is that right?

3 A Yes.

4 Q All right. So that probably burns you up a little
5 bit they think they're better than you?

6 A Well, it don't burn me up thinking they're better
7 than me. I really don't care what they really think. I
8 mean, like even right now, they're here in this courtroom.
9 And it's like every court proceeding I've had, they're
10 somewhere around. I guarantee you tonight there will be
11 something on Facebook about that. I know them pretty
12 well.

13 Q How --

14 A I mean, what is their business? What is their
15 business here now in this courtroom? They have no
16 business here.

17 Q Other than their daughter testifying --

18 A Even without their daughter -- you don't understand
19 what I'm saying. Every single court I have been to --
20 even when their daughter wasn't supposed to be there --
21 when I first got locked up on November 14th, Ms. Allison
22 Lane was there at the bond hearing. Do you want to tell
23 me why? That's an interesting question. Why was she
24 there?

25 You had no reason being there.

1 This lady has been a thorn in my side since the day I
2 first met her daughter.

3 Q You've got some anger coming out. You don't --

4 A It's not really anger. It's the fact of I'm always
5 put into a situation. And when I'm put into a situation,
6 they're always around, always around. And that's my, you
7 know, wife.

8 Q Well, let's go to this incident. I may go around on
9 this incident. Do you know a lady named Jennifer Anglin?

10 A I know of Jennifer Anglin.

11 Q You went to Jennifer Anglin's house and had dinner
12 with her, didn't you?

13 A No. I have not --

14 Q October of --

15 A -- I've never been to Jennifer Anglin's house.

16 Q October of 2014?

17 A No.

18 Q Do you know Jennifer Anglin's daughter, Redacted

19 Redacted?

20 A Not really.

21 Q Age 12?

22 A Not really.

23 Q You sent Redacted a Facebook request?

24 A Not really.

25 Q You not really did?

1 A No, ma'am. I'm -- what I'm saying is I don't know
2 **Redacted**, if she's a Facebook friend or whatever. You can
3 be anybody on Facebook. I don't know.

4 Q Did you send her a Facebook request?

5 A Not to my knowledge, I did not.

6 Q Well, did you --

7 A Because I haven't had Facebook in sometime.

8 Q October of 2014. October 9th of 2014 --

9 A That would be incorrect. I haven't had Facebook in
10 sometime. If you would check it right now, I guarantee
11 you there's nothing on there.

12 Q Is that because you started to use the name Jay
13 Fowler now?

14 A No. I wouldn't know who Jay Fowler really is. I
15 guess that's someone that's made up, too, I guess.

16 Q Yeah. It's like somebody out there is making a lot
17 of stuff up on you?

18 A Well, ma'am, that is your duty to find that out,
19 isn't it? It's not mine. Because I have no recollection,
20 no knowledge of anything happening -- what you're throwing
21 at me.

22 Q All right. So are you, currently, engaged right now?

23 A Yes, I am.

24 Q To whom?

25 A Angelina Campbell.

1 Q Is she in court today?

2 A Yes, she is.

3 Q Isn't there a no-contact order between you and
4 Angelina?

5 A There was.

6 Q No. There is, isn't there?

7 A I'm not sure. It's --

8 Q As a condition of your bond, you're not supposed to
9 have any contact with her; isn't that correct?

10 A No, it's not correct. It was supposed to have been
11 dissolved.

12 Q Sir, you have an active charge with her; correct?

13 A Ma'am, once again, it was supposed to be dissolved.

14 Q Sir, you have an active charge with her, do you not?

15 A I don't know if I do or not, ma'am. But, once again,
16 it was supposed to have been dissolved.

17 Q Am I your prosecutor on that case?

18 A I don't know if you are or not --

19 Q Have you not called me numerous times asking me --

20 A No, ma'am, I have not. No. There was a letter sent
21 to you, an affidavit filled out for you.

22 Q And have you been instructed by our office that that
23 case is not dropped and you are not to have contact with
24 her?

25 A Ma'am, I was once told it was dismissed. So I don't

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1 know what's going on with it --

2 Q Who were you told that by?

3 A I guess your office.

4 Q No, sir. No one from my office --

5 A Well, then --

6 Q -- who were you told that by --

7 A -- I have no idea --

8 MR. CHAMBERS: Objection, Your Honor. There's
9 arguing at this point.

10 THE COURT: Sustained.

11 BY MS. HODGE:

12 Q But you do have an active charge with her?

13 A Well, then I'm sorry if I do, ma'am. But, like I
14 said, once again, I don't know if it was there or not.
15 Because it wasn't supposed -- it was supposed to have been
16 dismissed due to her testimony or her statement.

17 Q So you were talking about the places that you guys
18 lived. And your timelines were a little interesting to
19 me. You lived in Tigerville -- or Tigerville Road when?

20 A That was the beginning of mine and Rachel's
21 relationship --

22 Q I thought --

23 A -- 2009, 2010 area.

24 Q I thought you lived with your dad then?

25 A Yeah, I did.

1 Q I said Tigerville Road.

2 A Well, Tigerville was probably about 2011.

3 Q Okay. When in 2011?

4 A Ma'am, I don't recall exact dates. I recall more
5 years than dates. And, right now, I'm pretty -- you have
6 to give me a moment to cool down. Because the argument
7 with you has got me up there where I can't even think.

8 Q Oh, do you need a break, sir?

9 A Actually, I do. I would like that.

10 MS. HODGE: Your Honor, the witness would like a
11 break.

12 THE COURT: Well, we're not going to have a break.
13 Keep on going.

14 MS. HODGE: Oh, sorry.

15 BY MS. HODGE:

16 Q All right. So when did you move to Tigerville?

17 A 2011, ma'am.

18 Q And when? What time of year?

19 A The beginning towards the middle.

20 Q The beginning towards the middle. Can you give me a
21 ballpark?

22 A No, ma'am, I cannot. Like I said, now, my mind is
23 not working. It's from the ADHD. I'm having a problem
24 with -- still with our argument.

25 Q So how long did you live there?

1 A Ma'am, approximately -- probably about eight to nine
2 months.

3 Q Eight to nine months --

4 A It was a lease there from Ms. -- I can't remember
5 our -- Ms. Loubecker [phonetic].

6 Q Okay. So you if you lived there for eight to nine
7 months, would that be the majority of 2011 then?

8 A It wouldn't quite be there because it was broken. I
9 just don't remember exactly when the lease was broken.
10 Because of the -- Ms. Loubecker died.

11 So I don't recall how long. It was a few months.
12 Within five or six months that we lived there -- the
13 contract was for a year. But it was broken somewhere in
14 the time frame of probably six to seven months. I'm not
15 exactly positive or sure.

16 Q So were you living there when you met VICTIM

17 A Yes.

18 Q All right. And did you live there for several months
19 after that?

20 A Yes.

21 Q All right. And then you claim that you went to State
22 Park Road for five months. When were those five months?

23 A Somewhere about four or five months, yeah. That was
24 after we left the Tigerville area.

25 Q Okay. So when did you leave Tigerville?

1 A Possibly about six months -- six or seven months
2 after we moved there. We moved over to State Park after
3 the fact.

4 Q Are we still in 2011 or 2012 since you're good with
5 the years --

6 A We're still in 2011.

7 Q So you spent six to seven -- six months and then
8 another five months at State Park Road?

9 A Actually, we spent -- me and Rachel got together in
10 2009. We spent part of 2009 -- from September on through
11 2009 with my father. My father lived at REDACTED
12 Circle, which was 2010. We moved from there in 2010 to
13 Tigerville Road, and stayed there until the beginning of
14 2011 -- oh, which in 2011, we moved over to State Park
15 Road from 2011 -- actually, towards the end of it is when
16 we moved on from there to the -- what was that? Magnolia
17 sometime in --

18 Q Magnolia --

19 A -- 2011.

20 Q All right. So you stated you, actually, met
21 VICTIM --

22 A It was --

23 Q -- in the summer?

24 A I met VICTIM June of -- around about 2011, yeah.

25 Q And you were living in Tigerville at that house?

- 1 A I was living at the Tigerville address, yes.
- 2 Q And you stayed there for a little while longer?
- 3 A A couple of months, yes.
- 4 Q All right. So, now, we're into August of 2011 by the
- 5 time you think you might have moved to State Park Road?
- 6 A Yeah. It wasn't long. It was -- we lived at the
- 7 State Park address maybe two or three months. It wasn't
- 8 long.
- 9 Q Okay. In your direct, you said five months. And you
- 10 were certain --
- 11 A It wasn't long. I'll put it that way. It was just a
- 12 few months.
- 13 Q Okay. Well, it's getting shorter; is that correct?
- 14 We're getting -- it's getting a little shorter?
- 15 A Like I said, I'm not positive of the time frame. I
- 16 just know a few months. And from there forth, we moved
- 17 over to Magnolia.
- 18 Q And Magnolia was Magnolia Trailer Park? Is that
- 19 what --
- 20 A Yes, it was.
- 21 Q -- it was called?
- 22 A Yeah. Or a village is, actually, what it's called.
- 23 It's on Magnolia Road.
- 24 Q And **VICTIM** did come to that location; correct?
- 25 A She came there one time, yes.

ROA 451

1 Q Okay. You testified two times in your direct?

2 A One time when we first moved there, she came, yes. I
3 testified to two, but I haven't gotten to that point yet.

4 Q I asked you did she come there. And you said one
5 time --

6 A Yes, one time. I didn't finish my statement.

7 Q Oh, please, finish.

8 A She come there when we first moved there, one time
9 when we first moved there. And it was me, and my wife,
10 and Josh, and VICTIM and Josh's cousin, Rachel Rish.

11 Q Okay. Well, tell me the second time then.

12 A The second time was with -- it's when her and Rachel
13 got into it. Rachel was still there, because Rachel lived
14 with us.

15 Q Rachel was your wife; right?

16 A There was two Rachel's there. There was Rachel Rish
17 and Rachel Gaskins. And if you'll look at the picture,
18 you'll see that -- with VICTIM and Rachel Rish going off
19 on each other.

20 Q Okay. What picture?

21 A I have a picture of that.

22 Q Oh, speaking of pictures, that just reminds me. This
23 is what VICTIM looked like when you met her; right?

24 Eighth grade?

25 A I, actually, didn't meet her in the eighth grade. I

1 met her in the ninth.

2 Q You didn't meet her in the eighth grade?

3 A No. I did not meet her in the eighth grade. I met
4 her in ninth grade.

5 Q Okay. Did she start ninth grade in the summer?

6 A I'm not sure. I just know that when I met her, they
7 claimed that she was in the ninth grade?

8 Q Who's "they"?

9 A Her family.

10 Q So her family lied about what grade she was in is
11 what you're saying?

12 A I guess so. Because I did pick her up one time at
13 school in the ninth grade.

14 Q Well, ninth is after eighth; correct?

15 A Well, like I said, I didn't know her in the eighth
16 grade. It was the ninth grade. Because I picked her up,
17 actually, twice. Me and my wife picked her up the first
18 time. And then me and Jamie, which was my nephew, picked
19 her up the second time when they were down in their
20 vehicles and no insurance.

21 Q And you, also, went to some of her games; correct?

22 A No. I never went to none of her games --

23 Q You and your wife never went to her games?

24 A No. I never went to none of VICTIM games.

25 Q You've been sitting in here through the trial; right?

1 A Yes, I have.

2 Q So is what we're supposed to understand is that
3 everything that the State presented is not true?

4 A Yes, ma'am.

5 Q That's what you're saying?

6 A That's exactly what I'm saying. Everything the State
7 has shown is not true. If there was proof there, it would
8 show something, ma'am, something with my name, something
9 with my date, something would be in -- you know, right
10 there, Jerald Gaskins, this is your number, this is your
11 phone number, something. Not nothing have you shown yet
12 has shown anything to do with me at all, Madam.

13 Q Okay. So #1 (Minor) -- you said you don't know

14 #1 (Minor) --

15 A I don't know #1 I met her about twice is all I
16 know of her. I never hung out with her.

17 Q Y'all didn't sit in the car and --

18 A No, ma'am.

19 Q -- talk about music?

20 A No. We did not.

21 Q Okay. So why did you send her a message on Facebook
22 two weeks ago asking her to call you?

23 A I never sent her a message on Facebook asking her to
24 call me. Because I haven't had a Facebook since 2012.

25 Q Well, maybe you did it under Jay Fowler?

1 A Maybe not. Prove that, ma'am.

2 Q So is it your testimony you did not send her a
3 Facebook message --

4 A I'm telling you right now, I never sent her a message
5 on Facebook. Because I haven't had Facebook since 2012,
6 since the day I was arrested on November 14th of 2012,
7 was -- marked the day of my life that was changed forever.

8 Q And you said you lived with your cousin, H.N.G.

9 A No. H.N.G. lived with me.

10 Q Okay. I'm sorry. Would --

11 A She was having some problems with her family and come
12 and stayed for a short few days.

13 Q Right. And H.N.G. is H.N.G. is that
14 right?

15 A Yes, she is.

16 Q Okay. And H.N.G. was, what, probably
17 13, 14 --

18 A Nah. She was 16 when she stayed --

19 Q -- when she came and stayed with you?

20 A -- fixing to be 17 when she stayed.

21 Q Okay. But you knew her and hung out with her. I
22 mean, she's your cousin; right?

23 A Of course, I knew her. She's my cousin. She's my
24 half-second cousin.

25 Q Okay. And y'all would hang out together; right?

ROA 455

1 A Not really much. I'd leave her there and Rachel and
2 her would hang out.

3 Q Okay. With who? Rachel your --

4 A Rachel, my Rachel.

5 Q Your Rachel?

6 A Yes.

7 Q Okay. And A Minor. And there wasn't an incident
8 with A Minor --

9 MR. CHAMBERS: Objection, Your Honor.

10 BY MS. HODGE:

11 Q -- when you were married to Rachel --

12 MR. CHAMBERS: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MS. HODGE:

15 Q So you're telling us that the State did not present
16 any true evidence. Is that what you just said?

17 A Ma'am, I'm telling you and the jury as well, there
18 was no evidence permitting anything at all towards me.
19 These were all allegations and things that were put forth
20 trying to destroy one man's life. Not at one point have
21 you shown anything that validates anything that you're
22 saying, ma'am.

23 Q Did you have a -- well, okay. Let's see. We started
24 with your addresses. You did live at the places that
25 VICTIM said you lived; correct?

1 A Yes, ma'am, I did.

2 Q All right. Did you have a silver Grand Prix?

3 A Yes, ma'am, I did. I bought it from my sister.

4 Q Okay. Did you have a Jeep Cherokee? Was it a green
5 Jeep Cherokee?

6 A It was, actually, not green. It was, actually,
7 turquoise.

8 Q Okay. Depending on what shade you call it. All
9 right. Turquoise.

10 And did you have a futon in your trailers?

11 A No, ma'am. I don't have futons around because my
12 daughter was very young at that age. And anyone that
13 knows anything about futons knows that if you get up on a
14 futon, it will bend. It will slam. It will hurt. It
15 don't play.

16 Q A futon?

17 A Yes, a futon. It is a metal piece of beam that's put
18 together. And in the middle of them beams is a --
19 actually, like a rounded piece of metal that holds it. If
20 the metal comes out, the whole thing goes from a sofa
21 straight down to a bed. If a child gets on that while
22 it's not engaged, it would hurt them. It would break
23 fingers. It could, also, even break necks. It could
24 hurt.

25 Q But grownups could get on it, couldn't they?

ROA 457

1 A Grownups could. But if it's not engaged correctly,
2 it will fold in half. So, no, ma'am, I did not own a
3 futon.

4 Q Did you have a futon?

5 A No, ma'am. I never had a futon during the whole --

6 Q So that is --

7 A -- relationship. I had a couch.

8 Q Okay. Now, you said you filed for divorce from your
9 wife under adultery -- grounds of adultery?

10 A Yes, I did.

11 Q All right. And did your wife -- do you know -- did
12 she ever get served with those papers?

13 A Yes, ma'am, she did.

14 Q Do you have proof of service?

15 A No, ma'am, I don't.

16 Q Okay. And did you file for a final divorce two years
17 later?

18 A No, ma'am. That divorce got filed -- it, actually,
19 kept getting continued. April 26th is when everything was
20 filed through the Family Court, of which that day is when
21 they, actually, took my daughter from me under the grounds
22 of they thought -- they had told people that I was a drug
23 head.

24 So allegations were made. Once again, allegations
25 were made. My daughter was placed in protective custody.

ROA 458

1 Q All right.

2 A And, at that point in time, there was a DSS
3 meeting -- a hearing for a safety plan that everyone
4 attended. At that point in time when we go through the
5 Court, I kept getting thrown in jail by my wife stating I
6 went and violated a protective order that never existed.

7 So it was twice I got throwed [sic] in jail for
8 something I didn't do. Later on, it was proved that there
9 was no such order at that point in time, which, you know,
10 at a further date in time, I'll deal with that myself.
11 But, for right now, the allegations that were made were
12 unfounded. But then there was a motion filed under
13 adultery that I did file.

14 Q You filed that. However --

15 A Yes.

16 Q -- your grounds when you, actually, got divorced,
17 the actual hearing were for one year's separation;
18 correct?

19 A No, ma'am.

20 Q Were you even there?

21 A Yes, I was there. I was there for the whole thing.

22 Q Okay.

23 A And it was, actually, continued. It was supposed to
24 be an hour set forth for them grounds. It would have
25 never --

ROA 459

1 Q Are you divorced, sir?

2 A Ma'am?

3 Q Are you divorced?

4 A I am now, yes, ma'am.

5 Q Do you have a final order?

6 A Yes, ma'am, I do.

7 Q And it was on one year's separation?

8 A No, it was not. The grounds for my divorce, which
9 will come through on the 2014 year of May, was for just
10 that. It was for adultery. It was served as -- or,
11 actually, given to me on the grounds of adultery, which I
12 don't have my paper here right this moment. But it was
13 given under adultery, yes, ma'am. I have been away from
14 her.

15 Q We're taking your word for that. Is that what you're
16 saying?

17 A Well, I'm hoping, ma'am. Because everything else
18 you've thrown at me has been rejected or neglected towards
19 me. So I'm hoping the Court's will take my word for that.
20 Because I am divorced.

21 Q And you don't have custody of your daughter; is that
22 correct?

23 A Wrong answer. The Court's went ahead and granted her
24 her last name, but give us both custody until we get back
25 to court.

ROA 460

1 Q You don't have custody of your daughter?

2 A We both have joint custody, yes, ma'am.

3 Q Of your son?

4 A Of both.

5 Q Who you've not seen?

6 A Of both. Of both. Yes, ma'am. I do not see them
7 because they won't let me see them.

8 Q You have -- if you have custody, you have the right
9 to see --

10 A Ma'am, it's not that easy. With this family here,
11 you're dealing with -- you don't never know one minute to
12 the next if you're going to get locked up. Multiple
13 times, I got locked up with that family. Multiple times,
14 my name went out on Facebook as a pedophile and a piece of
15 crap as something to -- their own definition.

16 So you're right. Why would I go spend my time going
17 to their house when all I've done is got locked up?

18 Q To see your children --

19 A Ma'am, twice -- like I've said, twice, I've done
20 that. And, twice, I got locked up.

21 Q Sir, it sounds like you've been the victim of many,
22 many things and --

23 A Yes, ma'am. I have been the victim of many, many
24 things.

25 MS. HODGE: That's all I have then.

ROA 461

REDIRECT EXAMINATION

BY MR. CHAMBERS:

Q Are these allegations against you true?

A No, sir. They are not true.

Q Are you angry about the fact that you've been falsely accused?

A I am very angry. I mean, you don't understand. Understand this much, my mother was -- went through rape. Most of her life, she was dysfunctional. Most of her life, she was on drugs and everything else. I did not have a mother growing up. So I had a father, a wonderful father --

Q Okay.

A -- that raised four kids.

MR. CHAMBERS: You've already answered my question. You can stop right there.

Thank you very much.

THE WITNESS: Yes, sir.

MR. CHAMBERS: I'm finished with the witness, Your Honor.

MS. HODGE: I have nothing else.

THE COURT: All right. Sir, you may step down.

THE WITNESS: Thank you.

THE COURT: Mr. Chambers, you may call your next witness.

1 MR. CHAMBERS: Your Honor, the Defense rests.

2 THE COURT: Ladies and gentlemen, I'm going to ask
3 you just to go to the jury room for a few minutes. Don't
4 talk about the case. And continue to keep an open mind.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 3:23 p.m.)

7 THE COURT: All right. Is the State going to bring
8 any reply?

9 MS. HODGE: I don't think I need to.

10 Thank you.

11 THE COURT: Okay. Any motions at this stage?

12 MOTIONS

13 MR. CHAMBERS: I just renew my motion for a directed
14 verdict, Your Honor.

15 THE COURT: I respectfully deny the motion.

16 I gave y'all a verdict form earlier. Obviously, I
17 made a mistake. I've got each of the indictments down as
18 a separate question for the jury. So there's six
19 questions about the charges.

20 But are there any specific requests either side
21 wishes me to make in terms of -- or excuse me,
22 instructions or charges that either side wishes me to give
23 the jury?

24 MS. HODGE: No, Your Honor.

25 I just looked at your reasonable doubt charge. That

1 was all I was curious about. But no special requests.

2 MR. CHAMBERS: Me either, Your Honor.

3 THE COURT: All right. How long do you think your
4 closings will be? I mean, it's 3:25, basically, now.

5 MS. HODGE: Mine will be less than 20 minutes.

6 MR. CHAMBERS: I think mine will probably be longer
7 than that.

8 THE COURT: So --

9 MS. HODGE: I would really like to go today, if we
10 could.

11 MR. CHAMBERS: I just think it's going to take us
12 until, at least 5:00, Your Honor, to finish up, which
13 means that they're going to -- they're probably going to
14 have to come back in the morning. If we're going to do
15 that, my personal preference would be to be able to do our
16 arguments fresh in the morning so that the jury then
17 immediately goes out to deliberate.

18 THE COURT: Well, we'll just try to get it to them
19 today and see -- if they don't have a verdict by early in
20 the evening, they can always come back in the morning.

21 MS. HODGE: Thank you, Your Honor.

22 THE COURT: Okay. Let's take about a five-minute
23 break, and let everybody get comfortable.

24 (WHEREUPON, a break was taken.)

25 THE COURT: All right. Bring the jury in, please.

1 (WHEREUPON, the jury came into open court at
2 approximately 3:37 p.m.)

3 THE COURT: Ladies and gentlemen, you've heard all
4 the evidence you're going to hear in the case. Now, it's
5 time for the closing arguments.

6 And, yes, sir, Mr. Chambers.

7 CLOSING ARGUMENTS

8 MR. CHAMBERS: May it please the Court, Your Honor.
9 Solicitor.

10 Ladies and gentlemen, we've come to the end. And you
11 folks are going to do what you were brought here to do.
12 And you're going to go back and you're going to deliberate
13 this case, and you're going to make a decision.

14 And, as we discussed at the outset, you're going to
15 make a decision based on the evidence in this case, not on
16 any supposition, not on any outside sort of notion about
17 what's fair play or what might happen, but what the
18 evidence that was presented to you was. And does that
19 evidence prove to you beyond a reasonable doubt that
20 Jerald Gaskins had sex with this 13, 14-year-old girl?

21 It doesn't matter whether she was forced. It doesn't
22 matter whether she was coerced. If, in fact, he had sex
23 with her, that is against the law. I don't want to try
24 and convince you of anything otherwise. That is against
25 the law.

1 And so what you have to do, as the triers of fact, is
2 you have to look at this evidence and you have to consider
3 whether it makes sense to you, whether it adds up, and
4 whether it proves to you beyond a reasonable doubt that
5 Jerald Gaskins had sex with VICTIM

6 So at the very heart of this and really pretty much
7 the heart of their case is the statement and the testimony
8 of VICTIM And so you have to remember when she
9 was on the stand what she said, how she said it. Did it
10 make sense? And apply your common sense to that as you do
11 that.

12 All right. She testified -- and this was pretty much
13 agreed upon by a lot -- by just -- by everybody that
14 testified that she met Jerald, along with her parents.
15 And, apparently, her dad, Walt, already knew Jerald from
16 the VFW where he worked sometimes. And they met at a
17 horseshoe tournament. And he was hanging out primarily
18 with her dad. And then they all hit it off. So him, and
19 Rachel, his little girl, Redacted [sic], and everybody went
20 back to the Mucienkos and they hung out.

21 And, apparently, they hit it off so well that they
22 started to hang out with each other a lot. And VICTIM
23 said they hung out with each other -- that they were
24 coming over there anywhere from two to four days a week.
25 Jerald said it was a little bit less than that. But he

ROA 466

1 agreed that they had a lot to do with each other.

2 And, at some point, VICTIM started to go over to the
3 house where Rachel and Jerald lived. And she did that on
4 numerous occasions. Again, there's somewhat of a
5 disagreement about how many times that was. But everybody
6 agrees that she went over there, and that she spent time
7 with them.

8 Now, as she comes in and tells it now with the
9 benefit of hindsight after preparing to come in here and
10 testify and do all these things, you know, you're told
11 that it was all Jerald's idea, that Rachel was never
12 involved in that. Okay. But if you remember when I was
13 talking to Investigator Perry and he wrote up his report,
14 he, actually, said --

15 (WHEREUPON, there was a disruption in the courtroom.)

16 MR. CHAMBERS: He said that she had told him during
17 his conversation with her at the school that Rachel and
18 Jerald had invited her to come over. And she wanted to go
19 because she liked Skylar. And she wanted to hang out over
20 there. So she went.

21 And, on that first meeting, the first time she went
22 over there is when she says that he starts to talk about
23 sex with her. Are you a virgin? You know, I'd make love
24 to you. I'd -- it'd be so good. And she -- it creeped
25 her out, which it should. If a conversation like that

ROA 467

1 happened with a 13-year-old girl, it should. And if she
2 was doing the right thing, she would go home and she would
3 tell her mom about it. But I'll give you the fact that
4 not every girl is going to do that.

5 And I hope that you don't think that anything that I
6 have to say or anything that I have done during the course
7 of this trial leads you to believe that it's in any way,
8 shape, or form acceptable for a grown man to have sex with
9 a child. It is not. Okay. But that's not the issue
10 here. The issue is whether Jerald did that.

11 But then we hear without much explanation that
12 despite that feeling, she continued to go back. She goes
13 back the next time and she says that he, actually, has sex
14 with her. She didn't like it. She didn't want to do it.
15 And that seemed to be the case every time, you know.

16 She talked about that they had sex somewhere maybe --
17 maybe more than 10 times, maybe more than 20 times. It,
18 certainly, wasn't every time that she went over there.
19 But, oh, I didn't like it. I didn't want to do it. He
20 always seemed to kind of talk me into it, or coerce me
21 into it.

22 And, really, at this point, what she's doing is she's
23 trying to have it both ways. It would be one thing if she
24 had come to you and said, listen, I'm not proud of it.
25 I'm ashamed of it. I wish it hadn't happened. But he

ROA 468

1 charmed me. I fell in love with him. I readily had sex
2 with him. I wish it hadn't happened. But that's not what
3 she has done in this particular case. She wants to have
4 it both ways. She wants to say I didn't even want to do
5 it. But she kept putting herself in that situation.

6 Folks, this is not a case where he lived under the
7 same roof with her. We all hear about cases where
8 somebody's dad, somebody's uncle, somebody's caregiver,
9 they have no choice but to be around them. And they end
10 up being forced or coerced into doing something they don't
11 want to do. And it is true that many, many times, if not
12 most times, they don't say anything about it, unless
13 somehow given the opportunity and they feel safe to say
14 something about it. You know, we all know that that's how
15 it is. But this is not that situation. It's not even
16 close to that situation.

17 What she wants you to believe is that she continued
18 to go over there, despite the fact that she didn't want to
19 be subjected to that. And the only thing she had to do to
20 make it stop was not go. And not only was she going, but
21 she wanted to go. The testimony from her, from her
22 mother, from everybody was she wanted to go.

23 And the testimony was not that this was a girl who
24 was miserable, and just had a terrible life, and was
25 looking for anybody to throw her a bone. There was

1 nothing about what you heard about her that would make her
2 seem like she was particularly vulnerable.

3 She said that her dad drank too much. But she was
4 happy at home. And her parents were good to her. She,
5 particularly, had a good relationship with her mother, a
6 close relationship with her mother. She did well in
7 school. And, apparently, they cared about that because,
8 at one point, they even took her phone away from her
9 because her grades slipped, the kind of thing that a good
10 parent does.

11 She was active in sports. She played volleyball.
12 Here is a picture of her when she was 13. She went to a
13 church youth group. She had friends. Her mother said she
14 was very sociable. She had lots of friend and people to
15 do things with.

16 So this is not somebody that would be easily charmed.
17 This is not somebody that could easily be taken advantage
18 of. She wanted to go over there. And if these things
19 were really happening to her and she felt that bad about
20 it and she didn't want them to happen, all she had to do
21 was not go.

22 I'll give her the benefit of the doubt, maybe she was
23 embarrassed if it happened. Maybe she didn't want to say
24 anything to anybody. But all she had to do was not go.
25 And the ready excuse for her when I asked her about it

ROA 470

1 was, well, it would have looked funny if I had quit going.
2 Why would it have looked funny?

3 Instead of going over to these adults house who have
4 a baby and, apparently, nothing else going on, why not be
5 going out with your friends, and doing all those things
6 that teenagers do? It looked funnier that she kept
7 wanting to go over there. And it was her choice. There
8 was no way for anybody to force her to go over there. It
9 just couldn't happen.

10 And, folks, that's what we're talking about when
11 we're talking about common sense. It doesn't make sense.
12 And she said, well, there are other things I enjoyed about
13 it. Well, listen, it would have to be something awfully
14 great for me to endure the kind of sexual assault that she
15 described for me to want to continue to go over there, you
16 know, to these double-wide trailers and these two-bedroom
17 houses that they lived in with all these other people that
18 were always piled in there with them.

19 And then that's the other thing. She wants you --
20 she tells you that almost all of these things happened
21 with other people in the house. His wife is in the house.
22 And she's taking a shower. And the Solicitor said, well,
23 when you take showers, you don't know what else is going
24 on in the house. Well, no, I mean, you don't.

25 But does it make sense to you that the first sexual

ROA 471

1 encounter that you're going to have with somebody, and you
2 know it's illegal, is with your wife right there in the
3 house subject to come out at any point, and that she just
4 readily said, yeah, let's -- you know, let's go ahead and
5 do that. It doesn't make sense. There were always people
6 around in these small houses with these thin walls. And,
7 yet, nobody at any point ever saw or heard anything that
8 gave anybody pause, never.

9 The one and only incident that you heard anything
10 about was from Rachel Gaskins when she said that they were
11 both asleep on the couch, and that his leg was over her
12 leg, and they were sitting there where they were watching
13 TV. It's not the most incriminating thing in the world.
14 But let's assume that it is. She didn't do anything about
15 it. She never said a word about that to anybody until she
16 walked in here to testify.

17 And that went on, VICTIM testified, for about a
18 15-month period from March of 2011 up until sometime in
19 the fall of 2012. And she just kept going. She kept
20 letting those things happen to her. And it was happening
21 in the house with all these people around. It defies
22 common sense.

23 So why would she make up a story like that? That's
24 got to be the question that y'all are asking. Why would
25 she make up a story like that? Well, I don't -- it's hard

ROA 472

1 to say what somebody's motivation for that is, you know.

2 The thing about it is there's a reason that somebody
3 who is accused of a crime doesn't have to prove their
4 innocence. Because it's very hard to prove a negative.
5 It's impossible to do. You can't prove you didn't do
6 something. And that's why there's such a high burden on
7 them that they have to come in and prove it beyond a
8 reasonable doubt.

9 But we do know a couple of things. One, she -- he
10 was, apparently, helping her out with things like school
11 supplies. He had put her and her brother on a phone plan.
12 And it wasn't just him that testified to that. If you
13 remember back when Sandy testified, she, also, mentioned
14 that there was another family member on that phone plan.

15 She knew that things were tough at her house. Her
16 dad, Walt, didn't work. He liked to drink. Mom worked
17 hard jobs it sounded like. I mean, waitress and bartender
18 are two very hard jobs. And it sounded like everything
19 was on Sandy to take care of things there at the house.

20 So a time comes that those things aren't there any
21 more because there's been this disagreement between Walt,
22 and Sandy, and Jerald. So she doesn't like him any more.
23 That's one motivation.

24 The other motivation is Rachel had moved out and was
25 no longer with Jerald. And you heard him talk about the

1 fact that they had had disagreements, basically, from the
2 start of their marriage about her fooling around with
3 other people. And that she -- and it, finally, came to a
4 head and he asked her to leave. And his dad came over and
5 got her and took her over to her grandmother's house.
6 That was in April. The divorce that -- he filed for the
7 divorce just a few -- a couple of weeks after that. And
8 you heard him talk about that when he talked about when he
9 filed the pleadings.

10 Something very important happens later on. And that
11 is Jamie Mucienko comes back from Florida. She is a
12 former high school best friend of Rachel Gaskins. And she
13 said that she got back in touch with Rachel when she got
14 back, Jamie did, and they started talking.

15 And, of course, what's going on at this time? He's
16 going through a divorce with her, and they're having a
17 custody dispute. And what better way to get a leg up on a
18 custody dispute than to make false allegations. So
19 everything starts to come together.

20 Jamie says, I had suspicions right from the
21 beginning. But you know what, she didn't. She's a grown
22 woman. She didn't pull her little sister aside and say, I
23 know what you're doing running around with this guy. I
24 don't know why you go over to their house. I've got some
25 real concerns about this guy. She didn't go to her mother

ROA 474

1 and say, why do you let her go over there? Wouldn't that
2 be the sensible thing to do? Isn't that what you would
3 do? No. She says, I tried to gain his trust so that I
4 could try and find some things out.

5 And what does she come up with? She's got these
6 incriminating text messages. But here's the thing. She
7 never offered those up to anybody until the day before
8 this trial started. And that is completely undisputed.
9 Supposedly, she got these text messages that said those
10 things that she testified to and that the Solicitor then
11 later asked about. But she never told anybody about it
12 until the day before this trial started, not at a time
13 when she could have produced the phone.

14 One of the things I remember about Investigator Perry
15 was, you know, we really like to be able to get a phone.
16 Even if the phone has been cut off, we like to get the
17 phone so that we can -- because we can trace that. And it
18 didn't have to be Jerald's phone. If they just had her
19 phone.

20 So, supposedly, she had these even before any of this
21 stuff happened, or right around that same time frame. Why
22 wouldn't you go to the police and say, you need to take a
23 look at these, here's my phone? She had the phone then.

24 Now, Investigator Perry didn't have anything about
25 anything like that in his reports. And you heard him

ROA 475

1 testify. And he said -- he was here in court. So he made
2 some -- I think she might have mentioned something about
3 text messages when I was there that night, but I don't
4 remember. And I didn't write it down. And I didn't
5 follow-up on it. Come on, folks, he said himself how
6 important those things were. That's not much of an
7 investigation if that's what happened.

8 The truth of the matter is she never told anybody
9 about it and she came up with those. Why would she do
10 that? Because she's worried. She knows these allegations
11 aren't true. And so she's going to run to the rescue with
12 some additional evidence at the last minute, not with a
13 phone that somebody could check and find out where they
14 came from, if they were real, but something that she said
15 happened. Something she said happened. None of that
16 makes sense. None of that makes sense at all.

17 The same thing with this girl #1 [REDACTED] Very
18 conveniently, here comes #1 [REDACTED] She never talked to the
19 police. She never talked to this woman, Sandy Mucienko,
20 that she said was like a mother to her. She never even
21 talked to #1 [REDACTED] [sic], who she said was her best friend
22 in the world.

23 But just shortly before this trial is to commence,
24 she comes forward and says, that happened to me, too. And
25 guess what? It happened in some of the same places in

1 just the same way, and along the same time frame. That's
2 awfully convenient.

3 So she's got her best friend who now says the same
4 thing happened to her. She's got her sister, who is good
5 friends with his estranged wife, coming in at the last
6 minute with stuff to shore up the case to try and make
7 sense of this nonsensical statement that VICTIM made to
8 begin with. And you see how it all starts to come
9 together.

10 And you've got Rachel Gaskins who if anybody ever had
11 an ax to grind, she does. And if there's ever anybody you
12 shouldn't believe, it's her. She comes in here and she
13 testifies to what sounds like the worst possible
14 relationship ever, just misery from day one, abject
15 misery. He made me quit school. He made me quit the CVS.
16 He pretty much made me move in with him after two weeks of
17 texting and calling.

18 And I'll grant you that is one of the most ridiculous
19 things I've ever heard that these two decided to move in
20 with each other after texting. That is a relationship
21 that is, obviously, doomed to fail. But, apparently, they
22 stayed together for a while. They had two kids together.
23 Although when the last one was born, they had split up.
24 She said that he tried to keep her away from his -- from
25 her family.

ROA 477

1 But if you will remember -- and she admitted this on
2 the stand and this -- you ought -- this ought to,
3 basically, disqualify anything that she's got to say to
4 you. She filed, by her own admission, a false police
5 report against the man she said she felt like was her
6 father. She accused this man of rape. She did that. She
7 talked to the police and filled out an incident report and
8 went forward with this case until she, finally, had to
9 come clean, apparently, and say it wasn't true. And what
10 was her only response to that? Jerald made me do it.

11 She wants you to believe that Jerald had her
12 completely under his thumb, and that she was never able to
13 do anything, that she was completely miserable and, yet,
14 what we do hear is that she -- they're frequently out
15 doing things together. They're going over to the
16 Mucienkos a lot. And he's primarily hanging out with Walt
17 when they go over there. She's going to her grandmother's
18 house, even VICTIM testified to that. She's not a
19 prisoner. She's not at home. She's not under anybody's
20 thumb.

21 And he told you that the reason that they split up
22 and the reason that he filed for divorce is she was
23 fooling around on him. And she wasn't happy about the
24 fact that he was trying to get custody of the kids.

25 So, again, all of this starts to come together. And

ROA 478

1 Sandy jumps on board because, you know, she's not happy
2 with him. She probably -- you heard her say that her and
3 Walt are not together anymore. She's probably not happy
4 about the fact that he's still friends with Walt. She's
5 not happy about the fact that he had cut them off and said
6 he wasn't going to help them out anymore. She's not happy
7 about that.

8 And you remember when VICTIM reported this. How did
9 it all start? It started with a phone call from somebody
10 in Rachel's family. It was either Rachel, or Rachel's
11 mom, or somebody. And, you know, Rachel is not -- this
12 trial doesn't involve her. She's not a victim or
13 anything. But everyone of her family members were here
14 yesterday and here again today because, as Jerald told
15 you, they have been out to get him for a long time. And
16 they wanted to be here to see it happen.

17 And I don't want to beat around the bush. I'm flat
18 out telling you that these people got together and they
19 made this up, that it didn't happen. And you saw the
20 frustration boil over in Jerald. After all this time he,
21 finally, gets on the witness stand and he's had to live
22 with these false allegations all this time. Anybody would
23 be angry. Anybody would be upset.

24 When VICTIM -- so they get this call -- they call
25 the police. The reporting officer comes over and takes

ROA 479

1 the basic statement. And Investigator Perry springs into
2 action. And he is going to investigate. He goes over and
3 talks to the parents briefly. VICTIM is not there. So
4 he follows up the next day at school and gets a short
5 statement.

6 Now, this is important. Two weeks later, they call
7 him up. And they say, oh, VICTIM wrote out a more
8 detailed statement. And Investigator Perry goes and gets
9 it. And it is a 16-page handwritten statement that she
10 said she had labeled at each place that they had lived and
11 all the details in there.

12 And if you will notice how this case was presented,
13 everybody that got up on the stand, the Solicitor would
14 click off these different locations and lead them through
15 that testimony about all these things. And everybody said
16 and did the right things, which if you're going to get
17 together and make up a story, that's how you do it.

18 And anybody that ever -- that knows that if you're
19 going to tell a good lie, it can't be a general lie.
20 You've got to come up with specifics to make it sound
21 right like, yeah, I was telling your wife that you were
22 four hours late because you had a tire blow out in the
23 country. Your battery was dead. So you had to walk three
24 miles to the nearest gas station only to find out it was
25 closed. And -- but you were lucky enough to find somebody

ROA 480

1 that lived next door that knew the owner. And you put in
2 all these little details and stuff. And then everybody
3 does that. And it sounds like, yeah. And then the
4 Solicitor can stand up and say, see how consistent they
5 all are.

6 But here is where you start to find out that maybe
7 they aren't telling the truth about things. Do you
8 remember when Jamie was testifying how vague she was about
9 details, and where her phone was, and why she couldn't
10 turn it over to the police, and how evasive she was about
11 why she didn't say anything to anybody.

12 And all through this, they kept saying that he
13 supplied her with all these goodies that, basically, this
14 was part of his seduction. But any time that **VICTIM** was
15 asked, the only thing I ever heard her say was, well,
16 he -- if I wanted a Coke, he'd get me a Coke. If I wanted
17 a candy bar, he'd get me a candy bar.

18 And then I pressed her on it a little bit. Well, you
19 know, anything I'd want. Couldn't you -- I mean, she
20 remembers all this other stuff with great specificity. If
21 somebody was giving me gifts and I was sitting here at a
22 trial like this, aren't those things that you think you
23 would remember? You would remember those. Those would be
24 important. And, yet, those are the details she struggled
25 with. Because those are the details they didn't practice.

ROA 481

1 And Jerald told you, yeah, I helped them out. I got
2 her school supplies when she needed them. They were hard
3 up for money sometimes, you know. I let them be on my
4 phone plan. All these things that he helped do, even
5 though he didn't really have a lot himself.

6 So, you know, you have to ask yourself -- and the
7 basic story itself, of course, they all got that right.
8 Because you remember Jamie said, We went into a room
9 together and we started writing that statement out. Now,
10 she said her sister told her what to say. But, man,
11 there's a lot of specifics in there. And they didn't get
12 it to Investigator Perry until two weeks later. And then,
13 basically, that was the blue print from then on. That's
14 what the whole investigation from that point forward was
15 based on.

16 Now, Investigator Perry didn't do a whole lot more at
17 that point. He didn't even follow-up, if you'll remember,
18 when he got the detailed report. He didn't go back and
19 ask for -- ask any more questions. He didn't go back and
20 say, well, will you take me to these places and show me
21 how things happened?

22 He did say something about going out to a house that
23 he thought might be the house that kind of fit the
24 description. Wouldn't it have been a hell of a lot easier
25 to get the alleged victim in the case and say, take me to

ROA 482

1 this place, walk me through, tell me what happened? He
2 didn't do that. He didn't do that. He didn't bring in
3 anything about anything like that.

4 There was a lot of discussion about texts and phones.
5 You didn't get one -- you know, anything that would
6 document an investigation into texts, or phone messages,
7 or anything like that that the police did. And they can,
8 certainly, go and get those phone records. And they can
9 certainly -- Officer Perry told you they could to that.
10 You didn't get anything like that. And, yet, they have
11 the burden of proof.

12 So once we get that 16-page statement, that's what
13 the Solicitor bases her whole case on. And the easiest
14 thing in the world to do is to start with a conclusion and
15 work backwards. And that's exactly what these people did
16 when they conspired to get together to go after Jerald
17 Gaskins.

18 Even the doctor that they brought in, this -- the one
19 who works at the hospital and the Julie Valentine Center,
20 yeah, Dr. Croswell, did -- anything that she said to you,
21 did you find it of value? I mean, here is, basically,
22 what she did. She did a physical exam and found nothing.
23 She was offered as a medical expert. She did a physical
24 exam and she found nothing. But that's not why they
25 brought her in here. Because what they wanted was

ROA 483

1 somebody else to come in here and say, this is what
2 VICTIM told me.

3 But, again, what did the doctor have access to before
4 she ever even spoke to VICTIM She had that 16-page,
5 specifically, written out statement. And that's what she
6 based it on. And then I said, So you found nothing?

7 No, no, I'm not saying that. I'm saying that what I
8 found is consistent with somebody who has been abused.

9 And then I said, Would it, also, be consistent with
10 somebody that hasn't been abused?

11 No. I'm not going to say that.

12 And then when I challenged her on it -- because it
13 seemed pretty clear to me -- she, finally, admitted that,
14 yeah, it's consistent with nobody having been abused. But
15 that wasn't what she was here for. And that's why she was
16 so hesitant.

17 Don't think that they don't have a stake in this, and
18 that they don't want to prevail, that they don't want you
19 to come back and find Jerald guilty. Everybody involved
20 in this case does. And they may even believe that he did
21 what he's excused of, the Prosecutor, and Dr. Croswell,
22 and all of these people. But Dr. Croswell, I mean, she
23 knew before she did that physical exam they weren't going
24 to find anything. And she found nothing to indicate that
25 there was anything going on.

ROA 484

1 Folks, it is -- you know, I know it's kind of hard to
2 wrap your head around, you know. The Solicitor is
3 probably going to say that what I have just said to you is
4 sheer conjecture and is beyond the realm of possibility.
5 And she may even tell you that it's ridiculous. But you
6 look at it. And you consider how all of this came to be,
7 and how unlikely it is that this girl would be putting
8 herself in the situation that she didn't have to be in
9 simply by not going over there. It doesn't make sense how
10 she would never say anything to anybody.

11 But, more importantly, how this friend who came in at
12 the last minute to say that she had, also, been abused
13 never warned her friend. Her excuse was I dropped off the
14 face of the earth. You couldn't find it in yourself to go
15 and say, he's coming after you, he told me he was. And
16 she would have known he was already spending time with
17 her.

18 Jerald said she never even came to the house, that he
19 only saw this girl on a couple of occasions. Do you
20 believe that she wouldn't go and say anything to Sandy?
21 Do you believe what Jamie at the last minute -- literally
22 the last minute comes in with these supposed text messages
23 that are supposedly damning? All of this stuff is coming
24 in at the last minute.

25 There's plenty of reasonable doubt in this case. If

ROA 485

1 you get back there and you start having questions, well,
2 why didn't -- you know, where's the evidence of this, or
3 where's the evidence of that? That's reasonable doubt.
4 If there's any hesitation on your part to believe beyond a
5 reasonable doubt that what VICTIM told you is
6 the absolute truth, that's reasonable doubt. And this is
7 a decision you're going to have to live with after this
8 case is long gone. But, more importantly, it's a decision
9 he's going to have to live with.

10 Because, as he said, this whole thing changed his
11 life completely. And you can imagine how that would be.
12 There aren't many things you can accuse somebody of that's
13 much worse. And if you're going to do that, you need to
14 come with solid evidence and not just a group of people
15 that get together all of whom have an ax to grind against
16 him, and come in here and make it all up and hope that you
17 find him guilty.

18 Now, I'm going to do the hardest thing that I have to
19 do in any trial. I'm going to go and sit down. And even
20 harder, I'm going to have to listen to the Solicitor. And
21 she's going to say a lot of things that I don't agree
22 with, and I won't be able to respond to. And the reason
23 for that is she has that burden of proof beyond a
24 reasonable doubt, that ever important, ever present burden
25 of proof to prove beyond a reasonable doubt.

ROA 486

1 But I know that you folks paid attention. I know
2 that you have the same questions about these things that I
3 did. I can tell you that Jerald appreciates the fact that
4 you're here. This is, finally, coming to an end for him.

5 We submit to you that they have not proven their
6 case. And the correct verdict in this case would be not
7 guilty.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Chambers.

10 Ms. Hodge.

11 MS. HODGE: Thank you, Your Honor.

12 Mr. Chambers.

13 I'm going to answer one of Mr. Chambers's questions
14 for him. How did this come to be? How did we get here?
15 How did you get here? It's exactly what I told you in
16 opening statements. We're here because a grown man,
17 30 years old, married with a kid thought it was okay to
18 prey on young, naive, maybe somewhat needy girls. That's
19 why we're here. That's how we got here. Because he took
20 the position that, why not, they're there, they're easy
21 enough, might as well go for it.

22 It's kind of like the phenomenon, you know, we see in
23 nature. So we've got a pack of lions. The biggest, the
24 best lion, he's going to get the biggest, the best, prey,
25 the maybe not as strong, or not as popular, or not as

ROA 487

1 whatever. He is going to go after the gazelle with the
2 bad leg, the baby, the vulnerable one. And I think that's
3 what we have here.

4 I think Mr. Gaskins has some personal issues, some
5 personal self-worth issues. And he goes for what he knows
6 he can get, which is a 13-year-old, a 14-year-old. I
7 mean, his wife was only 17. So we're not really
8 stretching far beyond what he chose to marry. But I think
9 he saw that as easy prey. And the chase, and the
10 conquest, and just having sex made him feel good about
11 himself.

12 In that moment, he felt more in control of himself
13 and in his life, more manly, more powerful, more
14 important. And I think that's where this all comes down.
15 And that he saw the opportunity. Unfortunately, for these
16 two girls, they happen to present on the same day, and --
17 VICTIM and #1 It was just which one was going to be
18 easier at that time. And it was #1

19 And #1 testified she has some problems. She's
20 grown up in a difficult life. And somebody was paying her
21 some attention. She liked it. She fell for it. Was she
22 proud of it? No. I think she was very, very humble when
23 she took the stand. And she was very honest. And she
24 said, I mean, I felt icky about it. I felt ashamed. I
25 felt bad about what I had done.

ROA 488

1 And here he was married. Let's forget the fact he's
2 30 -- or almost 30, and you're in eighth grade. But she
3 really did think this is kind of icky. But she did it.
4 And she didn't disown it. She didn't try to say he forced
5 her. She owned up. She was 13 -- or excuse me, she was
6 14 and in the eighth grade.

7 And he's somebody that's got a car, somebody that's
8 got a little bit of money. We're not talking big money,
9 little money is all really that can impress younger kids.
10 I mean, just the freedom, the freedom for somebody to take
11 you away from your house, buy you a drink, talk nice to
12 you, make you feel special. That's really all it took.
13 And those were the tools that he had in his tool box,
14 pretty simple.

15 And then when she said, I don't like this anymore, he
16 was, basically, done with her anyway. And so that's fine,
17 you know. I like VICTIM And there it went. And,
18 unfortunately, VICTIM fell prey to that.

19 Now, did VICTIM have a little bit more difficult
20 time owning it maybe in here? Do you think she was
21 probably embarrassed, humiliated, didn't really want to
22 come clean about how she, actually, put herself in that
23 position repeatedly? Probably. Would that be something
24 that would be difficult to say? Yeah. I kept going back.
25 And I knew he was married. And there was his wife. And

1 there was his daughter. And, yeah, that would be hard to
2 own up to.

3 But she never said he physically forced her. This
4 was not rape. It was nothing like that. She put herself
5 in those positions. I think she really liked him. And I
6 think that is what's embarrassing right now, too, is that
7 she, actually, fell for that.

8 So, yeah, maybe her testimony wasn't exactly as we
9 would have liked it to be, quite as humble, and as open,
10 and honest as #1 (Minor) but it wasn't a lie. He had sex
11 with VICTIM 10 plus times at almost every location that
12 they lived, at Tigerville Road, Magnolia Park, Central,
13 which is not in our jurisdiction, you don't have to
14 worry -- you don't have to decide anything about that,
15 Quail Roost, and even Belvue where he moved, finally, at
16 the end. And how do we know that? Well, we know that
17 because VICTIM told us that. There were only two
18 witnesses to this crime, the Defendant and VICTIM

19 So you have eyewitness testimony. What she says is
20 testimony. I mean, it's evidence. Everything she told
21 you is eyewitness testimony. She's very specific. She
22 was very detailed, very embarrassed, rightly so. I don't
23 think any of us want to sit up here and talk about
24 legitimate experiences that we've had in our lives, much
25 less something illegal, illegitimate. But she told you.

ROA 490

1 And she didn't exaggerate. She didn't make it more
2 than it was. She didn't say, yeah, every time, this
3 happened. Yeah, he did this each time, or -- you know,
4 she was very specific about these random occurrences. And
5 why is that? Because that's when the opportunities arose.
6 And that's how he would couch it, hey, now we can do it,
7 here is our chance. So it's easy for her to recall.
8 There weren't that many. But every time there was one,
9 that's what he wanted to do.

10 And I submit to you, she liked being over there. I
11 think she liked being around him. I think she liked being
12 with Skyland. I think she liked all that. But I think
13 she liked, again, the freedom, being away from home, not
14 under mom and dad's, you know, go do this, did you do the
15 dishwasher today. It was mom and dad that were giving her
16 a pass, hey, sure, go hang out with him. Yeah, Friday
17 night, go just spend the night. I mean, what 13-year-old,
18 14-year-old wouldn't like that?

19 Now, did something have to happen every now and then?
20 Yeah, she had to have sex with him every now and then.
21 But did she really, really hate that enough not to go
22 back? No.

23 Because I think what he told her and what she thought
24 was that one day, they were going to run off together.
25 She was going to get emancipated and, you know, this would

ROA 491

1 be real. It wouldn't just be him whispering to her about
2 how he thought she was great, and loved her, and all that
3 kind of stuff. It would be real. They could get married.

4 So what you've got to do now is decide from our two
5 witnesses to this crime what's true, what **VICTIM** told you
6 or what the Defendant told you. There's really no middle
7 ground. You either believe her about this, or you believe
8 him.

9 So let's go --

10 MR. CHAMBERS: Your Honor, I'm going to object. That
11 sounds like burden shifting to me.

12 THE COURT: All right. Overruled.

13 MS. HODGE: So let's go through how you're going to
14 determine what the truth is, who to believe in this case.
15 We all have common experiences about who's telling the
16 truth to us and who's lying. Right? We know that. We
17 don't need to be experts to do that. We live. We deal.
18 We make decisions. And we process things.

19 So we look at what someone is telling us. The first
20 thing that's going through our mind, did I just hear that
21 right? Does that make sense? Is that possible? So is
22 that probable? So you've got to have content. It's got
23 to be possible, plausible, rational.

24 Then you've got to look at, is what that person is
25 telling me consistent? Is it consistent within what --

1 the five minutes they were talking, were they consistent
2 within their own self? And then if I've got other people
3 joining in, are those people consistent with what this
4 person is telling me?

5 So that lends you to think, well, maybe this could be
6 true. Then we add another layer in. We look at motive.
7 And Mr. Chambers has told you all this from his
8 perspective. But, really, use your common sense in this.
9 What is **VICTIM** motive? This girl was busted. She
10 didn't like concoct a plan and come and bring -- try to
11 bring everybody that she could in on her plan. She got
12 busted. She got found out. She tried to deny it. And
13 then she, finally, told.

14 And once she told, things started clicking.
15 Everybody is like, yeah, you know, I was feeling weird
16 about that. The sister is only in town for like three
17 months when this goes on, because it's near the end, and
18 she's right away like, this is weird. I'm going to see if
19 I can find out more. And she clued right in, probably
20 because she's younger and, obviously, she's a sister.

21 Mom is keeping up the house. Mom is working. Mom's
22 got three kids. And mom is doing the best she can. And
23 she really did like the Defendant. There was a
24 friendship, apparently, then. So she's kind of looking
25 back now thinking, yeah, maybe that was weird.

ROA 493

1 And then you've got, you know, #1 who had really
2 nothing to do with anything. As soon as the Defendant
3 started up with VICTIM #1 kind of dropped off. Her
4 grandmother died. She started doing some things she
5 shouldn't be doing, getting in some trouble, things
6 like that. So she wasn't really a part of this
7 concoction.

8 You've got VICTIM just coming clean. This is it.
9 No motive whatsoever. She's not got a vendetta against
10 the Defendant. She doesn't want to hurt him. She doesn't
11 want to get him. She doesn't want to do anything to him.
12 She just has to tell the truth. And that's what happened.
13 And everything else comes from that.

14 Now, let's look at the Defendant's point. What he
15 came to court and presented to you was everything is a
16 lie, everything. No, I never texted that dad. No, I
17 never texted that sister. No, I don't even like country
18 music. No, I never said I had tickets to this concert.
19 No, I never went to that concert where I got into it with
20 my wife. No, I don't have Facebook, no, no, no, no, no,
21 nothing.

22 Now, is that believable? Nothing. Zero. I don't
23 think that's using your common sense. But he has to hold
24 that line. Because if he gives in on one thing, those
25 cards are going to fall. And you're right back over here

ROA 494

1 where VICTIM was with the truth.

2 And who has the motive in this case? VICTIM what's
3 she going to gain today, tomorrow, next week? Is she
4 going to get a big paycheck out of this? No. She's got
5 this to deal with for the rest of her life. This is
6 something that's in her book of life. She's worked on
7 that through counseling. But that's not going to change.
8 That's in her past.

9 The Defendant, what does he have to gain or to lose?
10 I submit today his life is going to be very different than
11 tomorrow, whichever way this goes. So does he have motive
12 to make it go the way he wants, to get in here and tell
13 you things that aren't true, to tell you lies? Of course,
14 he does. He's the only person in this with something to
15 gain or lose.

16 Mr. Chambers tried to allude that Dr. Croswell has
17 got some stake in this, or, you know, maybe law
18 enforcement. No, nobody does. I don't. I'll be back at
19 work tomorrow. I'll be pulling the next case. So will
20 Investigator Perry. So will Dr. Croswell. And it goes on
21 and on. We don't spend our time and our energy concocting
22 and hunting down innocent people to frame, and to spend
23 taxpayer dollars, and put all of this together and present
24 to you just because we don't have anything else to do and,
25 you know, we really want to get Jerald Gaskins.

ROA 495

1 I mean, that's what this is all about. You know,
2 he's been a victim since -- goodness knows, since he was a
3 child where he's had to have roommates so he can be
4 verified that he's been innocent throughout his life. I
5 mean, does that make sense that the State would go to that
6 trouble? I don't think so.

7 And speaking of those roommates that are going to
8 verify everything, that he's innocent, he did not present
9 them. He presented evidence. He presented his testimony.
10 You know, it's just something for you to consider.

11 As I told you at the beginning, verdict comes from
12 the Latin word verdicto. And it means to speak the truth.
13 So your verdict must speak the truth in this case. The
14 truth that this happened to VICTIM would be a guilty
15 verdict. The truth that you find it did not happen, there
16 was no sexual battery, no touching and fondling, then you
17 would say not guilty.

18 I submit, when you use your common sense and you go
19 through all of the evidence, all of the witnesses, the
20 State and the Defendant, that you will find the truth is
21 the Defendant did commit a sexual battery on VICTIM when
22 she was 13, 14 years ago old at various locations
23 throughout Greenville County, and that he is guilty as
24 charged.

25 Thank you.

ROA 496

CHARGE ON THE LAW

THE COURT: Thank you, Ms. Hodge.

Ladies and gentlemen, you've heard all the evidence you're going to hear in the case. And it's now my duty to instruct you on the law that applies to the facts of this case. It's your duty to find the facts from the evidence. To those facts, you must apply the law as I give it to you. And that means you must follow the law as I give it to you.

You should not be concerned with what the law should be, but with what it is. And you must not be concerned or influenced by any personal likes or dislikes, opinions, prejudices, or undue sympathy. And that means you must decide this case solely on the evidence before you and according to the law. And you will recall, you took an oath to do just that when we began this trial.

Now, in following my instructions, you must follow all of them and not single out some and ignore others, because they're all equally important. And you must not read into these instructions or into anything I may have said or done during this trial as any indication as to what I think the facts are or what I think your verdict should be. Because, as I told you at the outset, you are the sole and exclusive judge of the facts.

Now, you decide what the facts are by evaluating and

ROA 497

1 weighing the evidence you've heard during this trial. It
2 is a mental process. And you weigh and evaluate the
3 evidence simply by using your good common sense, and your
4 sound judgment, and your sense of logic and reason. And
5 you bring those things to bear on the evidence you've
6 heard during this trial.

7 I told you at the beginning that evidence consists of
8 two sources, sworn witness testimony and exhibits. So
9 nothing else is evidence. What the lawyers say, while
10 they're trying to help you understand the evidence and you
11 should pay keen attention to what they say, their
12 statements are not evidence because they're not witnesses.
13 So if your memory differs from the lawyers memory of the
14 evidence, then your memory controls.

15 The law, also, recognizes two different types of
16 evidence. And what I'm talking about now is
17 circumstantial and direct evidence. Direct evidence
18 directly proves the existence of a fact. It is evidence
19 that, if believed, immediately establishes a fact.
20 Circumstantial evidence is proof of a chain of facts and
21 circumstances indicating the existence of another fact.

22 Crimes may be proven by circumstantial or direct
23 evidence. The law makes no distinction between the weight
24 or value to be given either direct or circumstantial
25 evidence. However, to the extent the State relies upon

1 circumstantial evidence, all of the circumstances must be
2 consistent with each other, and when taken together point
3 conclusively to the guilt of the accused beyond a
4 reasonable doubt.

5 If these circumstances merely portray the Defendant's
6 behavior as suspicious, the proof has failed. The State
7 has the burden of proving the Defendant guilty beyond a
8 reasonable doubt. This burden rests with the State
9 regardless of whether the State relies on direct evidence,
10 circumstantial evidence, or some combination.

11 I told you, also, that you were, also, the judges of
12 the credibility of the evidence. And I'm not going to
13 repeat that, because I know you heard me the first time.

14 But I will tell you that in deciding credibility, you
15 may believe everything a witness says, or you may believe
16 nothing a witness says. You may believe parts of their
17 testimony, and disbelieve other parts. You may believe
18 one witness over several, or several over one. But you,
19 certainly, don't decide this matter of credibility by
20 counting up the witnesses for the different sides.
21 Because your objective is to find the true facts from the
22 evidence in this trial, and whether the State has met its
23 burden of proof.

24 Now, I told you, also, that expert witnesses could
25 give opinions. But I, also, told you that they, like all

1 other witnesses, must have their credibility judged by
2 you. And so that means you may accept the testimony of an
3 expert, reject it, or give it whatever weight you think it
4 deserves.

5 Now, I've already told you about the presumption of
6 innocence, but I will tell you again because it is so
7 fundamentally important that any time a person is charged
8 with a crime in this state, they are never required to
9 prove themselves innocent, or prove themselves not guilty.
10 It is a fundamental rule of the law that a defendant, no
11 matter what the seriousness of the charge may be, will
12 always be presumed to be innocent of the crime for which
13 the indictment was issued, unless and until guilt has been
14 proven by evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 The presumption of innocence does not end when you
17 begin your deliberations, but it accompanies the Defendant
18 throughout the trial, unless and until you reach a verdict
19 of guilt based on evidence satisfying you of guilt beyond
20 a reasonable doubt.

21 Now, the presumption of innocence is not some
22 technicality or mere theory. It is not just a legal
23 phrase. It is a substantial right to which all of us are
24 entitled. And it cannot be removed unless you, the jury,
25 are satisfied from the evidence of guilt beyond a

ROA 500

1 reasonable doubt.

2 Now, the mere fact that the Defendant was charged and
3 indicted is not evidence, as I told you before.

4 Mr. Gaskins has pled not guilty to these charges. And
5 that puts the burden of proof entirely on the State. And
6 you may draw no inference or conclusion from the fact that
7 he has been charged. And the indictments do not even
8 raise a suspicion of guilt in and of themselves.

9 Now, I have talked about this phrase reasonable
10 doubt. So what does that mean? A reasonable doubt is the
11 kind of doubt that would cause a reasonable, sincere,
12 honest, and conscientious person to hesitate to act during
13 an important matter in their own affairs. Proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced
15 of the Defendant's guilt.

16 Now, of course, there are few things we can know with
17 absolute certainty. And the law does not require proof
18 that overcomes every possible doubt. If, based on your
19 view of the evidence, you are firmly convinced that the
20 Defendant is guilty of the crime charged, you must find
21 him guilty. On the other hand, if you think there is a
22 real possibility that the Defendant is not guilty, you
23 must give him the benefit of that doubt and find him not
24 guilty.

25 And, ladies and gentlemen, a reasonable doubt may

1 arise from the evidence or from a lack of evidence. And a
2 defendant is entitled to every reasonable doubt that may
3 arise in the case. And what that means is simply this.
4 If as to any issue of fact that is necessary to a finding
5 of guilt you have a reasonable doubt as to how that issue
6 should be resolved, it's your duty to resolve that doubt
7 in favor of Mr. Gaskins.

8 Now, there are six total indictments that will be
9 listed on the verdict form. And, as I told you before,
10 you must weigh and evaluate the evidence as to each charge
11 separately. So that means as you go through the verdict
12 form, you will consider the evidence as to each listed
13 charge, weigh it, and determine whether the State has met
14 its burden of proof as to each and every element of that
15 charge. And you should not let your decision on one
16 charge influence your decision on the other. They must be
17 weighed and evaluated separately and individually.

18 Now, in order to convict Mr. Gaskins of the offense
19 of criminal sexual conduct with a minor in the second
20 degree, the State must first prove beyond a reasonable
21 doubt that the Defendant engaged in a sexual battery with
22 the victim. The State must then prove beyond a reasonable
23 doubt that the victim was, at least, 11 years old, but not
24 more than 14 years old at the time of the sexual battery.

25 A sexual battery is defined as sexual intercourse,

ROA 502

1 cunnilingus, fellatio, anal intercourse, or any intrusion,
2 however slight, of any part of a person's body or any
3 object -- or of any object into the genital or anal
4 openings of another person's body, except when the
5 intrusion is accomplished for medically recognized
6 treatment for diagnostic purposes.

7 Consent, willingness, indifference, or ignorance on
8 the part of the minor, if any, as to what was taking place
9 does not in any way affect the charge of criminal sexual
10 conduct with a minor. Because an unmarried woman under
11 the age of 14 cannot legally consent to sexual
12 intercourse.

13 Now, there are, also, two charges for committing a
14 lewd act on a child. In order to convict the Defendant of
15 this charge, the State must first prove beyond a
16 reasonable doubt that the Defendant, that is Mr. Gaskins,
17 was over the age of 14.

18 Next, the State must prove that the Defendant
19 willfully and lewdly committed or attempted a lewd or
20 lascivious act on or with the body or its parts of a child
21 under the age of 16 years with the intent to arouse,
22 appeal to, or gratify the lusts, passions, or sexual
23 desires of the Defendant or the child.

24 Willfully means voluntarily and intentionally with
25 the specific intent to do something the law forbids. Lewd

1 means obscene, lustful, indecent, or lecherous.

2 Lascivious means tending to incite lust, lewd, indecent,
3 obscene, or tending to deprave the morals and respect to
4 sexual relations.

5 Now, that covers all the substantive law. And I will
6 just give you a few instructions related to your
7 deliberations.

8 And, Ms. Marks, I've got the verdict form right here.
9 And it just goes through all six charges and asks whether
10 you find the Defendant guilty or not guilty.

11 Don't attach any significance to the option I put
12 first. It's simply I have to put one first. It doesn't
13 mean anything, of course.

14 But, ladies and gentlemen, you were chosen to be
15 jurors in this case, not to be partisans or advocates for
16 either the State or Mr. Gaskins. You were chosen because
17 both sides believe you could be fair and impartial, and
18 you could decide this case without any preconceived ideas,
19 or biases, or prejudices.

20 So you're judges, judges of the facts. And your sole
21 interest is to determine the facts from the evidence and
22 to do that fairly and impartially, and determine whether
23 the State has met its burden of proof as to every element
24 of each crime that has been alleged.

25 The record is now closed. There are not going to be

ROA 504

1 any more witnesses or exhibits. So if something was
2 referred to during this trial that you don't have back in
3 the jury room with you, I can't give it to you. Likewise,
4 if -- as to the testimony, you'll have to rely on your
5 memory of that testimony.

6 So the genius of our jury system is it allows 12
7 people from different backgrounds and life experiences to
8 come together, consider the evidence, and share their
9 perspectives and points of view and, ultimately, reach a
10 verdict. So what you will do, of course, is go back in
11 the jury room and calmly and thoroughly discuss the
12 evidence. You will determine what the facts are. And
13 you'll take the law that I just gave you and apply it to
14 those facts. And you'll be able to reach a verdict.

15 And you can only sign that verdict form when the
16 verdict is unanimous.

17 And that means that each of you has a vote. And your
18 vote is exactly that, it's your vote and no one else's.
19 So keep that in mind. And keep in mind, also, that you
20 should not care if you have to change your mind if the
21 discussion persuades you that you should, if you're of
22 different minds. But don't give up an honestly and
23 conscientiously held belief simply to get this case over
24 with or to reach a unanimous verdict. Because this is,
25 obviously, an important case for both the State and

ROA 505

1 Mr. Gaskins.

2 So thank you for your attention to me.

3 Just go on back to the jury room at this time, except
4 for you two ladies.

5 And don't start talking about the case until you get
6 the --

7 How many -- just one exhibit?

8 THE COURT REPORTER: Yes.

9 THE COURT: Until you get the exhibit. That will be
10 your signal you can start deliberating.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 4:39 p.m.)

13 THE COURT: All right. Any objection or exception to
14 the charge from the State?

15 MS. HODGE: None from the State.

16 THE COURT: From the Defense?

17 MR. CHAMBERS: No, Your Honor.

18 THE COURT: The law doesn't allow y'all to go in the
19 jury room at this time as the alternates. But if you'd
20 just stick around for about 10 or 15 minutes, just in case
21 we have a problem.

22 And if you need anything for your work, Ms. Troop
23 will provide that.

24 But we, certainly, appreciate your service. You gave
25 us the peace of mind knowing that we could finish the case

ROA 506

1 if something happened to one of the other jurors, as often
2 does.

3 So thank you very much.

4 If you'll just put them in a separate room.

5 THE BAILIFF: I will put them in one of the other
6 rooms for a few minutes.

7 THE COURT: Okay. Don't forget about them now.

8 We'll be at ease until we hear something.

9 (WHEREUPON, the proceedings were recessed at
10 approximately 4:40 p.m.)

11 QUESTIONS FROM THE JURY

12 THE COURT: Okay. We've got a note that says,
13 "Written description of the charges/indictments
14 2013-GS-23-3233, 31-33, criminal sexual conduct with a
15 minor and lewd act on a child."

16 I've shared this with both lawyers. And we'll make
17 it part of the record. I think the approach is going to
18 be to send back the jury charges on those two offenses.
19 It may be they're asking for the actual indictments. But
20 we'll find out once we send back the charge. And if they
21 communicate further, we'll know that's what they really
22 wanted.

23 But does that suit the State and the Defense?

24 MS. HODGE: Yes, sir.

25 MR. CHAMBERS: It suits me, Your Honor.

1 THE COURT: Okay. Do y'all want to come and look at
2 these charges?

3 (Pause.)

4 MR. CHAMBERS: Are you good?

5 MS. HODGE: Uh-huh.

6 MR. CHAMBERS: They're fine, Your Honor.

7 THE COURT: All right. Thank y'all.

8 We'll just make that a Court's Exhibit.

9 We'll be at ease until we hear something else.

10 (WHEREUPON, Court's Exhibit Nos. 1 and 2 were marked
11 for identification and admitted into evidence.)

12 (WHEREUPON, the proceedings were recessed at
13 approximately 5:01 p.m.)

14 (WHEREUPON, Court's Exhibit No. 3 was marked for
15 identification and admitted into evidence.)

16 THE COURT: The note we've now received says, "Dates
17 of the indictments. Age of the Plaintiff during the
18 charges." And there's some arrow pointing to charges. It
19 says the word "each" beside it.

20 Anyway, is there any objection to sending the
21 indictments back?

22 MR. CHAMBERS: No, not from me, Your Honor.

23 MS. HODGE: Not from the State, Your Honor.

24 THE COURT: Okay. We'll just send the six
25 indictments back. And I'll let you know if we hear

1 anything further.

2 Thank you.

3 (WHEREUPON, the proceedings were recessed at
4 approximately 5:11 p.m.)

5 THE COURT: We have everybody present.

6 The note they've sent out now says, "What is the
7 Plaintiff's birthday?"

8 MR. CHAMBERS: Who's the "Plaintiff"?

9 THE COURT: I don't know. I just propose saying
10 you'll have to rely on your memory of the testimony.

11 Is there any objection to that?

12 MS. HODGE: Not from the State.

13 MR. CHAMBERS: I don't object, Your Honor.

14 THE COURT: I can, also, ask them if they want to
15 continue deliberating or come back in the morning.

16 MR. CHAMBERS: That would be good.

17 THE COURT: Do you want me to ask them that?

18 MR. CHAMBERS: Yes, sir.

19 (WHEREUPON, Court's Exhibit No. 4 was marked for
20 identification and admitted into evidence.)

21 (WHEREUPON, the proceedings were recessed at
22 approximately 6:12 p.m.)

23 THE COURT: The jury has a verdict.

24 Anything before we bring the jury in?

25 MS. HODGE: No, sir.

ROA 509

1 MR. CHAMBERS: Not from the Defense, Your Honor.

2 THE COURT: Okay. Well, I appreciate everybody's
3 decorum during the trial. And if you don't think you're
4 going to be able to continue to keep decorum or control
5 your emotions when the verdict is read, the time to leave
6 is right now.

7 Bring the jury in.

8 (WHEREUPON, the jury came into open court at
9 approximately 6:17 p.m.)

10 THE COURT: Has the jury reached a unanimous verdict?

11 JUROR 112, ALICE MARKS: Yes, sir, we have.

12 THE COURT: If you'll hand it to the Bailiff, we'll
13 receive it and publish it.

14 (Pause.)

15 THE COURT: Okay. If you'll fill in the date, ma'am.

16 JUROR #112, ALICE MARKS: Today is the 5th?

17 THE BAILIFF: 6th.

18 JUROR #112, ALICE MARKS: The 6th?

19 THE CLERK: No. It's the 5th.

20 THE COURT: No. It's the 5th.

21 JUROR #112, ALICE MARKS: I thought that was right.

22 THE COURT: Thank you.

23 VERDICT

24 THE CLERK: Your Honor, in the case 2013-GS-23-3231,
25 3232, 3233, 3234, 3235 and 3236, the State of South

1 Carolina v. Jerald Gaskins, Jr., number one, as to the
2 indictment 2013-GS-23-3231, criminal sexual conduct with a
3 minor in the second degree, we, the jury, unanimously find
4 the Defendant, Jerald Denton Gaskins, Jr., guilty.

5 As to the indictment 2013-GS-23-3232, criminal sexual
6 conduct with a minor in the second degree, we, the jury,
7 unanimously find the Defendant, Jerald Denton Gaskins,
8 Jr., guilty.

9 Number three, as to the indictment 2013-GS-23-3234,
10 criminal sexual conduct with a minor in the second degree,
11 we, the jury, unanimously find the Defendant, Jerald
12 Denton Gaskins, Jr., guilty.

13 Number four, as to the indictment 2013-GS-23-3235,
14 criminal sexual conduct with a minor in the second degree,
15 we, the jury, unanimously find the Defendant, Jerald
16 Denton Gaskins, Jr., guilty.

17 Number five, as to the indictment 2013-GS-23-3233,
18 lewd act upon a child, we, the jury, unanimously find the
19 Defendant, Jerald Denton Gaskins, Jr., guilty.

20 Number six, as to the indictment 2013-GS-23-3236,
21 lewd act upon a child, we, the jury, unanimously find the
22 Defendant, Jerald Denton Gaskins, Jr., guilty.

23 These are all signed by Ms. Marks, our Forelady.

24 Ladies and gentlemen, if you agree these are the
25 verdicts you reached in your deliberation room, would you,

1 please, raise your right hand.

2 (WHEREUPON, all jurors raised their right hand.)

3 THE CLERK: I thank you.

4 THE COURT: All right. Any matters or motions before
5 the jury is discharged from the Defense?

6 MS. HODGE: No, not from the State.

7 MOTIONS

8 MR. CHAMBERS: I just make a motion for a judgment
9 notwithstanding the verdict, and a motion for a new trial,
10 Your Honor.

11 THE COURT: Do you wish to have the jury polled?

12 MR. CHAMBERS: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, thank
14 you for your service this week.

15 There are no more cases on the docket. And we're
16 thankful that you could guarantee the parties a right to a
17 jury trial this week. We know it's a sacrifice for you to
18 do so. But you're excused from your jury obligation this
19 week.

20 If you wish to see the sentencing portion of this,
21 you're welcome to do so. You can just come around. The
22 bailiffs will take you around to the front.

23 Thank you.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 6:22 p.m.)

1 MS. HODGE: Are you ready, Your Honor?

2 THE COURT: Let's see if any of the jurors would like
3 to come around.

4 MS. HODGE: Okay.

5 THE COURT: But I'll be glad to take the sheets.

6 MS. HODGE: Do you want me to sign these? Some
7 judges say I should, some --

8 THE COURT: No. That's okay.

9 Thanks.

10 MS. HODGE: Yes.

11 (Pause.)

12 THE COURT: All right. Yes, ma'am, Ms. Hodge.

13 MS. HODGE: Do you want us to come around?

14 THE COURT: Yes.

15 MS. HODGE: Your Honor, as far as prior record goes,
16 he has a 2000 disorderly conduct, a breach of peace; 2002,
17 fraud check; 2004, a criminal domestic violence charge.

18 I think you heard during the course of the
19 cross-examination that the Defendant does have some
20 pending charges, criminal domestic violence high and
21 aggravated, and two transporting child. I believe it's
22 out of state charges that, obviously, are not any part of
23 this case, but occurred after this case.

24 Your Honor, in regard to the facts in this case, as
25 you heard the trial unfold, it's the State's position that

1 this man is a predator. He is somebody that is targeting,
2 seeking out, and having some success with these young
3 girls. There, obviously, was this victim. At the same
4 time, there was #1 (Minor)

5 And in his cross-examination, we discussed, which he
6 denied, but there is Redacted -- a girl named Redacted
7 who's 12 years old, Redacted, I believe, was the last name,
8 that law enforcement has received a complaint on that he
9 was doing the same type of things, attempting to engage
10 this child. There is, also, a prior instance with his
11 cousin, who was about the same age.

12 So we believe that he is a threat, a danger to the
13 community, a predator. That he's not changing his ways.
14 That he's not accepted responsibility for these actions.
15 And that he should get the maximum.

16 THE COURT: Thank you.

17 Mr. Chambers.

18 MR. CHAMBERS: First of all, Your Honor, just to make
19 sure that the record is clean, I want to put my objection
20 on the record to the Solicitor offering up, essentially,
21 uncharged misconduct. You know, she's talking about
22 activity that -- for which my client has not been
23 convicted. But, certainly, I would ask the Court and feel
24 comfortable that the Court is not going to take that into
25 consideration.

1 Essentially --

2 THE COURT: I'm not going to take it into
3 consideration.

4 MR. CHAMBERS: Essentially, he has no significant
5 prior record, Your Honor. This case while, you know,
6 certainly, the jury has found him guilty of having had sex
7 with a 13-year-old girl -- and I'm not going to stand here
8 and try to defend that if that was, in fact, what
9 happened.

10 But it was clear that there was no force or coercion
11 involved in the case, you know. She continued to go to
12 his house willingly. And, you know, I think that that is
13 a mitigating factor. It's, certainly, not a legal excuse
14 and not offered as one.

15 I would just ask the Court to be as lenient as
16 possible. He does have family members who are here with
17 him to support him, believe in him.

18 I don't think Jerald has anything to say. Frankly, I
19 think the only thing he would to say is to profess his
20 innocence again, but. So I don't know what else I can add
21 at this point.

22 THE COURT: Thank you, sir.

23 Mr. Gaskins, anything you'd like to say, sir?

24 DEFENDANT GASKINS: Your Honor, I don't know what to
25 say. I was hoping for the best. It come to the worst. I

1 do find myself that I'm not a bad person. And I hope that
2 the Court has mercy, takes mercy.

3 Your Honor, I don't have a bad past record. And I
4 haven't really done anything wrong that I seen. I mean,
5 the Court said different. And I guess I did if the Court
6 say [sic] so, Your Honor. But I just respectfully ask the
7 Court to just, please, cut me a little slack, please.

8 THE COURT: All right, sir.

9 I'm unclear. Some of these sentencing sheets are --
10 are both of them violent and serious?

11 MS. HODGE: That's -- no. Lewd act is only violent.
12 It is not serious.

13 THE COURT: Now, one of them is marked most serious.

14 MS. HODGE: May I see that?

15 THE COURT: Yes.

16 (Pause.)

17 THE COURT: Thank you.

18 Did he spend any time in jail before?

19 MS. HODGE: I have two days, Your Honor.

20 MR. CHAMBERS: That sounds about right, Your Honor.

21 SENTENCING

22 THE COURT: Mr. Gaskins, the sentence of the Court is
23 you be committed to the Department of Corrections for a
24 period of 20 years on case number 3231.

25 On 3232, the sentence is 20 years concurrent.

1 3233, the sentence is 15 years concurrent.

2 3234, 20 years concurrent.

3 3235, 20 years concurrent.

4 3236, the sentence is five years consecutive, but
5 this sentence is to be served first.

6 MS. HODGE: Thank you, Your Honor.

7 THE COURT: You have 10 days to appeal. Your appeal
8 must be in writing.

9 *****END OF TRANSCRIPT OF RECORD*****
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WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER

2012A2330203987

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-
KBH

003231

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

VS.

JERALD DENTON GASKINS JR

Indictment for

0396

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)**

**VIOLATION § 16-3-655(B)(1)
[formerly § 16-3-655(2)]**

**ENTERED
ACCT.**

ROA 519

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)

At a Court of General Sessions, convened on **APR 23 2013** the Grand Jurors of Greenville
County present upon their oath:

That JERALD DENTON GASKINS JR did in Greenville County, between March 2012 and
August 2012, commit a sexual battery on **Victim** who was fourteen years of age or less but who was at
least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South
Carolina Code of Laws (1976) as amended.

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


SOLICITOR

ROA 520

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Jerald Denton Gaskins Jr

AKA:

Race: WHITE Sex: M Age: 32

DOB: Redacted

Address:

City, State:

DL#:

*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: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

8245

Hodge, Kris

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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickhamer

Jenkins

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303231

A/W#: 2012A2330203987

Date of Offense: 3/1/2012

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code:

Sentence Date:

2138

2.5.15

ROA 521

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203986

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-
KBH

003232

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

VS.

JERALD DENTON GASKINS JR

Indictment for

0396

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)**

**VIOLATION § 16-3-655(B)(1)
[formerly § 16-3-655(2)] (2)**

**ENTERED
ACCT.**

ROA 522

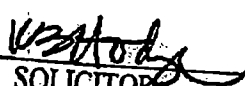
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)

At a Court of General Sessions, convened on **APR 23 2013** the Grand Jurors of Greenville
County present upon their oath:

That JERALD DENTON GASKINS JR did in Greenville County, between March 2012 and
August 2012, commit a sexual battery on **Victim** who was fourteen years of age or less, but who was at
least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South
Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Jerald Denton Gaskins Jr

AKA: _____
Race: WHITE Sex: M Age: 32
DOB: Redacted
Address: _____
City, St: _____
DL#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is. ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

8245
Hodge, Kris 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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: # 3231

☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☒ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/Deputy Clerk Paul A. Wickensamer
Court Reporter: Jenkins
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303232

A/W#: 2012A2330203986

Date of Offense: 3/1/2012

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge James L.

Judge Code: 2138

Sentence Date: 2.5.13

ROA 524

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER

2012A2330203985

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-

KBH

003233

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

ENTERED
ACCT.

ROA 525

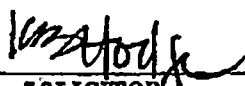
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on **APR 23 2013** the Grand Jurors of Greenville
County present upon their oath:

That JERALD DENTON GASKINS JR did in Greenville County, between August 2011 and November 2011,
willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, o **Victim**
child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or
sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws
(1976) as amended.

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


SOLICITOR

ROA 526

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Jerald Denton Gaskins Jr

AKA:

Race:

DOB:

Address:

City, State:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303233A/W#: 2012A2330203985Date of Offense: 8/1/2011S.C. Code §: 16-15-140CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd ActThe charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hodge, Kris8245
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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: # 3231
☐ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk Paul S. LickensCourt Reporter Jenkins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2138Sentence Date: 2.5.15

ROA 527

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203984

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBH

003234

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

-vs.

JERALD DENTON GASKINS JR

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-3-655(B)(1) [formerly § 16-3-655(2)]

ENTERED
ACCT.

ROA 528

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203987

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-
KBH

003231

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

0396

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)**

**VIOLATION § 16-3-655(B)(1)
[formerly § 16-3-655(2)]**

**ENTERED
ACCT.**

ROA 529

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203986

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-
KBH

003232

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)

VIOLATION § 16-3-655(B)(1)
[formerly § 16-3-655(2) (2)]

ENTERED
ACCT

ROA 530

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203985

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBH

003233

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

ENTERED
ACCT.

ROA 531

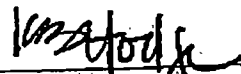
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on **APR 23 2013** the Grand Jurors of Greenville
County present upon their oath:

That JERALD DENTON GASKINS JR did in Greenville County, between August 2011 and November 2011,
willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of **Victim**
child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or
sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws
(1976) as amended.

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


SOLICITOR

ROA 532

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Jerald Denton Gaskins Jr

AKA:

Race: WHITE Sex: M Age: 32

DOB: Redacted

Address:

City, State

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

8245

Hodge, Kris

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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: # 3231
☐ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303233

A/W#: 2012A2330203985

Date of Offense: 8/1/2011

S.C. Code § : 16-15-140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

3231

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2138

Sentence Date: 2.5.15

ROA 533

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203984

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBH

003234

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-3-655(B)(1) [formerly § 16-3-655(2)]

ENTERED
ACCT.

ROA 534

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203983

ACTION OF GRAND JURY

TRUE BILL

DEMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBH

003235

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)

VIOLATION § 16-3-655(B)(1)
[formerly § 16-3-655(2)]

ENTERED
ACCT.

ROA 535

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE (11-14)

APR 23 2013

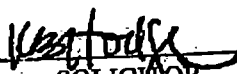
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That JERALD DENTON GASKINS JR did in Greenville County, between March 2011 and August 2011, commit a sexual battery on Victim who was fourteen years of age or less, but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

ROA 536

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Jerald Denton Gaskins Jr

AKA:

Race:

WHITE

Sex: M

Age:

32

DOB:

Redacted

Address

City, State

DL#:

001-186556

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

8245

Hodge, Kris

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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: # 3231

☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$ 25.00
\$150	\$
\$50	\$
\$40/ea	\$
\$5	\$ 5.00
\$	\$ 3.90
\$	\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickens

Jenkins

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303235

A/W#: 2012A2330203983

Date of Offense: 3/1/2011

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS☐ §17-25-45

w/minor 1st or Lewd Act)

Recommendation by the State.

Negotiated Sentence,

Without Negotiations or Recommendation,

Attorney for Defendant

Defendant

SC Bar#

County Detention Center,

State Department of Corrections,

under the Youthful Offender Act not to exceed _____ years

and/or payment

days/months/years and/or payment

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: # 3231

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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickens

Jenkins

Presiding Judge

Judge Code:

Sentence Date:

ROA 537

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/14/2012

ARREST WARRANT NUMBER
2012A2330203982

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBH

003236

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013

THE STATE

vs.

JERALD DENTON GASKINS JR

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

ENTERED
ACCT.

ROA 538

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

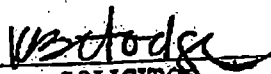
At a Court of General Sessions, convened on
County present upon their oath:

APR 23 2013

the Grand Jurors of Greenville

That JERALD DENTON GASKINS JR did in Greenville County, between March 2011 and August 2011, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of **Victim** a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

ROA 539

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Jerald Denton Gaskins Jr

AKA:

Race: WHITE Sex: M Age: 32

DOB: Redacted

Address:

City, State:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

8245

Hodge, Kris

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 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: #3231
☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul S. Wickman

Jenkins

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303236

A/W#: 2012A2330203982

Date of Offense: 3/1/2011

S.C. Code § : 16-15-140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

This sentence to be served first, before #3231. 6-14

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

Presiding Judge

Judge Code:

Sentence Date:

2138

2.5.15

ROA 540

THE STATE OF SOUTH CAROLINA
In The Appellate Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

D. Garrison Hill, Circuit Court Judge

2013-GS-23-003231-003236

The State,..... Respondent,

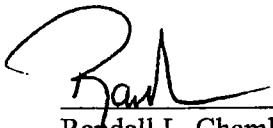
v.

Jerald Denton Gaskins, Jr.,..... Appellant.

NOTICE OF APPEAL

Jerald Denton Gaskins, Jr. appeals his February 5, 2015 sentence.

This 13th day of FEB, 2015.


Randall L. Chambers
804 Laurens Road
Greenville, South Carolina 29607
(864) 298-0001
Attorney for Appellant

Other Counsel of Record:
Kris B. Hodge, Thirteenth Circuit Solicitor
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8647
Attorney for Respondent

2013A23302357

FILED
FEB 13 PM 4:00
CLERK OF COURT

RECEIVED
FEB 19 2015
SC Court of Appeals

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

RECEIVED

JUN 09 2016

**Appeal from Greenville County
Honorable D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2015-000312**

SC Court of Appeals

THE STATE,

Respondent,

vs.

JERALD DENTON GASKINS, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

**ALAN WILSON
Attorney General**

**MARK R. FARTHING
Assistant Attorney General**

**Post Office Box 11549
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(803) 734-3727**

**WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit**

**305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282**

ATTORNEYS FOR RESPONDENT

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II. To the extent Appellant is challenging the solicitor's cross-examination of him about incriminating text messages he purportedly sent to the victim's family members prior to trial, that issue is not properly preserved for appellate review because Appellant conceded to the trial judge it was permissible for the solicitor to ask the questions about the text messages during trial and because defense counsel did not any seek additional relief after the trial judge sustained several of his objections to the questioning. However, notwithstanding any issue preservation concerns, the trial judge did not abuse his broad discretion by permitting the solicitor to question Appellant about the text messages he allegedly sent because the solicitor had a good faith factual basis for asking the questions in light of the testimony presented during trial in regard to the text messages and the fact the solicitor was provided with a physical copy of the purported text messages just before trial.	28
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JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA (2nd ed. 2002). 29

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not abuse his broad discretion by admitting the testimony of one of the victim's friends, who was sexually abused by Appellant in a strikingly similar manner to the manner in which Appellant sexually abused the victim, because the victim's friend's testimony constituted evidence of the existence of a common scheme or plan due to its numerous significant similarities to the testimony of the victim, including in regard to the circumstances under which Appellant met his victims, the similar ages of the victims, when the abuse occurred, the identical genders of the victims, the similar manners in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, Appellant's special treatment of the victims, and Appellant's provision of gifts to both victims, and because the probative value of the victim's friend's testimony was not substantially outweighed by its potential for undue prejudice.

II.

To the extent Appellant is challenging the solicitor's cross-examination of him about incriminating text messages he purportedly sent to the victim's family members prior to trial, that issue is not properly preserved for appellate review because Appellant conceded to the trial judge it was permissible for the solicitor to ask the questions about the text messages during trial and because defense counsel did not any seek additional relief after the trial judge sustained several of his objections to the questioning. However, notwithstanding any issue preservation concerns, the trial judge did not abuse his broad discretion by permitting the solicitor to question Appellant about the text messages he allegedly sent because the solicitor had a good faith factual basis for asking the questions in light of the testimony presented during trial in regard to the text messages and the fact the solicitor was provided with a physical copy of the purported text messages just before trial.

STATEMENT OF THE CASE

In November of 2012, Appellant Jerald Denton Gaskins, Jr. was arrested following an investigation into an alleged sexual assault. In April of 2013, the Greenville County Grand Jury indicted Appellant for four counts of second-degree criminal sexual conduct with a minor along with two count of committing or attempting to commit a lewd act upon a child. On February 4, 2015, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable D. Garrison Hill, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent twenty-year terms of imprisonment for each of the second-degree criminal sexual conduct with a minor convictions, a concurrent fifteen-year term of imprisonment for one of the lewd act convictions, and a consecutive five-year term of imprisonment for the remaining lewd act conviction. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In the spring of 2011, Appellant Jerald Denton Gaskins, Jr. and his wife at the time, Rachel Gaskins ("Rachel"), attended a horseshoe tournament at a home located in Travelers Rest, South Carolina. (R. p. 54; pp. 62-63; pp. 82-83; pp. 134-135). After the tournament, Appellant began regularly socializing with the family that lived at the home, including with a thirteen-year-old girl ("Victim") who was a part of that family. (R. pp. 64-66; pp. 82-83; pp. 135-136). Over the course of the next few months, Appellant developed a close friendship with Victim, and Victim began to regularly visit with Appellant and his family at different homes he lived in during that time period. (R. pp. 64-65; p. 98; p. 137; pp. 139-140; pp. 145-146; pp. 150-151). However, Victim's mother ("Mother") became uneasy when she found Victim in possession of a phone covertly provided to her by Appellant and when Appellant eventually began to act controlling with Victim, and she ended Victim's contact with Appellant as a result. (R. pp. 73-75; p. 227).

Subsequently, in November of 2012, Appellant's mother-in-law contacted Mother and provided her with information that made her become even more concerned about Victim and Appellant's relationship. (R. p. 75; pp. 87-88; pp. 156-157). In response, Mother and Victim's father confronted Victim about what had been revealed, and Victim initially denied anything inappropriate occurred between her and Appellant. (R. pp. 75-76). However, as the conversation with her parents continued, Victim began to cry before revealing she had been sexually abused by Appellant. (R. pp. 76-77). Thereafter, Mother immediately reported the sexual abuse to the authorities, and Deputy Paul Floyd of the Greenville County Sheriff's Office quickly responded to Victim's home. (R. pp. 53-54; pp. 76-77; p. 89). The deputy then spoke

with Victim alone, and, during their conversation, Victim disclosed she had been sexually abused by Appellant on multiple occasions over the course of more than a year. (R. pp. 56-58).

Following Victim's disclosure, Investigator Robert Perry of the Greenville County Sheriff's Office began an investigation into the reported sexual abuse and spoke with Victim at her school. (R. pp. 345-348; p. 361). During their conversation, Victim disclosed she was sexually abused by Appellant on multiple occasions at different places where he lived from the spring of 2011 until the fall of 2012. (R. pp. 348-349). After speaking with Victim, Investigator Perry attempted to gain access to Victim's phone to examine her communications with Appellant but was unable to do so in light of the fact he was advised Appellant had already taken the phone back from her. (R. p. 353). He then repeatedly attempted to make contact with Appellant, who was thirty years old at the time, but all his attempts to do so were unsuccessful. (R. p. 347; pp. 353-354). Thereafter, Investigator Perry obtained arrest warrants for Appellant based on the reported sexual abuse of Victim. (R. p. 354). Appellant was then arrested and indicted for multiple counts of second-degree criminal sexual conduct with a minor and committing or attempting to commit a lewd act upon a child, and he proceeded to trial. (R. p. 6; pp. 519-540).

During trial, Victim testified about the sexual abuse she suffered at Appellant's hands.¹ (R. p. 192). Regarding that abuse, Victim indicated she met Appellant at a horseshoe tournament in March of 2011 when she was a thirteen-year-old middle school student, and Appellant gave her his phone number at that event. (R. pp. 185-187). Shortly after that, Victim stated she and Appellant began visiting each other's homes and hanging out on a regular basis, and she indicated she spent the night at Appellant's home on some of those occasions. (R. p. 185; pp. 188-189). During one of the visits, Victim testified Appellant asked her if she was a virgin before informing her he would "spoil" her for the remainder of her life if he was the one who

¹ At the time of trial, Victim was seventeen years old and Appellant was thirty-two years old. (R. p. 183; p. 376).

took her virginity. (R. pp. 189-190). A few weeks after that, Victim indicated Appellant brought the subject of her virginity up again, and the two then engaged in sexual intercourse while Appellant's wife took a bath in another room. (R. pp. 190-193). Specifically, during that incident, Victim stated Appellant removed both of their pants, began fondling and kissing her, and then quickly had sexual intercourse with her. (R. pp. 193-194). Afterwards, Victim testified the two pretended like nothing had occurred, and, from that point forward, Appellant began providing her with phones and other gifts, gave her "a lot of attention," and promised to give her whatever she wanted. (R. pp. 194-196; pp. 213-214). As their relationship continued, Victim indicated she and Appellant engaged in sexual intercourse on multiple occasions at different homes Appellant moved to over the course of the next year and a half, and she noted Appellant always wore a condom during the acts of sexual abuse. (R. pp. 197-199). Victim further indicated Appellant performed oral sex on her during some of the incidents, and she recounted Appellant had sexual intercourse with her in a car on one occasion after driving her to an abandoned house while they were out to pick up food for other people in the home. (R. pp. 200-202; pp. 216-217). Additionally, Victim stated she had sexual intercourse with Appellant on one occasion after they dropped his wife off at the hospital, she indicated the two had sexual intercourse on one occasion after Appellant pretended he was going to take her to a country music concert, and she recounted an incident where Appellant's wife found Appellant lying next to her on a couch, which led to a heated argument between Appellant and his wife. (R. pp. 205-210; pp. 224-225). Furthermore, Victim testified Appellant convinced her they were going to get married, tried to talk her into getting legally emancipated from her parents, and tried to alienate her from her family. (R. pp. 222-224). Subsequently, Victim noted her relationship with

Appellant continued until her mother found a phone Appellant had given her, and she eventually revealed the sexual abuse when confronted by her parents about Appellant. (R. pp. 227-229).

As Victim's testimony continued, the solicitor asked Victim about her friend, Hannah Barton, who was present on the day Victim met Appellant.² (R. pp. 234-235). The solicitor then asked for permission to address a matter outside of the presence of the jury, and the trial judge excused the jury from the courtroom. (R. pp. 235-236). After that, the solicitor indicated she intended to introduce Barton's testimony as prior bad act evidence while noting Victim and Barton were the same ages, were in the same grades in school, met Appellant in the same manner, engaged in the same types of acts with Appellant, and were told the same things by Appellant during the courses of their relationships with him. (R. pp. 236-241). In response, defense counsel objected, contended the appellate court decision in State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), was "bad law," and asserted the prior bad act evidence involving Barton was not admissible as evidence of a common scheme or plan because there was allegedly no evidence of a modus operandi. (R. pp. 242-243).

Thereafter, the trial judge asked the solicitor to proffer Barton's testimony, and Barton was called to the witness stand. (R. pp. 245-246). During her proffered testimony, Barton stated she met Appellant in the spring of 2011 just after she turned fourteen years old when she was visiting Victim's home for a horseshoe tournament. (R. pp. 246-248). Upon meeting Appellant, Barton indicated Appellant was immediately flirtatious towards her, and the two exchanged telephone numbers. (R. p. 248). After that, Barton testified she began hanging out with Appellant, and Appellant said "very nice things" to her. (R. p. 249). A few weeks later, Barton indicated the two began kissing and eventually began having sexual intercourse when she was alone with Appellant after he made her feel "very special." (R. pp. 249-251). Regarding the

² By the time of trial, Barton was eighteen years old and no longer a minor child. (R. p. 246; p. 306).

sexual intercourse, Barton recounted it was quick, it always involved a condom, it always occurred when she was alone with Appellant, and only their pants were removed during it. (R. pp. 251-254). Additionally, Barton stated Appellant made her feel like the "most special person in the world" and got her whatever she wanted. (R. p. 252). As their relationship continued, Barton noted they had sex on a few more occasions, including on one occasion at an abandoned house. (R. pp. 253-254). Eventually, Barton indicated she ended the relationship with Appellant, and, when she did so, he informed her he was going to "make his next move" on Victim. (R. pp. 255-256).

Following Barton's proffered testimony, defense counsel conceded it would "be stupid" to suggest no similarities existed between the acts involving Barton and the acts involving Victim, but he contended the acts did not rise to the level of a common scheme or plan based on the fact the "whole series of events" allegedly occurred much differently for each of Appellant's victims. (R. p. 259). Defense counsel further renewed his assertion the decision in Wallace was "bad law" while contending prior bad act evidence was the most prejudicial type of evidence that could be admitted. (R. p. 260). In response, the solicitor asserted the prior bad act evidence was extremely probative in Appellant's case as evidence of the existence of a common scheme or plan and contended the probative value of that evidence outweighed the potential for undue prejudice in light of the lack of physical evidence in the case. (R. pp. 261-263). After considering the arguments of counsel, the trial judge found the similarities between the acts outweighed the dissimilarities due to the similarities regarding the ages of the victims, the timing of the sexual abuse, the locations where the abuse occurred, the relationship between Appellant and his victims, the manner and type of sexual abuse, and the use of coercion or seduction on the victims. (R. p. 264). Furthermore, the trial judge concluded the prior bad act evidence was not

unfairly prejudicial in Appellant's case while offering to give a limiting instruction if one was desired. (R. pp. 265-267).

Subsequently, Victim resumed her testimony before the jury, and she confirmed she never discussed Appellant or their relationship with Barton. (R. p. 268). Additionally, she indicated Appellant manipulated and coerced her into doing things with him, and she noted the acts of sexual abuse occurred during the few occasions she was alone with Appellant during the course of their relationship. (R. p. 280; p. 286). Furthermore, Victim testified Appellant got her whatever she asked for, singled her out, showed her favoritism, and made her feel special through his attention to her. (R. pp. 293-294).

Following Victim's testimony, Barton took the witness stand and testified about her relationship with Appellant before the jury. (R. p. 306). Specifically, Barton stated she met Appellant in the spring of 2011 at a horseshoe tournament taking place at Victim's house when she was a fourteen-year-old middle school student. (R. pp. 308-309). Upon meeting Appellant, Barton stated he was flirtatious towards her, and the two exchanged phone numbers. (R. p. 310). A few weeks later, Barton indicated Appellant invited her over and gave her special attention, and the two kissed while Appellant's wife and Victim were in another room of the home. (R. pp. 310-312). Shortly after that, Barton stated she visited Appellant's home again and engaged in a brief act of sexual intercourse with Appellant while he was wearing a condom and while her pants were removed. (R. pp. 313-314). Subsequently, Barton testified she engaged in a few more briefs acts of sexual intercourse with Appellant, including at an abandoned house, before ending their relationship. (R. pp. 315-316). At that point, Barton stated Appellant informed her he was going to go after Victim next. (R. p. 317).

In addition to Barton and Victim's testimony, the investigating officers testified about the investigation into the sexual abuse disclosed by Victim, which led to Appellant's arrest. (R. pp. 54-59; pp. 346-355). Additionally, Mother testified about the details of how Appellant and Victim began to regularly spend time together after meeting at the horseshoe tournament, and she noted Victim's behavior began to change after she started associating with Appellant. (R. pp. 62-67; pp. 72-73). Mother further discussed Victim's subsequent disclosure of the sexual abuse and their actions in response to that disclosure. (R. pp. 75-78; p. 89). Likewise, Victim's older sister ("Sister") testified about her interactions with Appellant after he began spending time with Victim, and she indicated she believed something was going on between Appellant and Victim based on the way Appellant treated her. (R. pp. 97-99). Sister further noted she spoke with Appellant on the phone and exchanged text messages with him after they became friendly towards one another, and she stated Appellant informed her he loved Victim most of all while also referring to her as his "beautiful future wife" during their communications.³ (R. pp. 100-101; pp. 107-108; p. 112). Furthermore, Dr. Mary-Fran Croswell, an expert in pediatric medicine and child abuse pediatrics, testified about her examination of Victim following the disclosure of the sexual abuse, indicated her examination of Victim was normal, and noted a normal examination did not exclude the possibility of sexual abuse. (R. pp. 332-338).

Beyond that testimony, Appellant's former wife, Rachel, also testified for the prosecution.⁴ (R. p. 130). During her testimony, Rachel confirmed she and Appellant became friends with Victim's family after meeting them at a horseshoe tournament in March of 2011, and she indicated Victim began regularly visiting their home and sometimes spent the night

³ During her testimony, Sister also noted she provided the prosecution with a physical copy of Appellant's text messages just before trial. (R. pp. 125-127).

⁴ During trial, Rachel noted she obtained a divorce from Appellant at some point after the events involving Victim occurred. (R. p. 154; pp. 172-173).

there.⁵ (R. pp. 134-137; p. 139). After that, she stated she became uncomfortable about the relationship and confronted Appellant, who reacted angrily. (R. p. 138). Rachel further testified Appellant and Victim were alone together numerous times during her visits, and she recounted on one occasion she found Appellant and Victim lying on a couch together in the middle of the night with Appellant's leg draped over Victim's legs. (R. p. 148). After finding them in that compromising position, Rachel stated she confronted Appellant and he became very threatening in response. (R. p. 149). At some point after that, Rachel indicated Appellant kicked her out of the home. (R. p. 152). She then testified she eventually revealed her concerns about Appellant and Victim to Victim's mother and Investigator Perry. (R. pp. 157-159).

Subsequently, at the conclusion of the State's case, Appellant elected to testify in his own defense. (R. p. 362; p. 376). During his testimony, Appellant asserted he first met Victim's family at a horseshoe tournament that took place on June 7, 2011, but claimed he did not speak to either Victim or Barton at that time.⁶ (R. pp. 394-395). After that, he indicated he and Rachel began regularly visiting with Victim's family while Victim began visiting his home to babysit his daughter. (R. pp. 394-396). After Victim began visiting, Appellant acknowledged she spent the night at his home on some occasions, but he claimed she was never alone with him on any occasions and simply played with his daughter, played video games, and used his "humongous"

⁵ At the outset of her testimony, Rachel indicated she met Appellant, who was twenty-six years old at the time, in September of 2008 when she was a seventeen-year-old high school student. (R. p. 131). She further stated he convinced her to move in with him through manipulation within two weeks of initially meeting her, and they got married less than a year later. (R. pp. 132-134; pp. 175-176). After that, Rachel indicated Appellant was abusive and manipulative towards her, and she noted he forced her to make a false allegation of sexual abuse against her father that she subsequently recanted. (R. pp. 143-144; pp. 165-166; p. 175; pp. 178-179). Later during trial, Appellant confirmed he met Rachel when she was seventeen years old and he was twenty-six years old, acknowledged she moved in with him two weeks later, and indicated she married him a few months later before giving birth to their first child together not long after that. (R. pp. 378-380; p. 388). He further asserted Rachel was violent and unfaithful towards him during the course of their relationship and claimed they both decided together for her to file a rape allegation against her stepfather. (R. pp. 382-383).

⁶ At the outset of his testimony, Appellant asserted he was disabled due to a diagnosis of attention deficit hyperactivity disorder and had been receiving disability benefits since the age of thirteen as a result. (R. p. 377).

television.⁷ (R. pp. 398-399). Eventually, Appellant stated he ceased spending time with Victim's family due to their alleged violent tendencies, and he denied Victim visited him at one of the homes he moved to in Travelers Rest.⁸ (R. pp. 408-410). Subsequently, in October on 2012, he claimed he cut off all ties with Victim's family after discovering Victim's father had secretly added multiple vehicles to his insurance policy. (R. pp. 415-418). As his testimony continued, he insisted he only possibly saw Victim in passing after cutting off ties with her family, and he denied Barton had ever been to his home. (R. pp. 418-419). He further denied having an inappropriate relationship with either Victim or Barton, and he insisted he had never heard about an abandoned house and had never discussed going to a country music concert with anyone. (R. pp. 420-421).

Thereafter, on cross-examination, the solicitor began asking Appellant if he sent a text message to Victim's father in regard to his divorce from Rachel, and Appellant insisted he did not send the message while contending someone else had been sending messages pretending to be him. (R. pp. 424-425). Defense counsel then objected to the solicitor's questioning while asserting a foundation had not been established in regard to the text messages he contended the solicitor was attempting to have Appellant read, and the trial judge sustained the objection. (R. pp. 425-426). Thereafter, the solicitor asked Appellant if he sent a text message to Victim's father asking if he was going to drop the charges, and Appellant denied he sent such a message. (R. p. 426). Defense counsel then again objected, and the trial judge sustained the objection before excusing the jury from the courtroom. (R. p. 426).

⁷ Appellant further indicated he tried to keep witnesses around him all the time to verify his innocence because he had been accused of many things during his lifetime. (R. pp. 400-401; p. 440).

⁸ He further alternately claimed Victim was present and was not present when he separated from Rachel. (R. pp. 411-412).

Once the jury was excused from the courtroom, the solicitor noted it was permissible for her to question Appellant about statements he was alleged to have made, and she further asserted she could call a witness in rebuttal to establish a foundation if she moved to admit the actual text messages themselves into evidence. (R. p. 427). In response, defense counsel asserted a foundation had to be established before the solicitor could ask questions regarding the messages, and the trial judge inquired of defense counsel why the solicitor could not ask Appellant if he made a particular statement. (R. pp. 427-428). Defense counsel then replied: "I think she – well, she can ask if he makes a statement, Your Honor. But she was, actually, reading the text messages verbatim." (R. p. 428). The trial judge and defense counsel then continued to discuss the matter, and defense counsel confirmed his concern was the solicitor's questions allegedly created the appearance she was publishing something that had not been admitted into evidence. (R. pp. 428-429). After that discussion, the following exchange occurred:

[Defense Counsel]: But my issue is not necessarily, Your Honor, that [the solicitor]'s asking [Appellant] that. That's fine. But she's, actually, walking up to him, laying these down in front of him as they were – as though they were a statement that he gave.

[Trial Judge]: Yes, I know. That's why I sustained the objection when you objected to that. But, I mean, I think she can ask about alleged previous statements the witness –

[Defense Counsel]: Well, I would agree with that.

[Trial Judge]: – who was a party, made.

[Defense Counsel]: Yeah, I would agree with that, Your Honor. I just – when she – she, at first, seemed as though she was, actually, going to have him read it. Then she's questioning him about it while it's laying up there in front of him. And I, clearly, believe that's improper.

[Trial Judge]: Well, I overrule the objection.

(R. p. 429).

Thereafter, the solicitor resumed her cross-examination of Appellant and asked him if he sent a text message to Victim's father about how they could go to Oklahoma and make money if he would drop the bogus charges, and Appellant denied sending such a message. (R. pp. 432-433). The solicitor then asked Appellant if he sent a text message to Sister in regard to not having enough tickets for a country music concert, and Appellant denied doing so while insisting he never sent a text message to Sister on any occasion. (R. pp. 435-437). After that, the solicitor asked Appellant if he sent a text message to Sister indicating Victim was his favorite, and Appellant again insisted he never sent a text message to Sister about anything. (R. pp. 437-438). As her cross-examination of Appellant continued, the solicitor asked Appellant if he knew Barton, and he responded he did not and had only met her on two occasions. (R. p. 455). The solicitor then inquired if Appellant had sent a Facebook message to Barton a few weeks earlier, and Appellant denied doing so while challenging the solicitor to prove it. (R. pp. 454-455).

Subsequently, the defense rested its case, and the solicitor indicated she did not believe it was necessary for her to call any rebuttal witnesses. (R. p. 463). The parties then presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 465-506). During his jury instructions, the trial judge explained to the jury evidence consisted of witness testimony and exhibits while expressly cautioning the jury the statements of counsel were not evidence.⁹ (R. p. 498). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (R. pp. 510-511). Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of twenty-five years. (R. pp. 516-517).

⁹ At the outset of trial, the trial judge had similarly instructed the jury evidence consisted of witness testimony and physical exhibits while also expressly informing the jury evidence could not be considered if an objection to it was sustained. (R. pp. 35-36).

ARGUMENT

I.

The trial judge did not abuse his broad discretion by admitting the testimony of one of the victim's friends, who was sexually abused by Appellant in a strikingly similar manner to the manner in which Appellant sexually abused the victim, because the victim's friend's testimony constituted evidence of the existence of a common scheme or plan due to its numerous significant similarities to the testimony of the victim, including in regard to the circumstances under which Appellant met his victims, the similar ages of the victims when the abuse occurred, the identical genders of the victims, the similar manners in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, Appellant's special treatment of the victims, and Appellant's provision of gifts to both victims, and because the probative value of the victim's friend's testimony was not substantially outweighed by its potential for undue prejudice.

Appellant contends the trial judge committed reversible error by admitting the testimony of Barton, a friend of Victim who was sexually abused by Appellant just before Appellant began sexually abusing Victim, as evidence of the existence of a common scheme or plan during Appellant's trial for sexually abusing Victim. In support of that contention, Appellant maintains the prior bad act evidence was inadmissible because it was not sufficiently similar to Appellant's more recent acts involving Victim and was overly prejudicial. To the contrary, the trial judge properly admitted Barton's testimony because it was highly similar to the testimony of Victim, including in regard to the circumstances under which Appellant met the victims, the similar ages of the victims when the abuse occurred, the identical genders of the victims, the similar manners in which the abuse occurred, the similar nature of the abuse, the similar locations at which the abuse occurred, Appellant's special treatment of the victims, and Appellant's provision of gifts to both victims, and constituted proof of the existence of Appellant's common scheme or plan to seduce and sexually assault teenaged girls. Moreover, in light of the high degree of similarity between the charged offenses and Appellant's prior bad acts coupled with the lack of physical evidence in Appellant's case, the high probative value of Barton's testimony was not outweighed

by its potential for undue prejudice. As a result, the trial judge did not abuse his broad discretion in admitting Barton's testimony regarding Appellant's prior bad acts. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for a prejudicial abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). An abuse of discretion occurs when the trial judge's conclusions either lack evidentiary support or are controlled by an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

In an appeal from a decision regarding the admission of prior bad act evidence, the appellate court is limited to determining whether the trial judge abused his discretion. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). "If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal." State v. Martucci, 380 S.C. 232, 253, 669 S.E.2d 598, 609 (Ct. App. 2008). Furthermore, in reviewing such a ruling, the trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be afforded great deference on appeal and should only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 594

(Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Generally, evidence of prior bad acts is not admissible to prove a defendant's guilt for the charged crime. State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). However, under Rule 404(b), SCRE, evidence of prior bad acts may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." See also State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923) (recognizing evidence of other crimes is competent to prove a charged offense if it tends to establish: (1) motive; (2) intent; (3) the absence of mistake or accident; (4) common scheme or plan; or (5) identity).

In determining whether to admit evidence of prior bad acts, the trial judge must first determine if the evidence is relevant. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). If a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

After determining the prior bad act evidence is relevant, the trial judge must next determine if the prior bad act evidence falls within one of the permissible exceptions of Rule 404(b), SCRE. Wallace, 384 S.C. at 433, 683 S.E.2d at 277. One such exception is the common scheme or plan exception, which necessitates a close degree of similarity or connection between

the prior bad act and the charged offense. State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325

(1998). Regarding the common scheme or plan exception, our Supreme Court has instructed:

Such evidence is relevant because proof of one is strong proof of the other. When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. Where the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).

Although not a complete list, in this type of case, the trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charge: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery. We emphasize that these factors are set out merely for guidance and that other factors may be relevant in weighing the similarities and the dissimilarities between the crime charged and the bad act evidence.

Wallace, 384 S.C. at 433-434, 683 S.E.2d at 277-278 (citations omitted). Thus, the required connection between prior bad acts and a charged offense is established by a close degree of similarity, and no further connection is required for admissibility. Id. at 434, 683 S.E.2d at 278.

"Requiring a 'connection' between the crime charged and the bad act evidence is simply a requirement that the two be factually similar and does not add an additional layer of analysis." Id. at 434, n. 5, 683 S.E.2d at 278.

Finally, after determining the prior bad act evidence is relevant and falls within a permissible exception of Rule 404(b), SCRE, the trial judge must weigh the probative value of the evidence against its prejudicial effect. State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004). "The probative value of evidence falling within one of the Rule 404(b) exceptions must substantially outweigh the danger of unfair prejudice to the defendant." Wallace, 384 S.C. at 435, 683 S.E.2d at 278. The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result generally hinges on the facts

of each specific case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). "Where the evidence of the bad acts is so similar to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh its prejudicial effect, it is admissible." Mathis, 359 S.C. at 463, 597 S.E.2d at 879. "Stated differently, evidence which is 'logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.'" State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (quoting State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973)).

In State v. Blanton, 316 S.C. 31, 32, 446 S.E.2d 438, 439 (Ct. App. 1994), Blanton was arrested and charged with first-degree criminal sexual conduct with a minor after Blanton's granddaughter alleged Blanton sexually molested her on several occasions. During trial, two other girls were permitted to testify over Blanton's objection about being sexually abused by Blanton approximately seven or eight years before Blanton sexually abused his granddaughter. Id. Following trial, Blanton appealed his conviction and asserted the prior bad act evidence was not sufficiently similar to the charged offense to constitute evidence of a common scheme or plan. Id. However, this Court disagreed and noted the following similarities existed between the prior bad act evidence and the incident involving Blanton's granddaughter:

All three of the female victims were approximately the same age. Each was subjected to requests both for the performance of cunnilingus and fellatio. All of the alleged activities took place in Blanton's house or his vehicle. In each instance, Blanton took advantage of his relationship with the victim for his sexual gratification.

Id. at 33, 446 S.E.2d at 439. Based on those similarities, this Court found the evidence of the prior bad acts was admissible and affirmed Blanton's conviction. Id.

Similarly, in State v. Hubner, 362 S.C. 572, 575, 608 S.E.2d 463, 464 (Ct. App. 2005), Hubner was arrested and charged with six counts of committing a lewd act upon a child after allegations arose he sexually abused a girl who attended his church. During trial, the victim testified she met Hubner through his involvement with the church youth group and their relationship gradually progressed to being sexual in nature. Id. at 575-576, 608 S.E.2d at 464. The victim stated Hubner – over the course of two years – reached into her pants, massaged her, touched her breasts, hugged her, fondled her between her vagina and rectum, told her he loved her, forced her to touch his penis, used religion to gain her acquiescence, gave her gifts, touched her vagina in a swimming pool, kissed her, and fondled her vagina in a garage. Id. at 575-579, 608 S.E.2d at 464-467. In addition to the victim's testimony, the State sought to introduce the testimony of a witness who was molested by Hubner approximately fourteen to fifteen years earlier. Id. at 579, 608 S.E.2d at 466. During an in camera hearing, the witness stated Hubner – over the course of two months – hugged her and fondled her breasts while she was babysitting, massaged her vagina and buttocks through her clothes, masturbated in front of her, engaged in sexual intercourse with her, threatened to kill her if she revealed the abuse to anyone, kissed her, slapped her, involved other people in their sexual encounters, and offered her money to perform sexual acts on him. Id. at 579-581, 608 S.E.2d at 466-467. Following the hearing, the trial judge ruled the witness' testimony regarding the hugging, kissing, and inappropriate touching was admissible as evidence of the existence of a common scheme or plan. Id. at 582, 608 S.E.2d at 467. Following the trial, Hubner appealed his convictions and asserted the prior bad act evidence should not have been admitted. Id. at 575, 608 S.E.2d at 464. On appeal, this Court reversed Hubner's convictions after finding the acts were not sufficiently similar to be admissible under the common scheme or plan exception. Id. at 585, 608 S.E.2d at 469.

However, the Supreme Court subsequently reversed this Court's decision and affirmed Hubner's convictions after finding the trial judge properly admitted the evidence of the prior sexual assaults. State v. Hubner, 384 S.C. 436, 437, 683 S.E.2d 279, 280 (2009).

Likewise, in State v. Scott, 405 S.C. 489, 492-493, 748 S.E.2d 236, 238-239 (Ct. App. 2013), cert. dismissed as improvidently granted, 413 S.C. 24, 773 S.E.2d 912 (2015), Scott was arrested and charged with numerous offenses, including one count of second-degree criminal sexual conduct with a minor and and three counts of committing a lewd act upon a child, following an investigation into allegations he sexually abused his four biological daughters when they were minors. During trial, the State sought to admit evidence regarding Scott's prior acts of sexual abuse to establish the existence of a common scheme or plan through the testimony of two unrelated witnesses who alleged Scott sexually abused them when they were minors approximately eleven years before Scott first began sexually abusing the oldest of his four daughters, who had not yet been born at the time Scott engaged in the sexual abuse of his earlier victims. Id. at 492-493, 748 S.E.2d at 238-239. In response, defense counsel objected to the admission of that testimony on the grounds it was too remote and its probative value was substantially outweighed by the danger of unfair prejudice. Id. at 499, 748 S.E.2d at 242. However, the trial judge permitted Scott's prior victims to testify over objection, and Scott was ultimately convicted of numerous offenses. Id. at 496-497, 748 S.E.2d at 240-241. Subsequently, Scott appealed his convictions, arguing the prior bad act evidence was not sufficiently similar to the charged crimes to establish the existence of a common scheme or plan and was so remote its probative value was substantially outweighed by the danger of unfair prejudice. Id. at 492, 748 S.E.2d at 238. On appeal, this Court affirmed. Id. In affirming, this Court first concluded Scott's prior victims' testimony was admissible pursuant to Rule 404(b),

SCRE, because the many similarities existing between the charged crimes and the prior bad acts, including in regard to the ages of the victims at the time of the abuse, the locations and situations where the victims were abused, and the nature of the abuse, outweighed any of the dissimilarities, which included the facts Scott was not biologically related to his prior victims and did not abuse his prior victims in all the same ways he abused his daughters. Id. at 503, 748 S.E.2d at 244. Furthermore, this Court determined the probative value of the prior bad act evidence was not substantially outweighed by a danger of unfair prejudice despite the fact Scott had abused his prior victims eleven years before he began the abuse of his daughters. Id. at 508-509, 748 S.E.2d at 247.

In the case sub judice, the trial judge did not abuse his broad discretion by admitting the testimony of Barton concerning Appellant's prior bad acts because her testimony constituted evidence of the existence of Appellant's common scheme or plan to seduce and sexually assault teenaged girls. Notably, during trial, Victim testified she met Appellant for the first time at a horseshoe tournament when she was a thirteen-year-old middle school student and Appellant provided her with his phone number at that tournament. After that, Victim indicated Appellant began communicating with her and invited her to his home, and she stated he talked with her, made her feel special, and began providing her with whatever she wanted once she began visiting with him. Victim's testimony further established Appellant began sexually abusing her a few weeks after he initiated contact with her, and she noted the abuse always occurred either at one of Appellant's homes or at an abandoned house when no one else was present or in the same room as them. Furthermore, Victim's testimony established Appellant sexually abused her by performing oral sex on her or by engaging in sexual intercourse with her, and she noted the

sexual intercourse was always brief, Appellant always wore a condom during it, and her pants were the only clothing removed.

Similar to Victim's testimony, Barton testified she met Appellant for the first time at a horseshoe tournament, which was the same exact place where Appellant met Victim, just after she turned fourteen years old and while she was a middle school student, and she noted Appellant provided her with his phone number at that tournament. Additionally, like Victim, Barton indicated Appellant began communicating with her and invited her to his home after that, and she stated he talked with her, made her feel like the "most special person in the world," and got her whatever she wanted. Likewise, similar to Victim's testimony, Barton's testimony further established Appellant began sexually abusing her within a few weeks of inviting her to his home, and she recounted the abuse always occurred either at Appellant's home or at an abandoned house when no one else was present or in the same room as them. Furthermore, Barton's testimony established Appellant sexually abused her by engaging in sexual intercourse with her, and, just like Victim, she indicated the sexual intercourse was always brief, Appellant always wore a condom during it, and her pants were the only clothing removed. Finally and critically, Barton testified Appellant established a direct connection between his sexual abuse of her and his sexual abuse of Victim by informing her he was going to move onto Victim when she ended her relationship with him.

Thus, in Appellant's case, each of Appellant's victims was a young girl attending middle school, and both of his victims were approximately the same age. Moreover, Appellant met both of his victims at the same location -- a horseshoe tournament -- and provided both of the girls with his phone number upon meeting them. Additionally, with each of his victims, Appellant invited the girls to his home a short time after meeting them, and he began sexually abusing the

victims after talking with them, making them feel special, and providing them with whatever they desired. Furthermore, although Victim was subjected to oral sex while Barton was not, Appellant engaged in sexual intercourse with both girls in a highly similar manner, with Appellant always wearing a condom, always engaging in the intercourse while just the girls' pants were removed, and always ending the sexual intercourse quickly. Likewise, both girls testified they were sexually abused by Appellant in his home and at an abandoned house while they were alone with him or while no one else was in the same room. Accordingly, the testimony of Appellant's most recent victim, Victim, was highly similar to the testimony of Appellant's previous victim, Barton, in regard to: (1) the approximate ages of the victims when the abuse occurred; (2) the genders of the victims; (3) the statuses of the victims as middle school students when they first met Appellant; (4) the location where Appellant met the victims; (5) Appellant's acts of providing his phone number to the victims and inviting them to his home within a few weeks of meeting them; (6) the locations where Appellant abused the victims; (7) the nature and type of the sexual abuse Appellant inflicted upon them; (8) the circumstances under which the sexual abuse occurred; and (9) Appellant's acts of making the girls feel special and providing them with gifts. See Wallace, 384 S.C. at 434, n. 5, 683 S.E.2d at 278 ("Requiring a 'connection' between the crime charged and the bad act evidence is simply a requirement that the two be factually similar and does not add an additional layer of analysis."); cf. Blanton, 316 S.C. at 33, 446 S.E.2d at 439 (finding the prior bad acts were sufficiently similar to the charged offense to be admissible where the victims in all of the acts were approximately the same age, each of the victims was subjected to the same type of sexual abuse in the same locations, and Blanton took advantage of his relationship with the victims for sexual gratification in each of the acts). Furthermore, those similarities between the acts outweighed any dissimilarities, which

established a clear and logical connection between the earlier acts and more recent crimes. See Wallace, 384 S.C. at 434, 683 S.E.2d at 278 ("In sum, there are similarities in the class of the victim, timing, place, and warning that outweigh any dissimilarity."); cf. Scott, 405 S.C. at 501, 748 S.E.2d at 243 (finding prior bad act evidence to be admissible where some distinctions existed between the prior bad act testimony and the testimony of Scott's most recent victims but the distinctions did not outweigh the significant similarities). As a result, Barton's testimony was properly admitted towards establishing the existence of Appellant's common scheme or plan to seduce and sexually assault teenaged girls, which was confirmed by Appellant's own statements to Barton evincing his intention to continue his plan by moving onto Victim after her, and the trial judge's decision to admit that testimony did not constitute an abuse of discretion under those circumstances. See Wallace, 384 S.C. at 433-434, 683 S.E.2d at 278 ("When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b). . . . A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility.").

Moreover, the trial judge properly concluded the probative value of Burrow's testimony was not substantially outweighed by a danger of unfair prejudice. Critically, in Appellant's case, the prior bad act evidence was extremely probative and significant due to the lack of physical evidence corroborating Victim's testimony, which could not be obtained based on the fact Appellant always wore a condom during the sexual abuse coupled with the fact both Barton and Victim delayed their disclosures of the abuse. As a result, Barton's testimony was extremely probative and significant because it established the existence of a common scheme or plan on Appellant's part and constituted strong proof of the highly similar incidents involving Victim based on the similarities between the Appellant's prior abuse of Barton and Appellant's

subsequent abuse of Victim. See id. at 433, 683 S.E.2d at 277 (“Such evidence is relevant because proof of one is strong proof of the other.”). Accordingly, the probative value of the prior bad act evidence was extremely high. Cf. State v. Clasby, 385 S.C. 148, 158-159, 682 S.E.2d 892, 898 (2009) (“Given there was no physical evidence to corroborate B.C.’s testimony regarding the indicted offense of CSC with a minor, first degree and lewd act upon a child, we find her testimony of Clasby’s sustained illicit conduct was extremely probative to establish the charge criminal sexual conduct underlying the offense of lewd act upon a child.”). In light of the high probative value of the evidence, the potential for undue prejudice that could have resulted from the admission of the evidence was not sufficient to substantially outweigh the evidence’s probative value. See Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is **substantially outweighed by the danger of unfair prejudice**, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” (emphasis added)); see also State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (“ ‘Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.’ ” (citations omitted)). Therefore, the trial judge did not abuse his broad discretion in weighing the probative value of the prior bad act evidence against its potential for undue prejudice. See Hamilton, 344 S.C. at 358, 543 S.E.2d at 594 (“If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.”).

In conclusion, the prior bad act evidence introduced during Appellant’s trial through Barton’s testimony was strikingly similar to the testimony of Victim in regard to the similar ages of the victims, the similar circumstances under which Appellant initiated contact with the

victims, the similar timing of the sexual abuse, the manner in which the abuse occurred, the nature of the abuse, the locations where the abuse occurred, and Appellant's special treatment of the victims and provision of gifts to them. See Wallace, 384 S.C. at 434, 683 S.E.2d at 278 ("Here, the similarities between the acts include petitioner's relationship to the victims (his stepdaughters), abuse beginning at about the same age, abuse occurring in the family home when the mother was absent, and an admonishment not to tell because no one would believe it. In sum, there are similarities in the class of victim, timing, place, and warning that outweigh any dissimilarity."); see also State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008) ("Where there is a close degree of similarity between the crime charged and the prior bad act, both this Court and the Court of Appeals have held prior bad acts are admissible to demonstrate a common scheme or plan."); cf. State v. Hallman, 298 S.C. 172, 175, 379 S.E.2d 115, 117 (1989) ("The prior bad acts here occurred while each of the young women was a foster child to appellant and of similar age to the victim. In each instance, appellant took advantage of this relationship for his sexual gratification. The extent of abuse against the victim was even more reprehensible than that against the previous foster children. It commenced, however, in exactly the same manner under similar circumstances. We find the evidence of prior bad acts bears such close similarity to the offense charged in this case that its probative value clearly outweighs its prejudicial effect."). Therefore, like in Blanton, Hubner, Scott, and numerous other cases, the prior bad act evidence was relevant and admissible as proof of the existence of a common scheme or plan, and its high probative value substantially outweighed its potential for undue prejudice. Cf. State v. Fonseca, 383 S.C. 640, 649, 681 S.E.2d 1, 5 (Ct. App. 2009) (concluding prior bad act evidence was not admissible under the common scheme or plan exception because "[t]he State provide[d] no compelling argument of any similarities between the two occurrences, or any argument to

overcome the fact that the incidents [were] remote in time" (emphasis added)). For those reasons, the trial judge did not abuse his broad discretion in admitting the testimony regarding Appellant's prior bad acts. See Kelley, 319 S.C at 176, 460 S.E.2d at 370 ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also Martucci, 380 S.C. at 253, 669 S.E.2d at 609 ("If there is any evidence to support the admission of bad act evidence, the trial judge's ruling cannot be disturbed on appeal."). Appellant's convictions should be affirmed.

II.

To the extent Appellant is challenging the solicitor's cross-examination of him about incriminating text messages he purportedly sent to the victim's family members prior to trial, that issue is not properly preserved for appellate review because Appellant conceded to the trial judge it was permissible for the solicitor to ask the questions about the text messages during trial and because defense counsel did not any seek additional relief after the trial judge sustained several of his objections to the questioning. However, notwithstanding any issue preservation concerns, the trial judge did not abuse his broad discretion by permitting the solicitor to question Appellant about the text messages he allegedly sent because the solicitor had a good faith factual basis for asking the questions in light of the testimony presented during trial in regard to the text messages and the fact the solicitor was provided with a physical copy of the purported text messages just before trial.

Appellant contends the trial judge erred by allowing the solicitor to question Appellant about text messages he allegedly sent to members of Victim's family that related to his criminal case. In support of that contention, Appellant maintains the solicitor should not have been permitted to ask Appellant about the contents of the text messages he allegedly sent and which he now characterizes on appeal as "inculpatory" without first establishing a foundation for those text messages to be admitted into evidence. Initially, Appellant's appellate challenge to the solicitor's questioning of Appellant about the alleged text messages on cross-examination is wholly unpreserved for appellate review because defense counsel repeatedly conceded to the trial judge it was permissible for the solicitor to question Appellant about the text messages. Based on that trial concession, Appellant is precluded from now raising a challenge to the solicitor's cross-examination questioning on appeal. Likewise, to the extent Appellant is complaining on appeal about the initial questions the solicitor asked Appellant after presenting him with a physical copy of the text messages, that issue is similarly unpreserved for appellate review because defense counsel's trial objections to those questions were sustained by the trial judge, and defense counsel sought no further relief from the trial judge after his objections were sustained. However, regardless of any issue preservation concerns, the trial judge nonetheless

committed no error by permitting the solicitor to question Appellant about the text messages he allegedly sent to Victim's family members because – just as defense counsel conceded during trial – it was permissible for the solicitor to question Appellant about the text messages in light of the fact she had a good faith factual basis for doing so based on the information available to her at that time. Appellant's convictions should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Imposing issue preservation requirements on a party "is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

However, even if a party properly objects to an issue that arises during trial, no issue is preserved for appellate review if the trial judge sustains the party's objection and the party does subsequently move to strike the allegedly objectionable matter or request some curative measure from the trial judge. State v. Wingo, 304 S.C. 173, 177-178, 403 S.E.2d 322, 325 (Ct. App. 1991); see State v. Saltz, 346 S.C. 114, 129, 551 S.E.2d 240, 248 (2001) ("The requirement that a party move to strike objectionable testimony applies when an objection has been *sustained*"). Critically, if party fails to request additional relief after an objection is sustained, that party has obtained the only relief sought while preserving no issue for appellate review. See State v.

Thompson, 304 S.C. 85, 87, 403 S.E.2d 139, 140 (Ct. App. 1991) (“[T]he trial judge sustained defense counsel’s objections to the testimony of which [Thompson] complains. No motion to strike, no request for instruction that the jury disregard the testimony, nor a motion for a new trial based on the admission of the testimony was made at trial. Appellant has failed to preserve this issue. He obtained the only relief he sought and this court, therefore, has no issue to decide.”).

Similarly, even if a party properly raises an objection during trial and the objection is overruled, a party may still waive his right to argue error in regard to that objection on appeal under certain circumstances. See State v. O’Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived). Significantly, a party can waive an objection to an issue by indicating to the trial judge the party no longer has an objection to an issue the party previously objected to or by eliciting similar testimony to testimony to which the party previously raised an objection without reserving that earlier objection. See State v. McKinney, 258 S.C. 570, 571, 190 S.E.2d 30, 30 (1972) (“During the course of the trial certain testimony was admitted over the objection of [McKinney’s] counsel. Thereafter, counsel for [McKinney] cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby lost and if any error had been committed in the admission of the testimony it was cured.”); O’Neal, 210 S.C. at 312, 42 S.E.2d at 526 (“An objection to the admission of evidence is waived where the same or similar evidence has been elicited by the objector.”); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (“Dicapua’s sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua’s counsel specifically stated he had ‘no

objection.’ We find this amounted to a waiver of any issue Dicapua had with the videotape.”). Likewise, a party can waive a previously-raised objection to an issue by subsequently conceding that issue to the trial judge. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal).

In the case at bar, the trial judge sustained several objections to questions the solicitor asked of Appellant on cross-examination after presenting him with a physical copy of text messages, and, following the trial judge’s rulings sustaining defense counsel’s objections, defense counsel did not seek any further relief from the trial judge or ask the trial judge to employ any curative measures. Thereafter, the trial judge and the parties discussed the matter outside of the presence of the jury, and, during that discussion, the trial judge afforded defense counsel an opportunity to identify any authority that would prohibit the solicitor from questioning Appellant about statements he was purported to have made against his own interests. In response, defense counsel conceded the solicitor could, in fact, ask Appellant if he made a particular statement while specifically asserting his issue was not with the solicitor’s act of asking the questions. The trial judge then indicated he believed it was permissible for the solicitor to question Appellant about statements he was alleged to have made, and defense counsel responded unequivocally he agreed with the trial judge’s position.

Because defense counsel conceded to the trial judge it was permissible for the solicitor to question Appellant about the statements he was alleged to have made, any issue regarding the propriety of the solicitor’s questioning of Appellant was waived and cannot now properly be raised or addressed on appeal. See id. at 315-316, 642 S.E.2d at 588 (recognizing an issue conceded during trial cannot properly be argued on appeal); see also Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party cannot acquiesce to a ruling on an issue

during trial and then complain of an error with the issue on appeal); cf. State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none). Likewise, to the extent Appellant is complaining on appeal about the initial questions the solicitor asked of Appellant after presenting him with a physical copy of the text messages, such an issue is similarly unpreserved for appellate review because defense counsel's objections to those questions were sustained during trial and no further relief was sought in regard to those questions. See Thompson, 304 S.C. at 87, 403 S.E.2d at 140 (holding Thompson failed to preserve any issue in regard to an objection that was sustained because he failed to make a motion to strike, request a curative strike, or move for a new trial after the objection was sustained); see also State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) ("Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide."). Accordingly, Appellant failed to preserve any issue for appellate review in regard to the solicitor's questioning of him about the text messages he purportedly sent to Victim's family members. See TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal."); McMillan, 319 S.C. at 335, 461 S.E.2d at 45 (finding an issue to be procedurally barred on appeal because it was conceded at trial); see also State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Appellant's convictions should be affirmed.

B. Propriety of the Solicitor's Questioning of Appellant on Cross-Examination

When a defendant elects to take the witness stand and testify on his own behalf during a criminal trial, the solicitor has a right to conduct cross-examination of that defendant. State v.

Holmes, 171 S.C. 8, ___, 171 S.E. 440, 443 (1933). As part of that cross-examination, the solicitor unquestionably is permitted to ask the defendant about any inculpatory or otherwise relevant statements he may have previously made that would be pertinent to the trial so long as the solicitor has a good faith factual basis for any questions asked. See Rule 801(d)(2), SCRE (instructing a party-opponent's own statements do not constitute inadmissible hearsay); see State v. McEachern, 399 S.C. 125, 147, 731 S.E.2d 604, 615 (Ct. App. 2012) (“[O]ur courts have held that a cross-examiner must have a good faith factual basis before questioning a witness about his or her past conduct.”); see also State v. Gilchrist, 342 S.C. 369, 372-373, n. 3, 536 S.E.2d 868, 869-870 (2000) (finding Gilchrist's incriminating statement was admissible as an admission by a party-opponent). Thus, while a solicitor is not permitted to merely “go on a fishing expedition” when cross-examining a defendant, the solicitor can question the defendant about matter relevant to the trial when the solicitor has a good faith basis for doing so. See State v. Joseph, 328 S.C. 352, 359, 491 S.E.2d 275, 278 (Ct. App. 1997) (“The cross-examiner must have a good faith factual basis before questioning a witness about his past conduct.”); see also State v. McGuire, 272 S.C. 547, 550, 253 S.E.2d 103, 105 (1979) (“Counsel should not be permitted to go on a fishing expedition in hopes of finding some misconduct involving moral turpitude by a witness.”).

In Appellant's case, Sister testified during trial in regard to text messages she had previously received from Appellant, and she noted she had communicated with him through both text messages and phone calls. See generally State v. Henry, 292 Neb. 834, 868-869, 875 N.W.2d 374, 400 (Neb. 2016) (finding a sufficient foundation had been established for the admission of a physical copy of text messages purportedly sent by Henry based on the testimony of witnesses who indicated they spoke with Henry at the phone number used to send the text

messages and knew Henry was the sender based on the context of the messages and further noting a party seeking to admit text messages is not required to conclusively prove who authored the messages before they can be admitted into evidence). Sister further indicated she provided the prosecution just before trial with a copy of text messages that were purportedly sent by Appellant. In light of Sister's testimony about the inculpatory text messages she had received from Appellant in regard to Victim and her provision of a copy of the text messages she contended were sent by Appellant to the prosecution, the solicitor had a good faith basis for asking Appellant whether he sent the incriminating text messages attributed to him.¹⁰ See McEachern, 399 S.C. at 147, 731 S.E.2d at 615 (recognizing a good faith factual basis is necessary to ask a particular question on cross-examination); see also State v. Needs, 333 S.C. 134, 160, 508 S.E.2d 857, 865 (1998) (holding testimony in regard to incriminating statements made by Needs was admissible as evidence of an admission by a party-opponent). Thus, just as defense counsel repeatedly conceded during trial, the solicitor was permitted to question Appellant about the text messages, and the trial judge did not abuse his broad discretion by permitting the solicitor to do so.¹¹ See State v. Sherard, 303 S.C. 172, 174, 399 S.E.2d 595, 596

¹⁰ Notably, depending on Appellant's responses to her questions, the solicitor's questioning of Appellant also could have aided the solicitor in establishing a foundation for the admission of the physical copy of the text messages had she subsequently chosen to seek the admission of that matter into evidence during trial. See Rule 901(b)(1), SCRE (recognizing the requirements for authentication can be satisfied in numerous ways, including through the presentation of the testimony of a witness with knowledge the matter is what it is purported to be); see also Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 576-577, 201 S.E.2d 372, 376 (1973) (instructing direct proof is not required in order to authenticate a particular piece of evidence, and, instead, evidence can be authenticated through indirect or circumstantial evidence).

¹¹ Moreover, as Appellant denied sending any of the text messages the solicitor asked him about, Appellant suffered no actual prejudice as a result of the solicitor's questioning in that regard. Cf. McEachern, 399 S.C. at 148, 731 S.E.2d at 616 ("[W]e note that the mere asking of an improper question is not necessarily prejudicial, where no evidence is introduced as a result. Here, Hollie denied even knowing Warren or Gibbs, and denied 'being involved' with any of the three men. Thus, we find any error in allowing these questions was harmless." (citation omitted)). Likewise, the trial judge's instructions to the jurors cautioning them the statements of counsel were not evidence and instructing them evidence consisted only of witness testimony and exhibits helped to ensure Appellant suffered no prejudice from the solicitor's act of asking the questions regarding the text messages. See Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267 (1999) ("The jury was instructed to determine petitioner's guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, without some showing the

(1991) (“It is well settled that the scope of cross-examination is within the trial judge’s discretion, and this Court will not interfere absent a showing of prejudice by the complaining party.”); see also State v. Turner, 373 S.C. 121, 130, 644 S.E.2d 693, 698 (2007) (recognizing the trial judge retains wide discretion in regard to the scope of cross-examination). Appellant’s convictions should be affirmed.¹²

jurors disregarded those instructions, this Court declines to presume prejudice.” (citations omitted)); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (“An instruction to disregard incompetent evidence is usually deemed to have cured the error. Moreover, jurors are presumed to follow the law as instructed to them.” (citations omitted)); cf. State v. Arther, 290 S.C. 291, 295, 350 S.E.2d 187, 189 (1986) (“The trial judge did charge the jury not to consider anything heard outside the courtroom. This charge was adequate under the circumstances to ensure the jury would render a verdict based upon the evidence presented.”).

¹² In seeking a reversal of his convictions on appeal, Appellant contends this Court should consider a number of unpreserved errors that allegedly occurred during trial when determining whether any preserved error that occurred in his case was harmless. Notably though, Appellant’s proposed harmless error analysis is entirely inconsistent with the established law in South Carolina. See State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 863 (1993) (instructing any error in the admission of evidence that is merely cumulative to other unobjected-to evidence is harmless); State v. Blalock, 357 S.C. 74, 82, 591 S.E.2d 632, 636 (Ct. App. 2003) (finding any error resulting from the publication of a prior statement would have been harmless where its publication was merely cumulative to a previous, unchallenged publication of the relevant portions of the same statement); see also State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) (“[T]he plain error rule does not apply in South Carolina state courts.”); State v. Burroughs, 328 S.C. 489, 496, 492 S.E.2d 408, 411 (Ct. App. 1997) (“South Carolina has no ‘plain error’ rule.”); State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (recognizing unchallenged rulings are the law of the case regardless of whether they are right or wrong).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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BY

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June 9, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
D. Garrsion Hill, Circuit Court Judge

SC Court of Appeals

Case No.: 2013-GS-23-003231; 003232; 003233; 003234; 003235; 003236
Appellate Case No.: 2015-000312

The State, ... Respondent,
vs.
Jerald Denton Gaskins, Jr., ... Appellant.

BRIEF OF APPELLANT

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- II. THE COURT ERRED IN ALLOWING QUESTIONS CONCERNING INFLAMMATORY TEXT MESSAGES WITHOUT A PROPER FOUNDATION.
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STATEMENT OF ISSUES ON APPEAL

- I. DOES THE ADMISSION OF PRIOR BAD ACTS UNDER THE FACTS OF THIS CASE CONSTITUTE REVERSIBLE ERROR?
- II. DID THE SOLICITOR'S QUESTIONING OF THE DEFENDANT CONCERNING INFLAMMATORY TEXT MESSAGES WITHOUT A PROPER FOUNDATION CONSTITUTE REVERSIBLE ERROR?
- III. SHOULD THE COURT'S ANALYSIS OF THE RECORD AS A WHOLE IN A HARMLESS ERROR ANALYSIS INCLUDE PREJUDICE ARISING OUT OF ISSUES APPEARING IN THE RECORD BUT NOT PRESERVED FOR APPELLATE REVIEW?

STATEMENT OF THE CASE

Appellant was indicted by the grand jury in Greenville County for three counts of criminal sexual conduct with a minor second degree, and three counts of lewd act upon a minor. A jury trial was held on February 4th and 5th, 2015, the Honorable D. Garrison Hill presiding. Kristie B. Hodge, Assistant Solicitor, represented the State at trial. Randall L. Chambers, of Greenville, represented the Appellant at trial. The Appellant was found guilty on all counts and sentenced to four 20 year sentences, one 15 year sentence, all of which were concurrent, and to one 5 year sentence which was consecutive, with the provision that the 5 year sentence was to be served first. Timely notice of appeal was served. J. Falkner Wilkes represents the Appellant on the appeal of this case.

STATEMENT OF THE FACTS

The defendant was accused of having a sexual relationship over the course of a year and a half with the prosecutrix while she was 13 to 14 years of age. 192-197. The defendant denied the allegations. 421, l. 24-422, l. 1. At the beginning of the trial, outside the presence of the jury, the state declared an intent to offer the testimony of another minor as evidence of other bad acts under Rule 404(b). 240-242. The state argued admissibility under the common plan or scheme exception: "We're saying that he operates in the same manner. Good, bad, or indifferent, we're not saying. But we're saying that he operates consistently the same way, targeting young girls, schmoozing, talking big, talking good, talking them into having sex with them." T. p. 263, l. 9-15. The defendant denied the allegations involving the state's 404(b) witness. 421, l. 19-23.

The state claimed that the events involving the 404(b) witness were factually similar to those involving the prosecutrix: "They were 13, eighth grade, met at horseshoes, had sex at the Defendant's residence, went to the abandoned house and had sex. And the Defendant used a condom. It was vaginal-penile penetration." 242, l. 21-25. The state argued that the 404(b) evidence established a *modus operandi*. 261-262. The defense argued that the similarities were merely generic and that the two were distinctly dissimilar. 242-258. Contrary to the

state's argument, the facts fail to show that the 404(b) evidence established a *modus operandi* or otherwise sufficiently similar to allow its admission.

The 404(b) Evidence:

The 404(b) witness testified that she met the defendant in the spring of 2011 at the prosecutrix's house. 247. That the first time she met the defendant they went outside to the defendant's car and started talking. 248. While sitting in the car talking they exchanged phone numbers. 248. She said that their first conversation in the car "immediately" became flirtatious. 248. About a month later during a cookout at the defendant's house she and the defendant went into a back room and immediately started kissing for twenty or thirty minutes. 249-250; 312. She characterized a relationship of *mutual interest*, stating that the next time they were together "we just started flirting again." 250, l. 24-25. She testified that one thing led to another and they had sex again. 250-251. The 404(b) witness testified that she was a "very" willing participant, and that she put forth her efforts into making it happen. 252, l. 14-16; 315. She claimed to have had sex with the defendant three times. 254.

The essence of the state's case as to the indicted offenses was that the defendant established a sexual relationship with the prosecutrix through the manipulation of her and her family over an extended period of time. The

evidence showed that the defendant and his family were close friends with the prosecutrix and her family. 64. The defendant's family would often go to the prosecutrix's house. 136. They had contact for over a year and half. 137. They were together as families at times on a daily basis. 83. The mother of the prosecutrix testified that the defendant was generous and gave them money to help out with their bills. 71. The prosecutrix claimed that the defendant helped her parents with their bills, including their car insurance, "to blind them away from what was happening." 288, l. 8-10.

The 404(b) witness lived with her grandparents. 255. Unlike the long established relationship that existed between the prosecutrix's family and the defendant's family, there was no evidence that the grandparents even knew the defendant, much less were friends or ever had any contact with him. 255. Also unlike the claims of almost constant contact between the prosecutrix and defendant, the contact between the defendant and the 404(b) witness was limited to communicating "over Facebook occasionally." 250, l. 16. By her own testimony The 404(b) witness was a very willing participant and that she actually worked at making "it" happen. The 404(b) witness's testimony is distinctly different than the testimony of the prosecutrix and the state's theory that the defendant heavily manipulated the prosecutrix and her family to establish a sexual relationship.

While the 404(b) witness had little contact with the defendant's family, the prosecutrix essentially lived at the defendant's for an extended period of time. The prosecutrix would come over to the defendant's house two or more times a week while the defendant's wife was there. 139. She spent nights at the defendant's house. 138. She was at the defendant's house close to every weekend. 203. This continued into 2011 when the defendant moved to Magnolia Trailer Park where she was given a bedroom. 140. During that time the defendant's wife helped the prosecutrix with her homework and she helped the wife with the defendant's daughter. 140. The prosecutrix also went places with the defendant's family such as bowling and to the movies. 141. She continued to come to the defendant's house even when the defendant and his family moved to Central, and later to Traveler's Rest in 2012. 145; 150-151. There is no evidence that the defendant and the 404(b) witness had similar contact with the defendant and his family.

The alleged sexual contact also differed greatly between the 404(b) witness and the prosecutrix. The defendant's wife testified that one night she found the defendant and the prosecutrix on the couch together. 148. The prosecutrix testified that the defendant had sex with her at his house while his wife was in the shower, and then went back to playing games and watching TV like nothing

had happened and ended up spending the night. 192-196. She also testified that while in Central she had sex with the defendant at his house while his wife was at the hospital. 205. They had sex, including oral sex, again at the house while the wife was asleep. 207. The prosecutrix claimed that she and the defendant had sex at different locations in different rooms. 199-200. She also testified that sometimes it was "full" sex and sometimes oral sex. 200. She testified that they had sex, including oral sex, in the defendant's car. 202. The prosecutrix testified that they continued to have sex everywhere the defendant moved. 198. These events are significantly dissimilar to those alleged by the 404(b) witness.

The prosecutrix also testified that she continued to have sex with the defendant because he had a short temper and in the back of her mind she didn't want to get yelled at. 213. These facts are also dissimilar to the 404(b) testimony.

The nature of the defendant's normal daily contact between the prosecutrix and the 404(b) witness is also hugely dissimilar. The prosecutrix testified that the defendant went to her school events, like volleyball tournaments or practices.

138. According to the defendant's wife the defendant had constant contact with the prosecutrix through text messages or calls to the prosecutrix. 137. When the prosecutrix had her phone cut off for going over her minutes on her parent's data plan, the defendant bought her a cell phone on his plan. 73. When that cell phone

was taken away due to poor grades, she testified that the defendant secretly provided another cell phone. 74. In contrast to the constant contact alleged by the prosecutrix, the 404(b) witness testified that she only had occasional contact with the defendant through Facebook. The dissimilarities clearly far outnumber any generic similarities between the testimony of the prosecutrix and the 404(b) witness.

In addition to the stated 404(b) evidence the solicitor repeatedly raised other evidence of bad acts or bad character throughout the trial. The solicitor asked the defendant on cross-examination about Jennifer Anglin's daughter. 444. Despite not being the subject of direct examination the solicitor went into a line of questioning involving Anglin's daughter. The solicitor's questions clearly implied that the Defendant was making some improper contact with Anglin's daughter using an assumed name. 445. The solicitor offered no proof to substantiate the allegations that were the subject of her questions. 446.¹ The solicitor then went on to question the defendant about the existence of a no contact bond with his fiancé Angelina Campbell. 446. The solicitor asked if the no contact provision was a condition of his bond. 446. The solicitor made a point to

¹The solicitor discussed Anglin's daughter and the defendant's cousin at sentencing claiming "that law enforcement has received a complaint on that he was doing the same type of things, attempting to engage this child." 514, l. 5-11.

inform the jury, under the guise of asking the defendant a question, that the defendant had an active charge against him:

Q: All right. So are you, currently, engaged right now?

A: Yes, I am.

Q: To whom?

A: Angelina Campbell.

Q: Is she in court today.

A: Yes, she is.

Q: Isn't there a no-contact order between you and Angelina?

A: There was.

Q: No. There is, isn't there?

A: I'm not sure. It's --

Q: As a condition of your bond, you're not supposed to have contact with her; isn't that correct?

A: No, it's not correct. It was supposed to have been dissolved.

Q: Sir, you have an active charge with her; correct?

A: Ma'am, once again, it was supposed to be dissolved.

Q: Sir, you have an active charge with her, do you not?

A: I don't know if I do or not, ma'am. But, once again, it was supposed to

have been dissolved.

Q: Am I your prosecutor on that case?

A: I don't know if you are or not --

Q: Have you not called me numerous times asking me --

A: No, ma'am, I have not. No. There was a letter sent to you, an affidavit filled out for you.

Q: And have you been instructed by our office that that case is not dropped and you are not to have contact with her?

A: Ma'am, I was once told it was dismissed. So I don't know what's going on with it --

Q: Who were you told that by?

A: I guess your office.

Q: No, sir. No one from my office --

445, l. 22-447, l. 4.

The solicitor went on to make the point again:

Q: But do you have an active charge with her? 447, l. 12.

There was never any evidence offered as to the alleged charge or no contact order to make it admissible or the proper subject of questioning before the jury.

The solicitor again attempted to bring up other bad acts evidence on cross of the defendant asking him about an *incident* with his cousin. 456. The state never offered any evidence to establish the admissibility of the any "incident" involving the defendant's cousin under Lyle and Rule 404(b).

The state elicited testimony from the investigating officer that he left his card for the defendant so the defendant could tell him his side of the story but that "He never contacted me." 354, l. 4-5. The solicitor went on to follow up that giving the defendant an opportunity to talk with the officer was something he normally did. 354, l. 10-11.

The solicitor asked the defendant on cross if he was supplementing his disability income by selling pot or pills. 442. There was no attempt by the state to establish any basis for the question under 404(b) or other any rule. 442.

In closing the state characterized the defendant as a pack of lions preying on a baby. 487-488. The state then repeatedly made personal representations to the jury in closing argument: I think the defendant has personal self-worth issues. 488. Vouching for the 404(b) witness: "I think she was very, very humble when she took the stand." 488, l. Vouching for the prosecutrix: "I think she really like[d] him. And I think that is what's embarrassing right now, too, is that she, actually, fell for that." 490. I think she liked being around him." 491. "Because I

think what he told her and what she thought was that one day, they were going to run off together." 491. "So, yeah, maybe her testimony wasn't exactly as we would have like it to be, quite as humble, and as open, and honest as [The 404(b) witness'], but it wasn't a lie." 490, l. 8-10.

ARGUMENT

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.*

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

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

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

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

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

evidence.

Common Plan or Scheme

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

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

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

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

In this case there are no more than generic similarities between the offenses for which the defendant was charged and those alleged by the 404(b) witness. The connection between the prior bad act and the crime must be more than just a general similarity. State v. Timmons, 327 S.C. 48, 488 S.E.2d 323 (1997); State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct.App.2004); State v. Stokes, 279 S.C. 191,

193, 304 S.E.2d 814, 815 (1983). Generic similarities fail to meet the standard necessary for admissibility. A *close degree of similarity* or connection between the prior bad act and the crime for which the defendant is on trial is required to support admissibility under the common scheme or plan exception. State v. Cheeseboro, 346 S.C. 526, 546, 552 S.E.2d 300, 311 (2001); State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct.App.1999) *emphasis added*.

The prior bad acts alleged through the testimony of the witness fail to establish any common scheme or plan, much less raise to the level of *modus operandi* as argued by the state. "Clear and convincing evidence of prior crimes or bad acts that is logically relevant is ... admissible to prove ... a common scheme or plan that embraces several previous crimes so closely related to each other that proof of one tends to establish the other." State v. Moultrie, 316 S.C. 547, 554, 451 S.E.2d 34, 39 (Ct.App.1994). Here, the prior bad acts fail to do more than establish evidence of propensity and bad character, which is clearly impermissible: "It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual." State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987); *see also* State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000) (finding that evidence of prior crimes or bad acts is inadmissible to prove bad character of defendant or that he acted in conformity

therewith).

In Fonseca the court rejected the State's argument that two incidents that occurred in Fonseca's marital home while his wife was in the other room, demonstrated that the Fonseca had a common scheme or plan to attack the victim while his wife was not present or was in the other room. Fonseca, which was adopted by the supreme court as well reasoned², appeared to be the first sign of a slowing of the Wallace juggernaut. Despite the court's ruling in Fonseca, the rule of Lyle and 404 against the use of propensity evidence has continued to be eroded, virtually to the point of non-existence in criminal sexual abuse cases, especially those involving minors. As pointed out by the dissent in Wallace:

[O]ur cases holding that evidence of other acts of sexual misconduct is admissible in a trial for criminal sexual conduct with a minor as a "common scheme or plan" under Rule 404(b), SCRE, have, in effect, created an exception to the rule's exclusion of propensity evidence. Compare, e.g., Vogel v. State, 315 Md. 458, 554 A.2d 1231 (Ct.App.1989). We have repeatedly held in non-sexual offense cases that, "the mere presence of similarity only serves to enhance the potential for prejudice," State v. Tuffour, 364 S.C. 497, 613 S.E.2d 814 (Ct.App.2005) vacated on other grounds 371 S.C. 511, 641 S.E.2d 24 (2007) internal citations omitted, yet under the majority's view, similarity is the touchstone of admissibility in child sexual offense cases. In my view, if we are to permit the admission of propensity evidence in these types of cases, then we should propose a new rule of evidence, and encourage public comment. See e.g. Rules 413 and 414, Fed.R.Evid.; Rule 404(c), Az. R. Evid. In light of the controversy engendered by these rules in other jurisdictions,⁷ I believe that thorough scrutiny is warranted.

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

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

In this case, the state has offered nothing more than propensity evidence. Any similarities are merely generic and far outweighed by dissimilarities between the facts surrounding the prosecutrix and the 404(b) witness. While the state argued that the 404(b) evidence was offered to show that the defendant had sex with the prosecutrix through a pattern or scheme of manipulation, it failed to show that the 404(b) witness or her family were similarly manipulated. What it did show was that the defendant had sex with a young girl before, therefore allowing the jury to infer that the defendant had the propensity to commit the offenses charged. In any other type of case, evidence of this nature would have immediately been judged too dissimilar under Lyle and Rule 404.

Even if the other bad act evidence were admissible under Rule 404(b), the testimony of the 404(b) witness should have nevertheless been excluded, as its probative value was substantially outweighed by the danger of unfair prejudice to the defendant. State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); Beck, 342 S.C. at 135-36, 536 S.E.2d at 683; *see also* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of

cumulative evidence."). Unfair prejudice means an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one. State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct.App.). State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (S.C. App., 2005) The testimony of The witness was unnecessary to any element in the state's case and overly prejudicial. As a result, the 404(b) evidence in this case should have been excluded under both Rules 404 and 403. Its admission was therefore error.

Harmless Error Analysis

To deem an error harmless, this court must determine "beyond a reasonable doubt the error complained of did not contribute to the verdict obtained." Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993) (citing Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)) (*internal quotations omitted*). Due to the prejudicial tendency of admitting prior bad act testimony it cannot be said that beyond a reasonable doubt the verdict was not affected by the evidence. See Fosneca, *supra*. Therefore, the erroneous admission of evidence under 404(b) in the defendant's case constitutes reversible error.

II. THE COURT ERRED IN ALLOWING QUESTIONS CONCERNING INFLAMMATORY TEXT MESSAGES WITHOUT A PROPER FOUNDATION.

On cross-examination the solicitor questioned the defendant about text messages allegedly sent to the prosecutrix's father some time after the defendant had been arrested on the present charges. 424. The solicitor asked the defendant if 561-7021 was his phone number. 424. The defendant testified that it was not. 424. He testified that he was not texting from that number. 425. The solicitor asked the defendant to read the content of the text messages aloud for the jury. 425. The defense objected to the solicitor asking the defendant to read aloud the contents of the messages. 426. The defense argued that there had been no foundation laid to allow the messages to be read aloud for the jury. 426. The court sustained the objection. 426, l. 9. Then, despite the objection having been sustained, the solicitor continued by reading the content of the text messages aloud to jury herself in the form of a question:

Q: Did you text -- well, here's how I'll do it. Did you text Walt on June 22nd of 2013, and state to him, Will you drop charges, or are we going to court? Either way, I'm still going to hang out with you. Just be honest with me?

A: No, I did not.

426, l. 11-16. Despite the continued denial of having sent any text messages

during that time frame or from that phone the Solicitor continued:

Q: Did you text him, my life is -- excuse me -- fucked up --

Again defense counsel objected. 426, l. 17-19. The objection was sustained and the jury excused. 426.

After the jury was excused there were arguments as to the propriety of having the contents of the text messages read aloud to the jury before they had been authenticated and offered into evidence. 427. The solicitor maintained that she should be allowed to read the text messages *verbatim* and force the defendant to answer whether he made each statement. The solicitor admitted that she could not introduce the statements through the defendant, but stated that she had a rebuttal witness that she would put on the stand to lay a foundation for the admission of the text messages. 426. In the discussions the court noted that what was "troublesome" was that solicitor was essentially publishing something not yet in evidence. 429. The court overruled the defense objection and allowed the solicitor to continue reading the texts aloud in the form of a question. 430. The court's ruling, however, appears to have been based on the solicitor's representation that the state would call a rebuttal witness to lay a proper foundation and have the text messages entered as evidence. 430.

The solicitor then continuing reading the content of the inflammatory text

messages aloud before for the jury in the form of questions to the defendant:

Q: All right. Mr. Gaskins, did you text Walt Mucienko on June 21st of 2013, and ask him to drop the charges so y'all could bounce and go hang out with Ian, your higher power God?

A: No, I did not.

Despite denying having sent the message the solicitor continued questioning the defendant about the message:

Q: Who is Ian?

A: I have no idea.

Q: What is the higher power God?

A: I have no idea either.

The solicitor continued:

Q: -Did you text him again on June 22nd of 2013, and ask him again, about dropping the charges, saying, If not, that's cool, but don't want to hassle with going to court?

A: No I did not.

431, l. 17- 432, l. 4.

Despite the defendant's consistent and repeated denials of sending the text messages the solicitor continued reading the inflammatory contents of the

alleged text messages in front of the jury in the form of questions:

Q: Okay. So you didn't text him about going to Oklahoma to make some money --

A: No, ma'am. I did not.

Q: Okay. And you didn't text him then about, Why have you not dropped this shit on me? And why are you letting Sandy drag it --

A: Once again, I never texted him from 2013 forwards at all.

Q: Okay. And so then you didn't text him to say, Sandy must be threatening you, daddy?

A: No, ma'am. I did not.

432, l. 22-433, l. 9.

Despite having indicated that the state would call a witness to lay a foundation and authenticate all of the text messages that were read aloud to the jury, when asked if the state intended to bring any reply the solicitor responded: "I don't think I need to." 463, l. 9.

In this case the jury should not have heard the substance of the texts messages without the state first laying a proper foundation and authenticating the content of messages through a witness with personal knowledge of origin of the messages. "A witness may not testify to a matter unless evidence is

introduced sufficient to support a finding that the witness has personal knowledge of the matter." Rule 602, SCRE. Here, the defendant denied any knowledge of the messages and the solicitor failed to call a witness as promised that could lay a proper foundation for the messages. Absent a proper foundation the state failed to establish the relevance of the evidence. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

Despite the defendant's denial of any knowledge of the text messages the prejudicial impact of solicitor's lengthy questioning is apparent. They were not only inculpatory, but also cast the defendant as a liar, pitting him against witnesses that were never called. The defense could not cross-examine or challenge the authenticity of the text messages. This left the jury to infer authenticity from the solicitor's insistent use of the them. As the court had earlier indicated, the solicitor was using them as they thought they were evidence in the case. The potential for the jury to consider the text messages is obvious. The solicitor's intent that the jury the jury consider the text messages as evidence is clear as she later argued them to the jury in closing argument, claiming that the defendant's denial of the text messages was not believable. 494. This of course

constituted arguing facts outside of the record. "Solicitors must confine their closing arguments to evidence in the record, tailoring comments to the evidence presented and its reasonable inferences. State v. Woomer, 277 S.C. 170, 284 S.E.2d 357 (1981); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981)." State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (S.C. App., 2000).

Based on the solicitor's failure to properly lay a foundation and authenticate the inflammatory text messages, the exact problem arose that the court had earlier predicted. The solicitor's reading of numerous text messages before the jury under the guise of questioning could only be perceived as evidence by the jury. Absent a foundation the state failed to establish the relevance of the evidence. Absent any relevance, the evidence fails to withstand a probative value versus prejudice analysis under Rule 403, SCRE. It was therefore error for the circuit court to allow the questioning without having the solicitor first lay a proper foundation.

In light of the inculpatory and inflammatory nature of the text messages, the prejudice resulting from the solicitor's improper questions undermines a finding of harmless error. See State v. Padgett, 2010 MO 17 (S.C., 2010).

III. THIS COURT SHOULD CONSIDER THE OVERALL PREJUDICE IN ANY HARMLESS ERROR ANALYSIS ON ALL ISSUES.

The cumulative prejudicial effect of evidence, questioning, and improper argument throughout the case should be considered in evaluating the prejudice effect of the appealable issues raised herein. The determination of whether an error is harmless depends on the circumstances of the particular case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990). No definite rule of law governs this finding. *Id.* Rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985). "An error is harmless where it could not reasonably have affected the result of the trial. *Id.* In the present case, unappealable due to the lack of an objection or the failure to request curative instructions, the record is replete with instances causing undue prejudice.

Without any foundation to establish admissibility under Rule 404, the solicitor asked the defendant on cross-examination about numerous other bad acts. The solicitor made absolutely no attempt at laying a foundation for questions implying bad acts involving Jennifer Anglin's daughter. 444. The solicitor's questions clearly implied that the Defendant was making improper contact with Anglin's daughter under an assumed name. 445. The solicitor

brought up other bad acts on cross of the defendant alleging an *incident* with the defendant's cousin. 456. The solicitor offered no proof whatsoever to substantiate the questions, or otherwise establish a valid basis under Rule 404 and *Lyle* for the admissibility of any evidence relating to either of the other individuals. 444; 446.

The solicitor then went on to question the defendant about the existence of a no contact order involving his fiancé Angelina Campbell. 446. The solicitor asked if the no contact provision was a condition of a bond, presumably a criminal bond. 446. The solicitor made a point to inform the jury, again under the guise of asking the defendant a question, that the defendant had an unrelated active criminal charge against him. 446. No foundation was laid for this line of questioning. 446. Although most of the inflammatory questioning went without an objection, and are therefore unappealable, the prejudice remains apparent and appropriate for this Court to consider in any harmless error analysis.

The state further caused undue prejudice by eliciting testimony from the investigating officer that he left his card for the defendant so the defendant could tell him his side of the story but the defendant never contacted him. The solicitor went on to follow up that giving the defendant an opportunity to talk with the officer was something he normally did. Although this also went without objection it clearly added to the overall prejudice in the case.

The solicitor went on to further prejudice the defendant in the jury's eyes by asking the defendant on cross if he was supplementing his disability income by selling pot or pills. 442. There was no apparent basis for asking this question, nor any attempt by the solicitor to establish the admissibility of such evidence. It was asked simply to show the jury the defendant's bad character. See State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000) (finding that evidence of prior crimes or bad acts is inadmissible to prove bad character of defendant or that he acted in conformity therewith). This went without an objection from defense counsel, but again it clearly added to the overall prejudice in the defendant's case. 442.

The solicitor also pitted the defendant against the state's witnesses: "So you're telling us the state did not present any true evidence. Is that what you said?" 456, l. 15-16. When the solicitor asks an argumentative question requiring the defendant to explain the truthfulness or testimony of an adverse witness, the question is improper. "No matter how a question is worded, anytime a solicitor asks a defendant to comment on the truthfulness or explain the testimony of an adverse witness, the defendant is in effect being pitted against the adverse witness. This kind of argumentative questioning is improper." Burgess v. State, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998). Particularly when credibility is the crucial issue in a case, improper pitting of witnesses is prejudicial and cannot be

deemed harmless. Sapps, 295 S.C. at 486, 369 S.E.2d at 146; Brown, 297 S.C. at 29, 374 S.E.2d at 670.

In closing the state characterized the defendant as a pack of lions preying on a baby argument that went without objection. 487-488. The solicitor then went on to make numerous personal representations in closing argument: "I think Mr. Gaskins has some personal issues, some personal self-worth issues." 488, l. 4-5. The solicitor vouched for the 404(b) witness stating: "I think she was very, very humble when she took the stand." 488, l. 22-23. The solicitor then vouched for the prosecutrix, "I think she really like[d] him. And I think that is what's embarrassing right now, too, is that she, actually, fell for that." 490, l. 5-7. I think she liked being around him." 491, l. 10-11. "Because I think what he told her and what she thought was that one day, they were going to run off together." 491. "So, yeah, maybe her testimony wasn't exactly as we would have like it to be, quite as humble, and as open, and honest as [the 404(b) witness'], but it wasn't a lie." 490, l. 8-10.

Despite the lack of objection by the defense, it is clear that the state repeatedly placed before the jury improper questions that prejudiced the defendant, offered improper and inflammatory evidence, and made improper argument to the jury. "Whether such an error is harmless in a particular case

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Jerald Denton Gaskins, Jr., Appellant.

Appellate Case No. 2015-000312

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2017-UP-166
Submitted February 1, 2017 – Filed April 19, 2017

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

PER CURIAM: Jerald Denton Gaskins, Jr. appeals his convictions of criminal sexual conduct with a minor second degree and lewd act upon a minor, arguing (1) the trial court erred in allowing evidence of prior bad acts, (2) the trial court erred in allowing the State to question him about text messages without laying a proper

foundation, and (3) the cumulative prejudicial effect of all errors throughout the trial should be considered in evaluating the prejudicial effect of the preserved issues. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting evidence of prior bad acts: *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) ("The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion."); Rule 404(b), SCRE (providing evidence of other crimes, wrongs, or acts may be admissible to show the existence of a common scheme or plan); *State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009) ("When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity."); *State v. Scott*, 405 S.C. 489, 500, 748 S.E.2d 236, 242 (Ct. App. 2013) ("A close degree of similarity exists when the 'similarities outweigh the dissimilarities.'" (quoting *Wallace*, 384 S.C. at 433, 689 S.E.2d at 278)); *id.* at 502, 748 S.E.2d at 243 (noting there was a close degree of similarity between the witness's testimony and the victim's testimony, despite some differences, because "the vast majority of [the 404(b) witness's] specific allegations directly align[ed]" with the victims' testimonies).

2. As to whether the trial court erred in allowing the State to question Gaskins about text messages without laying a proper foundation: *State v. Martucci*, 380 S.C. 232, 259, 669 S.E.2d 598, 612-13 (Ct. App. 2008) ("Where a defendant objects and the objection is sustained but he does not move to strike the evidence, the issue is not preserved for appellate review."); *State v. Bryant*, 372 S.C. 305, 315-16, 642 S.E.2d 582, 588 (2007) (providing an issue conceded at trial may not be argued on appeal).

3. As to the cumulative prejudicial effect of all errors: *See State v. Beekman*, 405 S.C. 225, 238, 746 S.E.2d 483, 490 (Ct. App. 2013), *aff'd*, 415 S.C. 632, 785 S.E.2d 202 (2016) (noting the defendant's argument the court should consider the cumulative effect of unpreserved errors was effectively "asking th[e] court to apply the plain error doctrine by combing the record for unpreserved issues and arguing the cumulative effect of these unpreserved matters deprived him of a fair trial"); *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) (providing South Carolina does not recognize the "plain error" rule).

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

AFFIRMED.

LOCKEMY, C.J., and GEATHERS and MCDONALD, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 05, 2017

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

REMITTITUR

Re: The State v. Jerald D. Gaskins, Jr.
Lower Court Case No. 2013GS2303231, 2013GS2303236
Appellate Case No. 2015-000312

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
J. Falkner Wilkes, Esquire
Mark Reynolds Farthing, Esquire
William Walter Wilkins, III, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

Jerald Denton Gaskins, Jr.)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2017-CP-23- 05901

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO
2017 SEP 14 PM 1:52

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 McCormick Correctional Institution
386 Redemption Way, McCormick S.C. 29899
2. Name and location of Court which imposed sentence Greenville County
General Session, 305 East North Street suite 325, Greenville SC, 29601
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS2303231, 2013GS2303232
 - (b) 2013GS2303234, 2013GS2303235

- (c) 2013GS2303236, 2013GS2303233
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2013GS2303236-(2-5-2015) 5 years
- (b) 2013GS2303236 (2-5-2015) 15 years
- (c) 3231, 3232, 3234, 3235 (2-15-2015) 20 years
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. Appeal From Greenville County (Direct Appeal)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 19th 2017
- 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) prosecutorial misconduct,

(b) Due process violations

(c) ineffective assistance of counsel,

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? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) I was told these were PCR issues by my last Attorney.

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(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, Mr J. Falkner Wilkes

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

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. General Sessions - Randy Chambers - Dont know address
Direct Appeal - J. Falkner Wilkes

ii. Attorney AT Law
114 Whitsett Street

iii. Greenville, SC 29601

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

i. General Sessions Greenville county - Randy Chambers
Direct Appeal - Mr. Jeff Wilkes

ii. _____

iii. _____

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

For conviction and sentence to be reversed
or to be given a new trial.

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

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Jerald Denton Gaskins, 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.

Jerald Denton Gaskins

SWORN to and subscribed before me this 29
day of August, 2017.

J. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, Jerald Denton Gaskins Jr., 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.

Jerald Gaskins Jr.
Applicant

SWORN or affirmed to and subscribed before me this

29 day of August, 2017.

J. Franklin
Notary Public

My Commission Expires: 12.16.2019

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-5901

$$V_i$$

**RETURN, PARTIAL MOTION
TO DISMISS AND MOTION FOR
A MORE DEFINITE STATEMENT**

Respondent.

I.

628

evaluating post-trial Brady¹ claims, the applicant must show (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385.

Applicant has failed to make the requisite *prima facie* showing to warrant an evidentiary hearing that the State withheld any evidence that would have produced a different outcome at his trial. Therefore, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the facts upon which the application is based.

¹ Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

IV.

Applicant also alleges he was denied due process of law. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegation of a due process violation. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Applicant’s allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel 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 in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. 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. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 17, 2018

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jerald Denton Gaskins, Jr. № 362923

V.

State of South Carolina

IN THE COURT OF COMMON PLEAS

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: McCormick Correctional Facility
2. Name and location of Court which imposed sentence: Court of General Sessions, Greenville, SC
3. Name(s) of co-defendant(s) (if any): None

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4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) 2013-GS-23-03231
 - (b) 2013-GS-23-03232
 - (c) 2013-GS-23-03233
 - (d) 2013-GS-23-03234
 - (e) 2013-GS-23-03235
 - (f) 2013-GS-23-03236
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) a, b, d, e above - February 15, 2015 - 20 years
 - (b) f above February 15, 2015 - 5 years
 - (c) c above February 15, 2015 - 15 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ____
 - (b) after a plea of not guilty
 - © after a plea of nolo contendere ____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - I. South Carolina Court of Appeals
 - ii.
 - iii.
 - (b) the result in each such Court to which you appealed:
 - I. Convictions affirmed
 - ii. ____
 - iii. ____
 - © the date of each such result:
 - I. April 19, 2017
 - ii. ____
 - iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

I. 2017-UP-166

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) Trial counsel failed to object to improper questions by the prosecutor concerning text messages with Walt Mucienko and a minor and an alleged incident with another minor when there was no factual basis for the questions.

(b) Trial counsel failed to interview and call several witnesses who could have refuted much of the testimony of the witnesses against me.

(c) Trial counsel failed to investigate and obtain records from various sources that could have refuted much of the testimony against me.

(d) Trial counsel failed to introduce family court records that would have established the ground for my divorce and therefore the cross examination by the state would have been proven to be inaccurate.

(e) Trial counsel failed to object to the questions by the state as to alleged drug dealing which had no basis in fact.

(f) Trial counsel failed to introduce the pleadings from the divorce which would impeach the testimony of my ex-wife.

(g) Trial counsel failed to subpoena my medical doctor to prove I was allergic to latex.

(h) Trial counsel failed to object to the improper testimony of Dr. Mary Fran Crosswell.

(i) Appellate counsel failed to perfect an appeal to the South Carolina Supreme

Court on the issue of the admissibility of other bad act under 404b.

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

- (a) At numerous times on cross examination the prosecuting attorney asked questions which had no basis in fact and no objection was raised by trial counsel. This testimony can be found in the transcript of the trial on pages 454 to 455; 424 to 430; 431 to 447.
- (b) The names of numerous witnesses we provided to trial counsel who failed to interview or call these witness. These witness would have proven that the alleged incident could not have happened under the circumstances described by the complaining witnesses.
- (c) Had trial counsel obtained lease agreements and cell phone records much of the testimony of the complaining witness could have been refuted. In addition trial counsel failed to obtain record that a jeep vehicle alleged used in this alleged incident had been wrecked before the incident.
- (d) The prosecuting attorney cross examined me at length about the ground for divorce as being one year separation. The prosecuting attorney cross examine me as if the ground were one year separation. Transcript at 460. Had trial counsel produced the divorce records to which he had access, the jury would have know that I was being truthful.
- (e) During her cross examination, the prosecuting attorney asked me "You're not supplementing that by selling pills or pot" Transcript at 442, ll 10-11. This was improper character evidence. My trial counsel failed to object to the question and move for a mistrial as no curative instructino could have erased the prejudice. There was no basis in fact for this question.
- (f) At the trial my ex-wife testified that I had filed for divorce on the ground of one year separation. My trial counsel failed to impeach her with a copy of the divorce pleadings which would have shown the divorce was on the ground of adultery. The trial court ruled that trial counsel could recall my ex-wife and impeach her with the pleadings, but counsel failed to do so. Tr. at 374, ll 15-25. Trial counsel

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also could have simply had me identify the pleadings that I filed and then introduce the pleadings but he failed to do this or attempt to do this. Had trial counsel attempted to do this and been denied, then the issue would have been preserved for appeal.

- (g) During the trial the complaining witness testified that I used a condom during the alleged sexual encounters. My lawyer know, because I had provided him with a medical statment, that I was alergic to latex and would break out in a rash if I came in contact with latex. My trial counsel failed to bring my medical doctor to court to terstify as to my allergy.
- (h) During the trial, the state called Dr. Mary Fran Croswell to testify. She testified that the examination was noral in that "She had normal hymenal tissue." Tr. at 337, ll 11-12. Notwithstanding this normal examination, Dr. Croswell testified that the examination was consistent with sexual abuse. This testimony was more prejudicial tha probative and an objection should have been raised. Furthermore, Dr. Cresswell was improperly testified as to what the complaining witness told her. Dr. Cresswell was not a treating physican and as such the medical hisotry form the complaining witness was not relevant.
- (i) Appelalte counsel failed to perfect the Petition for Writof Certiorari on the issue of the admisibility of the other alleged bad act. Appellate counsel should have known that *State v. Perez* had been argued before the South Carolina Surpeme Court on November 30, 2016 and one of the issues argued in that appeal was whether *State v. Wallace* should be overturned. Had appellate counsel filed the petition my case would have have been on direct appeal at the time of the issuance of the *Perez* opinion and my case would have been bound by it.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law?
- (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,

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if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12); list with respect to each petition, motion or application:

(a) the specific nature thereof:

I.

ii.

iii.

iv.

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

I.

ii.

iii.

iv.

(c) the disposition thereof:

I.

ii.

iii.

iv.

(d) the date of each such disposition:

I.

ii.

iii.

iv.

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

I.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court,

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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) Trial Counsel raised no objection

(b) same

(c) same

(d) same

(e) same

(f) same

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

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

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

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

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

I. Randall L. Chamber

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804 Laurens Road
Greenville, SC 29607
(803) 298-0001

- ii. J. Falkner Wilkes
114 Whitsett St.
Greenville, SC 29601
(864) 282-1292
- iii. C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010

- (b) the proceedings at which each such attorney represented you:
- I. initial plea, pretrial motions, trial and sentencing
 - ii. appeal to the South Carolina Court of Appeals
 - iii. preparation of this amended application for Post Conviction Relief

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

New trial

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

No

STATE OF SOUTH CAROLINA)
)

VERIFICATION

County of McCormick)

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

SWORN to and subscribed before me this _____
day of _____, 2____.

(L.S.)

Notary Public

My Commission Expires: _____

Revised 3/2003

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

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

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

Janell D. [Signature]

Applicant

SWORN or affirmed to and subscribed before me this
15 day of MAY, 2016.

[Signature]
Notary Public

My Commission Expires: 12/7/2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2017-CP-23-05901

JERALD DENTON GASKINS, JR.,
APPLICANT,

vs.

STATE OF SOUTH CAROLINA,
RESPONDENT.

TRANSCRIPT OF RECORD

ORIGINAL

October 24, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

C. RAUCH WISE, ESQ.
Attorney for the Applicant

DESHAWN H. MITCHELL, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

MR. MITCHELL: Your Honor, this is 2017-CP-23-5901, Jerald Gaskins v. the State of South Carolina. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court.

In April of 2013, the Greenville County Grand Jury indicted Applicant for four counts of criminal sexual conduct with a minor second degree, and two counts of lewd act upon a child. Mr. Randall L. Chambers represented the Applicant.

The Applicant proceeded to trial on February 4th, 2015, before the Honorable D. Garrison Hill and a jury. The jury found Applicant guilty as indicted to all charges. Judge Hill sentenced Applicant to concurrent 20-year terms of imprisonment for each of the second degree criminal sexual conduct with a minor convictions, a concurrent 15-year term of imprisonment for one of the lewd acts, and a consecutive five-year term of imprisonment for the remaining lewd act conviction.

He appealed his conviction. And the conviction was affirmed by the Court of Appeals. He filed a post-conviction relief application on September 14th, 2017.

He's present in the courtroom today and represented

1 by Mr. Wise.

2 THE COURT: All right. Mr. Wise.

3 MR. WISE: That's a correct recitation.

4 Let me check with him on one thing.

5 THE COURT: Okay.

6 (Pause.)

7 MR. WISE: Your Honor, I would -- I would like to
8 call Mr. Walt Mucionko [sic].

9 MR. GASKINS: Mucienko.

10 MR. WISE: Mucienko as our first witness.

11 THE COURT: All right. Where's he at?

12 THE COURTROOM DEPUTY: He's downstairs. I didn't
13 know you wanted to call him --

14 MR. WISE: Oh, I'm sorry. I apologize.

15 MR. MITCHELL: Can we approach, Your Honor?

16 THE COURT: Yes.

17 (WHEREUPON, a bench conference was held.)

18 (WHEREUPON, Mr. Walter Mucienko entered the
19 courtroom.)

20 THE COURT: If you'll come around. And Madam Clerk
21 is going to swear you in.

22 MR. WALTER MUCIENKO: Sure.

23 THE CLERK: Please place your left hand on the Bible
24 and raise your right hand.

25

1 WHEREUPON,

2 WALTER MUCIENKO,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 You may be seated.

6 THE COURT: All right. And once you -- once you get
7 there, spell your last name for the court reporter.

8 THE WITNESS: M-U-C-I-E-N-K-O.

9 THE CLERK: Thank you.

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. WISE:

13 Q Mr. Mucienko --

14 MR. WISE: First of all, I'd like to just mark these
15 for identification right now.

16 THE COURT: All right. No objection?

17 MR. MITCHELL: I do have an objection to the
18 authenticity of the -- the text messages. I would -- if
19 he would ask questions about those -- but I'm not sure
20 where they came from, who can verify them --

21 MR. WISE: I'm not admitting them at this point.

22 THE COURT: He's just marking them for -- for
23 identification purposes only.

24 MR. MITCHELL: Okay.

25 MR. WISE: He cannot authenticate them.

1 THE COURT: All right. They're for ID only.

2 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
3 identification only.)

4 BY MR. WISE:

5 Q Mr. Mucienko, I'm going to show you some text
6 messages. And I believe you had an opportunity to look at
7 those before?

8 A Let me get my glasses out here.

9 Yes, I have.

10 Q All right. Are those any text messages that you
11 exchanged with Jerald Gaskins?

12 A No, sir.

13 Q You didn't do any of those?

14 A No, sir.

15 Q And since --

16 A I have not had access to a cell phone since before I
17 went to prison.

18 Q All right. And these -- these are back in about
19 2013?

20 A 2013. For one, I have never had Verizon. I had
21 Sprint.

22 Q Okay. And after Mr. Gaskins was arrested in November
23 of 2012, did you have any contact with him?

24 A After he was arrested, yeah. I was threatened by him
25 and some of his friends at a bar when I was at the VFW,

1 because of the fact that I did press charges against him
2 for molesting my daughter.

3 Q All right. But you never had -- you never had any
4 text messages back and forth with him --

5 A No, sir.

6 Q -- after November of --

7 A No. No reason to text message.

8 Q You had no reason to text message him after November
9 of 2012?

10 A No.

11 Q And now that you've got your glasses on, look at --

12 A Yeah, sure.

13 Q You've seen those before when the investigator came
14 by to see you?

15 A Yes, sir, yeah. I -- I wrote a statement on it, too.

16 Q All right. And none of these -- if you'll look
17 through them a little bit.

18 A Yeah. Like I said, I have never -- I never had
19 Verizon. I had Sprint the whole -- the whole time I've
20 had Sprint. I've never had Verizon. So, for one,
21 that's -- that's -- that's falsified, made up by somebody
22 else.

23 Q Do you know whose phone number is (864)561-7021?

24 A No, sir.

25 THE COURT: Push that microphone right in front of

1 you --

2 THE WITNESS: No, sir.

3 THE COURT: -- and speak into it.

4 MR. WISE: Thank you very much.

5 That's all I have.

6 THE COURT: All right. Any questions, Mr. Mitchell?

7 MR. MITCHELL: Judge, I have no questions for this
8 witness.

9 THE COURT: All right. I have no questions, sir.

10 You can step down.

11 Do y'all need him any more?

12 MR. WISE: I do not.

13 MR. MITCHELL: No, Your Honor.

14 THE COURT: All right. Mr. Wise.

15 MR. WISE: I'd like to call Mr. Gaskins.

16 THE COURT: Mr. Gaskins, come on up and be sworn.

17 THE CLERK: Mr. Gaskins, please place your left hand
18 on the Bible and raise your right hand.

19 WHEREUPON,

20 JERALD DENTON GASKINS, JR.,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 You may be seated.

24 Please state your full name for the record.

25 THE WITNESS: Jerald Denton Gaskins, Jr.

DIRECT EXAMINATION

BY MR. WISE:

Q Mr. Gaskins, you were convicted of criminal sexual conduct with a minor back in, I believe, 2015?

A Yes, sir.

Q All right. Who was your lawyer in that case?

A It was Randall Chambers.

Q Randall Chambers. All right. And he represented you during the entire trial?

A Yes, sir.

Q All right. During the course of the trial, were there some questions asked of you by the Solicitor concerning some text messages or e-mails?

A Yes, sir, there was.

Q All right. Did you have a chance to see those during the trial?

A No, sir, I didn't.

Q All right. I want to show you what's been marked first as exhibit -- Applicant's Exhibit No. 1 for identification only. Have you had a chance to review those?

A Yes, sir, I have.

Q All right. And did you have a chance to review those -- approximately how long ago?

A When you brought it to me, sir.

1 Q About a month, or so?

2 A About a month ago, yes, sir.

3 Q Okay. Do you recognize those as being anything that
4 was used in the trial, some of the questions asked of you?

5 A Yes, sir.

6 Q All right. In looking at that, did you notice --
7 first of all, did you have any text messages back and
8 forth with Mr. Mucienko?

9 A No, sir, I didn't.

10 Q Were y'all on any real speaking terms?

11 A No, sir, we weren't.

12 Q And those were allegedly done when?

13 A These were allegedly done?

14 Q Yes.

15 A 2013.

16 Q Of what year -- I mean what month? Excuse me.

17 A June of 2013, sir.

18 Q All right. Now, so you have never had any contact
19 with Mr. Mucienko through text messages?

20 A No. My bond consisted of no contact --

21 Q Are some things in there in your looking at it that,
22 also, created some suspicions as to who -- whether or
23 not -- how they originated?

24 A Yes, actually, there was.

25 Q All right. And what did you observe?

1 A After observing the text messages, there were,
2 actually, several errors. And when I say "errors," there
3 were --

4 Q Now, you're looking at -- you're looking at
5 Applicant's Exhibit No. 1.

6 A In this message, you see that -- I'm sorry. It shows
7 that every message is forwarded. Now, anyone that knows
8 anything about cell phones knows that in order to forward
9 a message, you would have to, basically, use another
10 phone. In other words, in -- in this text, it shows that
11 from 561. There's no way I could possess the phone and
12 forward these messages. Because if I did -- if I owned
13 the phone, I would just send a normal text.

14 Q All right. Now, the phone number that's on there
15 that's texted [phonetic] you, is that your number?

16 A No, sir.

17 Q I believe you testified to that at the trial?

18 A Yes, sir, I did.

19 Q Has it ever been your number?

20 A No, sir.

21 Q All right. So are there anything suspicion about the
22 dates on the --

23 A Yes, there is. It shows on here that it was sent
24 June 21st at 12:07 a.m. However, if you look at the
25 picture, it shows -- there's several issues here. One, if

1 you look at the top of the page, it shows a Wi-Fi. The
2 only time you're going to use Wi-fi is if -- one of those
3 is if a phone doesn't work. If you're going to pull
4 something from a phone to another phone, then you would
5 activate Wi-Fi to pull that phone -- you would use the hot
6 spot. And it would connect with that device.

7 And in this instance, that's kind of what happened
8 here. You see the Wi-Fi is on, but --

9 MR. MITCHELL: Judge, I'm going to object. This
10 sounds like technical testimony. I don't think he's a --
11 a cell phone expert, or anything like that.

12 THE COURT: I -- he's -- he's kind of going down that
13 road, Mr. Wise. I'm going to sustain --

14 MR. WISE: All right. Let me -- let me -- let's
15 get --

16 THE COURT: -- the objection.

17 MR. WISE: -- to the date issue.

18 THE COURT: All right.

19 MR. WISE: That's more -- that -- that doesn't
20 require an expert.

21 THE WITNESS: Well, the dates -- the dates are
22 very -- very suspicious here. Because it shows June 21st
23 at 12:07 and it shows the message. Well, this phone --
24 Verizon showed at the bottom that it was altered. Because
25 at the bottom here --

1 BY MR. WISE:

2 Q Well, not -- go ahead.

3 A It shows at the top it was sent June 21st. But then
4 if you look at the bottom below the text message, it shows
5 June 24th, 2013, at 4:54 p.m.

6 Q So there's two different dates?

7 A Yes.

8 Q All right. Let me see it a second again.

9 I want to look at the last one here on the last page
10 of the exhibit, which it -- and the State has this copy.
11 It's a written in number, 16, at the top of the page. And
12 it's the one on June 28th -- June 26th at 8:18 p.m. Look
13 at the message there.

14 And what does the last message say?

15 A Are you talking about from this point down?

16 Q Right.

17 A Okay. It says, Wondering why you have -- I'm sorry.
18 Wondering why you have not dropped this crap on me, bro.
19 Why are you letting it drag? It is Sandy. I mean,
20 what -- did she threaten you today?

21 Q All right. And was that your father?

22 A No.

23 Q All right. Did you ever call Walt Mucienko when you
24 knew him father?

25 A No, sir, never.

1 Q All right. Did your attorney object to any of
2 these -- to this series of text messages at the trial?

3 A No, sir.

4 Q All right. I think there was some -- well, we'll get
5 to that in a minute. Do you think that was prejudicial to
6 you?

7 A Very.

8 Q All right. Now --

9 MR. WISE: You need to staple this, too.

10 BY MR. WISE:

11 Q Was there, also, an allegation at the trial about
12 alleged messages between you and -- and Jamie, the sister
13 of -- of the girl in this case?

14 A Yes.

15 MR. WISE: I'd like to mark this for Applicant's
16 identification No. 2.

17 THE COURT: Without objection.

18 (WHEREUPON, Applicant's Exhibit No. 2 was marked for
19 identification and admitted into evidence.)

20 BY MR. WISE:

21 Q And I hand you -- or you've got your set there. But
22 let's use --

23 A Okay.

24 Q -- the one I've got, unless you've got yours marked.

25 A Actually, I do have some of mine marked.

1 Q All right. First of all, I hand you Applicant
2 Exhibit No. 2. And look through that, if you would,
3 please.

4 A Yeah. I remember reviewing these.

5 Q All right. Have you seen those before?

6 A Yes.

7 Q All right. And in what context did you see some --
8 or hear some of those messages or even see some of them
9 before?

10 A The only time I, actually, seen these messages was
11 when you sent them to me.

12 Q All right --

13 A Other than that --

14 Q At the trial in your case, were questions asked --

15 A Yes.

16 Q -- about messages contained in there?

17 A Yes, sir.

18 Q All right. But you never had a chance to see the
19 messages?

20 A No, sir.

21 Q As far as you know, do you know if they were even
22 presented to your lawyer?

23 A No, sir, I don't.

24 Q All right. And what were those represented to be at
25 the trial?

1 A Text messages from Jamie Mucienko and myself.

2 Q Jamie?

3 A Yes.

4 Q Okay. And Jamie was an adult child --

5 A Yes.

6 Q -- of Walt Mucienko; correct?

7 A Yes, sir.

8 Q All right. Did you ever have any text messages with
9 Jamie Mucienko?

10 A No.

11 Q Did the State ever produce any testimony that you --
12 that Jamie Mucienko, actually, sent -- y'all exchanged
13 those?

14 A They had -- if I remember correctly, they had entered
15 into -- text messages as -- or entered them in as evidence
16 as they come from Jamie. But...

17 Q Those -- those were never introduced at trial?

18 A No. Not these, no.

19 Q All right. Did you have a chance to look through
20 those?

21 A The ones --

22 Q Those messages?

23 A Yes.

24 Q All right. Now, you can get your notes out now, the
25 ones you've got notes on. And, if you would, refer to

1 the -- to the page and so forth -- or the time. All
2 right. What was one of the first things you noticed?

3 A Actually, by looking at it, one of the first things I
4 noticed is that the phone has no service, none.

5 Q And is there something that tells anybody it's not
6 active --

7 A Yes.

8 Q What is that?

9 A The top left corner shows that it's 45 degrees
10 outside. Also, in some of the text messages, you will see
11 an icon --

12 Q Excuse me. Excuse me. It says -- it says
13 45 degrees; correct?

14 A Yes.

15 Q And when were those reportedly sent?

16 A September 30th.

17 Q All right. September through what period of time?

18 A I believe it was September through October 21st.

19 Q And does the degree ever change?

20 A No, sir.

21 Q Okay. So tell us now what -- what you observed in
22 there.

23 A After looking the messages over -- like I said, the
24 first thing I did observe was the phone being off. The
25 second thing I noticed was the -- and let's see. On Page

1 2, at the top of the page here, you can see that the
2 triangle -- anyone that has a cell phone knows that --
3 that a triangle means no service.

4 So, once again, there's no service on this phone.

5 Q All right. In looking through these, are the things
6 in here that clearly indicate as to -- not necessarily who
7 they came from, but who they didn't come from, such as
8 yourself?

9 A Right.

10 Q All right. Do you remember looking through there and
11 finding some of those things?

12 A I remember looking through them and then having, you
13 know, stuff like Sissy or Bubba.

14 Q All right. Let's look -- let's go to the one on
15 October 6th at 10:49.

16 A Okay.

17 Q All right. What does that message say?

18 A Hey. Tell momma that me and Nat are going to the
19 movies. If she needs me, I'll only answer the phone for
20 y'all.

21 Q Would you have told VICTIM to tell your mother that?

22 A No, sir.

23 Q All right. Going back -- going further, rather, go
24 to October the 7th at 6:49.

25 A Okay.

1 Q No. Back up, not that one. I should have marked
2 mine.

3 Does your name appear anywhere in these from what
4 you've looked through?

5 A No, never.

6 Q All right. Let's go to 11:30 a.m. at -- 4:13 p.m.
7 All right.

8 A What page are you on?

9 Q It's -- I don't -- I don't have mine -- my pages
10 numbered. But it's one at -- October the 8th at 4:13 p.m.

11 A Sorry.

12 Q I'll show you mine. Maybe it'll be a little quicker.

13 A I've got it. I've got it.

14 Q You've got it. Okay. What does that message say?

15 A Okay. It's -- the one from October 8th at 4:13
16 states, Painting and waiting to pick up VICTIM from
17 school. What are you doing?

18 Q All right. Do you sit in the car and paint?

19 A No, sir.

20 Q Are you an artist at all?

21 A No, sir.

22 Q Is anybody in the Muchiano -- how do you pronounce
23 their names?

24 A Mucienko.

25 Q Mucienko family paint?

1 A No. That -- I'm thinking about it. The only one
2 that, actually, draws is -- is the brother.

3 Q [Inaudible]?

4 A Yes.

5 Q Okay. The brother is some sort of an artist?

6 A Yes.

7 Q Okay. Let's go to October the 12th at 9:52 p.m.

8 A The one that says --

9 Q Excuse me.

10 A Is that what you're talking about?

11 Q It says -- how --

12 A You've got October 12th at 9:52 p.m.

13 Q No. 9:52 on October 12th.

14 A Mine must be different.

15 Q Yep.

16 A Okay.

17 Q All right.

18 A Sorry.

19 Q What does that last comment say?

20 A I thought we got straight last night about bowling.

21 So why are you telling mom I didn't invite us. This is

22 BS, Jamie, and you know it. Who catches all the hell?

23 Not you.

24 Q Does that make any sense coming from you?

25 A None.

1 Q Then let's go to the very last one -- not the very
2 last one. On October 23rd at 11:03 p.m.

3 A October 23rd. I don't believe I have that one, sir.

4 Q Yeah, you do. It's the one about the cell phone
5 payment, to refresh your memory.

6 A I must have left it over there. I don't have it in
7 my paperwork. I'm sorry. I think it would be much faster
8 to look at your copy, sir.

9 Q Have you got it?

10 A I don't have mine.

11 Q All right. Let me refresh you. Look at mine.

12 At 10:03 p.m., there's a discussion about a cell
13 phone payment?

14 A 11:03 p.m., yes.

15 Q All right. Did you ever have any cell phone
16 obligations with VICTIM?

17 A Never.

18 Q You never had her on a phone, or anything?

19 A No.

20 Q All right. I'm trying to find the one about New
21 York. Have you got the one about the New York comment? I
22 can't find it --

23 A Yes, sir. It's right here.

24 Q All right. What time is that?

25 A This is at on 10:23 p.m. on October 7th.

1 Q Let me make sure it's in here. Yes.

2 What does that say, that text say?

3 A That's good. Just wanted to say we should have one
4 more cookout before I go to New York.

5 Q Had you ever had any plans to go to New York?

6 A Never.

7 Q Any desire to go to New York?

8 A Never.

9 Q Ever been to New York?

10 A Never.

11 Q Do you know of your own knowledge whether or not any
12 member of the Mucienko family has moved to New York since
13 this --

14 A Yes.

15 Q Who is that?

16 A Sandy Mucienko, as well as her daughter, Jamie
17 Mucienko.

18 Q Jamie and the mom?

19 A Jamie and the mom, yes.

20 Q All right. So did you ever send any of those?

21 A No, sir.

22 Q At the trial, was it ever established that any of
23 those came from your cell phone number?

24 A No, sir.

25 Q One other point. Looking at these, what is the time.

1 on the first message on Page -- well, let me give you my
2 put together group.

3 A Thank you.

4 Q What is the time on the first message sent and what
5 is the date?

6 A 2:20 a.m. --

7 Q Let me back up. What is the time on the -- on the --

8 A Oh, okay, okay.

9 Q -- on the --

10 A 11:18 a.m., sir.

11 Q Excuse me?

12 A 11:18 a.m., sir.

13 Q 11:18 a.m. All right. And that's the time on the --
14 whatever device is being used?

15 A Right.

16 Q All right. What is the time on the last message?

17 A 11:36 a.m., sir.

18 Q All right. And do the -- does the time progress in
19 incremental order from 18 to 36?

20 A Yes.

21 Q All right. And what are the dates -- what are the
22 dates on that?

23 A From 11:18 a.m. from -- I'm sorry. From 11:18 a.m.
24 on the first page to 2:20 a.m., September 30th.

25 Q All right.

1 A And it ends at 11:13 p.m., October 23rd.

2 Q All right. So you had over a month of text messages
3 sent in 36 minutes?

4 A Correct.

5 Q Was that suspicious to you?

6 A Very.

7 Q All right. And were you asked about those messages
8 at trial?

9 A Sir?

10 Q Were you asked about --

11 A Yes, I was.

12 Q -- those messages at trial?

13 Did they portray you in a good light?

14 A They made me look bad.

15 Q All right. Did you send any of those messages?

16 A No, sir.

17 Q Did the State ever produce anybody to identify those
18 messages as, actually, coming from you?

19 A No, sir.

20 Q Did they ever introduce any devices they allegedly
21 came from?

22 A No, sir.

23 Q Did your lawyer object to those messages?

24 A No, sir.

25 MR. WISE: We need to mark this as -- for

1 identification, Applicant's Exhibit No. 3.

2 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
3 identification only.)

4 BY MR. WISE:

5 Q Have you seen what's been marked as Applicant's
6 Exhibit No. 3 for identification before?

7 A I had never seen it all until it was produced to me
8 by you.

9 Q Until we brought it in?

10 A Yes.

11 Q All right. Do you recognize that as being used in
12 your trial?

13 A The name I recognize.

14 Q All right. What about some of the questions? Have
15 you looked at --

16 A I've looked at the questions, yes.

17 Q All right. Were you asked questions about that --
18 those alleged messages at the trial?

19 A Yes, I was.

20 Q Who are those messages from?

21 A These messages are from someone by the name of Jay
22 Fowler.

23 Q All right. Who are they to?

24 A They're to a 12 year old girl.

25 Q Now, do you know a 12 year old girl?

1 A Vaguely.

2 Q All right. And how do you know her?

3 A Because of my ex-fiancée. She was sister-in-laws
4 with Jennifer Anglin, who is the mother of 12 year old girl?

5 Q All right. So you knew her through your fiancée --
6 former fiancée?

7 A Yes.

8 Q Okay. Have you ever been on Facebook as Jay Fowler?

9 A Never.

10 Q All right. Now, those questions to 12 year old girl
11 how old is 12 year old girl?

12 A 14 years of age.

13 Q All right. And did that come out at the trial that
14 she was, like, 14?

15 A Yes.

16 Q Did -- was there any objection raised by your lawyer
17 to even asking questions about another incident?

18 A No, sir.

19 Q All right. So you were cross-examined about that,
20 also?

21 A Yes, sir.

22 Q Do you think that was prejudicial to you?

23 A Very.

24 Q All right. Did anyone ever produce any IP addresses
25 or anything like that at trial to show where this Jay

1 Fowler sent his messages from?

2 A No, sir.

3 Q All right. And do you -- did you have an opportunity
4 to even see those before trial?

5 A No, sir.

6 Q Okay. Now, do you think those questions were -- were
7 prejudicial to you?

8 A Yes, sir, I do.

9 Q All right. Do you remember a question that you were
10 asked about any drug dealing?

11 A Yes, sir, I do.

12 Q And I believe that is on Page -- you don't have to
13 look it up.

14 But for the Court, it's on Page 442 at Lines 10
15 through 12.

16 All right. What was that question -- what were you
17 asked?

18 A I was asked if I supplemented my income by the
19 selling of pot or pills.

20 Q And you denied it?

21 A Yes, I did.

22 Q Do you do that?

23 A No, sir, I don't.

24 Q All right. Before you testified -- and, for the
25 Court's edification, you may want to look at this because

1 I don't think we've went over this.

2 On Page 364 of the transcript, were you asked by the
3 Court about your testifying?

4 A Was I asked?

5 Q Is that where you would discuss with the Court about
6 your testifying in the trial? If you look on Page 365, I
7 think you'll -- that's where you, actually, start talking.

8 A Okay. What was your question, sir?

9 Q All right. Do you remember the Court asking you
10 before you testified about do you want to testify, and all
11 that?

12 A Yes, sir.

13 Q All right. In that hearing, does the State represent
14 whether or not you had any criminal record?

15 Look at Lines 13 through 15.

16 A Not that I see. You said Page 365?

17 Q 364. Excuse me.

18 A I'm sorry.

19 Q I apologize.

20 A 364. And what line, sir?

21 Q Line 13 through 15.

22 A Okay. Yes.

23 Q All right.

24 A Yes, I do.

25 Q And what did the State represent?

1 A The State said, Nothing that would fit under the
2 rule.

3 Q All right. But you were impeached with an alleged
4 crime; correct?

5 A Yes, sir.

6 Q All right. On Page 454 at Line 21, this is during
7 your testimony. Did the State ask you about texting
8 #1 Minor two weeks ago?

9 A Yes, it did.

10 Q All right. Had you texted her two weeks ago?

11 A No, sir.

12 Q Have you ever seen any evidence to back that up?

13 A No, sir.

14 Q Did -- was an objection made about that?

15 A No, sir.

16 Q And was an allegation of your texting #1 Minor
17 two weeks ago prejudicial to your case?

18 A Yes, sir.

19 Q And you'll have to probably tell the Court who #1 Minor
20 is.

21 A #1 Minor -- #1 Minor was the victim's best friend that
22 she had known since the fourth grade.

23 Q All right. And did #1 Minor testify under the
24 Wallace case?

25 A Yes.

1 Q About the fact that you -- she alleged that you had
2 sex with her, too?

3 A Yes, sir, she did.

4 Q Is that correct?

5 A That's correct.

6 Q So your texting #1 Minor two weeks before trial
7 would be?

8 A Very prejudicial, sir.

9 Q Very prejudicial?

10 A Yes, sir.

11 Q All right. And then, I think, the sarcastic question
12 was, Well, maybe you did it under Jay Fowler?

13 A Yes, sir.

14 Q Was any objection raised to that?

15 A No, sir.

16 Q Okay. Now, during your testimony, a big to do was
17 made about your getting a divorce?

18 A Yes, sir, there was.

19 Q Correct?

20 A Yes, sir, there was.

21 Q All right. And were you impeached on the -- the
22 ground you were trying to seek a divorce on?

23 A Yes, sir.

24 Q And did you file a complaint seeking a divorce from
25 your wife, Rachel?

1 A I did, sir.

2 Q And was that on the grounds of adultery, as you
3 testified to?

4 A Yes, sir, it was.

5 Q Okay. I'll hand you this and ask you if you
6 recognize that?

7 A Yes, sir. It's the motion and order from the Family
8 Court.

9 Q Now, look through the whole thing. Keep going. I
10 probably gave you too much.

11 A I think you did.

12 Q Do you recognize that portion of it, in particular?

13 A This -- this portion, yes, I do.

14 Q And had you read that before your trial in 2015?

15 A Yes.

16 Q And what is that?

17 A It's a divorce pleading.

18 MR. WISE: All right. Hold on. I'd like to
19 introduce this. This will be an exhibit.

20 (WHEREUPON, Applicant's Exhibit No. 4 was marked for
21 identification only.)

22 BY MR. WISE:

23 Q All right. The grounds for your divorce became a --
24 did it become a big issue in this trial?

25 A Yes, sir, it did.

1 Q All right. And if you would, read from the complaint
2 what the grounds for divorce were.

3 A See the motion attached --

4 Q Well, let me -- let me help you out a little bit.
5 Keep going.

6 A Okay. Now, what do you want me to say, sir?

7 Q What were the grounds for divorce you sought -- what
8 were the grounds in the complaint you sought a divorce on?

9 A It was under adultery, sir.

10 Q All right. And is that what the complaint says?

11 A Yes.

12 Q All right. Were you impeached by the Solicitor about
13 the grounds for divorce?

14 A Yes, I was.

15 Q And I believe your wife -- or ex-wife testified to
16 the complete contrary; correct?

17 A Yes, she did.

18 Q All right. Would that exhibit that we just
19 introduced have been helpful to you at trial?

20 A Very much so, yes.

21 Q To prove you were telling the truth?

22 A Yes, sir.

23 Q Would it have impeached your ex-wife?

24 A Yes, sir.

25 THE COURT: Mr. Wise, let me ask you a question.

1 Are -- are you moving that exhibit into evidence?

2 MR. WISE: Yes. Excuse me.

3 THE COURT: All right. Any -- any objection?

4 MR. MITCHELL: Without objection, Your Honor.

5 (WHEREUPON, Applicant's Exhibit No. 4 was admitted into
6 evidence.)

7 THE COURT: I think the prior two were just for
8 purposes of identification, I believe.

9 MR. MITCHELL: That's correct, Your Honor.

10 MR. WISE: This is the first real one.

11 THE COURT: The first one was admitted without
12 objection.

13 BY MR. WISE:

14 Q Now, you hired Mr. Wilkes to handle your case on
15 appeal?

16 A I did, sir.

17 Q All right. And he briefed, I believe, two issues?

18 A Yes, sir.

19 Q Do you recall what they were without my refreshing
20 your memory?

21 A I do not.

22 Q All right. Do you remember one being the -- the --
23 what we call the other bad acts testimony, or the
24 Wallace --

25 A Yes, yes, the 404 bad acts --

1 Q Okay. And he briefed that one?

2 A Yes.

3 Q All right. And I believe the other one was about the
4 cross-examination that we've gone over with the text
5 messages?

6 A Yes.

7 Q All right. And do you recall what the Court did with
8 the second issue?

9 A I do not.

10 MR. WISE: Your Honor, the order's in the file. And
11 the Court held that was not properly preserved for review.

12 THE COURT: All right.

13 MR. WISE: If you will take judicial notice of that.

14 THE COURT: All right.

15 BY MR. WISE:

16 Q Now, after your opinion came down, did you get a
17 letter from Mr. Wilkes as to what you should do next?

18 A Yes, I did.

19 Q All right. I'll hand you this and ask you if you can
20 identify this letter of April 21st, 2017?

21 A Yes. I remember the letter very well.

22 MR WISE: Okay. I'd like to introduce this.

23 THE COURT: Any objection?

24 MR. MITCHELL: No objection, Your Honor.

25 THE COURT: It'll be Applicant's Exhibit No. 2

1 without objection.

2 THE COURT REPORTER: It's Applicant's Exhibit No. 5.

3 MR. WISE: I think she's, actually, numbering it
4 Applicant's Exhibit No. 5 --

5 THE COURT: Applicant's Exhibit No. 5 --

6 MR. WISE: -- in anticipation of my getting the other
7 three in.

8 THE COURT: Very good.

9 (WHEREUPON, Applicant's Exhibit No. 5 was marked for
10 identification and admitted into evidence.)

11 BY MR. WISE:

12 Q And what did Mr. Wilkes suggest that you do?

13 A Turn -- turn in -- or turn it now to a PCR. Just
14 skip everything and go straight to a PCR.

15 Q All right. He didn't recommend any further appeal?

16 A No.

17 Q All right. Did you know any law at that time?

18 A No, sir, I did not.

19 Q All right. Did you know -- do you know now that
20 there were cases pending?

21 A Yes, sir, I do.

22 Q All right. You're not a lawyer?

23 A No, sir, I'm not.

24 Q You're not trained in the law?

25 A No, sir, I'm not.

1 MR. WISE: Your Honor, I would like for the Court to
2 take judicial notice of the docket sheet with the South
3 Carolina appellate case management system and the case of
4 State v. Perez, which --

5 MR. MITCHELL: I don't have any objection to it.
6 That's fine.

7 THE COURT: I'll take judicial notice of it.

8 MR. WISE: And I've got a copy here for you and the
9 dates on that are relevant.

10 THE COURT: Can I see it?

11 MR. WISE: I would, also, request that the Court take
12 judicial notice of other documents filed with the South
13 Carolina Supreme Court, including the motion to argue
14 against precedent in Perez, and the order granting the
15 motion to argue against precedent in Perez.

16 MR. MITCHELL: No objection, Judge.

17 THE COURT: All right. I'll note it for the record.

18 MR. WISE: All right. I would, also, request that
19 the Court take judicial notice of the petition for cert in
20 Perez and, in particular, issue four, which states Wallace
21 was wrongly decided and should be overturned, along with
22 reversal of this verdict and remanded for a new trial.

23 THE COURT: All right.

24 MR. WISE: And that petition for cert is dated -- was
25 filed the 23rd of July, 2015.

1 THE COURT: All right. I'll take notice -- judicial
2 notice of that.

3 MR. WISE: All right. And, for the record, Your
4 Honor, I want you to take judicial notice of this.
5 Because I've done cases with the Attorney General's Office
6 before. And they always say counsel should be
7 clairvoyant -- can't be accused of being clairvoyant. And
8 this is to show what was in the pipeline there.

9 And, also, unfortunately, you can take judicial
10 notice of the Perez case in which two judges voted to
11 overturn Wallace, two judges voted to reverse the
12 conviction on other grounds, and one judge retired before
13 they issued an opinion.

14 THE COURT: All right.

15 MR. WISE: And I would, also, request that the Court
16 take notice of the case of State v. Damyon Cotton.

17 THE COURT: Do you got the cite on that?

18 MR. WISE: Excuse me?

19 THE COURT: Do you got the cite?

20 MR. WISE: Well, it's -- it's in the appellate
21 process. And the -- the -- actually, this petition is
22 reply brief. And it's appellate case #2017-002402.

23 And, again, it is the issue in which the Court has
24 granted a petition of writ of certiori on the question of
25 overturning Wallace.

1 THE COURT: Okay.

2 BY MR. WISE:

3 Q If you had known that there was a case in which the
4 South Carolina Supreme Court had granted cert some -- or
5 granted a review some one year before -- over a year
6 before your case was decided, and the South Carolina
7 Supreme Court was looking into overturning Wallace, would
8 you have then recommended to your lawyer that he appeal
9 further?

10 A Yes, sir.

11 Q Okay. Also, on Pages 446 through 447 of the
12 transcript, you were asked questions about Angelina
13 Campbell?

14 A Yes.

15 Q Well, first of all, who is Angelina Campbell?

16 A She's the mother of my child -- my third child, at
17 the time, my fiancée.

18 Q All right. Did Angelina Campbell's case have any
19 relevancy to your trial?

20 A No.

21 Q All right. Were you cross-examined about that case?

22 A Yes, sir, I was.

23 Q And who were you cross-examined by?

24 A The Solicitor.

25 Q All right. And that's on Page 446 and 447 of the

1 transcript?

2 A Yes, sir.

3 Q And I believe that cross-examination got rather
4 heated?

5 A Yes, sir.

6 Q To the extent -- do you recall what your lawyer said
7 when he did, finally, interpose an objection?

8 A I don't remember --

9 Q I think if you'll look at 447, you'll see it.

10 A Oh, yes. He objected that it was argument at this
11 point.

12 Q It was argument at this point?

13 A Yes.

14 Q Did he ever object on relevancy?

15 A No, sir.

16 Q Did he ever object on the grounds that the question
17 was unduly prejudicial?

18 A No, sir.

19 Q All right. Did he ever object on the -- on the
20 grounds that it brought up your character?

21 A No, sir.

22 Q All right. If he objected on those grounds, would
23 that -- from what you understand about the law now, would
24 those issues have been preserved --

25 MR. MITCHELL: Objection, Your Honor --

1 BY MR. WISE:

2 Q -- for appeal?

3 A Yes, sir.

4 MR. MITCHELL: The question calls for a legal
5 conclusion.

6 MR. WISE: Excuse me?

7 MR. MITCHELL: I objected. The question calls for a
8 legal --

9 MR. WISE: Correct. It would.

10 THE COURT: Sustained.

11 BY MR. WISE:

12 Q Was any objection raised at all?

13 A No, sir.

14 Q All right. Now, also, during your trial, there was
15 some testimony from Officer Perry; is that not correct?

16 A Yes, it is.

17 Q And Officer Perry pretty much testified about his
18 interview with -- with the complaining witness?

19 A Yes, he did.

20 Q And did he go over her testimony?

21 A Yes.

22 Q Did he name you as the person she accused?

23 A Yes.

24 Q This was not any excited utterance or anything by
25 her?

1 A No, sir.

2 Q She was interviewed at the school?

3 A Right.

4 Q Did your lawyer object to that hearsay testimony?

5 A No, sir.

6 Q Did -- let me get to Officer Perry for a second.
7 And that's on Page 348 through 349 -- about through
8 351. No objection was raised to that?

9 A No, sir.

10 Q Also, look at Page 357 of the transcript at Line 3
11 through 10. All right. Do you recall Officer Perry ever
12 being qualified as an expert in child sex abuse?

13 A No, sir.

14 Q All right. Was he asked a question there on Line 3
15 that called for an expert opinion?

16 A Yes, sir.

17 Q And what was that basic question?

18 A Basically, it says, And in your experience
19 investigating those cases, is -- what we call delayed
20 disclosure or the child coming forward much after the
21 events have, actually, occurred, is that common or
22 uncommon?

23 Q And he gave an opinion about that?

24 A He gave an opinion, yes, sir.

25 Q All right. Even though he had not been qualified?

1 A Right.

2 Q Was any objection made?

3 A No, sir.

4 Q All right. Do you think that was prejudicial to you?

5 A Yes, sir.

6 Q Now, let's go back to Dr. Fran Crosswell found on
7 Page 337 of the transcript.

8 A Uh-huh.

9 Q And she was allowed to testify on Line -- on Page
10 338, Line 12?

11 A Yes, sir.

12 Q All right. In which she said, Just because she had a
13 normal exam on the day of my evaluation doesn't exclude
14 sexual abuse?

15 A Correct.

16 Q All right. Was any objection made to that
17 conclusion?

18 A No, sir.

19 Q Then look on Page 339 when she says, We made a
20 referral for her to have appropriate mental health
21 counseling.

22 All right. Whether or not this child had mental
23 health counseling, was that relevant to your trial?

24 A No, sir.

25 Q All right. Was there an objection made to that?

1 Q All right. Now, let's go back to Officer Floyd on
2 Page 58 of the transcript. All right. Looking at
3 Lines -- well, basically, Lines 7 through 19 -- or 7
4 through 21. All right. Does Mr. Floyd -- Officer Floyd
5 relate a conversation he had with the complaining witness
6 in this case?

7 A Yes.

8 Q And, in that, does he testify as to who she
9 identified as the person who allegedly did it?

10 A Yes.

11 Q And who was that person?

12 A Jerald Gaskins.

13 Q All right. Was an objection made to that hearsay
14 testimony?

15 A No, sir.

16 Q All right. And there was some testimony during your
17 trial about your being allergic to latex?

18 A Yes, sir, there was.

19 Q And your lawyer had a statement from your doctor?

20 A Yes, sir, he did.

21 Q All right. Attesting to that?

22 A Yes, sir.

23 Q And he didn't call the doctor?

24 A No, sir.

25 Q All right. And why was that relevant in this case?

1 A Because the -- it was alleged that there was a condom
2 used. And I was allergic to latex.

3 MR. WISE: Okay. Thank you.

4 That's all the questions I have -- well, let me
5 make -- let me sum up with one other question.

6 THE COURT: All right.

7 BY MR. WISE:

8 Q Do you -- do you believe these errors were
9 prejudicial to your case?

10 A Yes, sir, I do.

11 Q What light -- particularly the cross-examination
12 questions, what light did they put you in, in your
13 opinion, in front of the jury?

14 A They put me as just a horrible person that I was not.

15 Q All right. And there was no proof ever introduced to
16 back up any of the cross-examination about --

17 A That is correct. None.

18 Q No records ever introduced?

19 A None.

20 Q No cell phone records?

21 A None.

22 Q No IP addresses?

23 A Nothing.

24 MR. WISE: All right. Thank you.

25 THE COURT: All right. Is your cross going to be

1 rather lengthy?

2 MR. MITCHELL: I don't think so, Judge. I'll save my
3 questions -- the majority of my questions for trial
4 counsel. So I -- I'll be brief.

5 THE COURT: Okay. I'll let you go ahead and cross
6 him.

7 CROSS-EXAMINATION

8 BY MR. MITCHELL:

9 Q Good afternoon, Mr. Gaskins.

10 How are you?

11 A I'm okay, sir.

12 Q Good.

13 I just have a few questions for you.

14 A Yes, sir.

15 Q I'll be brief. I'll save my questions for trial
16 counsel.

17 Let me ask you. How many times did you meet with
18 Mr. Chambers?

19 A Maybe twice.

20 Q Just twice going to trial?

21 A Yes.

22 Q Okay. Did you get a copy of your discovery?

23 A No, sir.

24 Q You didn't get -- so you went to trial without having
25 a copy of your discovery?

1 A He said he had me.

2 Q Okay. Any plea offers in the case at all?

3 A There was a plea offer.

4 Q For how much time?

5 A Zero to 12, 12 being the cap.

6 Q Okay. And you rejected the plea offer?

7 A Yes, sir, I did.

8 Q Okay. And then in terms of you guys meeting, what
9 type of defenses did you guys talk about?

10 A He, basically, just said it was a he-said she-said
11 case. And that there was just no evidence showing
12 anything. And this is the day before trial. I met -- the
13 last time I met with him was February 3rd.

14 Q Okay.

15 A And he said, also, that he and the Solicitor were old
16 colleagues, for me not to worry.

17 Q I just wanted to make sure you were done.

18 A Oh, yes, sir.

19 Q Okay. And so it was a he-said she-said story. Did
20 you guys talk about calling any potential witnesses on
21 your behalf at all?

22 A Yes, I did -- we did.

23 Q Who was that?

24 A There was one, Jaclyn Parker. There was my father,
25 Jerald Gaskins, Sr. There was Gina Gaskins. There was --

1 I can't remember. It's been so long ago. Michael
2 Gardner. There was Sabrina Radford. I can't remember the
3 others. But I do remember them off the top.

4 Q Okay. And what would they have testified to?

5 A My character and the position I was in as far as the
6 places I would have lived at, stuff like that, just stuff
7 that would have helped me.

8 Q Okay. So you decided that you wanted to testify
9 after talking to Mr. -- Mr. Chambers?

10 A I did not want to testify. But Mr. Chambers said
11 it'd be in my best interest to testify.

12 Q Okay.

13 A And it was -- merely, the reason why I didn't want to
14 testify was because of -- I have a -- a mental condition
15 I've had since I was 13. And, sometimes, I can get over
16 excited and just talk fast or -- or misunderstand what
17 someone says, which would cause me, you know, to get
18 angry, or something like that.

19 So I didn't feel like I wanted to go on the stand.
20 But he thought it was best. So that's what I done.

21 Q Okay. And I heard Mr. Wise ask you about objections
22 to text messages being talked about at trial. Mr. --
23 Mr. Chambers did object when there were issues about text
24 messages being introduced; correct?

25 A I -- I do not recall.

1 MR. MITCHELL: Okay. I would just -- for the Court's
2 notice, Page 101 and then, also, Page 425.

3 THE COURT: 101 and 125 [sic]?

4 MR. MITCHELL: Yes, sir.

5 MR. WISE: Excuse me. What was the page number?

6 MR. MITCHELL: Pages 101 and then 425. Objections to
7 text messages from -- first objections to text messages
8 from the sister of the victim. And then 425, objections
9 to text messages from the father of the victim.

10 BY MR. MITCHELL:

11 Q And so I guess my next question for you is, you got a
12 chance to testify at trial; right?

13 A I did.

14 Q Okay. And so you got a chance to refute all the
15 allegations against you; right?

16 A I wouldn't say refute. I was -- I don't know how to
17 answer that. Because I really didn't get a chance.
18 Because, at the time, like I said, I didn't understand the
19 law. I didn't understand -- because, like I said, he said
20 he had me.

21 So the questions that he was asking me would have
22 been questions that I would have tried to answer, you
23 know, in a -- as best I could. But during the trial,
24 certain questions was asked -- certain questions was asked
25 and I just didn't understand certain questions. So I

1 couldn't refute questions I didn't understand.

2 Q Okay. So your ex-wife testified. Mr. Chambers got a
3 chance to cross-examine her about --

4 A He did.

5 Q -- what was the basis for the divorce; correct?

6 A He did.

7 Q And he got a chance to ask her questions about
8 whether she cheated on you with your brother and another
9 person; correct?

10 A Yes.

11 Q So the jury heard that information?

12 A They did.

13 Q Okay. And then you testified to the fact that you
14 had an allergy to latex; correct?

15 A Yes.

16 Q So the jury heard that information as well?

17 A Yes.

18 Q Okay. Now, in terms of the doctor testifying and
19 giving a medical opinion, do you think it's prejudicial
20 when a doctor says there's no physical evidence?

21 A I do.

22 Q Why so?

23 A Because she's giving her opinion on some of the --
24 some of the things that were asked, she'd state opinions.
25 But, at the time, if this was -- if the latex thing was

1 given -- if it was introduced, they could have seen that
2 none of this could have happened.

3 I mean, it was very prejudicial. Because I didn't
4 have a chance to -- you know, to put that into -- as
5 evidence. Because it would have just rebuttaled [sic]
6 against that. And they would have said, hey, whoa, wait a
7 minute, you know. He's -- he's allergic to latex. And
8 they say that, you know, every allegation stated that
9 there's latex involved.

10 Q So the allegation -- the comments from the victim and
11 Ms. Barton were that it was a latex condom, or just a
12 condom?

13 A That it was a latex condom -- well, actually, it says
14 a condom. At the end, I do remember them asking if it
15 was -- something about latex. And then I do remember
16 Ms. Hodge asking what was the difference. I do remember
17 that. I can't remember exactly where. But I do remember
18 her asking was there a difference.

19 Q Okay. So there's other types of condoms besides
20 latex condoms; right?

21 A Right.

22 Q Okay. And then in terms of the testimony regarding
23 Ms. Angelina Campbell, that was -- was it your girlfriend
24 at the time or --

25 A She was at the time, yes.

1 Q Okay.

2 A She's the mother of my daughter.

3 Q So were there pending charges between the two of you
4 at the time?

5 A No.

6 Q No charges?

7 A No. They were dismissed. That's what I was getting
8 at. There was an affidavit signed to dismiss all charges.

9 Q Any type of no contact order, or anything?

10 A No. There -- at the beginning, yes. But there was
11 nothing after. Like I said, this -- that went on for
12 months. And there was a -- an affidavit signed and Mr. --
13 what was his name? -- Mr. Chambers office -- that was
14 faxed over to, I believe, the Solicitor. And nothing else
15 was ever said.

16 So, at that point, I do remember getting a phone
17 call. I think -- it wasn't maybe a month after it was
18 faxed over that -- that everything was dismissed. So
19 that's why Angelina and I lived together. If there was
20 some type of order, Angelina and I would have never lived
21 together. Like I said, we --- we have a child together,
22 so.

23 Q And let me ask you about that. I think there's
24 another question about Officer Perry testifying about the
25 statements that the minor child may have given to him?

1 A Yes, sir.

2 Q And that it was hearsay; correct?

3 A Yes, sir, it was.

4 Q By the time Officer Perry testified, the minor victim
5 had already testified to what he testified to; right?

6 A I don't recall. I really don't recall. It's been
7 too long ago.

8 Q Fair enough.

9 A I -- I believe that he had testified at the
10 beginning. The victim hadn't testified yet.

11 MR. MITCHELL: Judge, that's all the questions I have
12 for this witness.

13 THE COURT: All right. Anything on redirect?

14 MR. WISE: Nothing on redirect, Your Honor.

15 THE COURT: All right. And I have no questions.
16 You can step down.

17 THE WITNESS: Thank you.

18 THE COURT: All right. We're going to take a lunch
19 break and resume at approximately about 2:15 -- about
20 2:15, give or take.

21 All right. We'll stand at ease.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Are you ready to call your next witness,
24 Mr. Wise?

25 MR. WISE: The Applicant rests, Your Honor.

1 THE COURT: Okay. The Applicant rests.

2 Okay. Mr. Mitchell.

3 MR. MITCHELL: Thank you, Your Honor.

4 The State would call Mr. Randall Chambers to the
5 stand.

6 THE COURT: Mr. Chambers, come on around.

7 THE CLERK: Mr. Chambers, please place your left hand
8 on the Bible and raise your right hand.

9 WHEREUPON,

10 RANDALL LEE CHAMBERS,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 You may be seated.

14 And please state your full name for the record.

15 THE WITNESS: My full name is Randall Lee Chambers.

16 DIRECT EXAMINATION

17 BY MR. MITCHELL:

18 Q Good afternoon, Mr. Chambers.

19 How are you?

20 A I'm doing well.

21 How are you?

22 Q Good.

23 I know this is not your first time me questioning you
24 this week. So I do have some preliminary questions to ask
25 you again.

1 How long have you practiced law here in South
2 Carolina?

3 A In South Carolina, since 1992.

4 Q Okay. And has all that time been devoted to criminal
5 law?

6 A Yes.

7 Q And turning our attention to this case. Were you
8 appointed or retained to represent Mr. Gaskins?

9 A I was retained.

10 Q Okay. If you could -- I think some of the facts have
11 come out already. But if you could, just give me a brief
12 synopsis of the facts and relation to the charges in this
13 case.

14 A Well, I mean, this was a CSC case. The -- the
15 alleged victim in the case was a, I guess, family friend
16 of Mr. Gaskins. And he -- I mean, he had gotten to be
17 friends with the family. They -- they socialized
18 together.

19 And the girl started spending time with Jerald and,
20 also, with Jerald's wife, Rachel. And I think, honestly,
21 primarily with Rachel. But they -- she was with them a
22 lot. She would stay overnight with them.

23 Sometime after Jerald and Rachel split up -- I think
24 they were involved in divorce proceedings at the time.
25 This allegation comes up that he had been engaging in

1 sexual activity with her. And then the -- the charges
2 resulted from that. So, I mean, that's, basically, what
3 the facts were in the case.

4 Q Okay. Very good. Thank you.

5 Now, during the course of your representation, do you
6 recall offhand how many times you think you met with
7 Mr. Gaskins?

8 A I don't. And let me just say this up-front. And
9 I -- and I apologize that this is the case. I have,
10 literally, gone through in my file room probably 500 or
11 600 case files. I cannot find this case file.

12 My recollection is -- but I don't know. I can't say
13 this with a hundred percent certainty that sometime after
14 the case when the case had gone into the appeals process
15 that -- that someone -- either a member of Jerald's family
16 or maybe somebody -- Jerald wanted this file. And -- and
17 we -- rather than just copy the file because it was a big
18 file, we gave them the file.

19 But, again, I can't say that with a hundred percent
20 certainty. If that didn't happen, I apologize. But I
21 will say I cannot find the file. And that's where all of
22 my notes would have been.

23 I know that I met with him on numerous occasions.
24 He -- I remember his father being with him at different
25 times. They would come to the office. We met. I mean,

1 I -- I felt like going to trial that we were -- that we'd
2 met as much as we needed to, that we were well prepared to
3 go to trial.

4 Q Okay. That was going to be my next question. Did
5 you feel prepared adequately to go to trial?

6 A I did.

7 Q Okay. Now, during the course of these initial
8 meetings, did you go over the -- the charges that he was
9 facing and the possible punishments that he would face if
10 he was convicted?

11 A I did.

12 Q Okay. And what about the State's burden and his
13 Constitutional rights?

14 A Yes.

15 Q Okay. Now, during the course of this case, you filed
16 the appropriate Rule 5 motion for discovery?

17 A I did.

18 Q Did you share that discovery with him?

19 A I did.

20 Q Okay. Now, during the -- during the course of your
21 representation, did he ever indicate to you that he didn't
22 understand anything that you were saying to him?

23 A I mean, if he did, he -- he understood it by the time
24 we got finished, as far as I know. I mean, I made sure
25 that -- to the best of my ability that he understood the

1 process and -- and what we were doing as far as our case
2 strategy goes.

3 Q Okay. Now, let me ask you -- turning our attention
4 to the actual trial itself. What was your trial strategy
5 going in?

6 A Well, you know, my belief was -- you know, because
7 Jerald had -- had from the first day that I talked to him
8 was vehement that nothing had ever happened. And our
9 belief was after talking to Jerald, talking to -- again, I
10 think his father and going through the discovery material
11 we had is that as a result of this divorce proceeding that
12 was ongoing, coupled with the Mucienko -- I can't remember
13 how they pronounce that. I think it was Mucienko family.
14 Jerald had been really close to the Mucienkos. And he had
15 helped them pay bills. He'd done all sorts of things for
16 these folks.

17 And, at one point, he felt like he was being taken
18 advantage of. And he stopped that. That happened along
19 the same time that Rachel -- they were going through this
20 really nasty divorce.

21 Now, one of the things that if you -- when you read
22 through the transcript you saw is that the -- the alleged
23 victim -- I think her name was Jamie. Her sister had been
24 a high school classmate of Rachel. So they had an
25 existing relationship.

1 Our belief was -- and this is -- this was our theory
2 going in and this is what I -- I tried to, you know,
3 illicit for the jury through cross-examination and other
4 means is that Rachel with -- I believe the sister's name
5 was VICTIM, they had sort of concocted this plan to make
6 these allegations against Jerald, and -- and to benefit
7 primarily Rachel in this divorce action that was ongoing.

8 Q Okay.

9 A And so that -- that was -- that was our theory going
10 forward. Because, I mean, he -- he -- again, he was
11 adamant that he hadn't done anything. So there was just
12 the general denial.

13 But, also, any time you can ascribe a motive to
14 somebody making a false allegation, that's what you want
15 to do. And I -- I think that we had a good basis for that
16 in this case.

17 Q Okay. Now, in terms of investigation, were there any
18 types of witnesses that you thought that needed to be
19 called or Mr. Gaskins wanted you to call?

20 A Well, we talked about various witnesses. I mean,
21 there were -- there were no real good fact witnesses that
22 I know of. I mean, we had a witness list that we
23 submitted. And my recollection is that all of these
24 people were available for trial. I -- we didn't send
25 subpoenas to any of them, but they were available.

1 And -- and my recollection is that they were,
2 actually, present during the trial. And my -- I believe
3 there was a woman named Gosnell, somebody named Parker.
4 I'm having trouble reading my own handwriting here --
5 Jarrodine [phonetic], or something like that. It might be
6 Jaclyn, actually. A Michael Garner. And then Jerald's
7 father, Jerald Gaskins, Sr.

8 Q Okay. And so I'll get back to some allegations.
9 But, ultimately, Mr. Gaskins is the only one who
10 testified; is that correct?

11 A That's correct.

12 Q Okay. And so in terms of him testifying -- prior to
13 him testifying, you guys, obviously, had conversations
14 about him testifying?

15 A We did.

16 Q Okay. What was the substance of those conversations?
17 Did you try to dissuade him from testifying or...

18 A You know, I caught the tail end of his testimony.
19 And -- and, you know, I don't know that I would state it
20 quite the way that he did. But I was of the mind,
21 especially after the Judge allowed in the prior bad act
22 evidence and -- and some other things that came in, that
23 he really needed to testify.

24 Now, we had talked about him testifying very early in
25 the process, which is something I, typically, do with

1 clients, you know. I let them know, I don't know
2 whether -- I don't know whether it's going to be a good
3 idea for you to testify or not. But we need to be
4 thinking in those terms. And I want to get somebody
5 prepared if they have to testify.

6 So, yeah, we talked about it, I'm certain, early in
7 the process and then right up until the time that we,
8 actually, pulled the trigger and decided that he was going
9 to testify. Because, I mean, I heard him. He -- he
10 alluded to the fact -- now, I didn't realize there was any
11 sort of a medical condition, which I heard him say. I
12 knew just from being with him that he was very volatile.
13 And I, also, know the -- the courtroom style of -- of Kris
14 Hodge, who was going to prosecute this case.

15 So I knew that he was volatile. And I knew that she
16 was going to do her level best to get under his skin in
17 trying to illicit some sort of angry response from him.
18 And so we had a lot of discussion about that.

19 And my recollection was that he indicated that he
20 could do it, that he could maintain his calm. And -- and
21 those were the discussions we had. And he and I together
22 decided he would testify.

23 I mean, I'm not going -- I don't have the ability to
24 force somebody to testify. I'm not going to make somebody
25 testify. But I do believe -- and -- and I still believe,

1 even though I, certainly, second guess a lot of things
2 about -- any -- any time I lose a case, I second guess
3 myself. Okay. But I still believe that that was -- the
4 best strategy was for him to testify. Because I don't
5 think we could have won that case given the posture, at
6 that point, without him testifying.

7 Q Okay. And I guess let me backtrack just a little bit
8 in terms of the evidence that the State had. Was there
9 any physical evidence at all?

10 A Not that I recall.

11 Q Okay. So the evidence, essentially, was the
12 testimony of the victim in this --

13 A Well, the victim and then -- and then the -- the
14 prior bad act evidence that came in. And then, also, the
15 text messages, those sorts of things. Although the text
16 messages were never technically introduced into evidence,
17 but they were, certainly, discussed.

18 Q Okay. And so let's -- let's -- probably -- let's
19 talk about the allegations a little bit in terms of the
20 text messages that you heard Mr. Wise ask the Applicant
21 about. Now, I believe the first set of text messages were
22 asked about when the sister of the victim was -- was on
23 the stand. If you could, if you would, turn -- do you
24 have a copy of the transcript?

25 A I do.

1 Q If you'd turn to Page 100 for me -- or 101, I should
2 say.

3 A 101?

4 Q Yes.

5 A Okay.

6 Q So during this time, this Jamie Mucienko, that's the
7 sister of the victim, was testifying. Just a minute. I
8 apologize.

9 Okay. Page 101, Lines -- Line 6 where you make an
10 objection.

11 A Yeah.

12 Q Okay. And then your objection is -- the Judge asks
13 for the jury -- or you ask the Judge for the jury to be
14 excused; right?

15 A I did.

16 Q Okay. And then if you'd look down -- down to the
17 rest of that language. What was your basis for that
18 objection at that point?

19 A Well, first of all, that -- my position was that that
20 was hearsay testimony. But, also, that there was no
21 foundation for it.

22 Q Okay. And then if you -- it looks like the Judge
23 decides that --

24 A And the other thing was -- let me say this.

25 Timeliness. We weren't provided those -- anything about

1 those texts until, literally, the day before trial. I
2 state in here, We received these yesterday at 2:11 p.m. I
3 was not able to discuss them with my client until this
4 morning. I was able to get them to him last night so he
5 could look at them, but they were not timely disclosed.
6 And -- and Ms. Hodge admitted that that was the case.

7 Q Okay. And it looks as though on Page 104 to 106 that
8 the testimony is proffered then --

9 A Yeah.

10 Q -- outside the presence of the jury. And then
11 concluding on Page 106 where the Judge, ultimately,
12 overrules your objection?

13 A Yes.

14 Q Three's no question that you objected to the -- to
15 the conversations -- or, at least, questions being asked
16 about those text messages?

17 A I did object.

18 Q Okay. Now, if you turn with me to Page 425.

19 A Okay.

20 Q Okay. And this is the cross-examination of -- of the
21 Applicant. I apologize. Just a minute.

22 So it appears that the Solicitor is asking the
23 Applicant questions about text messages between him and
24 the victim's father. And you make an -- make an objection
25 on Page 425, Line 25.

1 A That's correct, the very last line on the page.

2 Q Okay. And what was the substance of your objection
3 at that point?

4 A I said, There's no foundation laid about any texts or
5 anything. Apparently, what she's doing is she has
6 pictures of texts. And she's just showing him and asking
7 him to read those.

8 Q Okay. And then --

9 A The Judge sustained the objection.

10 Q Okay. So no question that during these two times
11 where text messages are trying to be introduced -- or
12 questions are trying to be asked about them, you objected.
13 One time it looks like you were successful, the other time
14 it doesn't look like you were successful?

15 A That's correct.

16 Q Okay. So the next thing I want to ask you about is
17 Family Court records and this -- this whole thing about a
18 divorce record being introduced. At the time you went to
19 trial, you knew that Mr. Gaskins was either in the process
20 of getting a divorce or was divorced?

21 A Yes. I knew that -- I believe I knew that they were
22 in the process of getting divorced.

23 Q Okay. And so I think there was some contention about
24 what was the -- the grounds for the divorce that was --

25 A Yeah. That came up during the trial. I mean, I

1 didn't -- I didn't anticipate beforehand that there was
2 going to be an issue over the grounds for divorce.

3 Q Okay. Is it fair to say that you were able to
4 cross-examine the Applicant's ex-wife about what those
5 grounds were?

6 A Yes.

7 Q Now, whether she agreed with you or not is another
8 question. But you were able to cross-examine her?

9 A I did cross-examine her about it.

10 Q Okay. And Mr. Gaskins was asked about the divorce
11 himself during -- during his direct examination by you;
12 correct?

13 A That is correct.

14 Q Okay. Now, let's -- let's talk a little bit about --

15 A And, you know, I'm trying to remember. I've gone
16 through the transcript here. And I thought I had it
17 marked.

18 But my recollection is that after she had denied
19 that, we tried to offer the pleadings into evidence and
20 the Judge would not allow us to do that. And I had
21 offered to bring over the custodian of records from the
22 clerk's office, if that was something that was needed.
23 And he declined to let us do that.

24 Q Okay. And I believe that's Page 365 through 376
25 where you try to introduce a copy of the divorce records

1 and, also, it looks like a prescription that the doctor
2 had wrote Mr. Gaskins?

3 A Yeah. Because that's the another thing that came up
4 during the course of the trial that I didn't anticipate
5 was the -- the thing with the condoms, you know. Jerald
6 told me after that testimony came up, as -- as I
7 recollect, that he was allergic to latex. And so assuming
8 that it was a latex condom that was used, he would not
9 have been able to use a latex condom.

10 Q Okay. Now, you said he told it to you. Did he
11 provide any type of a prescription, or anything like that,
12 or any --

13 A We -- I -- somebody in his family brought it to me
14 later during the course of the trial.

15 Q Okay.

16 A And I -- it might have been the next day.

17 Q Okay. So this happened while the trial was going on?

18 A That's correct.

19 Q Okay. Now, let me ask you about various -- there's
20 some allegations about various times where he's alleging
21 that you should have objected to -- to statements or
22 questions asked by the Solicitor. Before we get into
23 that, what's your general -- I guess your general -- I
24 don't want to say ruling. But do you often object during
25 cross-examination, or do you have a practice, or...

1 A I mean, every case is different. I mean, I -- I
2 object any time I think that, first of all, something's
3 objectionable, and it is something that's going to really
4 prejudice my client. Now, there are times when
5 something's technically -- technically objectionable that
6 I let it go just because I don't think it's hurting us.

7 And I don't -- you know, I don't -- as much as
8 possible, I don't want to appear like I'm keeping things
9 from the jury. But, again, I mean, if there's something
10 that's unduly prejudicial and it's objectionable, I'm
11 going to object to it. It's not to say that I don't
12 sometimes mess up. But, you know, that's -- that is,
13 generally, you know, my philosophy on objections at trial.
14 If it's objectionable and it's going to hurt my client,
15 I'm going to do everything I can to keep it out.

16 Q Okay. And to that point, one of the -- the
17 allegations is failure to object to the improper testimony
18 of the medical expert. Let's see. Just a minute.

19 So it looks like the allegation is referenced on Page
20 337 of the transcript where she testifies that the -- the
21 victim had a -- normal hymen tissue, and then that this
22 was consistent with sexual abuse. Do you feel, at that
23 point, that you needed to object to any of her testimony?

24 A No.

25 Q Okay. Can you give me a reason why?

1 A I mean, just -- I don't -- I mean, she's -- she is --
2 as a medical professional, she's allowed to offer a
3 medical opinion. I -- this particular Dr. Crosswell is --
4 has testified in several cases I've been involved in. And
5 I think that what she testified to was within the scope of
6 the rules.

7 And I know from experience that even if I had
8 objected, the Judge was going to let that come in any way.
9 And so I think all I would have accomplished there was
10 making the jury think that I was afraid of what she had to
11 say, you know.

12 I -- I feel like that on cross-examination I pointed
13 out the fact that, basically, anything that had -- that --
14 that she had uncovered during the course of her
15 examination, you know -- ostensibly a medical examination
16 of the alleged victim in this case, she was going to say
17 was consistent with her having been a victim -- a victim
18 of sexual abuse. Because that's what she always says.

19 Q Okay. Now, let me ask you about -- it looks like the
20 allegation is failure to object to the questions by the
21 Solicitor concerning a charge pending against the
22 Applicant. So that is referenced -- I apologize --
23 referenced on Page 447 -- 445 to 447.

24 The Solicitor asks the Applicant if he has any
25 pending charges against him brought by Ms. Campbell. And

1 I think you make a -- you make an objection. They're
2 arguing at this point. Did you feel the need to make an
3 objection after the Solicitor asked if he had any pending
4 charges?

5 A Let's see. What -- you say 445?

6 Q Yes, sir, 445. That's what the application
7 references.

8 A What line are you looking at? Because I'm having
9 trouble finding that.

10 Q Give me just a minute.

11 So it starts on Page -- Line 22 when she asks him,
12 Are you engaged right now?

13 A Okay.

14 Q And then she asks him about Ms. Campbell.

15 A Yeah.

16 Q And then she proceeds to ask him about a no-contact
17 order. Now, during any part of this testimony, did you
18 feel the need to object at all?

19 A Apparently not.

20 Q Okay. Do you think it's something that was
21 objectionable?

22 A You know, it might -- it might be.

23 Q Okay. Now, let me move on to the next allegation.

24 Well, I guess I should back up. You said -- said that it
25 might be?

1 A Yeah. Just -- I mean, it's not anything -- I mean,
2 given the way that the back and forth went there, it
3 doesn't bother me a whole lot. I don't think it really
4 hurt in the grand scheme of things as far as this trial
5 goes. But it -- it might be an improper question.

6 Q Got you. But no question that he refuted any of
7 those?

8 A He did. Yeah, he did.

9 Q Okay. And let me ask you about the next allegation
10 is failure to object to the hearsay testimony of -- of
11 the -- Officer Robert Perry. And I believe he's the
12 investigator in the case. And that's Page 346 to 347.

13 A Okay.

14 Q It appears that Officer Perry is detailing the
15 information that he got from the victim. At any time, did
16 you feel the need to object to any of the information that
17 he was relaying to the jury about his -- I guess his talk
18 or investigation with the victim?

19 A You know, I mean, obviously, that's, technically,
20 hearsay. I could have objected to it, maybe I should've.
21 But those were facts that were coming out anyway. And I
22 wasn't overly concerned about it.

23 Q Well, let me ask you this. At the point in time that
24 Officer Perry had testified, had the victim testified
25 already?

1 A She had.

2 Q Okay. So her testimony -- and, again, you can answer
3 the question. The facts that he testified to, were they
4 similar to what she testified to?

5 A I believe so.

6 Q Okay. And then the next issue was about the officer
7 testifying about delayed disclosure and his experience
8 with it. And I believe that is 348 to -- pardon me. Give
9 me just a minute.

10 MR. MITCHELL: I beg the Court's indulgence, Your
11 Honor.

12 THE COURT: Yes.

13 (Pause.)

14 BY MR. MITCHELL:

15 Q So Page 357. I apologize.

16 A 357?

17 Q Yes, sir. So starting on Line 3, the Solicitor is
18 asking Officer Perry about his experience investigating
19 sexual assault cases and what they call delayed
20 disclosure. And the answer from the detective is, It's
21 such a rarity for me to see a case that a child has
22 immediately told that it's, like, you know, maybe one out
23 of a hundred, you know.

24 And then she asks him, Is -- is -- this delay in
25 coming forward, does it somehow hamper the investigation?

1 Is that something that you felt should have been
2 objected to?

3 A Obviously not. I mean, I didn't object to it.
4 And -- and even now looking at it, I don't think I would
5 object to it. I mean, he indicated that he had several
6 years of experience, that he'd been involved in probably
7 over 500 investigations. And she was asking, based on his
8 experience. It seems like a proper question to me. It's
9 one that I've seen asked and answered in lots of trials
10 beforehand.

11 Q Okay. And then it looks like the last allegation I
12 want to cover, if you refer back to the beginning of the
13 transcript on Page 58. It's direct examination of Officer
14 Paul Floyd, who is the initial traffic patrol officer who
15 first comes in contact with the victim.

16 A Okay.

17 Q And so the allegation is that the Solicitor elicited
18 a response that the minor child had identified the
19 Applicant as the alleged suspect. Did you see any reason
20 to object at that time to -- to the identification?

21 A I mean, again, that's, technically, hearsay. I could
22 have objected to it. The Judge likely would have
23 sustained it. But that's information that was, clearly,
24 going to come out.

25 So I wasn't overly concerned about it. I mean, he

1 had been identified and was going to be identified by the
2 alleged victim in the case.

3 MR. MITCHELL: Okay. Judge, I beg the Court's
4 indulgence for just a minute.

5 THE COURT: Yes, sir.

6 (Pause.)

7 MR. MITCHELL: Judge, that's all the questions I have
8 for this witness.

9 THE COURT: All right. Cross-examination, Mr. Wise.

10 CROSS-EXAMINATION

11 BY MR. WISE:

12 Q Mr. Chambers, I'd -- I'd like to agree with you.
13 Probable the most difficult decision a lawyer ever makes
14 in a case like this is whether or not the Defendant
15 testifies.

16 All right. Let's go over some things here. On Page
17 442 of the transcript at Line 10 --

18 A Okay.

19 Q -- the question was asked about selling pills or pot;
20 correct?

21 A That is correct.

22 Q And there was no objection to it?

23 A There wasn't. I -- I -- honestly, I had -- I think I
24 was even rising to my feet as she said that.

25 Q All right. Let me --

1 A And -- but when he -- he answered, No, ma'am. And
2 then, Actually, I've never done a drug in my life. So it
3 appears that I did not object at that point.

4 Q That was an attack on his character. No question
5 about it?

6 A No question about it.

7 Q All right. Go back to Page 364. And I'm thinking
8 it's Line -- toward the bottom.

9 A Okay.

10 Q All right. The Judge was inquiring about any record
11 that Mr. Gaskins may have in order to be impeached with;
12 correct?

13 A That's correct.

14 Q And -- and what does the assistant solicitor respond?

15 A Nothing that would fit under the rule.

16 Q All right. That would imply there would be no
17 impeachment with other crimes, wouldn't it?

18 A That is correct.

19 Q Correct?

20 A That is correct.

21 Q And that's what the Judge was told, and what you were
22 told?

23 A That is correct.

24 Q All right. But when you get to Page 442, all that
25 changes.

1 A That is correct.

2 Q All right.

3 A And -- and I think she was speaking more -- of
4 course, that just came out of nowhere. I mean, she just
5 came out with that.

6 Q Did you ever inquire as to whether or not she had a
7 good faith basis for that question?

8 A Inquire of her or --

9 Q Yes.

10 A I did not.

11 Q Okay. And you understand what I mean by a good faith
12 basis for a question?

13 A I do.

14 Q Okay. Now, you've got these exhibits that are marked
15 for identification now, literally, I'm told the day
16 before?

17 A The day before at about -- I think I read 2:15, or
18 so.

19 Q All right. Obviously, you hadn't had time to go over
20 them with -- go over them with Jerald?

21 A I -- as I said, I gave him a copy so that he would
22 look over them at the jail. And we talked about them
23 briefly that morning.

24 Q And getting something at the last minute is terribly
25 distracting?

1 A Well, it's unfair.

2 Q Yeah. Now, did you -- did she ever give you any
3 basis for saying why she thought those were authentic?

4 A She -- I don't think -- she didn't give me a good
5 basis. I mean, she indicated that she had, literally,
6 just gotten them herself. That she only had those screen
7 shots. And -- and that -- she said that she had gotten
8 them from the sister. And that the sister -- basically,
9 her basis for offering these up, which I think is what she
10 told the Judge when we were arguing back and forth, was
11 that the sister had provided those.

12 Q Were you in here during part of Jerald's testimony
13 where he talked about those?

14 A I was not.

15 Q Okay. Did you look at them even close enough to
16 notice discrepancies or -- or not necessarily
17 discrepancies, but things that just don't look right?

18 A I looked at them. I don't -- I -- I did not note any
19 discrepancies.

20 Q All right.

21 A But again --

22 Q Well, let me suggest one of them that -- that
23 Mr. Gaskins pointed out. If you look at the one in your
24 hand, which is, I believe, identification number what?

25 A I've got Applicant's Exhibit No. 2.

1 Q Applicant's Exhibit No. 2. Okay. It has a
2 temperature on it, doesn't it?

3 A It does. Actually, 45 degrees.

4 Q All right. And it has a date on it, too, doesn't it?

5 A Well, it has a time, 11:18. Okay. September 30th at
6 2:19 a.m. They all have the -- the time stamped on there.

7 Q Right.

8 A And then the date's out there, September 30th. So
9 that's -- that's on all of them.

10 Q All right. And look at the last one, the last page.

11 A The last page?

12 Q Uh-huh. What's the temperature on that one?

13 A Well, the temperature's the same.

14 Q Yeah.

15 A It's 45 degrees.

16 Q Is that a little unusual?

17 A Yeah, it is.

18 Q All right. Look at the time in the top right corner
19 of -- well, let me -- the first page.

20 A 11:18 a.m.

21 Q All right. And look at the time on the last page.

22 A It's -- it's either 11:36 or 11:16. I can't quite
23 tell. It looks like it might be a three, and there's a
24 little splotch over it.

25 Q So 11:30 something?

1 A Yeah.

2 Q There was no explanation given for that?

3 A No --

4 Q That's strange?

5 A No, no explanation given for it. No.

6 Q You were never given any information as to -- as to
7 whose phone that came off of, were you?

8 A No.

9 Q Did you read some of the messages that seemed
10 inconsistent coming from Mr. Gaskins? And I'll give you
11 an example. Look at this one on October 16th. Would that
12 be a strange comment coming from Mr. Gaskins telling --
13 telling Jamie to tell momma?

14 A It would.

15 Q All right. If you had had more time to over -- to
16 look over those, would you have had the ability to pick up
17 on these discrepancies? And I'll concede, I've had a
18 whole lot more time than you did.

19 A Well, I would, certainly, have had a better
20 opportunity to find the discrepancies. And I would have,
21 certainly, had more time to go over them with Jerald.
22 And -- and he could have, certainly, pointed out those
23 discrepancies.

24 I mean, he was adamant with me, as I recall, that he
25 didn't send these, they weren't from him. And I believe

1 he testified to that.

2 Q Did you -- did you ever ask Ms. Hodge during the
3 cross-examination about those text messages what her good
4 faith basis for believing those, actually, came from
5 Jerald were?

6 A I -- I didn't ask. But I -- but I don't know -- I
7 mean -- I mean, are you talking about asking her outside
8 of court or --

9 Q No. Having an objection on the record and dismissing
10 the jury, and say, I need to know the good faith basis for
11 believing these are even from my client.

12 A Well, no. I -- I didn't do that. But, you know,
13 again, I did object to them coming in. And the Judge
14 overruled that objection.

15 Q Now, also, there were some text messages from -- let
16 me find it. Yes. Applicant Exhibit No. 1 are alleged
17 text messages between Mr. Mucienko and Jerald; correct?

18 A That is correct.

19 Q All right. And I believe it was represented in the
20 trial that Mr. Mucienko's wife would authenticate that?

21 A I think there was some reference made to that.

22 Q All right.

23 A I didn't -- I didn't see these at all until she --
24 she used these to cross-examine. These were never
25 produced to us beforehand.

1 Q Until you got -- until -- I guess then that's the
2 first time you've really seen them?

3 A This is the first time I've ever seen them. She was
4 asking him about them during the trial. She was walking
5 up to the witness stand and laying it down as though it
6 was some sort of an official document and asking him
7 questions about it. I objected to it. And the -- again,
8 the Judge, eventually, overruled and let her continue
9 asking about them.

10 Q Were you here when Mr. Walt Mucienko testified?

11 A I wasn't. But you told me out in the hallway that he
12 was going to testify --

13 Q That he denied --

14 A -- and that he didn't have anything to do with any --

15 Q -- sending those?

16 A -- of those text messages -- yes, exactly.

17 Q If you'd gotten those a week ahead of time, would you
18 have had a chance to talk to Mr. Mucienko about it?

19 A I would have, certainly, had a better opportunity.
20 That's for sure.

21 Q All right. And if you got them two months ahead of
22 time, plenty of opportunity?

23 A Absolutely.

24 Q All right. Now, the -- the other cross-examination
25 dealt with a Facebook page on Jay Fowler, which is this

1 exhibit, which is Applicant's Exhibit No. 3. Have you
2 seen that before?

3 A I don't believe I've ever seen this, no.

4 Q Until today?

5 A I believe this is the first time, yes.

6 Q There was cross-examination in -- in the trial about
7 Jerald Gaskins impersonating Jay Fowler, if you remember.
8 Do you remember that?

9 A I do.

10 Q All right. And Mr. Gaskins denied ever being Jay
11 Fowler, or imitating Jay Fowler, or anything like that;
12 correct?

13 A I believe that's correct.

14 Q Did you ever get any representation from the
15 solicitor's office as to a good faith basis for
16 determining whether or not that came from Jerald Gaskins?

17 A No.

18 Q And you were not provided that in discovery at all?

19 A No.

20 Q Now, and you didn't ask her about a good faith basis
21 for claiming Jay Fowler is Jerald Gaskins?

22 A No. But, you know, my understanding of the rules --
23 and this is pretty much what Judge Hill said is that when
24 I was -- when we were going back and forth about the
25 Mucienko text, she could ask and he can answer. She's

1 stuck with whatever answer that -- that he gives.

2 But as far as going off the record and questioning
3 her about her good faith basis, no, I did not do that.

4 Q You would, generally, agree, though, that -- that if
5 you were cross-examining a witness about whether or not
6 they had stolen a thousand dollars from a previous
7 employer that you would have to have a good faith basis to
8 ask that question?

9 A Well --

10 Q You can't just come up with it out of the blue?

11 A Well, no. You -- you can't just make anything up.
12 But that would have ordinarily been just something that my
13 client had told me using the example that you just used.

14 Q And these documents you've got in front of you would
15 not have been that difficult for the State to
16 authenticate, I assume, in some way?

17 A You wouldn't think -- you would think not.

18 Q All right. Now, on Page -- on Page 444 through 445,
19 that's cross-examination about those Facebook messages
20 with Jay Fowler; correct?

21 A Let me see. You sent 12 year old girl a Facebook request, is
22 that where -- is that what you're --

23 Q Right. In that area.

24 A Okay.

25 Q Correct?

1 A Yeah.

2 Q And the clear implication from those questions was
3 that he was trying to strike up an illicit affair with a
4 12-year-old girl?

5 A Well, he was, certainly, trying to talk to her, yes.

6 Q All right. Did you object to that on the grounds
7 that that's improper character evidence?

8 A I did not.

9 Q All right. Did they ever give you any notification
10 about any of that even being 404(b) evidence?

11 A No.

12 Q And, of course, they didn't have a pre-trial hearing
13 or a pre-testimony hearing about trying to get that in
14 under 404(b) evidence either, did they?

15 A No.

16 Q All right. And that's kind of damaging to him?

17 A I mean, it, certainly, is part of the sort of
18 cumulative effect of all of these things. Yes, it's
19 damaging.

20 Q All right. Now, on Page 454, I'm looking at Line 21
21 over to the next page.

22 A Okay.

23 Q Jerald was asked about whether or not two weeks
24 before trial he had sent a text to #1 Minor ; correct?

25 A That is correct.

1 Q Did you ever see any documents that would lead you to
2 believe that Jerald had sent any text messages to #1 Minor

3 [REDACTED] ?

4 A No.

5 Q You were supplied no discovery on that?

6 A No.

7 Q All right. And that's pretty damaging, too, isn't
8 it?

9 A Oh, yeah. I mean, again, taken -- when you start
10 adding all these things together, yes.

11 Q All right. Because there was an allegation in this
12 trial that he'd seduced [REDACTED] #1 Minor ; correct?

13 A Well, certainly, that he had tried to talk to her on
14 Facebook.

15 Q Right. But [REDACTED] #1 Minor was the other Lyle
16 evidence.

17 A Oh, I'm -- I'm sorry.

18 Q Okay. I'm sorry. I figured when you -- you
19 didn't pick up on that right away.

20 A Yeah. That's exactly right.

21 Q So if he's trying to contact this girl two weeks
22 before trial, I mean, that's even more damaging?

23 A Well, absolutely.

24 Q All right. Now, go back to the testimony about
25 Officer Perry. Officer Perry testified in some detail

1 about what the complaining witness told him; correct?

2 A That's correct.

3 Q In which he named Jerald; correct?

4 A That's correct.

5 Q Named the places?

6 A That's correct.

7 Q Now, are you familiar with a line of cases in South
8 Carolina that talk about improper vouching?

9 A I -- I probably couldn't tell you the specific cases.
10 But I'm -- I'm familiar with improper vouching.

11 Q Yeah. Kromah and several others cases, like Johnson,
12 and a couple of others?

13 A Exactly.

14 Q The concept is that you don't put witnesses up that
15 simply repeat what the person told them is improper
16 vouching; correct?

17 A Well, at least, vouching for their truthfulness.

18 Q Right. So Officer Perry -- let me get his testimony.
19 But Officer Perry was allowed to, basically, repeat her
20 testimony?

21 A Well, yeah. He gave -- he gave the facts that she
22 had given him during the investigation.

23 Q And then -- and that -- I think you said that was,
24 obviously, hearsay?

25 A Yeah. I mean, that's, clearly, hearsay. I could

1 have objected to it, and I didn't.

2 Q Now, on Page 351 at Line 8, this is during Officer
3 Perry's testimony.

4 A Okay.

5 Q Do you perceive where he says all those nice things
6 about the complaining witness that that would be vouching
7 for her testimony?

8 A It, certainly, is, at least, on the -- the borderline
9 of that, yeah. He -- he's not necessarily talking about
10 her truthfulness. He's talking about her demeanor, which
11 I think is -- is a fair comment for him to talk about her
12 demeanor. But he probably crosses the line a little bit
13 when he talks about her being embarrassed that she kind of
14 got manipulated by Mr. Gaskins.

15 Q Right. It makes it testifying that her demeanor, as
16 he interpreted it, as -- is being truthful?

17 A I don't believe I thought that at the time. But I
18 think you could, certainly, make that argument in
19 hindsight.

20 Q Now, on Page 357, we mentioned it earlier about
21 Officer Perry testifying about delayed disclosure?

22 A Correct.

23 Q He was never qualified as an expert in this case, was
24 he?

25 A No. He wasn't qualified as an expert. But he --

1 there was some discussion leading up to that as to his
2 years of experience handling cases that he had -- that --
3 that he had investigated.

4 Q Right. And his statement that, It's such a rarity
5 for me to see a case where the child has immediately told
6 that it's, like, you know, maybe one out of hundred.
7 If it's -- it's a very common thing, a very -- that's,
8 basically, an opinion, isn't it?

9 A I took it in that circumstance to be in a -- relating
10 his personal experience as an investigator.

11 Q I understand that.

12 A I could, certainly, be -- I could, certainly, be
13 wrong in not objecting to it. But that's how I took it.

14 Q But it's still an opinion?

15 A Certainly, his opinion based on -- yeah, based on his
16 experiences.

17 Q All right. Now, let's go to the closing argument of
18 Ms. Hodge on Page 494 where she's talking about how you
19 determine truth, and lies, and all that. Look at --
20 beginning particularly at Line 14.

21 A Okay.

22 Q Where she says, Let's look at the Defendant's point.
23 What he came to court and presented to you is everything
24 is a lie, everything. And then she says, No, I never
25 texted that, dad. And "dad" is a word used in one of the

1 text messages, for your information. She says, No, I
2 never texted that sister. And that's a word used in one
3 of the text messages. No, I don't even like country
4 music. No, I never said I had tickets to this concert.
5 No, I never went to the concert where I got into it with
6 my wife. No, I don't have Facebook, no, no, no, no,
7 nothing.

8 Basically, what she's -- isn't what she's telling the
9 jury there is that he lied in his denials to her?

10 A That's what she's saying, yes.

11 Q All right. Did she ever introduce a scintilla of
12 evidence that what he said was, in fact, a lie?

13 A No.

14 Q Were you anticipating reply testimony in this case?

15 A She -- she indicated on the record that there -- that
16 there was the possibility she was going to bring in a
17 rebuttal witness. Because we had some back and forth
18 about that. Because I -- I think it was within the
19 context of the Walt Mucienko text messages.

20 And I had said that we had not been provided those.
21 We had no notice of them. And that Walt Mucienko had not
22 been provided as a potential witness in the case.

23 And that's when she -- she said, Well, we don't have
24 to divulge the names of rebuttal witnesses.

25 But she didn't call any rebuttal. So, I mean,

1 that -- that was the only reason that I had anticipated
2 that she might put something up in rebuttal is she
3 indicated that she might do that.

4 Q Because of the cross-examinations, too?

5 A Exactly, yes, sir.

6 Q All right. Now, the cross about Angelina Campbell
7 and the pending charges, that wasn't relevant to any issue
8 in this trial, was it?

9 A No.

10 Q And alleging there's pending charges by another woman
11 against Mr. Gaskins was, obviously, an attack on his
12 character?

13 A Yes.

14 Q Correct?

15 A Yes.

16 Q All right. And then didn't she in the course of that
17 argument -- excuse me, cross-examination, you probably
18 accurately called it an argument, but cross-examination.
19 Didn't she, at one point, even pit her testimony against
20 Mr. Gaskins when she talked about, I'm -- if you go look
21 at Page 446.

22 Do you have that?

23 A I'm on 446, yes.

24 Q All right. Where, at one point, she asked a
25 question, Am I the -- your prosecutor on that case?

1 Correct? At Line 17?

2 A Yeah. Am I your prosecutor on this case?

3 Q And he says, I don't know if you are or not.

4 And then she says, Have you not called me numerous
5 times asking me?

6 And he said, No, ma'am. I have not.

7 So isn't she pitting her own credibility against the
8 witness in that case?

9 A I'll -- I'll answer yes. I'm not -- I'm not sure I'm
10 exactly following you. But I see where you're going with
11 that.

12 Q Well, she's, basically, saying, you've called me. I
13 know you've called me.

14 And he's saying, No.

15 A Yeah. That's true.

16 Q All right. That's, in essence, what she said?

17 A That's true.

18 Q All right. She in essence -- and through that, would
19 she not be conveying to the jury, I know he's a liar?

20 A Yes.

21 Q All right. Is that really proper cross-examination?

22 A In hindsight, I would say probably not.

23 Q And, in fact, it was shortly after that that you made
24 the astute observation that there's argument at this
25 point?

1 A Yes.

2 Q Because it was?

3 A Yes.

4 Q All right. Now, for some reason -- and I agree it's
5 probably for some reason unknown to you and I. The issue
6 of the grounds for divorce became a big issue in this
7 case?

8 A Well, only because I believe, if I remember
9 correctly, that Rachel kept denying the grounds for
10 divorce.

11 Q And did not -- Ms. Hodge cross-examined Mr. Gaskins
12 at length about the grounds for divorce, too?

13 A That's correct.

14 MR. WISE: Where is our exhibit -- the divorce
15 exhibit?

16 THE COURT REPORTER: It's going to be Applicant
17 Exhibit No. 4.

18 THE WITNESS: It's not in here.

19 BY MR. WISE:

20 Q Have you got Applicant's Exhibit No. 4? I don't see
21 it up here.

22 A Oh, here we go.

23 Q There you go. And you had a certified copy of that
24 in the trial?

25 A I did.

1 Q All right. And you and the Judge had a discussion
2 about whether or not it was admissible?

3 A That is correct.

4 Q All right. Did you ever consider the idea of simply
5 giving that document to your client and saying, do you
6 recognize this?

7 A I don't recall if I had it.

8 Q I'm thinking you did. You got it during lunch, or
9 something.

10 A That's correct. I -- I mean, obviously, I didn't.

11 So no.

12 Q All right.

13 A But -- but he did testify to the grounds for divorce.

14 Q Correct. But -- but other people denied that was the
15 grounds.

16 A That's -- yeah.

17 Q He was cross-examined about the fact, You didn't file
18 for divorce; correct?

19 A That's correct.

20 Q And if he had identified that document -- which he
21 can do since it's his pleadings, couldn't he?

22 A He could.

23 Q All right. And then introduced it, it would have
24 shown all that was wrong?

25 A That is correct.

1 Q All right. And this is a close credibility case,
2 isn't it?

3 A Yeah. I mean, credibility is really important in
4 this case.

5 Q It's the big issue. Because Dr. Crosswell never
6 testified there was any physical evidence of sex?

7 A That's correct.

8 Q And the testimony was from the complaining witness
9 they had had sex, at least, 10 times, if not more?

10 A I believe that's correct.

11 Q All right. So the logic would tell you that granted
12 not in every case, but, certainly, with 10 or more times,
13 there probably should have been some physical evidence;
14 correct?

15 A Correct.

16 Q All right. I want to ask you about Dr. Crosswell,
17 too. One second. I can find it quicker if you hand me my
18 petition. 337.

19 All right. And Dr. Crosswell testified it was a
20 normal exam on Page 337; correct?

21 A That's correct.

22 Q All right. Then they asked a question of would her
23 findings on this exam be consistent with the allegations
24 of sexual abuse on Page 338; correct?

25 A Yes.

1 Q And -- and she, basically, says that's not -- that's
2 not -- that's consistent with sexual abuse?

3 A That is what she said.

4 Q Isn't that really a meaningless phrase?

5 A Absolutely.

6 Q All right. And even as an expert, I don't think --
7 you would agree an expert's not allowed to testify to a
8 meaningless phrase?

9 A Well, I mean, she's -- I think she's allowed to give
10 her opinion. I -- I agree with you that it has -- or
11 should have very little import. Because, basically,
12 what -- essentially, what she's saying is that no matter
13 what I find, it's consistent with sexual abuse.

14 Q I -- I agree. But doesn't that send the wrong
15 message to the jury that somehow that's a valid test?

16 A And that's why I cross-examined her on it.

17 Q We'll get to that in a minute.

18 Secondly, on Page 339 -- all right. She -- the
19 question was asked, How about mental health counseling?
20 Did you make a recommendation for that?

21 And she answered, We made a referral for her to have
22 appropriate mental health counseling.

23 All right. Is that not tantamount to saying I
24 believe the girl?

25 A I don't know. I can't answer that question.

1 Q Mental health counseling wasn't relevant in this
2 case, was it?

3 A I -- it's not relevant to the -- to the issue that
4 was at the heart of the trial, no.

5 Q Correct.

6 All right. So when -- it didn't bear on any
7 important issue. And do you believe an average juror
8 would understand that a professional such as Dr. Crosswell
9 would not send a child to mental health counselling unless
10 they needed it for what they're complaining about?

11 A I don't think I can answer that question.

12 Q Okay. Now, on cross-examination, you -- the first
13 question you asked was a very simple "yes" or "no"
14 question, I agree. All right. You simply asked, Your
15 testimony is not that there was sexual abuse, just that
16 there could have been?

17 And the obvious answer to that is "yes"?

18 A Correct.

19 Q And that's all that needed to be said --

20 A That's correct.

21 Q -- correct?

22 She went beyond that, didn't she?

23 A She did.

24 Q What did she say?

25 A She said, My testimony is that my patient provided me

1 a history of sexual abuse. And her exam was consistent
2 with the history provided.

3 Q All right. With no physical evidence; correct?

4 A Correct.

5 Q So, in essence, she's saying that her exam was
6 consistent with sexual abuse only because that's what my
7 client -- what the lady told her?

8 A That's exactly correct.

9 Q What the child told her?

10 A That's exactly right.

11 Q All right. Is that not vouching for her testimony?

12 A I don't think so. But I can understand how you could
13 make that argument. I mean --

14 Q But the point is you didn't make an objection, at
15 that point, to the question not being responsive to your
16 decent question?

17 A No, I didn't.

18 Q Okay. And she pretty much said the same thing over
19 on Page 340, where you, again, asked a simple "yes" or "no"
20 question of -- Through this exam that you did, you didn't
21 make any independent finding of your own? To which, the
22 obvious answer is no, based upon all the testimony?

23 A That's correct.

24 Q Instead, she says, I made my findings based on the
25 history and the physical exam of what she needed as a

1 result.

2 All right. So she's kind of, again, saying she based
3 it upon what the child told her?

4 A That's correct.

5 Q All right. At that time, you didn't think it was
6 prudent to make an objection to that?

7 A I didn't make an objection. But, I mean, I covered
8 all that in the cross-examination with her. I mean,
9 that's why I said to her, So, basically, what you're
10 telling us is you're just an information gatherer? I got
11 into all that with her.

12 And this is common with these sort of -- with these
13 medical doctors, and with police officers, all these
14 folks. They never want to give you a straight answer to
15 your question. So you have to keep trying to pin them
16 down on cross-examination.

17 But as far as making an objection, no, I didn't do
18 that.

19 Q And your question, quite frankly, was a good question
20 that required a simple answer?

21 A That's correct.

22 Q Unfortunately, you didn't get it?

23 A I didn't.

24 MR. WISE: Excuse me one minute.

25 (Pause.)

1 BY MR. WISE:

2 Q I think -- I do want to say I thought your
3 preservation of the Wallace issue on the record was -- was
4 very good...

5 A Well, I appreciate --

6 Q Unfortunately, the Court of Appeals didn't agree with
7 you.

8 A I appreciate that. I mean, I -- just --

9 MR. WISE: Thank you.

10 THE WITNESS: -- just to add a comment. I -- I
11 really think that the -- allowing that evidence in made it
12 almost impossible for Jerald to get a fair trial. I don't
13 think there's any question about that.

14 THE COURT: Anything on redirect?

15 Mr. MITCHELL: No, Your Honor.

16 THE COURT: All right. And I have no questions.

17 Thank you, Mr. Chambers.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. Any other witnesses for the
20 State?

21 MR. MITCHELL: The State would call Mr. Jeff Wilkes
22 to the stand.

23 THE CLERK: Mr. Wilkes --

24 MR. JEFFREY WILKES: Yes, ma'am.

25 THE CLERK: -- please place your left hand on the

1 Bible and raise your right hand.

2 WHEREUPON,

3 JEFFREY FALKNER WILKES,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Please be seated.

7 And state your full name for the record.

8 THE WITNESS: Jeffrey Falkner Wilkes.

9 DIRECT EXAMINATION

10 BY MR. MITCHELL:

11 Q Good afternoon, Mr. Wilkes.

12 How are you?

13 A Good.

14 Thank you.

15 Q Good. I appreciate you sticking around.

16 How long have you practiced law here in South
17 Carolina?

18 A 30 years.

19 Q Okay. And how much of that time has been dedicated
20 to criminal law?

21 A All of it, although I do other things. But for all
22 30 years, I have been involved in criminal law either
23 prosecution or defense.

24 Q Okay. Is it fair to say a good part of your practice
25 involves appellate work?

1 A Yes.

2 Q Okay. And how do you stay abreast of current
3 issues -- appellate issues?

4 A Well, research -- I'm constantly researching. But
5 I -- CLE's, and all the other usual stuff of trying to
6 stay current.

7 Q Okay. And so in this particular case, after Mr. --
8 after Mr. Gaskins was convicted, he retained you; correct?

9 A He did.

10 Q Okay. And so once you got the case, what did you do?
11 What was the first thing you did?

12 A Well, I guess I met with him. And then I proceeded
13 in ordering -- all the usual steps of the appeal process.
14 I ordered the transcript, reviewed the transcript,
15 briefed -- briefed the case.

16 Q Okay. So you reviewed the transcript for issues that
17 you thought may be successful on appeal. Is that a --

18 A I did.

19 Q -- fair statement?

20 A And -- and PCR. I make -- when I go through the
21 transcript, I try to make an analysis of PCR issues that
22 are apparent from the record, or from things that my
23 client tells me during the appeal process, even though
24 it's not really part of the appeal. I just -- as long as
25 I'm doing it, I try to put down anything that I see that

1 might be relevant to the PCR.

2 Q Okay. So let's -- let's just get to the heart of the
3 allegation that the Applicant has alleged that you did
4 not -- after the Court of Appeals issued their opinion --
5 petition to the Supreme Court on a particular allegation.
6 Why didn't you?

7 A Well, the reason -- well, I didn't because my client,
8 Mr. Gaskins, made the decision to proceed with PCR,
9 instead of the petition or -- or the petition for
10 certiori. But he did that on my advice.

11 So it was my recommendation as far as the better use
12 of -- of time and resources would be spent on the
13 post-conviction relief, rather than another two or so
14 years pursuing a petition for writ of certiori.

15 Q Was that advice based on you believing he wouldn't be
16 successful?

17 A Correct.

18 Q Okay. So the allegation inside of the application is
19 that State v. Perez was argued before the Supreme Court
20 during the time that this appeal potentially was pending.
21 Are you familiar with State v. Perez?

22 A Yes.

23 Q Okay. And so Applicant's issue -- or trial, I should
24 say, dealt with the case State v. Wallace?

25 A Uh-huh.

1 Q Okay. Now, how did State v. Perez -- or I guess I
2 should back up. You said you reviewed State v. Perez;
3 correct?

4 A I have reviewed State v. Perez, yes.

5 Q Okay. And does State v. Perez discuss State v.
6 Wallace?

7 A Yes.

8 Q Okay.

9 A So Perez came out just recently, the decision in
10 Perez. I think the point on PCR is -- is that I did not
11 consider the fact that there had -- the potential that
12 Perez could overturn Wallace in advising on whether or not
13 Mr. Gaskins should follow -- continue with the direct
14 appeal. Perez had not come out and was not law until, I
15 think, April of this year, or close to it.

16 Q It was March, I think.

17 A March. But it -- it just came out. So that -- the
18 opinion itself was not a factor. The -- the question on
19 the application was not factoring in the fact that the
20 petition had been granted and a motion to argue against
21 precedent had, also, been granted.

22 Q Okay. And you do not believe that it was in Mr. --
23 Mr. Gaskins interest to --

24 A I did not believe that the Court was -- I did not
25 believe that the probability was high as to the Court

1 overturning Wallace any time soon -- sufficiently to
2 justify pursuing the petition versus going to PCR.
3 Because PCR -- there's a spoliation issue sometimes with
4 PCR cases. If you go all the way through the petition for
5 writ of certiori, you've added two or more years to -- to
6 the time that you'll start a PCR.

7 So you -- you have a greater -- and you've already
8 been several years from the trial, which has been several
9 years from the incident, which means you're adding time
10 upon time before you start a PCR.

11 And I do a lot of PCR's. So I'm pretty sensitive to
12 the balance between continuing on in a petition for
13 certiori if it's not likely and losing evidence, or
14 potentially losing evidence or weakening the -- the PCR
15 case.

16 Q And so there's no question that this information was
17 relayed to the Applicant?

18 A Yes, I did relay. And the way I did it was to give
19 him a recommendation that, in my opinion, pursuing the
20 petition for writ of certiori would not be the best use of
21 his time and resources. But I -- it's not that I refused
22 to do it. Certainly, we would have continued, filed the
23 petition, had OID pick it up, if necessary. But I think
24 his decision was based on my recommendation.

25 Q Very good.

1 And I guess the last question I'll ask you. The --
2 the Court issued an opinion in State v. Perez. Did it
3 address State v. Wallace?

4 A Yes. It -- it was upheld. So it -- ultimately,
5 it -- I guessed right, I guess you could say. Because
6 that's all we do in giving opinions is make an educated
7 guess. And I guessed right.

8 I will say this. It was a heck of a lot closer than
9 I anticipated. So that -- that doesn't mean that next
10 year it'll happen, or in two years it'll happen. Because
11 the Court [inaudible] changes. But it -- it was far
12 closer than I would have guessed. Because both Beatty --
13 Judge -- Justice -- Chief Justice Beatty and Justice Hearn
14 believed that Wallace should be overturned. So I -- I
15 expected one, but not both.

16 Q And as -- but, currently, as of this date, it's still
17 good law?

18 A Yeah. Wallace is, unfortunately, yeah, still the
19 law.

20 MR. MITCHELL: Thank you.

21 Please answer any questions Mr. Wise may have.

22 THE COURT: Mr. Wise.

23 CROSS-EXAMINATION

24 BY MR. WISE:

25 Q Do you know who wrote the Court of Appeals opinion in

1 Wallace?

2 A You -- no, no. I know who dissented. I think -- I
3 believe Justice Pleicones may have dissented.

4 Q No, not the Supreme Court opinion. The Court of
5 Appeals where --

6 A Oh, no, no, no, I don't. I don't recall.

7 Q All right. Justice Hearn, for your information.

8 A Oh, well, that explains --

9 Q Okay. And Justice Beatty dissented in Wallace?

10 A Yes.

11 Q Okay.

12 A And in Perez.

13 Q All right. And are you familiar with opinions in the
14 Court of Appeals written by Justice Kittredge?

15 A Some, but I can't place any in this line attributed
16 to him. But I know that he -- he did not agree,
17 apparently, with Hearn and -- Justice Hearn and Chief
18 Justice Beatty in Perez.

19 Q In Perez?

20 A Right.

21 Q He went on the Wallace panel [phonetic]. Would it
22 shock you to learn that he's written on the Court of
23 Appeals several opinions that are very favorable for the
24 Defense side of the -- the Lyle issue?

25 A No, no, it wouldn't.

1 Q All right. So there are two to three votes up there
2 in play right now?

3 A That is true. It is --

4 Q Tell me -- tell me what seminars you've been to on --
5 on the Lyle-Wallace issue.

6 A I can't remember a single one that I can identify. I
7 know it's -- it's probably covered in most of the
8 seminars, especially the criminal ones. But not a single
9 dedicated to just the Lyle issue.

10 Q Were you aware that the Supreme Court had granted
11 cert in the Perez case as far back as, I believe, 2015 --
12 it's in the exhibit we've got -- in which the cert
13 petition was sought on the grounds that Wallace should be
14 overturned?

15 A I cannot -- I -- I should have been. It would have
16 been reported in Westlaw. So even though -- even though
17 Perez was an unpublished --

18 Q Correct.

19 A -- its cert would have been shown in Westlaw --

20 Q Correct.

21 A -- so, yes, I -- I would have -- I would have seen
22 it, yes.

23 Q And that would -- was done long before -- in fact,
24 Perez was argued on the 30th of November, 2016.

25 A Correct. And cert was granted in '15, I think.

1 Q Right.

2 A So I -- yes, I would have known that.

3 Q All right. So you're aware of all those dates?

4 A Absolutely.

5 Q So you're aware when you wrote the letter to
6 Mr. Gaskins saying don't appeal it any further, that cert
7 had been granted in a case that could overturn Wallace?

8 A I would have been aware that -- yes.

9 Q Couldn't you have just simply filed a petition for
10 cert with the South Carolina Court of Appeals -- not a
11 cert -- a rehearing with the South Carolina Court of
12 Appeals and told them to hold it in abeyance until the
13 Supreme Court does something with Wallace?

14 A I could have, yes, sure.

15 Q And that would have not been that expensive?

16 A No, no, no, nor would -- nor would have filing the
17 cert. I mean, he could have just pursued the cert as
18 well. But, again, that gets back to the -- I was just
19 doing a balancing of what I perceived the -- the success
20 would be versus the -- the time involved.

21 Q Even -- even though you were aware that cert had been
22 granted --

23 A Yes --

24 Q -- in an effort to overturn Wallace?

25 A Oh, yes. Cert -- cert being granted is not

1 necessarily a -- an absolute predictor of the outcome of
2 the case. You -- you can put a percentage on it. But --
3 but it's not a predictor. As we see, it was not a
4 predictor at all. So I guessed right --

5 Q Well --

6 A -- an educated guess right.

7 Q Well, two judges said overturn it --

8 A Yes.

9 Q -- two ignored it, and one bailed out?

10 A Yes.

11 Q Is that a correct analysis?

12 A That is exactly correct.

13 Q Okay. And -- and, for your information, do you know
14 that Wallace arose out of this courtroom? It's a
15 Greenville case.

16 A I -- I -- that I don't recall.

17 Q Okay. It's a Greenville case.

18 A I don't recall that.

19 MR. WISE: Thank you.

20 MR. MITCHELL: Judge, I have no more questions for
21 this witness.

22 THE COURT: No more questions?

23 MR. MITCHELL: No, sir.

24 THE COURT: All right. Thank you.

25 Good to see you, Jeff. Take care of yourself.

1 THE WITNESS: Good to see you.

2 THE COURT: All right. Any other witnesses?

3 MR. MITCHELL: I have no additional witnesses, Judge.

4 MR. WISE: Your Honor, one -- one thing on that. I
5 had anticipated I was going to call Ms. Hodge. And I was
6 going to have her simply identify the documents she gave
7 me from her file. If he'll stipulate that she gave to me
8 those files and introduce them, I have -- I don't have any
9 reason to call her.

10 THE COURT: Will you stipulate to that?

11 MR. MITCHELL: Your Honor, that's fine with me.

12 MR. WISE: Okay.

13 THE COURT: All right. I'll tell you what we're
14 going to do. I'm going to ask both sides to send me a
15 proposed order within 30 days. And I'll take a look at
16 it. If you need more time, let me know.

17 MR. MITCHELL: Thank you.

18 (Pause.)

19 MR. WISE: Your Honor --

20 THE COURT: Yes, sir.

21 MR. WISE: -- I just realized while I was sitting
22 here talking to my client, 30 days from today is
23 Thanksgiving week.

24 THE COURT: Oh, well, we don't want to do that.
25 What's good for both of you?

1 MR. WISE: Any time the following -- any time toward
2 the middle of the following week.

3 MR. MITCHELL: What I will say is, I am leaving the
4 office. So my last day will be the 6th with the Attorney
5 General's Office. But I'm going to work on it diligently.

6 Sherry's here with me from the AG's Office today,
7 too. So one of us will get it to you in that 45 days.

8 THE COURT: Say, by December 15th?

9 MR. WISE: Oh, that's plenty -- that's good. That's
10 good.

11 MR. MITCHELL: That works for us.

12 MR. WISE: And I didn't mean to run him off.

13 THE COURT: No. That's all right.

14 All right. December 15th.

15 RM. MITCHELL: Thank you, Judge.

16 THE COURT: All right.

17 *****END OF TRANSCRIPT OF RECORD*****
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jerald D. Gaskins Jr., 362923
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-5901

ORDER OF DISMISSAL

19 FEB 4 PM 12:00
Paul Wickensimer COC SUL SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed on September 14, 2017 by Applicant. Respondent made its Return on January 17, 2018. An evidentiary hearing into the matter was convened on October 24, 2018, at the Greenville County Courthouse. Applicant was present and represented by C. Rauch Wise. Respondent was represented by DeShawn H. Mitchell and Sherrie Butterbaugh of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Trial counsel Randall L. Chambers and appellate counsel J. Falkner Wilkes also testified. Applicant also called Walter Mucienko to testify on his behalf at the hearing. Following a thorough review of the record in its entirety, and the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In April of 2013, the

Greenville County Grand Jury indicted Applicant for four counts of criminal sexual conduct with a minor second degree (2013-GS-23-3231, 3232, 3234, 3235) and two counts of lewd act upon a child (2013-GS-23-3233, 3236). Randall L. Chambers represented Applicant. Applicant proceeded to trial on February 4, 2015, before the Honorable D. Garrison Hill and a jury. The jury found Applicant guilty as indicted to all charges. Judge Hill sentenced Applicant to concurrent twenty-year terms of imprisonment for each of the second-degree criminal sexual conduct with a minor convictions, a concurrent fifteen-year term of imprisonment for one of the lewd act convictions, and a consecutive five-year term of imprisonment for the remaining lewd act conviction.

Applicant filed a timely notice of appeal. J. Falkner Wilkes, Esquire perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions on February 1, 2017. *State v. Gaskins*, Op. No. 2017-UP-166 (S.C. Ct. App. filed April 19, 2017). The remittitur was returned to the circuit court on May 5, 2017.

FACTUAL HISTORY

In the spring of 2011, Applicant and his wife at the time, Rachel Gaskins (Rachel), attended a horseshoe tournament at a home located in Travelers Rest. (Tr.p.54; pp.62-63; pp.82-83; pp.134-135). After the tournament, Applicant began regularly socializing with the family that lived at the home, including a thirteen-year-old girl (victim) who was a part of that family. (Tr.pp.64-66; pp.82-83; pp.135-36). Over the next few months, Applicant developed a close friendship with victim, and victim began to regularly visit with Applicant and his family. (Tr.pp.64-65; p.98; p.137; pp.139-40; pp.145-46; pp.150-51). However, victim's mother (mother) became uneasy when she found victim in possession of a phone covertly provided to her by Applicant and when Applicant eventually began to act controlling with victim, and she

ended victim's contact with Applicant as a result. (Tr.pp.73-75; p.227).

Subsequently, in November of 2012, Applicant's mother-in-law contacted mother and provided her with information that made her become even more concerned. (Tr.p.75; pp.87-88; pp.156-57). In response, mother and victim's father confronted victim, and victim initially denied anything inappropriate occurred between her and Applicant. (Tr.pp.75-76). However, as the conversation with her parents continued, victim began to cry before revealing she had been sexually abused by Applicant. (Tr.pp.76-77). Mother immediately reported the sexual abuse to the authorities, and Deputy Paul Floyd (Floyd) of the Greenville County Sheriff's Office responded to victim's home. (Tr.pp.53-54; pp.76-77; p.89). Floyd spoke with victim alone and victim disclosed she had been sexually abused by Applicant on multiple occasions over the course of more than a year. (Tr.pp.56-58).

Following victim's disclosure, Investigator Robert Perry (Perry) of the Greenville County Sheriff's Office began an investigation into the reported sexual abuse and spoke with victim at school. (Tr.pp.345-48; p.361). During their conversation, victim disclosed she was sexually abused by Applicant on multiple occasions at different places where he lived from the spring of 2011 until the fall of 2012. (Tr.pp.348-49). After speaking with victim, Perry attempted to gain access to victim's phone to examine her communications with Applicant, but could not because Applicant had taken the phone back from victim. (Tr.p.353). Perry repeatedly attempted to make contact with Applicant, who was thirty-years-old, but the attempts were unsuccessful. (Tr.p.347; pp.353-54). Thereafter, Perry obtained arrest warrants for Applicant based on the reported sexual abuse of victim. (Tr.p.354).

During trial, victim testified about the sexual abuse.¹ (Tr.p.192). Regarding the abuse,

¹ At the time of trial, victim was seventeen-years-old and Applicant was thirty-two years old.

victim indicated she met Applicant at a horseshoe tournament in March of 2011 when she was a thirteen-year-old middle school student, and Applicant gave her his phone number. (Tr.pp.185-87). Shortly after that, victim stated she and Applicant began visiting each other's homes and hanging out on a regular basis, and she indicated she spent the night at Applicant's home occasionally. (Tr.p.185; pp.188-89). During one of the visits, Applicant asked victim if she was a virgin before informing her he would "spoil" her for the remainder of her life if he was the one who took her virginity. (Tr.pp.189-90). A few weeks later, victim indicated Applicant brought up the subject of her virginity again, and the two then engaged in sexual intercourse while Applicant's wife took a bath in another room. (Tr. pp. 190-193). Specifically, during that incident, victim testified Applicant removed their pants, began fondling and kissing her, and then quickly had sexual intercourse with her. (Tr.pp.193-94). Afterwards, victim testified the two pretended like nothing happened, and, from that point forward, Applicant provided her with phones and other gifts, gave her "a lot of attention," and promised to give her whatever she wanted. (Tr.pp.194-96; pp.213-14). As their relationship continued, victim indicated she and Applicant engaged in sexual intercourse on multiple occasions at different homes Applicant moved to over the course of the next year and a half, and she noted Applicant always wore a condom during the acts of sexual abuse. (Tr.pp.197-99). Victim further indicated Applicant performed oral sex on her during some of the incidents, and she recounted Applicant had sexual intercourse with her in a car on one occasion after driving her to an abandoned house while they were out to pick up food for other people in the home. (Tr.pp.200-02; pp.216-17). Additionally, victim stated she had sexual intercourse with Applicant on one occasion after they dropped his wife off at the hospital, she indicated the two had sexual intercourse on one occasion after

(Tr.p.183; p.376).

Applicant pretended he was going to take her to a country music concert, and she recounted an incident where Applicant's wife found him lying next to her on a couch, which led to a heated argument between Applicant and his wife. (Tr.pp.205-10; pp.224-25). Furthermore, victim testified Applicant convinced her they were going to get married, tried to talk her into getting legally emancipated from her parents, and tried to alienate her from her family. (Tr.pp.222-24). Subsequently, victim noted her relationship with Applicant continued until her mother found a phone Applicant had given her, and she eventually revealed the sexual abuse when confronted by her parents. (Tr.pp.227-29).

As victim's testimony continued, the solicitor asked victim about her friend who was present on the day victim met Applicant.² (Tr. pp. 234-235). The solicitor asked to address a matter outside of the presence of the jury, and the trial judge excused the jury from the courtroom. (Tr.pp.235-36). The solicitor indicated she intended to introduce the friend's testimony as prior bad act evidence while noting victim and friend were the same ages, were in the same grades in school, met Applicant in the same manner, engaged in the same types of acts with him, and were told the same things by Applicant during the course of their relationships with him. (Tr.pp.236-41). In response, defense counsel objected, contended the Supreme Court's decision in *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009), was "bad law," and asserted the prior bad act evidence involving the friend was not admissible as evidence of a common scheme or plan because there was allegedly no evidence of a modus operandi. (Tr.pp.242-43).

The trial judge asked the solicitor to proffer the friend's testimony, and she was called to the witness stand. (Tr.pp.245-46). During her proffered testimony, the friend stated she met

² By the time of trial, the friend was eighteen and no longer a minor child. (Tr.p.246; p.306).

Applicant in the spring of 2011 just after she turned fourteen-years-old when she was visiting victim's home for a horseshoe tournament. (Tr.pp.246-48). Upon meeting Applicant, the victim's friend indicated he was immediately flirtatious with her, and the two exchanged telephone numbers. (Tr.p.248). After that, she testified she began hanging out with Applicant, and Applicant said "very nice things" to her. (Tr.p.249). A few weeks later, the victim's friend indicated the two began kissing and eventually began having sexual intercourse when she was alone with Applicant after he made her feel "very special." (Tr.pp.249-251). Regarding the sexual intercourse, the friend recounted it was quick; it always involved a condom, it always occurred when she was alone with Applicant, and only their pants were removed. (Tr.pp.251-54). Additionally, she stated Applicant made her feel like the "most special person in the world" and got her whatever she wanted. (Tr.p.252). As their relationship continued, the friend noted they had sex on a few more occasions, including on one occasion at an abandoned house. (Tr.pp.253-54). Eventually, the victim's friend indicated she ended the relationship with Applicant, and, when she did so, he informed her he was going to "make his next move" on the victim. (Tr.pp.255-56).

Following the friend's proffered testimony, defense counsel conceded it would "be stupid" to suggest no similarities existed between the acts involving the friend and the acts involving victim, but he contended the acts did not rise to the level of a common scheme or plan based on the fact the "whole series of events" allegedly occurred much differently for each of Applicant's victims. (Tr.p.259). Defense counsel further renewed his assertion the decision in *Wallace* was "bad law" while contending prior bad act evidence was the most prejudicial type of evidence that could be admitted. (Tr.p.260). In response, the solicitor asserted the prior bad act evidence was extremely probative in Applicant's case as evidence of the existence of a common

scheme or plan and contended the probative value of that evidence outweighed the potential for undue prejudice in light of the lack of physical evidence in the case. (Tr.pp.261-63). After considering the arguments of counsel, the trial judge found the similarities between the acts outweighed the dissimilarities due to the ages of the victims, the timing of the sexual abuse, the locations where the abuse occurred, the relationship between Applicant and his victims, the manner and type of sexual abuse, and the use of coercion or seduction on the victims. (Tr.p.264). Furthermore, the trial judge concluded the prior bad act evidence was not unfairly prejudicial in Applicant's case while offering to give a limited instruction if one was desired. (Tr.pp.265-67).

Following victim's testimony, her friend took the witness stand and testified about her relationship with Applicant before the jury. (Tr.p.306). It was similar to the in-camera hearing. (Tr.pp.306-17).

Additionally, mother testified about the details of how Applicant and victim began to regularly spend time together after meeting, and she noted victim's behavior began to change after she started associating with Applicant. (Tr.pp.62-67; pp.72-73). Mother further discussed victim's subsequent disclosure of the sexual abuse and their actions in response to that disclosure. (Tr.pp.75-78; p.89). Likewise, victim's older sister (sister) testified about her interactions with Applicant, and she indicated she believed something was going on between Applicant and victim based on the way Applicant treated her. (Tr.pp.97-99). Sister further noted she spoke with Appellant on the phone and exchanged text messages with him after they became friendly toward one another, and she stated Applicant informed her he loved victim most of all, while also referring to her as his "beautiful future wife" during their communications. (Tr.pp.100-01; pp.107-08; p.112). Furthermore, Dr. Mary-Fran Croswell, an expert in pediatric

medicine and child abuse pediatrics, testified about her examination of victim following the disclosure of the sexual abuse, indicated her examination of victim was normal, and noted a normal examination did not exclude the possibility of sexual abuse. (Tr.pp.332-38).

Applicant's former wife, Rachel, also testified for the prosecution.³ (Tr.p.130). During her testimony, Rachel confirmed she and Applicant became friends with victim's family after meeting them at a horseshoe tournament in March of 2011, and she indicated victim began regularly visiting their home and sometimes spent the night there.⁴ (Tr.pp.134-37; p.139). Rachel stated she became uncomfortable about the relationship and confronted Applicant, who reacted angrily. (Tr.p.138). Rachel further testified Applicant and victim were alone together numerous times during her visits, and she recounted on one occasion she found them lying on a couch together in the middle of the night with Applicant's leg draped over victim's legs. (Tr.p.148). After finding them in that position, Rachel confronted Applicant and he became very threatening. (Tr.p.149). Subsequently, Rachel indicated Applicant kicked her out of the home. (Tr.p.152). Rachel eventually revealed her concerns about Applicant and victim to victim's mother and Perry. (Tr.pp.157-59).

³ During trial, Rachel noted she obtained a divorce from Applicant at some point after the events involving victim occurred. (Tr.p.154; pp.172-73).

⁴ At the outset of her testimony, Rachel indicated she met Applicant, who was twenty-six years old at the time, in September of 2008 when she was a seventeen-year-old high school student. (Tr.p.131). She further stated he convinced her to move in with him within two weeks of initially meeting her, and they got married less than a year later. (Tr.pp.132-34; pp.175-76). Rachel indicated Applicant was abusive and manipulative toward her, and she noted he forced her to make a false allegation of sexual abuse against her father that she subsequently recanted. (Tr.pp.143-44; pp.165-66; p.175; pp.178-79). Later during trial, Applicant confirmed he met Rachel when she was seventeen and he was twenty-six, acknowledged she moved in with him two weeks later, and indicated she married him a few months later before giving birth to their first child together not long after that. (Tr.pp.378-80; p.388). He asserted Rachel was violent and unfaithful towards him during the course of their relationship and claimed they both decided together for her to file a rape allegation against her stepfather. (Tr.pp.382-83).

At the conclusion of the State's case, Applicant elected to testify. (Tr. p. 362; p. 376). During his testimony, Applicant asserted he first met victim's family at a horseshoe tournament in 2011, but claimed he did not speak to either victim or her friend at that time.⁵ (Tr.pp.394-95). Applicant testified he and Rachel began regularly visiting with victim's family while victim began visiting his home to babysit his daughter. (Tr.pp.394-96). After victim began visiting, Applicant acknowledged she spent the night at his home on some occasions, but he claimed she was never alone with him and simply played with his daughter, played video games, and used his "humongous" television.⁶ (Tr.pp.398-99). Applicant stated he eventually stopped spending time with victim's family due to their alleged violent tendencies, and he denied victim visited him at one of the homes he moved to in Travelers Rest. (Tr.pp.408-10). Subsequently, in October of 2012, Applicant claimed he cut off all ties with victim's family after discovering victim's father had secretly added multiple vehicles to his insurance policy. (Tr. pp. 415-18). As Applicant's testimony continued, he insisted he only possibly saw victim in passing after cutting off ties with her family, and he denied the victim's friend had ever been to his home. (Tr.pp.418-19). Applicant further denied having an inappropriate relationship with either victim or her friend, and he insisted he had never heard about an abandoned house and had never discussed going to a country music concert with anyone. (Tr.pp.420-21).

On cross-examination, the solicitor asked Applicant if he sent a text message to victim's father in regard to his divorce from Rachel, and Applicant insisted he did not send the message

⁵ At the outset of his testimony, Applicant asserted he was disabled due to a diagnosis of attention deficit hyperactivity disorder and had been receiving disability benefits since the age of thirteen as a result. (Tr.p.377).

⁶ Applicant further indicated he tried to keep witnesses around him all the time to verify his innocence because he had been accused of many things during his lifetime. (Tr.pp.400-01; p.440).

while contending someone else had been sending messages pretending to be him. (Tr.pp.424-25). Defense counsel objected to the questioning while asserting a foundation had not been established regarding the text messages the solicitor was attempting to have Applicant read, and the trial judge sustained the objection. (Tr.pp.425-26). Following the exchange, the solicitor asked Applicant if he sent a text message to victim's father asking if he was going to drop the charges, and Applicant denied he sent such a message. (Tr.p.426). Defense counsel again objected, and the trial judge sustained the objection before excusing the jury from the courtroom. (Tr.p.426).

Once the jury was excused, the solicitor noted it was permissible for her to question Applicant about statements he was alleged to have made, and she further asserted she could call a witness in rebuttal to establish a foundation if she moved to admit the actual text messages themselves into evidence. (Tr.p.427). In response, defense counsel asserted a foundation had to be established before the solicitor could ask questions regarding the messages, and the trial judge inquired of defense counsel why the solicitor could not ask Applicant if he made a particular statement. (Tr.pp.427-28). Defense counsel then replied: "I think she - well, she can ask if he makes a statement, Your Honor. But she was, actually, reading the text messages verbatim." (Tr.p.428). The trial judge and defense counsel then continued to discuss the matter, and defense counsel confirmed his concern was the solicitor's questions allegedly created the appearance she was publishing something that had not been admitted into evidence. (Tr.pp.428-429). After that discussion, the following exchange occurred:

[Defense Counsel]: But my issue is not necessarily, Your Honor, that [the solicitor]'s asking [Appellant] that. That's fine. But she's, actually, walking up to him, laying these down in front of him as they were - as though they were a statement that he gave.

[Trial Judge]: Yes, I know. That's why I sustained the objection

when you objected to that. But, I mean, I think she can ask about alleged previous statements the witness –

[Defense Counsel]: Well, I would agree with that.

[Trial Judge]: – who was a party, made.

[Defense Counsel]: Yeah, I would agree with that, Your Honor. I just – when she – she, at first, seemed as though she was, actually, going to have him read it. Then she's questioning him about it while it's laying up there in front of him. And I, clearly, believe that's improper.

[Trial Judge]: Well, I overrule the objection.

(Tr.p.429).

Thereafter, the solicitor resumed her cross-examination and asked Applicant if he sent a text message to victim's father about how they could go to Oklahoma and make money if he would drop the bogus charges, and Applicant denied sending such a message. (Tr.pp.432-33). The solicitor also asked Applicant if he sent a text message to sister about tickets for a country music concert, and Applicant denied doing so while insisting he never sent a text message to sister on any occasion. (Tr.pp.435-37). After that, the solicitor asked Applicant if he sent a text message to sister indicating victim was his favorite, and Applicant again insisted he never sent a text message to sister about anything. (Tr.pp.437-38). As her cross-examination of Applicant continued, the solicitor asked Applicant if he knew the victim's friend, and he responded he did not and had only met her on two occasions. (Tr.p.455). The solicitor then inquired if Appellant had sent a Facebook message to the victim's friend a few weeks earlier, and Applicant denied doing so while challenging the solicitor to prove it. (Tr.pp.454-55).

Subsequently, the defense rested its case, and the solicitor indicated she did not believe it was necessary for her to call any rebuttal witnesses. (Tr.p.463). The parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law.

(Tr.pp.465-506). At the conclusion of trial, the jury convicted Applicant as indicted. (Tr.pp.510-11). Following the verdict, the trial judge sentenced Applicant to an aggregate term of imprisonment of twenty-five years. (Tr.pp.516-17).

ALLEGATIONS

In his initial application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Prosecutorial Misconduct
2. Due Process violations
3. Ineffective assistance of counsel

Applicant amended his application on May 22, 2018; and October 25, 2018, alleging he is being held in custody unlawfully for the following reasons:

1. Trial counsel failed to object to improper questions by the prosecutor concerning text messages with Walt Mucienko and a minor and an alleged incident with another minor when there was no factual basis for the questions.
2. Trial counsel failed to interview and call several witnesses who could have refuted much of the testimony of the witnesses against me.
3. Trial counsel failed to investigate and obtain records from various sources that could have refuted much of the testimony against me.
4. Trial counsel failed to introduce family court records that would have established the ground for my divorce and therefore the cross examination by the state would have been proven to be inaccurate.
5. Trial counsel failed to object to the questions by the state as to alleged drug dealing which had no basis in fact.
6. Trial counsel failed to introduce the pleadings from the divorce which would impeach the testimony of my ex-wife.
7. Trial counsel failed to subpoena my medical doctor to prove I was allergic to latex.
8. Trial counsel failed to object to the improper testimony of Dr. Mary Fran Croswell.
9. Appellate counsel failed to perfect an appeal to the South Carolina Supreme Court on the issue of the admissibility of other bad act under 404b.
10. Trial counsel failed to object to the questions by the solicitor concerning an alleged charge pending against me that was brought by Angelina Campbell.
11. Trial Counsel failed to object to the hearsay testimony of Officer Robert Perry when he testified as the statements the minor child as to the details of the alleged sexual assault. The statements are hearsay and trial counsel should have objected.
12. Trial counsel failed to object to the testimony of Officer Robert Perry when he gave an opinion as an expert to the delayed disclosure of sexual abuse when he had not been qualified as an expert in this field.

13. During the direct examination of Officer Paul Floyd, the assistant solicitor elicited a response that minor child had identified myself as the alleged suspect. This hearsay testimony was not objected to my trial counsel.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Walter Mucienko's Testimony

At the start of the evidentiary hearing, Applicant called Walter Mucienko (Walter), the victim's father, to ask him about the text messages allegedly exchanged between himself and Applicant. Walter testified he never sent any text messages to Applicant about dropping the charges, further stated he did not use Verizon as his carrier as indicated on the messages and instead previously used Sprint, and stated he was threatened by Applicant and his friends. Walter ended his testimony by reiterating he never sent texts to Applicant and someone had falsified the messages.

Applicant's Testimony

Applicant testified he also never exchanged text messages with Walter, and specifically noted the messages had been forwarded, the phone number was not his, and the texts should not have been used at trial. Applicant stated trial counsel should have objected to the admission of the texts because he did not send them and they were very prejudicial to his defense. Applicant also addressed Facebook messages the solicitor asked him about at trial. The messages were sent by a man named Jay Fowler to a young girl. (Tr.pp.444-45; pp.454-55). Applicant testified counsel should have objected because the solicitor could not prove he sent the messages and he did not see the messages before trial. Further, Applicant stated counsel should have objected more strongly when the solicitor brought up a no contact order and pending charge involving his fiancée. (Tr.pp.445-47).

Applicant also testified there were other instances trial counsel should have objected,

including to hearsay statements by Perry when he testified the victim identified Applicant as her abuser and statements made when he was not qualified as an expert. Applicant testified counsel also should have objected to hearsay statements of Floyd who also testified the victim identified Applicant. Finally, Applicant testified he told counsel he was allergic to latex and could not have worn a condom as the victim stated he did, but counsel did not call his doctor to confirm the allergy. Applicant stated counsel's deficiency prejudiced him because he could have presented evidence to dispute the victim's claim.

Regarding the claim of ineffective assistance of appellate counsel, Applicant testified he was prejudiced because counsel did not continue with the appeal. After failing to prevail at the Court of Appeals, counsel advised Applicant by letter to file for PCR rather than petition for review in the Supreme Court. Applicant testified he was prejudiced by counsel's advice to proceed to PCR rather than continue with his appeal.

On cross-examination, Applicant testified he met with trial counsel twice and admitted he rejected a plea offer with a sentencing range of zero to twelve years. Applicant also stated he testified at trial despite a "mental condition" which caused him to become excited, angry, and speak fast so that he did not always understand the questions being asked of him. When confronted with specific cites to the trial transcript, Applicant acknowledged counsel objected to the text messages but not in the manner he wanted him to, and acknowledged counsel attempted to admit a note from his doctor about his latex allergy. Applicant also agreed he testified at trial about his divorce with Rachel to refute her testimony.

Trial Counsel's Testimony

Trial counsel testified he had been practicing criminal law in South Carolina since 1992. Counsel stated Applicant retained him, they met on numerous occasions, and he was well

prepared to handle the case. Counsel testified he shared discovery with Applicant who understood the process and helped him develop a trial strategy. Counsel indicated there were few fact witnesses to call to testify on Applicant's behalf at trial given it was a "he said/she said" situation. Counsel testified Applicant always maintained nothing happened between himself and the victim and their strategy was to attempt to convince the jury the whole thing was a false allegation concocted by Applicant's ex-wife Rachel and her friend to benefit Rachel during a "nasty divorce." Counsel stated he attempted to introduce documents from the Family Court divorce proceeding to rebut and impeach Rachel's testimony; however, the trial court denied his request. (Tr.pp.365-75). The record reflects Applicant was asked about the divorce and the reason why he filed for divorce which he asserted was adultery, even though Rachel denied it. (Tr.p.172; p.414).

Trial counsel testified he prepared Applicant to testify and discussed with him the pros and cons of doing so, and it was Applicant's decision to testify at trial. Counsel stated Applicant had a "volatile" personality and he knew the solicitor would try to "get under his skin," so he tried his best to prepare him for her questions. Counsel testified there was no physical evidence in the case, so Applicant's credibility was critical.

Turning to the other allegations of ineffective assistance of counsel, trial counsel testified he, in fact, objected to the use of text messages allegedly sent between Applicant and Walter and the trial court initially sustained the objection, before overruling him and allowing the solicitor to ask Applicant about the texts. (Tr.pp.425-30). Regarding the medical opinion offered by the doctor about the victim's normal examination, counsel testified she was qualified as an expert, her testimony was within the scope of her expertise so he did not believe he could object to it, and he felt he could best handle her opinion during cross-examination. Counsel stated the

testimony by Perry and Floyd in which they stated the victim identified Applicant as her abuser was technically hearsay, but he did not object to it. Counsel stated he did not believe it would have been beneficial to object because the information was going to come out anyway during the victim's testimony. Moreover, counsel testified, in his experience as a criminal defense attorney, their testimony was properly admitted based on their prior investigation into the case. As to the solicitor's questions about a pending charge and no contact order involving Applicant's fiancée, counsel testified he agreed it was prejudicial, but he objected to the questions which the trial court sustained, and Applicant refuted the information in front of the jury. On cross-examination, counsel acknowledged he did not object to the solicitor's limited questions about whether Applicant supplemented his income by "selling pills or pot" and acknowledged the solicitor told the trial court Applicant had no criminal history that could be used to impeach him when he testified. Counsel testified it was not his general practice to object during cross-examination of any of his clients unless the questions were unduly prejudicial.

Appellate Counsel's Testimony

Appellate counsel testified he had thirty years' experience as an attorney with focuses on criminal law and appellate practice. Counsel indicated he did research and kept up with case law to help identify issues on appeal. Counsel stated it was his advice not to petition to the Supreme Court following the adverse decision in the Court of Appeals in Applicant's appeal and it was in Applicant's best interests to move on to PCR. Counsel believed, based on his professional opinion, there was not a high probability the Court would overturn *Wallace*,⁷ so he did not think the petition had a high chance of success.⁸

⁷ *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009).

⁸ One of the issues raised in Applicant's appeal was whether the trial court erred in admitting

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony. As a matter of general impression, this Court finds trial counsel's testimony was credible and persuasive on all matters, while also finding applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of facts and conclusions of law based on the probative evidence presented.

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 post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "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. at 686. *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*. First, an applicant must prove counsel's performance was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

evidence of prior bad acts pursuant to *Wallace*. See *State v. Gaskins*, Op. No. 2017-UP-166 (S.C. Ct. App. filed Apr. 19, 2017). At the time Applicant's appeal was pending, a similar case was also awaiting a decision before the Supreme Court, *State v. Perez*, 423 S.C. 491, 816 S.E.2d 550 (2018).

Under this prong, the court measures 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, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by applicant:

Ineffective Assistance of Counsel

Failure to Object

(Allegations 1, 5, 8, 10, 11, 12, and 13)

Applicant alleges trial counsel was ineffective in failing to object to the testimony of several witnesses, as well as improper questions about text messages, selling drugs, and a pending charge. This Court finds Applicant has failed to meet his burden on all of these claims as they are matters of trial strategy, and dismisses them with prejudice.

First, the record directly contradicts Applicant's allegation trial counsel did not object to

the questions regarding text messages or Facebook messages. During cross-examination at trial, the solicitor asked Applicant if he and the victim's father sent texts to each other. (Tr.pp.424-25). Counsel immediately objected to the lack of foundation, twice, and the trial court sustained the objection both times. (Tr.pp.425-26). However, following arguments outside the presence of the jury, the trial court overruled a subsequent objection. The solicitor continued her cross-examination which included questions about the texts and later about Facebook messages sent to the victim's friend. This Court finds counsel's performance at trial was reasonable. Counsel objected to questions about the messages twice, the objections were sustained, and counsel further argued against the questions outside of the jury's presence, which was ultimately overruled. See *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (citing *Strickland*, 466 U.S. at 690) ("Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."). It is unclear from the record what more counsel could have reasonably done to prevent further questions about the messages. Additionally, this Court finds it is pure conjecture to claim any further objection would have affected the outcome at trial.

Second, Applicant alleges trial counsel should have objected when the solicitor asked him whether he sold drugs, and about a no-contact order and pending charge involving his fiancée. Again, the record refutes the contention counsel did not object to the questions regarding a pending charge involving Applicant's fiancée. Counsel objected to the question, the trial court sustained the objection, and Applicant contradicted the solicitor about the charge in front of the jury. At the hearing before this Court, counsel acknowledged he did not object to the solicitor's limited questions about whether Applicant sold "pills or pot." However, counsel testified it was not his general practice to object during cross-examination of any of his clients

unless the questions were unduly prejudicial. While acknowledging the question was prejudicial, it was also limited and counsel did not believe it was so prejudicial to warrant an objection. Accordingly, the record is clear counsel exercised his professional judgment in determining when to object during cross-examination of Applicant and this Court will not second guess counsel's judgment, or his articulated trial strategy. Because counsel had a valid, strategic reason for objecting when he did during Applicant's cross-examination, his performance was reasonable. "When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). Applicant cannot meet his burden on this claim.

Next, Applicant asserts trial counsel was ineffective in failing to object to the improper testimony of Dr. Mary-Fran Croswell (Croswell). The doctor testified the victim had a normal examination, but that "doesn't exclude sexual abuse." (Tr.pp.337-38). Counsel testified his strategy in dealing with an expert such as Croswell was to let her give her opinion on direct examination because he felt could best handle it during cross-examination. This Court finds counsel's strategy was reasonable. See *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)) (holding 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). The record reflects counsel asked pointed questions of the doctor regarding her physical examination and tried to elicit inconsistencies for the jury. Applicant cannot demonstrate how a different strategy would have been more successful or how an objection would have changed the outcome at trial.

Finally, Applicant alleges trial counsel was ineffective in failing to object to the hearsay testimony of deputy Floyd and investigator Perry at trial who both testified the victim identified Applicant as her abuser. Floyd testified prior to the victim at trial, and Perry testified after she did. Counsel credibly testified that while he believed the testimony was technically hearsay, he did not object to it because the information was going to come out anyway during the victim's testimony, so he did not believe it would have been beneficial to object. Moreover, counsel testified, in his experience as a criminal defense attorney, their testimony was properly admitted based on their prior investigation into the case. This Court finds counsel's strategy was reasonable based on his experience as a criminal defense attorney. *See Edwards*, 392 S.C. at 456, 710 S.E.2d at 64 ("When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel."). While counsel was correct the statement was technically hearsay, counsel was also drawing on his years of experience to know any objection would have been futile. At the time of Applicant's trial in February 2015, any objection would have been overruled because a law enforcement officer could testify for the limited purpose of explaining why an investigation was undertaken. It was not until 2017 when our Supreme Court cautioned against the use and admission of "investigative information" so as not to circumvent the rules against hearsay. *See State v. King*, 422 S.C. 47, 66-67, 810 S.E.2d 18, 28 (2017). Trial counsel cannot be deficient for failing to object to the testimony when no case law existed at the time of Applicant's trial cautioning against the use of similar testimony. Reasonable representation does not require counsel to foresee successful appellate challenges to novel questions of law. *See e.g., Thornes v State*, 426 S.E.2d 764, 765 (S.C. 1993) (holding attorneys are not required to be clairvoyant, or to anticipate changes in the law, or facts which did not exist at the time of the trial). Regardless, the

statements by Floyd and Perry were not prejudicial to Applicant because they were cumulative to the victim's testimony. *See State v. Townsend*, 321 S.C. 55, 59, 467 S.E.2d 138, 141 (Ct. App. 1996) (explaining when "hearsay is merely cumulative to other evidence, its admission is harmless"). Accordingly, Applicant cannot meet his burden on this claim.

Therefore all of these allegations are denied and dismissed with prejudice.

*Failure to Interview/Call Witnesses
(Allegations 2 and 7)*

Next, Applicant alleges trial counsel was ineffective in failing to interview and call witnesses who could have refuted "much of the testimony of the witnesses against me" and to call his doctor to testify about a latex allergy which would have refuted the victim's testimony. Applicant used a condom during the abuse. However, Applicant failed to present any of these witnesses at his evidentiary hearing or otherwise offer any evidence as to what their testimony would have been. Accordingly, any assertion that they would have provided favorable testimony or changed the outcome at trial is purely speculative.

This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. *See Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (Ct. App. 2012) (finding an applicant failed to meet his burden of proof where he failed to present any testimony from the alleged character witnesses at the PCR hearing in order to establish prejudice from the lack of testimony of these witnesses at trial); *see also Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (noting our courts have "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 in order to establish prejudice from the witness' failure to testify at trial").

This Court notes trial counsel is an experienced criminal defense attorney who testified

he was well prepared to handle the case. This Court finds counsel's testimony more credible than Applicant's that counsel understood the case, reviewed discovery, and worked with Applicant to develop a trial strategy. Counsel also noted there were few fact witnesses to interview or call on Applicant's behalf because it was a "he said/she said" situation. See *Strickland*, 466 U.S. at 691 (stating counsel's actions are often based on information supplied by the defendant). Moreover, regarding testimony from Applicant's the doctor, the record directly refutes Applicant's allegation. The trial transcript demonstrates trial counsel told the trial court he wanted to have the doctor there to testify but it was "not possible" and attempted to submit a note from the doctor regarding a latex allergy. (Tr.p.5; pp.365-75). Applicant also admitted during his testimony before this Court counsel attempted to present evidence of his allergy. Accordingly, this Court finds applicant fails to prove either prong of *Strickland*. See *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (explaining an applicant bears the burden of proving the allegations in his or her application). Therefore, this allegation is denied and dismissed with prejudice.

*Failure to Investigate
(Allegation 3)*

Applicant asserts trial counsel failed to investigate and obtain certain documents, such as lease agreements and cell phone records, which could have been used to refute the victim's testimony. This Court finds Applicant has failed to present any credible evidence to support this allegation.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation," which includes making an independent investigation of the facts of the case. *Edwards v. State*, 392 S.C. at 456, 710 S.E.2d at 64. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere

speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a decision not to investigate must be directly assessed for reasonableness, applying a heavy measure of deference to counsel's judgments. *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

Trial counsel testified he reviewed all discovery, discussed it with Applicant, conducted an independent investigation, and met with Applicant numerous times, and developed a trial strategy. This Court finds counsel's actions were reasonable. See *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690) (holding under the deficiency prong, an attorney's performance is measured by its "reasonableness under prevailing professional norms"). This Court also finds counsel's testimony more credible than Applicant's on this issue, particularly where Applicant failed to produce to this Court any of the purported leases, cell phone agreements, or other documents he alleges would have refuted the victim's testimony. Consequently, any assertion the documents would have changed the outcome at trial is purely speculative and trial counsel cannot be ineffective. See *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357 (holding failure to investigate does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result). Accordingly, this Court finds Applicant has failed to meet his requisite burden of proof. This allegation is denied and dismissed with prejudice.

*Failure to Introduce Records
(Applicant's Allegations 4 and 6)*

Next, Applicant contends trial counsel was ineffective in failing to introduce Family Court records from his divorce to refute the testimony of his ex-wife, and impeach her testimony about the reason he filed for divorce. This Court finds the record directly refutes this allegation

as counsel attempted to introduce the Family Court pleadings, but the trial court denied the request. Further, Applicant has failed to demonstrate what introducing the documents would have brought out to the jury when he actually testified to the reason for his divorce. Accordingly, this claim is without merit.

Both trial counsel and Applicant testified about this issue at the evidentiary hearing. This Court finds counsel's testimony more credible than Applicant's. At trial, counsel cross-examined Rachel, Applicant's ex-wife, about the divorce. She testified Applicant sought the divorce based on a one-year separation and not adultery. (Tr.pp:172-73). The record demonstrates counsel tried to establish through his questioning of Rachel the stated trial strategy she and Applicant went through a "nasty divorce" and the alleged abuse was a "false allegation" made up by Rachel and her friend to benefit Rachel during the divorce. At the evidentiary hearing, counsel testified, and the trial transcript reflects, he tried to introduce the pleadings from the divorce proceedings to refute and impeach Rachel's testimony, given that she gave an incorrect answer about the reason Applicant filed for divorce. Counsel engaged in a lengthy argument before the trial court in an attempt to gain a favorable ruling, but the court ultimately ruled the Family Court records were not admissible. (Tr.pp.365-75). Applicant later testified at trial about why he sought the divorce and told the jury he filed alleging adultery. (Tr.p.414). Applicant also acknowledged during his testimony to this Court he himself refuted Rachel's testimony by telling the jury about his reasons for filing for divorce. Applicant has failed to demonstrate to this Court how counsel was ineffective. Counsel effectively cross-examined the witness in an attempt to discredit her before the jury and then attempted to introduce the records from the couple's divorce proceeding. The record reflects counsel made reasonable arguments before the trial court, but was ultimately unsuccessful. This Court will not second guess counsel's trial tactics, particularly where this

Court must make "every effort" to "eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689. This Court finds counsel's efforts regarding the Family Court records were not deficient.

Because Applicant cannot demonstrate the first prong of *Strickland*, he also fails to prove he was prejudiced by trial counsel's failure to introduce the Family Court records. Particularly where there is nothing in the record to indicate the trial court would have made a different ruling regarding the admissibility of the documents had counsel used different language during his argument before the court. Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel
(Applicant's Allegation 9)

Applicant alleges appellate counsel was ineffective in failing to file a petition for writ of certiorari to the Supreme Court in his direct appeal. However, Applicant had no right to seek discretionary review, and therefore, no right to effective representation when seeking such review. See *Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 543-44 (2006) ("We find that the decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion."); see also *Jones v. Barnes*, 463 U.S. 745 (1983) (explaining appellate counsel must be allowed to exercise reasonable professional judgment in determining which non-frivolous issues to raise on direct appeal). Appellate counsel testified he did not seek certiorari because he did not think it was warranted based on his professional opinion, specifically he believed it was in Applicant's best interests to file for PCR rather than continue pursuing a direct appeal. Therefore, Applicant cannot establish any constitutional ineffectiveness in appellate counsel's decision not to seek certiorari in his case once the Court of Appeals affirmed his convictions, and this Court finds this allegation must be denied.

CONCLUSION

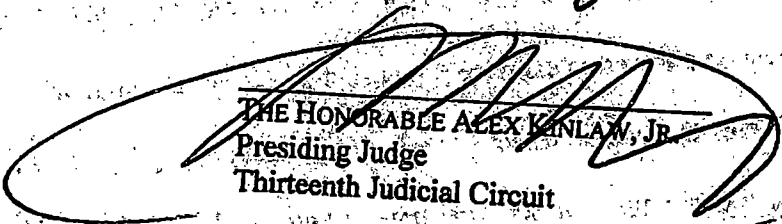
Based on the foregoing, this Court finds applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.

The Court notes the applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek review, PCR counsel must file a notice of appeal on the applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for further procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The PCR application is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15th day of February, 2019.


THE HONORABLE ALEX KENLAW, JR.
Presiding Judge
Thirteenth Judicial Circuit

Credley, South Carolina

Copy mailed to
Attorney <u>general / Wilkes</u>
on <u>2</u> , <u>4</u> , <u>19</u>

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2017-CP-23-5901

19 MAR 8 PM 3:27
Paul Wickensimer CDC GUL SC

Jerald D. Gaskins, Jr. No. 362923

Plaintiff,

vs.

State of South Carolina,

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

C. Rauch Wise, Bar No. 06188

Address:

305 Main Street, Greenwood SC 29646

Phone: 864-229-5010 Fax 864-229-2665

E-mail: rauchwise@gmail.com Other: _____

Defendant's Attorney:

Sherrie Butterbaugh, Bar No. _____

Address:

1000 Assembly St.

Columbia, SC 29201

Phone: (803) 734-0128 Fax _____

E-mail: SButterbaugh@scag.gov Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

2-19-2019
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: FOR

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Jerald D. Gaskins, Jr. № 362923)

Applicant,)

Rule 59 Motion to Alter or Amend Judgment

-vs-)

2017-CP-23-5901

State of South Carolina)

Respondent.)

19 APR 8 PM 3:28
Paul Wickensimer COC GVL SC

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Jerald D. Gaskins, Jr. hereby Moves the Court to alter or amend the Order dated February 1, 2019 and received by Counsel on February 11, 2019, based upon the following errors in the Order:

1. The Order of this Court on page 18 concludes that the decision of trial counsel in not objecting to the various text message and other electronic communications, the allegation of selling drugs and a pending charge was part of a trial strategy but the Court failed to articulate what trial strategy existed that would permit a trial lawyer from not objecting to the prejudicial testimony and cross-examination.

2. The Order of this Court on page 19 incorrectly states that defense counsel objected to the improper cross examination of the Gerald Jaskins. While counsel did originally object on the vague ground that "[S]he's, actually, walking up to him, laying these down in front of him as they were - - as though they were a statement that he gave." Tr. at 429, ll 10-12. Defense counsel at that point did not object on the ground that the solicitor did not have a good faith basis to ask the question nor did he question the authenticity of the messages. The Court failed to

consider that the testimony at the Post Conviction Relief hearing established that the messages were not from Walter Mucienko, the father of the minor child. The Court failed to consider or rule upon the issues that the jury was lead to believe the messages were in fact between Mr. Gaskins and Mr. Mucienko. To fail to rule upon this issue permits the conviction of Mr Gaskins to stand based upon false testimony implied from the cross-examination of Mr. Gaskins. No reasonable trial strategy can be given for not properly objecting to the improper cross examination of Mr. Gaskins as to the alleged text messages improperly attributed to Mr. Mucienko..

3. The Order of the Court on page 19 states "Counsel objected to questions about the messages twice, the objection was sustained, and counsel further argued against the questions outside the jury's presence, which was ultimately overruled." This finding ignores the ruling of the South Carolina Court of Appeals in the unpublished opinion in this matter that the issue was not preserved for appellate review. As trial counsel apparently attempted to object but did not effectively do so, no trial strategy could be involved in his failure to properly preserve the issue. As trial counsel failed to preserve the issue, he was ineffective.

4. The Order of this Court on page 19 fails to recognize or consider the fact that trial counsel did not object to the improper cross examination of Mr. Gaskins concerning the daughter of Jennifer Anglin. This cross examination of Mr. Gaskins is found at Tr. 444, 18 to 447, 116. This cross-examination improperly brought out the allegation Mr. Gaskins was using the name "Jay Fowler." The Court failed to consider that trial counsel was ineffective for not objecting as to both the improper character evidence brought out, but he failed to question as to the factual basis for the cross-examination. At neither the trial nor the Post Conviction relief hearing did the

State ever offer any proof that "Jay Fowler" was in fact Gerald Gaskins. Counsel should have objected to this improper cross-examination.

5. The Order of this Court on page 19 incorrectly contends that there was an objection to the cross examination of Mr. Gaskins that brought out the allegation Mr. Gaskins has a pending charge against him involving Angelina Campbell. The record at the pages cited above shows in fact no objection to this improper cross-examination was ever made. The only objection ever made was "There's arguing at this point." Tr. at 447, ll 8-9. As a matter of law, this objection would not have preserved for appellate review the improper questions asked by the State.

5. The Order of this Court on pages 19-20 states that trial counsel used his professional judgment in not objecting to the improper question of whether Mr. Gaskins sold drugs. The Order fails to set forth any reasonable trial strategy for not objecting to this totally improper question. An alleged judgment call as to the question not being unduly prejudicial is hardly a valid trial strategy. The same would be true for not objecting to the heated discussion between Mr. Gaskins and the assistant solicitor when discussing the alleged pending charges against Mr. Gaskins involving Angelina Campbell.

6. The Order of this Court on page 21 states that counsel was not ineffective for his failure to object to hearsay testimony from the alleged victim from Deputy Floyd, Officer Perry and Dr. Croswell. The Court incorrectly found "[C]ounsel testified, in his experience as a criminal defense attorney, their testimony was properly admitted based on their prior investigation in the case." The Court further concluded "While Counsel was correct the statement was technically hearsay, counsel was also drawing on his years of experience to know any objection would be futile." The statements in question were hearsay and inadmissible. As

the statements went well beyond that which is permitted by the case law and the Rules of Evidence. The Court further erred in finding the law at the time of this trial did permit such statements. This was in error. "A well-settled exception in criminal sexual conduct cases allows limited corroborative testimony. When the victim testifies, evidence from other witnesses that the victim complained of the sexual assault is admissible in corroboration; however, such evidence is limited to the time and place of the assault and cannot include details or particulars." *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001)(internal citation omitted). Thus, since before 2001 a reasonably trained criminal defense lawyer in South Carolina would have known the statement was inadmissible except for the time and place. No novel questions of law were involved in this case. The Court was incorrect in holding "Trial counsel cannot be deficient for failing to object to the testimony when no case law existed at the time of Applicant's trial cautioning against the use of similar testimony." Even as far back as 1994 our Supreme Court has said, "Improper corroboration testimony that is merely cumulative to the victim's testimony, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration." *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994). The law on this issue was re-affirmed when the South Carolina Rules of Evidence were adopted on September 3, 1995. *See*, Rule 801(d)(1)(D). Any reasonable trial lawyer who is familiar with the law and the Rules of Evidence would have known to object to the improper testimony. Mr. Gaskins was prejudiced by the failure of his trial counsel to object to the hearsay testimony.

7. The Order of this Court on page 21 gave an improper interpretation to *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). This case did not create any new law in 2017. The opinion

re-affirmed the traditional hearsay rule. The Court said "Further, we do not discern, nor has the State cited, any exception to the hearsay rule that would provide for the admissibility of the testimony. Nonetheless, even with this straightforward analysis, we believe it is necessary to caution prosecutors against using 'investigative information' as it appears this is an attempt to circumvent the rules against hearsay." *Id.* at 66-67, 810 S.E.2d at 28. This portion of the Order should be altered or amended to reflect the proper holding of *King*.

8. The Order of this Court on page 24, incorrectly stated "Trial counsel testified he reviewed all discovery, discussed it with applicant, conducted an independent investigation and met with Applicant several time, and developed a trial strategy." The error in this finding is that trial counsel testified at the Post Conviction Relief hearing that he did not receive two of the electronic messages used by the State in cross-examining Mr. Gaskins. The only group of messages he had received before trial, and it was the night before, were the messages from Walter Mucienko. Trial Counsel testified the first time he had seen two of the sets of electronic messages was at the Post Conviction Relief hearing. This portion of the Order should be altered or amended to reflect the correct facts.

9. The Order of this Court fails to address the improper vouching of the testimony of the minor child. The comments by Officer Perry and Dr. Croswell, cited in the proposed order of Mr. Gaskins, were in fact simply improper bolstering that has been condemned by our courts. *State v. Dawkins*, 297 S.C. 386, 377 S.E.298 (1989). As our Supreme Court has said "[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." *State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). The Order of the Court does not address the improper vouching issue:

10. The Order of this Court fails to discuss or rule upon the improper expert testimony issue. During the trial Officer Robert Perry was asked for his expert opinion about delayed disclosure of sexual abuse. The question and answer were as follows:

Q. (By Ms. Hodge) And in your experience investigating those cases is -- what we called delayed disclosure or the child coming forward much after the events have, actually, occurred, is that common or uncommon?

A. (By Officer Perry) Oh, yeah. It's such a rarity for me to see a case that a child has immediately told that it's like, you know, maybe one out of a hundred, you know. So that is a very common thing, very common.

Tr. at 357, 113-10.¹

Officer Perry was never qualified as an expert and no objection was taken to his testimony. The Order did not discuss the failure of trial counsel to object to this testimony which was prejudicial against Mr. Gaskins.

11. The Order of this Court on page 26, fails to discuss the appellate issue raised by Applicant at the Post Conviction Relief hearing. Mr. Gaskins raises the point that Appellate counsel failed to fully inform Mr. Gaskins as to his options before Mr. Gaskins made the decision to drop his appeal as recommended by his appellate counsel. Mr. Wilkes testified at the hearing that he was aware of the pending *Perez* case and knew that the South Carolina Supreme Court had agreed to review *State v. Wallace*, 384 S.C. 428, 638 S.E.2d 275 (2009) at the time the South Carolina Court of Appeals made its ruling in this case. A client is entitled to be advised as

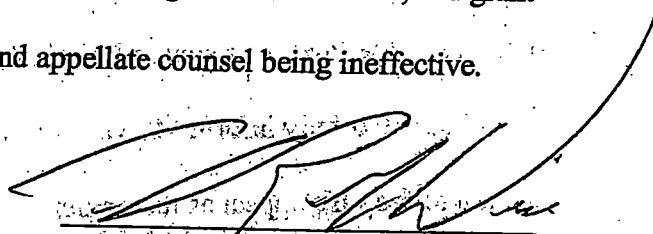
¹ Immediately after this statement, the officer then explains at length how the delayed disclosure hampers their investigation. He even went so far as to explain how he could have obtained the text messages from a phone, but this was not an option in this case. Tr. at 357, 111 to 358, 19. Again, according to the sister, this information was available on her Ipad in the form of pictures. These pictures for some unexplained reason would not be turned over for more than two years.

to the current state of the law that is within the knowledge of his lawyer. The decision of a client not to appeal any further is no better than the advice given him by his counsel. When counsel fails to advise him of all the relevant facts within the knowledge of the lawyer, then a client is not making an informed decision. In *Padilla v. Kentucky*, 559 U.S. 356 (2010) the United States Supreme Court recognized that the failure of counsel to advise a client of the collateral consequences of a plea is grounds for finding counsel to be ineffective. There should be no different rule here. The issue of the failure of appellate counsel to fully inform Mr. Gaskins of the state of the law is grounds for finding appellate counsel was not effective. The Order of this Court does not discuss this issue.

CONCLUSION

For the foregoing reasons, this Court should withdraw the Order previously issued in this matter, issue an Order in which the Court makes the required findings of facts and law, and grant Jerald D. Gaskins, Jr. a new trial based upon his trial and appellate counsel being ineffective.

February 19, 2019



C. Rauch Wise
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(864) 229-5010
rauchwie@gmail.com
S. C. Bar No. 06188

Attorney for Jerald D. Gaskins, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jerald D. Gaskins Jr., 362923

Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-5901

**RETURN TO APPLICANT'S MOTION
TO ALTER OR AMEND JUDGMENT**

Respondent submits this Court's rulings are legally correct and supported by the record, and that the Court should deny Applicant's Motion to Alter or Amend Judgment dated February 19, 2019. In support, Respondent would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. In April of 2013, the Greenville County Grand Jury indicted Applicant for four counts of criminal sexual conduct with a minor second degree (2013-GS-23-3231, 3232, 3234, 3235) and two counts of lewd act upon a child (2013-GS-23-3233, 3236). Randall L. Chambers represented Applicant. Applicant proceeded to trial on February 4, 2015, before the Honorable D. Garrison Hill. The jury found Applicant guilty of all charges. Judge Hill sentenced Applicant to concurrent twenty-year terms of imprisonment for each of the second-degree criminal sexual conduct with a minor convictions, a concurrent fifteen-year term of imprisonment for one of the lewd act convictions, and a consecutive five-year term of imprisonment for the remaining lewd act conviction.

Applicant filed a timely notice of appeal. J. Falkner Wilkes, Esquire perfected the

appeal. The South Carolina Court of Appeals affirmed Applicant's convictions on February 1, 2017. *State v. Gaskins*, Op. No. 2017-UP-166 (S.C. Ct. App. filed April 19, 2017). The remittitur was returned to the circuit court on May 5, 2017.

II. Current Post-Conviction Relief Action

On September 14, 2017, Applicant filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on October 24, 2018, at the Greenville County Courthouse before the Honorable Alex Kinlaw, Jr. Applicant was present and represented by C. Rauch Wise. Respondent was represented by DeShawn H. Mitchell and Sherrie Butterbaugh of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. Trial counsel Randall L. Chambers and appellate counsel J. Falkner Wilkes also testified. Applicant also called Walter Mucienko to testify on his behalf at the hearing.

By written order signed February 1, 2019, and filed February 4, 2019, Judge Kinlaw denied and dismissed the application with prejudice. Applicant subsequently filed a Motion to Alter or Amend the Judgment. This return follows.

III. Applicant's Motion to Alter or Amend

In the motion to alter or amend, Applicant disagrees with various findings of fact set forth in the order of dismissal. Applicant also disagrees with certain conclusions of law, including this Court's application of law regarding allegations of failure to object to improper hearsay testimony. Finally, Applicant asserts the Court failed to address allegations raised through testimony at the evidentiary hearing. In sum, Applicant requests the Court submit an amended order of dismissal, or reverse its prior rulings and grant him post-conviction relief based on arguments that were denied by the Court in its order of dismissal.

In response, Respondent submits this Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; *see also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent asserts the Court fully ruled on all issues properly presented through Applicant's amended post-conviction relief application. Moreover, there was insufficient evidence presented at the evidentiary hearing to address any allegations Applicant asserts were raised at the hearing and not ruled on by the Court in its order of dismissal. *See* Rule 71.1(e), SCRCP (stating the burden of proof is on the applicant to prove the allegations by a preponderance of the evidence). Further, beyond simply asking the Court to alter or amend its order, Applicant is also asking the Court to reverse its decision and grant him relief. Such a request is more properly addressed through the appellate process. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to, but not ruled upon by, the trial court).

As each properly raised allegation was addressed fully in the order, Applicant's assertions are without merit. Indeed, Applicant's motion is replete with arguments previously presented to the Court, which this Court considered when making its ruling. Respondent submits this Court's rulings are legally correct and supported by the record, and this Court should deny Applicant's request to reconsider, alter or amend its ruling.

IV. Relief Requested

WHEREFORE, having made its return to the motion, Respondent requests the motion to alter or amend be denied and the motion be dismissed.

Respectfully submitted,

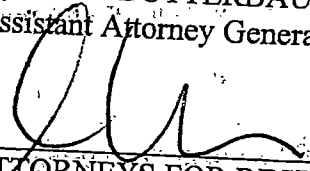
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

BY:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

March 1, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jerald D. Gaskins Jr., 362923

Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-5901

ORDER DENYING APPLICANT'S
59(e) MOTION TO ALTER OR AMEND
JUDGMENT

ENTERED COMPUTER

19 MAR 5 AM 10:12
Paul Wickensimer COC GUL SC

This matter comes before the Court by way of Applicant's Rule 59(e) Motion to alter or amend its order of dismissal denying the application for post-conviction relief.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. In April of 2013, the Greenville County Grand Jury indicted Applicant for four counts of criminal sexual conduct with a minor second degree (2013-GS-23-3231, 3232, 3234, 3235) and two counts of lewd act upon a child (2013-GS-23-3233, 3236). Randall L. Chambers represented Applicant. Applicant proceeded to trial on February 4, 2015, before the Honorable D. Garrison Hill and a jury. The jury found Applicant guilty of all charges. Judge Hill sentenced Applicant to concurrent twenty-year terms of imprisonment for each of the second-degree criminal sexual conduct with a minor convictions, a concurrent fifteen-year term of imprisonment for one of the lewd act convictions, and a consecutive five-year term of imprisonment for the remaining lewd act conviction.

Applicant filed a timely notice of appeal. J. Falkner Wilkes, Esquire perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions on February 1,

MA #1

2017. *State v. Gaskins*, Op. No. 2017-UP-166 (S.C. Ct. App. filed April 19, 2017). The remittitur was returned to the circuit court on May 5, 2017.

II. Current Post-Conviction Relief Action

On September 14, 2017, Applicant filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on October 24, 2018, at the Greenville County Courthouse before the Honorable Alex Kinlaw, Jr. Applicant was present and represented by C. Rauch Wise. Respondent was represented by DeShawn H. Mitchell and Sherrie Butterbaugh of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. Trial counsel Randall L. Chambers and appellate counsel J. Falkner Wilkes also testified. Applicant also called Walter Mucienko to testify on his behalf at the hearing.

By written order signed February 1, 2019, and filed February 4, 2019, Judge Kinlaw denied and dismissed the application with prejudice. Applicant subsequently filed a Motion to Alter or Amend the Judgment dated February 19, 2019. Respondent submitted a return on or about March 1, 2019.

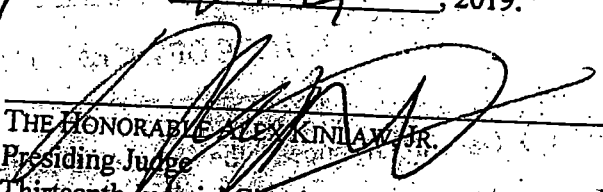
III. Applicant's Motion to Alter or Amend is Denied

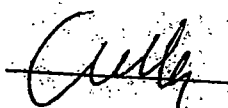
This Court finds its Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; *see also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court further finds its Order of Dismissal addresses and disposes of all allegations properly raised. This Court finds there was insufficient evidence presented at the evidentiary hearing to raise new allegations not previously raised in the application for relief. See Rule 71.1(e), SCRCP (stating the burden of proof is on the applicant to prove the allegations

by a preponderance of the evidence). Having carefully reviewed the record in this matter and arguments presented, this Court finds there is no basis for altering or amending its prior ruling.¹ Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous order of dismissal.

This Court notes if Applicant wishes to seek appellate review of this order and the order of dismissal, a notice of appeal must be filed and served within thirty days of the service of this order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 4th day of March, 2019.


THE HONORABLE ALEX K. KINLAW, JR.
Presiding Judge
Thirteenth Judicial Circuit

 South Carolina

Copy mailed to
Attorney General / Rauch Wise
on May 1, 2019

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Alex Kinlaw, Jr. Circuit Court Judge

Lower Case No 2017-CP-23-5901

Jerald D. Gaskins, Jr. #00362923..... Petitioner,

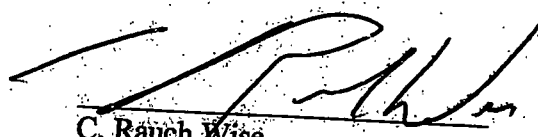
vs.

State of South Carolina Respondent.

NOTICE OF INTENT TO APPEAL

Jerald D. Gaskins, Jr. appeals the Order of Dismissal of the Honorable Alex Kinlaw, Jr.
filed February 4, 2019, and the Order Denying Applicant's 59(e) Motion to Alter or Amend
Judgment dated March 4, 2019. Petitioner received notice on May 30, 2019.

May 30th, 2019



C. Rauch Wise
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(864) 229-5010

Attorney for Appellant

OTHER COUNSEL OF RECORD

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