

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 28 2025

S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

BRYAN JEFFREY ELLIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000761

APPENDIX

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C.D. Judicial Error

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- (1) Abuse of discretion when choosing inferior Denno case law simply because he "usually follow[s]" it.
- (2) Abuse of discretion when using involuntary statement to decide if coercion existed.
- (3) Abuse of discretion when setting coercive parameters, stating defendant did not allege being told how and when to strike through and initial corrections, though defendant stated he did everything the investigator told him to do.
- (4) Abuse of discretion when own coercive parameters met during jury portion, where the investigator openly admits — and without being lead — the very exculpatory evidence the judge based his biased opinion on defendant's statement; refusing to grant defense request for directed verdict and a new trial. Tr 121, Tr 327.8-14
- (5) Abuse of discretion by authenticating a forensic interviewer as an expert witness against S.C. case law. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013)
- (6) Abuse of discretion by not recusing himself from case due to prejudice.

C. Judicial Error

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- (7) Abuse of discretion when continually badgering defense on-stand during the suppression hearing and in front of the jury, showing bias by vocal and physical demeanor in disallowing defense attorney to follow procedure, interrupting defense counsel during witness examination, telling defendant how to answer questions, even going so far as stretching over his podium into the witness stand while reproaching the defendant how to answer a non-question — in front of the jury.
- (8) Showing bias when lunging out of podium toward his chamber door with a distinct hatred on his face, upon defendant's leaving of the stand during suppression hearing.
- (9) Abuse of discretion by imposition of cruel and unusual punishment for maximum sentencing, though defendant had no pre-sentencing evaluation, no prior arrests nor convictions, and judge lost jurisdiction to hear case due to bias.
- (10) Abuse of discretion at sentencing for using defendant's victimization as a child against him.

C. Judicial Error

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- (11) Abuse of discretion when opined that maximum sentence be imposed because defendant enforced his Constitutional rights to confrontation, due process, and a fair hearing.
- (12) Abuse of discretion when suggesting that imposition of maximum sentencing will deter others' from committing convicted crimes as defendant is not authority to anyone but himself.
- (13) Abuse of discretion when stating that recidivist nature of convictions and lack of rehabilitation from the State could cure the status offense of being a "pedophile".
- (14) Abuse of discretion when imposing cruel and unusual, dehumanizing, procedurally unreasonable maximum sentences to run consecutively that is substantively unreasonable due to not just defense counsel's failing to introduce mitigating circumstances via a pre-sentencing evaluation, but to the lack of a criminal history (and thus, knowledge of the criminal justice system); defendant's mental health status, and his being previously victimized at a young age; and not affording defendant with restitution for solicitor's flamboyant misconduct(s).

C. Judicial Error

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(15) Abuse of discretion by allowing a misstatement and mistake of law as a 'sexual battery' under 16-3-651(h)(2015) States: "Sexual intercourse or any intrusion, however slight, of any part of a person's body or any object into the genital or or anal openings of another person's body"; there was no allegation that defendant penetrated the alleged victim's 'genital' nor 'anal openings'.

(16) Stated "indeterminate" life and "indeterminate" 15-years Sentencing, but writing determinate sentences of "Life" and "15 years", with no pre-trial incarceration goal-time noted on Sentencing sheets; meaning the judge explicitly stated a life-sentence eligible for parole at the minimum 25-years and a 15-years-sentence eligible for parole at the minimum Zero(0)-years — NOT Life without possible parole and mandatory 15-years.

(17) Abuse of discretion by not allowing defense possible exculpatory evidence, requested through defense counsel, of Officer Rawls' disciplinary record, violating the FOIA (Freedom of Information Act).

(18) Failed to ask defendant if appointed counsel was adequate, which defendant already notified court of previous ~~an~~ disgruntlement.

D. Ineffective Assistance of Appellate Counsel

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- (1) Failed to adhere to the Sentencing Reform Act of 1984 for challenging inhumane sentences, though they are in-line with statute. Counsel did not allege judicial abuse of discretion. Only that a sentence given within guidelines does not constitute justifiable imposition once actively applied.
- (2) Failed to allege abuse of discretion of trial court cumulative to entire record.
- (3) Failed to allege faulty indictments with no valid witness.
- (4) Failed to request grand jury proceeding transcripts in order to verify date, time, statements, and information other than jury privilege deliberation.
- (5) Failed to allege prosecutorial misconduct cumulative to entire record.
- (6) Failed to obtain and issue corrected ~~pre~~ transcripts; instead, opting to tell defendant that his minimalist, misstated/typo'd, illegal transcripts are all the record there is and will be.

D. Ineffective Assistance of Appellate Counsel

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- (7) Failed to assert Federal Statute that requires verbatim recording of every court session to include side bars and audio/video evidence. (U.S. v Winstead, 74 F3d 1313, 1321 (1996)).
- (8) Failed for not arguing 16-3-655(D)(1), requiring the jury to make a distinction of their collective perception constituting sexual battery and intrusion.
- (9) Failed to allege that case entirely based on involuntary confession with no direct evidence (prior to trial) and lacking proof of all statutory elements, thereby invalidating arrest and prosecution of allegations.

E. ^{Conviction} Pre-~~incarceration~~ Violations

pg 14

- (1) U.S. Constitution, Amendment Four violated when officer Smith entered defendant's home without an invitation, nor probable cause or extrinsic circumstances.
- (2) Fourth Amendment violation when officer Rawl entered defendant's home ~~unann~~ unannounced without invitation, extrinsic circumstances, probable cause, or search warrant.
- (3) Fifth Amendment violation when officer Rawl kicked defendant from his home before obtaining a search warrant.
- (4) Fifth Amendment violation when officer Rawl pressured defendant to cooperate, be it through direct contact, verbal means, psychological means, suggestive means, or even subjective means that extend to being objectively unreasonable by use of intimidation.
- (5) Fifth Amendment violated when officer Rawl did not Mirandize defendant prior to first interrogation.
- (6) Fifth Amendment and Brady violation when officer Rawl failed to maintain his primary duty to preserve evidence of the first intimidated interrogation, constituting spoliation of exculpatory evidence.

E. Pre-Conviction Violations

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- (7) Fifth Amendment and Brady violation when officer Rawl failed to maintain his primary duty to preserve evidence of the second intimidated interrogation, constituting spoliation of exculpatory evidence.
- (8) Sixth Amendment violation when officer Rawl decided not to inform defendant of right to counsel prior to evicting defendant from his home.
- (9) Sixth Amendment violation when officer Rawl decided, in bad faith, not to inform defendant of right to counsel prior to first intimidated interrogation.
- (10) Sixth Amendment violation when officer Rawl decided not to allow defendant ample time and/or means to search for counsel, adding that defendant's phone was illegally seized.
- (11) Fourth Amendment violation when officer Laintz passed directly by defendant, but failed to present the defendant the search warrant in best efforts; entering defendant's home unlawfully.
- (12) Fourth Amendment violation when officer Rawl illegally seized defendant's mobile phone.

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E. Pre-Conviction Violations

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(13) Fourth Amendment violation when officer Rawl did not inform defendant of his right to not consent to warrantless search.

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

(14) Fifth Amendment violation when officer Rawl did not inform defendant of his right to not consent to warrantless search.

(15) First Amendment violation when officer Rawl refused to allow defendant to remain silent upon asserting Fifth Amendment right against self-incrimination.

(16) Defendant affectively kidnapped, illegally, by Thomas and Danny Havird, and aggravated coercion in nature.

(17) officer Rawl admits to violating defendants' 5th and 6th Amendment rights by visiting defendant in jail without notifying defense counsel, proving his lack of care for defendant's Constitutional guarantees. Also, wore body camera at this time. TR 346

(18) officer Rawl had no probable cause, prior to coercive interrogation, to request search warrant of defendant's home as no reason to believe in allegation truthfulness or reliability
11C v Wilhelm 2011 WL 119-77 (4th Cir. 1996)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Bryan Jeffrey Ellis, SCDC #373122,	)	Case No. 2020-CP-32-2225
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Bryan Jeffrey Ellis (Applicant) on June 25, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on January 24, 2016, following an investigation into allegations of sexual abuse involving his stepdaughter. During its July 2017 term, the Lexington County Grand Jury indicted Applicant for first-degree criminal sexual conduct (CSC) with a minor (2017-GS-32-2303) and third-degree CSC with a minor (2017-GS-32-2305(A)).

On July 10, 2017, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Assistant Public Defender David Mauldin represented Applicant. Assistant Solicitors Suzanne Mayes and Le'Jessica Stringfellow prosecuted the case.

A. Pre-Trial

Prior to trial, Applicant challenged the admissibility of his written confession, and the trial judge held a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964). The trial court found

Applicant's confession was freely and voluntarily given. (R. 121). However, Applicant moved to redact certain portions of the confession on the basis of the prejudice of such portions outweighing their probative value. The State and Applicant agreed on all redactions except one. Applicant took exception to the following question and answer regarding whether Mother knew Applicant had discussed masturbation with Victim and Brother One:

Q: Did your wife know that you had these conversations with [Brother One] and [Victim]?

A: No. I never thought to tell her I talked to them about it.

(R. 130–32, R. 493). The trial court declined to redact the entire question and answer but instructed the State to redact any reference to Brother One. The State complied with the trial judge's ruling and made the appropriate redactions. The redacted exhibit that was entered into evidence read as follows:

Q: Did your wife know that you had these conversations with [Victim]?

A: No. I never thought to tell her.

(R. 130–32, R. 500; State's Exhibit #29).

B. Summary of Evidence Adduced at Trial

The victim (Victim) in this case was born in 2008. (R. 237). Applicant and victim's mother (Mother) began dating in 2009 when Victim was one and a half years old. (R. 237). Applicant is not Victim's biological father, but Applicant and Mother did share one biological child together (Brother Two). (R. 237). Victim had another brother (Brother One) who was also not biologically related to Applicant. (R. 237). Applicant and Mother were married in 2010 and then lived together with Mother's parents (Grandma and Grandpa) for approximately the next six years. (R. 238). In

March 2015, Applicant and Mother purchased a mobile home approximately fifty yards away from Mother's parent's home. (R. 239).

On January 23, 2016, Victim disclosed to Grandma that she was sexually assaulted by Applicant. (R. 225). Victim disclosed the same information to Mother the following day, January 24, 2016, before Mother went to work. (R. 227). Mother called out of work and sent a text to Applicant asking him to come home. (R. 246). Applicant returned home at approximately 3:30 PM at which time Mother asked Applicant: "Did you make [Victim] lick your pee-pee?" (R. 247, lines 14-15). Applicant responded in the affirmative saying: "Yes. It's all true." (R. 247, line 15). Mother then went to her parent's home where she called 911 at approximately 3:56 PM. (R. 248). Grandpa and his brother (Mother's Uncle) went to Applicant's home to wait with Applicant until law enforcement arrived. (R. 251). Grandpa asked Applicant whether he sexually assaulted Victim. Applicant responded in the affirmative. (R. 280).

Sergeant Miles Rawl of the Lexington County Sheriff's Department arrived at Applicant's residence and spoke with Applicant inside Rawl's police vehicle. (R. 313). Rawl advised Applicant of his Miranda rights and Applicant voluntarily spoke with Rawl. (R. 316). Applicant confessed verbally and in writing. (R. 318). One portion of Applicant's written confession reads as follows:

I [Applicant] have changed my family by completing what should never have been done. It started mid to late November 2015. I had my daughter perform a hand job without ejaculation. Later in December, early January she had done the act again with flavored lubricant and an external vibrator in which she used on herself after seeing me use it on myself. I had asked if she would put her mouth on my penis and she did. I ejaculated on the floor and some in her mouth. Last was again using her mouth this past Thursday. I was going to put my mouth on her vagina but I became nauseated and did not proceed in doing so. I ejaculated in her mouth and on the floor.

(R. 326–27, lines 19-5, R. 494). At trial and in her forensic interview, Victim corroborated details of Applicant’s confession, including details regarding Victim performing fellatio on Applicant, Applicant’s subsequent ejaculation in Victim’s mouth, and Victim’s use of a vibrator on herself. (R. 174–77, 181, State’s Exhibit #26).

Upon finishing his written confession, Applicant was arrested by Rawl. (R. 341). Law enforcement also seized Applicant’s cell phone. Detective Michael Phipps performed an extraction of Applicant’s phone that revealed a series of Google searches performed on the phone from the time Mother called 911 to the time Rawl arrived and began interviewing Applicant. Among the terms entered into the Google search engine on Applicant’s phone during this time period were “help with addiction”, “addiction”, “beat addiction”, and “beat sex addiction”. (R. 373, line 19; R. 374, line 22, 24; R. 375, line 3).

While awaiting trial, Applicant wrote to Mother occasionally from the Lexington County Detention Center. (R. 252, State’s Exhibit #20). In one such letter Applicant wrote to Mother: “I know I was wrong for what [Victim] and I did. That’s why I confessed.” (R. 421, State’s Exhibit #20 p. 2). In the same letter, Applicant wrote “I know what [Victim] and I did was fucked up.” (State’s Exhibit #20, p. 1).

As discussed above, the trial court declined to redact the question and answer regarding whether Mother knew Applicant had discussed masturbation with Victim and Brother One, but instructed the State to redact any reference to Brother One. The redacted exhibit was entered into evidence read as follows:

Q: Did your wife know that you had these conversations with [Victim]?

A: No. I never thought to tell her.

(R. 130–32, R. 500, State’s Exhibit #29). Prior to admitting the redacted copy of Applicant’s confession into evidence, the trial judge gave the jury the following instruction:

The State has introduced State’s exhibit number 29. A copy instead of the original document which is Court’s exhibit number 1 has been introduced because I have determined that portions of Court’s exhibit number 1 is not admissible, therefore, I have ordered that to be redacted or removed from Court’s exhibit number 1, therefore, it is now State’s exhibit number 29. You will see some markings on there for items redacted or removed and the like. The fact that I have redacted portions of State’s 29 or only allowed State’s 29 into evidence should not be considered by you for any purpose whatsoever during your deliberations. I have ruled that it is not proper that those portions which have been redacted would be a part of the record in this case.

(R. 321–22, lines 13–2). The State made no mention of Applicant’s conversation with Brother One at trial.

C. Verdict & Subsequent Proceedings

On June 12, 2017, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to consecutive terms of life imprisonment for first-degree CSC with a minor and fifteen years’ imprisonment for third-degree CSC with a minor.

Applicant filed a timely notice of appeal. Appellate Defender Joanna K. Delany (Appellate Counsel) perfected Applicant’s appeal by filing a brief with the Court of Appeals on the following issue:

Whether the trial court erred in denying the defense’s motion to redact part of [Applicant]’s statement in which he admitted to Detective Rawl that he discussed masturbation with another minor child, prejudicing [Applicant] by injecting potential sexual misconduct with another child since [Applicant] was not charged with any offense regarding that child, particularly where the refusal to redact allowed the solicitor to argue in closing that [Applicant] was a sex offender who must be stopped?

Following further briefing, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Ellis*, 2019-UP-166 (S.C. Ct. App. withdrawn, substituted, and refiled June 26, 2019).¹ The case was remitted back to the circuit court on August 2, 2019. Applicant timely commenced this PCR action on June 25, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "Ineffective assistance of trial counsel"
 - a. "Introducing prejudicial character evidence of 'prior bad acts' of discipline. Tr. 188."
 - b. "Failed to raise impeachment of alleged victim when she stated a scientific improbability that she and her brothers were hanged by their shirts from a hook on the door."
 - c. "Failed to raise impeachment of alleged victim when forensic video shows interviewing expert witness leading questions and inconsistent statements during interview."
 - d. "Failed to use pre-trial actions such as: motion to dismiss, motion for summary judgment, motion for speedy trial, motion(s) for depositions and/or interrogatories, motion to reduce bond, and (initially, until defendant request to relieve counsel) motion to suppress illegally obtained evidence. Violating procedural due process."
 - e. "Failed to obtain expert witnesses to rebut prosecution's expert witness."
 - f. "Failed to object to having forensic interview be authenticated as an expert witness in violation of S.C. case law: *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013)."
 - g. "Failed to object to illegally obtained mobile phone data outside of search warrant criteria; to include being too broad, introduced information too prejudicial compared to probative value, and expiration of warrant when executed."

¹ The Court granted Applicant's petition for rehearing following the Court's original opinion, which was filed May 8, 2019.

- h. “Failed to educate defendant of various pleas, such as nolo contendere, not guilty due to mental illness, or even appearing to obtain a plea—despite counsel’s immediate superior boasting counsel’s credential and enforcing that defendant would remain unheard.”
- i. “Failed to educate defendant on meaning of ‘25 to life, life, parole, sexual battery,’ etc. Even so far as stating ‘you understand you just don’t like it’ during one of the less than eight attorney visits in a high value case during defendant’s 18-month illegal detainment.”
- j. “Showed bias, stating to defendant: ‘I’m tired of talking about pee-pees and vaginas’ and ‘He gets paid the same whether he wins or loses’ during visits to defendant in jail.”
- k. “Failed to educate defendant about a ‘bench trial.’
- l. “Failed to submit psycho-sexual psychiatrist, Dr. Tom Martin as an expert witness during trial, at sentencing, or even to the court for a pre-sentencing report.”
- m. “Failed to verify defendant’s competency to stand trial and/or mental state for lack of criminal intent.”
- n. “Failed to request trial judge recuse himself (the judge) for bias, apparent in verbal tone, physical mannerisms, and one-sided interpretations of the law.”
- o. “Failed to object to solicitor’s allegation that there was ‘no way’ government witnesses could have known about defendant’s involuntary statement, though the lead investigator all ready took the stand stating he talked to them directly after defendant’s arrest; and the D.S.S. report states they received the statement prior to the forensic interviews.”
- p. “Failed to impeach forensic interviewer for her prior inconsistent statements in forensic video and on stand, to include her disregard towards leading questions and suggestions, that she states she did not commit.”
- q. “Failed to object to faulty indictments at trial for not having a valid witness.”
- r. “Failed to object to indictment for CSC 3rd degree being faulty due to time paradox of grand jury convening and signing indictment the day of trial, where invalid witness seems to be in two places at once, even.”
- s. “Failed to have forensic interviews transcribed so that defendant could review them as allowed by due process for discovery.”

- t. “Failed to have mobile phone data available to defendant in hard copy format to review as allowed by due process for discovery.”
 - u. “Failed to request to exclude expert testimony for unreliability under S.C.R.E. 702 and Jamison v. Morris, 285 S.C. 215, 228, 684 S.E.2d 168, 175 (2009).”
 - v. “Failed to attach ruling of involuntary confession under F.R.E. 103(a)(1)(A) and S.C.R.E. 103(a)(1) when the courts parameters met after Officer Rawl stated he coached defendant to edit statement and initial (U.S. v. Bolick, 917 F.2d 135, 149 (4th Cir. 1990).”
 - w. “Failed to request charge for spoliation of non-preserved first interrogation.”
 - x. “Failed to request charge for spoliation of non-preservation of video of interrogations.”
 - y. “Failed to introduce Best Efforts Rule in presenting search warrant of home to home-owner prior, or even after, its completion, though home-owner defendant was passed by the officer, in his yard, being interrogated.”
 - z. “Failed by allowing immaterial, prejudicial evidence of non-prosecuted allegations, therefore against the res gestae, by introducing an external vibrator to enhance the prosecution’s case by inferring other criminal acts or to confuse the issues to the jury.”
 - aa. “Failed to request a limiting instruction against the introduction of an external vibrator—an act not prosecuted before or at trial. (State v. Timmons, 372 S.C. 48, 54–55, 488 S.E.2d); (Webb v. CSX Transp. Inc., 364 S.C. 639, 655, 625 S.E.2d 440, 449 (2005).”
 - bb. “Failed by attempting to make generalization of objections contemporaneous as ‘previous objections’ (State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996).”
 - cc. “Failed to secure a jury of defendant’s peers: age, gender, education, military (nearly all-female jury).”
 - dd. “Only decided to do a very limited defense when defendant requested counsel dismissal due to counsel’s malpractice; bias; refusal to form a defense involving defendant in the process; not trying to obtain a plea offer; instructing that if counsel dismissed, defendant would not get new appointed counsel.”
 - ee. “Failed to allege double jeopardy as even prosecution admits elements of CSC 1st constitutes criteria for CSC 3rd Tr. 378.”
2. “Malicious prosecution”

- a. "Introduction of suicidal mental health issue by action similar to a 'talking objection' by questioning character of evidence with no foundation."
 - b. "Introduction of irrelevant, non-material evidence, being procedurally illegal due to search warrant expiration, and being too broad, for defendant's mobile phone data."
 - c. "Unjustly and unfairly opined in opening and closing arguments multiple times, dehumanizing defendant and inciting the jury's passions by continually calling defendant 'sex offender,' 'predator;' suggesting multiple victims; bolstering and vouching, by religious oath, the alleged victim while demeaning defendant; and out-right instructing the jury to 'find the defendant guilty'—twice in the same instance and the court instructions cannot remove this taint of flagrant misconduct." U.S. v. Davis, 514 F.3d 596, 613–14 (6th Cir. 2008), Berger v. U.S., 295 U.S. 78, 88 (1935), U.S. v. Kennedy, 372 F.3d 686 (4th Cir. 2004), Boyd v. French, 147 F.3d 319, 328–29 (4th Cir. 1998)."
 - d. "Continually introduction of misstatement of facts throughout."
 - e. "Enforcing jury act as conscious for community."
 - f. "Failed to request a retrial because of denial of defendants right to due process and a fair trial."
3. "Judicial error"
- a. "Abuse of discretion when choosing inferior Denno case law simply because he 'usually follows' it."
 - b. "Abuse of discretion when using involuntary statement to decide if coercion existed."
 - c. "Abuse of discretion when setting coercive parameters, stating defendant did not allege being told how and when to strike though and initial corrections, though defendant stated he did everything the investigator told him to do."
 - d. "Abuse of discretion when own coercive parameters met during jury portion, where investigator openly admits—and without being lead—the very exculpatory evidence the judge based his biased opinion on defendant's statement; refusing to grant defenses request for directed verdict and a new trial. Tr. 121, Tr. 327. 8-14."
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 - q. “Abuse of discretion by not allowing defense possible exculpatory evidence, requested through defense counsel, of Officer Rawl’s disciplinary record, violating the FOIA (Freedom of Information Act).”
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 - g. “Fifth Amendment and Brady violations when Officer Rawl failed to maintain his primary duty to preserve evidence of the second intimidated interrogation, constituting spoliation of evidence.”
 - h. “Sixth Amendment violation when Officer Rawl decided not to inform defendant of right to counsel prior to evicting defendant from his home.”
 - i. “Sixth Amendment violation when Officer Rawl decided, in bad faith, not to inform defendant of right to counsel prior to first intimidated interrogation.”
 - j. “Sixth Amendment violation when Officer Rawl decided not to allow defendant ample time and/or

- means to search for counsel, adding that defendant's phone was illegally seized."
- k. "Fourth Amendment violation when Officer Laintz passed directly by defendant, but failed to present the defendant the search warrant in best efforts; entering defendant's home unlawfully."
 - l. "Fourth Amendment violation when Officer Rawl illegally seized defendant's mobile phone."
 - m. "Fourth Amendment violation when Officer Rawl did not inform defendant of his right not to consent to warrantless search."
 - n. "Fifth Amendment violation when Officer Rawl did not inform defendant of his right not to consent to warrantless search."
 - o. "First Amendment violation when Officer Rawl refused to allow defendant to remain silent upon asserting Fifth Amendment right against self-incrimination."
 - p. "Defendant affectively kidnapped, illegally, by Thomas and Danny Havird, and aggravated coercion in nature."
 - q. "Officer Rawl admits to violating defendant's 5th and 6th Amendment rights by visiting defendant in jail without notifying defense counsel, proving his lack of care for defendant's constitutional guarantees. Also, wore body camera at this time. Tr. 346."
 - r. "Officer Rawl had no probable cause, prior to coercive interrogation, to request search warrant of defendant's home as no reason to believe in allegation truthfulness or reliability. U.S. v. Wilhelm, 80 F.3d 116 (4th Cir. 1996)."

Applicant requests relief as follows:

"convictions and sentences to be overturned/acquitted of with prejudice, monetary[sic] sanctions and relief to be decided at a later hearing for illegal prosecution and detainment; at the very least reverse and remand entire case"

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the

trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. PARTIAL MOTION TO DISMISS

Applicant's allegations of "judicial error" and "pre-conviction violations" should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act² (the Act). An applicant may commence a post-conviction relief action on the following grounds:

1. United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to

² S.C. Code Ann. § 17-27-10 to -160.

the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel).

None of Applicant's eighteen claims of "judicial error" and eighteen claims of "pre-conviction violations" are properly before this Court. *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."). Accordingly, the State moves to dismiss these allegations pursuant to Rule 12(b)(6), SCRPC, for failure to state a cognizable claim. The State further moves for summary dismissal of this claim pursuant to § 17-27-70 because there is no genuine issue of material fact which would necessitate an evidentiary hearing and these allegations should be dismissed as a matter of law.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of

such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community," *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.* Because of the difficulties

inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that

“there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. *See id.*, at 695 (Where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

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

proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”). Applicant raises multiple claims of ineffective assistance of trial counsel, most of which are not valid post-conviction relief claims.

B. Ineffective Assistance of Appellate Counsel

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, Appellate counsel is *not* obligated to raise every non-frivolous issue that is presented by the record. *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000); cf. *Jones v. Barnes*, 463 U.S. 745, 752 (1983) (“There can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review.”). Indeed, “[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.” *Smith v. Murray*, 477 U.S. 527, 536 (1986). “For [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754.

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g.*, *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must

demonstrate (1) that his “counsel’s representation fell below an objective standard of reasonableness” in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *Id.* at 694; see *Smith v. Robbins*, 528 U.S. 259 (2000) (holding that habeas applicant must demonstrate that “counsel was objectively unreasonable” in failing to file a merits brief addressing a nonfrivolous issue and that there is “a reasonable probability that, but for his counsel’s unreasonable failure . . . , he would have prevailed on his appeal”).

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective assistance of counsel on appeal, however, “reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal.” *Jarvis*, 236 F.3d at 164 (internal citation omitted). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). Applicant raises nine claims in support of his allegation of ineffective assistance of counsel, none of which could have properly been raised on appeal.³

³ *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (holding that “if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards” (citing S.C. Code Ann. § 17–19–90 (2003))); *id.* at 102, 610 S.E.2d at 500 (explaining that an indictment is a mere notice document, which need only state the offense of murder with sufficient certainty and particularity such that a defendant knows what he is being

C. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial and appellate counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. PROSECUTORIAL MISCONDUCT

Applicant further raises multiple claims of prosecutorial misconduct, including comments and statements the solicitor made that Applicant simply does not like. Applicant does not present any facts indicating any of these remarks deprived him of a fair trial. *See generally State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) ("A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process."). Moreover, "considerable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence." *Johnson v. Life Ins. Co. of Ga.*, 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

called upon to answer); *Ex Parte McLeod*, 272 S.C. 373, 252 S.E.2d (1979) (stating that "the investigation and deliberations of a grand jury should be conducted in secret, and that for most intents and purposes all its proceedings are legally sealed against divulgence" and denying the Attorney General's request to have a court stenographer present during the presentation of evidence to the grand jury); *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (explaining that, in order for an issue to properly be preserved for appellate review, the issue must be "(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"); *See State v. Covert*, 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct. App. 2006), *majority aff'd as modified*, 382 S.C. 205, 675 S.E.2d 740 (2009) (defendant's argument that a cumulative effect of errors required reversal of his conviction was not preserved for appeal, even assuming the presence of errors, as the issue was neither raised to nor ruled on by the trial court);

Applicant has failed to present any evidence tending to establish bad faith or intent on the part of the prosecution. *See Alabama v. Smith*, 490 U.S. 794 (1989) (finding that, with regard to prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness). However, the record likely does not refute or disprove Applicant's allegations of prosecutorial misconduct; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; *see also* Rules 15(a)-(b), SCRCP. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

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

VII. GENERAL DENIAL

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

[Conclusion and signature on following page]

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its partial motion to dismiss set forth in section III, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel and prosecutorial misconduct.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

November 23, 2020

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2020-CP-32-0225
BRYAN JEFFERY ELLIS, #373122	)	
	)	
Applicant,	)	
	)	
vs	)	
	)	CERTIFICATE OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Ola A. Johnson
Ola A. Johnson, Attorney at Law
PO Box 549
Lexington, SC 29071

DATED this 23rd day of November, 2020.


 Camille Henry
 Legal Assistant
 For Respondent

FILED**ORIGINAL**

STATE OF SOUTH CAROLINA)

2022 MAY 25 AM 11: 59)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

LISA M. COMER

CLERK OF COURT ELEVENTH JUDICIAL CIRCUIT
LEXINGTON SC**BRYAN J. ELLIS,**)**CASE NO.: 2020-CP-32-02225**

Applicant,)

v.)

AMENDMENT TO APPLICATION**FOR POST CONVICTION RELIEF**

STATE OF SOUTH CAROLINA,)

Respondent.)

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed June 25, 2020, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to David Mauldin as follows:

1. Applicant's counsel, David Mauldin, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss this case with applicant.
2. Applicant's counsel, David Mauldin, failed to properly investigate the facts of this case.

3. Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to the evidence seized following a search of the Applicants residence.
4. Applicant's counsel, David Mauldin "opened the door" to testimony from the victim regarding evidence against the applicant about the victim being assaulted by the Applicant in "Na Na's house". (P.187, Lines 22-25, p. 190-191, P. 193, Lines 21-25, P.194, Lines 1-3).
5. Applicant's counsel, David Mauldin, failed to object to hearsay evidence "she come over, and [REDACTED] told her about what had happened". (P.227, Lines 8-9).
6. Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to letters allegedly written by the Applicant that were prejudicial to the defense and introduced by the state into evidence (P. 254 and 282, States EX:22).
7. Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to testimony Inv. Phipps and evidence regarding internet searches allegedly conducted by the Applicant regarding "help with addiction" and "beat sex addiction" on a cellular phone that was presented into evidence by the state (P. 373,374 and P.375).
8. Applicant's counsel, David Mauldin, failed to obtain a ruling from the court on his objections to the states closing and failed to move for a mistrial (P.446 - 447).
9. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed

issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'OLA JOHNSON', is written over a horizontal line. The signature is stylized with long, sweeping strokes.

OLA JOHNSON

Attorney for Applicant

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This 25th day of May, 2022

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BRYAN J. ELLIS,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

FILED

2022 JUN -6 AM 9:12 IN THE COURT OF COMMON PLEAS

LISA M. COMER
CLERK OF COURT
ELEVENTH JUDICIAL CIRCUIT
LEXINGTON SC

CASE NO.: 2020-CP-32-02225

SECOND AMENDMENT TO
APPLICATION

FOR POST CONVICTION RELIEF

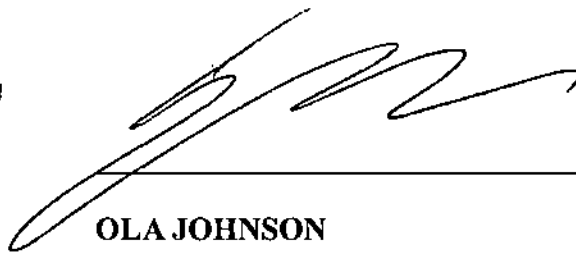
Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed June 25, 2020, by Applicant and the Amendment to Application filed by counsel on May 25, 2022. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to David Mauldin as follows:

1. Applicants counsel David Mauldin failed to object to the state describing the Applicant as a sex offender in arguments to the jury (p.436,437, 441,456).

2. Applicants counsel David Mauldin failed to explain to Applicant the option for filing a motion to reconsider the sentence following trial and sentencing.

Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

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803-360-8692 Phone

olajohnsonlaw@gmail.com

This 5 day of June, 2022

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS
C.A. NO. 2020-CP-32-0225

BRYAN J. ELLIS,

PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE JOCELYN NEWMAN

DATE: JUNE 8, 2022
TIME: N/A
LOCATION: SOUTH CAROLINA CIRCUIT COURT 11
TRANSCRIBED BY: KELLEY PRIMM

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8 REPRESENTING THE PLAINTIFF9
10
11 TAYLOR SMITH, ESQUIRE

12 SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE

13 PO BOX 11549

14 COLUMBIA, SOUTH CAROLINA 29211

15
16 REPRESENTING THE DEFENDANT

17

18

19

20

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EXAMINATIONS

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
For the Plaintiff:				
Bryan Ellis	6	15		
For the Defendant:				
David Mauldin	18	48	57	61

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

P R O C E E D I N G S

THE COURT: Okay. Yes, sir.

MR. SMITH: May I please The Court? This is the case of *Bryan Ellis v the state*. Case number is 2020-CP-32-0225. Mr. Ellis is serving in a sentence in the South Carolina Department of Corrections. He was arrested in January of 2016 after investigation of allegations of sexual abuse involving his step daughter. He was later indited for first degree criminal sexual conduct with a minor and third degree criminal sexual conduct with a minor.

In July of 2017, he was tried before a jury -- tried before Judge McMahon by the jury. Jury found him guilty as indited and Judge McMahon sentenced him to imprisonment for life plus 15 years. The South Carolina Court of appeals then affirmed his appeal in an unpublished (indiscernible) opinion, and he has since filed this application.

Mr. Johnson has filed two amendments to the application on Mr. Ellis' behalf. One of them recently, and I do have a copy of it if Your Honor needs it. I don't think I've given it to you before now.

THE COURT: I don't have a copy of either amendment.

MR. SMITH: Okay. May I approach, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: This is a copy of the first amendment and the second amendment.

1 THE COURT: Thank you.

2 MR. SMITH: And I would like to supplement one thing
3 more. I have a -- this is a transcript from a hearing in
4 the general sessions case from Mr. Ellis from June 8th,
5 2017. I just recently received it from the (indiscernible)
6 Defender who represented Mr. Ellis on appeal.

7 THE COURT: Okay. Thank you. Mr. Johnson, call your
8 first witness.

9 MR. JOHNSON: Thank you, Your Honor. We'll be -- and
10 if you want me to put it down in the record, there's -- some
11 of these allegations I put in the amended application that
12 we're going forward in adopting the original PCR
13 application, plus my amendment, plus the second amendment,
14 but I've informed the attorney generals office.

15 Under the original application, the only grounds that
16 we're going forward on from the original are listed under
17 what's listed as, ineffective assistance of trial counsel,
18 and they're numbered. So I list them by the number as the
19 ones that we'll be going for it on would be 3 and 4 and 7,
20 8, 9, and 11. And those are the ones that we'll be going
21 forward on from the original application, in addition to my
22 amended and my second amended.

23 THE COURT: Okay.

24 MR. JOHNSON: And that's what I have Judge, and I call
25 my client Mr. Ellis to testify at this time.

1 THE COURT: Place your left hand down and raise your
2 right. Do you swear from the testimony that you give us,
3 you'll tell the truth, the whole truth and nothing but the
4 truth so help you God?

5 MR. ELLIS: I do.

6 THE COURT: If you'll have a seat and state your full
7 name for the record.

8 MR. ELLIS: Bryan Jeffrey Ellis.

9 BY MR. JOHNSON:

10 Q. Mr. Ellis, who represented you during this trial?

11 A. David Mauldin.

12 Q. Okay. During that representation, -- just starting with
13 number 3 under your application, do you feel like he failed
14 to reach some impeachment of the victim there during the
15 forensic video? Tell me about that.

16 A. During the forensic video, the forensic interviewer had led
17 the witness into a statement.

18 MR. SMITH: Objection, under best evidence rule.

19 Ellis is testifying about what happened on a video
20 recording.

21 THE COURT: Overruled.

22 BY MR. JOHNSON:

23 A. The question was, your brother said that daddy licked your
24 peepee, and she said that, no, daddy didn't do that, J. [REDACTED]
25 lies like that sometimes. And then the solicitor -- or the

1 forensic interviewer had said are you sure? You can tell
2 me. It's all right. It doesn't matter. It's -- go ahead.
3 And so she changed her answer to yeah, daddy did do that.

4 Q. Okay. Moving on to number 4, did you get full advice
5 regarding options for pretrial motions, motions to dismiss,
6 motions for speedy trial, or motions to suppress? Did
7 Mr. Mauldin discuss all that with you?

8 A. No. He didn't discuss -- he didn't discuss anything with me
9 until I found out from other inmates, and he refused to
10 actually communicate with me until I tried to fire him.

11 Q. Okay. And you put in here motion to reduce bond. Did you
12 request that type of motion?

13 A. I did ask him, however, he said that they weren't going to
14 reduce it so we were going to trial.

15 Q. Okay. So that -- you never had that hearing?

16 A. Not the reduced, no.

17 Q. Okay. And number 7 in your original application, did you
18 -- he failed to object to mobile phone data that was
19 retrieved as part of this case that's prejudicial to your
20 case?

21 A. Yes. He -- the warrant was invalid the ---

22 MR. SMITH: Objection, improper opinion testimony ---

23 MR. ELLIS: No. This is actual. It's on the warrant.

24 THE COURT: Hold on.

25 MR. ELLIS: Yes. Sorry.

1 THE COURT: I respond to the objections, not you.
2 Right. Overruled. You can -- have you answered the
3 question? You can go ahead if you were not finished.

4 MR. ELLIS: I'm sorry.

5 THE COURT: Go ahead. Go ahead.

6 BY MR. JOHNSON:

7 A. No, actually the warrant says January 27th, 2016 to January
8 27th, 2017. So '16 to '17, thats a whole year. It says
9 there's ten days to sign this warrant. However, this
10 warrant was said to be completed on August of 2016.

11 Q. And I'll pass you up -- I'm just going to pass you up the
12 search warrant provided by attorney general. Do you
13 recognize that search warrant?

14 A. Yeah. This is ---

15 Q. You can ---

16 A. Looks like a ---

17 Q. Okay. And what does it say on the return?

18 A. On the return it says I received the attached search warrant
19 January 27th, 2016 and have executed it as follows on
20 January 27th, 2017.

21 Q. Okay. And do you feel like that should've been challenged
22 by a defense?

23 A. It should have, yes. It's irrelevant.

24 Q. All right. Mr. Ellis, just moving on. Do you -- during
25 your trial and representation by Mr. Mauldin, did

1 Mr. Mauldin ever advise you of various types of options you
2 have regarding various types of pleas, or guilty or not
3 guilty, or issues regarding mental illness as far as not
4 guilty by reason of insanity or anything that -- any of
5 those options? Guilty but mentally ill, did he describe any
6 of that to you?

7 A. He didn't -- he didn't describe any of that to me other than
8 they were offering 25 to life, and I asked him what that
9 meant and he said you know what that means and just left it
10 at that

11 Q. Okay. And moving on to number 9 in your application, did he
12 ever sit down and talk to you about the meanings of the
13 sentences? 25 to life, life, parole, the definitions of all
14 those?

15 A. No, sir.

16 Q. So you did not understand that as you went forward?

17 A. Correct.

18 Q. And you did not understand the potentials? Are you saying
19 you did not understand the potential sentence if you were
20 convicted?

21 A. I understood that 25 to life could have been anywhere from
22 25 to life, but didn't understand parole, didn't understand
23 if it was 25 to life, or if it was life or if it was 25.

24 Q. Okay. And number 11, did you have a conversation where he
25 ever advised you of what a bench trial was?

1 A. I was never advised on anything.

2 MR. JOHNSON: Okay. Your Honor, at this time -- Judge,
3 this is a search warrant copy provided by attorney generals
4 and I -- this is the exhibit that I questioned Mr. Ellis
5 about. I was going to have this marked, made part of the
6 record. I don't believe the attorney generals have any
7 objection to it.

8 ATTORNEY GENERAL: No objection.

9 THE COURT: So Applicants 1 is admitted without
10 objection. It can be Plaintiff.

11 (Whereupon, the above-described
12 document was marked as Plaintiff's
13 Exhibit No. 1)

14 MR. JOHNSON: Thank you, Judge. Mr. ---

15 THE COURT: Hold on. Hold on. Hold on.

16 MR. JOHNSON: Oh, I'm sorry.

17 THE COURT: We've got to do her marking.

18 MR. JOHNSON: Yes, ma'am.

19 THE COURT: This lawyering 101 in South Carolina, when
20 you've presented an exhibit, I've handed it to the court
21 reporter. They may need a minute to put the exhibit sticker
22 on it and all that. You can't just keep talking with your
23 next question. Teachable moment.

24 MR. JOHNSON: Thank you.

25 THE COURT: All right.

1 MR. JOHNSON: I keep forgetting that.

2 THE COURT: (Indiscernible) law students, and law
3 students to be. Anyway, go ahead.

4 MR. JOHNSON: Thank you, Judge.

5 BY MR. JOHNSON:

6 Q. All right. Mr. Ellis, we're going to move on to amended
7 application and fault in this case. Number 1 on the
8 amendments application, how many times did Mr. Mauldin meet
9 with you to prepare for this case?

10 A. Fewer than ten.

11 Q. Okay. Did he give you a physical copy of the evidence?

12 A. Yes.

13 Q. Did he watch all audio/video with you?

14 A. Yes.

15 Q. Did he have an investigator sit down and talk to you?

16 A. No.

17 Q. Is there anything you felt like you should've done as far as
18 having an investigator work the case and interview with us?

19 A. I tried to have him do the multiple different types of
20 motions that I had heard about from other inmates or
21 detainees. And he would not return any of my phone calls.
22 Specifically a speedy trial and a suppression of evidence.
23 He would not do any of that until I tried to fire him
24 through Robert Madsen, is his boss.

25 Q. Okay. But getting back to my question, did -- was there a

1 situation where you wanted him to have an investigator
2 interviewing your witnesses for you?

3 A. Oh, witnesses specifically, no.

4 Q. And moving to number 2 regarding just general investigation,
5 is there anything else that he failed to do to investigate
6 the case?

7 A. Not that I can think of.

8 Q. Now, going to number 3 in the amended application, did he
9 fail to -- or explain to you why he failed to make a motion
10 to suppress evidence ceased from your residence, that was
11 actually used at trial?

12 A. No. We had never spoken about suppression of evidence
13 ceased from -- from my home. I didn't actually understand
14 or realize until after I'd gotten into prison that it was
15 actually illegal that a police officer as a third party
16 couldn't get, under oath, a search warrant.

17 Q. Now, moving on to number 4, did Mr. Mauldin explain to you
18 why, during the trial, there was a finding that he had
19 opened the door to testimony from the victim regarding
20 evidence against you about the victim being assaulted by the
21 applicant in what was referred to as Nana's house on page
22 187, lines 20 through 25 and 190-191, as well as page 194.
23 Did he get into that? Explain to you why his failure to act
24 or his actual questioning opened the door? Or why that
25 happened?

1 A. No.

2 Q. Okay. And moving on to number 5, did Mr. Mauldin explain
3 why he failed to object to hearsay evidence quote, the
4 statement, she come over and [REDACTED] told her about what had
5 happened on page 227 lines 8 through 9. Did he explain to
6 you why he failed to object to that?

7 A. No.

8 Q. And did Mr. Mauldin explain, or did you talk about why he
9 did not object to move to suppress and object to letters
10 written by -- allegedly by you that were of prejudicial
11 nature and used by the state?

12 A. No.

13 MR. JOHNSON: This was referenced on page 254 and 282,
14 Judge. It states exhibit 22 I believe.

15 BY MR. JOHNSON:

16 Q. Did Mr. Mauldin -- I'm going to move on down to number 7.
17 Did Mr. Mauldin have a conversation with your
18 (indiscernible) why he failed to make a motion to suppress
19 and object to testimony from investigator Phipps, and
20 evidence regarding internet searches allegedly conducted by
21 you regarding searches listed as help with addiction and
22 beat sex addition -- sex addiction on a cellular phone that
23 was presented in evidence by the state and I'm referencing
24 page 373, 374, 375. Did Mr. Mauldin explain to you why he
25 failed to object to that or keep that out?

1 A. He refused.

2 Q. You didn't have a conversation -- he didn't talk -- didn't
3 have a conversation at all?

4 A. We didn't have conversation at all during or after trial.

5 Q. Okay. Did Mr. Mauldin explain why he failed to obtain a
6 ruling from The Court on his objections to state's closing,
7 failed to move for a mistrial? Pages 446 and 447.

8 A. Actually, I believe he did ask for a mistrial.

9 MR. JOHNSON: On number 9, let' see -- Judge, I'm going
10 to move on to second amendment application.

11 BY MR. JOHNSON:

12 Q. Did Mr. Mauldin explain to you why he failed to object to
13 the state referring to you, during their closing, to -- as a
14 sex offender? On page 436 or 437, 441 and 456 on the
15 transcript.

16 A. He did object to that, and it was overruled. Well, no, my
17 apologies, it was not overruled. The solicitor was
18 admonished and then continued to do so after.

19 Q. And did Mr. Mauldin ever explain to you the option for
20 filing the motion to reconsider your sentence?

21 A. Say it again?

22 Q. Did he ever explain to you about the option for filing the
23 motion to reconsider the sentence?

24 A. No.

25 Q. He never had that conversation with you?

1 A. No, sir.

2 Q. Anything else that you feel like he should've done in the
3 representation of you?

4 A. He should've tried harder about the coerced false statement.
5 The evidence on record shows that the Judge did abuse his
6 discretion as far as I'm concerned. As far as allowing the
7 police officer to enter my -- enter my home unannounced
8 and -- two police officers, rather.

9 Kick me out of my house and to interrogate me in a
10 squad car without a option of my cellphone, in which case
11 was taken from me. Again, all of this was on the record so
12 I believe it is abuse of discretion on the Judge.

13 MR. JOHNSON: No more questions, Your Honor.

14 THE COURT: Cross examination.

15 BY MR. SMITH:

16 Q. Mr. Ellis, you had at least ten meetings with Mr. Mauldin,
17 didn't you?

18 A. I do not believe it was even ten.

19 Q. You deny that. How many meetings do you say you had?

20 A. I would say between five and eight.

21 Q. Okay. During those meetings, didn't Mr. Mauldin explain the
22 elements of the crimes?

23 A. No.

24 Q. He didn't explain that? Did he explain what a sexual
25 battery was?

- 1 A. No.
- 2 Q. But you maintained that you were innocent through all of
3 this, right?
- 4 A. Correct.
- 5 Q. Okay. So you didn't want any plea deal, right?
- 6 A. Correct.
- 7 Q. Okay.
- 8 A. Well, I had -- I apologize. May I ---
- 9 Q. Go ahead.
- 10 A. I was taking a plea deal for what I actually did do, but I
11 will not take a plea deal for what I did not.
- 12 Q. Okay. Would you have taken a plea deal for the crimes for
13 which you were convicted?
- 14 A. No.
- 15 Q. Okay. And in fact, you did turn down a plea deal on June
16 8th, 2017, right?
- 17 A. On what date?
- 18 Q. Or, it was discussed in Court on June 8th, 2017 that you had
19 turned down a plea deal.
- 20 A. I didn't realize it was so late. I thought it was January,
21 but yes.
- 22 Q. Okay. And that was the same hearing where you told Judge
23 Keesley that you were withdrawing your motion to relieve
24 Mr. Mauldin, right?
- 25 A. Correct.

1 Q. Okay. And that you were satisfied with his representation
2 of you, right?

3 A. Correct.

4 Q. Okay. You mentioned earlier the forensic interview, that
5 video recording was played at your trial, right?

6 A. It was.

7 Q. Okay. And you mentioned earlier that Mr. Mauldin didn't
8 discuss with you the difference between a bench trial and
9 jury trial. Did you, I mean, Judge McMahon gave you life
10 plus 15 years, right?

11 A. Correct.

12 Q. Okay. So bench trial might not have been a great idea,
13 right?

14 A. I don't know.

15 Q. And didn't you tell Judge McMahon at trial that you didn't
16 have any physical, mental, or nervous problems that defended
17 your thinking?

18 A. I believe at one time I did tell him that yes, I do, but
19 there are times where I said I hadn't.

20 Q. Okay. So did you mention anxiety?

21 A. Anxiety, depression.

22 Q. You mentioned depression?

23 A. I was on medicine for it.

24 Q. Did you tell him you were on -- suffering from depression?

25 A. Yes. I believe I did.

1 Q. Okay. Okay. No more questions.

2 THE COURT: Do you need to redirect?

3 MR. JOHNSON: No, Your Honor.

4 THE COURT: Okay. You can go back and sit next to your
5 lawyer.

6 UNIDENTIFIED SPEAKER: Your Honor, may I have just a
7 moment?

8 THE COURT: Sure.

9 (MULTIPLE PARTICIPANTS SPEAKING AT ONCE)

10 MR. SMITH: Okay. Your Honor, I call Mr. Mauldin.

11 THE COURT: Go ahead and put your stuff down first.

12 MR. MAULDIN: Okay.

13 THE COURT: Do you swear from the testimony you'll give
14 us the truth, the whole truth, and nothing but the truth so
15 help you God?

16 MR. MAULDIN: Yes

17 THE COURT: Have a seat please and state your full
18 name.

19 MR. MAULDIN: David Micheal Mauldin.

20 BY MR. SMITH:

21 Q. Mr. Mauldin, when were you admitted to practice in South
22 Carolina?

23 A. 1997.

24 Q. Okay. And can you give me a summary of your legal
25 experience since then?

1 A. I did a little personal injury work about a year out of law
2 school and then I went to the public defenders office in
3 Aiken in 1999 and then moved to the Lexington public
4 defenders office in 2008. Mainly criminal law since 1999.

5 Q. Okay. Can you tell me how you came to be involved in
6 Mr. Ellis's case?

7 A. Well, he was arrested and our offices appointed to
8 represent.

9 Q. Okay. Can you tell me the facts of the case as you remember
10 them?

11 A. It was an allegation of -- history of molestation of his
12 step daughter. Involved sex toys -- devices, let's call
13 them devices. Sex devices and oral sex mainly.

14 Q. Okay.

15 A. The -- there was a disclosure, a confrontation, I believe,
16 between his wife and him. The police were called. He
17 eventually gave an oral confession and a seven page written
18 detailed confession regarding the grooming and the
19 molestation of the child.

20 Q. Okay. Is it also true that multiple witnesses there
21 testified that they heard Mr. Ellis admit to the
22 molestation?

23 A. I believe the wife and the -- her mother? Somebody's mom.

24 Q. Okay. People there? Okay. And how many times did you meet
25 with Mr. Ellis while you represented him?

1 A. I can go through it. An initial visit with him on February
2 18th, of 2016. I reviewed the discovery with him that I had
3 gotten initially on May 24th, of '16, had a preliminary
4 hearing on May 27th, of '16. I had Dr. Martin, who is
5 another psycho sexual evaluator, evaluate him.

6 I discussed Dr. Martin's findings with him, or
7 impressions with him on September 1st, of '16. On February
8 6th, of '17, the states offered his plea to one count of CSC
9 first. Straight up. I went to relay that to him on June
10 7th, of '17.

11 The (indiscernible) got on me about whether or not he
12 was going to take it. I informed him the deadline was
13 coming up. On the 8th, of '17 -- June 8th, of '17 we had
14 the plea rejection on the record. On June 16th, of '17 we
15 had a jail visit where we watched videos, reviewing new role
16 5 including about 100 or so pages of letters that Mr. Ellis
17 had written to the family apologizing for what he'd done,
18 not specifically for what he'd done, but he was apologizing
19 for what he did, but not stating specifically what he did.

20 On June 25th, of '17 there was some more discoveries
21 sent, I reviewed that with him and then talked to him about
22 trial procedures. June 30th, of '17, more discovery came
23 in, reviewed that, went over trial procedures. July 3rd, of
24 '17, went visiting, reviewed more evidence.

25 July 5th, of '17, reviewed the -- his statements and

1 letters, the statements he had given to the police, the
2 letters. July 7th, of '17, reviewed some more discovery
3 that had come in. And then the trial was -- I mean, it was
4 the last three days for July of '17, July 3rd, July 5th,
5 July 7th. And then July 10th, of '17 was the trial, July
6 10th or 12th. So 13 times pretrial.

7 Q. Okay. Did you have communications with him outside of those
8 meetings?

9 A. The occasional phone call, usually not in the office a lot.
10 Phone calls or usually im in court or going to jail seeing
11 other people going to other county jails and that kind of
12 thing.

13 Q. Do you know how many times you talked to him on the phone?

14 A. No. I ---

15 Q. Okay.

16 A. I normally just take notes of my visits.

17 Q. Okay. Did you do any pretrial investigation?

18 A. Well, no. Initially, Mr. Ellis had admitted the charges to
19 him -- against him, and that's why we had Dr. Martin assess
20 him for potential mitigation. Plea situation, when he --
21 the plea offer was not to his liking, he then said well,
22 that -- I didn't mean it when I said it, this is what really
23 happened.

24 I think he said he just showed her how to use a sexual
25 device or something without touching her. Pretty -- the

1 story became basically what he had told at trial I reviewed
2 with him. I said well, sir, you're telling me that you lied
3 the entire time when you said it did happen and this is what
4 really happened? You know, I just want to ensure that this
5 wasn't (indiscernible) test. And he said it was, so I had
6 to take it at faith and go with it.

7 Q. Okay. So he changed his story to you?

8 A. Yes.

9 Q. Okay.

10 A. He claimed guilt to a (indiscernible) I may be a CSC third
11 degree, guilty, somewhere in there.

12 Q. Okay. You mentioned he had been evaluated. What doctor was
13 that?

14 A. Dr. Thomas Martin.

15 Q. Okay. Did you feel you were going to be able to use any of
16 that for ---

17 A. I discussed with Mr. Martin, Mr. Martin said that he would
18 not be helpful. Did not want to write this down because he
19 did not want anybody to see his impressions. And that, I
20 mean, without going into what was discussed between ---

21 Q. Right.

22 A. --- the two, but Dr. Martin's impression was that he
23 didn't -- he didn't want me -- he did not want me to have
24 him coming anywhere near Court.

25 Q. Okay. Did you see any need to have an investigator working

1 in this case?

2 A. No. Basically it was going to be his word versus the
3 police's word about his statement. And the only words that
4 he wrote in his own handwriting and, of course, the child's
5 words as well.

6 Q. Okay. And his word against the other people ---

7 A. Yeah. Potentially the other people that ---

8 Q. Okay. Did Mr. Ellis tell you any particular act of
9 investigation he wanted you to do that you didn't do?

10 A. No. No.

11 Q. Okay. Did you go over, you know, potential sentences with
12 Mr. Ellis?

13 A. Yes, I did. As I mentioned, he was originally charged with
14 five counts of first degree ---

15 Q. Right.

16 A. --- CSC. And one count of third degree, and three counts of
17 dissemination involving showing a pornographic videos to the
18 child. And the offer was plea to one count of CSC, first
19 degree with a minor. Which, of course, was explained as
20 mandatory minimum of 25 years and maximum of life in prison.

21 Q. Okay. When you -- did you review the discovery with
22 Mr. Ellis?

23 A. Yes, I did.

24 Q. Okay. Did you explain to him the elements of the offenses?

25 A. Yes, I did.

1 Q. Okay. Did you go over sexual battery?

2 A. Yes.

3 Q. Okay.

4 A. Obviously the allegation was fellatio. Fellatio's a sexual
5 battery.

6 Q. Okay.

7 A. I didn't need to go over all of them ---

8 Q. Right.

9 A. --- but obviously the one alleged in this case was fellatio,
10 and that's definitely a sexual battery.

11 Q. Okay. Did you tell him what a life sentence meant? Did he
12 seem to be confused about what a life sentence would be?

13 A. I -- I don't know where somebody would be confused.

14 Q. Okay. Did you tell him what 25 to life meant?

15 A. Well, minimum of 25, maximum of life. That's a range.

16 Q. Right. Okay. Did you discuss with him anything about
17 parole eligibility?

18 A. I let him know it was an 85 percent (indiscernible)

19 Q. Okay.

20 A. Of course, that's if he's got a number.

21 Q. Did you discuss with Mr. Ellis the difference between a
22 bench trial or a jury trial?

23 A. No.

24 Q. Okay. Did he say anything to you that would indicate to you
25 at the time that he was interested in a bench trial?

1 A. No.

2 Q. Okay. Do you know ---

3 A. And I wouldn't have recommended one from either Judge
4 McMahon or Judge Keesley. The two main judges that were out
5 here at the time.

6 Q. Okay. And, in fact, Judge McMahon gave the maximum
7 sentences for both convictions, right?

8 A. Yes.

9 Q. Okay.

10 A. Consecutive.

11 Q. Okay. So tell me what happened. Did Mr. Ellis want you to
12 be relieved as counsel?

13 A. Yes. The plea offer was not to his liking. And, as I may
14 have stated in other occasions, that the plea offer is not
15 to their liking, your services aren't very appreciated.

16 Q. Okay. So he -- what did he tell you when he decided to
17 withdraw his motion? Did he give an explanation for
18 deciding to drop it?

19 A. I don't recall if it was -- if it was on the record or not.

20 Q. Okay.

21 A. Was it on the record?

22 Q. I don't know if it was explained, but.

23 A. I don't remember.

24 Q. Okay. Did you do anything to prepare Mr. Ellis for
25 questioning at trial?

1 A. Yes. Especially in the July dates I mentioned, the 3rd, 5th
2 and 7th, we were reviewing his statements and his testimony
3 for trial. Obviously preparing for impeachment, to review
4 how I was going to direct him by going through the statement
5 pretty much line by line and asking him, why did he write
6 that if he wasn't guilty.

7 Q. Okay. And that's pretty close to what happened at trial,
8 right?

9 A. Yes.

10 Q. Okay. When you were meeting with Mr. Ellis, did you tell
11 him your opinion of his chance of success at trial?

12 A. Yes.

13 Q. What'd you tell him about that?

14 A. I told him that I didn't think his chances were good at all.
15 However, I respected his willingness to go to trial, rather
16 than take a plea that may essentially get a life sentence
17 anyway.

18 Q. Right. Okay. Did you see any basis upon which you could've
19 moved to dismiss the indictments?

20 A. No.

21 Q. Okay. What about -- do you -- do you normally move for
22 summary judgment in criminal cases?

23 A. I do a directed verdict motion (indiscernible) state's case.

24 Q. Okay. And I use the phrase summary judgment because that's
25 what's in the application.

1 A. Oh. Well, I don't do a summary judgment I do a directed
2 verdict.

3 Q. Did you discuss with Mr. Ellis, any basis for a speedy trial
4 motion?

5 A. I don't believe that came up at all.

6 Q. Did you have ---

7 A. And he was arrested January of '16, and went to trial in
8 July of '17. That's fairly quick for South Carolina.

9 Q. Did you file any bond motions for him?

10 A. I don't believe so.

11 Q. Okay.

12 A. I don't think he had financial resources or a place to go.

13 Q. Okay. Did he ask you to do that?

14 A. I think we discussed it, and the fact that he had no
15 financial resources or place to go, it was decided not to
16 proceed.

17 Q. Okay. When you say it was decided, does that mean he ---

18 A. We talked about it together.

19 Q. So he agreed with that?

20 A. He -- the strategy being to wait in jail and be able to
21 accrue some time served in case there was a favorable plea
22 bargain, that he would have time served.

23 Q. Okay. And you did move to suppress his statements at trial,
24 right?

25 A. That is correct.

1 Q. Okay. That was a lengthy argument and hearing, right?

2 A. Yes.

3 Q. Okay. So tell me, from your recollection, what was your
4 argument for suppression?

5 A. Well, Mr. Ellis's assertion was that the statement was made
6 under duress. I discussed with him the pre trial motion we
7 prepared for about his testimony. But I believe Mr. Ellis's
8 definition of duress and the laws definition of duress are
9 very different.

10 Q. And he testified at that Jackson (indiscernible) hearing,
11 right?

12 A. Yes, he did.

13 Q. Okay. And would you agree with me that you moved to
14 suppress the vibrator sex toy taken from the house?

15 A. I would defer to the record on that.

16 Q. Okay. Did you discuss with Mr. Ellis at all the
17 applicability of not guilty by reason of insanity?

18 A. Within Dr. Marten's evaluation was the finding of
19 competence. I did -- and my discussions with him and my
20 talks with him did not set off any warning bells. I've been
21 doing this for over 20 years. I think I can tell when
22 somebody needs to be evaluated, and when they don't need to
23 be evaluated. And nothing -- so -- any of those alarm
24 bells.

25 Q. When you have conversations with him, were his statements

1 and questions to you responsive and appropriate to what you
2 two were discussing?

3 A. Generally. Although he did have somewhat unrealistic
4 expectations.

5 Q. What do you mean by that?

6 A. Well, as far as the plea bargain, or minimizing his
7 behavior, as far as the behavior, seemed like a normal thing
8 to him, which was not.

9 Q. Right. Okay. Did he make any statements to you that would
10 lead you to believe that he had been mentally ill or
11 mentally insane at the time of his crimes?

12 A. No.

13 Q. If he had, would you have followed up on that?

14 A. Yes, I would have.

15 Q. Okay. Did he bring up at all the possibility of entering
16 alternate pleas?

17 A. Are you talking about mental health pleas? Or are you
18 talking about ---

19 Q. Anything.

20 A. Well, he wasn't going to take what they had offered. So I
21 mean, the alternative was trial.

22 Q. Okay.

23 A. I mean, there's no use of discussing an offer, or no
24 contest, or any alternate plea if he's not going to take
25 what he's offered.

1 Q. And by that point, he was insisting that he was innocent?

2 A. Yes.

3 Q. Okay. You had a trial -- you had a hearing on the
4 admissibility of the recording of the forensic interview of
5 the child, right?

6 A. Again, I'd have to defer to the record, or you'd have to
7 point me to the part of the record.

8 Q. Do you -- did you watch the whole forensic record -- the
9 recording of the forensic interview?

10 A. Yes.

11 Q. Okay. Did you have many concerns about leading questions in
12 that recording?

13 A. No.

14 Q. Okay.

15 A. My main concern was when the child mimed performing fellatio
16 on Mr. Ellis.

17 Q. What was the context to that? In that performing ---

18 A. They had asked her if he had touched her anywhere else and
19 she said the cheek. And I think the interviewer was a
20 little unsure of what she meant by that, whether it meant
21 her butt cheek or something along those lines. And the back
22 and forth between them was still kind of confused and the
23 interviewer said can you show me? And then the girl opened
24 her mouth wide and started bobbing her head up and down.

25 Q. I beg The Court's indulgence for a moment.

1 MR. SMITH: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. SMITH:

4 Q. Mr. Mauldin, will you look at this 7 page document I'm
5 handing you, and tell me if you recognize it?

6 A. It appears to be a copy of Mr. Ellis's written statement to
7 the police, given January 24th, 2016.

8 Q. Okay. Are you familiar with this statement?

9 A. Yes, I am.

10 Q. Okay. Tell me about the format of the statement from page
11 -- the difference between page 1 and the remaining pages.

12 A. Page 1 is a narrative written by Mr. Ellis and the
13 subsequent pages 2 through 7 are done in question and answer
14 format, where I believe this detective role would write the
15 question and Mr. Ellis would write the answer.

16 Q. This was admitted in a redacted format at trial, right?

17 A. That is correct.

18 MR. SMITH: Okay. Your Honor, at this time I move to
19 admit this as state's one.

20 MR. JOHNSON: No objection, Your Honor.

21 THE COURT: State's one is admitted without objection.

22 (Whereupon, the above-described document was marked as
23 Defendant's Exhibit No. 1)

24 BY MR. SMITH:

25 Q. Mr. Mauldin if you look at ---

1 A. Do I need to --

2 Q. --- the first

3 A. Are we going to go through it?

4 Q. Yes. Look at page 1, please.

5 A. Yes.

6 Q. If you will look about halfway down in the handwritten

7 portion, and this is Mr. Ellis's handwriting, right?

8 A. Yes.

9 Q. He admitted that a trial?

10 A. Yes.

11 Q. Okay. And he writes there that, quote, I had asked if she

12 would put her mouth on my penis and she did, I ejaculated on

13 the floor, same in her mouth.

14 A. Some.

15 Q. Some in her mouth. Close quote. Okay. So that was

16 something admitted at trial, right?

17 A. Yes.

18 Q. Okay. And so that's an admission from him in writing that

19 he did in fact, engage in oral sex with the child.

20 A. Yes.

21 Q. Okay. So continue on with what you were saying about the

22 forensic interview.

23 A. Well, that -- that was not a good fact. Obviously that she

24 was able to -- the child -- child I think was 9? 9 year old

25 child being able to demonstrate fellatio in such a manner.

1 Q. Well, will you look at page 2 of this for me?

2 A. Yes. I'm looking at it.

3 Q. Will you tell me -- read for me his -- Mr. Ellis's
4 handwritten answer to the first question on page 2?

5 A. The first question is, what is your daughter's name? And
6 how old is she? [REDACTED], stepdaughter, 7 years.

7 Q. Okay so she was 7 years old?

8 A. 9 at trial.

9 Q. Okay. Do you remember if you -- well, can you look at page
10 273 of the trial transcript for the record on appeal?

11 A. I'm there.

12 Q. Okay. You agree with me that this is a hearing on the
13 admissibility of the recording of a forensic interview?

14 A. Yeah, The Court made findings on the record regarding the
15 admissibility.

16 Q. Okay. And was one of those findings that the victim
17 statement was not elicited by leading questions during the
18 interview?

19 A. Yes.

20 Q. Okay.

21 A. And I don't believe telling a child that it's all right,
22 that they can say anything, is a leading question.

23 Q. Okay. All right. And would you agree with me that he also
24 made a finding that her statement represented a detailed
25 account of the alleged offenses and was internally coherent?

1 A. Yes.

2 Q. Okay. And then if you look at page 448.

3 A. Is that the Judge's charge?

4 Q. 448.

5 A. Yes.

6 Q. Well, I may have my page numbers wrong.

7 A. Oh, wait, no. It's my closing argument.

8 Q. Okay.

9 A. I was talking about reasonable doubt real possibility. I
10 thought it was Judge's charge.

11 Q. And did you argue on that page that there were
12 inconsistencies in the child's statement given in the
13 forensic interview?

14 A. The difference is between the video and what she had
15 testified to on the stand.

16 Q. Okay. So I'd like to talk to you now about the search of
17 Mr. Ellis's phone. Can you tell me some context about that,
18 about what was the significance of the the phone?

19 A. They had taken the phone into the evidence. Number one,
20 because I believe it may have been alleged that he showed
21 her pornographic videos from the phone. And also, in these
22 child sex cases, they want to be sure that no photos or
23 videos may have been taken of the victim in these cases.
24 And so the phone was taken into evidence.

25 And then I think they did some kind of extraction. And

1 the only negative thing I think was mentioned during the
2 Plaintiff's case there, that there were searches as the
3 police were there. He was searching sexual addiction
4 treatment.

5 Q. Can you look at page 6 of State's exhibit 1 for me, please?

6 A. I am there.

7 Q. Okay. And do you agree with me that the first question and
8 answer together, they're on that page that Mr. Ellis wrote,
9 that he had showed pornography to the victim?

10 A. The question was, have you ever shown any of your three kids
11 pornography? Answer written by Mr. Ellis was [REDACTED] had asked
12 to see other people doing the same things we had done. She
13 asked if women do it to other women, and men to men. I did
14 show her some pornography.

15 Q. Okay.

16 A. How many times? Was the next question. Two or three
17 occasions on my phone.

18 Q. Was that the same phone that was taken into evidence and the
19 subject of the search?

20 A. Yes.

21 Q. Okay. Do you still have -- did you see any reason at trial
22 to object to -- I mean, excuse me, I'll rephrase. To move
23 to suppress the evidence from the phone?

24 A. I didn't -- I didn't see any legal basis ---

25 Q. Okay.

1 A. --- to do it.

2 Q. Did you review the search warrant?

3 A. I did. The phone was already in evidence at the Sheriff's
4 Office. I don't know if I could have shown -- if there
5 wasn't a late return, I don't know if I could have shown any
6 prejudice. The phone had been taken into evidence. There
7 was initial return done in '16 and a subsequent one done in
8 '17. Although, that might have been a scriveners error.
9 I'm not too sure because I believe the officer testified at
10 the trial to get done some things in 2016.

11 Q. And if you look at the -- look at Applicants exhibit 1, the
12 first return you're referring to there.

13 A. I do not have it.

14 Q. I have a copy. Okay. On page 7 of 8, would you agree with
15 me that Michael Phipps wrote at the top that he executed the
16 warrant on January 27, 2016?

17 A. Yes, there is a return with that date on it.

18 Q. Okay. Which was, in your mind, more damaging evidence at
19 trial? The Google search results from the phone, or
20 Mr. Ellis's statement?

21 A. Well, definitely Mr. Ellis's statement.

22 Q. Okay.

23 A. And I'm looking at this exhibit, and it's hard for me to say
24 whether he did the extraction in 2016 and then just made a
25 CD of the extraction in 2017.

1 Q. And then, when you look at that, he does refer to the fact
2 that there was a large amount of data, right?

3 A. Yes.

4 Q. Okay. Which seems to indicate that he had at least done
5 some kind of analysis of the phone to be able to know there
6 was an exhaustive amount of information, right?

7 A. Yes.

8 Q. Okay. So I'd like to ask you about the search of the house.
9 The officers testified at trial, and, in fact, more than one
10 officer that Mr. Ellis consented to the search of his house,
11 right?

12 A. I believe so. But again, I'd have to defer to the record on
13 that.

14 Q. Okay.

15 A. But I believe there was a search warrant.

16 Q. Okay. Did Mr. Ellis tell you that the officers entered his
17 home without his consent or searched it without his consent?

18 A. No.

19 Q. What was -- what did he tell you about that?

20 A. I don't think there was any discussion about it.

21 Q. Okay.

22 A. Because I believe they obtained a search warrant. And,
23 according to the police, he was very compliant and would say
24 that he would help them with whatever they wanted.

25 Q. So even though the officers testified that Mr. Ellis gave

1 them consent to search the house, they secured a search
2 warrant anyway?

3 A. That appears to be the case.

4 MR. SMITH: Your Honor, may I approach?

5 THE COURT: Yes.

6 BY MR. SMITH:

7 Q. Mr. Mauldin, can I have the smart -- the State's 2 for
8 identification? Thank you. Mr. Mauldin, will you take a
9 look at this document I'm handing to you and tell me if you
10 recognize it?

11 A. Yes. It's a search warrant for the residents from my file.

12 Q. Okay. You're familiar with ---

13 A. That was provided to me in discovery by state.

14 Q. Okay.

15 MR. SMITH: Your Honor, I'd move to admit as state's 2.

16 MR. JOHNSON: No objections, Your Honor.

17 THE COURT: State's 2 is admitted without objection.

18 (Whereupon, the above-described document was marked as
19 Defendant's Exhibit No. 2.)

20 BY MR. SMITH:

21 Q. Okay. And Mr. Mauldin, this is the search warrant the
22 officers obtained, even though, as they testified, that
23 Mr. Ellis had given the consent to search the home, right?

24 A. Yes.

25 Q. Okay. So I'd like to ask you, if you'd look at page 187 of

1 the transcript.

2 A. All right. I'm there.

3 Q. Okay. Will you agree with me here that in response to your
4 question, the victim testified that the sexual abuse started
5 in her grandmother's home?

6 A. Let's see. I'd have to look at the context. I'm sorry.

7 Q. Okay. Do you see there where the ---

8 A. I mean, I see where it is, but I want to kind of read around
9 it ---

10 Q. Okay.

11 A. --- so I can ---

12 Q. Go ahead. Yeah.

13 A. --- context. Okay. I believe I was asking her about the
14 house that she was living in, the same house. And the
15 question I asked was, in the house she showed you, you said
16 these things happened. That's where it started, is that
17 right, in that house? And her response was, in my Nana's
18 house, which I believe might have been the house next door
19 up the hill.

20 Q. Okay. And the significance of that would have been that the
21 victim in the entire family, including Mr. Ellis, lived with
22 the grandparents next door before they began living in the
23 house in the pictures?

24 A. Possibly.

25 Q. Okay.

1 A. Possibly.

2 Q. Did you -- when you look there, do you see -- did you ask
3 any follow up questions on that? Or did you ask ---

4 A. No.

5 Q. --- an unrelated question?

6 A. No, there was no follow up. That's the only mention of
7 Nana's house.

8 Q. Okay.

9 A. Of course, you know, I thought they were going to try to
10 (indiscernible) together because obviously it's the same
11 grooming and molestation of the same girl. It's common
12 pointers. If I've ever seen one in a sex case.

13 Q. Okay.

14 A. Because it doesn't involve different victims.

15 Q. Were you surprised that the child mentioned the
16 grandmother's house?

17 A. No.

18 Q. Okay.

19 A. Obviously it was just in my Nana's house. And that's it.
20 We moved on. I don't think it was elaborated on, or pointed
21 out, or highlighted in any way.

22 Q. Well look at -- look at page 190 and 191.

23 A. All right.

24 Q. And would you agree with me that the solicitor did ask a
25 follow up question on that?

1 A. Let's see. Yeah. It was as you described, that they had
2 lived in that one house before they move in the house next
3 door.

4 Q. Okay. And then on 192, will you agree with me that when you
5 re-crossed the victim, you asked her if other people had
6 lived there too? At the grandmother's house?

7 A. We talked about Uncle Joel and your nana, your grandma, and
8 your grandpa were there and your Uncle Joel.

9 Q. Do you remember why you asked that question? About who else
10 lived there?

11 A. The present time -- sometimes, you know, you just do general
12 question, especially with children you kind of beat around
13 the bush a lot before you get to the pointed questions.
14 Just try to make them feel comfortable talking to.

15 Q. Okay. Will you look at page 227 for me?

16 A. All right, I'm on page 227.

17 Q. Okay, and what witness is this?

18 A. Barbara (indiscernible).

19 Q. Okay. Do you remember her role in this case?

20 A. She was a -- worked in a elementary school. Might have done
21 a time and place witness.

22 Q. Does the ---

23 A. Let's see. Oh, it was the grandmother.

24 Q. Okay. Okay. On 227, she does testify that the victim
25 disclosed to the victim's mother, right?

1 A. Yes.

2 Q. Did she say what the victim said to her mother?

3 A. No. It was not -- it was just what had happened.

4 Q. Okay. Did you see any reason to make a hearsay objection
5 there?

6 A. No, because it wasn't a statement. It was just general
7 about what had happened. That's not like a quote from
8 somebody.

9 Q. Right. Were you -- was Mr. Ellis ---

10 A. I mean, most time and place witnesses are limited to:
11 something happened at X time and X place. They can't name
12 the Defendant, and they can't name the (indiscernible).

13 Q. And Mr. Ellis wasn't disputing in trial that the victim had
14 made allegations, it was just that the allegations were
15 false, right?

16 A. That is correct.

17 Q. Okay. And Mr. Ellis admitted his guilt in his statements,
18 oral and written anyway, right?

19 A. To the police, yes.

20 Q. Okay.

21 A. And to me initially.

22 Q. Okay. And to the people I'm seeing?

23 A. Yes.

24 Q. Okay. I want to talk about the letters you mentioned
25 earlier, how many letters did Mr. Ellis write to the victim

1 and her family on this case?

2 A. It's hard to say we. I have a packet here of 110 pages of
3 letters, or 110 pages, which includes the letters.

4 Q. Did you discuss ---

5 A. And ---

6 Q. --- these letters with

7 A. --- some -- some of the pages are actually xeroxes of the
8 envelopes and letters that were sent to them. Oh, yes, I
9 did.

10 Q. Okay. What ---

11 A. And we ---

12 Q. --- tell me about this ---

13 A. --- went through them all. And I had highlighted parts
14 where he had specifically said that he's sorry for
15 everything, and would review those with him about why would
16 he write that? Let's see. I kept both the addictions porn
17 and video games alive and strong. I should have seen the
18 effects -- just anything negative involving sex or
19 apologizing? I went over those with him so we could address
20 those at trial.

21 Q. Okay. And some of them were admitted in evidence at trial,
22 right?

23 A. That is correct.

24 Q. Okay. And Mr. Ellis didn't dispute that he wrote and sent
25 these letters?

1 A. Pardon?

2 Q. Did Mr. Ellis dispute that he wrote and sent these letters?

3 A. No. His dispute was that the inference that he was
4 apologizing for acts of fellatio. What -- that -- that
5 speculation was incorrect. He was apologizing for the
6 showing her how to masturbate. And not that it was not
7 specifically dictated in the letters, what he was
8 apologizing for.

9 Q. Okay. Did you see any legal basis upon which you could have
10 opposed the admission of the letters?

11 A. No. The people said that they had received those from the
12 jail. They said it was in Bryan's handwriting. He admitted
13 to them as well, but I mean, before they came in, I mean,
14 they didn't have a handwriting expert or anything like that.
15 But I think that goes more to the wait than the
16 admissibility.

17 Q. Okay. Did you expect some of those to be entered into
18 evidence at trial?

19 A. Oh, yeah. That's why I reviewed them with Mr. Ellis.

20 Q. Right.

21 A. To make sure that if he testified, and he did testify, he
22 would be able to provide some sort of explanation for them.

23 Q. Okay. I'd like to ask you about this. Are you aware of
24 some of the solicitor's references in closing argument where
25 she refers to Mr. Ellis being or acting like a sex offender?

1 A. You'd have to point that out to me.

2 Q. Okay.

3 A. To refresh my recollection.

4 MR. SMITH: I beg The Court's indulgence.

5 THE COURT: Yes, sir.

6 BY MR. SMITH:

7 Q. Okay. So for example, on page 437.

8 A. Let's see. Are you talking about line 25 of 436? Going
9 into 437?

10 Q. I'm sorry. On 436, about line 21 through 22.

11 A. Okay. This is -- this is the solicitor quoting Mr. Ellis
12 talking about what she would refer to as the grooming
13 portion. I had to ask what she liked and didn't like. And
14 then she went on with what she liked.

15 That's how a sex offender thinks and I submit to you,
16 it's something that can't be understood or rationalized by
17 anyone in this courtroom. That is not the law. It is not
18 our job to try to interpret what the twisted mind of a sex
19 offender thinks, or feels, or how he operates.

20 Q. And then on page 443, look at line 24 and 25. What did she
21 call Mr. Ellis there?

22 A. Let's see. It's after the section again, describing
23 Mr. Ellis's statements of acts that were performed. The
24 statements given to the police. She says again, there's no
25 way we can ever rationalize or understand his way of

1 thinking but that's why it's crime, that's why he's a
2 criminal.

3 Q. Would you agree with me that there was evidence that had
4 been in this case, in Mr. Ellis's statements, referring to
5 some kind of need to be connected to the child?

6 A. I don't know if you can rephrase that question? That's kind
7 of -- connected to the child in what sort of way?

8 Q. So what -- what was Mr. Ellis on trial for?

9 A. Well, he was on trial for criminal sexual conduct first and
10 third degree. The situation that was alleged was that he
11 initially started by using sex devices on the child. His
12 statement elicits that he tried many different ones, and she
13 had ones that she quote unquote, liked and didn't like. And
14 then that eventually graduated to touching type behavior as
15 a result of it eventually, fellatio in a sexual manner.

16 Q. Okay. So someone convicted of doing that, that's a sex
17 offender, right?

18 A. Yes. He's charged with being a sex offender.

19 Q. Okay.

20 A. And obviously her position was that he was a sex offender,
21 and that she had proved that he was a sex offender. And
22 that was what she was arguing to the jury.

23 Q. In that context, did you find -- did you believe you needed
24 to object to her references to him as a sex offender?

25 A. Well, I mean, if it's a murder case, you would probably call

1 my client a murderer. I mean.

2 Q. Okay. And ---

3 A. And if it was a drug dealing case, she would probably call
4 him a drug dealer. I mean.

5 Q. And you did raise an objection during her closing to
6 something else, right?

7 A. If you could please show on the record.

8 Q. Okay. All right. Page 446.

9 A. Oh, yes, future dangers.

10 Q. Okay. And you did object to that, right?

11 A. Yes.

12 Q. Okay. And you've got a curative?

13 A. Yes.

14 Q. Okay. Did you consider filing a motion to reconsider in
15 this case?

16 A. I would refer to the record and Judge McMahon's speech that
17 he gave during sentencing. And there was -- no way that
18 Judge McMahon was going to reconsider. If you read his
19 speech, which is a direct ---

20 Q. Okay.

21 A. --- the little girl kept referring to him as daddy in the
22 video, the forensic interview video. And I just remember
23 the quote with him, he says, I don't think I could -- it's
24 going to be a long time before I hear one of my children
25 call me daddy without wanting to throw up a little bit in my

1 mouth. Something along those lines.

2 Q. Okay. So you felt there was no point?

3 A. No.

4 Q. Did Mr. Ellis ask you to ---

5 A. No.

6 Q. --- file a motion?

7 A. No.

8 Q. Okay. Just one moment please. Okay. No more questions.

9 Thank you.

10 THE COURT: Cross examine.

11 MR. JOHNSON: Thank you, Your Honor.

12 BY MR. JOHNSON:

13 Q. Mr. Mauldin, starting out with the original application, did
14 you feel like there was any grounds for cross examining the
15 victim about any leading questions from the video you
16 reviewed?

17 A. No.

18 Q. And did you have any conversations with Mr. Ellis about
19 motions for speedy trial or motions to suppress, what that
20 means?

21 A. Well, we obviously did a motion to suppress his statement.
22 And we've discussed that and we discussed his preparation
23 for the testimony he gave for that motion.

24 Q. Did -- he never requested motion for speedy trial or motion
25 for bond?

1 A. I think, as I said on direct, that we had discussed bond and
2 that he's limited. He did not have financial resources or a
3 place to go. And the strategy was that he would stay in
4 jail and build up some time served.

5 Q. Did you ever ---

6 A. A speedy ---

7 Q. Oh, I'm sorry.

8 A. --- trial, I don't remember any discussion of a speedy
9 trial. Obviously, trial was not in his purview until June
10 of '17, when he decided to reject the plea offer.

11 Q. Okay. Regarding the cell phone data, did you feel that
12 -- wasn't it damaging to the Defense to have this cell phone
13 information? The searches coming in? Wasn't that damaging
14 to your case?

15 A. It was a drop in the ocean, yes.

16 Q. And so wouldn't there have been some benefit to attempt to
17 keep that out?

18 A. Possibly.

19 Q. Did you make any attempt?

20 A. No, I didn't.

21 Q. Okay. And the discussions regarding various types of pleas
22 or verdicts, not guilty but mentally ill and different
23 things, did you have that conversation with him?

24 A. No, I did not. As I said before, I had no warning bells go
25 off for me.

1 Q. There was ---

2 A. Something where I got some records from the armory regarding
3 him, but they did not appear to have anything of
4 significance or alarm bells for me. And again, as I said,
5 Dr. Martin said he was competent, as well. There's no
6 mention of him saying that, you know, that he thought she
7 was an ice cream cone or something that was delusional or
8 anything like that.

9 Q. Did you feel he had any problems? Did you ever try to
10 explain what 25 to life meant, or life, parole, or sexual
11 battery, define those terms for him?

12 A. Again, I did go over what a sexual battery was, it's
13 fellatio. And as to 25 to life, I mean, I failed to see how
14 he didn't understand 25 to life as a range of a minimum of
15 25 and a maximum of life.

16 Q. Did you have any discussions about what a bench trial was?

17 A. I don't believe -- I can't recall any discussion about a
18 bench trial.

19 Q. Okay.

20 A. Of course, someone does not have a right to a bench trial.
21 They have a right to request one and the state and the judge
22 has to consent before a bench trial can proceed.

23 Q. Did you explain any of that to him?

24 A. No. Not that I recall.

25 Q. Okay. And how many times you said you met with him? Do you

1 remember the number you gave?

2 A. Around 13ish.

3 Q. Okay. But you never had an investigator meet with him?

4 A. No.

5 Q. And you never had any of the people from the scene, that the
6 attorney general mentioned, who maybe heard a statement or
7 testified about statements, you never had those people
8 interviewed?

9 A. No.

10 Q. And the actual search of the home -- and I'm referencing, I
11 believe page 183 about the vibrator coming into evidence. It
12 was ceased from residence. You actually never objected at
13 that time to attempt to keep that out?

14 A. No, I did not.

15 Q. Okay. And that was not helpful to your client, was it?

16 A. No, it was not.

17 Q. Okay. And if you'd objected, it's possible, you could have
18 kept that out of evidence, correct?

19 A. I doubt it.

20 Q. But the point of an objection is to try and keep it out.

21 A. Yes.

22 Q. Okay. And referencing -- this is going to page 187,
23 starting there with the subject of your -- I believe the
24 opening the door testimony, victim regarding evidence
25 against the applicant about the victim being assaulted by

1 the Applicant in Nana's house, starting on page 187, lines
2 22 through 25.

3 And then page 190, 191, 193 and lines 21 to 25, that
4 the attorney general covered, isn't it true that you
5 basically kind of opened the door by that question, the
6 response from the victim? Then opened the door to something
7 where the solicitor went further questioning about these
8 previous incidents at the grandmother's house that were not
9 in evidence?

10 A. He was originally charged with five counts of it. If you
11 want to say opened the door, that's fine, but I think
12 it's ---

13 Q. Well, ---

14 A. --- 404 admissible all day long.

15 Q. Okay. Let me just clarify my point a little bit. Page 187,
16 lines 20 through 25, as the questioning starting on -- and
17 you questioned that you had a cross examination in the house
18 that she showed you, where you said these things happened.
19 And that's when it started. Is that right, in that house?
20 And the answer was in my Nana's house. And then it
21 continues ---

22 A. Right. And then the solicitor elicited that it started at
23 Nana's house and then continued at the house they moved
24 into.

25 Q. Right. And when The Court -- we went through this --

1 through 190 and 191, and there was -- at some point you told
2 The Court, well, I asked a question. And then -- so that's
3 why it came in as a result of you asking that question,
4 which was ---

5 A. Where -- where is that in the transcript?

6 Q. It says --

7 MR. JOHNSON: Excuse me, Your Honor. I'm just going to
8 jump to -- Judge and Mr. Mauldin, I'll just point out, on
9 page 193, and there's a discussion starting on page 20 --
10 line 21 of 193, Ms. (indiscernible) says, Your Honor, I
11 would just briefly put on the record, I know we discussed it
12 at the bench, but the testimony regarding the prior events
13 and where that began on the ongoing illicit conduct, as it's
14 termed pursuant to the case law.

15 It was elicited by Mr. Mauldin. Going into page 90 --
16 194 on cross examination. And for that reason, the state
17 did follow up with the further questioning, where she says
18 that it began at Nana's house. And The Court -- anything
19 further solicitor Ms. (Indiscernible)? Not on that matter,
20 Your Honor. And said Mr. Mauldin. And you said that's
21 correct, Your Honor. And then -- this was after the
22 previous conversation on 193.

23 BY MR. JOHNSON:

24 A. Well, I think that what I'm failing to understand, is that
25 he had received fellatio multiple times from the seven year

1 old child, what -- what difference if it happened at Nana's
2 house or his house?

3 Q. Well, I'm just indicating that according to the record, this
4 was something that had come into evidence because of that
5 question and answer.

6 A. Well, the question was my understanding based on the
7 evidence I had received from the state in the forensic
8 interview, and the discovery. It was just my impression
9 that it had started at the house they had moved into it. I
10 asked that question, and it turned out that she said it
11 started somewhere else. I thought I knew the answer to the
12 question that I asked, but apparently I did not. That's
13 what happened.

14 Q. And my point is that it brought in some additional
15 information about a previous assault.

16 A. Possibly. But like I said, there were allegations of
17 multiple events.

18 MR. JOHNSON: I'm sorry, Judge. I was just trying to
19 find that.

20 THE COURT: Yes, sir.

21 MR. JOHNSON: Your Honor, I'll move on to number 5,
22 failure to object to hearsay.

23 BY MR. JOHNSON:

24 Q. Mr. Mauldin, on 1 -- on 2 to 7. Was there a statement where
25 the answer was she come over and Minor told her about what

1 had happened. Since that was a statement by someone talking
2 about a statement from victim, isn't it true that would have
3 been a hearsay objection that you could have made?

4 A. I failed to see where that is a statement made by an out of
5 Court Declarant.

6 Q. And on number 6 of my application, these letters that you
7 referenced, I'm referencing transcript page 254 and 282.
8 Isn't it true that these were not helpful to the Defense?

9 A. Well, I don't think anything introduced by the statements
10 helped the Defense.

11 Q. Right. But -- so if you -- that's the purpose of the motion
12 to suppress, right?

13 A. Right. I didn't see any basis to do that.

14 Q. So ---

15 A. And I did not make one. So if you thought I should have,
16 you could argue that to the Judge.

17 Q. Right. And if there's a letter that was created, and
18 there's going to be testimony that it came from the
19 Defendant, you could object saying lack of foundation,
20 hearsay.

21 A. I thought they had laid the foundation, so I didn't object.

22 Q. Got it. Thank you. Regarding under number 7 on the amended
23 application, when investigator Phipps brought in evidence
24 regarding internet searches, and we've -- I know you've
25 talked about that before. You did not make that objection

1 but that was not helpful to the Defense regarding the
2 searches, help with addiction and beat sex addiction,
3 correct?

4 A. No, that was not helpful.

5 Q. And you didn't object?

6 A. And I didn't object to it.

7 Q. Did you get a ruling on page 446, 447, when there was a
8 motion for mistrial, and it references -- do you recall
9 making that motion for mistrial?

10 A. Let's see. Is it 446 and 447? Is that what you're saying?

11 Q. I thought that's what I -- let me double check that. Yeah,
12 446, 447.

13 A. I see where -- If I object to her mentioning of
14 (indiscernible) this will be the last time he hurts a child
15 and this will be the last time he steals the innocence -- I
16 think it's stealing the innocence. Appealing the passion
17 and prejudice. (Indiscernible) this must be the last time,
18 which is just the same thing in a different ---

19 Q. So I'm just saying ---

20 A. --- different Cadillac, and I objected again ---

21 Q. Well ---

22 A. --- the Judge gave a charge -- let's see. I don't see where
23 I'm moving for mistrial.

24 Q. Well, I guess -- I'm sorry. I misstated my question. My
25 question was is it true you did not move for mistrial?

1 A. I did not.

2 Q. Okay. And moving on to the second amended application, you
3 did not raise an objection to him being referred to -- the
4 Defendant being referred to as a sex offender. You did not
5 object to that.

6 A. That is correct. You're right.

7 Q. Is it possible that someone could have -- the jury could
8 have heard that and thought sex offender registry? That
9 would have been prejudicial against your client? Is that
10 possible?

11 A. I think the 7 page confession was pretty much detailing how
12 he molested a child. So the fact that the solicitor called
13 him a child molester, it's kind of a six, and one half a
14 dozen of another.

15 Q. Did you ever have any conversations about what a motion to
16 reconsider the sentence was? How you perceive that?

17 A. No. I think as I stated on direct, if Judge McMahon could
18 have found a way to give him more time he probably would
19 have.

20 MR. JOHNSON: All right. No more question, Your Honor.

21 BY MR. SMITH:

22 Q. Mr. Mauldin, can you look at the transcript for me?

23 A. Yes.

24 Q. On Page 188?

25 A. I am at page 188.

1 Q. Will you agree with me there, that you did question the
2 victim about a statement she made during the forensic
3 interview, about what her mother told her to do?

4 A. I asked the girl, do you remember telling that lady the day
5 you went February 8th, 2016, you were there because mommy
6 says do what I say? That question?

7 Q. Yeah. And the lady you're referring to there, that's the
8 forensic interviewer, right?

9 A. Yes.

10 Q. Okay. Then look at page 193. Did you question the victim
11 about the forensic interview there again on page 193?

12 A. Something about being hung in a closet. Like I'm not a hook
13 in the closet or something by the clothes.

14 Q. Okay. And that was something that she had told the --
15 you're questioning whether she said that during the forensic
16 interview; is that right?

17 A. Re-cross, when you live in Nana, you brother, one brother.
18 Oh, they redacted the names of children. Sort of confusing.
19 Was talking about the people that live there. And there was
20 an Uncle Joe. Now, when you talked to the lady on the
21 video, did you tell her anything about being hung on a hook
22 in the closet? She said I don't remember.

23 Q. Was that a reference to the forensic interview again?

24 A. I believe so.

25 Q. Okay. You testified earlier that the Google search results

1 obtained from Mr. Ellis's phone were a drop in the ocean.

2 What do you mean by that?

3 A. Well, the -- the 7 page detailed confession that he gave was
4 the ocean and that search, and the dildo corroborating both
5 his statement and her statement, they weren't helpful, but
6 it was his confession that sunk the ship.

7 Q. Okay. And when you were discussing -- discussing plea deal
8 or plea offers with Mr. Ellis, did he gives you any reason
9 to believe he was confused about what the terms meant?

10 A. Oh, no, he did not like the term 25 to life. In fact, he
11 rejected it.

12 Q. Okay. All right.

13 A. He didn't think it was fair that somebody accused, or doing
14 what he did, would have to face that much time. That was
15 not a fair penalty. I said well, that's what the
16 legislators of this state deemed to be the penalty for that
17 kind of conduct. And he did not seem to be able to wrap his
18 mind around that.

19 Q. Did he use ---

20 A. Not the fact that it was 25 to life, but that it was 25 to
21 life for somebody that did what he was accused of or did.

22 Q. Did he use any unusual phrases to refer to himself?

23 A. Not to me. But he did to Dr. Martin.

24 Q. You were questioned on cross about the people there at the
25 scene, most of those testified against Mr. Ellis at trial,

1 didn't they?

2 A. I believe so.

3 Q. Okay.

4 A. I would again, refer to the record.

5 Q. Okay. You were also asked on cross about the
6 (indiscernible) to the vibrator. I believe you testified
7 that you didn't see any basis for objecting to it; is that
8 right?

9 A. Right. It was described in both his statement and, I
10 believe, some of her allegations said it was used during the
11 grooming process and potentially be part of the CSC third
12 degree charge. And I thought there was a search warrant
13 validly executed. And they also alleged that he consented
14 to a search of his house.

15 Q. Can you look at page -- page 3 of State's exhibit one?

16 A. Okay. I'm there.

17 Q. Okay. And if you look at the second full question and
18 answer on that page, what -- what does Mr. Ellis write in
19 there about the vibrator?

20 A. The question is where did you get the vibrator and lubricant
21 from? His answer, my wife and I have it in our dresser that
22 my wife and I bought for intimacy a long time prior to my
23 degradation.

24 Q. Is that the vibrator admitted that Mr. Johnson asked you
25 about?

1 A. Possibly. I think there were a number of sex toys or
2 devices.

3 Q. Okay.

4 A. It's hard to use the word toy when it involves a child.

5 Q. And so those were the items taken from the home, pursuant to
6 the search warrant?

7 A. Yes.

8 Q. Okay. And you were also asked about whether you could have
9 objected to Mr. Ellis's letters on the basis of hearsay.
10 What's your understanding of the hearsay objection when the
11 Declarant is the Defendant?

12 A. Well, number one, I think there were statements against
13 interests. Number two, (indiscernible) a party opponent
14 kind of. And three, I mean, I wouldn't say everything the
15 Defendant says is fair game, but a good chunk of it is.

16 Q. Okay.

17 MR. SMITH: No more questions, thank you.

18 MR. JOHNSON: (Indiscernible), Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. JOHNSON:

21 Q. Mr. Mauldin, do you see a page 3 of a discovery marked June
22 21, 2017, page 3 of a notes from investigator?

23 MR. JOHNSON: Mr. Mauldin, -- Judge, I'm going to ask
24 Mr. Mauldin if he's got something from his record that we
25 can reference.

1 THE COURT: Yes, sir.

2 MR. JOHNSON: This is marked it's -- it's page 3 of 8,
3 investigator's notes. Can you see if we have that?

4 BY MR. JOHNSON:

5 A. Mr. Madsen, chief public defender is a very frugal
6 individual and he has people go through and take all the
7 clips and findings out of the papers and file when they get
8 closed, so everything is in a mishmash. Page 3 of what?
9 June 20th, so that would've been close to the due date of
10 the trial. Let's see. What date is this? This doesn't have
11 a date on it. June 16, 2016. Goodness gracious. Here we
12 are.

13 Q. And on -- on -- just referencing, your notes, do you have
14 notes confirming, on page 3 of 8, regarding the beginning of
15 an interview, taking of a statement, that would be in 18:25,
16 is that the time you have recorded? Is that the time for
17 taking statements for Mr. Ellis?

18 A. Okay. Oh, this is page 2, I'm sorry. These are notes, I'm
19 not sure as to which officer wrote these. It does say at
20 18:25, 6:25 ---

21 MR. SMITH: Your Honor, I have an objection.

22 THE COURT: Yes, sir.

23 MR. SMITH: Multiple. Okay. Going to object to
24 authentication, hearsay, referring to an item not in
25 evidence, best evidence rule, and a rule of completeness.

1 MR. JOHNSON: We -- Your Honor, if I check -- if I just
2 ask, can Mr. Mauldin refresh his memory based on the
3 specific notes, does he have a record and refresh his memory
4 about when they recorded a time when they did a -- took a
5 statement, and then compare it to the respondents one, their
6 -- their actual statement they put in the record?

7 Because there's notes. This is not the copy from
8 Mr. Mauldin, so this is the copy that we've got from my
9 client. And there's just a time recorded. And I'm just
10 trying to get Mr. Mauldin to ---

11 THE COURT: To find this in his own?

12 MR. JOHNSON: He's got it. And I believe he's found
13 it, Judge. And so I'm just asking, basically refresh his
14 memory. And since there's a time recorded, if he can -- if
15 he was aware of a time that was recorded by the investigator
16 for taking the statement, which was the -- I believe ---

17 MR. MAULDIN: I don't know what that time is referring
18 to it's just up in the air.

19 MR. JOHNSON: Okay.

20 MR. MAULDIN: That's when they initially talked to the
21 victims at Grandma's house or the wife at Grandma's house?

22 MR. SMITH: That's one of the reasons for the
23 objections, is without context.

24 MR. JOHNSON: And Judge, I just wanted to make sure I
25 was clear on that. I can ask him if he has a record of -- I

1 mean, when he reviews it, its mark page 3 of 8, and after he
2 reviews it, if he has some clear memory of that, if he
3 doesn't, he doesn't.

4 THE COURT: Sure.

5 MR. JOHNSON: But that's all I'm asking.

6 THE COURT: Absolutely.

7 BY MR. JOHNSON:

8 A. No, I mean, memory of what?

9 Q. Is there a time recorded on there showing ---

10 A. I mean, I can look at it, it doesn't make me remember
11 anything. I see it there and I can read it to you.

12 Q. Yeah. Do you not -- you don't have knowledge about whether
13 or not that was referencing the time when Mr. Ellis was
14 giving a statement? This exhibit ---

15 A. I have no clue as to what that time is referring to.

16 Q. Okay.

17 A. Whether it was before he walked to the house where they
18 first encountered Mr. Ellis, there was some verbal
19 conversation in the car for a period of time before the
20 statement was given. It's hard to say.

21 Q. All right, Mr. Mauldin.

22 MR. JOHNSON: Judge, I just want to make that clear.

23 If he -- if he could review that. If he could say that that
24 time was something he remembered. If he says that he
25 doesn't know, then that answers the question.

1 THE COURT: Yes, sir.

2 MR. JOHNSON: Thank you, Your Honor. Your Honor, I
3 have no more questions.

4 THE COURT: Is that it? That's it.

5 MR. MAULDIN: You said no or one?

6 THE COURT: No more.

7 MR. MAULDIN: Oh, good.

8 MR. SMITH: State rests.

9 THE COURT: And the state rests. All right. Any
10 argument, Mr. Johnson?

11 MR. JOHNSON: No, Your Honor. We're still staying on
12 the record. Thank you.

13 THE COURT: Yeah, there's too much to go through. I'll
14 let y'all know in writing.

15 MR. JOHNSON: Thank you, Judge.

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CERTIFICATE OF TRANSCRIBER

I, Kelley Primm, a court-approved transcriber, do hereby

certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Lexington County, South Carolina, on the 8th day of June, 2022.

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

August 7, 2024

Kelley Primm
Certified Transcriber



Lexington County Sheriff's Department Statement Form



DATE 24 JAN 2016 PLACE [REDACTED] TIME STARTED 1908 M

I, the undersigned, Bryan Jeffrey Ellis, am 29 years of age, my date and place of birth being the [REDACTED] day of [REDACTED], 19 [REDACTED], at [REDACTED]

My present address is [REDACTED] West Columbia, South Carolina 29170

I completed 12 grade(s) in school. I can read and write. BJE (Initials)

CONTACT NUMBERS: H) N/A W) N/A [REDACTED] -5407

ALTERNATE CONTACT: Name Leslie Gail Ellis Phone Numbers: [REDACTED] -6237

Before answering any questions or making any statements, to Det. Razul

a person who identified him/herself as a LCSD Deputy Sheriff

duly warned and advised me that:

1) I HAVE THE RIGHT TO REMAIN SILENT. BJE

2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. BJE

3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. BJE

4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. BJE

5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. BJE

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. BJE I MAKE THE FOLLOWING STATEMENT:

I, Bryan Jeffrey Ellis, have changed my family by completing what should never have been done. It started mid to late November 2015. I had my daughter perform a ^{hand job} ~~hand job~~, without ejaculation. Later in late to early December, early January she had done the act again, with Flavored lubricant and an external vibrator in which she used on herself after seeing me use it on myself. I had asked if she would put her mouth on my penis and she did. I ejaculated on the floor and some in her mouth.

Last was, again, using her mouth, this past Thursday. I was going to put my mouth on her vagina, but I became nauseated and did not proceed in doing so. I ejaculated in her mouth and on the floor. BJE

Witness

Notary Public

CSD 173, Revised 11/04

My Commission expires

F16-00411

Person giving Statement

Date

Pg 1 of 7 pgs

LE Report: 2-4-16



VOLUNTARY STATEMENT

Page 2 of 7 pages.

Q: Det. Rawl A: Bryan Ellis

Q: What is your daughter's name and how old is she?

BJE A: Minor [REDACTED] Step daughter, 7 yo.

Q: Since Nov. 2015, how many times has this type of activity occurred between you and Minor?

BJE A: Five to six times

Q: Where did these sexual activities ~~often~~ happen?

BJE A: [REDACTED], living room and master bathroom.

Q: How did these activities start between you and Minor?

BJE A: Minor's hand brushed against my pants and I asked her to continue. After a short period of time, I took my pants off and she continued with her hand.

Q: Have you ever touched Minor's vagina?

BJE A: yes

Q: How many times and what did you do?

BJE A: Twice, first was rubbing outside with finger, second was trying to put my mouth to her vagina, but I then became nauseated and stopped.

Q: Did you show Minor how to use the vibrator on her vagina?

BJE A: No, she saw me using it on my testicles and mimicked.

Q: How did she know how to put it on her vagina?

BJE A: she has had a tendency to self stimulate herself from what my wife stated.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Signature of person giving voluntary statement

Sworn to before me this _____ day of _____ 20____.

Notary Public of South Carolina

LCSD 006, Revised 7/07

VOLUNTARY STATEMENT

Page 3 of 7 pages.

that is the only way I could figure. my wife has stated she has masturbated many times and could smell it on her fingers.

Q. How did you and **Minor** use the Cherry Flavored Lubricant?

BJE A: First time was with her hands, then with her's and mouth the time after.

Q. Where did you get the Vibrator & Lubricant from?

BJE A: My wife and I have it in our dresser that my wife and I bought for our own intimacy along time prior to my degradation.

Q. Have you ever inserted your penis inside **Minor** vagina?

BJE A: Never

Q. Have you ever rubbed your penis on **Minor** other than her hands and mouth?

BJE A: NO

Q. Have you ever helped **Minor** stimulate herself?

BJE A: other than already stated, no

Q. Explain why you did not put your mouth on **Minor's** vagina?

BJE A: Prior to me trying, I thought that we would enjoy it. When I came close I had a change of thought and did not proceed. This is when I had figured how disgusting not only what I was doing, but how disgusting it was to whom I had BJE do it to my seven year old daughter

Q. Have you ever done any sexual activities with the other 2 kids in the house?

BJE A: No, I did not feel that they were active like **Minor**, nor are they female. They would have found it to be gross.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Signature of person giving voluntary statement

Sworn to before me this _____ day of _____ 20____.

Notary Public of South Carolina

LCSD 006, Revised 7/07

VOLUNTARY STATEMENT

Page 4 of 7 pages.Q: Why did you perform these acts with **Minor**?

BJE A: **Minor** seemed like she wanted to perform actions, I had a twisted idea that I could teach her to enjoy herself unlike her mother who was always told that sexual stimulation was wrong. In the end, this was my left field of him I should have educated her.

When I was younger, one of my mother's boyfriends molested my sister and I; he taught, at least to me, to be free with my urges.

Q: Explain what your urges are and what you mean by saying that?

BJE A: He, my mother's boy friend when I was young, taught me to not be scared to experiment with different things, open to sexuality and to not suppress curiosity around masturbation and stimulation.

Q: Do you believe you were teaching **Minor** about masturbation or Pleasuring yourself?

BJE A: Both, we reciprocated on what felt good and what did not. She found what she did not like.

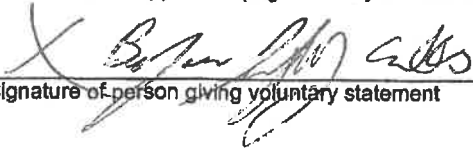
Q: What did **Minor** not like?

BJE A: She did not like the Cherry lubricant, she expressed to me this last time, she did not like using her mouth and preferred using her hand as she used the external vibrator.

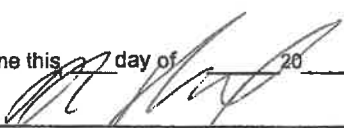
Q: How did **Minor** like it when you ejaculated in her mouth?

BJE A: She was disgusted and immediately told me not to do it.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


Signature of person giving voluntary statement

Sworn to before me this 20 day of June.


Notary Public of South Carolina

LCSD 006, Revised 7/07

VOLUNTARY STATEMENT

Page 5 of 7 pages.

Q: How did **Minor** like using the vibrator on herself & when you touched & rubbed her vagina?

BJE A: I think she liked the vibrator better than me using my hand. She would always ask for it.

Q: How many times has **Minor** used the vibrator?

BJE A: Four or five times

Q: Have you ever thought about putting your penis inside **Minor's** vagina?

BJE A: No, I did not want to have intercourse. I did not even want her to use a dildo. That is not what I thought she needed to know; she just needed to know that masturbation was healthy even if her BJE her mother said she should stop.

Q: Do you look up pornography on the internet? If so what do you use (phone, computer, etc.)

BJE A: yes, phone and desktop computer

Q: Have you ever told anyone that you and **Minor** had sexual activities?

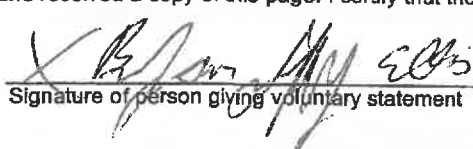
BJE A: ~~no~~ BJE only when Father-in-law's Brother asked what was going on when my father-in-law asked him to wait with the white waiting on officers.

Q: Why did you not want **Minor** to use a dildo?

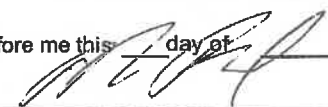
BJE A: It was not my intention to take her virginity, only to allow her to understand she was not bad for masturbating.

Q: When is the last time you looked at Porn?

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


Signature of person giving voluntary statement

Sworn to before me this 16 day of June 2016


Notary Public of South Carolina

LCSD 006, Revised 7/07

VOLUNTARY STATEMENT

Page 6 of 7 pages.

BJE A: I would say it has been at least a week.

Q: Have you ever shown any of your 3 kids pornography?

BJE A: **Minor** had asked to "see other people" doing the same things we had done. She asked if women do it to other women and men to men. I did show her some pornography.

Q: How many times?

BJE A: Two or three occasions, on my phone.

Q: What was her reactions?

BJE A: She got excited, she stated she ~~liked~~ ^{liked} women doing the acts to other women, rather than man on man. She asked what were different ways men and women could have sexual pleasure. I told her that she would find out later on how intercourse worked when she was older and was more able to enjoy herself with who she loved.

Q: Have you ever talked to your two boys about masturbating?

BJE A: I have had the one of conversation with my oldest son. He did not seem to grasp the concept of masturbation.

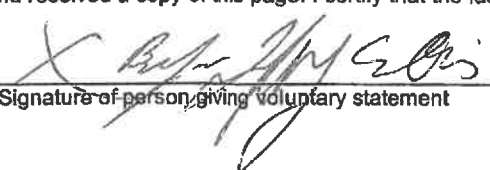
Q: How old is he and what is his name?

BJE A: His name is **L.D.**, he is 9.

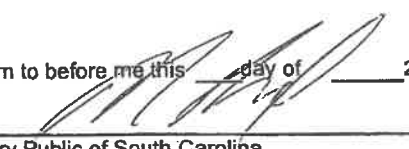
Q: What did you tell him?

BJE A: I told him that it was ok if he were to play with himself only himself, not anyone else, but if he felt attracted to a boy, it was fine.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


Signature of person giving voluntary statement

Sworn to before me this 16 day of June 2016.


Notary Public of South Carolina

LCSO 008, Revised 7/07

VOLUNTARY STATEMENT

Page 7 of 7 pages.

Q: What was his reaction?

BJE A: He acted like he did not understand. My wife states she has seen him playing with his anus, which brought up the conversation later on.

Q: Did your wife know that you had these conversations with **L.D.** and **Minor**?

BJE A: No, I never thought to tell her I talked to them about it.

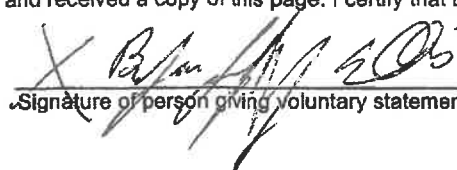
Q: Is there anything else that you want to tell me or talk to me about?

BJE A: As I understand now, that I need some form of assistance to become a part of the functioning society and that what I have tried to achieve is not becoming of an adult, much less a parent.

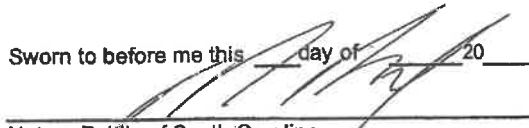
Q: Other than what we have talked about, have you ever done this before last Nov 2015 with anyone else? If so, what, when, where, how & who?

BJE A: NO, but I have had this done to my sister and I when we were younger by my mother's Boyfriend, Mark Owens, when I was about 13 years old. Both orally and penetrative.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


Signature of person giving voluntary statement

Sworn to before me this 17 day of June, 2016.


Notary Public of South Carolina

LCSD 006, Revised 7/07

-1-24-16, copy provided @ 2130

STATE OF SOUTH CAROLINA

County of Lexington

SEARCH WARRANT

Date January 24, 2016

By: Sgt. I. Lantz



RETURN

I received the attached Search Warrant January 24th 2016, and have executed it as follow
 On January 24th 20 16 at 7:11 o'clock P. M, I search
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Residence
 Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- 1-one (1) Flesh Colored Phallus (dildo) - master Bedroom Dresser
- 2-one (1) Purple Colored Phallus (dildo) - master Bedroom Dresser
- 3-one (1) Pink Colored Anal Plug - master Bedroom Dresser
- 4-one (1) Purple Colored Anal Beads - master Bedroom Dresser
- 5-one (1) HP Laptop Computer Black model HP 661 SN/CNF93794V6 - master Bedroom closet
- 6-one (1) Personal Lubricant Jelly (equine) - master Bedroom Dresser
- 7-one (1) DVD-R with "Recovery 7.8" written on it - master Bedroom closet
- 8-one (1) Black Betkemp Toshiba external Hard Drive 500GB SATA II LT006 - living room near kids room
- 9-one (1) Black Wii model WUP-K01 (00) other # FW44781184 with card - living room next to kids room
- 10-one (1) Dell Tower Black model D11m - living room next to kids room
- 11-one (1) Dell Tower white studio XPS - model D03m - living room next to kids room
- 12-one (1) Azza Tower Black - living room next to kids room
- 13-one (1) RCA Black tablet model RCT62036046 - master Bedroom closet
- 14-one (1) Black & Flesh colored "Flesh light" - master Bedroom closet
- 15-one (1) Flesh colored Plastic Vagina - master Bedroom closet
- 16-one (1) silver/clear Plastic & Chrome vibrating Bean

This inventory was made in the presence of J. Laintz
 AND E. Miller

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 25
 day of January 20 16
[Signature] (L. S.)
 Signature of Judge 09/01/16

[Signature]
 (Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-0-160
March 16, 1918

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Lexington County Sheriff's Office

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The grounds, outbuildings, place, premise, residence and vehicles to be searched are located at [REDACTED] in the Redbank area of Lexington County, South Carolina. The residence is a Single story mobile home with light brown vinyl siding, white vinyl underpinning, and white window trim. Wooden steps lead up to a plain white door with a light on the upper left side of the door. Under the light and to the left of the door are black numbers showing [REDACTED]. The house is located at the end of [REDACTED] down a dirt driveway to the right of [REDACTED]. A black metal mailbox on a metal stand with [REDACTED] sits on [REDACTED] just before the driveway.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

In this search warrant Law Enforcement is seeking any and all evidence related to the sexual assault of a 7 yoa victim. The evidence sought is to assist in the investigation of a sexual battery that took place at [REDACTED] in the Redbank area of Lexington County. The evidence sought in this search includes but is not limited to any and all clothing worn by the victim or suspect, blood, blood spatter, biological, saliva, serological, trace evidence, fibers, latent print, and paper effects. Also sought are any and all items that could be used for the purpose of sexual arousal for the suspect on the victim, to include a phallus vibrator in the master bedroom, and any electronic devices, to include camera, recorders, cell phones and computers that could have been used to by the suspect to record the criminal act. Photographs will also be taken of the scene.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge Melton

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Lexington
January 24

S. C.

, 20 16

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Lexington

Personally appeared before me, one Sgt. J. Laintz
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

In this search warrant Law Enforcement is seeking any and all evidence related to the sexual assault of a 7 yoa victim. The evidence sought is to assist in the investigation of a sexual battery that took place at [REDACTED] in the Redbank area of Lexington County. The evidence sought in this search includes but it not limited to any and all clothing worn by the victim or suspect, blood, blood spatter, biological, saliva, serological, trace evidence, fibers, latent print, and paper effects. Also sought are any and all items that could be used for the purpose of sexual arousal for the suspect on the victim, to include a phallus vibrator in the master bedroom, and any electronic devices, to include camera, recorders, cell phones and computers that could have been used to by the suspect to record the criminal act. Photographs will also be taken of the scene.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The grounds, outbuildings, place, premise, residence and vehicles to be searched are located at [REDACTED] in the Redbank area of Lexington County, South Carolina. The residence is a Single story mobile home with light brown vinyl siding, white vinyl underpinning, and white window trim. Wooden steps lead up to a plain white door with a light on the upper left side of the door. Under the light and to the left of the door are black numbers showing [REDACTED]. The house is located at the end of [REDACTED] down a dirt driveway to the right of [REDACTED]. A black metal mailbox on a metal stand with [REDACTED] sits on [REDACTED] just before the driveway.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On January 24, 2016, at approximately 4:15 pm deputies with the Lexington County Sheriff's Department responded to [REDACTED] in the Redbank area of Lexington County in reference to a sexual battery. Upon arrival of the deputies they were advised that a 7 yoa victim wrote a note stating that they have preformed sexual acts on a family member and that same family member has used a phallus vibrator to also perform sexual acts on the victim. The incident location of the incident is believed to be [REDACTED] in the Redbank area of Lexington County. Law enforcement has interviewed the suspect and he has confessed sexual battery against the victim. Law enforcement needs to search this house to collect any and all evidence that is related to this crime to include any possible electronic equipment that could have been used to record and store any unlawful sexual acts preformed on the victim.

Sworn to and Subscribed before me

this 24 day of January 20 16

(L. S.)

Signature of Judge


AffiantAddress 521 Gibson Rd
Lexington, SC 29072Phone (803) 785-2442

STATE OF SOUTH CAROLINA

County of Lexington

SEARCH WARRANT

16-001521

Date January 27, 2016

Officer Det. M. Rawl



STATE OF SOUTH CAROLINA

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-0-160
March 16, 1918

COUNTY OF Lexington

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Lexington County Sheriff's Office

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The place to be searched is a black Galaxy Note 3 Phone (Model Number SMN900VUD (Serial Number FCCA3LSMN900V). This device is currently located at the Lexington County Sheriff's Department's evidence room, 521 Gibson Road, Lexington, South Carolina 29072.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

As a result of the execution of this search warrant, a search for any and all saved, archived, encrypted, or deleted data including but not limited to records, documents, photographs or videos depicting minors engaged in sexual activity or posed in a lewd and lascivious manner taken from, derived from or contained in the computer components and storage media described in the above device seized pertaining to this investigation of criminal sexual conduct, sexual exploitation of a minor, and disseminating obscene material to a minor twelve years of age or younger. Due to the intense nature and exhaustive amount of information that may be stored in the device seized and necessary amount of time required to complete the search of the device, the result of any forensic analysis will be maintained by law enforcement for any subsequent legal proceeding. LCSD Case number 16-001521.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge Melton

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Longin
January 27

, S. C.

, 20 16

[Signature] (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Lexington

Personally appeared before me, one Det. M. Rawl
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

As a result of the execution of this search warrant, a search for any and all saved, archived, encrypted, or deleted data including but not limited to records, documents, photographs or videos depicting minors engaged in sexual activity or posed in a lewd and lascivious manner taken from, derived from or contained in the computer components and storage media described in the above device seized pertaining to this investigation of criminal sexual conduct, sexual exploitation of a minor, and disseminating obscene material to a minor twelve years of age or younger. Due to the intense nature and exhaustive amount of information that may be stored in the device seized and necessary amount of time required to complete the search of the device, the result of any forensic analysis will be maintained by law enforcement for any subsequent legal proceeding. LCSD Case number 16-001521.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The place to be searched is a black Galaxy Note 3 Phone (Model Number SMN900VUD (Serial Number FCCA3LSMN900V). This device is currently located at the Lexington County Sheriff's Department's evidence room, 521 Gibson Road, Lexington, South Carolina 29072.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See Attached A reference LCSD Case Number 16-001521

Sworn to and Subscribed before me

this 27 day of January 20 16
[Signature] (L. S.)
 Signature of Judge [Signature]

[Signature]
 Affiant
 Address 521 Gibson Rd
Lexington, SC 29072
 Phone (803) 785-2475

Attachment A: Reason for Affiant's belief that the property sought is on the subject premises:

The undersigned, on oath, states that corroborating evidence related to Lexington County Sheriff's Department Incident Report Number 16-001521, being a report of the crime of Criminal Sexual Conduct with a Minor – First Degree, SC Code of Law: 16-3-655(A)(1); Criminal Sexual Conduct with a Minor – Third Degree, SC Code of Law: 16-3-655(C); and Disseminating Obscene Material to Minor Twelve Years of Age or Younger, SC Code of Law: 16-15-355 is contained on the afore-described Black Galaxy Note 3 Phone seized from [REDACTED] in the West Columbia area of Lexington County, South Carolina. My belief is based on the following facts:

I, Miles Rawl, a detective with the Lexington County Sheriff's Department, which is located at 521 Gibson Rd., Lexington, SC 29072, phone (803) 785-8230, being duly sworn depose as follows:

I have been a law enforcement officer since 2004 and have conducted numerous criminal investigations including but not limited to murders, suicides, narcotic violations, sexual assaults, child abuse, burglaries, fraud and forgery, criminal domestic violence and robberies. I am currently assigned to the Major Crimes Division of the Lexington County Sheriff's Department. I have received specialized training and on the job training through supervisors and other experienced law enforcement officers from local and state authorities.

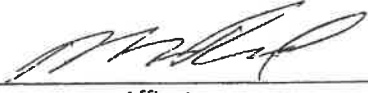
On January 24, 2016, at approximately 4:15 pm deputies with the Lexington County Sheriff's Department responded to [REDACTED] in the West Columbia area of Lexington County in reference to a sexual battery. Upon arrival of the deputies they were advised that a 7 yoa victim wrote a note stating that they have preformed sexual acts on a family member and that same family member has used a phallus vibrator to also perform sexual acts on the victim. The incident location of the incident is [REDACTED] in the West Columbia area of Lexington County South Carolina. Law enforcement has interviewed the defendant, Bryan Jeffery Ellis (29 years of old) and he has confessed to law enforcement in a sworn written



Judge

01/27/16

Date



Affiant

01-27-16

Date

statement that he had the victim (7 years of age) perform fellatio (oral sex) on him five to six times between the dates of November 15, 2015 and January 21, 2016. The defendant went on in his written confession to admit that he did have the same victim use their hands to manually stimulate his penis during a lewd and lascivious act with the intent for arousal, gratifying lust and sexual desires, between the dates of November 15, 2015 and December 15, 2015. The defendant also admitted that he did disseminate obscene material to the same victim by viewing and watching pornography with the 7 years old with the use of his computer and phone. The defendant in this case has been charged with five counts of Criminal Sexual Conduct with a Minor – First Degree, one count of Criminal Sexual Conduct with a Minor – Third Degree, and three counts of Disseminating Obscene Material to Minor Twelve years of Age or Younger.

Due to my training, knowledge, and experience, it has been found that persons who have demonstrated an interest or preference in sexual activity with minors or in sexually explicit visual depictions of minors are likely to keep secret and/or hidden, but readily at hand, sexually explicit images depicting minors. In some instances, these depictions are actual photographs or images of the suspect's own sexual activity with past or present child victim. In some instances, the suspect keeps these depictions as a means of titillating the sexual interests of new minor victims or otherwise lowering the inhibitions of other potential child sexual partners by showing them that other minors participate in this activity. Still in other instances, the depictions are a means of arousing the suspect. The depictions tend to be extremely important to such individuals and are likely to remain in the possession of or under the control of such an individual for extensive time periods. In my training and experience, individuals who view or possess child pornography typically maintain their collections for many years and keep and collect items containing child pornography over long periods of time. In fact, a person that has this type of material rarely, if ever, disposes or destroys the collection of their sexually explicit images and videos. This search is needed to further locate any evidence related to the crime of Criminal Sexual Conduct of a Minor, Sexual Exploitation of a Minor, and also to corroborate the



Judge

01-27-16

Date



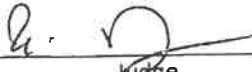
Affiant

01-27-16

Date

defendant's admission that he viewed and watch pornographic material of people engaged in sexual acts with the 7 year of victim.

Due to the intense nature and exhaustive amount of information that may be stored in the device seized and the necessary amount of time required to complete the search of the device, the results of any forensic analysis will be maintained by law enforcement for any subsequent legal proceedings. LCSD Case Number: 16-0001521



Judge

0127/16

Date



Affiant

01-27-16

Date

RETURN

I received the attached Search Warrant Jan 27, 20 16, and have executed it as follows:

On Jan 27, 20 16, at _____ o'clock _____ m.,

I searched (the person) described in the warrant and (the premises).

I left a copy of the warrant with the device
Name of person searched or "at the place of search" together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: Due to the exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of these device(s), the results of any forensic analysis will be maintained by law enforcement for any subsequent legal proceedings.

This inventory was made in the presence of Michael Phillips

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 1

Day of February, 20 16

Signature of Judge [Signature]

(L. S.)

[Signature]
(Signature of Officer Executing Warrant)

RETURN

I received the attached Search Warrant January 27, 2016 and have executed it as follows
On January 27 20 17 at _____ o'clock _____ M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with the defence
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

A CD containing phone extraction from a Samsung SM-N900V (PR90956)
Completed by Det. Mike Phipps & hand delivered as discovery on
6-16-17. Case number 16-001521.

This inventory was made in the presence of Michael Phipps
AND Miles Earl

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 19
day of June 20 17
[Signature] (L. S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

2025 MAR 19 PM 3:15

IN THE COURT OF COMMON PLEAS

FOR THE ELEVENTH JUDICIAL CIRCUIT

Bryan J. Ellis, SCDC #373122,

LISA M. COMER

Case No. 2020-CP-32-02225

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Appellate Counsel:

Solicitors:

Date of Hearing:

Court Reporter:

Hon. Jocelyn Newman

Ola A. Johnson, Esq.

Taylor Smith, Esq.

David M. Mauldin, Esq.

Joanna K. Delany, Esq.

Suzanne Mayes, Esq.

Le'Jessica Stringfellow, Esq.

June 8, 2022

Bethanie Creppon [Kelley Prim – transcript]

This matter comes before the Court by way of the application for post-conviction relief by Bryan Ellis filed on June 25, 2020. On November 23, 2020, Respondent State of South Carolina filed its Return and Partial Motion to Dismiss, requesting an evidentiary hearing to resolve the claims set forth in the application. The Court appointed Ola Johnson on October 20, 2020 to represent the Applicant. The Applicant, though counsel Johnson, made an amended application on May 25, 2022 and a second amended application on June 5, 2022.

On June 8, 2022, an evidentiary hearing was held at the Lexington County Courthouse before the Honorable Jocelyn Newman. Applicant was present and represented by Ola Johnson, Esquire. Assistant Attorney General Taylor Smith, Esquire represented Respondent. At the hearing, Applicant proceeded forward on allegations 3, 4, 7, 8, 9, and 11 within his original PCR

application and additionally the allegations in his first and second amended applications. In support of these claims, Applicant testified on his own behalf. Respondent presented the testimony of David Mauldin (Trial Counsel). This Court has before it the transcript of this PCR hearing.

Following a thorough review of the trial record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on January 24, 2016, following an investigation into allegations of sexual abuse involving his stepdaughter. During its July 2017 term, the Lexington County Grand Jury indicted Applicant for first-degree criminal sexual conduct (CSC) with a minor (2017-GS-32-2303) and third-degree CSC with a minor (2017-GS-32-2305(A)). On July 10, 2017, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Assistant Public Defender David Mauldin represented Applicant. Assistant Solicitors Suzanne Mayes and Le'Jessica Stringfellow prosecuted the case.

On June 12, 2017, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to consecutive terms of life imprisonment for first-degree CSC with a minor and fifteen years' imprisonment for third-degree CSC with a minor.

Applicant filed a timely notice of appeal. Appellate Defender Joanna K. Delany (Appellate Counsel) perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

Whether the trial court erred in denying the defense's motion to redact part of [Applicant]'s statement in which he admitted to Detective Rawl that he discussed masturbation with another minor child, prejudicing [Applicant] by injecting potential sexual misconduct with another child since [Applicant] was not charged with any offense regarding that child, particularly where the refusal to redact allowed the solicitor to argue in closing that [Applicant] was a sex offender who must be stopped?

The Respondent was represented in the appeal by Assistant Attorney General Scott Matthews. Following further briefing, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Ellis*, 2019-UP-166 (S.C. Ct. App. withdrawn, substituted, and refiled June 26, 2019).¹ The Remittitur was returned to the lower court on August 2, 2019.

FACTS GIVING RISE TO THE CONVICTION

The victim (Victim) in this case was born in 2008. (R. 237)². Applicant and victim's mother (Mother) began dating in 2009 when Victim was one and a half years old. (R. 237). Applicant is not Victim's biological father, but Applicant and Mother did share one biological child together (Brother Two). (R. 237). Victim had another brother (Brother One) who was also not biologically related to Applicant. (R. 237). Applicant and Mother were married in 2010 and then lived together with Mother's parents (Grandma and Grandpa) for approximately the next six years. (R. 238). In March 2015, Applicant and Mother purchased a mobile home approximately fifty yards away from Mother's parent's home. (R. 239).

On January 23, 2016, Victim disclosed to Grandma that she was sexually assaulted by Applicant. (R. 225). Victim disclosed the same information to Mother the following day, January

¹ The Court granted Applicant's petition for rehearing following the Court's original opinion, which was filed May 8, 2019.

² References to "R. _" are to the Record on Appeal. These page numbers are consistent with the pages in the trial transcript. References to "PCR Tr. p. _" are to the June 8, 2022 transcript of the PCR hearing before this Court.

24, 2016, before Mother went to work. (R. 227). Mother called out of work and sent a text to Applicant asking him to come home. (R. 246). Applicant returned home at approximately 3:30 PM at which time Mother asked Applicant: "Did you make [Victim] lick your pee-pee?" (R. 247, lines 14-15). Applicant responded in the affirmative saying: "Yes. It's all true." (R. 247, line 15). Mother then went to her parent's home where she called 911 at approximately 3:56 PM. (R. 248). Grandpa and his brother (Mother's Uncle) went to Applicant's home to wait with Applicant until law enforcement arrived. (R. 251). Grandpa asked Applicant whether he sexually assaulted Victim. Applicant responded in the affirmative. (R. 280).

Sergeant Miles Rawl of the Lexington County Sheriff's Department arrived at Applicant's residence and spoke with Applicant inside Rawl's police vehicle. (R. 313). Rawl advised Applicant of his Miranda rights and Applicant voluntarily spoke with Rawl. (R. 316). Applicant confessed verbally and in writing. (R. 318). One portion of Applicant's written confession reads as follows:

I [Applicant] have changed my family by completing what should never have been done. It started mid to late November 2015. I had my daughter perform a hand job without ejaculation. Later in December, early January she had done the act again with flavored lubricant and an external vibrator in which she used on herself after seeing me use it on myself. I had asked if she would put her mouth on my penis and she did. I ejaculated on the floor and some in her mouth. Last was again using her mouth this past Thursday. I was going to put my mouth on her vagina but I became nauseated and did not proceed in doing so. I ejaculated in her mouth and on the floor.

(R. 326-27, lines 19-5, R. 494). At trial and in her forensic interview, Victim corroborated details of Applicant's confession, including details regarding Victim performing fellatio on Applicant, Applicant's subsequent ejaculation in Victim's mouth, and Victim's use of a vibrator on herself. (R. 174-77, 181, State's Exhibit #26).

Upon finishing his written confession, Applicant was arrested by Rawl. (R. 341). Law enforcement also seized Applicant's cell phone. Detective Michael Phipps performed an extraction of Applicant's phone that revealed a series of Google searches performed on the phone from the time Mother called 911 to the time Rawl arrived and began interviewing Applicant. Among the terms entered into the Google search engine on Applicant's phone during this time period were "help with addiction", "addiction", "beat addiction", and "beat sex addiction". (R. 373, line 19; R. 374, line 22, 24; R. 375, line 3).

While awaiting trial, Applicant wrote to Mother occasionally from the Lexington County Detention Center. (R. 252, State's Exhibit #20). In one such letter Applicant wrote to Mother: "I know I was wrong for what [Victim] and I did. That's why I confessed." (R. 421, State's Exhibit #20 p. 2). In the same letter, Applicant wrote "I know what [Victim] and I did was fucked up." (State's Exhibit #20, p. 1).

At a pre-trial hearing, the trial court declined to redact the question and answer regarding whether Mother knew Applicant had discussed masturbation with Victim and Brother One but instructed the State to redact any reference to Brother One. The redacted exhibit was entered into evidence read as follows:

Q: Did your wife know that you had these conversations with [Victim]?

A: No. I never thought to tell her.

(R. 130–32, R. 500, State's Exhibit #29). Prior to admitting the redacted copy of Applicant's confession into evidence, the trial judge gave the jury the following instruction:

The State has introduced State's exhibit number 29. A copy instead of the original document which is Court's exhibit number 1 has been introduced because I have determined that portions of Court's exhibit number 1 is not admissible, therefore, I have ordered that to be redacted or removed from Court's exhibit number 1, therefore, it

is now State's exhibit number 29. You will see some markings on there for items redacted or removed and the like. The fact that I have redacted portions of State's 29 or only allowed State's 29 into evidence should not be considered by you for any purpose whatsoever during your deliberations. I have ruled that it is not proper that those portions which have been redacted would be a part of the record in this case.

(R. 321–22, lines 13–2). The State made no mention of Applicant's conversation with Brother One at trial.

CURRENT ACTION BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleged he is being held in custody unlawfully based on the following (verbatim)³:

- I. "Ineffective assistance of trial counsel"
 1. ~~"Introducing prejudicial character evidence of 'prior bad acts' of discipline. Tr. 188."~~
 2. ~~"Failed to raise impeachment of alleged victim when she stated a scientific improbability that she and her brothers were hanged by their shirts from a hook on the door."~~
 3. **"Failed to raise impeachment of alleged victim when forensic video shows interviewing expert witness leading questions and inconsistent statements during interview." (3)**
 4. **"Failed to use pre-trial actions such as: motion to dismiss, motion for summary judgment, motion for speedy trial, motion(s) for depositions and/or interrogatories, motion to reduce bond, and (initially, until defendant request to relieve counsel) motion to suppress illegally obtained evidence. Violating procedural due process." (4)**
 5. ~~"Failed to obtain expert witnesses to rebut prosecution's expert witness."~~
 6. ~~"Failed to object to having forensic interview be authenticated as an expert witness in violation of S.C. case law: State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013)."~~
 7. **"Failed to object to illegally obtained mobile phone data outside of search warrant criteria; to include**

³ The allegations in **bold** were raised at the hearing, the allegations that were struck through were specifically abandoned. PCR Tr.p. 5.

being too broad, introduced information too prejudicial compared to probative value, and expiration of warrant when executed." (7)

8. "Failed to educate defendant of various pleas, such as nolo contendere, not guilty due to mental illness, or even appearing to obtain a plea—despite counsel's immediate superior boasting counsel's credential and enforcing that defendant would remain unheard." (8)
9. "Failed to educate defendant on meaning of '25 to life, life, parole, sexual battery,' etc. Even so far as stating 'you understand you just don't like it' during one of the less than eight attorney visits in a high value case during defendant's 18-month illegal detainment." (9)
- ~~10. "Showed bias, stating to defendant: 'I'm tired of talking about pee-pees and vaginas' and 'He gets paid the same whether he wins or loses' during visits to defendant in jail."~~
11. "Failed to educate defendant about a 'bench trial.' (11).
- ~~12. "Failed to submit psycho-sexual psychiatrist, Dr. Tom Martin as an expert witness during trial, at sentencing, or even to the court for a pre-sentencing report."~~
- ~~13. "Failed to verify defendant's competency to stand trial and/or mental state for lack of criminal intent."~~
- ~~14. "Failed to request trial judge recuse himself (the judge) for bias, apparent in verbal tone, physical mannerisms, and one-sided interpretations of the law."~~
- ~~15. "Failed to object to solicitor's allegation that there was 'no way' government witnesses could have known about defendant's involuntary statement, though the lead investigator all ready took the stand stating he talked to them directly after defendant's arrest; and the D.S.S. report states they received the statement prior to the forensic interviews."~~
- ~~16. "Failed to impeach forensic interviewer for her prior inconsistent statements in forensic video and on stand, to include her disregard towards leading questions and suggestions, that she states she did not commit."~~
- ~~17. "Failed to object to faulty indictments at trial for not having a valid witness."~~
- ~~18. "Failed to object to indictment for CSC 3rd degree being faulty due to time paradox of grand jury convening and signing indictment the day of trial, where invalid witness seems to be in two places at once, even."~~



19. ~~"Failed to have forensic interviews transcribed so that defendant could review them as allowed by due process for discovery."~~
20. ~~"Failed to have mobile phone data available to defendant in hard copy format to review as allowed by due process for discovery."~~
21. ~~"Failed to request to exclude expert testimony for unreliability under S.C.R.E. 702 and Jamison v. Morris, 285 S.C. 215, 228, 684 S.E.2d 168, 175 (2009)."~~
22. ~~"Failed to attach ruling of involuntary confession under F.R.E. 103(a)(1)(A) and S.C.R.E. 103(a)(1) when the courts parameters met after Officer Rawl stated he coached defendant to edit statement and initial (U.S. v. Boliek, 917 F.2d 135, 149 (4th Cir. 1990))."~~
23. ~~"Failed to request charge for spoliation of non-preserved first interrogation."~~
24. ~~"Failed to request charge for spoliation of non-preservation of video of interrogations."~~
25. ~~"Failed to introduce Best Efforts Rule in presenting search warrant of home to home owner prior, or even after, its completion, though home owner defendant was passed by the officer, in his yard, being interrogated."~~
26. ~~"Failed by allowing immaterial, prejudicial evidence of non-prosecuted allegations, therefore against the res gestae, by introducing an external vibrator to enhance the prosecution's case by inferring other criminal acts or to confuse the issues to the jury."~~
27. ~~"Failed to request a limiting instruction against the introduction of an external vibrator an act not prosecuted before or at trial. (State v. Timmons, 372 S.C. 48, 54-55, 488 S.E.2d); (Webb v. CSX Transp. Inc., 364 S.C. 639, 655, 625 S.E.2d 440, 449 (2005))."~~
28. ~~"Failed by attempting to make generalization of objections contemporaneous as 'previous objections' (State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996))."~~
29. ~~"Failed to secure a jury of defendant's peers: age, gender, education, military (nearly all female jury)."~~
30. ~~"Only decided to do a very limited defense when defendant requested counsel dismissal due to counsel's malpractice; bias; refusal to form a defense involving defendant in the process; not trying to obtain a plea offer; instructing that if counsel dismissed, defendant would not get new appointed counsel."~~
31. ~~"Failed to allege double jeopardy as even prosecution admits elements of CSC 1st constitutes criteria for CSC 3rd Tr. 378."~~

II. — "Malicious prosecution"

1. ~~"Introduction of suicidal mental health issue by action similar to a 'talking objection' by questioning character of evidence with no foundation."~~
2. ~~"Introduction of irrelevant, non-material evidence, being procedurally illegal due to search warrant expiration, and being too broad, for defendant's mobile phone data."~~
3. ~~"Unjustly and unfairly opined in opening and closing arguments multiple times, dehumanizing defendant and inciting the jury's passions by continually calling defendant 'sex offender,' 'predator,' suggesting multiple victims; bolstering and vouching, by religious oath, the alleged victim while demeaning defendant; and out-right instructing the jury to 'find the defendant guilty' twice in the same instance and the court instructions cannot remove this taint of flagrant misconduct." U.S. v. Davis, 514 F.3d 596, 613–14 (6th Cir. 2008), Berger v. U.S., 295 U.S. 78, 88 (1935), U.S. v. Kennedy, 372 F.3d 686 (4th Cir. 2004), Boyd v. French, 147 F.3d 319, 328–29 (4th Cir. 1998)."~~
4. ~~"Continually introduction of misstatement of facts throughout."~~
5. ~~"Enforcing jury act as conscience for community."~~
6. ~~"Failed to request a retrial because of denial of defendants right to due process and a fair trial."~~

III. — "Judicial error"

1. ~~"Abuse of discretion when choosing inferior Denno case law simply because he 'usually follows' it."~~
2. ~~"Abuse of discretion when using involuntary statement to decide if coercion existed."~~
3. ~~"Abuse of discretion when setting coercive parameters, stating defendant did not allege being told how and when to strike though and initial corrections, though defendant stated he did everything the investigator told him to do."~~
4. ~~"Abuse of discretion when own coercive parameters met during jury portion, where investigator openly admits—and without being lead—the very exculpatory evidence the judge based his biased opinion on defendant's statement; refusing to grant defenses request for directed verdict and a new trial. Tr. 121, Tr. 327. 8–14."~~
5. ~~"Abuse of discretion by authenticating a forensic interviewer as an expert witness against S.C. case law: State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013)."~~
6. ~~"Abuse of discretion by not recusing himself from case due to prejudice."~~

7. ~~"Abuse of discretion when continually badgering defense on stand during suppression hearing and in front of the jury's showing bias by vocal and physical demeanor in disallowing defense attorney to follow procedure, interrupting defense counsel during witness examination, telling defendant how to answer questions, even going so far as stretching over his podium into the witness stand while reproaching the defendant how to answer a non-question in front of the jury."~~
8. ~~"Showing bias when lunging out of podium toward his chamber door with a distinct hatred on his face, upon defendant's leaving the stand during suppression hearing."~~
9. ~~"Abuse of discretion by imposition of cruel and unusual punishment for maximum sentencing, though defendant had no pre-sentencing evaluation, no prior arrests, and judge lost jurisdiction to hear case due to bias."~~
10. ~~"Abuse of discretion at sentencing for using defendant's victimization as a child against him."~~
11. ~~"Abuse of discretion when opined that maximum sentence be imposed because defendant enforced his constitutional rights to confrontation, due process, and a fair hearing."~~
12. ~~"Abuse of discretion when suggesting the imposition of maximum sentence will deter others from committing convicted crimes as defendant is not authority to anyone but himself."~~
13. ~~"Abuse of discretion when stating that recidivist nature of convictions and lack of rehabilitation from the state could cure the status offense of being a 'pedophile.'"~~
14. ~~"Abuse of discretion when imposing cruel and unusual, dehumanizing, procedurally unreasonable maximum sentenced to run consecutively that is substantively unreasonable due to not just defenses counsel's failing to introduce mitigating circumstances via a "pre-sentencing evaluation, but to the lack of criminal history (and thus, knowledge of the criminal justice system); defendant's mental health status, and his previously being victimized at a young age; and not affording defendant with restitution for solicitor's flamboyant misconduct(s)."~~
15. ~~"Abuse of discretion by allowing a misstatement and mistake of law as a 'sexual battery' under 16-3-651(h)(2015) states: 'sexual intercourse of any intrusion, however slight, of any part of a person's body or any object into the genital or anal openings of another person's body;' there was no allegation that defendant~~

~~penetrated the alleged victim's 'genital' nor 'anal openings.'~~"

- ~~16. "Stated 'indeterminate' life and 'indeterminate' 15 year sentencing, but writing determinate sentences of 'life' and '15 years,' with no pre trial incarceration good time noted on sentencing sheets; meaning the judge explicitly states a life sentence eligible for parole at the minimum 25 years and a 15 years sentence eligible for parole at the minimum zero (0) years—NOT life without possible parole and mandatory 15 years."~~
- ~~17. "Abuse of discretion by not allowing defense possible exculpatory evidence, requested through defense counsel, of Officer Rawl's disciplinary record, violating the FOIA (Freedom of Information Act)."~~
- ~~18. "Failed to ask defendant if appointed counsel was adequate, which defendant already notified court of previous disgruntlement."~~

IV. ~~"Ineffective assistance of appellate counsel"~~

- ~~1. "Failure to adhere to the Sentencing Reform Act of 1984 for challenging inhumane sentences, though they are in line with statute. Counsel did not allege judicial abuse of discretion. Only that a sentence given within the guidelines does not constitute justifiable imposition which actively applied."~~
- ~~2. "Failed to allege abuse of discretion of trial court cumulative to entire record."~~
- ~~3. "Failed to allege fault indictments with no valid witness."~~
- ~~4. "Failed to request grand jury proceeding transcripts in order to verify date, time, statements, and information other than jury privilege deliberation."~~
- ~~5. "Failed to allege prosecutorial misconduct cumulative to entire record."~~
- ~~6. "Failed to obtain and issue corrected transcripts; instead opting to tell defendant that his minimalist, misstated, typo'd, illegal transcripts are the record there is and will be."~~
- ~~7. "Failed to assert federal statute that requires verbatim recording of every court session to include side bars and audio/video evidence. (U.S. v. Winstead, 74 F.3.d 1313, 1321 (1996)."~~
- ~~8. "Failed for not arguing 16-3-655(D)(1), requiring the jury to make a distinction of their collective perception constituting sexual battery and intrusion."~~
- ~~9. "Failed to allege that case entirely based on involuntary confession with no direct evidence (prior to trial) and~~

~~lacking proof of all statutory elements, thereby invalidating arrest and prosecution of allegations."~~

~~V. "Pre conviction violations"~~

- ~~1. "U.S. Constitution, Amendment Four violated when Officer Smith entered defendant's home without an invitation, nor probable cause or extrinsic circumstances."~~
- ~~2. "Fourth Amendment violation when Officer Rawl entered defendant's home unannounced without invitation, extrinsic circumstances, probable cause or search warrant."~~
- ~~3. "Fifth Amendment violation when Officer Rawl kicked defendant from his home before obtaining a search warrant."~~
- ~~4. "Fifth Amendment violation when Officer Rawl pressured defendant to cooperate, be it through direct contact, verbal means, psychological means, suggestive means, or even subjective means that extent to being objectively unreasonable by use of intimidation."~~
- ~~5. "Fifth Amendment violation when Officer Rawl did not Mirandize defendant prior to first interrogation."~~
- ~~6. "Fifth Amendment and Brady violation when Officer Rawl failed to maintain his primary duty to preserve evidence of the first intimidated interrogation, constituting spoliation of exculpatory evidence."~~
- ~~7. "Fifth Amendment and Brady violations when Officer Rawl failed to maintain his primary duty to preserve evidence of the second intimidated interrogation, constituting spoliation of evidence."~~
- ~~8. "Sixth Amendment violation when Officer Rawl decided not to inform defendant of right to counsel prior to evicting defendant from his home."~~
- ~~9. "Sixth Amendment violation when Officer Rawl decided, in bad faith, not to inform defendant of right to counsel prior to first intimidated interrogation."~~
- ~~10. "Sixth Amendment violation when Officer Rawl decided not to allow defendant ample time and/or means to search for counsel, adding that defendant's phone was illegally seized."~~
- ~~11. "Fourth Amendment violation when Officer Laintz passed directly by defendant, but failed to present the defendant the search warrant in best efforts; entering defendant's home unlawfully."~~
- ~~12. "Fourth Amendment violation when Officer Rawl illegally seized defendant's mobile phone."~~

- ~~13. "Fourth Amendment violation when Officer Rawl did not inform defendant of his right not to consent to warrantless search."~~
- ~~14. "Fifth Amendment violation when Officer Rawl did not inform defendant of his right not to consent to warrantless search."~~
- ~~15. "First Amendment violation when Officer Rawl refused to allow defendant to remain silent upon asserting Fifth Amendment right against self incrimination."~~
- ~~16. "Defendant affectively kidnapped, illegally, by Thomas and Danny Havird, and aggravated coercion in nature."~~
- ~~17. "Officer Rawl admits to violating defendant's 5th and 6th Amendment rights by visiting defendant in jail without notifying defense counsel, proving his lack of care for defendant's constitutional guarantees. Also, wore body camera at this time. Tr. 346."~~
- ~~18. "Officer Rawl had no probable cause, prior to coercive interrogation, to request search warrant of defendant's home as no reason to believe in allegation truthfulness or reliability. U.S. v. Wilhelm, 80 F.3d 116 (4th Cir. 1996)."~~⁴

Applicant requested relief as follows:

"convictions and sentences to be overturned/acquitted of with prejudice, monetary[sic] sanctions and relief to be decided at a later hearing for illegal prosecution and detainment; at the very least reverse and remand entire case"

In the first Amended Application filed May 25, 2022, the Applicant makes the following allegations (verbatim):

- 2(a). Applicant's counsel, David Mauldin, failed to meet with the application a sufficient number of times to properly review the evidence and discuss this case with applicant.
- 2(b). Applicant's counsel, David Mauldin, failed to properly investigate the facts of the case.
- 2(c). Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to the evidence seized following a search of the Applicants residence.

⁴ Applicant withdrew a number of the allegations from his initial application at the evidentiary hearing.

2(d). Applicant's counsel, David Mauldin "opened the door" to testimony from the victim regarding evidence against the applicant about the victim being assaulted by the Applicant in "Na Na's house". (P.187, Lines 22-25, p. 190-191, P. 193, Lines 21-25, P. 194, Lines 1-3).

2(e). Applicant's counsel, David Mauldin, failed to object to hearsay evidence "she comes over, and **Minor** told her about what had happened". (P. 227, Lines 8-9).

2(f). Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to letters allegedly written by the Applicant that were prejudicial to the defense and introduced by the state into evidence. (P. 254 and 282, States EX:22).

2(g). Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to testimony Inv. Phipps and evidence regarding internet searches allegedly conducted by the Applicant regarding "help with addition" and "beat sex addiction" on a cellular phone that was presented into evidence by the state (P. 373,372 and P. 375).

2(h). Applicant's counsel, David Mauldin, failed to obtain a ruling from the court on his objections to the states closing and failed to move for a mistrial (P. 446 – 477).

In the second Amended Application, filed June 5, 2022, the Applicant makes the following allegations (verbatim):

3(a). Applicants counsel David Mauldin failed to object to the state describing the Applicant as a sex offender in arguments to the jury (p. 436, 437, 441, 456).

3(b). Applicant's counsel David Mauldin failed to explain to Applicant the option for filing a motion to reconsider the sentence following trial and sentencing.

Before this Court are the records of the Lexington County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript and briefs; and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁵ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

⁵ S.C. Code Ann. §§ 17-27-10 to -160.

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome

the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of Trial Counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J.,

concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing credible and persuasive, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the trial. This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate

the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1(c): "Failed to raise impeachment of alleged victim when forensic video shows interviewing expert witness leading questions and inconsistent statements during interview."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to raise impeachment of the alleged victim when the forensic video shows interviewing expert witness leading questions and inconsistent statements during interview. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that during the forensic video, the forensic interviewer led the victim into a statement. (PCR Tr. p. 6).

On direct examination, Trial Counsel Mauldin testified that he did not have many concerns about leading questions in the recording. (PCR Tr. p. 30). Trial counsel testified the trial court made findings on the record regarding the admissibility of the forensic interview and one of those findings was that that victim statement was not elicited by leading questions during the interview. (PCR Tr. p. 33). See Trial Counsel testified that he did not feel like there were any grounds for cross-examining the victim about any leading questions from the video he reviewed. (PCR Tr. p. 48). Trial Counsel testified that in his closing argument he argued there was inconsistencies in the child's statements between the video and what she testified to on that stand." (PCR Tr. p. 34).

Findings

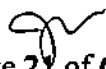
This Court finds the combination of the record and Trial Counsel's credible testimony that Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged

deficiency prejudiced him. See Butler, *supra*. Trial Counsel credibly testified to his trial strategy and this Court finds that trial strategy reasonable under the prevailing professional norms. Additionally, the record reflects the trial court made a specific finding that "the statements both from testimony of the witness and from review of the Court of "child" (victim) is not elicited by leading questions." (R. p. 273).

Further, this Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Trial Counsel was not ineffective for failing to cross-examine the victim on the inconsistencies and choosing to instead address it in his closing arguments. See Huggler v. State, 360 S.C. 627, 635, 602 S.E.2d 753, 757 (2004) (holding that trial counsel was not ineffective for failing to cross-examine child witnesses on inconsistencies between direct testimonies and written statements when counsel instead chose to highlight the inconsistencies in closing), *abrogated on other grounds by* Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and



DISMISSED WITH PREJUDICE.

Allegation 1(d): "Failed to use pre-trial actions such as: motion to dismiss, motion for summary judgment, motion for speedy trial, motions(s) for depositions and/or interrogatories, motion to reduce bond, and (initially, until defendant request to relieve counsel) motion to suppress illegally obtained evidence. Violating procedural due process."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to use pre-trial motions. More specifically counsel failed to file a motion to dismiss, motion for summary judgment, motion for a speedy trial, motion(s) for depositions and or/interrogatories, motion to reduce bond, and a motion to suppress illegally obtained evidence allegedly violating procedural due process. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant alleges he never discussed any motions with him and refused to communicate with him until Applicant tried to fire him. (PCR Tr. p. 7). Applicant alleges he asked Trial Counsel to request a motion to reduce bond and Trial Counsel said they weren't going to reduce it and so they were going to trial. Id. Applicant alleges he never had a hearing to reduce bond. Id.

On direct examination, Trial Counsel Mauldin testified that he did not see any basis upon which he could have moved to dismiss the indictments. (PCR Tr. p. 26). Trial Counsel testified that he does not move for summary judgment in criminal cases, he would move for a directed verdict. (PCR Tr. p. 27). Trial Counsel testified he does not believe a discussion of any basis for a speedy trial motion came up at all. Id. Trial Counsel testified that Applicant was arrested in January of 2016 and went to trial in July of 2017 and that is fairly quick for South Carolina. Id. Trial Counsel testified he discussed bond motions with Applicant and the fact that he had no financial

resources or places to go, it was decided not to proceed. Id. Trial Counsel testified that he and Applicant talked, and the strategy was to wait in jail and be able to accrue some time served in case there was a favorable plea bargain, then he would have time served. Id. Trial Counsel testified he did move to suppress Applicant's statements at trial. Id.

Findings

This Court finds the combination of the record and Trial Counsel's credible testimony that Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra.

Motion for Summary Judgment; Motion for Depositions/ and or Interrogatories

A motion for summary judgment is filed by parties to a *civil* case, a motion for summary judgment does not exist in criminal law. (SCRCP 56). Affidavits and depositions are inadmissible in evidence in a criminal case. State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) (citing; State v. Hester, 137 S.C. 145, 134 S.E. 885; State v. Murphy, 48 S.Ct. 1, 25 S.E. 43). This Court finds that Applicant has failed to show any deficiency by Trial Counsel for failing to file *civil* motions in his criminal case or any prejudice flowing therefrom.

Motion for a Speedy Trial

Pursuant to both the United States Constitution and the South Carolina Constitution, an accused in a criminal prosecution has a constitutionally guaranteed right to a speedy trial. See U.S. Const, amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right to a speedy and public trial[.]"). That right is designed to protect against anxiety stemming from public accusations of a crime and to limit the possibility of a lengthy pre-trial delay impairing an accused's defense. State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471 , 481 (2012). However,

the right to a speedy trial is chiefly designed to prevent undue pre-trial impairment of liberty. United States v. Loud Hawk, 474 U.S. 302, 312 (1986). Critically, though, the criminal trial process is designed to move deliberately due to the many procedural safeguards involved, and, thus, the essential guarantee provided by the right to a speedy trial is the orderly expedition of a charge as opposed to mere speedy expedition. United States v. Ewell, 383 U.S. 116, 120 (1966); see Beavers v. Haubert, 198 U.S. 77, 87 (1905) ("The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures the rights of a defendant. It does not preclude the rights of public justice.").

In order to trigger a speedy trial analysis, a criminal defendant's trial must have been delayed for a period of time that is presumptively prejudicial, which is necessarily dependent on the particular circumstances of each case. Langford, 400 S.C. at 442, 735 S.E.2d at 482. Notably, "a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case." Id. In South Carolina, a delay of over two years has previously been found to be sufficient to trigger a speedy trial analysis. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Likewise, the United States Supreme Court has suggested a delay of roughly one year could—in certain circumstances—be presumptively prejudicial. See Doggett v. United States, 505 U.S. 647, 652, n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found post accusation delay 'presumptively prejudicial' at least as it approaches one year."). However, even where a delay that is presumptively prejudicial exists, a speedy trial determination "is not based on the passage of a specific period of time," and delay alone is not singularly dispositive. State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (emphasis added).



Ultimately, once a speedy trial analysis has been triggered, the question of whether a defendant's speedy trial rights have been violated is necessarily dependent on the specific circumstances of the case. State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999). When attempting to answer that question, several factors should be considered. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Specifically, a court analyzing a speedy trial claim should consider: (1) the length of the delay; (2) the reason for the delay, (3) **the defendant's assertion of his right**; and (4) whether any prejudice was suffered by the defendant as a result of the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably, though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant." Id. "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

Trial counsel's assessment and strategy for not seeking a speedy trial were credible and reasonable. Trial Counsel did not believe a discussion of any basis for a speedy trial motion came up at all. Id. Trial Counsel testified that Applicant was arrested in January of 2016 and went to trial in July of 2017 and that is fairly quick for South Carolina. Id. Counsel was not deficient.

Further, Sixth Amendment prejudice was not shown. This Court finds that even assuming, *in arguendo*, the speedy trial analysis was triggered in this case, that Applicant has not established a reasonable probability that had counsel raised the issue that the court would have found a speedy trial violation from the facts of his case. The record shows Applicant was arrested in January of 2016 and proceeded to trial in July of 2017. Additionally, Trial Counsel testified that trial was not in Applicant's purview until June of 2017, when he decided to reject the plea offer. (PCR Tr. p. 49).

Therefore, this Court finds Applicant has failed to show any deficiency by Trial Counsel for failing to move for a speedy trial or any prejudice flowing therefrom.

Motion to Dismiss

Trial Counsel credibly testified that he did not see any basis upon which he could have moved for dismissal of the indictments. Applicant did not allege any grounds at the evidentiary hearing on which the indictments could have been dismissed. This Court finds Trial Counsel was not deficient in his performance with regard to this allegation because there was no meritorious motion Trial Counsel could have made. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Therefore, this Court finds Applicant has failed to show any deficiency by Trial Counsel for failing to move to dismiss or any prejudice flowing therefrom.

Motion to Reduce Bond

Applicant testified that he requested that Trial Counsel file a motion to reduce bond and Trial Counsel said they weren't going to reduce it, so they were going to trial. (PCR Tr. p. 7). This Court finds Applicant's testimony on this matter not credible or persuasive. Trial Counsel credibly testified he discussed bond motions with Applicant and the fact that he had no financial resources or places to go, it was decided not to proceed with a bond motion. (PCR Tr. p. 27). Trial Counsel testified the strategy they discussed was for Applicant to wait in jail and be able to accrue some time served in case there was a favorable plea bargain, he would have time served. (PCR Tr. p. 27). Therefore, this Court finds Applicant has failed to show any deficiency by Trial Counsel for failing file a motion to reduce bond or prejudice flowing therefrom.

Motion to Suppress Illegally Obtained Evidence

The record directly refutes Applicant's allegation that Trial Counsel failed to file a motion to suppress illegally obtained evidence. This Court finds Applicant's testimony on this matter **not credible** or **persuasive**. The record reflects Trial Counsel did file a motion to suppress Applicant's statements at trial which resulted in a lengthy argument and Jackson v. Denno hearing. R. p. 47-121. Judge McMahon denied relief in that matter. R.p. 119-121.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 1(g): "Failed to object to illegally obtained mobile phone data outside of search warrant criteria; to include being too broad, introduced information too prejudicial compared to probative value, and expiration of warrant when executed."

Allegation 2(g): Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to testimony Inv. Phipps and evidence regarding internet searches allegedly conducted by the Applicant regarding "help with addiction" and "beat sex addiction" on a cellular phone that was presented into evidence by the state (P. 373, 374 and P. 375).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to illegally obtained mobile phone data outside of search warrant criteria. He claims more specifically to include being too broad, the State introduced information too prejudicial compared

to probative value, and the expiration of warrant when executed. Applicant alleges Trial Counsel was constitutionally ineffective for failing to object and failing to make a motion to suppress the internet searches shown on the cell phone. This Court finds these allegations to be without merit.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.). When analyzing counsel's performance, the reviewing court will "strongly presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be



wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

PCR Evidentiary Hearing

On direct examination Applicant alleges the search warrant stated there is 10 days to sign the warrant from January 27th, 2016, however the warrant was said to be completed in August of 2016. (PCR Tr. p. 8). Applicant alleges that the fact that the warrant return says it was received on January 27th, 2016, and was executed it as follows on January 27th, 2017, should have been challenged by a defense. Id. On direct examination, Applicant testified that Trial Counsel did not explain why he failed to make a motion to suppress or object to testimony from investigator Phipps, and evidence regarding internet searches allegedly conducted by Applicant listed as "help with addiction" and "beat sex addiction" on a cellular phone that was presented in evidence. (PCR Tr. pp. 13-14).

On direct examination, Trial Counsel testified he did not see any legal basis to move to suppress the internet search evidence from the Applicant's phone. (PCR Tr. p. 35). Trial Counsel testified that the phone was already in evidence at the Sheriff's Office at the time of the search warrant. (PCR Tr. p. 36). Trial Counsel testified that there was an initial return done in 2016 and a subsequent one done in 2017 although that may have been a scrivener's error because he believes the officer testified at trial to get done some things in 2016. Id. Trial Counsel testified that Officer Michael Phipps wrote on the top of the first warrant return that he executed the warrant on January 27, 2016. Id. Trial Counsel testified that in his opinion, Applicant's statement was more damaging evidence at trial than the Google search results from his phone. Id.

On cross-examination, Trial Counsel testified that the cell phone data was a drop in the ocean. (PCR Tr. p.49). Trial Counsel testified that there would have possibly been some benefit to keeping that evidence out, but he did not make any attempt. Id.

On re-direct examination, Trial Counsel testified that what he meant by the cell phone data being a drop in the ocean was that the 7-page detailed confession that Applicant gave was the ocean, and that search, and the dildo corroborating both his statement and her statement, they weren't helpful, but it was his confession that sunk the ship. (PCR Tr. p. 59).

Findings

This Court finds the combination of the record and Trial Counsel's credible testimony that Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra.

This Court finds the warrant was properly executed within ten days after it was issued. S.C. Code Ann. § 17-13-140 (2014) ("Any warrant issued hereunder shall be executed and return made only within ten days after it is dated."). Further, the failure to observe the ten-day requirement for the execution and return of a warrant, a ministerial requirement, does not necessarily void the warrant. State v. Wise, 272 S.C. 384, 252 S.E.2d 294 (1979). The warrant will be invalidated only if the defendant can show he was prejudiced by the failure. Id.

Trial Counsel credibly testified he did not see any legal basis to move to suppress the evidence from the phone. The Applicant has failed to present any legal basis for excluding the evidence from the phone that reasonable counsel would have raised. Further, this Court finds the search warrant authorized the collection of all data, and the search warrant was executed on January 27, 2016. Officer Michael Phipps testified that on August 10, 2016, he examined the cell phone and made an extraction. (R. p. 366). A subsequent return was dated June of 2017, where a



CD containing data from the phone was delivered as discovery. Here, due to the intense nature and exhaustive amount of information that may be stored in the device seized and the necessary amount of time required to complete the search of the device, the search warrant authorized the result of any forensic analysis to be maintained by law enforcement for any subsequent legal proceeding. (Applicant's Exhibit 1). The record reflects that counsel did not object. Tr.p. 361-376. This Court finds the government's retention of the copies of the digital data lawfully extracted does not affect the reasonableness of any subsequent search of such data. Counsel was not deficient under Strickland for failing to object where no legal basis to object existed that would have excluded the evidence.

Further, this Court finds Applicant failed to present any evidence that he was prejudiced by Trial Counsel's failure to object to the mobile phone data. Assuming *arguendo* that the mobile phone data had been objected to and kept out of trial, Applicant gave an extensive and detailed confession corroborating the information discovered on the cell phone. Applicant therefore cannot show he was prejudiced by Trial Counsel's failure to object to the mobile phone data under Strickland.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and

counsel's belief that the only alternative was trial. Id. Trial Counsel testified at that point of the offers; Applicant was still insisting that he was innocent. (PCR Tr. p. 30).

On cross-examination, Trial Counsel testified that no warning bells went off to lead to discussing (not) guilty but mentally ill. (PCR Tr. p. 49). Trial Counsel testified he got some records from the Army regarding Applicant, but they did not appear to have anything of significance. (PCR Tr. p. 50). Trial Counsel testified that Dr. Martin said he was competent as well. Id. Trial Counsel testified that there is no mention of him saying that he thought victim was an ice cream cone or something that was delusional or anything like that. Id.

Findings

This Court finds the combination of the record and Trial Counsel's credible testimony that Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra.

Nolo Contendere

Practically, a plea of *nolo contendere* "is a plea of guilty in so far as the consequences in the particular case in which it is pled." Kibler v. State, 267 S.C. 250, 254, 227 S.E.2d 199, 201 (1976). In South Carolina, *nolo contendere* pleas are only allowed in misdemeanor cases. See S.C. Code Ann. § 17-23-40 (2006); Kibler, 267 S.C. at 254, 227 S.E.2d at 201. Thus, because *nolo contendere* pleas are only permissible in misdemeanor cases, not felonies, Applicant was not entitled to enter such a plea in this case. Id. Consequently, this Court finds Applicant's allegation is without merit and fails as a matter of law.

Not Guilty Due to Mental Illness

"It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the



capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. S.C.Code Ann. § 17-24-10(A) (Supp.1992). However, a defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. S.C.Code Ann. § 17-24-20(A) (Supp.1992)." State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255 (1993). Applicant did not present any evidence to suggest he had any mental disease or illness that affected his ability to understand right from wrong. Further, Trial Counsel credibly testified that Applicant did not make any statements that would lead him to believe Applicant had been mentally ill or mentally insane at the time of his crimes. This Court finds that he has failed to show either deficient performance or prejudice on his mental illness claims.

Failed to Obtain a Plea

This Court finds the record directly refutes this allegation. Applicant testified he would not have taken a plea deal for the crimes he was convicted of. Further, the record reflects Trial Counsel communicated a plea deal to Applicant and he turned it down. Applicant, therefore, has failed to prove Trial Counsel was deficient for failing to obtain a plea, when the record shows that Applicant was presented a plea deal. Further, Applicant has failed to show any prejudice, as his testimony states he would not have taken a plea deal regardless.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 1(i): "Failed to educate defendant on meaning of '25 to life, life, parole, sexual battery,' etc. Even so far as stating 'you understand you just don't like it' during one of the less than eight attorney visits in a high value case during defendant's 18-month illegal detainment."

Applicant alleges Trial Counsel was constitutionally ineffective for failing to educate Applicant on the meaning of "25 to life, life, parole, and sexual battery." This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he understood that 25 to life could have been anywhere from 25 to life, but did not understand parole, and did not understand "if it was 25 to life, or if it was life, or if it was 25". (PCR Tr. p. 9).

On direct examination, Trial Counsel testified that he did go over sexual battery with Applicant and the allegation in this case was fellatio, which he went over with Applicant. (PCR Tr. p. 24). Trial Counsel testified that he did tell him what "25 to life" meant, and did not know where somebody would be confused. Id. Trial Counsel testified that he let Applicant know that he believed he would be eligible for release after 85% of his sentence, that was if he got a number of years as opposed to a life sentence. Id. The Applicant received a sentence of life imprisonment. R.p. 485, R. 503.

On cross-examination, Trial Counsel testified that he did go over what sexual battery was, and as to the 25 to life, he failed to see how Applicant did not understand 25 to life as a range of a minimum of 25 and a maximum of life. (PCR Tr. p. 50).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible**. This Court further finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds Trial Counsel **credibly** testified that he explained the alleged terms to Applicant. Notably, Applicant has presented no credible evidence to this Court that Trial Counsel did not discuss and explain Applicant's charges and sentencing range related to his charges. His suggestion otherwise is without credible support.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 1(k):

"Failed to educate defendant about a 'bench trial'"



Applicant alleges Trial Counsel was constitutionally ineffective for failing to educate Applicant about a bench trial. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination Applicant testified that he never was advised on what a bench trial was. (PCR Tr. p. 10).

On direct examination, Trial Counsel testified that he did not discuss the difference between a bench trial and a jury trial with Applicant. (PCR Tr. p. 24). Trial Counsel testified that Applicant did not say anything to him that would indicate at the time he was interested in a bench trial. Id. Trial Counsel testified he would not have recommended a bench trial from either Judge McMahon or Judge Keesley, the two main judges that were out there at the time. (PCR Tr. p. 25). Trial Counsel testified that in fact Judge McMahon gave the maximum sentences for both convictions. Id.

On cross-examination, Trial Counsel testified that someone does not have a right to a bench trial. (PCR Tr. p. 50). Trial Counsel testified that they have a right to request one and the state and the judge has to consent before a bench trial can proceed. Id. Trial Counsel testified that he does not recall explaining any of that to Applicant. Id.

Findings

There is no federally recognized right to a bench trial. Singer v. United States, 380 U.S. 24, 34, 85 S. Ct. 783, 790, 13 L. Ed. 2d 630 (1965). A defendant's only constitutional right concerning the method of trial is to an impartial trial by jury. Id. This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Also, this Court finds Applicant has failed to overcome his burden in proving Trial

Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. This Court finds Trial Counsel was not deficient by failing to educate Applicant about a bench trial.

Under South Carolina Rule of Criminal Procedure, Rule 14, a defendant may waive a jury trial *only with the approval of the solicitor* and the trial judge. The Applicant has made no showing the solicitor would have approved a waiver their right to a jury trial under Rule 14. He has failed in his burden of proof that there was a Sixth Amendment duty/requirement upon counsel to advise him of a potential for a bench trial under the reasonable competence standard of Strickland.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 2(a): Applicant's counsel, David Mauldin, failed to meet with the applicant a sufficient number of times to properly review the evidence and discuss the case with applicant.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times to properly review the evidence and discuss the case with applicant. This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings



between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective," Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding that it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), *abrogated on other grounds by* Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329, S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of

counsel when he did not present evidence showing how additional preparation would have impacted the trial).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel met with him fewer than ten times. (PCR Tr. p. 11). Applicant testified that Trial Counsel gave him a physical copy of the evidence. Id. Applicant testified that Trial Counsel watched all of the audio and video with him. Id. On cross-examination, Applicant testified that he had between five and eight meetings with Trial Counsel. (PCR Tr. p. 15).

On direct examination, Trial Counsel testified that he had an initial visit with Applicant on February 18th, 2016. (PCR Tr. p. 20). Trial Counsel testified that he reviewed the discovery with him that he had gotten initially on May 24th, 2016, and had a preliminary hearing on May 27th, 2016. Id. Trial Counsel testified that he had Dr. Martin, a psychosexual evaluator, evaluate Applicant, and then discussed the findings with Applicant on September 1, 2016. Id. Trial Counsel testified that on February 6, 2017, the state offered his plea to one count of criminal sexual conduct first degree straight up and he went to relay that to him on June 7, 2017. Id. Trial Counsel testified that on June 8th, 2017, they had the plea rejection on the record. Id. Trial Counsel testified that on June 16th, 2017, they had a jail visit where they watched videos, reviewed new rule 5 discovery including about 100 pages of letters that Mr. Ellis had written to the family apologizing for what he had done. Id. Trial Counsel testified that on June 25th, 2017, there was more discovery that came in and so he reviewed that with Applicant and talked to him about trial procedures. Id. Trial Counsel testified that on July 3rd, 2017, he went and visited him and reviewed more evidence. Id. Trial Counsel testified that on July 5th, 2017, they reviewed Applicant's statements, letters, the statements he had given to the police. (PCR Tr. pp. 20-21). Trial Counsel testified that on July 7th,

2017, he reviewed some more discovery that had come in. (PCR Tr. p. 21). Trial Counsel testified he met with Applicant 13 times pretrial. Id. Trial Counsel testified that he communicated with Applicant additionally by the occasional phone call. (PCR Tr. p. 21). Trial Counsel testified he did not know how many times he talked to him on the phone. Id.

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from the alleged deficiency. See Butler, supra. At the evidentiary hearing on direct-examination, Trial Counsel credibly testified to meeting with Applicant thirteen times and thoroughly reviewing multiple waves of discovery as they became available with Applicant and discussing trial procedures. See Campbell, Olson, and Easter, supra. This Court has reviewed the records and finds Trial Counsel was fully prepared and additional meetings with Applicant would not have resulted in a different outcome at trial. The record reflects that Trial Counsel prepared Applicant by reviewing Applicant's statements with him and his testimony for trial. Specifically, Trial Counsel met with him and prepared him for impeachment and went through his direct examination line by line. Applicant has provided no evidence that any additional preparation would have impacted the trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or



omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2(b): Applicant's counsel, David Mauldin, failed to properly investigate the facts of the case.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to properly investigate the facts of the case.

When asked at the evidentiary hearing, whether there was anything Trial Counsel failed to do to investigate the case, Applicant responded "not that I can think of". (PCR Tr. p. 12). Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegation abandoned.

Allegation 2(c): Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to the evidence seized following a search of the Applicant's residence.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to make a motion to suppress and object to the evidence seized following a search of the Applicant's residence. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing



On direct examination, Applicant testified that he and Trial Counsel never spoke about suppression of evidence seized from Applicant's home. (PCR Tr. p. 12). Applicant testified that "it was actually illegal that a police officer as a third party couldn't get, under oath, a search warrant." Id.

On direct examination, Trial Counsel testified that the police obtained a search warrant, and according to police, Applicant was very compliant and said he would help them with whatever they wanted. (PCR Tr. p. 37). Trial Counsel testified that officers obtained a search warrant, even though, as they testified, Applicant had given consent to search the home. (PCR Tr. p. 37-38).

On cross-examination, Trial Counsel testified that he did not object to the vibrator seized from the residence coming into evidence. (PCR Tr. p. 51). Trial Counsel testified that he doubts that it is possible that if he objected, he could have kept the vibrator out of evidence. Id.

On re-direct, Trial Counsel testified that the vibrator was described in both Applicant's statement and at trial, some of the allegations said it was used during the grooming process and potentially be part of the Criminal Sexual Conduct third degree charge. (PCR Tr. p. 60).

Findings

As an initial matter, this Court finds Trial Counsel's testimony on this matter **credible** and Applicant's testimony **not credible** and **not persuasive**. The Applicant has failed to show that the search pursuant to the search warrant was invalid or that there was any basis concerning the breadth of the search to challenge the admission of the evidence.

The record at trial revealed that the Applicant, when initially confronted by police at his home, authorized a consensual search. However, law enforcement wisely chose to await the preparation and signing of the search warrant before they proceeded with the search of the home

and area. His conclusory allegation is without merit and a factual basis. R. p. 49, 51-52 68, 81-82, 115, 120, 226, 297-299, 309-314, 319, 342, 397.

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Notably, Applicant provided no legal authority to support his allegations. This record reflects that there was a valid search warrant prior to the search of the residence, and additionally, that Applicant consented to the search. Further, this Court finds that any motion to suppress the evidence found inside Applicant's home would have been non-meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.



Allegation 2(d): Applicant's counsel, David Mauldin "opened the door" to testimony from the victim regarding evidence against the applicant about the victim being assaulted by the Applicant in "Na Na's house". (P. 187, Lines 22-25, p. 190-191, P. 193, Lines 21-25, P.194, Lines 1-3).

Applicant alleges trial Counsel was constitutionally ineffective for opening the door to testimony from the victim about the victim being assaulted by the Applicant in "Na Na's house". This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain to him why during the trial, there was a finding that counsel had opened the door to testimony from the victim regarding evidence against Applicant concerning the victim being assaulted by Applicant in what was referred to as Nana's house. (PCR Tr. pp. 12-13).

On direct examination, Trial Counsel testified that when asking the victim about whether the things with Applicant started happening in the house she was living in, and her response was it started in her Nana's house. (PCR Tr. p. 39). See R.p. 187. Trial Counsel testified he did not ask any follow up questions on that. (PCR Tr. p. 40). Accord, 187. But see R.p. 192-193 (counsel's questions about who else lived in nana's house at that time). Trial Counsel testified that when he re-crossed the victim, he asked her if other people had lived at the grandmother's house. (PCR p. 41). Trial Counsel testified that he asked that question because sometimes you just do general questions, especially with children you kind of beat around the bush a lot before you get to the pointed questions just to make them feel comfortable talking. Id.

On cross-examination, Trial Counsel testified that based on his understanding of the evidence he had received from the state in the forensic interview and the discovery, it was his impression that it had started at the house they had moved into. (PCR Tr. p. 54). However, he



opined that the evidence about the grandmother's house was admissible under Evidence Rule 404 anyway. See R.p. 187, l. 22-25.⁶

Trial Counsel testified that he asked that question and it turned out she said it started somewhere else. *Id.* Trial Counsel testified that he thought he knew the answer to the question that he asked, but apparently, he did not. *Id.*

Findings

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds the combination of the record and Trial Counsel's **credible** testimony that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See *Butler, supra*. Trial Counsel's **credible** testimony indicates that his line of questioning was based off the discovery and the forensic interview of the victim. The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689; see *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). Trial Counsel **credibly** testified there was no way at that time to anticipate that the victim would answer that Applicant's conduct began at a different home.

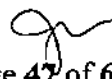
⁶ In redirect examination at trial, the State inquired of the victim that when it started it was at nana's house. The child confirmed that she lived a nana's house before she moved into the other house where they saw pictures from. She confirmed that it was where the victim was living when the Applicant started touching her. The child also confirmed that it happened to her there "more than one time." The child said that she kept it a secret because the Applicant told her not to tell anyone. R.p. 190-191. The State, at trial, put on the record that the evidence about the ongoing illicit conduct that counsel did on cross-examination allowed the State to follow-up with further questioning about the victim's statement that it began at nana's house. R.p. 193-194.

Turning to the Strickland prejudice prong, this Court finds Applicant has failed to prove any prejudice from whether Applicant's conduct began at her home, or prior when she lived at her grandmother's home. This Court finds the outcome of Applicant's trial did not hinge on this answer to Trial Counsel's question. The victim had already testified that the bad touching incidents incidents had occurred more than one time at the current house she had moved into after nana's house. R. p. 173-179. The State in its closing made no reference to the incidents at nana's house. R. p. 434 (comments about nana's house being safer than Bryan's house). . Furthermore, this Court finds that this testimony was not so crucial as to undermine the results of the proceedings.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant has failed to present information that reasonable counsel would have understood and expected this answer. However, there was no showing of anything before this Court to suggest that Applicant's counsel would have expected this response by the child. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance by the evidence of the uncharged conduct.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2(e): **Applicant's counsel, David Mauldin, failed to object to hearsay evidence "she comes over, and [Minor] told her about what had happened." (P. 227, Lines 8-9).**



Applicant alleges Trial Counsel was constitutionally deficient for failing to object to hearsay evidence that "she comes over, and Minor told her about what had happened." This Court finds this allegation to be without merit.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be

wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain why he failed to object to the hearsay evidence quote. (PCR Tr. p. 13).

On direct examination, Trial Counsel testified that the grandmother testified that the victim disclosed to the victim's mother. (PCR Tr. p. 41). Trial Counsel testified that the witness did not say what the victim said to her mother. (PCR Tr. p. 42). Trial Counsel testified that it was not a statement, it was just general about what had happened and not a quote from somebody. *Id.* Trial Counsel testified that Mr. Ellis was not disputing in trial that the victim had made allegations, just that the allegations were false. *Id.*

On cross-examination, Trial Counsel testified that he failed to see where that was a statement made by an out of court declarant for the truth of the matter asserted. (PCR Tr. p. 55).

Findings

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. S.C. R. Evid. 802. Here, the statement was "... and **Minor** told her about what had happened." (R. p. 227).

This Court finds Trial Counsel was not deficient in failing to object to the testimony of Barbara Havird at trial. Trial Counsel **credibly** testified that he did not see a legal basis to the challenged testimony, as the testimony of the witness did not include the actual contents of the victim's statement and did not meet the definition of hearsay. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for



employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."). The testimony Applicant challenges as improper character evidence explained the setting of Applicant's arrest, including the seizure of the murder weapon. Under *res gestae*, the testimony of the events and circumstances surrounding Applicant's arrest were integral to help the jury understand the time and place forming the basis of the charge against Applicant and do not constitute impermissible character evidence.

Additionally, as there was no meritorious basis for Trial Counsel to object to the challenged testimony, Applicant cannot establish prejudice from Trial Counsel's failure to object. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2(f): **Applicant's counsel, David Mauldin, failed to make a motion to suppress and object to letters allegedly written by the Applicant that were prejudicial to the defense and introduced by the state into evidence. (P. 254 and 282, States EX:22).**

Applicant alleges Trial Counsel was constitutionally deficient for failing to make a motion to suppress and object to letters written by Applicant and introduced into evidence. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel did not explain or talk about why he did not object and move to suppress the letters written allegedly by Applicant that were of prejudicial nature and used by the state. (PCR Tr. p. 13).

On direct examination, Trial Counsel testified that he went through all of the letters with Applicant. (PCR Tr. p. 43). Trial Counsel testified that he had highlighted parts where Applicant specifically said he was sorry for everything. Id. Trial Counsel testified he went over everything where Applicant said anything negative involving sex or apologizing so they could address those at trial. Id. Trial Counsel testified that Applicant did not dispute that he wrote and sent those letters. (PCR Tr. p. 44). Trial Counsel testified that he did not see any legal basis upon which he could have opposed the admission of the letters. Id. Trial Counsel testified that the people said they had received those letters from jail, they said it was in Applicant's handwriting, and Applicant admitted to the letters as well. Id. Trial Counsel testified that he expected some of the letters to be entered into evidence at trial and that is why he reviewed them with Applicant, to make sure that if he testified, he would be able to provide some explanation for the letters. Id.

On cross-examination, Trial Counsel testified that he did not see any basis for a motion to suppress. (PCR Tr. p. 55). Trial Counsel testified that he thought that they had laid the foundation, and so he did not object. Id.

On re-direct, Trial Counsel testified that in regard to hearsay, the letters were both statements by a party opponent and statements against interest. (PCR Tr. p. 61). Trial Counsel

testified that he wouldn't stay everything the Defendant says is fair game, but a good chunk of it is. Id.

Findings

This Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Notably, Applicant provided no legal authority to support his allegations. Further, this Court finds that any motion to suppress the letters written by Applicant would have been non-meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2(h): **Applicant's counsel, David Mauldin, failed to obtain a ruling from the court on his objections to the state's closing and failed to move for a mistrial. (P.446 – 447).**



Applicant alleged Trial Counsel was constitutionally ineffective for failing to obtain a ruling from the court on his objections to the states closing and failed to move for a mistrial.

As stated in the next allegation, there were objections to two comments to the solicitor's closing argument. R.p. 446, l. 15-22 and R. p. 447, l. 4-11. However, there was no motion for a mistrial. Accor. PCR Tr. p 56-57.

MS. MAYES: ...This is a sex offender and there's no other way around it. Let this be the last time that he hurts a child in this way. Let this be the last time he steals the innocence –

MR. MAULDIN: Objection, Your Honor.

MS. MAYES: -- of a child.

MR. MAULDIN: Appealing to passion and prejudice.

THE COURT: All right. Of course, ladies and gentlemen, your verdict will not be based on passion and prejudice, biased or any other motive not in evidence or emotion not in evidence in the case. It must be based on the facts and the reasonable inferences therefrom. Thank you, Mr. Mauldin. Thank you, Solicitor. You may continue.

MS. MAYES: Yes, sir, Your Honor. I submit to you this must be the last time. The correct verdict in this case –

MR. MAULDIN: Objection, Your Honor.

THE COURT: Again, ladies and gentlemen, your verdict must be based on the evidence, the reasonable inferences drawn therefrom and the law as I tell you the law is.

R.p. 446, l. 15 -- 447, l. 11.

“The decision to grant or deny a mistrial is within the sound discretion of the trial court.” State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). “The power of the trial court to declare a mistrial should be used with the greatest caution” and only “when absolutely necessary” and a defendant has to “show both error and resulting prejudice.” *Id.* “The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous

that the prejudicial effect can be removed in no other way.” Id. Washington v. State, 440 S.C. 550, 565, 891 S.E.2d 668, 676 (Ct. App. 2023), reh'g denied (Sept. 21, 2023)

When asked about the allegation on direct-examination at the PCR evidentiary hearing, Applicant testified "actually, I believe he did ask for a mistrial". (PCR Tr. p. 14). However, counsel clarified that he did not move for a mistrial after his objections. (PCR Tr.p. 56-57). The

Applicant failed to prove that counsel was deficient in failing to request a mistrial. It is unclear that, in this setting, a mistrial was appropriate with the trial court cautionary instructions to the jury. Upon review of the record, this Court must find that counsel was not deficient in failing to request a mistrial after the instructions to the jury comments by the prosecutor. Further Sixth Amendment prejudice was not shown. This Court finds that the Applicant has failed to prove that there is a reasonable probability that if counsel would have requested a mistrial based upon those comments the results would have been a mistrial. The comments were brief at the end of the closing argument and a cautionary instruction was given. A review of the argument and instruction does not show that a mistrial appropriate as, "an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Sixth Amendment prejudice has not been shown.

Allegation 3(a): Applicant's counsel, David Mauldin, failed to object to the state describing the Applicant as a sex offender in arguments to the jury (p. 436, 437, 441, 456).

During the trial, the following argument was presented that he is currently challenging:

. . . Here we have direct evidence from **Minor** as well as people who heard directly from his mouth what he did to that child and, in fact, direct evidence by his own hand every single word in that confession is true except the one thing he had to **do because that's how sex offenders operate**. Right there in that confession he's still trying to cast blame on that child. Seven years old. She had questions.



I had to ask what she liked and didn't like. What she liked? **That's how a sex offender thinks** and I submit to you it's something that can't be understood or rationalized by anybody in this courtroom but that is not the law. It is not our job to try to interpret what the twisted mind of a sex offender thinks or feels or how he operates. That's not the law. The way the law works is do we have the proof that he did it? By his own admission he did it and by that child's own sworn testimony he did it.

R. p. 436, l. 13-p 437, l. 5. (emphasis added).

He is everything he owns up to being right here in this confession. A sex offender is as bad as it gets.

R.p. 437, l. 18-19.

Well, all the coaching and encouragement, the grooming that he described is exactly what he has done to **Minor**. He wanted to break down every barrier and inhibition that that child had to teach her from the youngest age possible that it was okay and that it was right so that she would do everything that he said and **I submit to you that is only how a sex offender would think and would act**. It's all about making her believe that it's okay and that it's their secret and not to tell because as long as he's got her doing whatever he wants her to do, he's going to keep doing it and it's going to keep escalating exactly like it did and ultimately with **Minor** it only stopped because she told.

R.p. 441, l. 6-18.

This is a **sex offender** and there's no other way around it.

R.p. 446, l. 15-16.

There was no threats. No coercions. Just the attempts of a **manipulative sex offender** trying to talk his way out of it with Sergeant Rawl the same way he took that stand and tried to talk his way out of it to everyone in this courtroom.

R.p. 456, l. 2-7.

Applicant alleges Trial Counsel failed to object to the state describing the Applicant as a sex offender in arguments to the jury. The Court finds this allegation to be without merit.

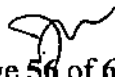
The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient

representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.").

PCR Evidentiary Hearing



On direct examination, Applicant testified that Trial Counsel did object to the state describing him as a sex offender, and the solicitor was "admonished and then continued to do so after." (PCR Tr. p. 14).

On direct examination, Trial Counsel testified that Applicant was charged with being a sex offender as the crime of his interaction with the child. (PCR Tr. p. 46). Trial Counsel testified that obviously the solicitor's position was that he was a sex offender, that she had proved he was a sex offender, and that was what she was arguing to the jury. *Id.* Trial Counsel testified that he did object to future dangers during the closing, and he got a curative instruction. (PCR Tr. p. 47).

On cross-examination, Trial Counsel testified that Applicant's seven-page confession was detailing how he molested a child, and so the fact that the solicitor called him a child molester "it's kind of a six, and one half a dozen of another." (PCR Tr. p. 57).⁷

Findings

Trial Counsel **credibly** testified that there was a seven-page confession detailing how Applicant molested a child and so the solicitor did not find the term to be objectionable. Trial Counsel articulated his reason for not objecting and therefore is found to not be deficient. See Underwood *supra*.

During closing argument, "[a] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Smith v. State, 375 S.C. 507, 523, 654 S.E.2d 523, 531–32 (2007) (citation omitted) (quoting Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 181 n.2, 810 S.E.2d 836, 839 n.2 (2018). However, "[a] solicitor's closing argument must be carefully

⁷ Evidence in the trial in addition to his confession revealed that he had admitted to another that he had "molested" the victim. R.p. 280, l. 5-7 (Thomas Havird).

tailored so as not to appeal to the personal biases of the jury. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.” Smith v. State, 375 S.C. at 522–23, 654 S.E.2d at 531. “In assessing the propriety of remarks made during the State's closing argument, appellate courts must determine ‘whether the solicitor's comments “so infected the trial with unfairness as to make the resulting conviction a denial of due process.”’ Tappeiner v. State, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016).

Further, Applicant provided no evidence to show that had Trial Counsel objected, the outcome of the trial would have been different. Applicant confessed to the allegations and there was a significant amount of evidence provided at trial confirming his confession and the interaction with the child. . There was no evidence presented by Applicant that specifically the State referring to him as a sex offender, had any impact on the outcome of the trial. Therefore, Applicant failed to show any resulting prejudice.

This Court finds that counsel was not deficient in failing to object to the State’s use of the words “sex offender” in their argument. The majority of the prosecutor's closing argument was devoted to explaining how the evidence adduced at trial satisfied the elements of the offenses. The Court notes that the terms “sex offender,” “molester,” and “child molester,” are descriptive labels that are inherently connected to sexual perpetrators and, although arguably used to stigmatize those labeled as such, were specific to the evidence presented at this trial. The Applicant attempts to suggest that the jury would have concluded that the Applicant was a registered sex offender and imply that he had a prior sexual offense conviction. PCR Tr.p. 57. However, the Court must find that suggestion is unlikely and does not find deficiency in counsel’s performance.

In this case, the prosecutor's invocation of these descriptive labels were not excessive within the context of the closing argument as a whole and, further, did not purposely or otherwise

saturate the trial with emotion. Especially in this case, where there was abundant evidence of Applicant's guilt, including testimony from admissions, this Court does not find reasonable counsel was under a duty to object to the use of that term of art where the prosecutor's occasional use of the term "sex offender" did not render the trial fundamentally unfair.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance. This court does not find in this setting that there was a reasonable probability that had counsel objected the result of the proceeding would have been different.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 3(b): Applicant's counsel, David Mauldin failed to explain to Applicant the option for filing a motion to reconsider the sentence following trial and sentencing.

Applicant alleges Trial Counsel failed to explain to Applicant the option for filing a motion to reconsider the sentence following trial and sentencing. The Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel never explained to him the option for filing a motion to reconsider the sentence. (PCR Tr. p. 14).

On direct examination, Trial Counsel testified that there was no way that Judge McMahon was going to reconsider. (PCR Tr. p. 47). Trial Counsel testified that there was no point filing for a motion to reconsider after Judge McMahon's speech he gave during sentencing. (PCR Tr. pp. 47-48). See R.p. 482-485. Trial Counsel testified that Applicant did not ask him to file a motion to reconsider. (PCR Tr. p. 48).

On cross-examination, Trial Counsel testified that if Judge McMahon could have found a way to give Applicant more time he probably would have. (PCR Tr. p. 57).

Findings

Based on a review of the record and the testimony presented at the PCR hearing, the Court finds this allegation to be without merit. Trial Counsel credibly testified that Applicant never asked him to file a motion to reconsider. Furthermore, there is no professional obligation to file a motion for reconsideration of a sentence absent a specific legal reason to do so. The sentence imposed on Applicant was not an illegal sentence, nor was there any allegation that the trial court acted with partiality, prejudice, oppression or corrupt motive when sentencing Applicant. *See Shraiar v. U.S.*, 736 F.2d 817, 818 (1st Cir. 1984) ("No court has held that failure to file a [motion to reduce sentence] automatically constitutes ineffective assistance of counsel."). Trial Counsel was not under any obligation to file a motion to reconsider Applicant's sentence and had no basis to do so. Therefore, Trial Counsel was not ineffective for failing to file a motion to reconsider Applicant's sentence.

Furthermore, Applicant fails to establish he was prejudiced by Trial Counsel's alleged failure to file a motion to reconsider Applicant's sentence. To establish prejudice under Strickland, Applicant must show a reasonable probability that, but for counsel's deficient performance, the results of the proceeding would have been different. 466 U.S. at 694. In the context of a motion

to reconsider sentence, Applicant must establish a reasonable probability his sentence would have been reduced if the motion had been filed. Applicant provided no testimony or evidence suggesting his sentence would have been reduced by way of a motion to reconsider. Trial Counsel testified that there was no way Trial Judge was going to reconsider and further that if there was a way to give Applicant more time he probably would have.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 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 that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.
- 3.

AND IT IS SO ORDERED this 18th day of March, 2025.


 THE HONORABLE JOCELYN NEWMAN
 Presiding Judge
 Eleventh Judicial Circuit

Columbia, South Carolina

WITNESSES

Lexington County Sheriffs Department

M. Rawl

Law Enforcement Case #: 16001521

LSM

ARREST WARRANT NUMBER

2016A3210200131

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Ferguson
Foreperson of Grand Jury

Date: 6-5-17

VERDICT

Guilty

Arnold S. Johnson
Foreperson of Petit Jury

Date: 7/12/2017

DOCKET NO. 2017GS3202303

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

vs.

Bryan Jeffrey Ellis

CDR #: 0385

Indictment for

Criminal sexual conduct with a Minor -
First Degree

§ 16-03-0655(A)(1)

S.R. Hubbard III, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Criminal sexual conduct with a Minor –
 First Degree

§ 16-03-0655(A)(1)

At a Court of General Sessions, convened in JUNE 2017, the Grand Jurors of Lexington County present upon their oath:

That **Bryan Jeffrey Ellis** date of birth ~~Oct 12, 1986~~ did in Lexington County, South Carolina, on or about November 15, 2015 through January 21, 2016, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree by engaging in sexual battery as defined in Section 16-3-651(h) with a minor who was less than eleven (11) years of age, to wit: ~~Zoeey Dean, date of birth March 20, 2005~~ including but not limited to fellatio, in violation of Section 16-3-655(A)(1), S.C. Code of Laws, 1976, as amended.

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

Suzanne Mayes
 ASSISTANT SOLICITOR

JUL 13 2017

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Bryan Jeffrey Ellis
 AKA: _____
 Race: _____ Sex: M Age: 30
 DOB: [REDACTED] SS#: [REDACTED]
 Address: 53 Pinedale Rd
 City, State, Zip: West Columbia, SC 29170-4111
 DL#: 00539345 SID#: SC02233557

*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 under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)
 The charge is: ☐ As Indicted, ☐ Lesser Included (offense), ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Solicitor _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life 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 (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
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 61.6 (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3

TOTAL \$ 125.00

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3202303

A/W#: 2016A3210200131

Date of Offense: 11/15/2015

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

RECEIVED

JUL 19 2017

SENTENCE SHEET SC Court of Appeals

☒ 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,
 § Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]

Judge Code: 2143

Sentence Date: 12 July 17

A TRUE COPY
 Lex. Co. C.C.P., G.S. & F.C.

SEX OFFENDER REGISTRY

WITNESSES

Lexington County Sheriffs Department

M. Rawl

Law Enforcement Case #: 16001521

LSM

ARREST WARRANT NUMBER

2016A3210200136

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Ferguson
Foreperson of Grand Jury

Date: 7-10-17

VERDICT

Guilty

And S. Galt
Foreperson of Petit Jury

Date: 7/12/2017

DOCKET NO. 2017GS3202305 (A)
(Amended)

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2017

THE STATE

vs.

Bryan Jeffrey Ellis

CDR #: 3661

Indictment for

Criminal Sexual Conduct with a Minor -
Third degree

§ 16-03-0655(C)

S.R. Hubbard III, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Criminal Sexual Conduct with a Minor –
 Third degree

§ 16-03-0655(C)

At a Court of General Sessions, convened in JULY 2017, the Grand Jurors of Lexington County present upon their oath:

That **Bryan Jeffrey Ellis**, date of birth ~~06-05-20 1992~~ being a person over fourteen years of age, did in Lexington County, South Carolina, on or about November 15, 2015 through January 21, 2016, willfully and lewdly commit or attempt to commit a lewd and lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of the child, to wit: touching of a sexual nature involving a child, ~~06-05-20 1992~~ date of birth ~~06-05-20 1992~~ furthermore, the said child was under the age of fourteen years during the time of these offenses, in violation of Section 16-3-655(C), S.C. Code of Laws, 1976, as amended .

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

Suzanne Mayes
 ASSISTANT SOLICITOR

110261700
 JUL 14 2017

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Bryan Jeffrey Ellis

AKA: _____

Race: _____ Sex: M Age: 30

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: SC02233557*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, 3rd degree

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: _____ \$

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$ 1,225Clerk of Court/ Deputy Clerk Lisa CarterCourt Reporter: Shelley

SCCA217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3202305AA/W#: 2016A3210200136Date of Offense: 11/15/2015S.C. Code § : 16-03-0655(C)CDR Code #: 3661

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSA TRUE COPY
Lex. Co. C.C.P. G.S. & E.C.

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.Presiding Judge TommyJudge Code: 2145Sentence Date: 12 July 17

SEX OFFENDER REGISTRATION