

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Pickens County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

JOSEPH CAMPBELL WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000730

APPENDIX

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1 A. Can you repeat that?

2 Q. Are you telling this jury that there
3 were many nights when your mother worked that
4 you were left alone in that home with Jodie
5 Williams?

6 A. Yes.

7 Q. Is it true that you told Detective
8 Kelley on November 30th, 2013, -- you said
9 that -- you said that Jodie -- "he", Jodie --
10 "did use his fingers on several occasions" by
11 inserting them into your vagina. Did you
12 tell him that?

13 A. Yes, as I said earlier.

14 Q. Turn over to Page 33 in your
15 testimony in 2015.

16 A. (Complies).

17 Q. Was the question posed to you, "Did
18 he ever put any part of his body in your
19 vagina?" What was your answer.

20 A. His penis. Speaking of his penis,
21 he never penetrated me with his penis.

22 Q. So I misquoted that? The question
23 was, "Did he ever put any part of his body in
24 your vagina?"

25 A. Yes, it was.

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1 Q. And your answer was "No, ma'am."

2 A. Yeah.

3 Q. Is a finger a part of your body?

4 A. At that time I thought she meant by
5 rape. I've never said that he raped me.

6 Q. Just another one of those little
7 things that you made a mistake on?

8 SOLICITOR ODOM: Objection, Your Honor.
9 That's completely inappropriate. It's a
10 comment about the testimony.

11 THE COURT: Sustained.

12 CROSS EXAMINATION CONTINUED

13 BY SCOTT DOVER:

14 Q. In 2009, -- let me ask this
15 question. You were in counseling from 2002
16 through 2011 with Behavioral Health Services
17 of Pickens County; isn't that correct?

18 A. I've been in and out of Behavioral
19 Health my entire life, sir.

20 Q. And in 2009, your counselors asked
21 you specifically had your stepfather ever
22 abused you; didn't they?

23 A. I don't remember that.

24 Q. Do you remember what your answer was
25 to them?

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1 A. In 2009?

2 Q. Yes.

3 A. That was eight years ago. Nope,
4 nothing was ever mentioned about my stepdad
5 at that point. I never reported anything
6 until I was seventeen.

7 Q. When you were seven years of age, if
8 my math is right that would be 2003; correct?

9 A. Yes.

10 Q. And these indictments that the jury
11 heard earlier was that these events allegedly
12 occurred to you from the date of your seventh
13 birthday, July the 8th, 2003, until July 8th of
14 2009, when you turned thirteen. Is that what
15 you have charged Jodie Williams with?

16 SOLICITOR ODOM: Objection.

17 SCOTT DOVER: I apologize. I will
18 rephrase the question.

19 CROSS EXAMINATION CONTINUED

20 BY SCOTT DOVER:

21 Q. Is that what your allegations have
22 been towards Jodie Williams?

23 A. Yes.

24 Q. So in 2009, if someone asked you if
25 you had been abused or touched or messed with

1 *by Jodie Williams and you answered no, would*
2 *that be a lie?*

3 A. *I never was asked anything. I never*
4 *reported anything about it.*

5 Q. *If someone asked you that questions*
6 *specifically in 2009 and you said that "he*
7 *never messed with me", would that have been a*
8 *lie?*

9 A. *Could you please explain that to me*
10 *a little bit?*

11 Q. *Yes.*

12 A. *I am really confused on what you're*
13 *asking.*

14 Q. *I apologize. I'm sorry. You've*
15 *told this jury that my client has done some*
16 *very horrible things to you from the time of*
17 *your seventh birthday in 2003 until your*
18 *thirteenth birthday in 2009. Has that been*
19 *your testimony?*

20 A. *Yes. Not my exact birthdays but,*
21 *yes, seven to twelve.*

22 Q. *So in 2009, you would have been*
23 *thirteen. Correct?*

24 A. *Yes.*

25 Q. *The question is, if your counselor*

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1 *had asked you at that time if your stepfather*
2 *had ever messed with you and you answered*
3 *that "he never messed with me", would that*
4 *have been a lie?*

5 A. *(No verbal response).*

6 Q. *Did you lie to cover up for Jodie?*

7 A. *He ---*

8 SOLICITOR ODOM: *I am going to object.*
9 *He's calling for speculation. He asked her*
10 *if she remembers that and she said no. So*
11 *now he is getting into some hypothetical?*

12 THE COURT: *No, I think it's*
13 *appropriate.*

14 SCOTT DOVER: *Thank you.*

15 CROSS EXAMINATION CONTINUED

16 BY SCOTT DOVER:

17 Q. *There were times, ma'am, when your*
18 *mother was very supportive of you and your*
19 *counseling at Behavioral Health Services,*
20 *wasn't she?*

21 A. *No.*

22 Q. *Never?*

23 A. *No. Me and my mom had a lot of*
24 *disagreements. The problems that I had from*
25 *all the issues between her and my dad and her*

1 and Jodie, I never got any help with anything
2 that I was going through.

3 My mom felt like she was doing everything
4 right and wasn't doing anything wrong. So
5 counseling never was helpful to me, because
6 instead of me being allowed to speak for
7 myself, my mother told them what she thought
8 my problem was and they went from there.

9 Q. Isn't it true that you went to
10 counseling when you lived with your grand-
11 parents and your grandmother went up there
12 with you?

13 A. I don't recall that.

14 Q. While you were in counseling in
15 2002, 2011, you informed your counselors that
16 there had been ---

17 SOLICITOR ODOM: Objection. He's not
18 asking the question. He's attempting to
19 testify that ---

20 SCOTT DOVER: I will rephrase the
21 question.

22 THE COURT: Yes, please.

23 SOLICITOR ODOM: Thank you.

24 CROSS EXAMINATION CONTINUED

25 BY SCOTT DOVER:

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1 Q. Isn't it true that when you were in
2 counseling at Behavioral Health Services from
3 2002 to 2011, that there were times when you
4 told your counselor that your mother had
5 physically abused you?

6 A. Yes. There was times when there
7 were physical altercations between me and my
8 mother.

9 Q. Isn't it also true that you told
10 them that other men had physical abused you?

11 A. I don't recall that.

12 Q. You don't recall anybody else -- but
13 it is also true, isn't it, that you never
14 once told your counselors that your
15 stepfather, Jodie Williams, was physically
16 abusing you?

17 A. That's true. I never told them
18 anything about it.

19 Q. Do you recall, ma'am, when you were
20 eight years of age and you were in the third
21 grade at Pickens Elementary School, getting
22 referred to Behavioral Health Services in
23 Pickens County for lying and telling
24 exaggerated stories?

25 A. I don't recall that.

1 Q. You don't recall that?

2 A. I remember in the third grade, I
3 remember my teacher -- actually my teacher
4 involved herself in my life and I done
5 spelling bees and things in third grade. I
6 don't ever remember being called a liar or
7 anything of that sort in third grade. I was
8 eight years old.

9 Q. Do you remember in 2005 -- strike
10 that. Isn't it true, MINOR 1 [REDACTED], that you
11 lived the majority of your time in 2007 and
12 2008 with your grandparents and not your
13 mother?

14 A. 2008, I would have been -- as I said
15 before, those times at High Top Drive, my
16 grandparents did live below my mother and we
17 stayed with my grandparents, I'd say, for a
18 good two to three months there before my
19 grandparents tried to obtain custody and we
20 were forced to go back to live with my mother
21 and Jodie on High Top Drive.

22 Q. You were required to leave your
23 mother and Jodie in April of 2008 by the
24 Department of Social Services, were you not?

25 A. Well, see, I'm confused on which

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1 *time you're talking about because I was*
2 *placed out and back so many times.*

3 *Q. Mr. Skelton testified a few moments*
4 *ago that in 2008 that you made a change, you*
5 *changed living with your mother -- that you*
6 *changed schools -- from living with your*
7 *mother to your grandmother. My question is,*
8 *were you not with your grandparents from*
9 *April of 2008 to December of 2008?*

10 *A. Okay. Right before -- on High Top*
11 *Drive, like I just stated, I would live with*
12 *my grandparents. Then I was forced to go*
13 *back to stay with my mother and Jodie.*

14 *Now, after that we stayed with mama and*
15 *Jodie at High Top Drive for several months*
16 *and finally it was lifted from DSS to where I*
17 *could go back to my grandparents.*

18 *I mean, I was screaming to go back to my*
19 *grandparents and my mom finally let me go*
20 *back to my grandparents. Nobody understood*
21 *why I didn't want to stay there at the time*
22 *but it was because I was being abused and*
23 *couldn't open my mouth about, out of fear*
24 *about my brothers and my sister being taken.*

25 *Q. And that was before 2009 when you*

1 *were in counseling at Behavioral Health*
2 *Services.?*

3 *A. I've been in counseling several*
4 *times. Most of the time -- anytime that I*
5 *went it was two or three sessions and then it*
6 *would be nothing because my mom done my*
7 *counseling with me. I was not the one that*
8 *really was receiving any treatment.*

9 *Q. Were you fearful -- are you telling*
10 *this jury that you were fearful of telling*
11 *the people, your counselors, at Behavioral*
12 *Health Services that people had sexually*
13 *abused you?*

14 *A. I've always been fearful of saying*
15 *anything about what Jodie done to me.*

16 *Q. But you weren't fearful of telling*
17 *them about others?*

18 *A. I don't know what you're talking*
19 *about.*

20 *SOLICITOR ODOM: Objection, Your Honor.*
21 *I think we need to approach.*

22 *THE COURT: How much more time do you*
23 *think you have?*

24 *SCOTT DOVER: Probably about ten more*
25 *minutes.*

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1 THE COURT: All right. I'm going to
2 ask you to go back to your jury room. The
3 reason I am doing this is because the next
4 witness -- I know it's getting kind of late
5 but the next witness has to leave and we are
6 going to try to get them in before lunch.
7 There may be some scheduling issues that we
8 need to address. I think that may be some
9 snacks back there that will tide you over
10 until lunch.

11 So if y'all will step back to your jury
12 room, we will be with you shortly.

13 Don't discuss the case. We will be with
14 you as quickly as we can. Thank you.

15 (READBACK AND DISCUSSION BETWEEN COUNSEL
16 AND THE COURT MUTED ON PLAYBACK BEFORE JURY)

17 COURT REPORTER: Testimony resumed as
18 the jury returned to the courtroom.

19 THE COURT: Thank you, ladies and
20 gentlemen. Mr. Dover, you may continue your
21 examination.

22 CROSS EXAMINATION RESUMED

23 BY SCOTT DOVER:

24 Q. Ma'am, before the break I believe
25 you had testified that you were fearful of

1 *telling your counselors what Jodie, your*
2 *stepfather had done to you. Is that what you*
3 *said?*

4 *A. Correct.*

5 *Q. And my question was, you weren't*
6 *fearful of telling your counselor that others*
7 *had sexually abused you, were you?*

8 *A. I am still confused on what you're*
9 *talking about with that. I don't recall*
10 *telling them about any other incidents.*

11 *Q. I want you to go with me to Page 36.*
12 *That's all that I am going to ask you about*
13 *that line of questioning. I want to go back*
14 *to a question I asked you earlier. Go with*
15 *me to Page 36 of your prior testimony.*

16 *A. Okay.*

17 *Q. Remember me asking you questions in*
18 *front of the jury a few moments ago about if*
19 *your counselors asked you in 2009 if Jodie*
20 *Williams had sexually abused you. Do you*
21 *remember me asking you that question?*

22 *A. (No verbal response).*

23 *Q. If you could answer that question*
24 *first. It's not about your testimony. Do*
25 *you remember me asking you that a few moments*

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1 ago?

2 A. About ---

3 Q. Yes, and you said that you didn't
4 remember the counselors asking you that?

5 A. (No verbal response).

6 Q. Do you remember saying that? Did I
7 get that right?

8 A. Yeah, I don't remember the
9 counselors, besides the one time that there
10 was an incident that I'm not allowed to speak
11 of that happened that I was ---

12 Q. You're reading that, but that's not
13 my question. My question to you is, just a
14 few moment ago -- do you remember me asking
15 you some questions and I asked you if you
16 recalled your counselor asking you in 2009 if
17 your stepfather had sexually abused you.

18 A. (No verbal response).

19 Q. Do you remember me asking you that
20 question?

21 A. My counselor never asked me ---

22 Q. Ma'am, if you'd try to answer my
23 question.

24 THE COURT: Answer his question and
25 then you can explain.

1 CROSS EXAMINATION CONTINUED

2 BY SCOTT DOVER:

3 Q. Do you remember me asking that
4 question a few moments ago?

5 A. Yes.

6 Q. And you told the jury that you
7 didn't remember telling your counselor that,
8 didn't you?

9 A. Can you please repeat that? I
10 thought you asked me if my counselor had
11 asked me that.

12 Q. I did. I thought you told the jury
13 that you didn't recall them asking you that.

14 A. No, I don't recall my counselor
15 asking me that.

16 Q. So let's turn to Page 36.

17 A. (Complies).

18 Q. My question to you back two years
19 ago was, on October 2nd, 2009, if your
20 therapist asked you if that had happened,
21 that the sexual assault had happened to you.
22 Didn't I ask you that question?

23 A. (Affirmative nod).

24 Q. And what did you respond on Line 15.
25 What did you tell us?

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1 A. *(Reading): "They asked me, I never*
2 *told them anything."*

3 Q. *Didn't I ask you this follow up*
4 *question, "And you denied it, didn't you?"*
5 *Did I ask you that?*

6 A. *Yes, I did.*

7 Q. *And what was your answer at that*
8 *time? Line 17.*

9 A. *(Reading): "I told them that*
10 *nothing ever happened with me.." ---*

11 Q. *That's all that you need, that's all*
12 *that is relevant. Just a few more questions.*
13 *At that same time in 2009, weren't you in*
14 *counseling for problems with telling the*
15 *truth when you didn't get your way?*

16 A. *No.*

17 Q. *You do remember going, in 2011, to*
18 *get some assistance for your child at the*
19 *parenting place, do you not?*

20 A. *I went to get assistance in 2011 at*
21 *the parenting place for my child.*

22 Q. *On November 2nd, 2011, you went to*
23 *the Healthy Families intake to get assistance*
24 *for your child and yourself. Do you remember*
25 *that?*

1 A. I was pregnant with my oldest child
2 and I -- I went to -- (pause).

3 Q. So 2011 would be two years before
4 you were with your dad and you reported this
5 on Jodie, is that correct? 2013 is when you
6 reported this to law enforcement?

7 A. Yes.

8 Q. And you were with your biological
9 father when that happened. Correct?

10 A. Yes.

11 Q. In 2011, November the 2nd, 2011, is
12 that your signature right there?

13 A. (Upon review), yes. I went there
14 for parenting classes and stuff. I was a new
15 mother and I was pregnant with ---

16 Q. And didn't they ask you ---

17 SOLICITOR ODOM: Your Honor, I am going
18 to object on Rule 5 grounds. I've never seen
19 this before.

20 SCOTT DOVER: I think we should take that
21 up in a sidebar.

22 THE COURT: Objection is overruled.

23 SCOTT DOVER: Thank you.

24 COURT REPORTER: At this point there
25 was an off record sidebar, then cross

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1 examination continued by Mr. Dover:

2 Q. On November 2nd, 2011, in the forms
3 that you have pleaded there were a couple of
4 questions there. One of the questions says,
5 "I am now under eighteen years of age and I
6 am/have been a . . ." -- and the first
7 question is, "The victim of sexual abuse by a
8 relative or family member such as a parent,
9 stepparent or guardian." Was that question
10 asked of you at that time, in 2011?

11 A. Yes, and I did not check anything.
12 I did not say anything about it. This was
13 before I ever reported it.

14 Q. And it keeps on going down there,
15 they ask you if you were the victim of sexual
16 abuse by a nonfamily member such as a rape,
17 date rape, sexually unwanted touches. You
18 told them that you had been that, didn't you?

19 A. Am I allowed to explain.

20 THE COURT: Answer the question.

21 WITNESS: I did. Am I allowed to
22 explain?

23 CROSS EXAMINATION CONTINUED

24 BY SCOTT DOVER:

25 Q. So you were asked in 2011 and you

1 *denied it. Right?*

2 A. *I did.*

3 Q. *You were asked ---*

4 A. *I never denied it. I just never*
5 *said about it.*

6 Q. *And in 2009, we now know that you*
7 *were specifically asked by your counselor and*
8 *you denied it. Correct?*

9 A. *DSS workers and a guidance counselor*
10 *at school questioned me when an incident had*
11 *been reported to DSS, that I'm not allowed to*
12 *speak of.*

13 Q. *Ma'am, in 2013, ten hours before you*
14 *called the sheriff's department, you issued a*
15 *whole bunch of e-mails out, didn't you?*

16 A. *(No verbal response).*

17 Q. *FaceBook?*

18 A. *(No verbal response).*

19 Q. *Is that a copy of your son there,*
20 *your child, is that his picture on your*
21 *FaceBook page?*

22 A. *(No verbal response).*

23 Q. *Is that his picture, in a swing?*

24 A. *Yes, that's a picture of my child in*
25 *his swing. What does that have ---*

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1 Q. Let me ask you this question, did
2 you publish on your FaceBook page, ten hours,
3 before you made these allegations, (reading):
4 "I think its funny people wanna say they beat
5 someones ass when in reality they the ones
6 who got beat. Pussy ass niggas wanna run wont
7 face a man but wanna talk shit when
8 everybodys gone. world war 3 is about to
9 begin and everybody gonna wish they never
10 fucked with me ! that aint a threat , that's
11 a promise!"

12 Ten hours before you did that, didn't you
13 put that on your FaceBook page?

14 A. You know, I make a lot of posts on
15 FaceBook. I don't have the prettiest mouth
16 but this was not posted anywhere the time
17 that any of this happened. So I -- I really
18 -- the stuff that was on it, my mom and my
19 sister and stuff partying ---

20 Q. Just answer my question, did you
21 post this ten hours before you went to law
22 enforcement?

23 A. Yeah.

24 Q. That's all I ---

25 A. It was way before that.

1 Q. --- asked. Remember me asking you
2 those questions a while ago about you having
3 a falling out with your mom about this Joseph
4 Bates being able to hang around your sister
5 you not being able to hang around with Joseph
6 Bates. Do you remember asking me those
7 questions?

8 A. I do, but I don't understand what
9 you're getting at.

10 Q. Well, let me help you understand
11 that.

12 SOLICITOR ODOM: Your Honor, if I could
13 just see what ---

14 WITNESS: There was never an argument
15 about me being around Joseph Bates. Joseph
16 was my sister's friend. He was not my
17 friend.

18 CROSS EXAMINATION CONTINUED

19 BY SCOTT DOVER:

20 Q. Now, this one happens on Facebook to
21 be posted November 29th, 7:38 p.m. -- that's
22 when your post here is. Correct.

23 THE COURT: Are you objecting?

24 SOLICITOR ODOM: I object. I think
25 that if he is going to read it out that he

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1 needs to give her a chance to review it, to
2 say if it is even her or not.

3 CROSS EXAMINATION CONTINUED

4 BY SCOTT DOVER:

5 Q. Under your FaceBook post on November
6 29th at 7:38 p.m., is this a copy of it?

7 A. (Upon review), that was an argument
8 between me and my mom.

9 Q. Now, going back, for the record, I
10 think Officer Rackley said that he was
11 alerted at -- do you remember when Officer
12 Rackley said that he went out there to take a
13 statement from you?

14 A. (No verbal response).

15 Q. Do you remember that?

16 A. (No verbal response).

17 Q. I know that it was November 30th, but
18 do you remember what time he testified to?

19 A. It was during the daytime and it was
20 on a weekend. It was on a Saturday. It was
21 actually the -- about two hours before the
22 Clemson game started that day.

23 Q. So the 29th at 7:38 p.m. would have
24 been the day before you called law enforce-
25 ment in the middle of the day before the

CROSS EXAMINATION CONTINUED

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1 BY SCOTT DOVER:

2 Q. Please publish -- please read to the
3 jury what you put on your FaceBook page on
4 the 29th day of November at 7:38 p.m.

5 A. This was a private message.

6 Q. Please read to the jury what you
7 said.

8 A. This was not a post, though.

9 Q. Your private message.

10 A. This was a private message to my
11 mother.

12 Q. Please tell us what you you're your
13 mother.

14 A. (Reading): "You tell daddy I aint
15 gonna control your house ? I aint trying to
16 control your house that's what all them
17 teenagers are there for you and your fucked
18 up daughter MINOR 2 . you sit there and allow
19 all those punks at your house and let them
20 come back after they get MINOR 2 to fight me
21 and are doin all those drugs at your house
22 smoking weed in the building and letting
23 alexa come right in there with em."

24 Q. This was your niece, right?

25 A. Yes, Alexa is my niece. This was my

1 *main concern.*

2 *Q. Go ahead.*

3 *SOLICITOR ODOM: Objection. I am going*
4 *to ask that she be allowed to read the whole*
5 *thing and that he not insert ---*

6 *THE COURT: Right, then you can explain*
7 *later.*

8 *SCOTT DOVER: I apologize.*

9 *CROSS EXAMINATION CONTINUED*

10 *BY SCOTT DOVER:*

11 *Q. Please continue.*

12 *A. (Reading): "alexa is wondering*
13 *around inside and outside not bein watched*
14 *walkin around with knives outta the*
15 *dishwasher cuz she aint bein watched last*
16 *time I checked dss has done said if they get*
17 *a wiff of this shit again that shit would be*
18 *done . and its like no one down there cares*
19 *and obviously you don't neither cuz you allow*
20 *them down there anyway MINOR 2 is gonna end up*
21 *dead or in jail because of them and you aint*
22 *doin shit to stop it and I'm here to tell you*
23 *that your being there doesn't make a damn bit*
24 *of a difference and your indenial if you*
25 *think it does I get treated like shit for*

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1 *givin a fuck about my brothers and my niece*
2 *because they dont deserve to be taken away*
3 *from their family because of everyone elses*
4 *bullshit but no I'm always the bitch startin*
5 *shit and I'm put down and everyone else comes*
6 *before me and you let them . you're my mom*
7 *and I feel like you don't give a fuck about*
8 *me so guess what i'm gonna quit givin a fuck*
9 *about everyone and everything and worry about*
10 *me because all yall are doing is distracting*
11 *me from what I need to be focused on . i'm*
12 *tired of worryin bout my niece all the time n*
13 *whether she's watched or not I shouldnt have*
14 *to . that's my babygirl and I'm no longer*
15 *gonna be there for her because its hurting me*
16 *way too much and i can't take it anymore i'm*
17 *coming to get my shit from your house and I'm*
18 *not comin back bye."*

19 *Q. Now, you told this jury earlier in*
20 *direct examination that the reason that you*
21 *went to law enforcement and complained was*
22 *because you were fearful about your niece,*
23 *Alexa, and Jodie Williams. Isn't that what*
24 *you told them?*

25 *A. But that ---*

1 Q. Isn't that what you told them? Yes
2 or no?

3 A. Yes, but -- the day before. This is
4 from the day before. I never told my mother
5 about Jodie. I ain't never told my mother
6 about Jodie.

7 Q. Ma'am, the truth of the matter is
8 that you were worried about your niece,
9 Alexa, being about these "fucked up boys" as
10 you called Joseph Bates.

11 A. Yes, Joseph was -- but Jodie
12 Williams was one of them. He was giving them
13 the drugs. I witnessed it, I watched him
14 doing it, giving them alcohol. They was
15 drinking. My niece was a baby running
16 around.

17 Q. That's all that I have for you.
18 Thank you.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY SOLICITOR ODOM:

22 Q. MINOR 1, sometimes it seems like you
23 would get a little confused by Mr. Dover's
24 questions. Would you say that?

25 A. There were ---

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1 SCOTT DOVER: I object to that.

2 WITNESS: There were some questions
3 that got me a little confused. I mean ---

4 THE COURT: Overruled.

5 WITNESS: --- like I said, it's very
6 hard to remember exact dates and times
7 because we were out and back between my
8 grandparents and -- not only did my mom and
9 stepdad move constantly but my grandparents
10 did as well, so there were so many places we
11 were out and back. I was seven to twelve
12 years old. I'm sorry if I misplaced a place
13 for the wrong place.

14 REDIRECT EXAMINATION CONTINUED

15 BY SOLICITOR ODOM:

16 Q. Are you confused, though, about who
17 molested you for years?

18 A. No, I know who molested me.

19 Q. And who was that?

20 SCOTT DOVER: Your Honor, I object to
21 that. I didn't ask her any questions about
22 that. That's not proper ---

23 WITNESS: I'm sorry.

24 THE COURT: I am going to let her.

25 REDIRECT EXAMINATION CONTINUED

1 BY SOLICITOR ODOM:

2 Q. Go ahead.

3 A. I'm sorry. I just screamed from my
4 anxiety. Can you repeat that, please?

5 Q. Who molested you?

6 A. My stepdad, Joseph Williams.

7 Q. And is there any doubt about that?

8 A. There is ---

9 SCOTT DOVER: Objection to a leading
10 question, Your Honor.

11 THE COURT: Yeah, ---

12 SCOTT DOVER: That's an improper
13 question.

14 SOLICITOR ODOM: That's ---

15 REDIRECT EXAMINATION CONTINUED

16 BY SOLICITOR ODOM:

17 Q. Do you know who molested you?

18 A. Yes, I know who molested me.

19 SCOTT DOVER: That has been asked and
20 answered twice. I object to her asking her
21 again.

22 SOLICITOR ODOM: Judge, ---

23 THE COURT: Proceed.

24 SOLICITOR ODOM: That's my last
25 question. I would like to just get it out.

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1 *I know it's been asked and answered. I was*
2 *trying to finish this.*

3 *THE COURT: All right.*

4 *SOLICITOR ODOM: MINOR 1, thank you for*
5 *testifying. Judge, that is all I have.*

6 *SCOTT DOVER: Nothing further.*

7 *COURT REPORTER: That concluded the*
8 *testimony of MINOR 1.*

9 *THE COURT: All right, ladies and*
10 *gentlemen. If you will, go back to your jury*
11 *room and continue your deliberations.*

12 *(JURY OUT @ 4:20 P.M.)*

13 *THE COURT: Any exceptions or objection*
14 *from the State?*

15 *SOLICITOR ODOM: No, Your Honor.*

16 *THE COURT: From the Defendant?*

17 *SCOTT DOVER: No, sir, Your Honor.*

18 *THE COURT: We will be at-ease until*
19 *the next question.*

20 *(JURY IN DLEIBERATIONS)*

21 *(NOTIFIED OF JURY NOTE @ 5:05 P.M.)*

22 *(DEFENDANT PRESENT)*

23 *THE COURT: Question Number 6, Court*
24 *Exhibit 7.*

25 *(SO ENTERED AS COURT'S EXHIBIT 7)*

1 THE COURT: "What is the next step?
2 We can't get an unanimous verdict." Signed,
3 Forrest Ballew, dated today.

4 As the law requires, I will now read them
5 an *Allen* charge and we will see where we go
6 from there.

7 Bring them out.

8 (JURY IN @ 5:09 P.M.)

9 THE COURT: Mister Foreman, I have
10 received your note, number six, "*What is*
11 *the next step? We can't get an unanimous*
12 *verdict.*"

13 First of all -- and I don't want to know
14 how anyone has voted, but I'm just going to
15 ask based on what you've told me, is it
16 correct that you have not been able to reach
17 an unanimous verdict?

18 FOREMAN: Yes.

19 THE COURT: All right. Now, I can't --
20 I've now got to -- the law requires me to
21 read to you an *Allen* charge.

22 Ladies and gentlemen, you've stated that
23 you've unable to agree on a verdict in this
24 case. As I instructed you earlier, the
25 verdict must be unanimous.

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1 When a matter is in dispute it is not
2 always easy for two people to agree. When
3 twelve people must agree it becomes even more
4 difficult.

5 In most cases absolute certainty cannot
6 be reached and is not expected. However, you
7 the duty to make every reasonable effort to
8 reach an unanimous verdict. In doing this,
9 you should consult with one another, express
10 your own views, and listen to the opinions of
11 your fellow jurors. Tell each other how you
12 feel and why you feel that way. Discuss your
13 difference with open minds.

14 I'm sure that y'all have done up to this
15 point and I appreciate all the hard work that
16 you've done up to this point.

17 Although the verdict of the jury must be
18 unanimous, every one of you has a right to
19 your own opinions. The verdict that you
20 agree to must be your own verdict, a result
21 of your own convictions. You should not give
22 up firmly-held beliefs merely to be in
23 agreement with your fellow jurors.

24 The majority should consider the
25 minority's position and the minority should

1 consider the majority's position.

2 You should carefully consider the
3 respective opinions of each other and re-
4 evaluate your position for reasonableness,
5 correctness and impartiality.

6 You must lay aside all outside matters
7 and re-examine the question before you based
8 on the law and the evidence in this case.

9 If you do not agree on verdicts in this
10 case, I must declare a mistrial. In that
11 case, it does mean that anybody "wins."
12 It just means that at some future time this
13 case will be tried again with some other jury
14 sitting where you sit now. The same
15 participants will come in, the same lawyers
16 will ask basically the same questions and get
17 basically the same answers. We would go
18 through this process again.

19 You were selected in the same manner and
20 from the same source as any future jury would
21 be. There is no reason for me to suppose
22 that the case could ever be submitted to
23 twelve more intelligent, impartial,
24 conscientious and competent jurors than you.
25 Or that more clear evidence could be produced

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1 on one side or the other.

2 That is what the *Allen* charge is.

3 Therefore I must ask that you continue
4 your deliberations. I know that y'all have
5 worked very hard and I can tell from your
6 questions that this has been a very difficult
7 process for you.

8 In light of that, I'm required by law to
9 ask you to return to your jury room and
10 continue deliberations.

11 Let me know if you have any additional
12 questions. Thank you.

13 (JURY OUT @ 5:13 P.M.)

14 THE COURT: Any exception or additions
15 to the *Allen* charge, from the State?

16 SOLICITOR ODOM: No, Your Honor.

17 THE COURT: From the defense?

18 SCOTT DOVER: No, sir.

19 THE COURT: We will be at-ease awaiting
20 the verdict.

21 (JURY IN DELIBERATIONS)

22 (NOTIFIED OF VERDICT @ 5:35 P.M.)

23 (DEFENDANT PRESENT)

24 THE COURT: I am advised that we have
25 a verdict. I will bring the jury back in.

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1 I will let everybody know that we will not
2 tolerate any outbursts, any response to this
3 at all. These deputies right here, I will
4 have them take you into custody if there is
5 anything out of the ordinary. So, be
6 advised. I expect everyone to act
7 accordingly.

8 (JURY IN @ 5:37 P.M.)

9 THE COURT: Mister Foreman, I
10 understand that you have reached a verdict.

11 FOREMAN: Yes, Your Honor.

12 THE COURT: Please hand it to the
13 Clerk.

14 CLERK: (Tenders to Court).

15 THE COURT: The verdict form has been
16 properly completed. Mister Clerk, if you
17 could publish the verdict.

18 CLERK: Yes, sir. State of South
19 Carolina versus Joseph Campbell Williams,
20 III, as to Indictment 15-GS-39-1030,
21 (reading): *"We, the jury, unanimous find the*
22 *Defendant, Joseph Campbell Williams, II,*
23 *guilty of first degree criminal sexual*
24 *conduct with a minor."*

25 As to Indictment 2017-GS-39-0700,

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1 (reading): "We, the jury, unanimously find
2 the Defendant, Joseph Campbell Williams, II,
3 guilty of second degree criminal sexual
4 conduct with a minor."

5 If this was your verdict and is still
6 your verdict, so say you all by raising your
7 right hand -- (unanimous response by Jurors).

8 Thank you very much.

9 THE COURT: Anything else from the
10 jury, from the State?

11 SOLICITOR ODOM: Not from the State?

12 THE COURT: Anything else from the
13 jury, from the Defendant?

14 SCOTT DOVER: Nothing.

15 THE COURT: All right. Ladies and
16 gentlemen, thank you for your deliberations
17 here. I appreciate your attention.

18 At this time, go back to your jury room.
19 I'll step back there in just a few minutes
20 and talk to you if you have any questions.

21 (JURY DISMISSED)

22 THE COURT: Do you have the sentencing
23 sheets?

24 SOLICITOR ODOM: I do, Your Honor.

25 THE COURT: We will be at-ease for just

1 a minute.

2 (BRIEF RECESS)

3 (DEFENDANT PRESENT)

4 SCOTT DOVER: Shall I go ahead and make
5 my Motion?

6 THE COURT: Yes.

7 SCOTT DOVER: Your Honor, I renew my
8 Motion that I made at the end of the case.
9 I also make a Motion that you, acting as the
10 Thirteenth Juror, consider the evidence in
11 the case and weigh in on that and reverse the
12 verdict of the juror and find the Defendant
13 not guilty based on the facts, evidence and
14 testimony presented in the case.

15 That is not eloquently stated but ---

16 THE COURT: I understand. I understand
17 your position. I believe that the nature of
18 the testimony made it clearly a jury decision
19 and I find no basis for changing that. So
20 your Motion is denied.

21 SCOTT DOVER: Thank you.

22 THE COURT: Are you ready for
23 sentencing?

24 SCOTT DOVER: We are.

25 THE COURT: Mr. Williams, the jury

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1 returned a verdict of Guilty on both counts.
2 My role at this point is merely the
3 sentencing of this matter.

4 I will hear from the victim, if she would
5 like to say anything, and then I will hear
6 from Mr. Dover.

7 SOLICITOR ODOM: Thank you, Your Honor.
8 Shannon Odom on behalf of the State. The
9 victim, MINOR 1 [REDACTED], does wish to address
10 the court.

11 MINOR 1 [REDACTED]: Your Honor, I would
12 like to thank this Court for giving me the
13 closure that I need to live past this. Thank
14 you for giving me what I deserve. That's all
15 that I have to say.

16 THE COURT: For the record, I would
17 indicate that while I preside over the trial
18 that the jury was the one that returned the
19 verdicts.

20 Mr. Dover? Mr. Williams?

21 I assume that you have nothing further?

22 SOLICITOR ODOM: No, Your Honor,
23 nothing further from the State.

24 THE COURT: Mr. Dover.

25 SCOTT DOVER: Your Honor, you heard it

1 all. He's forty-five, he is the father of
2 two other boys. Their mother, his wife, has
3 been here with him.

4 I've certainly -- I've advised him of
5 your rulings in this case at this point,
6 that the jury has reached their verdict,
7 I've advised him of the consequences. He
8 understands that the consequences are dire,
9 are strict and severe.

10 We just ask that you use your best
11 judgment in sentencing. You've heard all the
12 testimony and we just ask that you sentence
13 him appropriately.

14 THE COURT: Mr. Williams, is there
15 anything that you would like to tell me?

16 DEFENDANT: No, sir.

17 THE COURT: All right. On 15-GS-39-
18 1030, criminal sexual conduct on a minor in
19 the first degree, the sentence of the Court
20 is thirty (30) years with the sexual
21 registry.

22 On 17-GS-39-0700, on the charge of
23 criminal sexual conduct with a minor second
24 degree, the sentence of the Court is ten (10)
25 years.

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1

Those are consecutive.

2

Good luck to you, sir.

3

SCOTT DOVER: Thank you, Your Honor

4

(TRIAL CONCLUDED)

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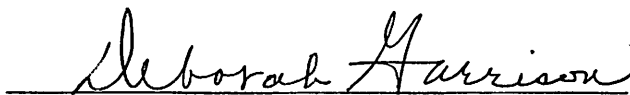
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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF PICKENS)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the jury trial
held in the within action heard on August 31 and
September 1, 2017, before The Honorable Perry H.
Gravelly;

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.



Deborah Garrison

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Court Case No.: 2017-001867

The State, ... Respondent,
v.
Joseph Campbell Williams, II, ... Appellant.

BRIEF OF THE APPELLANT

RECEIVED
MAY 31 2018
SC Court of Appeals

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STATEMENT OF THE ISSUES

1. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
2. Did the court commit reversible error in excluding evidence as to the Appellant's state of mind?

STATEMENT OF THE CASE

The Appellant was indicted by the grand jury in Pickens County for the offense of criminal sexual conduct with a minor, first degree (15-GS-39-1030), and criminal sexual conduct with a minor, second degree (17-GS-39-0700). The Appellant was tried by jury August 31st through September 1, 2017, the Honorable Perry H. Gravely presiding. Scott Dover, Esq., represented the Applicant at trial. Shannon Odom, Assistant Solicitor, represented the State. The jury returned a verdict of guilty on both charges and the Appellant was sentenced to 30 years on the CSC, first degree and 10 years consecutive on the CSC, second degree. The Appellant was remitted to the custody of the South Carolina Department of Corrections. A timely notice of appeal was filed. Joshua A. Edwards, Assistant Attorney General represents the State on appeal. J. Falkner Wilkes represents the Appellant on appeal.

STATEMENT OF FACTS

On November 30, 2013, the prosecutrix made a complaint to the Pickens County Sheriff's Office alleging sexual abuse by the Appellant when she was six or seven years old. R. p. 63. She reported this for the first time in 2013, when she was 17 years old. R. p. 108. She was 21 at the time of trial. R. p. 89. The prosecutrix testified that when she was six years old she began living on Lewis Street with her mother and the Appellant, her step father. R. p. 89; 97. She claimed that when she was seven years old and living at Jane Lane the Appellant rubbed on her "close to her privates". R. p. 92. She testified to oral sex occurring just before she went to live at her grandparents for a while on Railroad Street. R. p. 94. The prosecutrix testified that later the Appellant and her mom moved to High Top Drive where the "majority of everything that he done to me happened at." 94. She was ten when they initially moved to High Top. R. p. 100. The prosecutrix testified that the last abuse is occurred just before she turned thirteen. R. p. 106.

The defense produced Facebook postings showing that just hours prior to making allegations of sexual abuse against the Appellant the prosecutrix was upset with her mother and posted threats directed at them: "I think its funny people wanna say they beat someones ass when in reality they the ones who got beat. Pussy ass niggas wanna run wont face a man but wanna talk shit when everybodys gone. world war 3 is about to begin and everybody gonna wish they never fucked with me ! that anit a threat, that's a promise!" R. p. 154. The prosecutrix admitted posting the threats just hours prior to making the allegations against the Appellant that resulted in his arrest and prosecution in this case. R. p. 154-158. The defense also produced mental health/behavioral records where the prosecutrix had, over the course of years denied any sexual abuse, including specifically any abuse by the Appellant. R. p. 149-153; 226-227.

Early in the trial there was a discussion as to the application of the rape shield statute. There was an agreement on rape shield statute that the defense would not get into any prior sexual habits of the prosecutrix. R. p. 36-41.

During the trial the defense attempted to establish a prior pattern of false sexual abuse allegations by the prosecutrix against people other than the Appellant. R. p. 40. The state objected repeatedly claiming that such testimony should be excluded under the rape shield statute. The defense disclosed its intent to elicit testimony of prior false allegations of sexual abuse against two people other than the Appellant. R. p. 74-76. State's argued that testimony about prior false allegations violated the rape shield statute. R. p. 77. There was a long discussion with the court ruling that the defense could not get into the details (falsity) of the prior sexual allegations against other people. R. p. 77-83.

The state offered testimony by its expert witness, Farmer, who had been one of the prosecutrix's mental health providers. R. p. 201-206. Farmer had the prosecutrix's mental health records to refer to during her testimony. R. p. 206-208. The solicitor elicited testimony from Farmer about the prosecutrix's mental/behavioral health treatment. R. p. 208. Farmer testified that the prosecutrix made a false report of abuse by her mom. R. p. 215-216. Farmer went on to also identify in the records where the prosecutrix also made allegations of sexual abuse against two people other than the defendant. R. p. 215-216. Unlike the abuse claim involving the victim's mother, Farmer did not volunteer that the two allegations of sexual abuse made against other people were also false.¹

¹Presumably, based on the court's earlier ruling, Farmer had been instructed not to disclose the details (falsity) of the victim's allegations of prior sexual abuse by persons other than the defendant.

On cross-examination the defense attempted to elicit testimony from Farmer, based on the medical records of the prosecutrix, that the two prior allegations of sexual assault were also found to be false. The state objected on the grounds of hearsay. R. p. 229. The court sustained the objection without stating a basis. R. p. 229.

The defense later attempted to offer testimony of the prior false allegations through the Appellant's brother. When the brother attempted to testify that victim "had a troubled past and had already made false accusations..." the state objected. R. p. 297. The court again sustained without explanation. R. p. 297. Then the defense attempted to elicit testimony from the Appellant's brother pertaining to the Appellant being around the prosecutrix (presumably due to her prior false allegations against other men): "did your brother, what was he telling you about his relationship with..." R. p. 298. The state objected and the court again sustained as hearsay. R. p. 298.

When the Appellant took the stand he testified that he would never be alone with the prosecutrix over the whole time he was married to the prosecutrix's mother. R. p. 303. When the Appellant attempted to explain why, the state objected and cut him off:

Q. Tell the jury why you would never leave yourself alone with this girl?

A. Because she'd made accusations against --.

R. p. 303.

The jury was sent out and argument ensued. The defense argued that the testimony was not offered for truth of the matter asserted. R. p. 303. Specifically the defense argued that the testimony proved the Appellant's motive and intent as to why he wouldn't be alone with the

prosecutrix. R. p. 303. The state maintained that the testimony violated the rape shield statute. 304-308.

The defense requested to proffer the Applicant's testimony. R. p. 303-307. When the defense attempted to proffer the Appellant's testimony the court immediately cut the Appellant off:

The Court: I'll let you proffer.

Defense counsel: Mr. Williams, I am going to ask you some question on a proffer. Did you ever leave yourself alone with [the prosecutrix]?

Defendant: No, sir, I did not.

Defense counsel: Because I was fearful of her because of past --

The Court: Again, he can say "I was fearful of being accused of anything' but I don't think that he can say because of her previous allegations.

R. p. 307, l. 6-18.

After successfully preventing the testimony explaining that the Appellant didn't want to be alone with the prosecutrix because she had made prior false allegations of sexual abuse against other people, the solicitor went on to argue to the jury how she didn't believe the defense witnesses. R. p. 351. That the defense witness testimony was absurd to her [the prosecutor]. R. p. 351. The solicitor went on to say "How crazy is this?..... went to such great lengths... just to make sure that her daughters never had a chance to be alone with him. This is preposterous." R. p. 362. The solicitor went on attacking the defense testimony that the Appellant avoided ever being alone

with the prosecutrix: "How crazy is this? How illogical is this, that they want you to believe that they went to great lengths, to avoid sleep, just to make sure that her daughters never had a chance to be alone with him? This is preposterous." R. p. 362, l. 18-23. Throughout closing argument the state continued to take an unfair advantage of having blocked the Appellant's ability to explain the basis for his avoidance of ever being alone with the prosecutrix:

Now, Mr. Dover said that the defendant would have been a fool to have put himself in that position. The defendant testified that 20 from the beginning he said that he wasn't left alone with them. By putting -- by saying, you know, that he would have been a fool to have put himself in that position, that's like a slap in the face to all the other step-dads out there. That is saying that no step-dad should ever be alone with a step-child because that's an inherent risk. That is saying that when moms and dads get married that have prior children, that the family shouldn't be blended. That you should try to have a good relationship. That you should push your child away. No. That makes no sense. And it makes no sense that mom would have gone to great lengths to keep the kids away from him like that.

R. p. 386, l. 17-397, l. 10.

ARGUMENT

I. THE COURT ERRED IN EXCLUDING EVIDENCE OF PRIOR FALSE ACCUSATIONS BY COMPLAINANT AGAINST PERSONS OTHER THAN THE DEFENDANT.

The defense in this case sought to introduce evidence of the prosecutrix's prior false allegations of sexual misconduct against persons other than the defendant. The state objected repeated raising the Rape Shield Statute.

In a prosecution for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence of the victim's sexual conduct is controlled by S.C. Code Ann. 16-3-659.1 (1985). Unlike the federal rule which contains the standards and procedures governing the admissibility of such evidence, this rule merely references the statute. Note to Rule 412. Rule 412, SCRE, provides: "In prosecutions for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence concerning the victim's sexual conduct is subject to the limitations contained in S.C. Code Ann. 16-3-659.1 (1985)." South Carolina's Rape Shield statute provides in pertinent part: "Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible in prosecutions under Sections 16-3-615 and 16-3-652 to 16-3-656;..." S.C. Code Ann. § 16-3-659.1. The testimony that the court excluded was not evidence of the victim's sexual conduct, but rather evidence of the prosecutrix's prior false allegations. The former is barred by Rule 412, the latter is not.

Rule 412 is designed only to preclude evidence of a complaining witness's prior sexual conduct. Evidence of prior false accusations of rape made by a complaining witness does not constitute "prior sexual conduct" for rape shield purposes. In presenting such evidence, a

defendant is not probing the complaining witness's sexual history. Rather, a defendant seeks to prove for impeachment purposes that the complaining witness has previously made false accusations of rape. Viewed in this light, such evidence is more properly understood as verbal conduct, not sexual conduct. To the extent a defendant offers evidence of prior false accusations of rape to impeach the credibility of the witness, its admission does not run afoul of the Rape Shield Rule. *See State v. Walton*, 715 N.E.2d 824, 826–27 (Ind. 1999).

Other jurisdictions are reasonably consistent in allowing evidence of prior false accusations for impeachment purposes.² Maine, Maryland, Missouri, New Mexico, Ohio, Tennessee, Vermont, and Wisconsin follow the federal rule and allow cross-examination concerning a prior false accusation that is probative of the witness's character for truthfulness, but do not allow the use of extrinsic evidence to contradict the witness's answer or to prove the character trait. *See, e.g., State v. Almurshidy*, 732 A.2d 280, 287 n. 4 (Me.1999); *State v. Cox*, 298 Md. 173, 468 A.2d 319, 323–24 (1983); *State v. Raines*, 118 S.W.3d 205, 211–14 (Mo.Ct.App.2003); *State v. Scott*, 113 N.M. 525, 828 P.2d 958, 962–63 (Ct.App.1984); *State v. Boggs*, 63 Ohio St.3d 418, 588 N.E.2d 813, 816–17 (1992); *State v. Wyrick*, 62 S.W.3d 751, 780–82 (Tenn.Crim.App.2001); *State v. Leggett*, 164 Vt. 599, 664 A.2d 271, 272 (1995); *State v. Olson*, 179 Wis.2d 715, 508 N.W.2d 616, 619–20 (Ct.App.1993), *reh'g denied*, 515 N.W.2d 715 (Wis.1994).

Alaska, Arizona, Arkansas, Idaho, New Hampshire, and Nevada also have evidence rules similar to the federal rule, but have relaxed those rules in sexual crime cases to allow the

²The following state-by-state analysis was made by the Supreme Court of New Jersey in *State v. Guenther*, 181 N.J. 129 (2004). Although somewhat dated, it remains relevant.

admission of extrinsic evidence of an accuser's prior false sexual crime allegation. See, e.g., Morgan v. State, 54 P.3d 332, 336 (Alaska Ct.App.2002); State v. Hutchinson, 141 Ariz. 583, 688 P.2d 209, 212–13 (Ct.App.1984) (*interpreting* State ex rel Pope v. Superior Court, 113 Ariz. 22, 545 P.2d 946, 953 (1976)); West v. State, 290 Ark. 329, 719 S.W.2d 684, 686–87 (1986), *reh'g denied*, 290 Ark. 329, 722 S.W.2d 284 (1987); State v. Schwartzmiller, 107 Idaho 89, 685 P.2d 830, 833 (1984); State v. Gordon, 146 N.H. 258, 770 A.2d 702, 704–05 (2001); Miller v. State, 105 Nev. 497, 779 P.2d 87, 89–90 (1989).

Massachusetts and Oregon, which like New Jersey follow the common law rule, have recognized a limited exception to allow cross-examination of an accuser who has made a prior false sexual crime allegation when the case involves a similar crime, but disallow extrinsic evidence. See, e.g., Commonwealth v. Bohannon, 376 Mass. 90, 378 N.E.2d 987, 991 (1978); State v. Driver, 192 Or.App. 395, 86 P.3d 53, 55–58 (2004). Kansas, Georgia, Indiana, Louisiana, and Virginia, which also follow the common law rule prohibiting specific conduct evidence relating to character, have suggested that the defendant's right to confrontation in a sexual crime case allows cross-examination of the accuser-witness and the admission of extrinsic evidence to prove the witness's prior false sexual crime accusation. See, e.g., State v. Barber, *supra*, 766 P.2d at 1290 (Kan.); Smith v. State, 259 Ga. 135, 377 S.E.2d 158, 160, *cert. denied*, 493 U.S. 825, 110 S.Ct. 88, 107 L.Ed.2d 53 (1989); Little v. State, 413 N.E.2d 639, 643–44 (Ind.Ct.App.1980); State v. Smith, 743 So.2d 199, 202 (La.1999); Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263, 266 (1988).

Texas has embraced a case-by-case analysis to determine whether a defendant's right to confrontation requires relaxation of the bar on specific conduct evidence in all cases in which an

accuser has made a prior false criminal allegation—not just sexual crime cases. *See Lopez v. State*, 18 S.W.3d 220, 225 (Tex.Crim.App.2000) (declining "to create a per se exception to the Rule 608(b) for sexual offenses" because "[i]t makes no sense to say that certain factors will always be present in a case involving a sexual offense").

Some Federal Courts of Appeals that have addressed the use of a prior false accusation to undermine the credibility of an accuser-witness have determined that restrictions on the admissibility of extrinsic evidence do not violate the Sixth Amendment right to confrontation. *See, e.g., Boggs v. Collins*, 226 F.3d 728, 736–40 (6th Cir.2000), *cert. denied*, 532 U.S. 913, 121 S.Ct. 1245, 149 L.Ed.2d 152 (2001); *Hogan v. Hanks*, 97 F.3d 189, 191 (7th Cir.1996), *cert. denied*, 520 U.S. 1171, 117 S.Ct. 1439, 137 L.Ed.2d 546 (1997); *United States v. Bartlett*, 856 F.2d 1071, 1088–89 (8th Cir.1988).

Several jurisdictions have recognized that prior false accusations of sexual crimes by the accuser may be admissible for reasons unrelated to impeachment of general credibility—to prove the accuser's habit, state of mind, motive, or common scheme. *See, e.g., Peeples v. State*, 681 So.2d 236, 237–39 (Ala.1995) (habit); *People v. Hurlburt*, 166 Cal.App.2d 334, 333 P.2d 82, 87 (1958) (state of mind); *State v. Anderson*, 211 Mont. 272, 686 P.2d 193, 199, 201 (1984) (state of mind, motive, and bias). In the present case, given multiple prior false allegations, combined with other evidence in the victim's mental health records of a pattern of lying, the evidence could fall within the realm of habit, intent, or common scheme.

In determining that prior false allegations are admissible under Rule 412, other court's have considered and resolved any conflict with Rule 608. Rule 608 provides in part:

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 608 (b), SCRE.

In considering the apparent conflict other court's have held that "evidentiary constraints must sometimes yield to a defendant's right of cross-examination." Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263, 266 (1988); *see also* Mengon v. State, 505 N.E.2d 788, 792 (Ind.1987) (holding that a party's right to cross-examination should not be unduly limited by the court). A defendant's Sixth Amendment right of confrontation requires that the defendant be afforded an opportunity to conduct effective cross-examination of State witnesses in order to test their believability. Davis v. Alaska, 415 U.S. 308, 315–18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); Timberlake v. State, 690 N.E.2d 243, 255 (Ind.1997), *cert. denied*, 525 U.S. 1073, 119 S.Ct. 808, 142 L.Ed.2d 668 (1999). "The right to cross-examine, as well as other forms of confrontation, 'ensure [sic] that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo–American criminal proceedings.' " Tague v. Richards, 3 F.3d 1133, 1138 (7th Cir.1993) (*quoting Maryland v. Craig*, 497 U.S. 836, 846, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990)). Accordingly, the majority of jurisdictions that have considered the have held that the evidentiary rule preventing evidence of specific acts of untruthfulness must yield to the defendant's Sixth Amendment right of confrontation and right to

present a full defense.³ Finding both the reasoning and weight of this authority persuasive, we hold that evidence of prior false accusations of rape is admissible to attack the credibility of the accusing witness, notwithstanding the general exclusionary edict of Rule 608(b). *See State v. Walton*, 715 N.E.2d 824, 827 (Ind. 1999).

As a matter of first impression the South Carolina Supreme Court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility. *State v. Boiter*, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). There the court noted that "other jurisdictions have held that such evidence is admissible only if the court makes a threshold determination that the prior accusation was false. *See Clinebell v. Com.*, 235 Va. 319, 368 S.E.2d 263 (1988); *Woods v. State*, 657 P.2d 180 (Okla. 1983), *Commonwealth v. Bohannon*, 376 Mass. 90, 95, 378 N.E.2d 987, 991 (1978). Other Courts have also considered remoteness of the prior accusation. *See State v. LeCair, supra.*" *See State v. Boiter*, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). Although apparently holding that the trial court must make some threshold determination that the prior accusation was false to allow such evidence, the *Boiter* Court did not articulate an applicable standard of proof when doing so.

The standard of proof applied in similar cases varies among jurisdictions. Some jurisdictions require that the prior accusation be shown to be "demonstrably false." *See, e.g., Little, supra*, 413 N.E.2d at 643 (Ind.Ct.App.); *State v. Sieler*, 397 N.W.2d 89, 92 (S.D. 1986); *Berry v. Commonwealth*, 84 S.W.3d 82, 91 (Ky.Ct.App. 2001). Others have articulated varying

³ *E.g., Clinebell*, 368 S.E.2d at 265–66; *Commonwealth v. Bohannon*, 376 Mass. 90, 378 N.E.2d 987, 990–91 (1978); *West v. State*, 290 Ark. 329, 719 S.W.2d 684, 687 (1986); *State v. Anderson*, 211 Mont. 272, 686 P.2d 193, 198–201 (1984); *Miller v. State*, 105 Nev. 497, 779 P.2d 87, 89 (1989); *Smith v. State*, 259 Ga. 135, 377 S.E.2d 158, 160, *cert. denied*, 493 U.S. 825, 110 S.Ct. 88, 107 L.Ed.2d 53 (1989).

standards of proof for determining whether the witness made the accusation and whether it was false: clear and convincing evidence, Gordon, *supra*, 770 A.2d at 704, 705 (N.H.); preponderance of the evidence, Morgan v. State, 54 P.3d 332, 339 (Alaska Ct.App.2002); or "a reasonable probability of falsity," Smith, *supra*, 377 S.E.2d at 160(Ga.); Barber, *supra*, 766 P.2d at 1290 (Kan.Ct.App.); Clinebell, *supra*, **323 368 S.E.2d at 266 (Va.). *See also* Smith, *supra*, 743 So.2d at 203 (La.) (stating judge must determine "whether reasonable jurors could find, based on the evidence presented by defendant, that the victim had made prior false accusations").

Although not setting a clear standard of proof, the Boiter Court held that in deciding admissibility of evidence of a victim's prior accusation, the trial judge should first determine whether such accusation was false. If the prior allegation was false, the next consideration becomes remoteness in time. Finally, the trial court shall consider the factual similarity between prior and present allegations to determine relevancy.

The defense in this case was clearly attempting to lay a proper foundation for the admissibility of the prior false statements. In every attempt the trial court summarily cut the defense off without allowing an opportunity to present evidence relevant to a Boiter analysis. Given the testimony at issue, it was incumbent upon the trial court to conduct a proper Boiter analysis, which it failed to do.

Despite some testimony about the prior sexual allegations against other people was admitted, evidence of their falsity was excluded. Although the trial court repeatedly cut off the defense, a review of the questions that the defense was attempting to ask, the arguments of counsel, as well as other testimony that was admitted, facts relating to the investigation and falsity of the prior accusations appear to have been recorded in the mental/behavioral health

records of the prosecutrix. The record is sufficient evidence to show that the allegations were false, or at least sufficient enough to require the trial court to conduct a hearing to properly address and determine the issue under the factors set forth in Boiter.

There is nothing in the record that would suggest that the trial court considered, much less conducted, a proper analysis under Boiter. The record shows that the court simply refused to allow the defendant an opportunity to meet his burden to establish admissibility under Boiter. Accordingly, the trial court's ruling constitutes an error of law and is not entitled to any deference. Failing to allow the defense an opportunity to present evidence to carry the burden as to admissibility constitutes an abuse of discretion on the part of the trial judge.

Prejudice

This case turned entirely on the believability of the prosecutrix. As a result, the defense of the case rested heavily on her effective cross-examination. In limiting the defense cross-examination the court violate the Appellant's rights under the Confrontation Clause. "A violation of the defendant's Sixth Amendment right to confront the witness is not per se reversible error" if the "error was harmless beyond a reasonable doubt." State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) (*quoting State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)) (*internal quotations omitted*). This Court must determine whether the error was harmless beyond a reasonable doubt. Graham, 314 S.C. at 385, 444 S.E.2d at 527. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v.

Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318–19 (*quoting Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

“Harmless beyond a reasonable doubt” means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (internal quotations omitted).

The Mizzell Court concluded the trial court committed reversible error:

Considering the Van Arsdall factors, we note much of Steele's testimony was either cumulative or corroborated by other witnesses....
 ...Critically, however, Steele was the only witness to testify as an eyewitness to [defendants'] burglary of the home. The lack of physical evidence placing [defendants] at the scene enhanced the importance of Steele's testimony. As in [State v.] Brown, [303 S.C. 169, 399 S.E.2d 593 (1991),] the co-conspirator witness is the only link placing [defendants] at the scene of the crime....
Because Steele was the only witness to directly link [defendants] to the burglary, we cannot say the trial court's error was harmless beyond a reasonable doubt. Accordingly, we find the trial court committed prejudicial error in limiting [defendants'] cross-examination into Steele's possible sentence.

State v. Mizzell, 349 S.C. 326, 334–35, 563 S.E.2d 315, 319–20 (2002). Here, the only evidence against the Appellant was the testimony of the prosecutrix. Limiting the Appellant's effective cross-examination can not be harmless.

Prejudice is further evident where several witnesses, including the Appellant, testified that the allegations could not be true because the Appellant intentionally avoided ever being alone with the prosecutrix. The state objected every time a witness, including the Appellant, attempted to explain the reason underlying the Appellant's fear of being alone with the prosecutrix. Then after having kept out any explanation behind the witnesses' testimony that the defendant would never be alone with the prosecutrix, the state made the defense's lack of explanation the object of ridicule in closing argument. The conviction of the Appellant should therefore be reversed.

II. THE COURT ERRED IN REFUSING TO ALLOW WITNESSES OFFER TESTIMONY TO EXPLAIN THE APPELLANT'S STATE OF MIND.

A key element of the defense in this case involved testimony that the Appellant never allowed the prosecutrix around him when they would be alone together. The Appellant, his wife, and his brother each testified that the Appellant went to great lengths to make sure that he was never alone with the prosecutrix. As unusual as that may seem, it would make sense in light of the multiple prior false sexual allegations by the prosecutrix against other people. Relying on the rape shield statute the state objected. Although the court failed to state clearly the basis for excluding any mention of the prior false allegations, during discussions it referred to the testimony at issue as hearsay. R. p. 306, l. 17; R. p. 305-308. To the extent that the court excluded the testimony on the grounds of hearsay, such a ruling is in error.

The Appellant argued that the evidence established the Appellant's state of mind in deciding to avoid ever being alone with the prosecutrix. Rule 803 (3) provides that the following

are not excluded by the hearsay rule: "Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will." Testimony as to the prior false allegations explained the Appellant's state of mind as fearful of being alone with the prosecutrix. It was therefore, not excludable as hearsay.

Rule 803 (4) provides that the following are not excluded by the hearsay rule:

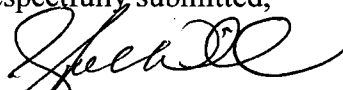
"Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion." Rule 803 (4) SCRE. Evidence relating to the falsity of prior sexual allegations were contained in the prosecutrix's mental/behavioral health records and, being pertinent to her treatment and diagnosis, were not excludable as hearsay.

As set forth above, the prejudice created by the exclusion of the testimony is obvious given the state's closing argument ridiculing the defense testimony about the Appellant never being alone with the prosecutrix. The court therefore erred in excluding the testimony as hearsay.

CONCLUSION

Based on the foregoing the conviction and sentence of the Appellant should be reversed and set aside.

Respectfully submitted,



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May 25, 2018.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Court Case No.: 2017-001867

The State, ... Respondent,
v.
Joseph Campbell Williams, II, ... Appellant.

CERTIFICATE OF COUNSEL

I certify that the Final Brief of Appellant complies with Rule 211 and further that it has been redacted in compliance with the Supreme Court's Order on the redaction of private data and personal identifiers.

Respectfully submitted,


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MAY 24 2018

SC Court of Appeals

THE STATE,

Respondent,

v.

JOSEPH CAMPBELL WILLIAMS, II,

Appellant.

FINAL BRIEF OF RESPONDENT

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<i>State v. Hill</i> , 409 S.C. 50, 760 S.E.2d 802 (2014)	4
<i>State v. Mitchell</i> , 330 S.C. 189, 498 S.E.2d 642 (1998)	5
<i>State v. Nichols</i> , 325 S.C. 111, 481 S.E.2d 118 (1997)	5
<i>State v. Pagan</i> , 369 S.C. 201, 631 S.E.2d 262 (2006)	4
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STATEMENT OF ISSUES ON APPEAL**I.**

Appellant's argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Appellant conceded this issue at trial.

II.

The trial court did not err by preventing Appellant from testifying about the veracity of Victim's prior accusations of abuse because Appellant had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony.

STATEMENT OF THE CASE

Appellant was indicted by a Pickens County grand jury for one count of criminal sexual conduct with a minor in the first degree and one count of criminal sexual conduct with a minor in the second degree. Appellant proceeded to trial before the Honorable Perry H. Gravely on August 31, 2017. Appellant was represented by Scott Dover, Esquire. Respondent (the State) was represented by Assistant Solicitor Shannon Odom. Appellant was convicted on both counts and sentenced to 30 years' incarceration for CSC with a minor 1st degree and 10 years' incarceration for CSC with a minor 2nd degree, to be served concurrently. This appeal follows.

STATEMENT OF FACTS

Appellant was Victim's stepfather. R. 308-09. Appellant married Victim's mother in 2006, but had lived with Mother since late 2001 or early 2002, when Victim was around six years old. R. 261-62. Victim began behavioral therapy at age six, and was referred to counseling for various issues on nine separate occasions. Tr. 208-210. During counseling that occurred when Victim was eight, ten, and twelve years old, either Victim or Mother reported that Victim had been sexually abused by two men (neither of which was Appellant). R. 217-219. At age fourteen, Victim reported that she had been raped by a third person. R. 220. Victim did not report that Appellant had abused her during these counseling sessions. R. 235-36.

In November 2013, Victim called the Pickens County Sheriff's Office and reported that Appellant sexually abused her as a child. R. 62-64. At trial, Victim testified that Appellant began molesting her when she was seven or eight years old. R. 91. What initially began as rubbing of Victim's legs and torso progressed to digital penetration, cunnilingus, and fellatio. R. 91-94; 131. Victim testified the abuse continued until shortly before her thirteenth birthday. R. 94; 105. Victim testified that she did not recall making allegations of abuse against any other men during her age eight to twelve counseling sessions. R. 137.

Appellant testified he never engaged in sexual behavior with Victim. R. 303. Appellant and Mother both testified that Victim was never left alone with Appellant, and that Victim intermittently lived with her grandparents for extended periods of time. R. 253-59; 309. Appellant's neighbor, brother and sister-in-law all testified that Victim normally stayed with her grandparents and they never knew her to spend the night in the same house as Appellant. R. 299-300; 294-295; 287.

ARGUMENT

I.

Appellant's argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Appellant conceded this issue at trial.

Appellant claims the trial court prevented him from presenting evidence of Victim's prior false rape allegations in violation of *State v. Boiter*, 302 S.C. 381, 396 S.E.2d 364 (1990). However, Appellant misstates the facts. Appellant conceded at trial that it would be improper to inquire about these purportedly false prior allegations, and did not attempt to do so. Therefore, this issue is not preserved for appellate review. *State v. Benton*, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (holding an issue conceded at trial is not preserved for review).

The admission of evidence is within the discretion of the trial court and will not be reversed absent a prejudicial abuse of discretion. *State v. Hill*, 409 S.C. 50, 55, 760 S.E.2d 802, 805 (2014). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

In camera, the court heard arguments regarding the admissibility of evidence of prior allegations. R. 73. Defense counsel agreed he was not entitled to ask Victim about her making prior unfounded allegations because to do so would violate the rape shield law, S.C. Code §16-3-659.1. Appellant argued instead that testimony regarding the prior accusations was admissible for the limited purpose of conveying to the jury that (1) the abuse for which Victim was previously counseled was not related to Appellant; and (2) Victim was willing to discuss other instances of sexual abuse, but did not accuse Appellant at that time. R. 75-78.

Defense counsel stated: "I would never ask her [those questions]— you know, 'did you accuse some body and it was later unfounded.' That would absolutely be impermissible. I certainly think that I can ask her the question, 'in 2009, in counseling didn't you report, you know, report A, B and didn't report my client?'" R. 78. Later, defense counsel stated: "I don't think the status of those [other incidents] are relevant of what happened. But the fact that she was accusing others- here you've got- I submit that it is fair for the jurors to believe that this young lady just felt so much, whatever her feelings were, that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true." R. 80.

The court allowed Appellant to pursue this theory during trial, and Appellant raised this line of questioning during his cross-examinations of Victim, expert witness Shauna Galloway-Williams, and counselor Angela Farmer, and advanced the theory again in his closing argument. R. 137; 196; 235; 382. In contrast, the inadmissibility of evidence of the falsity of the prior allegations was conceded at trial, and is being argued for the first time on appeal. This is improper. "An argument not raised and ruled on by the trial court is not preserved for appeal." *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). "A litigant cannot concede an issue at trial and then raise it on appeal." *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 81, 716 S.E.2d 877, 885 (2011); *State v. Mitchell*, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (stating a defendant cannot acquiesce in an issue at trial and then complain about it on appeal).

In *Boiter*, the Supreme Court held that evidence of a victim's prior false allegation of abuse may be admissible to impeach the victim's credibility in some circumstances. In order to be admissible, the defendant must first show that the prior allegation was false. *Boiter*, 302 S.C.

at 383-84. The court must then consider the remoteness in time of the accusation. *Id.* Finally, the court must consider the factual similarity between the prior and present accusation to determine relevance. *Id.* Not only did Appellant fail to satisfy any of the *Boiter* factors, Appellant never even referenced *Boiter*. He did not proffer witnesses testimony or law enforcement records, inquire on cross-examination, or even argue to the court that he should be allowed under *Boiter* to offer this evidence. Defense counsel noted that at least one of the persons accused by Victim pled guilty to the assault, R. 75, and accepted that “there is no question that this young lady has been sexually abused[.]” R. 235, l. 8-11. Appellant did not give the court an “opportunity to exercise its discretion” on the issue. *Stephens v. CSX Transportation, Inc.*, 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012). Instead, he conceded the issue away. Because Appellant conceded this issue at trial, it is not preserved for review.

II.

The trial court did not err by preventing Appellant from testifying about the veracity of Victim's prior accusations of abuse because Appellant had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony.

Appellant next claims that the trial court erred by preventing Appellant from testifying that he refused to be alone with victim because she had made false allegations of sexual abuse against others. This argument fails because Appellant had already conceded that evidence of prior false allegations was inadmissible. The Court was simply acting on its prior ruling, which defense counsel accepted. Furthermore, Appellant was allowed to give substantially the same testimony, and argued the point in his closing. Therefore, Appellant suffered no prejudice.

Although Appellant had previously conceded that evidence regarding the falsity of prior allegations was not admissible under the rape shield law, defense counsel nevertheless objected to the court's exclusion of Appellant's testimony that he refused to be alone with Victim because she had made false allegations in the past. R. 303. Defense counsel argued that the falsity of the prior allegations was relevant to Appellant's state of mind, explaining why he refused to be alone with Victim. R. 304. However, because Defense counsel had already conceded that the falsity of prior allegations was inadmissible under the rape shield law, he had no cause to complain about the exclusion of the evidence when offered in this form. Appellant failed to make the showing required by *Boiter* that the referenced allegations were false, and declined to pursue this defense strategy. The limitation of Appellant's testimony followed from the court's earlier ruling, which Appellant acquiesced in.

Furthermore, the trial judge correctly ruled that the testimony would have constituted hearsay. R. 306. Because Appellant declined to attempt to prove the falsity of the prior allegations with competent evidence, his only basis for knowing the veracity of the prior

allegations was through the statements of others. Appellant did not call the accused persons to testify about the falsity of the prior accusations, nor did he offer law enforcement testimony or other evidence to establish their falsity. As discussed above, Appellant actually conceded that Victim had been abused by others. The trial court correctly ruled that the evidence as offered was inadmissible hearsay.

Finally, Appellant has failed to show prejudice from the alleged error. The court allowed Appellant to testify that he avoided being alone with Victim because he “was fearful that she might make up some sort of accusation[.]” R. 309. The jury had already heard Angela Farmer’s testimony that Victim’s record indicated that she had made a prior false allegation of abuse that proved unfounded.¹ R. 216. The jury also heard defense counsel question Farmer about a medical record that indicated the first two allegations of sexual assault had been unfounded.² R. 228. Finally, in his closing argument defense counsel argued: “remember, she’s a veteran at this. She has accused people all her life of sexually abusing her.” R. 382-83. The point was clear—Appellant was afraid Victim would make up allegations against him, and never allowed himself to be alone with her. The falsity of the prior allegations had already been conceded as irrelevant and inadmissible, and was properly excluded.

While it is true that Appellant’s attack on Victim’s credibility was weakened by his failure to show the prior allegations were in fact false, this error belongs to the defense attorney, not the court. “The Court of Appeals does not sit to relieve self-inflicted wounds.” *Rish v. Rish by and Through Barry*, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988) (Bell, J., concurring).

¹ Unlike Appellant’s testimony, Farmer’s testimony came on direct examination and was not subject to a hearsay objection.

² The judge sustained a hearsay objection to this question.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

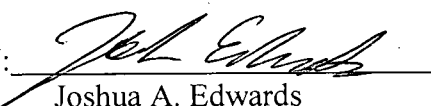
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ATTORNEYS FOR RESPONDENT

May 24, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2017-001867

RECEIVED

MAY 24 2018

SC Court of Appeals

THE STATE,

Respondent,

v.

JOSEPH CAMPBELL WILLIAMS, II,

Appellant.

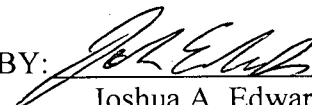
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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May 24, 2018

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Joseph Campbell Williams, II, Appellant.

Appellate Case No. 2017-001867

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2020-UP-199
Submitted April 1, 2020 – Filed July 1, 2020

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua Abraham Edwards, both of
Columbia, and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Joseph Campbell Williams, II, appeals his convictions and sentences of thirty years' imprisonment for criminal sexual conduct (CSC) with a minor in the first degree and consecutive ten years' imprisonment for CSC with a minor in the second degree. On appeal, Williams argues the trial court erred by (1)

excluding evidence of prior false accusations by his step-daughter (Victim) against persons other than Williams, and (2) refusing to allow witnesses to testify as to his own state of mind. We affirm.

1. Williams argues the trial court erred in excluding evidence of prior false allegations made by Victim and in failing to conduct a *State v. Boiter* analysis in determining the admissibility of Victim's prior allegations of sexual abuse. *State v. Boiter*, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990) (holding "[e]vidence of prior false accusations by a complainant may be probative on the issue of credibility"). As to the alleged failure to conduct a *Boiter* analysis, Williams did not raise this issue to the trial court. Thus, we find the issue is not preserved for appellate review. *See State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) ("An issue may not be raised for the first time on appeal, but must have been raised to the trial [court] to be preserved for appellate review.").

As to the exclusion of the evidence, we find the trial court did not err in excluding evidence of the veracity of Victim's prior allegations of sexual misconduct by men other than Williams. In *Boiter*, our supreme court held:

[I]n deciding admissibility of evidence of a victim's prior accusation, the trial [court] should first determine whether such accusation was false. If the prior allegation was false, the next consideration becomes remoteness in time. Finally, the trial court shall consider the factual similarity between prior and present allegations to determine relevancy. This holding is consistent with the well-settled rule that admission of proffered testimony is largely discretionary with the trial court, and its rulings will not be disturbed on appeal unless an abuse of discretion is shown.

302 S.C. at 383-84, 396 S.E.2d at 365. In *Boiter*, the defendant did not present any evidence to establish the falsity of the prior accusations, and our supreme court held the trial court did not abuse its discretion in determining a prior accusation that was not investigated and was made nine years earlier when the victim was eight years old was too remote to be of sufficient probative value. *Id.* at 385, 396 S.E.2d at 365-66. In this case, the prior allegations were made between 2003 and 2004, when Victim was between six and eight years old. The trial occurred in 2017 when Victim was twenty-one years old.

In this case, Williams did not proffer witness testimony or other evidence to show the falsity of the allegations. *See Boiter*, 302 S.C. at 383, 396 S.E.2d at 365 ("[I]n deciding admissibility of evidence of a victim's prior accusation, the trial [court] should first determine whether such accusation was false."); *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009) ("Generally, the failure to make a proffer of excluded evidence will preclude review on appeal."). In any event, we find the prior allegations were too remote to be admitted as evidence. *See Boiter*, 302 S.C. at 384, 396 S.E.2d at 365 (holding a prior allegation was too remote to be of sufficient probative value when the victim was eight years old at the time of the incident and seventeen at the time she testified at trial). We find no error in the trial court's exclusion of the evidence.

2. Williams also argues the trial court erred by refusing to allow witnesses to testify about the prior allegations and their effect on his state of mind on the grounds of hearsay. Williams maintains the testimony falls into two exceptions to the rule against hearsay under Rule 803 of the South Carolina Rules of Evidence: (1) then existing mental, emotional, or physical condition, and (2) statements for purposes of medical diagnosis or treatment. The South Carolina Rules of Evidence define hearsay as "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." Rule 801(c), SCRE. Then existing mental, emotional, or physical conditions are not excluded by the rule against hearsay and are defined as: "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition" Rule 803(3), SCRE. Statements for the purpose of medical diagnosis or treatment are not excluded by the rule against hearsay and are defined as: "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" Rule 803(4), SCRE.

Contrary to Williams' assertion, we find the state of mind exception to the rule against hearsay is applicable only to the mental state of the declarant rather than a witness. Because Victim, rather than Williams, is the declarant for purposes of the prior allegations, and Williams is not offering the statements to show Victim's state of mind, the statement does not meet the mental state exception to the rule against hearsay and was properly excluded by the trial court.

Williams also contends evidence of the veracity of Victim's prior allegations was contained in her mental health records and because the records were pertinent to her treatment and diagnosis, they are not excludable as hearsay. However, for a

hearsay statement to be admissible as a statement for the purposes of medical diagnosis or treatment, the statement had to be made for the purposes of that medical diagnosis or treatment.

Here, Williams was attempting to admit statements he made to others about Victim's prior allegations for the purposes of proving he never spent time alone with Victim. We find any statements he made to others about the prior allegations would constitute hearsay and would not fall under the exception for statements made for the purpose of medical diagnosis or treatment. Furthermore, any error in excluding this testimony was not prejudicial because substantially similar evidence was offered into evidence. *See State v. Hill*, 409 S.C. 50, 55, 760 S.E.2d 802, 805 (2014) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent a prejudicial abuse of discretion."). The trial court allowed Williams to testify he avoided being alone with Victim "[b]ecause [he] was fearful that she may make up some kind of allegations toward[] [him]." The jury also heard testimony that Victim's record indicated she had made a prior physical abuse allegation that proved to be unfounded. Further, in his closing argument, Williams argued Victim was a "veteran" at accusing others of sexual abuse and had been accusing others "all of her life." Therefore, we find Williams was not prejudiced by the proper exclusion of his self-serving statements to others because his defense was effectively communicated to the jury. *See Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.").

AFFIRMED.¹

HUFF, THOMAS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Court Case No.: 2017-001867

RECEIVED

Jul 14 2020

SC Court of Appeals

The State, ... Respondent,
v.
Joseph Campbell Williams, II, ... Appellant.

PETITION FOR REHEARING

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Counsel for Appellant

PETITION

Pursuant to Rule 221 the Appellant hereby moves this Court to reconsider its opinion and grant the Appellant a rehearing based on the following:

This Court's decision overlooked evidence showing that the other allegations of abuse were made specifically for the purposes of medical diagnosis or treatment and therefore were admissible under Rule 803(4). Rule 803 (4) provides that the following are not excluded by the hearsay rule: "Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion." Rule 803 (4) SCRE. Mental health provider Angie Farmer testified that the prosecutrix was referred for treatment for a number of behavioral and mental health issues including making false reports of abuse, false reports of physical abuse, telling exaggerated stories, and anger issues. R. 215-217. Those being the basis for the assessment and any resulting diagnosis and treatment, Farmer documented pertinent history in the medical records. This included the prior allegations. Given that they were directly related to the mental health treatment sought, the prior allegations constituted the quintessential example of what is allowed under Rule 803(4), SCRE.

In its analysis this Court further misperceived the prior allegation's probative value. In Boiter the court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility . State v. Boiter, 396 S.E.2d 364, 302 S.C. 381 (S.C.,

1990). Boiter only dealt with one prior allegation that was remote in time. In applying Boiter this Court misperceived the nature of the evidence at issue in the Appellant's case. Unlike cases involving a single remote prior allegation, the present case involves a series of prior allegations made against multiple individuals. By virtue of the increased number of allegations made against different people the probative nature of evidence is far greater than seen in Bointer. Especially when combined with the prosecutrix's documented history of lying.

This Court further misperceived the proximity in time between the prior allegations and the events alleged against the Appellant. This Court found that the offenses for which the Appellant was charged occurred in 2003 and 2004 when the prosecutrix was between six and eight years old. The Court however overlooked evidence showing that this was the exact same time period in which the prior allegations were made and documented by Farmer in the medical records. The record shows that the prosecutrix was originally referred for mental health treatment in 2003. R. 215-219. One of the reasons for the referral in 2003 was specifically for making false allegations. In 2004 allegations against two separate individuals was documented. Clearly the allegations at issue occurred in close proximity to the events for which the Appellant was charged.

Under Boiter the prior accusations were relevant and highly probative. Accusations against multiple people around the same time as the events alleged against the Appellant could reasonably be expected to have an effect on the jury. Where this case turned on the credibility of the prosecutrix it presents precisely the situation where the Confrontation Clause "tips the scales" in favor of permitting cross-examination. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). Because the prior allegations bore directly on the issue of the prosecutrix's credibility they were highly probative to the point of being essential to the defense of the case. Denial of the

Appellant's right to cross-examine and introduce evidence related to the prior allegations was therefore error.

Prejudice

This Court's decision holds that similar evidence was introduced such that it removes the prejudice of excluding evidence relating to the other allegations. This overlooks the fact that it was the pattern of allegations against multiple people that makes the evidence so important. While evidence of a single prior false accusation may raise doubt in the jury's mind as to the credibility of the prosecutrix, a pattern of such allegations around the same time raises that potential exponentially. This is especially important where the case turned entirely on the believability of the prosecutrix. As a result, the defense of the case rested heavily on effective cross-examination. In limiting the defense cross-examination the court violated the Appellant's rights under the Confrontation Clause. "A violation of the defendant's Sixth Amendment right to confront the witness is not *per se* reversible error" if the "error was harmless beyond a reasonable doubt." State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) (*quoting State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)) (*internal quotations omitted*). This Court must determine whether the error was harmless beyond a reasonable doubt. Graham, 314 S.C. at 385, 444 S.E.2d at 527. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318–19 (*quoting* Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

“Harmless beyond a reasonable doubt” means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (internal quotations omitted).

The Mizzell Court concluded the trial court committed reversible error:

Considering the Van Arsdall factors, we note much of Steele's testimony was either cumulative or corroborated by other witnesses....
 ...Critically, however, Steele was the only witness to testify as an eyewitness to [defendants'] burglary of the home. The lack of physical evidence placing [defendants] at the scene enhanced the importance of Steele's testimony. As in [State v.] Brown, [303 S.C. 169, 399 S.E.2d 593 (1991),] the co-conspirator witness is the only link placing [defendants] at the scene of the crime....
Because Steele was the only witness to directly link [defendants] to the burglary, we cannot say the trial court's error was harmless beyond a reasonable doubt. Accordingly, we find the trial court committed prejudicial error in limiting [defendants'] cross-examination into Steele's possible sentence.

State v. Mizzell, 349 S.C. 326, 334–35, 563 S.E.2d 315, 319–20 (2002). Here, the State's case rested squarely on the credibility of the prosecutrix. Attacking credibility was the essence of the defense strategy. Limiting the Appellant's ability to impeach the prosecutrix can not be harmless.

CONCLUSION

Based on the foregoing the Court should grant a rehearing in the case and reverse the conviction and sentence of the Appellant.

Respectfully submitted,

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Counsel for Appellant

July 14, 2020..

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Court Case No.: 2017-001867

RECEIVED

Jul 14 2020

SC Court of Appeals

The State, ... Respondent,

v.

Joseph Campbell Williams, II, ... Appellant.

CERTIFICATE OF SERVICE

I certify that on July 14, 2020, I served the Appellant's Petition for Rehearing and Certificate on the Respondent by sending a copy of same via AIS email address to counsel of record, and others as indicated below:

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Respectfully submitted,

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July 14, 2020.

The South Carolina Court of Appeals

The State, Respondent,

v.

Joseph Campbell Williams, II, Appellant.

Appellate Case No. 2017-001867

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Luff

J.

Paul W. Thomas

J.

Stephen P. McDonald

J.

Columbia, South Carolina

FILED

cc:

Alan McCrory Wilson, Esquire
J. Falkner Wilkes, Esquire
Joshua Abraham Edwards, Esquire
William Walter Wilkins, III, Esquire
The Honorable Perry H. Gravely

August 24, 2020

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Court of Appeals Case No.: 2017-001867

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Sep 21 2020

S.C. SUPREME COURT

The State,..... Respondent,

v.

Joseph Campbell Williams, II,..... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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PETITION

Pursuant to Rule 242, SCACR, the Petitioner moves this Court for a writ of certiorari to review the decision of the Court of Appeals in this case.

The Petitioner was convicted of the offense of criminal sexual conduct with a minor in the first degree and criminal sexual conduct with a minor in the second degree. Petitioner received a combined sentence of forty years. On appeal the Petitioner argued that the trial court committed error by excluding evidence offered to prove a pattern of prior false accusations made by the prosecutrix against other individuals. The excluded evidence was offered for two reasons. First, it bore directly on the credibility of the prosecutrix. Second, it was essential to understanding the Petitioner's testimony as to why he never allowed the prosecutrix to be alone with him. Exclusion of the evidence prevented the Petitioner from effectively cross-examining the prosecutrix. It also limited the Petitioner's ability to present a full defense by preventing him from fully explaining the reason he intentionally avoided being alone with the prosecutrix.

Statement of the Issues

1. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
2. Did the court commit reversible error in excluding evidence of prior false accusations so as prove the Petitioner's state of mind and thereby explaining his actions?

Statement of the Case

This was a delayed reporting case. The Petitioner, mother and prosecutrix resided together from the time the prosecutrix was four to five years old. R. p. 88-89. The prosecutrix had a

history of physically fighting with her mother. R. p. 443. When the prosecutrix was 17 she got wo angry with her mother that she posted on Facebook “world war 3 is about to begin and everybody gonna wish they never f***ed with me ! that aint a threat, that’s a promise!”. 154, l. 2-12. Just hours after posting the promise to do something cataclysmic the prosecutrix made a complaint to the Sheriff’s Office alleging that the Petitioner had sexually abused her when she was six or seven years old. R. p. 63; 108.

The prosecutrix had been in mental health treatment since 2003. R. p. 201-237. The defense presented evidence from mental health records so show that the prosecutrix had consistently denied any sexual abuse. R. p. 149-153; 206-216; 226-227. As an essential part of the defense the Petitioner sought to establish a prior pattern of false sexual abuse allegations by the prosecutrix. R. p. 40. The false accusations were apparently one of the reasons that the prosecutrix was referred for mental health treatment. R. p. 74-76. The state objected repeatedly to the defense’s attempts to establish the history of false allegations arguing that such testimony should be excluded under the rape shield statute. R.p. 77. The defense was clear in its intent to elicit evidence of the false allegations rather than any actual sexual behavior. R. p. 74-76. The court sustained the State’s objection and excluded evidence of the prior false allegations. R. p. 77-83.

During the State’s case-in-chief the prosecution offered expert testimony of Angie Farmer who was one of the prosecutrix’s mental health providers. R. p. 201-206. Farmer had the prosecutrix’s mental health records to refer to during her testimony. R. p. 206-208. The solicitor elicited testimony from Farmer about the prosecutrix’s mental/behavioral health treatment. R. p. 208. Farmer testified that the prosecutrix made a false report of abuse by her mom. R. p. 215-216.

Farmer went on to also identify in the records where the prosecutrix also made allegations of sexual abuse against two people other than the defendant. R. p. 215-216. Unlike the abuse claim involving the victim's mother, Farmer did not volunteer that the two allegations of sexual abuse made against other people were also false.¹ On cross-examination the defense attempted to elicit testimony from Farmer that the two prior allegations of sexual assault were also found to be false. This time the state objected on the grounds of hearsay. R. p. 229. The court sustained the objection without stating a basis. R. p. 229.

The defense later attempted to offer testimony of the prior false allegations through the Petitioner's brother. When the brother attempted to testify that victim "had a troubled past and had already made false accusations..." the state objected. R. p. 297. The court again sustained without explanation. R. p. 297. Then the defense attempted to elicit testimony from the Petitioner's brother pertaining to the Petitioner efforts to never be alone with the prosecutrix (presumably due to her prior false allegations against other men): "did your brother, what was he telling you about his relationship with..." R. p. 298. The state objected and the court again sustained as hearsay finding that the Petitioner was not a party to the case. R. p. 298.

When the Petitioner took the stand he testified that he would never be alone with the prosecutrix over the whole time he was married to the prosecutrix's mother. R. p. 303. When the Petitioner attempted to explain why, the state objected and cut him off:

Q. Tell the jury why you would never leave yourself alone with this girl?

A. Because she'd made accusations against --.

¹Presumably, based on the court's earlier ruling, Farmer had been instructed not to disclose the details (falsity) of the victim's allegations of prior sexual abuse by persons other than the defendant.

R. p. 303.

At that point the jury was sent out and argument ensued. The defense argued that the testimony was not offered for truth of the matter asserted. R. p. 303. Specifically the defense argued that the testimony proved the Petitioner's motive and intent as to why he wouldn't be alone with the prosecutrix. R. p. 303. The state maintained that the testimony violated the rape shield statute. 304-308.

The defense requested to proffer the Applicant's testimony. R. p. 303-307. When the defense attempted to proffer the Petitioner's testimony the court immediately cut the Petitioner off:

The Court:	I'll let you proffer.
Defense counsel:	Mr. Williams, I am going to ask you some question on a proffer. Did you ever leave yourself alone with [the prosecutrix]?
Defendant:	No, sir, I did not.
Defense counsel:	Because I was fearful of her because of past --
The Court:	Again, he can say "I was fearful of being accused of anything' but I don't think that he can say because of her previous allegations.

R. p. 307, l. 6-18.

After successfully preventing the testimony explaining that the Petitioner didn't want to be alone with the prosecutrix because she had made prior false allegations of sexual abuse against other people, the solicitor went on to argue to the jury how she didn't believe the defense witnesses. R. p. 351. That the defense witness testimony was absurd to her [the prosecutor]. R. p. 351. The solicitor went on to say "How crazy is this?..... went to such great lengths... just to make

sure that her daughters never had a chance to be alone with him. This is preposterous." R. p. 362. The solicitor went on attacking the defense testimony that the Petitioner avoided ever being alone with the prosecutrix: "How crazy is this? How illogical is this, that they want you to believe that they went to great lengths, to avoid sleep, just to make sure that her daughters never had a chance to be alone with him? This is preposterous." R. p. 362, l. 18-23. Throughout closing argument the state continued to take an unfair advantage of having blocked the Petitioner's ability to explain the basis for his avoidance of ever being alone with the prosecutrix:

Now, Mr. Dover said that the defendant would have been a fool to have put himself in that position. The defendant testified that 20 from the beginning he said that he wasn't left alone with them. By putting -- by saying, you know, that he would have been a fool to have put himself in that position, that's like a slap in the face to all the other step-dads out there. That is saying that no step-dad should ever be alone with a step-child because that's an inherent risk. That is saying that when moms and dads get married that have prior children, that the family shouldn't be blended. That you should try to have a good relationship. That you should push your child away. No. That makes no sense. And it makes no sense that mom would have gone to great lengths to keep the kids away from him like that.

R. p. 386, l. 17-397, l. 10.

Discussion of the Law

In a prosecution for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence of the victim's sexual conduct is controlled by S.C. Code Ann. 16-3-659.1 (1985). Unlike the federal rule which contains the standards and procedures governing the admissibility of such evidence, this rule merely references the statute. Note to Rule 412. Rule 412, SCRE, provides: "In prosecutions for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence concerning the victim's sexual conduct is subject to the limitations contained in S.C. Code Ann. 16-3-659.1

(1985).” South Carolina’s Rape Shield statute provides in pertinent part: “Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible in prosecutions under Sections 16-3-615 and 16-3-652 to 16-3-656;...” S.C. Code Ann. § 16-3-659.1. The testimony that the court excluded was not evidence of the victim’s sexual conduct, but rather evidence of the prosecutrix’s prior false allegations. The former is barred by Rule 412, the latter is not.

Rule 412 is designed only to preclude evidence of a complaining witness's prior sexual conduct. Evidence of prior false accusations of rape made by a complaining witness does not constitute "prior sexual conduct" for rape shield purposes. In presenting such evidence, a defendant is not probing the complaining witness's sexual history. Rather, a defendant seeks to prove for impeachment purposes that the complaining witness has previously made false accusations of rape. Viewed in this light, such evidence is more properly understood as verbal conduct, not sexual conduct. To the extent a defendant offers evidence of prior false accusations of rape to impeach the credibility of the witness, its admission does not run afoul of the Rape Shield Rule. *See State v. Walton*, 715 N.E.2d 824, 826–27 (Ind. 1999).

Other jurisdictions are reasonably consistent in allowing evidence of prior false accusations for impeachment purposes.² Maine, Maryland, Missouri, New Mexico, Ohio, Tennessee, Vermont, and Wisconsin follow the federal rule and allow cross-examination concerning a prior false accusation that is probative of the witness's character for truthfulness, but do not allow the use of extrinsic evidence to contradict the witness's answer or to prove the

²The following state-by-state analysis was made by the Supreme Court of New Jersey in *State v. Guenther*, 181 N.J. 129 (2004). Although somewhat dated, it remains relevant.

character trait. *See, e.g.,* State v. Almurshidy, 732 A.2d 280, 287 n. 4 (Me.1999); State v. Cox, 298 Md. 173, 468 A.2d 319, 323–24 (1983); State v. Raines, 118 S.W.3d 205, 211–14 (Mo.Ct.App.2003); State v. Scott, 113 N.M. 525, 828 P.2d 958, 962–63 (Ct.App.1984); State v. Boggs, 63 Ohio St.3d 418, 588 N.E.2d 813, 816–17 (1992); State v. Wyrick, 62 S.W.3d 751, 780–82 (Tenn.Crim.App.2001); State v. Leggett, 164 Vt. 599, 664 A.2d 271, 272 (1995); State v. Olson, 179 Wis.2d 715, 508 N.W.2d 616, 619–20 (Ct.App.1993), *reh'g denied*, 515 N.W.2d 715 (Wis.1994).

Alaska, Arizona, Arkansas, Idaho, New Hampshire, and Nevada also have evidence rules similar to the federal rule, but have relaxed those rules in sexual crime cases to allow the admission of extrinsic evidence of an accuser's prior false sexual crime allegation. *See, e.g.,* Morgan v. State, 54 P.3d 332, 336 (Alaska Ct.App.2002); State v. Hutchinson, 141 Ariz. 583, 688 P.2d 209, 212–13 (Ct.App.1984) (*interpreting* State ex rel Pope v. Superior Court, 113 Ariz. 22, 545 P.2d 946, 953 (1976)); West v. State, 290 Ark. 329, 719 S.W.2d 684, 686–87 (1986), *reh'g denied*, 290 Ark. 329, 722 S.W.2d 284 (1987); State v. Schwartzmiller, 107 Idaho 89, 685 P.2d 830, 833 (1984); State v. Gordon, 146 N.H. 258, 770 A.2d 702, 704–05 (2001); Miller v. State, 105 Nev. 497, 779 P.2d 87, 89–90 (1989).

Massachusetts and Oregon, which like New Jersey follow the common law rule, have recognized a limited exception to allow cross-examination of an accuser who has made a prior false sexual crime allegation when the case involves a similar crime, but disallow extrinsic evidence. *See, e.g.,* Commonwealth v. Bohannon, 376 Mass. 90, 378 N.E.2d 987, 991 (1978); State v. Driver, 192 Or.App. 395, 86 P.3d 53, 55–58 (2004). Kansas, Georgia, Indiana, Louisiana, and Virginia, which also follow the common law rule prohibiting specific conduct

evidence relating to character, have suggested that the defendant's right to confrontation in a sexual crime case allows cross-examination of the accuser-witness and the admission of extrinsic evidence to prove the witness's prior false sexual crime accusation. *See, e.g., State v. Barber, supra*, 766 P.2d at 1290 (Kan.); Smith v. State, 259 Ga. 135, 377 S.E.2d 158, 160, *cert. denied*, 493 U.S. 825, 110 S.Ct. 88, 107 L.Ed.2d 53 (1989); *Little v. State*, 413 N.E.2d 639, 643–44 (Ind.Ct.App.1980); State v. Smith, 743 So.2d 199, 202 (La.1999); Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263, 266 (1988).

Texas has embraced a case-by-case analysis to determine whether a defendant's right to confrontation requires relaxation of the bar on specific conduct evidence in all cases in which an accuser has made a prior false criminal allegation—not just sexual crime cases. *See Lopez v. State*, 18 S.W.3d 220, 225 (Tex.Crim.App.2000) (declining "to create a per se exception to the Rule 608(b) for sexual offenses" because "[i]t makes no sense to say that certain factors will always be present in a case involving a sexual offense").

Some Federal Courts of Appeals that have addressed the use of a prior false accusation to undermine the credibility of an accuser-witness have determined that restrictions on the admissibility of extrinsic evidence do not violate the Sixth Amendment right to confrontation. *See, e.g., Boggs v. Collins*, 226 F.3d 728, 736–40 (6th Cir.2000), *cert. denied*, 532 U.S. 913, 121 S.Ct. 1245, 149 L.Ed.2d 152 (2001); Hogan v. Hanks, 97 F.3d 189, 191 (7th Cir.1996), *cert. denied*, 520 U.S. 1171, 117 S.Ct. 1439, 137 L.Ed.2d 546 (1997); United States v. Bartlett, 856 F.2d 1071, 1088–89 (8th Cir.1988).

Several jurisdictions have recognized that prior false accusations of sexual crimes by the accuser may be admissible for reasons unrelated to impeachment of general credibility—to prove

the accuser's habit, state of mind, motive, or common scheme. *See, e.g., Peeples v. State*, 681 So.2d 236, 237–39 (Ala.1995) (habit); *People v. Hurlburt*, 166 Cal.App.2d 334, 333 P.2d 82, 87 (1958) (state of mind); *State v. Anderson*, 211 Mont. 272, 686 P.2d 193, 199, 201 (1984) (state of mind, motive, and bias). In the present case, given multiple prior false allegations, combined with other evidence in the victim's mental health records of a pattern of lying, the evidence could fall within the realm of habit, intent, or common scheme.

In determining that prior false allegations are admissible under Rule 412, other court's have considered and resolved any conflict with Rule 608. Rule 608 provides in part:

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 608 (b), SCRE.

In considering the apparent conflict other court's have held that "evidentiary constraints must sometimes yield to a defendant's right of cross-examination." *Clinebell v. Commonwealth*, 235 Va. 319, 368 S.E.2d 263, 266 (1988); *see also Mengon v. State*, 505 N.E.2d 788, 792 (Ind.1987) (holding that a party's right to cross-examination should not be unduly limited by the court). A defendant's Sixth Amendment right of confrontation requires that the defendant be afforded an opportunity to conduct effective cross-examination of State witnesses in order to test their believability. *Davis v. Alaska*, 415 U.S. 308, 315–18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); *Timberlake v. State*, 690 N.E.2d 243, 255 (Ind.1997), *cert. denied*, 525 U.S. 1073, 119 S.Ct. 808, 142 L.Ed.2d 668 (1999). "The right to cross-examine, as well as other forms of

confrontation, ‘ensure [sic] that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo–American criminal proceedings.’ ” Tague v. Richards, 3 F.3d 1133, 1138 (7th Cir.1993) (*quoting Maryland v. Craig*, 497 U.S. 836, 846, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990)). Accordingly, the majority of jurisdictions that have considered the have held that the evidentiary rule preventing evidence of specific acts of untruthfulness must yield to the defendant's Sixth Amendment right of confrontation and right to present a full defense.³ Finding both the reasoning and weight of this authority persuasive, we hold that evidence of prior false accusations of rape is admissible to attack the credibility of the accusing witness, notwithstanding the general exclusionary edict of Rule 608(b). *See State v. Walton*, 715 N.E.2d 824, 827 (Ind. 1999).

As a matter of first impression this Court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility . State v. Boiter, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). There the Court noted that “other jurisdictions have held that such evidence is admissible only if the court makes a threshold determination that the prior accusation was false. *See Clinebell v. Com.*, 235 Va. 319, 368 S.E.2d 263 (1988); Woods v. State, 657 P.2d 180 (Okl.1983), Commonwealth v. Bohannon, 376 Mass. 90, 95, 378 N.E.2d 987, 991 (1978). Other Courts have also considered remoteness of the prior accusation. *See State v. LeCair, supra.*” *See State v. Boiter*, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). Although apparently holding that the trial court must make some threshold determination that the prior

³ *E.g.*, Clinebell, 368 S.E.2d at 265–66; Commonwealth v. Bohannon, 376 Mass. 90, 378 N.E.2d 987, 990–91 (1978); West v. State, 290 Ark. 329, 719 S.W.2d 684, 687 (1986); State v. Anderson, 211 Mont. 272, 686 P.2d 193, 198–201 (1984); Miller v. State, 105 Nev. 497, 779 P.2d 87, 89 (1989); Smith v. State, 259 Ga. 135, 377 S.E.2d 158, 160, *cert. denied*, 493 U.S. 825, 110 S.Ct. 88, 107 L.Ed.2d 53 (1989).

accusation was false to allow such evidence, the Boiter Court did not articulate an applicable standard of proof when doing so.

The standard of proof applied in similar cases varies among jurisdictions. Some jurisdictions require that the prior accusation be shown to be "demonstrably false." *See, e.g., Little, supra*, 413 N.E.2d at 643 (Ind.Ct.App.); State v. Sieler, 397 N.W.2d 89, 92 (S.D.1986); Berry v. Commonwealth, 84 S.W.3d 82, 91 (Ky.Ct.App.2001). Others have articulated varying standards of proof for determining whether the witness made the accusation and whether it was false: clear and convincing evidence, Gordon, supra, 770 A.2d at 704, 705 (N.H.); preponderance of the evidence, Morgan v. State, 54 P.3d 332, 339 (Alaska Ct.App.2002); or "a reasonable probability of falsity," Smith, supra, 377 S.E.2d at 160(Ga.); Barber, supra, 766 P.2d at 1290 (Kan.Ct.App.); Clinebell, supra, **323 368 S.E.2d at 266 (Va.). *See also Smith, supra*, 743 So.2d at 203 (La.) (stating judge must determine "whether reasonable jurors could find, based on the evidence presented by defendant, that the victim had made prior false accusations").

Although not setting a clear standard of proof, this Court in Boiter held that in deciding admissibility of evidence of a victim's prior accusation, the trial judge should first determine whether such accusation was false. If the prior allegation was false, the next consideration becomes remoteness in time. Finally, the trial court shall consider the factual similarity between prior and present allegations to determine relevancy.

The defense in this case was clearly attempting to lay a proper foundation for the admissibility of the prior false statements. When the defense attempted to proffer the evidence it was cut short by the court. In every attempt the trial court summarily cut the defense off without allowing an opportunity to present evidence relevant to a Boiter analysis. Given the testimony at

issue, it was incumbent upon the trial court to conduct a proper Boiter analysis, which it failed to do.

Despite some testimony about the prior sexual allegations against other people was admitted, evidence of their falsity was excluded. Although the trial court repeatedly cut off the defense, a review of the questions that the defense was attempting to ask, the arguments of counsel, as well as other testimony that was admitted, facts relating to the investigation and falsity of the prior accusations appear to have been recorded in the mental/behavioral health records of the prosecutrix. The record is sufficient to show that the allegations were false, or at least sufficient enough to require the trial court to conduct a hearing to properly address and determine the issue under the factors set forth in Boiter.

There is nothing in the record that would suggest that the trial court considered, much less conducted, a proper analysis under Boiter. The record shows that the court simply refused to allow the defendant an opportunity to meet his burden to establish admissibility under Boiter. Accordingly, the trial court's ruling constitutes an error of law and is not entitled to any deference. Failing to allow the defense an opportunity to present evidence to carry the burden as to admissibility constitutes an abuse of discretion on the part of the trial judge.

Prejudice

This case turned entirely on the believability of the prosecutrix. As a result, the defense of the case rested heavily on her effective cross-examination. In limiting the defense cross-examination the court violated the Petitioner's rights under the Confrontation Clause. "A violation of the defendant's Sixth Amendment right to confront the witness is not per se reversible error" if the "error was harmless beyond a reasonable doubt." State v. Mizzell, 349 S.C. 326, 333, 563

S.E.2d 315, 318 (2002) (*quoting* State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)) (*internal quotations omitted*). This Court must determine whether the error was harmless beyond a reasonable doubt. Graham, 314 S.C. at 385, 444 S.E.2d at 527. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318–19 (*quoting* Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

“Harmless beyond a reasonable doubt” means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (*internal quotations omitted*).

The Mizzell Court concluded the trial court committed reversible error:

Considering the Van Arsdall factors, we note much of Steele's testimony was either cumulative or corroborated by other witnesses....
...Critically, however, Steele was the only witness to testify as an eyewitness to [defendants'] burglary of the home. The lack of physical evidence placing [defendants] at the scene enhanced the importance of Steele's testimony. As in

[State v. Brown, [303 S.C. 169, 399 S.E.2d 593 (1991),] the co-conspirator witness is the only link placing [defendants] at the scene of the crime....
Because Steele was the only witness to directly link [defendants] to the burglary, we cannot say the trial court's error was harmless beyond a reasonable doubt. Accordingly, we find the trial court committed prejudicial error in limiting [defendants'] cross-examination into Steele's possible sentence.

State v. Mizzell, 349 S.C. 326, 334–35, 563 S.E.2d 315, 319–20 (2002). Here, the only evidence against the Petitioner was the testimony of the prosecutrix. Limiting the Petitioner's effective cross-examination can not be harmless.

Prejudice is further evident where several witnesses, including the Petitioner, testified that the allegations could not be true because the Petitioner intentionally avoided ever being alone with the prosecutrix. The state objected every time a witness, including the Petitioner, attempted to explain the reason underlying the Petitioner's fear of being alone with the prosecutrix. Then after having kept out any explanation behind the witnesses' testimony that the defendant would never be alone with the prosecutrix, the state made the defense's lack of explanation the object of ridicule in closing argument. The conviction of the Petitioner should therefore be reversed.

In its analysis the Court of Appeals further misperceived the prior allegations' probative value. In Boiter the court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility . State v. Boiter, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). Boiter only dealt with one prior allegation that was remote in time. In applying Boiter the Court of Appeals misperceived the nature of the evidence at issue in the Petitioner's case. Unlike cases involving a single remote prior allegation, the present case involves a series of prior allegations made against multiple individuals. By virtue of the increased number of allegations made against different people the probative nature of evidence is far greater than seen

in Bointer. Especially when combined with the prosecutrix's documented history of lying.

Under Boiter the prior accusations were relevant and highly probative. Accusations against multiple people around the same time as the events alleged against the Petitioner could reasonably be expected to have an effect on the jury. Where this case turned on the credibility of the prosecutrix it presents precisely the situation where the Confrontation Clause "tips the scales" in favor of permitting cross-examination. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). Because the prior allegations bore directly on the issue of the prosecutrix's credibility they were highly probative to the point of being essential to the defense of the case. Denial of the Petitioner's right to cross-examine and introduce evidence related to the prior allegations was therefore error.

Prejudice

The decision of the Court of Appeals found that the introduction of similar evidence such that it removed the prejudice of excluding evidence relating to the other allegations. This overlooks the fact that it was the pattern of false allegations against multiple people that makes the evidence so important. While evidence of a single prior false accusation may raise doubt in the jury's mind as to the credibility of the prosecutrix, a pattern of such allegations around the same time raises that potential exponentially. This is especially important here where the case turned entirely on the believability of the prosecutrix. As a result the defense of the case rested heavily, if not entirely, on effective cross-examination. In limiting the defense cross-examination the trial court violated the Petitioner's rights under the Confrontation Clause. "A violation of the defendant's Sixth Amendment right to confront the witness is not *per se* reversible error" if the "error was harmless beyond a reasonable doubt." State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d

315, 318 (2002) (*quoting* State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)) (*internal quotations omitted*). This Court must determine whether the error was harmless beyond a reasonable doubt. Graham, 314 S.C. at 385, 444 S.E.2d at 527. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318–19 (*quoting* Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

“Harmless beyond a reasonable doubt” means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (*internal quotations omitted*).

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State v. Mizzell, 349 S.C. 326, 334–35, 563 S.E.2d 315, 319–20 (2002). Here, the State's case rested squarely on the credibility of the prosecutrix. Attacking credibility was the essence of the defense strategy. Limiting the Petitioner's ability to impeach the prosecutrix can not be harmless.

CONCLUSION

Based on the foregoing the Court should grant a the petition, order full briefing, and reverse the decision of the Court of Appeals.

Respectfully submitted,

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September 21, 2020.

STATE OF SOUTH CAROLINA
In The Supreme Court

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Oct 21 2020

APPEAL FROM PICKENS COUNTY

S.C. SUPREME COURT

Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001262

THE STATE,

Respondent,

v.

JOSEPH CAMPBELL WILLIAMS II,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Certiorari is not appropriate in this case because no novel issue is raised and the Court of Appeals opinion is unanimous, unpublished, and correctly decided, to wit:

- I. **Williams’s argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Williams conceded this issue at trial. 4**

- II. **The trial court did not err by preventing Williams from testifying about the veracity of Victim’s prior accusations of abuse because Williams had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony. 7**

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STATEMENT OF ISSUES ON APPEAL**I.**

Williams's argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Williams conceded this issue at trial.

II.

The trial court did not err by preventing Williams from testifying about the veracity of Victim's prior accusations of abuse because Williams had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony.

STATEMENT OF THE CASE

Williams was indicted by a Pickens County grand jury for one count of criminal sexual conduct with a minor in the first degree and one count of criminal sexual conduct with a minor in the second degree. Williams proceeded to trial before the Honorable Perry H. Gravely on August 31, 2017. Williams was represented by Scott Dover, Esquire. Respondent (the State) was represented by Assistant Solicitor Shannon Odom. Williams was convicted on both counts and sentenced to 30 years' incarceration for CSC with a minor 1st degree and 10 years' incarceration for CSC with a minor 2nd degree, to be served concurrently.

Williams appealed his conviction, alleging the trial court erred by excluding testimony regarding prior allegations of sexual abuse made by the victim. In a unanimous unpublished opinion filed on July 1, 2020, the Court of Appeals affirmed. (Opinion No. 2020-UP-199). Williams's petition for rehearing was denied on August 24, 2020. Williams now petitions for certiorari.

STATEMENT OF FACTS

Williams was Victim's stepfather. App. 366-67. Williams married Victim's mother in 2006, but had lived with Mother since late 2001 or early 2002, when Victim was around six years old. App. 319-20. Victim began behavioral therapy at age six, and was referred to counseling for various issues on nine separate occasions. App. 262-64. During counseling that occurred when Victim was eight, ten, and twelve years old, either Victim or Mother reported that Victim had been sexually abused by two men (neither of which was Williams). App. 271-73. At age fourteen, Victim reported that she had been raped by a third person. App. 274. Victim did not report that Williams had abused her during these counseling sessions. App. 289-90.

In November 2013, Victim called the Pickens County Sheriff's Office and reported that Williams sexually abused her as a child. App. 116-18. At trial, Victim testified that Williams began molesting her when she was seven or eight years old. App. 145. What initially began as rubbing Victim's legs and torso progressed to digital penetration, cunnilingus, and fellatio. App. 145-48; 131. Victim testified the abuse continued until shortly before her thirteenth birthday. App. 148; 159. Victim testified that she did not recall making allegations of abuse against any other men during her age eight to twelve counseling sessions. App. 191.

Williams testified he never engaged in sexual behavior with Victim. App. 361. Williams and Mother both testified that Victim was never left alone with Williams, and that Victim intermittently lived with her grandparents for extended periods of time. App. 311-17; 367. Williams's neighbor, brother and sister-in-law all testified that Victim normally stayed with her grandparents and they never knew her to spend the night in the same house as Williams. App. 357-58; 352-53; 345.

ARGUMENT

Certiorari is not appropriate in this case because no novel issue is raised and the Court of Appeals opinion is unanimous, unpublished, and correctly decided, to wit:

I.

Williams's argument that the trial court erred by excluding evidence that Victim made prior false rape allegations is not preserved for appellate review because Williams conceded this issue at trial.

Williams claims the trial court prevented him from presenting evidence of Victim's prior false rape allegations in violation of *State v. Boiter*, 302 S.C. 381, 396 S.E.2d 364 (1990). However, Williams misstates the facts. Williams conceded at trial that it would be improper to inquire about these alleged false prior allegations, and did not attempt to do so. Therefore, this issue is not preserved for appellate review. *State v. Benton*, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (holding an issue conceded at trial is not preserved for review).

The admission of evidence is within the discretion of the trial court and will not be reversed absent a prejudicial abuse of discretion. *State v. Hill*, 409 S.C. 50, 55, 760 S.E.2d 802, 805 (2014). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

In camera, the court heard arguments regarding the admissibility of evidence of prior allegations. App. 127. Williams agreed that he was not entitled to ask Victim about other unfounded allegations because this would violate the rape shield law, S.C. Code §16-3-659.1. Williams argued instead that testimony regarding the prior accusations was admissible for the limited purpose of conveying to the jury that (1) the abuse for which Victim was previously

counseled was not related to Williams, and (2) Victim was willing to discuss other instances of sexual abuse, but did not accuse Williams at that time. App. 129-32.

Defense counsel stated: “I would never ask her [those questions]— you know, ‘did you accuse some body and it was later unfounded.’ That would absolutely be impermissible. I certainly think that I can ask her the question, ‘in 2009, in counseling didn’t you report, you know, report A, B and didn’t report my client?’” App. 132. Later, defense counsel stated: “I don’t think the status of those [other incidents] are relevant of what happened. But the fact that she was accusing others- here you’ve got- I submit that it is fair for the jurors to believe that this young lady just felt so much, whatever her feelings were, that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true.” App.134.

The court allowed Williams to pursue this theory during trial, and Williams raised this line of questioning during his cross-examinations of Victim, expert witness Shauna Galloway-Williams, and counselor Angela Farmer, and advanced the theory again in his closing argument. App, 191, 250, 289, 440. In contrast, the inadmissibility of evidence of the falsity of the prior allegations was conceded at trial, and Williams's argument that the trial court erroneously excluded it is being argued for the first time on appeal. This is improper. “An argument not raised and ruled on by the trial court is not preserved for appeal.” *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). “A litigant cannot concede an issue at trial and then raise it on appeal.” *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 81, 716 S.E.2d 877, 885 (2011); *State v. Mitchell*, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (stating a defendant cannot acquiesce in an issue at trial and then complain about it on appeal).

In *Boiter*, the Supreme Court held that evidence of a victim's prior false allegation of abuse may be admissible to impeach the victim's credibility in some circumstances. In order to be admissible, the defendant must first show that the prior allegation was false. *Boiter*, 302 S.C. at 383-84. The court must then consider the remoteness in time of the accusation. *Id.* Finally, the court must consider the factual similarity between the prior and present accusation to determine relevance. *Id.* Not only did Williams fail to satisfy any of the *Boiter* factors, Williams never even referenced *Boiter*. He did not proffer witnesses testimony, law enforcement records, inquire on cross-examination, or even argue to the court that he should be allowed under *Boiter* to offer this evidence. Defense counsel noted that at least one of the persons accused by Victim pled guilty to the assault, App. 129, and accepted that "there is no question that this young lady has been sexually abused[.]" App. 289, l. 8-11. Williams did not give the court an "opportunity to exercise its discretion" on the issue. *Stephens v. CSX Transportation, Inc.*, 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012). Instead, he conceded the issue away. Because Williams conceded this issue at trial, it is not preserved for review.

II.

The trial court did not err by preventing Williams from testifying about the veracity of Victim's prior accusations of abuse because Williams had already conceded that this evidence was inadmissible and was allowed to elicit substantially the same testimony.

Williams next claims that the trial court erred by preventing Williams from testifying that he refused to be alone with victim because she had made false allegations of sexual abuse against others. This argument fails because Williams had already conceded that evidence of prior false allegations was inadmissible. The Court was simply acting on its prior ruling, which defense counsel accepted. Furthermore, Williams was allowed to give substantially the same testimony, and argued the point in his closing. Therefore, Williams suffered no prejudice.

Although Williams had previously conceded that evidence regarding the falsity of prior allegations was not admissible under the rape shield law, defense counsel nevertheless objected to the court's exclusion of Williams's testimony that he refused to be alone with Victim because she had made false allegations in the past. App. 361. Defense counsel argued that the falsity of the prior allegations was relevant to Williams's state of mind, explaining why he refused to be alone with Victim. App. 362. However, because Defense counsel had already conceded that the falsity of prior allegations was inadmissible under the rape shield law, he had no cause to complain about the exclusion of the evidence when offered in this form. Williams failed to make the showing required by *Boiter* that the referenced allegations were false, and declined to pursue this defense strategy. The limitation of Williams's testimony followed from the court's earlier ruling, to which Williams acquiesced.

Furthermore, the trial judge correctly ruled that the testimony would have constituted hearsay. App. 364. Because Williams declined to attempt to prove the falsity of the prior allegations with competent evidence, his only basis for knowing the veracity of the prior

allegations was through the statements of others. Williams did not call the accused persons to testify about the falsity of the prior accusations, nor did he offer law enforcement testimony or other evidence to establish their falsity. As discussed above, Williams actually conceded that Victim had been abused by others. The trial court correctly ruled that the evidence as offered was inadmissible hearsay.

Finally, Williams has failed to show prejudice from the alleged error. The court allowed Williams to testify that he avoided being alone with Victim because he “was fearful that she might make up some sort of accusation” App. 367. The jury had already heard Angela Farmer’s testimony that Victim’s record indicated that she had made a prior allegation of abuse that had not been substantiated.¹ App. 270. The jury also heard defense counsel question Farmer about a medical record that indicated the first two allegations of sexual assault were unsubstantiated.² App. 282. Finally, in his closing argument defense counsel argued: “remember, she’s a veteran at this. She has accused people all her life of sexually abusing her.” App. 440-41. The point was clear— Williams was afraid Victim would make up allegations against him, and never allowed himself to be alone with her. The falsity of the prior allegations had already been conceded as irrelevant and inadmissible, and was properly excluded.

While it is true that Williams’s attack on Victim’s credibility was weakened by his failure to show the prior allegations were in fact false, this error belongs to the defense attorney, not the court. “The Court of Appeals does not sit to relieve self-inflicted wounds.” *Rish v. Rish by and Through Barry*, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988) (Bell, J., concurring).

¹ Unlike Williams’s testimony, Farmer’s testimony came on direct examination and was not subject to a hearsay objection.

² The judge sustained a hearsay objection to this question.

CONCLUSION

For all the foregoing reasons, the Court of Appeals correctly affirmed Williams's conviction. Furthermore, no novel issue is raised, and the opinion below was unanimous and unpublished. Certiorari is not warranted in the case, and Williams's petition should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 19, 2020

The Supreme Court of South Carolina

The State, Respondent,

v.

Joseph Campbell Williams, II, Petitioner.

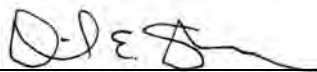
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ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file ten (10) additional copies of the appendix and ten (10) copies of their briefs in the manner provided by Rule 242(i), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
May 07, 2021

cc: Alan McCrory Wilson, Esquire
Joshua Abraham Edwards, Esquire
William Walter Wilkins, III, Esquire
J. Falkner Wilkes, Esquire
The Honorable Jenny Abbott Kitchings

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Appellate Court Case No.: 2020-001262

RECEIVED

Jun 07 2021

S.C. SUPREME COURT

The State, ... Respondent,
v.
Joseph Campbell Williams, II, ... Petitioner.

BRIEF OF THE PETITIONER

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STATEMENT OF THE ISSUES

1. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
2. Did the court commit reversible error in excluding evidence as to the Petitioner's state of mind?

STATEMENT OF THE CASE

The Petitioner was indicted by the grand jury in Pickens County for the offense of criminal sexual conduct with a minor, first degree (15-GS-39-1030), and criminal sexual conduct with a minor, second degree (17-GS-39-0700). The Petitioner was tried by jury August 31st through September 1, 2017, the Honorable Perry H. Gravely presiding. Scott Dover, Esq., represented the Applicant at trial. Shannon Odom, Assistant Solicitor, represented the State. The jury returned a verdict of guilty on both charges and the Petitioner was sentenced to 30 years on the CSC, first degree and 10 years consecutive on the CSC, second degree. The Petitioner was remitted to the custody of the South Carolina Department of Corrections. A timely notice of appeal was filed. The appeal was perfected and the court of appeals issued a per curiam opinion July 1, 2020 affirming the conviction. A timely petition for rehearing was filed which was denied. A timely petition for a writ of certiorari was filed which this Court granted May 7, 2021. This brief follows. Alan Wilson, Attorney General, Joshua A. Edwards, Assistant Attorney General, and Walter Wilkins, Solicitor represent the State on appeal. J. Falkner Wilkes represents the Petitioner on appeal.

STATEMENT OF FACTS

On November 30, 2013, the prosecutrix made a complaint to the Pickens County Sheriff's Office alleging sexual abuse by the Petitioner when she was six or seven years old. R. p. 63. She reported this for the first time in 2013, when she was 17 years old. R. p. 108. She was 21 at the time of trial. R. p. 89. The prosecutrix testified that when she was six years old she began living on Lewis Street with her mother and the Petitioner, her step father. R. p. 89; 97. She claimed that when she was seven years old and living at Jane Lane the Petitioner rubbed on her "close to her privates". R. p. 92. She testified to oral sex occurring just before she went to live at her grandparents for a while on Railroad Street. R. p. 94. The prosecutrix testified that later the Petitioner and her mom moved to High Top Drive where the "majority of everything that he done to me happened at." 94. She was ten when they initially moved to High Top. R. p. 100. The prosecutrix testified that the last abuse is occurred just before she turned thirteen. R. p. 106.

The defense produced Facebook postings showing that just hours prior to making allegations of sexual abuse against the Petitioner the prosecutrix was upset with her mother and posted threats directed at them: "I think its funny people wanna say they beat someones ass when in reality they the ones who got beat. Pussy ass niggas wanna run wont face a man but wanna talk shit when everybodys gone. world war 3 is about to begin and everybody gonna wish they never fucked with me ! that anit a threat, that's a promise!" R. p. 154. The prosecutrix admitted posting the threats just hours prior to making the allegations against the Petitioner that resulted in his arrest and prosecution in this case. R. p. 154-158. The defense also produced mental health/behavioral records where the prosecutrix had, over the course of years denied any sexual abuse, including specifically any abuse by the Petitioner. R. p. 149-153; 226-227.

Early in the trial there was a discussion as to the application of the rape shield statute. There was an agreement on rape shield statute that the defense would not get into any prior sexual habits of the prosecutrix. R. p. 36-41.

During the trial the defense attempted to establish a prior pattern of false sexual abuse allegations by the prosecutrix against people other than the Petitioner. R. p. 40. The state objected repeatedly claiming that such testimony should be excluded under the rape shield statute. The defense disclosed its intent to elicit testimony of prior false allegations of sexual abuse against two people other than the Petitioner. R. p. 74-76. State's argued that testimony about prior false allegations violated the rape shield statute. R. p. 77. There was a long discussion with the court ruling that the defense could not get into the details (falsity) of the prior sexual allegations against other people. R. p. 77-83.

The state offered testimony by its expert witness, Farmer, who had been one of the prosecutrix's mental health providers. R. p. 201-206. Farmer had the prosecutrix's mental health records to refer to during her testimony. R. p. 206-208. The solicitor elicited testimony from Farmer about the prosecutrix's mental/behavioral health treatment. R. p. 208. Farmer testified that the prosecutrix made a false report of abuse by her mom. R. p. 215-216. Farmer went on to also identify in the records where the prosecutrix also made allegations of sexual abuse against two people other than the defendant. R. p. 215-216. Unlike the abuse claim involving the victim's mother, Farmer did not volunteer that the two allegations of sexual abuse made against other people were also false.¹

¹Presumably, based on the court's earlier ruling, Farmer had been instructed not to disclose the details (falsity) of the victim's allegations of prior sexual abuse by persons other than the defendant.

On cross-examination the defense attempted to elicit testimony from Farmer, based on the medical records of the prosecutrix, that the two prior allegations of sexual assault were also found to be false. The state objected on the grounds of hearsay. R. p. 229. The court sustained the objection without stating a basis. R. p. 229.

The defense later attempted to offer testimony of the prior false allegations through the Petitioner's brother. When the brother attempted to testify that victim "had a troubled past and had already made false accusations..." the state objected. R. p. 297. The court again sustained without explanation. R. p. 297. Then the defense attempted to elicit testimony from the Petitioner's brother pertaining to the Petitioner being around the prosecutrix (presumably due to her prior false allegations against other men): "did your brother, what was he telling you about his relationship with..." R. p. 298. The state objected and the court again sustained as hearsay. R. p. 298.

When the Petitioner took the stand he testified that he would never be alone with the prosecutrix over the whole time he was married to the prosecutrix's mother. R. p. 303. When the Petitioner attempted to explain why, the state objected and cut him off:

Q. Tell the jury why you would never leave yourself alone with this girl?

A. Because she'd made accusations against --.

R. p. 303.

The jury was sent out and argument ensued. The defense argued that the testimony was not offered for truth of the matter asserted. R. p. 303. Specifically the defense argued that the testimony proved the Petitioner's motive and intent as to why he wouldn't be alone with the

prosecutrix. R. p. 303. The state maintained that the testimony violated the rape shield statute. 304-308.

The defense requested to proffer the Applicant's testimony. R. p. 303-307. When the defense attempted to proffer the Petitioner's testimony the court immediately cut the Petitioner off:

The Court: I'll let you proffer.

Defense counsel: Mr. Williams, I am going to ask you some question on a proffer. Did you ever leave yourself alone with [the prosecutrix]?

Defendant: No, sir, I did not.

Defense counsel: Because I was fearful of her because of past --

The Court: Again, he can say "I was fearful of being accused of anything' but I don't think that he can say because of her previous allegations.

R. p. 307, l. 6-18.

After successfully preventing the testimony explaining that the Petitioner didn't want to be alone with the prosecutrix because she had made prior false allegations of sexual abuse against other people, the solicitor went on to argue to the jury how she didn't believe the defense witnesses. R. p. 351. That the defense witness testimony was absurd to her [the prosecutor]. R. p. 351. The solicitor went on to say "How crazy is this?..... went to such great lengths... just to make sure that her daughters never had a chance to be alone with him. This is preposterous." R. p. 362. The solicitor went on attacking the defense testimony that the Petitioner avoided ever being alone

with the prosecutrix: “How crazy is this? How illogical is this, that they want you to believe that they went to great lengths, to avoid sleep, just to make sure that her daughters never had a chance to be alone with him? This is preposterous.” R. p. 362, l. 18-23. Throughout closing argument the state continued to take an unfair advantage of having blocked the Petitioner’s ability to explain the basis for his avoidance of ever being alone with the prosecutrix:

Now, Mr. Dover said that the defendant would have been a fool to have put himself in that position. The defendant testified that 20 from the beginning he said that he wasn’t left alone with them. By putting -- by saying, you know, that he would have been a fool to have put himself in that position, that’s like a slap in the face to all the other step-dads out there. That is saying that no step-dad should ever be alone with a step-child because that’s an inherent risk. That is saying that when moms and dads get married that have prior children, that the family shouldn’t be blended. That you should try to have a good relationship. That you should push your child away. No. That makes no sense. And it makes no sense that mom would have gone to great lengths to keep the kids away from him like that.

R. p. 386, l. 17-397, l. 10.

ARGUMENT

I. THE COURT ERRED IN EXCLUDING EVIDENCE OF PRIOR FALSE ACCUSATIONS BY COMPLAINANT AGAINST PERSONS OTHER THAN THE DEFENDANT.

The defense in this case sought to introduce evidence of the prosecutrix's prior false allegations of sexual misconduct against persons other than the defendant. The state objected repeatedly raising the Rape Shield Statute.

In a prosecution for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence of the victim's sexual conduct is controlled by S.C. Code Ann. 16-3-659.1 (1985). Unlike the federal rule which contains the standards and procedures governing the admissibility of such evidence, this rule merely references the statute. *See Note to Rule 412*. Rule 412, SCRE, provides: "In prosecutions for criminal sexual conduct or assault with intent to commit criminal sexual conduct, the admissibility of evidence concerning the victim's sexual conduct is subject to the limitations contained in S.C. Code Ann. 16-3-659.1 (1985)." South Carolina's Rape Shield statute provides in pertinent part: "Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible in prosecutions under Sections 16-3-615 and 16-3-652 to 16-3-656;..." S.C. Code Ann. § 16-3-659.1. The testimony that the court excluded was not evidence of the victim's sexual conduct, but rather evidence of the prosecutrix's prior false allegations. The former is barred by Rule 412, the latter is not.

Rule 412 is designed only to preclude evidence of a complaining witness's prior sexual conduct. Evidence of prior false accusations of rape made by a complaining witness does not constitute "prior sexual conduct" for rape shield purposes. In presenting such evidence, a

defendant is not probing the complaining witness's sexual history. Rather, a defendant seeks to prove for impeachment purposes that the complaining witness has previously made false accusations of rape. Viewed in this light, such evidence is more properly understood as verbal conduct, not sexual conduct. To the extent a defendant offers evidence of prior false accusations of rape to impeach the credibility of the witness, its admission does not run afoul of the Rape Shield Rule. *See State v. Walton*, 715 N.E.2d 824, 826–27 (Ind. 1999).

Other jurisdictions are reasonably consistent in allowing evidence of prior false accusations for impeachment purposes.² Maine, Maryland, Missouri, New Mexico, Ohio, Tennessee, Vermont, and Wisconsin follow the federal rule and allow cross-examination concerning a prior false accusation that is probative of the witness's character for truthfulness, but do not allow the use of extrinsic evidence to contradict the witness's answer or to prove the character trait. *See, e.g., State v. Almurshidy*, 732 A.2d 280, 287 n. 4 (Me.1999); *State v. Cox*, 298 Md. 173, 468 A.2d 319, 323–24 (1983); *State v. Raines*, 118 S.W.3d 205, 211–14 (Mo.Ct.App.2003); *State v. Scott*, 113 N.M. 525, 828 P.2d 958, 962–63 (Ct.App.1984); *State v. Boggs*, 63 Ohio St.3d 418, 588 N.E.2d 813, 816–17 (1992); *State v. Wyrick*, 62 S.W.3d 751, 780–82 (Tenn.Crim.App.2001); *State v. Leggett*, 164 Vt. 599, 664 A.2d 271, 272 (1995); *State v. Olson*, 179 Wis.2d 715, 508 N.W.2d 616, 619–20 (Ct.App.1993), *reh'g denied*, 515 N.W.2d 715 (Wis.1994).

Alaska, Arizona, Arkansas, Idaho, New Hampshire, and Nevada also have evidence rules similar to the federal rule, but have relaxed those rules in sexual crime cases to allow the

²The following state-by-state analysis was made by the Supreme Court of New Jersey in *State v. Guenther*, 181 N.J. 129 (2004). Although somewhat dated, it remains relevant.

admission of extrinsic evidence of an accuser's prior false sexual crime allegation. See, e.g., Morgan v. State, 54 P.3d 332, 336 (Alaska Ct.App.2002); State v. Hutchinson, 141 Ariz. 583, 688 P.2d 209, 212–13 (Ct.App.1984) (*interpreting* State ex rel Pope v. Superior Court, 113 Ariz. 22, 545 P.2d 946, 953 (1976)); West v. State, 290 Ark. 329, 719 S.W.2d 684, 686–87 (1986), *reh'g denied*, 290 Ark. 329, 722 S.W.2d 284 (1987); State v. Schwartzmiller, 107 Idaho 89, 685 P.2d 830, 833 (1984); State v. Gordon, 146 N.H. 258, 770 A.2d 702, 704–05 (2001); Miller v. State, 105 Nev. 497, 779 P.2d 87, 89–90 (1989).

Massachusetts and Oregon, which like New Jersey follow the common law rule, have recognized a limited exception to allow cross-examination of an accuser who has made a prior false sexual crime allegation when the case involves a similar crime, but disallow extrinsic evidence. See, e.g., Commonwealth v. Bohannon, 376 Mass. 90, 378 N.E.2d 987, 991 (1978); State v. Driver, 192 Or.App. 395, 86 P.3d 53, 55–58 (2004). Kansas, Georgia, Indiana, Louisiana, and Virginia, which also follow the common law rule prohibiting specific conduct evidence relating to character, have suggested that the defendant's right to confrontation in a sexual crime case allows cross-examination of the accuser-witness and the admission of extrinsic evidence to prove the witness's prior false sexual crime accusation. See, e.g., State v. Barber, *supra*, 766 P.2d at 1290 (Kan.); Smith v. State, 259 Ga. 135, 377 S.E.2d 158, 160, *cert. denied*, 493 U.S. 825, 110 S.Ct. 88, 107 L.Ed.2d 53 (1989); Little v. State, 413 N.E.2d 639, 643–44 (Ind.Ct.App.1980); State v. Smith, 743 So.2d 199, 202 (La.1999); Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263, 266 (1988).

Texas has embraced a case-by-case analysis to determine whether a defendant's right to confrontation requires relaxation of the bar on specific conduct evidence in all cases in which an

accuser has made a prior false criminal allegation—not just sexual crime cases. *See Lopez v. State*, 18 S.W.3d 220, 225 (Tex.Crim.App.2000) (declining "to create a *per se* exception to the Rule 608(b) for sexual offenses" because "[i]t makes no sense to say that certain factors will always be present in a case involving a sexual offense").

Some Federal Courts of Appeals that have addressed the use of a prior false accusation to undermine the credibility of an accuser-witness have determined that restrictions on the admissibility of extrinsic evidence do not violate the Sixth Amendment right to confrontation. *See, e.g., Boggs v. Collins*, 226 F.3d 728, 736–40 (6th Cir.2000), *cert. denied*, 532 U.S. 913, 121 S.Ct. 1245, 149 L.Ed.2d 152 (2001); *Hogan v. Hanks*, 97 F.3d 189, 191 (7th Cir.1996), *cert. denied*, 520 U.S. 1171, 117 S.Ct. 1439, 137 L.Ed.2d 546 (1997); *United States v. Bartlett*, 856 F.2d 1071, 1088–89 (8th Cir.1988).

Several jurisdictions have recognized that prior false accusations of sexual crimes by the accuser may be admissible for reasons unrelated to impeachment of general credibility—to prove the accuser's habit, state of mind, motive, or common scheme. *See, e.g., Peeples v. State*, 681 So.2d 236, 237–39 (Ala.1995) (habit); *People v. Hurlburt*, 166 Cal.App.2d 334, 333 P.2d 82, 87 (1958) (state of mind); *State v. Anderson*, 211 Mont. 272, 686 P.2d 193, 199, 201 (1984) (state of mind, motive, and bias). In the present case, given multiple prior false allegations, combined with other evidence in the victim's mental health records of a pattern of lying, the evidence could fall within the realm of habit, intent, or common scheme.

In determining that prior false allegations are admissible under Rule 412, other court's have considered and resolved any conflict with Rule 608. Rule 608 provides in part:

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 608 (b), SCRE.

In considering the apparent conflict other court's have held that "evidentiary constraints must sometimes yield to a defendant's right of cross-examination." Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263, 266 (1988); *see also* Mengon v. State, 505 N.E.2d 788, 792 (Ind.1987) (holding that a party's right to cross-examination should not be unduly limited by the court). A defendant's Sixth Amendment right of confrontation requires that the defendant be afforded an opportunity to conduct effective cross-examination of State witnesses in order to test their believability. Davis v. Alaska, 415 U.S. 308, 315–18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); Timberlake v. State, 690 N.E.2d 243, 255 (Ind.1997), *cert. denied*, 525 U.S. 1073, 119 S.Ct. 808, 142 L.Ed.2d 668 (1999). "The right to cross-examine, as well as other forms of confrontation, 'ensure [sic] that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo–American criminal proceedings.' " Tague v. Richards, 3 F.3d 1133, 1138 (7th Cir.1993) (*quoting* Maryland v. Craig, 497 U.S. 836, 846, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990)). Accordingly, the majority of jurisdictions that have considered the have held that the evidentiary rule preventing evidence of specific acts of untruthfulness must yield to the defendant's Sixth Amendment right of confrontation and right to

present a full defense.³ Finding both the reasoning and weight of this authority persuasive, the Indiana court held that evidence of prior false accusations of rape is admissible to attack the credibility of the accusing witness, notwithstanding the general exclusionary edict of Rule 608(b). *See State v. Walton*, 715 N.E.2d 824, 827 (Ind. 1999).

As a matter of first impression the South Carolina Supreme Court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility . *State v. Boiter*, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). There the court noted that “other jurisdictions have held that such evidence is admissible only if the court makes a threshold determination that the prior accusation was false. *See Clinebell v. Com.*, 235 Va. 319, 368 S.E.2d 263 (1988); *Woods v. State*, 657 P.2d 180 (Okl.1983), *Commonwealth v. Bohannon*, 376 Mass. 90, 95, 378 N.E.2d 987, 991 (1978). Other Courts have also considered remoteness of the prior accusation. *See State v. LeCair, supra.*” *See State v. Boiter*, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). Although apparently holding that the trial court must make some threshold determination that the prior accusation was false to allow such evidence, the *Boiter* Court did not articulate an applicable standard of proof when doing so.

The standard of proof applied in similar cases varies among jurisdictions. Some jurisdictions require that the prior accusation be shown to be "demonstrably false." *See, e.g., Little, supra*, 413 N.E.2d at 643 (Ind.Ct.App.); *State v. Sieler*, 397 N.W.2d 89, 92 (S.D.1986); *Berry v. Commonwealth*, 84 S.W.3d 82, 91 (Ky.Ct.App.2001). Others have articulated varying

³ *E.g., Clinebell*, 368 S.E.2d at 265–66; *Commonwealth v. Bohannon*, 376 Mass. 90, 378 N.E.2d 987, 990–91 (1978); *West v. State*, 290 Ark. 329, 719 S.W.2d 684, 687 (1986); *State v. Anderson*, 211 Mont. 272, 686 P.2d 193, 198–201 (1984); *Miller v. State*, 105 Nev. 497, 779 P.2d 87, 89 (1989); *Smith v. State*, 259 Ga. 135, 377 S.E.2d 158, 160, *cert. denied*, 493 U.S. 825, 110 S.Ct. 88, 107 L.Ed.2d 53 (1989).

standards of proof for determining whether the witness made the accusation and whether it was false: clear and convincing evidence, Gordon, *supra*, 770 A.2d at 704, 705 (N.H.); preponderance of the evidence, Morgan v. State, 54 P.3d 332, 339 (Alaska Ct.App.2002); or "a reasonable probability of falsity," Smith, *supra*, 377 S.E.2d at 160(Ga.); Barber, *supra*, 766 P.2d at 1290 (Kan.Ct.App.); Clinebell, *supra*, **323 368 S.E.2d at 266 (Va.). *See also* Smith, *supra*, 743 So.2d at 203 (La.) (stating judge must determine "whether reasonable jurors could find, based on the evidence presented by defendant, that the victim had made prior false accusations").

Although not setting a clear standard of proof, the Boiter Court held that in deciding admissibility of evidence of a victim's prior accusation, the trial judge should first determine whether such accusation was false. If the prior allegation was false, the next consideration becomes remoteness in time. Finally, the trial court shall consider the factual similarity between prior and present allegations to determine relevancy.

The defense in this case was clearly attempting to lay a proper foundation for the admissibility of the prior false statements. In every attempt the trial court summarily cut the defense off without allowing an opportunity to present evidence relevant to a Boiter analysis. Given the testimony at issue, it was incumbent upon the trial court to conduct a proper Boiter analysis, which it failed to do.

Despite some testimony about the prior sexual allegations against other people was admitted, evidence of their falsity was excluded. Although the trial court repeatedly cut off the defense, a review of the questions that the defense was attempting to ask, the arguments of counsel, as well as other testimony that was admitted, facts relating to the investigation and falsity of the prior accusations appear to have been recorded in the mental/behavioral health

records of the prosecutrix. The record is sufficient evidence to show that the allegations were false, or at least sufficient enough to require the trial court to conduct a hearing to properly address and determine the issue under the factors set forth in Boiter. The record also shows that the prior false allegations against two other people were made during the exact same time period that the prosecutrix alleges she was abused by the Petitioner.

There is nothing in the record that would suggest that the trial court considered, much less conducted, a proper analysis under Boiter. The record shows that the court simply refused to allow the defendant an opportunity to meet his burden to establish admissibility under Boiter. Accordingly, the trial court's ruling constitutes an error of law and is not entitled to any deference. Failing to allow the defense an opportunity to present evidence to carry the burden as to admissibility constitutes an abuse of discretion on the part of the trial judge.

In its decision below the court of appeals overlooked evidence showing that the other allegations of abuse were made specifically for the purposes of medical diagnosis or treatment and were therefore admissible under Rule 803(4). Rule 803 (4) provides that the following are not excluded by the hearsay rule: "Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion." Rule 803 (4) SCRE. Mental health provider Angie Farmer testified that the prosecutrix was referred for treatment for a number of behavioral and mental health issues including making false reports of abuse, false reports of physical abuse,

telling exaggerated stories, and anger issues. R. 215-217. Those being the basis for the assessment and any resulting diagnosis and treatment, Farmer documented pertinent history in the medical records. This undoubtably would have included any discussion or statements made by the prosecutrix as to the falsity of those accusations. Given that they were directly related to the mental health treatment sought, evidence relating to the prior false allegations constituted the quintessential example of what is allowed under Rule 803(4), SCRE.

In its analysis the court of appeals further misperceived the probative value of the prior false allegations. In Boiter the court held that prior allegations by the victim against persons other than the defendant may be probative on the issue of credibility . State v. Boiter, 396 S.E.2d 364, 302 S.C. 381 (S.C., 1990). Boiter only dealt with one prior allegation that was remote in time. In applying Boiter the court of appeals misperceived the nature of the evidence at issue in the Appellant's case. Unlike cases involving a single remote prior allegation, the present case involves a series of prior allegations made against multiple individuals. By virtue of the increased number of allegations made against different people the probative nature of evidence is far greater than seen in Boiter. Especially when combined with the prosecutrix's documented history of lying.

The court of appeals also misperceived the proximity in time between the prior allegations and the events alleged against the Appellant. While court of appeals found that the offenses for which the Appellant was charged were alleged to have occurred in 2003 and 2004, when the prosecutrix was between six and eight years old, the court overlooked the fact that this was the exact same time period in which the prior false allegations were made and the prosecutrix's mental health treatment documented by Farmer in the medical records. The record

shows that the prosecutrix was originally referred for mental health treatment in 2003. R. 215-219. One of the reasons for the referral in 2003 was specifically for making the false allegations. Clearly the allegations at issue occurred in close proximity to the events for which the Appellant was charged. The court of appeals failed to consider the timing of the alleged offenses and the prior false accusations in its analysis of the case.

Applying Boiter the prior accusations were relevant and highly probative. Accusations against multiple people around the same time as the events alleged against the Appellant could reasonably be expected to have an effect on the jury. Where this case turned on the credibility of the prosecutrix it presents precisely the situation where the Confrontation Clause "tips the scales" in favor of permitting cross-examination. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990); USCS Const. Amend. 6. The Confrontation Clause of the Sixth Amendment of the United States Constitution requires that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. In South Carolina, not only is this right applicable to state prosecutions under the Fourteenth Amendment, it is specifically mandated by the State Constitution. State v. Green, 269 S.C. 657, 661, 239 S.E.2d 485, 487 (1977) (citing S.C. Const. art. I, § 14). Because the prior allegations bore directly on the issue of the prosecutrix's credibility they were highly probative to the point of being essential to the defense of the case. Denial of the Appellant's right to cross-examine and introduce evidence related to the prior allegations was therefore error.

Prejudice

This case turned entirely on the believability of the prosecutrix. As a result, the defense of the case rested heavily on her effective cross-examination. In limiting the defense cross-

examination the trial court violated the Petitioner's rights under the Confrontation Clause. "A violation of the defendant's Sixth Amendment right to confront the witness is not *per se* reversible error" if the "error was harmless beyond a reasonable doubt." State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) (*quoting State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)) (*internal quotations omitted*). This Court must determine whether the error was harmless beyond a reasonable doubt. Graham, 314 S.C. at 385, 444 S.E.2d at 527. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004). Whether an error is harmless depends on the particular facts of each case and upon a host of factors, including:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318–19 (*quoting Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

"Harmless beyond a reasonable doubt" means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt. Mizzell, 349 S.C. at 334, 563 S.E.2d at 319; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). "In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict." Mizzell, 349 S.C. at 334, 563 S.E.2d at 319 (*internal quotations omitted*). The Mizzell Court concluded the trial court committed reversible error:

Considering the Van Arsdall factors, we note much of Steele's testimony was either cumulative or corroborated by other witnesses....

...Critically, however, Steele was the only witness to testify as an eyewitness to [defendants'] burglary of the home. The lack of physical evidence placing [defendants] at the scene enhanced the importance of Steele's testimony. As in [State v.] Brown, [303 S.C. 169, 399 S.E.2d 593 (1991),] the co-conspirator witness is the only link placing [defendants] at the scene of the crime....

....Because Steele was the only witness to directly link [defendants] to the burglary, we cannot say the trial court's error was harmless beyond a reasonable doubt. Accordingly, we find the trial court committed prejudicial error in limiting [defendants'] cross-examination into Steele's possible sentence.

State v. Mizzell, 349 S.C. 326, 334–35, 563 S.E.2d 315, 319–20 (2002). Here, the only evidence against the Petitioner was the testimony of the prosecutrix. Limiting the Petitioner's effective cross-examination can not be harmless.

II. THE COURT ERRED IN REFUSING TO ALLOW WITNESSES TO OFFER TESTIMONY TO EXPLAIN THE PETITIONER'S STATE OF MIND.

A key element in the defense of this case involved proving that the Petitioner never had the opportunity to commit the alleged offenses. The Petitioner, his wife, and his brother each testified that the Petitioner went to great lengths ensure that the Petitioner was never left alone with the prosecutrix. As unusual as that may seem, it makes perfect sense in light of prosecutrix's prior false allegations against other individuals. At trial the Petitioner argued that the evidence established the Petitioner's state of mind in deciding to avoid ever being alone with the prosecutrix. The evidence was thus necessary to explain why the Petitioner took such unusual precautions. The basis for the Petitioner's decision never to be alone with the prosecutrix was clearly relevant to the defense's theory of the case. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE

(*emphases added*); accord State v. Lyles, 379 S.C. 328, 665 S.E.2d 201. Thus, any "[e]vidence which assists a jury at arriving at the truth of an issue is relevant." *See Lyles*, 379 S.C. at 337, 665 S.E.2d at 206 (*quoting State v. Schmidt*, 288 S.C. 301, at 303, 342 S.E.2d 401 at 403 (1986) (*internal quotations omitted*)). Evidence of Petitioner's knowledge of the prior false accusations was necessary if the jury was to properly evaluate testimony that the Petitioner was careful never to be alone with the prosecutrix. It would have allowed the jury to understand and evaluate the Petitioner's testimony. Testimony that in closing argument the prosecution ridiculed as being absurd and unbelievable.

It is difficult to determine the exact basis for the court's evidentiary rulings at various points throughout the trial. Testimony as to the Petitioner's knowledge of the prior false allegations appears to have been initially excluded under the state's original rape shield objection. R. p. 303. Although on multiple occasions the trial court failed to state clearly the basis for excluding any mention of the prior false allegations, at one point during discussions they were referred to as hearsay. R. p. 306, l. 17; R. p. 305-308. To the extent that the court excluded the testimony on the grounds of hearsay, such a ruling was in error.

Rule 803 (4) provides that the following are not excluded by the hearsay rule: "Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion." Rule 803 (4) SCRE. Here, evidence relating to the falsity of prior sexual allegations contained in the

prosecutrix's mental/behavioral health records, being pertinent to her treatment and diagnosis, was not excludable as hearsay.⁴

Rule 803 (3) provides that the following are not excluded by the hearsay rule: "Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will." Testimony by Petitioner's wife and brother relating to the Petitioner's knowledge of the prior false allegations the defense sought to offer explained the Petitioner's state of mind as being fearful of being alone with the prosecutrix. It was therefore, not excludable as hearsay.

Exclusion of testimony establishing the Petitioner's knowledge of prior false allegations as the basis for his precautions was error. This evidence was necessary to explain the Petitioner's actions and to allow the jury to properly evaluate the Petitioner's overall testimony. The prejudice created by the exclusion of the testimony is obvious, especially given the state's closing argument ridiculing the defense testimony about the Petitioner taking precautions to never be alone with the prosecutrix. The court therefore erred in excluding this testimony as hearsay, or on any other basis.

⁴Presumably the records include the prosecutrix's statements concerning the prior allegations and their falsity as this was the basis of the referral and resulting mental health treatment.

CONCLUSION

Based on the foregoing the conviction and sentence of the Petitioner should be reversed and set aside.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001262

THE STATE,

Respondent,

v.

JOSEPH CAMPBELL WILLIAMS II,

Petitioner.

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STATEMENT OF THE ISSUES

I.

Evidence of a victim's prior false allegations of sexual abuse may be admissible if the defendant proves their falsity and relevance. While Williams alleged Victim made prior false allegations against others, he conceded evidence of the falsity of the allegations was inadmissible and did not proffer any evidence to prove Victim made the allegations, that they were false, or that they were sufficiently recent and similar to be relevant. Though he claims the trial court erred by limiting his cross-examination of Victim, the trial court did not make any adverse ruling limiting his questioning in this regard. Did the trial court err?

II.

An out-of-court statement admitted for its truth is hearsay. Williams attempted to introduce evidence that he refused to be alone with Victim because she had made false allegations of abuse against others. There was no evidence presented that Williams had any personal knowledge of any prior accusations and Williams made no attempt to prove the falsity of the accusations. Williams was allowed to testify that he refused to be alone with Victim because he was afraid she would make up an accusation against him. Did the trial court commit reversible error by excluding the hearsay statements?

STATEMENT OF THE CASE

A Pickens County grand jury indicted Joseph Williams for one count of 1st Degree Criminal Sexual Conduct with a Minor (CSCM 1st) and one count of 2nd Degree Criminal Sexual Conduct with a Minor (CSCM 2nd). Appellant proceeded to jury trial before the Honorable Perry H. Gravely on August 31, 2017. Appellant was convicted on both counts and sentenced to 30 years' incarceration for CSCM 1st degree and 10 years' incarceration for CSCM 2nd, to be served concurrently. He appealed two of the trial court's evidentiary rulings and the Court of Appeals affirmed his convictions in an unpublished opinion. Unpublished Opinion No. 2020-UP-199 (S.C. Ct. App. filed July 1, 2020). This Court granted certiorari on May 7, 2021.

FACTS

Appellant Joseph Williams was Victim's stepfather. (R.p.308-09). Williams married Victim's mother in 2006, but had lived with her since late 2001 or early 2002, when Victim was around six years old. (R.p.261-62). In November 2013, Victim called the Pickens County Sheriff's Office and reported that Williams sexually abused her as a child. (R.p.62-64). At trial, Victim testified that Williams began molesting her when she was seven or eight years old. (R.p.91). What initially began as rubbing of Victim's legs and torso progressed to digital penetration, cunnilingus, and fellatio. (R.p.91-94, 131). Victim testified the abuse continued until shortly before her thirteenth birthday. (R.p.94, 105). Williams thoroughly attacked Victim's credibility during cross-examination. (R.p.116-62). The State presented evidence that Victim exhibited behavioral problems from the age of six, and demonstrated sexual "acting out" behavior from the age of eight. (R.p.216-23). The State presented evidence that Victim's mother "was never supportive of her in her allegations." (R.p.240-1).

Williams testified he never engaged in sexual behavior with Victim. (R.p.303). Williams and Victim's mother both testified that Victim was never left alone with Williams, and that Victim intermittently lived with her grandparents for extended periods of time. (R.p.253-59, 309). Williams' neighbor, brother, and sister-in-law testified that Victim normally stayed with her grandparents and they never knew her to spend the night in the same house as Williams. (R.p.287, 299-300, 294-295). The State presented reply testimony from Victim's grandfather that,

contrary to the defense witnesses' testimony, he knew that Williams was "often" home alone with Victim. (R.p.334).

The issues on appeal center around Williams' attempt to discredit Victim's testimony by showing she made unfounded allegations of abuse against others prior to accusing Williams. Although Williams complains that the trial court prevented him from effectively attacking Victim's credibility by limiting evidence about these prior accusations, Williams conceded that testimony concerning the truth or falsity of the prior allegations was inadmissible and did not proffer any evidence to prove the falsity of the alleged prior allegations. Regardless, the issue permeated the trial from beginning to end and substantial testimony was presented regarding Victim's history of abuse. These facts will be discussed in more detail in the argument section.

ARGUMENT

- I. Williams' argument that the trial court erred by excluding evidence about Victim's alleged prior false rape allegations is not preserved for review because Appellant conceded at trial that such evidence was inadmissible and did not attempt to proffer testimony proving the falsity of the alleged prior accusations. Even if preserved, Williams failed to establish the falsity of the prior accusations, a prerequisite to the introduction of such testimony.

Williams claims the trial court erroneously prevented him from proving Victim made false rape allegations against others before accusing Williams, citing State v. Boiter, 302 S.C. 381, 396 S.E.2d 364 (1990). This argument is not preserved for review because Williams never attempted to prove the falsity of Victim's purported prior allegations. Rather, he explicitly stated it would be impermissible for him to do so. Because Williams did not proffer any evidence or make any attempt to admit evidence of false allegations under Boiter, there was no trial court ruling denying any request to admit testimony concerning the purported allegations. Likewise, the trial court did not limit Williams' cross-examination related to this matter. Accordingly, this issue is not preserved for review. Even if preserved, Williams' argument fails because there is no evidence in the record establishing the falsity and relevance of the purported prior allegations required under Boiter. This Court should affirm.

A. Standard of review.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a

manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). The appellate court “will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion.” State v. Fuller, 425 S.C. 468, 476, 822 S.E.2d 910, 914 (Ct. App. 2019). “[C]onsiderable latitude and discretion should be allowed the trial [court] in determining the admissibility of impeaching testimony.” State v. Williams, 409 S.C. 455, 468, 761 S.E.2d 770, 777 (Ct. App. 2014). The appellate court may affirm any ruling, order, decision or judgment upon any ground appearing in the record. Rule 220(c), SCACR.

B. Relevant facts.

The issue of prior false allegations was first broached during a pretrial conference when the solicitor informed the court that the prosecution and defense agreed that evidence of Victim's prior sexual experiences was inadmissible under the "rape shield" law, S.C. Code §16-3-659.1. (R.p.39). Defense counsel agreed not to "pry into any of her sexual habits," but maintained he intended to question Victim about why she did not report the abuse sooner. Defense counsel asserted that Victim made allegations of abuse against two others "at the time," and argued this was relevant to the credibility of Victim's delayed disclosure. (R.p.40). The State argued that evidence about distant, dissimilar prior accusations was not relevant. (R.p.40–41). The trial court agreed to take up the issue in more detail at a later time. (R.p.41).

During his opening statement, defense counsel referenced "comments" and "opinions" that "professionals" made about Victim as a result of counseling sessions when Victim was a child. (R.p.57–58). The State objected that defense counsel was commenting on inadmissible hearsay. (R.p.57). The court cautioned defense counsel not to "get into anything that may or may not be admissible." (R.p.57). Defense counsel continued, specifically referencing Victim's counseling sessions "at age six, at age seven, at age eight, at age nine, at age eleven and age fourteen," and linked these counseling sessions to attempts to "get her way" regarding "issues with her mother and her father" (R.p.57–58). The clear insinuation of defense counsel's statement was that Victim lied as a child about being sexually abused in order to "get her way" with her parents. This improper opening statement was the first of many attempts by the defense to put incompetent evidence before the jury regarding the Victim's purported prior allegations, despite defense counsel's representations to the trial court that he had no intention of introducing evidence about the specifics of those purported allegations.

Following testimony from two State witnesses, the court excused the jury and heard arguments on the admissibility of evidence concerning prior allegations of abuse. Defense counsel referenced records from Behavioral Health Services of Pickens County pertaining to "the victim reporting acts of sexual abuse." (R.p.74). Defense counsel asserted there were "handwritten letters where the victim had accused others of raping her and doing similar acts that she is now complaining of

in this act." (R.p.74). Defense counsel explained how he believed the reports were relevant:

Those [allegations] were investigated, at time by Pickens City and at times by Pickens County. . . . There are statements that I would like to pass up to counselors as to, you know, that this young lady was certainly able and willing, candid in coming forward and saying that these other two people had done these things to her. **At the same time, she never once reported that my client did those things to her.** I think that is a fair question under the situation.

The counselors that are going to testify, there is evidence that . . . they were counseling her for sexual abuse. **It would be confusing to this jury if you did not allow me to ask those questions because it might infer that that counseling was as to my client, and it was not.** It was sexual abuse that she had alleged by these two other individuals.

(R.p.74–75) (emphasis added).

Defense counsel went on to discuss yet another instance of sexual abuse against Victim "during the period of time that these offenses actually occurred" (R.p.75). He asserted that a third individual "pled guilty and went to jail for abusing her." (R.p.75). He argued this incident was relevant for the same reasons as the other accusations: because "**[d]uring that entire time she never once said my client was doing that.**" She complained about three other individuals doing these things to her and didn't . . . say that my client was guilty of the same thing." (R.p.75) (emphasis added). Defense counsel indicated he wanted to "ask[] her and the counselors and [the detective] those questions." (R.p.76).

The solicitor argued defense counsel's proposed line of questioning would violate the rape shield statute, but agreed that defense counsel "could be limited in how he asks it But he can't get up there and say, 'isn't it true that you said

somebody raped you, and they didn't?" (R.p.76). She argued that Williams should not be allowed to "get into cases of other people, other sexual acts that may or may not have been done to my victim. . . . If he says . . . 'were you in counseling for an unrelated matter,' and he can even say of a sexual nature, but he can't get into the facts of those cases." (R.p.77). The solicitor pointed out the dubious nature of the purported statements, noting the letters were written in cursive and dated from the time when Victim would have been four or five years old. (R.p.77). Defense counsel did not offer the letters as exhibits.

The court asked for clarification whether the statements "related to the other matters and have nothing to do with this one" (R.p.78). The prosecutor agreed. Defense counsel responded: "**I would never ask her the questions that [the prosecutor referenced] . . . you know, 'did you accuse somebody and it was later unfounded?' That would absolutely be impermissible.**" (R.p.78) (emphasis added).

The solicitor made one final objection that testimony into the specifics of the prior allegations would rely on hearsay and pitting Victim's disclosures against her mother's representations to Victim's counselors about what Victim privately told her mother about the prior allegations. She argued: "it's hearsay on hearsay and complicates the issue." (R.p.79).

The court took a recess to review case law and returned to ask defense counsel "exactly what you propose that you're going to ask." (R.p.79). Defense

counsel repeated his intent to inquire into Victim's alleged prior accusations. He explained:

I don't think the status of those are relevant, of what happened. But the fact that she was accusing others . . . I submit that it is fair for the jurors to believe . . . that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true.

(R.p.80) (emphasis added). When pressed by the court to answer which specific questions he would ask, he responded: "Isn't it true . . . that during this same period of time that you discussed to your counselors that the same type of events had occurred with three other individuals?" (R.p.80–81). The solicitor responded that she believed it would be appropriate for defense counsel to ask Victim: "Well, you were able to speak to a counselor about possible sexual abuse with other perpetrators, why didn't you speak to the counselor about this supposed sexual abuse." (R.p.81). However, the solicitor argued the victim's prior disclosures should not be referred to as "allegations of similar conduct" because it suggested the facts around the prior accusations were similar to the allegations against Williams. (R.p.82). **Defense counsel agreed** not to use the word "similar." (R.p.82).

The court ruled that he would allow Williams to "get into the fact that she was in counseling, that she discussed sexual abuse with other individuals."

(R.p.83). The court noted the parties were "fairly close on what [they] agreed on."

(R.p.82). The court indicated he would not allow the detective who investigated the rape Victim reported at age 14 to discuss the specifics of that case.¹ (R.p.83).

¹ Neither party called the detective to testify at trial.

Finally, the court instructed both parties not to mention the fact that another victim had accused Williams of sexual abuse. (R.p.84).

Victim testified in detail that Williams sexually abused her over the course of several years. (R.p.91–105). Defense counsel extensively cross-examined Victim about her testimony and attacked her credibility. He confronted inconsistencies in her trial testimony, statements to police, and testimony at a preliminary hearing. (R.p.118–26, 131–32, 149–50). He questioned whether Victim was "in a pretty difficult argument" with her mother when she reported Williams' abuse to police, and introduced Facebook posts wherein Victim threatens to start "World War 3" shortly before reporting Williams' abuse to police. (R.p.127, 154).

Defense counsel thoroughly questioned Victim's failure to disclose Williams' abuse earlier. He questioned whether Victim disclosed Williams' abuse to an ex-boyfriend. (R.p.128–30). He showed that the Victim claimed in 2011 on a government form that she was not the "victim of sexual abuse." (R.p.152).

Most germane to this appeal, he questioned Victim about her time in "counseling from 2002 through 2011" (R.p.132). He asked whether her counselors asked specifically whether Williams ever abused her. Victim replied that she did not remember. (R.p.133). He then continued to question her about whether she denied to her counselors that Williams abused her. (R.p.135). Victim admitted she never told her counselors that Williams physically abused her. (R.p.137).

Victim testified that her mother was not supportive during her counseling sessions, and that **she was not allowed to speak for herself**. (R.p.136). She

explained her mother "told them what she thought my problem was and she went from there." (R.p.136). Defense counsel asked whether "there were times when you told your counselor that your mother had physically abused you?" (R.p.137). Victim agreed. (R.p.137). Defense counsel then asked whether Victim told her counselors that other men had physically abused her. Victim replied that she did not recall making any such allegations. (R.p.137). Defense counsel asked whether she had been referred to Behavioral Health Services at age eight "for lying and telling exaggerated stories[.]" Victim replied that she did not remember. (R.p.138).

Finally, defense counsel asked whether Victim was fearful of disclosing to her counselors that "people had sexually abused [her]." She replied she had "always been fearful of saying anything" about Williams' abuse. (R.p.140). Defense counsel then asked: "But you weren't fearful of telling them about others?" Victim replied: "I don't know what you're talking about." (R.p.141).

The solicitor objected and the court held an in camera hearing. (R.p.143–44). The solicitor argued that defense counsel was attempting to elicit specifics about separate allegations of abuse, and expressed concern that it was Victim's mother who actually told the counselors Victim had been abused. (R.p.142–43). **The court ruled the question was proper.** (R.p.144). When the court indicated that the solicitor seemed to be concerned about follow-up questions, defense counsel stated: "I really wasn't going to ask another question about it," and indicated he would "move on." (R.p.145). Resuming cross-examination, defense counsel asked again: "[Y]ou weren't fearful of telling your counselor that others had sexually abused you,

were you?" (R.p.147). Victim again responded that she was "still confused on what you're talking about with that. **I don't recall telling them about any other incidents.**" (R.p.147) (emphasis added). Defense counsel then stated: "That's all I'm going to ask you about that line of questioning." (R.p.147).

The State called Angie Farmer, counselor at Behavioral Health Services of Pickens County. (R.p.201–03). Farmer chronicled Victim's history of treatment at the center from age six up through the time of trial. She testified Victim was originally referred for treatment at age six for "lying, defiance, foul language, false reports of abuse, some anger issues. She was having night terrors." (R.p.216) (emphasis added). Victim began treatment roughly one year after Williams moved in with the family. (R.p.215, 261).

Farmer testified that Victim was again referred for counseling at age eight and "there were reports" that Victim "had been touched inappropriately by two separate men," had "seen some pornographic materials," and "had knowledge of adult ideas" and "desires to engage in adult behaviors" (R.p.217). Farmer testified that **Victim's mother reported** "that she may have been physically abused. The client had accused the two men of previously trying to rape her" (R.p.218). Farmer testified **Victim's mother** "gave [the] history" that Victim was lying. (R.p.218). Farmer further testified that the "reports" of inappropriate touching were "addressed in some of the therapy sessions there." (R.p.217).

Farmer continued that, at age twelve, Victim was again referred for behavioral issues. Farmer noted that "sexual abuse history was identified during

that assessment also." (R.p.219). Farmer continued that, at age fourteen, Victim was again referred for counseling and "reported being raped by another individual," and continued to suffer from depression, anxiety, and other behavioral problems. (R.p.220).

On cross-examination, Farmer agreed with defense counsel's assertion that Victim exhibited symptoms of sexual abuse before Victim's eighth birthday.² (R.p.226). She noted that during Victim's age six visit, there was "a denial of sexual abuse but there were allegations of physical abuse." (R.p.227). Defense counsel asked Farmer whether her records indicated that Victim's "mother had a communication with your employee that the prior acts of the rape that you talked about with the other men had been unfounded." (R.p.228). The trial court sustained a hearsay objection to this question. (R.p.229). Defense counsel then asked whether Victim "reported being raped by three different individuals other than my client" between 2003 and 2009. (R.p.233). Farmer responded: "I would not use the word 'raped.' She was sexually assaulted by two men. She used the word 'rape,' 'attempted rape.' She was sexually assaulted by two men and then raped by another." (R.p.234). Defense counsel specifically asked Farmer: "There is no question that this young lady has been sexually abused during the time in which this indictment covers?" Farmer responded, "that's correct." (R.p.235). Defense counsel then asked whether Victim reported sexual abuse by Williams during this

² Defense counsel mischaracterized Victim's testimony, implying Victim testified Williams' abuse started at age eight. Victim testified the abuse began when she was seven, not eight. (R.p.91).

time. Farmer confirmed Victim did not report abuse by Williams until 2013, when Victim was seventeen years old. (R.p.235).

C. Error preservation.

The Court of Appeals correctly held Williams' argument is not preserved for review because he conceded at trial that he could not question Victim about the falsity of her prior allegations and did not proffer any evidence that could have made evidence of the prior accusations admissible under State v. Boiter. On the contrary, he explicitly stated that he did not believe it would be appropriate for him to even ask Victim whether she "accuse[d] somebody and it was later unfounded[.]" (R.p.78). Defense counsel candidly admitted: "**That would absolutely be impermissible.**" (R.p.78). Instead, he told the court that he only intended to show Victim "was certainly able and willing, candid in coming forward and saying that these other two people had done these things to her. At the same time, she never once reported that my client did those things to her." (R.p.74–75).

Later, defense counsel again explicitly stated that he did not intend to prove the falsity of the alleged prior allegations. He explained: "**I don't think the status of those are relevant, of what happened.** But the fact that she was accusing others . . . I submit that it is fair for the jurors to believe . . . that she did not feel comfortable discussing those type matters with her counselor at that time. Yet in this particular case, that is not true." (R.p.80). Williams' stated purpose was to cast doubt on the credibility of Victim's delayed disclosure by showing she had the opportunity to disclose, openly discussed other instances of sexual abuse with her

counselor, but did not disclose abuse by Williams. He never argued he was entitled to attempt to prove the falsity of the prior allegations. Instead, he attempted to sneak in references and innuendos about the purported prior allegations through hearsay and improper cross-examination.

Williams now claims on appeal that "evidence of [the allegations'] falsity was excluded," and that the trial court "repeatedly cut off the defense," preventing him from "present[ing] evidence relevant to a Boiter analysis." Brief of Petitioner at 13. He asserts Williams "sought to introduce evidence of [Victim's] prior false allegations" Brief of Petitioner at 7. The record shows this assertion is simply untrue. Williams never proffered any evidence seeking to prove the falsity of the prior allegations. Because Williams did not make a Boiter argument or proffer at trial, this argument is not preserved for review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (explaining an argument not raised and ruled on by the trial court is not preserved for appeal). Tellingly, Williams does not provide any citations to the record to support his claims. He does not even identify a specific court ruling upon which to assign his claim of error. See Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App.2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.")

Defense counsel was allowed to ask each question he posed of Victim during cross-examination. When defense counsel asked Victim why she wasn't "fearful of telling [her counselors] about [other instances of abuse]," the court overruled the

State's objection to the question, ruling "it's a proper question." (R.p.144, lines 23–24). The court allowed defense counsel to resume his cross-examination and defense counsel asked again: "[Y]ou weren't fearful of telling your counselor that others had sexually abused you, were you?" (R.p.147). Victim responded that she did not "recall telling them about any other incidents." (R.p.147). Defense counsel then stated: "That's all I'm going to ask you about that line of questioning." (R.p.147). Williams was able to pursue his desired line of questioning. Because Williams got what he asked for, there is no adverse ruling to review relating to Williams' cross-examination of Victim.

The trial court sustained only one objection to Williams' cross-examination of Victim or Farmer. The court sustained a State's objection to defense counsel's question asking Farmer to read from a report and repeat what "the mother told" a Behavioral Health employee about whether the "prior acts of the rape that you talked about with the two other men had been unfounded." (R.p.228). The trial court correctly excluded the evidence as hearsay.

Williams is right about one thing: "[t]here is nothing in the record that would suggest the trial court considered, much less conducted, a proper analysis under Boiter." Brief of Petitioner at 14. This is exactly right—because defense counsel never sought to prove the falsity of the prior allegations under Boiter! It was the defendant's burden to produce evidence supporting this claim. State v. Boiter, 302 S.C. 381, 384, 396 S.E.2d 364, 365 (1990). He did not even attempt to do so. Williams did not give the trial court an opportunity to exercise its discretion.

Stephens v. CSX Transportation, Inc., 400 S.C. 503, 514, 735 S.E.2d 505, 511 (Ct. App. 2012) (finding “[b]ecause Stephens did not present this argument to the trial court, the court was not given the opportunity to exercise its discretion as to that argument, and the argument is not preserved for appeal”). Failure to make an offer of proof precludes consideration of an issue on appeal. State v. Cabbagestalk, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984). The Court of Appeals correctly found this issue is not preserved for review. This Court should affirm.

D. Discussion.

Even if preserved, Williams failed to establish the admissibility of evidence concerning Victim's alleged false prior accusations. As discussed above, Williams did not proffer any evidence or make any attempt to show the falsity of Victim's purported prior accusations. While State v. Boiter established a rule allowing impeachment related to prior false allegations of sexual assault if certain elements are met, Williams did not establish any of those elements.

Generally, “[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence.” Rule 608(b), SCRE. However, in Boiter, this Court held that evidence of a victim’s prior false allegation of abuse may be admissible to impeach the victim’s credibility in some circumstances. In order to be admissible, the defendant must first show that the prior allegation was false. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). The court must then consider the remoteness in time of the accusation. Id.

Finally, the court must consider the factual similarity between the prior and present accusation to determine relevance. *Id.* See also *Vanover v. State*, 433 S.C. 31, 41, 856 S.E.2d 160, 165 (Ct. App. 2021), reh'g denied (Apr. 5, 2021) (noting that in other jurisdictions, generally speaking, "prior false allegations are allowed if the allegations 'suggest a pattern' that casts 'substantial doubt' on the charges at issue").

1. Williams failed to establish Victim made false allegations of rape.

The first step required to admit evidence of prior allegations under *Boiter* is for the defendant to establish the falsity of a prior accusation. Williams failed to do so. In fact, he failed to clearly establish that Victim made two of the purported allegations at all.

Because Williams did not attempt to proffer evidence showing Victim made false rape allegations, the only evidence arguably supporting his *Boiter* claim came during his cross-examination of Victim and her counselor, Angie Farmer. Defense counsel acknowledged that Victim was sexually abused at age fourteen. (R.p.235, lines 8–10). Williams' claim therefore must rest on vague references to "two other men" who reportedly abused Victim at an earlier age. However, it is unclear from the testimony that Victim personally made a report of this sexual abuse. She denied making these reports at trial. (R.p.147). Instead, she testified her mother "told them what she thought [her] problem was," and explained she was not allowed to "speak for [her]self" in counseling. (R.p.136).

Regarding the age six visit, Farmer testified that Victim was referred for "false reports of abuse" and that there were "allegations of physical abuse **by DSS.**" (R.p.216). Regarding the age eight visit, Farmer testified only that there were "reports" of abuse by two separate men. (R.p.217). The counselor testified that **Victim's mother** reported that Victim was sexually abused at age ten. (R.p.218, lines 12–25). While Farmer testified that at Victim's age twelve sessions, "sexual abuse history was identified during that assessment also," Farmer did not specifically testify that Victim reported the abuse. Only regarding the age fourteen visit did Farmer specifically testify that Victim herself reported being raped. (R.p.220). Defense counsel recognized this was not a false allegation. (R.p.235).

The closest defense counsel came to establishing that Victim even made the allegations in question was when he asked Farmer whether Victim "reported being raped by three different individuals other than my client" between 2003 and 2009. (R.p.233). Farmer responded: "I would not use the word 'raped. She was sexually assaulted by two men. She used the word 'rape,' 'attempted rape.' She was sexually assaulted by two men and then raped by another." (R.p.234). Defense counsel asked a follow-up question whether Farmer "said on direct examination that in one of the cases that was referred to you that **there was allegations** [sic] of sexual abuse by two men that were not my client. Correct?" Farmer responded, "Correct." (R.p.234). She continued that Victim "reported a rape by another individual," referencing the substantiated report Victim made at age fourteen, which defense

counsel acknowledged as true. (R.p.235). The evidence that Victim personally made allegations against "two other men" at all was equivocal at best.

Because Williams failed to establish that Victim even made the allegations in question, he is also unable to show the allegations were false. There is no evidence in the record clearly explaining the circumstances of the purported allegations. Victim denied making them. (R.p.147). However, it is clear from the above-cited testimony that **Victim's mother** was the source of several of these reports when Victim was a child. It is also clear that Victim had a troubled relationship with her mother, who testified for Williams at trial. Williams proffered absolutely zero evidence to support his assertion that Victim made false allegations against others. Williams failed to meet his burden to establish the first element of Boiter: that Victim made a false accusation of rape. See State v. Boiter, 302 S.C. at 383, 396 S.E.2d at 365 (affirming exclusion of evidence of victim's prior accusation where "[t]he defense presented no evidence to establish its falsity").³ This Court should affirm.

2. Williams failed to show the relevance of Victim's purported prior allegations.

Not only did Williams fail to establish Victim made prior false accusations, he failed to demonstrate that any such allegations were relevant in this case. Boiter

³ Boiter does not explicitly state the evidentiary standard governing a trial court's admission of prior false allegations. If this Court deems it necessary to enunciate a standard, it should employ the same standard necessary to admit evidence of prior bad acts under Rule 404, SCRE: clear and convincing evidence. State v. Holder, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009) ("Evidence of prior bad acts that are not the subject of a conviction must be establishing by clear and convincing evidence.").

requires that after the circuit court is satisfied that a witness made a false accusation of rape, the court must consider the remoteness in time and the factual similarity between the prior and present accusation. State v. Boiter, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). Williams presented no evidence to satisfy these elements.

The record contains no evidence about the specific allegations Victim supposedly made against the two unnamed men. It is thus impossible to address the factual similarity between these purported allegations and the allegations against Williams. Furthermore, the allegations were remote in time from the allegations against Williams. Allegations made by an 8-year-old girl have little bearing on the credibility of a 21-year-old. See Vanover, 433 S.C. at 41, 856 S.E.2d at 165 (citing Redmond v. Kingston, 240 F.3d 590, 591 (7th Cir. 2001) (Posner, J.), for the proposition that “[t]he fact that a teenage girl has a disordered past and lies a lot (who doesn't?) does not predict that she will make up stories about having sex”). Williams failed to show the relevance of the purported prior allegations. See Boiter, 302 S.C. at 384, 396 S.E.2d at 365–66 (“The trial court determined that the bare accusation of an eight year old child made nine years earlier was too remote to be of sufficient probative value. We find no abuse of discretion on the part of the trial judge.”). Even if preserved, Williams has failed to establish this element of Boiter.

3. Williams suffered no prejudice because he was able to accomplish his stated purpose of attacking Victim's credibility by showing she did not take advantage of prior opportunities to

disclose the abuse, despite being willing to disclose other instances of abuse.

As discussed in the error preservation section above, Williams has failed to identify any ruling where the court improperly prevented him from introducing competent evidence proving Victim made false allegations of rape. As a result, he cannot demonstrate error in any specific ruling. But even if this Court finds the trial court erred, Williams did not suffer any prejudice. He was able to accomplish his stated purpose of showing Victim did not take advantage of prior opportunities to disclose Williams' abuse, despite being willing to disclose other instances of abuse. Accordingly, even if the trial court somehow erred, Williams suffered no prejudice. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial.").

Williams attacked Victim's credibility throughout trial, including during his cross-examination of Victim, his opening statement, and closing argument. But even apart from his attacks on her credibility, Williams accomplished his stated purpose in inquiring into Victim's history of counseling for alleged abuse: that Victim had the opportunity to disclose Williams' abuse when she was undergoing counseling sessions, discussed allegations against others, but did not report abuse by Williams. According to defense counsel's own representations to the court, this was his reason for inquiring into past allegations. (R.p.80). As discussed above, substantial evidence was presented (through Victim and her counselor) showing unequivocally that Victim had opportunities to disclose Williams' abuse while undergoing counseling, discussed other instances of abuse, but Victim did not

disclose Williams' abuse at that time. The issue of Victim's alleged prior allegations was constantly before the jury. Williams accomplished his stated purpose. He should not be heard to complain about rulings he never requested from the trial court, and from which he suffered no prejudice. This Court should affirm.

II. The trial court correctly excluded minimally probative, highly prejudicial hearsay testimony concerning what Williams was told about Victim's purported prior allegations of abuse.

In a closely related argument, Williams next claims the trial court erred by excluding testimony that Williams refused to be alone with Victim because he was told she had made false allegations of sexual abuse against others. His brief appears to allege the trial court improperly excluded evidence by his wife and brother to the effect that Williams told them he refused to be alone with Victim because she had made false allegations against others. Brief of Petitioner at 20. This argument is not preserved for review because Williams does not identify a specific ruling excluding evidence offered by his wife and brother. The issue is waived. Even if preserved, the argument fails. The only adverse ruling related to Williams' wife or brother is found on page 298 of the record; this testimony was properly excluded as hearsay.

If this Court interprets Williams' argument to allege the trial court improperly prevented **him** from offering testimony (and this Court finds that argument preserved), the argument is meritless. Williams' testimony concerning what he heard about Victim's purported prior allegations was rightly excluded

because it was inadmissible hearsay and carried a substantial danger of unfair prejudice. There was no evidence presented that Williams witnessed Victim make allegations of abuse against others. His statements of belief in that fact presumably rested on the statements of another, presumably Victim's mother. Statements of memory or belief, or a declarant's reasons for experiencing a particular state of mind, are not admissible to prove a declarant's state of mind. Furthermore, Williams had already conceded that evidence of prior false allegations was inadmissible and did not attempt to prove the falsity of the purported accusations, as discussed in the previous section. The Court was acting on its prior rulings and defense counsel's own concessions when it excluded the testimony. Finally, Williams was allowed to give substantially the same testimony, thereby accomplishing his stated purpose of showing he refused to be alone with Victim. He suffered no prejudice. This Court should affirm.

A. Standard of review.

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014).

B. Error preservation.

Williams' argument is not preserved for review because it is not stated with sufficient particularity to allow Respondent and this Court to ascertain the argument. Williams' issue statement alleges the trial court refused "to allow

witnesses to offer testimony to explain [his] state of mind." Brief of Petitioner at 18. While Williams does not clearly identify which witnesses were improperly prevented from testifying, his argument refers to testimony from his wife and brother relating to Williams' refusal to be alone with Victim. Brief of Petitioner at 18 and 20. Williams asserts "[t]estimony by Petitioner's wife and brother relating to Petitioner's knowledge of the prior false allegations the defense sought to offer explained the Petitioner's state of mind as being fearful of being alone with the prosecutrix. It was therefore not excludable as hearsay." Brief of Petitioner at 20. However, Williams never cites to the record to identify a specific ruling excluding testimony from his wife or brother. The trial court did not exclude any such testimony from his wife, but did exclude testimony from his brother regarding what Williams told him about his "relationship" with Victim. (R.p.298). Regardless, Williams has waived the issue by failing to state it with sufficient particularity to allow Respondent and this Court to ascertain his argument. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue.").

If this Court interprets Williams' argument to allege the trial court erred by preventing **him** from testifying explicitly that he refused to be alone with Victim because he knew she made prior false allegations against others (as the Court of Appeals apparently did), the argument is likewise unpreserved for review because it

is not stated in his issue statement. Rule 208(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) ("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal."). While Williams does cite to the trial court's exclusion of a portion of Williams' testimony (found at R.p.306–08) as one example of the trial court's "evidentiary rulings at various points throughout the trial" in which the court "failed to state clearly the basis for excluding any mention of the prior false allegations," he does not clearly argue that this ruling is the foundation of his argument. Williams' issue statement cites the trial court refusal to allow "witnesses" to offer testimony about Williams' state of mind. While Williams could feasibly be understood to be one of the "witnesses" referred to, the phrasing of the issue statement suggests the basis for his argument is testimony from witnesses other than himself.

Because Williams has not clearly stated the basis for his argument, this Court should deem the issue abandoned. Respondent and this Court should not have to "grope in the dark" to ascertain Williams' allegations of error. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue.").

Even if this Court finds Williams did not waive the argument, it is nonetheless unpreserved because it is a different argument than he made at trial. At trial, he sought to justify admission of his own statement as showing his "motive and intent." (R.p.304). There is no "motive" or "intent" exception to the hearsay rule. Likewise, he never argued the evidence fit within the "statement for the purpose of medical diagnosis or treatment" exception. Because he did not make these arguments at trial, they are not preserved for review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal). This Court should affirm.

C. Discussion.

a. The trial court correctly excluded hearsay testimony from Williams' brother regarding Williams' stated reasons for refusing to be alone with Victim.

If this Court decides Williams has sufficiently alleged error in the exclusion of his brother's testimony regarding what Williams told him "about his relationship" with Victim, the Court should reject the argument. The brother's testimony was correctly excluded as hearsay with little probative value and a substantial danger of unfair prejudice. (R.p.298). Williams' brother had already improperly testified that Victim made prior "false allegations," testimony the trial court correctly struck as hearsay. (R.p.297). Williams' statements to his brother about "his relationship" with Victim were part of an out-of-court narrative that took place during an unspecified conversation. Defense counsel's question about what Williams told his brother about his relationship with Victim was an improper attempt to elicit

hearsay testimony. Rule 801(c), SCRE ("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.").

Furthermore, Williams' purported reasons for refusing to be alone with Victim during his conversations with his brother had no probative value. What mattered was his brother's corroboration of Williams' story that he refused to ever be alone with Victim. This was Williams' purpose in offering the testimony, and he was allowed to achieve his purpose through his brother's testimony that Victim and Williams never had an opportunity to be alone together. (R.p.299). Williams' attempts to admit evidence of Victim's alleged prior allegations through the back door were not probative and were properly thwarted by the trial court.

The specific content of Williams' statements to his brother were completely unnecessary to prove his point: that he did not have the opportunity to molest Victim because he was never alone with her. For this reason, the exclusion of Williams' brother's testimony about what Williams told him about his relationship with Victim had low probative value and did not affect the result of trial. Accordingly, Williams suffered no prejudice from its exclusion. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial."). This Court should affirm.

b. The trial court correctly excluded Williams' hearsay testimony relating to what he heard about Victim's purported prior allegations.

If this Court decides Williams properly alleges the trial court erred by excluding his own testimony and decides to consider the merits of the argument, it should reject the argument because the trial court correctly limited Williams' testimony to exclude improper hearsay evidence concerning what Williams heard about Victim's alleged prior allegations against others. Additionally, specific evidence concerning the substance of the alleged accusations had low probative value and carried the danger of unfair prejudice. Furthermore, Williams had already conceded evidence about Victim's alleged prior allegations was inadmissible and was able to elicit substantially the same testimony. He suffered no prejudice from the court's ruling that properly limited his testimony to exclude hearsay evidence. This Court should affirm.

As discussed at length in the first argument section, Williams conceded at the outset of trial that he could not properly introduce evidence concerning Victim's alleged prior accusations of abuse against others. (R.p.78). Yet during the presentation of his case, he backtracked on this view and attempted to introduce precisely this type of evidence. But rather than admit it properly through competent non-hearsay testimony pursuant to Boiter, he attempted to sneak the evidence in through the back door as hearsay.

The trial court correctly recognized the testimony was hearsay. (R.p.306). Williams never claimed to have personal knowledge of the facts underlying Victim's alleged prior allegations. Accordingly, he was merely repeating the assertions of others. See Rule 801, SCRE (providing "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). See also Vanover v. State, 433 S.C. 31, 40, 856 S.E.2d 160, 165 (Ct. App. 2021), reh'g denied (Apr. 5, 2021) (explaining PCR applicant's testimony about purported prior false allegations by victim was hearsay because there was "no first-hand account of Daughter's accusation").

Williams attempts to justify the admission of hearsay evidence by asserting that it showed his "state of mind," presumably referencing Rule 803, SCRE, which provides that a "statement of the declarant's then existing state of mind" may be admissible despite the rule against hearsay. Rule 803(3), SCRE (emphasis added). This argument is not preserved because Williams did not make it to the trial court. Even if preserved, the argument is meritless. The "state of mind" exception only applies to a declarant's state of mind. Williams was not the declarant of the Victim's purported prior allegations. There was no evidence presented that Williams personally witnessed or had any firsthand knowledge of Victim's purported allegations against the two unnamed individuals. Rather, he was the mere recipient of this knowledge from others. Accordingly, the testimony was hearsay.

Furthermore, the "state of mind" exception allows testimony concerning the emotions or sensations the declarant is feeling when the statement is made. It does not allow the witness to repeat the declarant's reason for experiencing the state of mind. See State v. Tennant, 394 S.C. 5, 16, 714 S.E.2d 297, 302–03 (2011) (citing United States v. Cohen, 631 F.2d 1223, 1225 (5th Cir.1980) and explaining "the

state-of-mind exception does not permit the witness to relate any of the declarant's statements as to why he held the particular state of mind, or what he might have believed that would have induced the state of mind. **If the reservation in the text of the rule is to have any effect, it must be understood to narrowly limit those admissible statements to declarations of condition—'I'm scared'—and not belief—'I'm scared because [someone] threatened me'.**) The rule plainly states it does not allow for admission of "a statement of memory or belief to prove the fact remembered or believed" Rule 803(3), SCRE. Williams' interpretation of the rule would allow unlimited hearsay as long as the underlying fact or statement had some purported effect on the declarant. This would eviscerate the rule against hearsay. See State v. Garcia, 334 S.C. 71, 76, 512 S.E.2d 507, 509 (1999) ("The purpose of this exclusion is 'to avoid the virtual destruction of the hearsay rule which would otherwise result from allowing state of mind, provable by a hearsay statement, to serve as a **basis for an inference of the happening of the event which produced the state of mind.**'") (emphasis added). The Court of Appeals correctly held the trial judge did not abuse its discretion by excluding Williams' purported reasons for avoiding being alone with Victim.

Likewise, Williams' testimony did not fit within the hearsay exception for statements made for the purpose of medical diagnosis or treatment. Rule 803(4), SCRE. As noted above, this argument is not preserved for review because it was not made to the trial court. (R.p.304–05). Even if preserved, the argument is meritless. Again, the "declarant" for hearsay purposes is whoever told Williams

about the purported prior allegations (presumably Victim's mother). There was no evidence presented that Williams witnessed or had personal knowledge of Victim's purported false allegations, despite ample opportunity and incentive for Williams to produce such evidence. Likewise, there was no testimony that Victim's alleged statements were made for the purpose of medical diagnosis or treatment, and no evidence concerning the nature of the purported abuse. The Court of Appeals correctly held this hearsay statement did not fit with this hearsay exception. The trial court did not abuse its discretion by excluding it.

Furthermore, the hearsay had very little probative value and carried substantial prejudice against Victim. See Rule 403, SCORE (providing that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence"). Williams claimed he intended to offer the evidence to explain why he refused to be alone with Victim. But the specifics of the purported allegations were not probative of Williams' actions; rather, his testimony that he feared being accused was sufficient to explain his actions and explain his testimony that he did not have the opportunity to molest Victim. This is exactly what happened at trial; the trial court allowed Williams to testify that he refused to be alone with Victim because he feared being accused of improper behavior, but properly prohibited him from repeating the specifics of what he was

told regarding the allegations. (R.p.309). See Tennant, 394 S.C. at 16, 714 S.E.2d at 302–03.

Finally, Williams was not prejudiced by the trial court's ruling. He was allowed to offer substantially the same evidence to accomplish his stated purpose of showing that he refused to be alone with Victim, and accordingly could not be guilty of molesting her. (R.p.304). In his brief, Williams confirms that the purpose of the testimony was to prove he "never had an opportunity to commit the alleged offenses." Brief of Petitioner at 18. Williams was allowed to introduce this evidence through his own testimony, as well as the testimony of his wife, brother, and another friend. In fact, Williams was able to go even further when he testified he avoided being alone with Victim because he "was fearful that she might make up some sort of accusation[.]" (R. 309). The import of this statement was crystal clear to the jury, which had been bombarded throughout the trial with testimony concerning Victim's history of sexual assault and her alleged prior accusations against others. As discussed above, the jury heard testimony about Victim's history of counseling, her "unfounded" allegation of abuse against an unnamed person, and vague testimony about another purported allegation. Furthermore, Victim's mother testified Victim fabricated allegations of abuse against her. (R.p.264–65). When announcing its ruling, the trial court noted testimony about the alleged prior allegations was "already in the record anyway but I don't think he can say it." (R.p.307). The issue permeated the trial and continued through Williams' closing argument wherein defense counsel alleged Victim was "a veteran at this. She has

accused people all her life of sexually abusing her.” (R. 382-83). It was painfully obvious that the "accusations" to which Williams referred were prior allegations of sexual abuse against others. Williams was not only able to make his point that he refused to be alone with Victim, but also that the reason for his refusal was Victim's alleged history of "accusations" against others. That Williams was not able to go even further by inserting improper hearsay regarding the specifics of what he heard about the purported prior allegations did not prejudice his case. In addition to being legally correct, the trial court's ruling did not make a bit of difference in the outcome of trial. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial.").

If Williams wanted to prove specifics about Victim's purported prior allegations (i.e. that they were false allegations), he should have done so with competent evidence in an in camera hearing pursuant to Boiter. He did not even attempt to do so. His subsequent attempt to make this point by innuendo through improper hearsay evidence was properly thwarted by the trial court. The testimony was inadmissible under the rules of evidence and its exclusion did not reasonably affect the result of trial. This Court should affirm.

CONCLUSION

For all the foregoing reasons, the State respectfully asks that this Court affirm the conviction and sentence of the lower court.

Respectfully submitted,

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Attorney General

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ATTORNEYS FOR RESPONDENT

July 28, 2021

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Joseph Campbell Williams II, Petitioner.

Appellate Case No. 2020-001262

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Pickens County
Perry H. Gravely, Circuit Court Judge

Memorandum Opinion No. 2022-MO-001
Heard November 10, 2021 – Filed January 12, 2022

AFFIRMED

J. Falkner Wilkes, of Greenville, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney
General Joshua A. Edwards, both of Columbia; and
Thirteenth Circuit Solicitor W. Walter Wilkins III, of
Greenville, for Respondent.

PER CURIAM: We granted a writ of certiorari to review the decision of the court of appeals in *State v. Williams*, Op. No. 2020-UP-199 (S.C. Ct. App. filed July 1, 2020). Williams was convicted of first and second degree criminal sexual conduct with a minor and sentenced to forty years in prison. The minor victim was Williams' stepdaughter. On appeal, Williams argues the trial court erred in excluding evidence that the minor victim had falsely accused others of sexual abuse. It is Williams' position that evidence of false accusations of sexual abuse does not constitute "prior sexual conduct" for purposes of the "Rape Shield" Statute. See S.C. Code Ann. § 16-3-659.1 (2015). More to the point, Williams contends evidence of false accusations of sexual abuse "is more properly understood as verbal conduct, not sexual conduct." The State's response to this ostensibly meritorious argument is to follow the lead of the court of appeals and assert the issue was not properly preserved in the trial court. We are constrained to agree with the court of appeals that this issue is not preserved for *direct* appellate review. We further find Williams' effort to bolster his evidentiary challenge through the purportedly improper closing argument of the prosecutor was not preserved in the trial court.¹ Accordingly, we affirm the court of appeals.

AFFIRMED.

BEATTY, C.J., KITTREDGE, HEARN, JAMES, JJ., and Acting Justice DeAndrea Gist Benjamin, concur.

¹ The prosecution successfully prevented Williams from fully explaining why he did not want to be alone with the minor victim. The trial court then prevented Williams from making a full proffer. Seizing upon this, the prosecutor in closing argument attacked the defense for the absence of such evidence. We recognize the regrettable practice (a tactic utilized by prosecutors and defense attorneys alike) to successfully exclude evidence and then leverage the lack of that evidence in closing argument. There was no objection to the State's closing argument. As with the primary issue raised in Petitioner's brief, this issue may be addressed in a collateral proceeding.

FORM 5

2022-CP-39- 00795

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

2022 JUL -5) A 9:42

IN THE COURT OF COMMON PLEAS

Joseph Campbell Williams, II, 00373946
Full name and prison number (if any) of ApplicantCLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Pickens County General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 17GS3900700 Crim Sex Cond. w/Minor 2nd Degree
 - (b) 15GS3901030 Crim Sex Cond. w/Minor 1st Degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 1, 2017 10 years
 - (b) September 1, 2017 30 years

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. S.C. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. Affirmed
- iii. _____
- (c) the date of each such result:
- i. July 1, 2020
- ii. January 12, 2022
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2020-UP-199
- ii. Memorandum Opinion No. 2022-MO-001
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel.

(b) _____

(c) _____

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

(a) 1. Trial counsel failed to properly handle the issue of the victim's prior false allegations such that the evidence was excluded by the trial court. Trial counsel failed to offer or proffer witness testimony or other evidence to show the falsity of the allegations. Counsel further failed to offer evidence and argument sufficient to cause a Boiter type of review as to the admissibility of the prior false allegations. Counsel further failed to properly preserve the issue in the trial court to allow for direct appellate review.

2. Trial counsel failed to properly object to improper closing argument where the prosecution attached the defense for the absence . Trial counsel further failed to properly preserve the issue in the trial court to allow for direct appellate review.

3. Trial counsel failed to introduce evidence relating to prior false allegations as substantive evidence and for the purpose of impeachment of the victim's credibility.

4. Trial counsel failed to introduce evidence of threats made by the victim towards the Applicant and his family as substantive and impeachment evidence.

5. Trial counsel failed to properly introduce evidence and argue law during an attempt to proffer evidence.

6. Applicant reserves the right to amend his application after additional investigation and research.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions

relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The issues presented above are proper for collateral attack through a state post conviction relief action and were not proper for direct appeal.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. R. Scott Dover

ii. J. Falkner Wilkes

iii. _____

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

i. All trial proceedings.

ii. Direct appeal and this PCR action.

iii. _____

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

Reversal of conviction and granting of a new trial.

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

No.

STATE OF SOUTH CAROLINA)

County of McCormick)

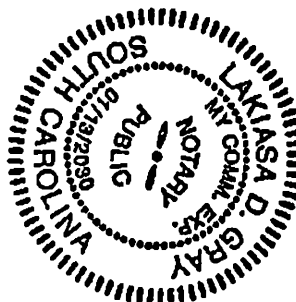
VERIFICATION

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

Joseph Campbell Williams M

SWORN to and subscribed before me this 15th
day of June, 2022
Lakisha D. Gray (L.S.)
Notary Public

My Commission Expires: 01/13/30



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

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

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

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Joseph Campbell Williams II
Applicant

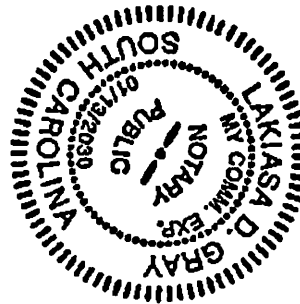
SWORN or affirmed to and subscribed before me this

15th day of June, 2022

Lakisha D. Gray
Notary Public

My Commission Expires:

01/15/30



State of South Carolina)
)
 County of Pickens)
)
 Joseph Campbell Williams, II, 00373746)
 v.)
 State of South Carolina)

In the Court of Common Pleas
 20022-CP-39-00795

2024 SEP 10 PM 1:15

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

**APPLICATION FOR POST-CONVICTION RELIEF
 AMENDMENT TO PARAGRAPH 11**

PCR ISSUE 1. Trial counsel erred in failing to properly raise and preserve the issues at trial that Applicant raised on direct appeal. Applicant is entitled to a belated appeal on the issues raised in his direct appeal, and which the Supreme Court found were not properly raised or preserved.

APPEAL ISSUE I. THE COURT ERRED IN EXCLUDING EVIDENCE OF PRIOR FALSE ACCUSATIONS BY COMPLAINANT AGAINST PERSONS OTHER THAN THE DEFENDANT .

The Supreme Court's ruling:

"The State's response to this ostensibly meritorious argument is to follow the lead of the court of appeals and assert the issue was not properly preserved in the trial court. We are constrained to agree with the court of appeals that this issue is not preserved for direct appellate review. We further find Williams' effort to bolster his evidentiary challenge through the purportedly improper closing argument of the prosecutor was not preserved in the trial court. Accordingly, we affirm the court of appeals." *Supreme Court Memorandum Opinion No. 2022-M0-001*

Defense counsel's failure to recognize admissibility under Boiter:

Defense counsel:

14 I would never ask her the questions that
 15 Ms. Odom -- you know, 'did you accuse some
 16 body and it was later unfounded.' That would
 17 absolutely be impermissible.
 18 I certainly think that I can ask her the
 19 question, 'In 2009, in counseling didn't you
 20 report, you know, report A, B and didn't
 21 report my client?'
 R. 78.

Relevant Facts and Argument; *See also Applicant's Appellate Briefs and State v. Boiter*, 396 S.E.2d 364, 302 S.C. 381 (S.C. 1990).

APPEAL ISSUE II: THE COURT ERRED IN REFUSING TO ALLOW WITNESSES OFFER TESTIMONY TO EXPLAIN THE APPELLANT'S STATE OF MIND.

Supreme Court's ruling:

.....The State's response to this ostensibly meritorious argument is to follow the lead of the court of appeals and assert the issue was not properly preserved in the trial court. We are constrained to agree with the court of appeals that this issue is not preserved for direct appellate review. We further find Williams' effort to bolster his evidentiary challenge through the purportedly improper closing argument of the prosecutor was not preserved in the trial court. *fn1*

fn1 The prosecution successfully prevented Williams from fully explaining why he did not want to be alone with the minor victim. The trial court then prevented Williams from making a full proffer. Seizing upon this, the prosecutor in closing argument attacked the defense for the absence of such evidence. We recognize the regrettable practice (a tactic utilized by prosecutors and defense attorneys alike) to successfully exclude evidence and then leverage the lack of that evidence in closing argument. There was no objection to the State's closing argument. As with the primary issue raised in Petitioner's brief, this issue may be addressed in a collateral proceeding. *Supreme Court Memorandum Opinion No. 2022-M0-001*

Relevant Facts and Arguments - *See Applicant's appellate briefs*

PCR ISSUE 2: Trial counsel failed to render effective assistance of counsel failing to properly introduce a Facebook post made by the prosecutrix that was highly probative and essential to the defense of the case. Counsel further failed to object to the Court's improper response to the jury's request to have the Facebook post in their deliberations.

A Facebook post by the prosecutrix established revenge as a motive for fabricating the allegations against the Applicant. The post was read to the jury during the cross-examination of the prosecutrix, but not introduced into evidence. (R. 154-161). Finding it necessary to its deliberations the jury requested the Facebook post. (R. 408-409). The Court, finding that the Facebook post had not been introduced as evidence, denied the jury's request. The Facebook post was essential to the defense theory of the case. (R. 154-161; 408-409). Counsel's failure to

ensure that the Facebook post was properly admitted for the jury to consider during its deliberations therefore constitutes ineffective assistance of counsel.

While it appears that Counsel was surprised to find that the Facebook post had not been properly admitted into evidence, it was discovered prior to the case being submitted to the jury for deliberation, and therefore well within time for Counsel to make a motion to reopen the defense case:

19 THE COURT: Please review the exhibits
20 with the court reporter. Well, we didn't have
21 any evidence (sic), did we? I mean we didn't
22 have any exhibits, did we?
23 COURT REPORTER: No, sir. Defense
24 Exhibit 1 was a proffer, the State had no
25 exhibits.
(R. 408).

Despite it becoming apparent that the Facebook post was not in record Counsel failed to immediately motion the Court to reopen the defense case to allow for its introduction prior to the case being submitted to the jury for deliberations. (R. 408-409).

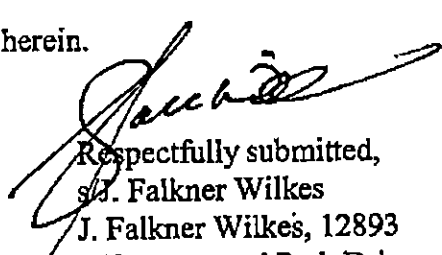
The conduct of a case in the Circuit Court, so far as relates to the time when testimony may be introduced, must be left to the discretion of the Circuit judge, to be governed by the particular circumstances of each case. Matthews v. Heyward, 2 S. C. 247. Indeed the courts of this State have gone so far as to hold that a Circuit judge may, in his discretion, permit a plaintiff to introduce other evidence even after a motion for a non-suit has been made and argued. Browning v. Huff, 2 Bailey 179; Poole v. Mitchell, 1 Hill 404; and these cases have been recognized and followed by this court in the recent case of Kairson v. Puckhaber, 14 S. C. 627. So in Colclough v. Rhodus, 2 Rich. 78, it was held that a Circuit judge might, in his discretion, permit a witness to return to the stand and testify after the case had been submitted to the jury and they had been addressed by counsel. It is true that these were civil cases; but the rules of evidence, with certain exceptions not applicable here, are the same in both civil and criminal cases. 1 Greenl. Evid. 65; State v. Rawls, 2 N. & McC. 331.
State v. Clyburn, 16 S.C. 375 (S.C. 1882).

The prejudice created by the jury not having a copy of the Facebook post was further compounded by the Court's response to the jury's request for the post. The Court's response to the jury's request was at best, misleading and confusing: "Although referenced, the FaceBook post was not admitted as evidence." (R. 409, l. 14-15, R. 542 Ct. Ex. 2). A reasonable interpretation of the Court's response could lead the jury to believe that the content of the Facebook post was not evidence and therefore could not be considered in its deliberations, even though it had been read during the cross-examination of the prosecutrix. Despite its obvious potential to mislead the jury, Counsel failed to raise an objection to the Court's response to the jury.

As the Facebook post was clearly essential to the defense, as a last measure to protect the Defendant's right to a fair trial, Counsel should have moved the Court for a mistrial or new trial. Counsel's failure to do so further constitutes ineffective assistance of counsel.

PCR ISSUE 3. Trial Counsel failed to introduce additional evidence of threats made by the prosecutrix towards the Applicant and his family.

Applicant reserves the right to introduce additional evidence and testimony at the evidentiary hearing to prove the allegations contained herein.



Respectfully submitted,
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 Counsel for Applicant

September 3, 2024.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Joseph Campbell Williams, #373746	)	Case No. 2022-CP-39-0795
	)	
Applicant,	)	
v.	)	RETURN
	)	<i>(Evidentiary Hearing Requested)</i>
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Applicant filed the captioned application for post-conviction relief on July 5, 2022, and challenges his conviction for criminal sexual conduct (CSC) with a minor, 2nd degree, and criminal sexual conduct (CSC) with a minor, 1st degree. Applicant now raises ineffective assistance of counsel allegations. (PCR App. at 3). Respondent submits that at least some of the specific allegations of ineffective assistance of counsel provided in the attachment to the application will likely require an evidentiary hearing to adequately resolve. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”). However, Respondent relies on the established record and controlling law to assert that Applicant is unlikely to be able to carry his burden of proof. In support of its position, Respondent would respectfully show the court:

Procedural History

Applicant, Joseph Campbell Williams, II, is presently confined in the South Carolina Department of Corrections, McCormick Correctional Institution, pursuant to orders of commitment from the Pickens County Clerk of Court. A Pickens County grand jury indicted Applicant in July 2015 on the charge of CSC with a minor, 1st degree (2015-GS-39-1031).

(Attachment 1). The indictment was amended in August 2017. Applicant was also indicted for CSC with a minor, 2nd degree, in March 2017. (Attachment 1).

A jury trial was held on August 31, 2017, with the Honorable Perry H. Gravely presiding. (Attachment 3, at 1). R. Scott Dover Esq. represented Applicant and Assistant Solicitor Shannon Odom prosecuted the case. (Attachment 3, at 1). The jury found Applicant guilty on both counts, and Judge Gravely sentenced Applicant to thirty (30) years for CSC with a minor, 1st degree, and ten (10) years for CSC with a minor, 2nd degree, to be served consecutively. (Attachment 3, at 534-535; 535-539; Attachment 2).

Applicant timely filed a notice of appeal.

Direct Appeal

J. Falkner Wilkes, Esq., represented Applicant on appeal. By final brief of appellant filed May 31, 2018, in the South Carolina Court of Appeals, appellate counsel raised the following issues:

- I. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
- II. Did the court commit reversible error in excluding evidence as to the Appellant's state of mind?

(Attachment 4, at iv). Respondent filed its final brief on May 24, 2018. (Attachment 5). By unpublished opinion filed on July 1, 2020, the Court of Appeals affirmed Applicant's conviction. *State v. Williams*, Unpublished Op. No. 2020-UP-199. (Attachment 6).

Appellate counsel filed a petition for rehearing on December 9, 2021, asking the court to reconsider its opinion and grant Applicant a rehearing based on the following:

This Court's decision overlooked evidence showing that the other allegations of abuse were made specifically for the purposed of medical diagnosis or treatment and therefore were admissible under Rule 803(4).

(Attachment 7, at 1). The Court of Appeals denied the petition on August 24, 2020. (Attachment 8).

Appellate counsel filed a petition for writ of certiorari along with the appendix in the Supreme Court of South Carolina on September 21, 2020, seeking further review. Applicant raised the following issues:

1. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
2. Did the court commit reversible error in excluding evidence or prior false accusations so as to prove the Petitioner's state of mind and thereby explaining his actions?

(Attachment 9, at 1). The State filed its return on October 21, 2020. (Attachment 10). Our Supreme Court granted the petition on May 7, 2020, and ordered that the parties proceed with briefing. (Attachment 11). Applicant filed his brief on June 7, 2021, and Respondent filed its brief on July 28, 2021. (Attachment 12; Attachment 13). Oral arguments were held on November 10, 2021. Appellate counsel J. Faulkner Wilkes, Esq., argued on behalf of Applicant and Assistant Attorney General Joshua A. Edwards of the South Carolina Attorney General's Office represented the State. In a memorandum opinion filed January 12, 2022, our Supreme Court affirmed the Court of Appeals. *State v. Williams*, Unpublished Op. No. 2022-MO-001. (Attachment 14). The remittitur was issued on February 2, 2022. (Attachment 15). Applicant now proceeds with the present action.

Attachments

Respondent attaches, and incorporates by reference, the following:

1. Indictments;
2. Sentencing Sheet;

3. Trial Transcript, August 31, 2017 – September 1, 2017;
4. Final Brief of Appellant, filed May 31, 2018, (direct appeal);
5. Final Brief of Respondent, filed May 24, 2018, (direct appeal);
6. *State v. Williams*, Unpublished Op. No. 2020-UP-199, filed July 1, 2020, (direct appeal);
7. Petition for Rehearing, filed December 9, 2021, (direct appeal);
8. Order denying Petition for Rehearing, filed August 24, 2020, (direct appeal);
9. Petition for Writ of Certiorari, filed September 21, 2020, (direct appeal);
10. Return to Petition for Writ of Certiorari, filed October 21, 2020, (direct appeal);
11. Order granting Writ of Certiorari, May 7, 2020, (direct appeal);
12. Brief of Petitioner, filed June 7, 2021, (direct appeal);
13. Brief of Respondent, filed July 28, 2021, (direct appeal);
14. *State v. Williams*, Unpublished Op. No. 2022-MO-001, filed January 12, 2022, (direct appeal);
15. Remittitur issued February 2, 2022.

Present Allegations

Applicant makes the following allegations in support of his claim of ineffective assistance of counsel:

1. Trial counsel failed to properly handle the issue of the victim's prior false allegations such that the evidence was excluded by the

trial court. Trial counsel failed to offer or proffer witness testimony or other evidence to show the falsity of the allegations. Counsel further failed to offer evidence and argument sufficient to cause a Boiter type review as to the admissibility of the prior false allegations. Counsel further failed to promptly preserve the issue in trial court to allow for direct appellate review.

2. Trial counsel failed to properly object to improper closing argument where the prosecution attacked the defense for the absence. Trial counsel further failed to properly preserve the issue in the trial court to allow for direct appellate review.
3. Trial counsel failed to introduce evidence relating to prior false allegations as substantive evidence and for the purpose of impeachment of the victim's credibility.
4. Trial counsel failed to introduce evidence of threats made by the victim towards the Applicant and his family as substantive and impeachment evidence.
5. Trial counsel failed to properly introduce evidence and argue law during an attempt to proffer evidence.

(PCR App. at 3). Applicant also reserved the right to amend. (PCR App. at 3). Applicant requests the following relief: "Reversal of conviction and granting of a new trial." (PCR App. at 6).

Applicant, through counsel, amended his application, received by Respondent on September 3, 2024, to clarify the aforementioned allegations:

PCR Issue 1: Trial counsel erred in failing to properly raise and preserve the issues at trial that Applicant raised on direct appeal. Applicant is entitled to a belated appeal on the issues raised in his direct appeal, and which the Supreme Court found were not properly raised or preserved.

(Amended App. at 1).

PCR Issue 2: Trial counsel failed to render effective assistance of counsel failing to properly introduce a Facebook post made by the prosecutrix that was highly probative and essential to the defense of the case. Counsel further failed to object to the Court's improper response to the jury's request to have the Facebook post in their deliberations.

(Amended App. at 2).

PCR Issue 3: Trial Counsel failed to introduce additional evidence of threats by the prosecutrix towards the Applicant and his family.

(Amended App. at 4).

DISCUSSION

The scope of this Court's subject matter jurisdiction for PCR matters is set out in section 17-27-20 of the South Carolina Code. Subsection (A) lists the types of claims that may be considered for review. Subsection (B) limits this jurisdiction by recognizing that PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(B). Because a PCR action is not a substitute for other available proceedings or remedies, particularly those at trial and direct appeal, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on direct appeal. *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993).

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Id.* at 9, 430 S.E.2d at 520. ("Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel."). Ineffective assistance of counsel claims are generally appropriate for post-conviction relief actions. See, e.g., *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code Ann. § 17-27-20(A) and finding "[a] typical PCR claim of ineffective assistance of counsel falls into this category..."). Ineffective assistance claims are analyzed under the *Strickland* standard.

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, 466 U.S. at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, 466 U.S. at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRCF. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”). A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. at 697.

Argument in Response to the Claims

At least some of the allegations of ineffective assistance of counsel presented in the attachment to the application likely require consideration of facts outside the existing record to adequately resolve. Therefore, Respondent requests an evidentiary hearing under *Sharper*. As it presently stands, though, the trial record appears to demonstrate competent assistance, in trial counsel's presentation of Applicant's defense and as a matter of law, counsel is presumed to have rendered “reasonable professional assistance.” *Strickland*, 466 U.S. at 689. Further, none of

the alleged errors complained of by Applicant appear sufficient at this point to undermine confidence in Applicant's conviction. *Id.* at 694. Thus, it is unlikely that Applicant will be able to carry his burden of proof. Respondent acknowledges Applicant's intent to reserve the right to amend, and, in response, specifically reserves the right to move for summary dismissal of any allegations not withdrawn or later made that may be adequately resolved by the record alone.

CONCLUSION

WHEREFORE, having made its Return, Respondent requests that this matter be conditionally scheduled for an evidentiary hearing pursuant to *Sharper*.

Respectfully submitted,

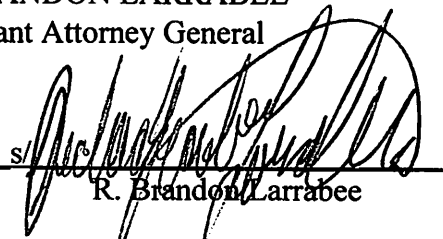
ALAN WILSON
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October 9, 2024

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2022-CP-39-00795
COUNTY OF PICKENS	)	
	)	
	)	
	)	
JOSEPH C. WILLIAMS, II,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

October 9, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE PATRICK CLEBURNE FANT, III, JUDGE

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

J. FALKNER WILKES, ESQ.
Attorney for the Applicant

BRANDON LARRABEE, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(RW) - Denotes Defense Witness

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EXHIBITS

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P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 3:54 PM.)

THE COURT: If you'll call the case, and then I want to go over just as far as venue and make sure that's on the record and then we will proceed.

MR. LARRABEE: The State calls 2022-CP-39-0795.

THE COURT: Okay. You are Joseph C. Williams?

DEFENDANT WILLIAMS: Yes, sir.

THE COURT: All right. Sir, the Thirteenth Circuit is made up of Greenville County and Pickens County. Your case was in Pickens County. You sit right now in Greenville County. Are you going to waive venue of your trial, this PCR trial, and allow it to take place in Greenville?

DEFENDANT WILLIAMS: Yes, sir.

THE COURT: Okay. Mr. Wilkes?

MR. WILKES: Thank you, Your Honor.

THE COURT: You're in agreement with that?

MR. WILKES: Yes, sir.

THE COURT: Does the State have any objection to proceeding with venue here in Greenville?

MR. LARRABEE: No, Your Honor.

THE COURT: Okay. Thank you.

MR. WILKES: Ready, Judge?

THE COURT: Yes, sir.

1 MR. WILKES: I call Wendy Williams.

2 THE CLERK: Ms. Williams, please place your left
3 hand on the Bible and raise your right hand.

4 WHEREUPON,

5 WENDY WILLIAMS

6 After having been duly sworn, testified as follows:

7 THE CLERK: Thank you. You may be seated. Please
8 state your full name for the record.

9 THE WITNESS: Wendy Fay Williams.

10 DIRECT EXAMINATION

11 BY MR. WILKES:

12 Q Ms. Williams, what's your relationship to
13 Mr. Williams?

14 A We were married.

15 Q And are you married now?

16 A Well, I haven't got a divorce yet. Separated for a
17 long time.

18 Q Okay. All right. And what's your relationship to
19 any other person involved in this case?

20 A MINOR 1 is my daughter.

21 Q And MINOR 1 being the person that brought the
22 charges.

23 A Correct.

24 Q Were you aware of the Facebook post that was read at
25 trial?

1 A I was, yes.

2 Q Tell me a little bit about that Facebook post.

3 A It's been a lot of years. I can't quote it word for
4 word. I just remember that it had said something about
5 everyone's about to pay or everyone's about to go down.
6 I don't remember it word for word.

7 MR. WILKES: May I approach, Your Honor?

8 THE COURT: Sure.

9 MR. WILKES: Can I mark this as Exhibit 1?

10 MR. LARRABEE: No objection, Your Honor.

11 THE COURT: No objection.

12 (WHEREUPON, Applicant's Exhibit Number 1 was marked for
13 identification.)

14 THE COURT: Just identify exactly what that is. Is
15 that from the transcript when it got into Facebook?
16 You've got to say "yes" or "no."

17 MR. WILKES: Your Honor, this is an excerpt from the
18 trial transcript where the Facebook post I'm talking
19 about was read in cross-examination of the prosecutrix.
20 And I'll have her publish it just so it will be in the
21 record.

22 BY MR. WILKES:

23 Q Would you read starting line 13 and continue where
24 it goes down to, I believe, here on the next page at
25 line 19, the part that's in italics.

1 A So you need me to start here (indicating)?

2 Q Yes, ma'am.

3 A Right there (indicating).

4 Q Yes, ma'am.

5 A And read to right there (indicating)?

6 Q Yes, ma'am. Where the italics end.

7 A (As read) "alexa is wandering around inside and
8 outside not bein watched walkin around with knives outta
9 the dishwasher because she ain't bein watched. The last
10 time I checked dss has done said if they get a wiff of
11 this shit again this shit would be done . and its like no
12 one down there cares and obviously you don't neither
13 because you allow them down there anyway **MINOR 2** is gonna
14 end up dead or in jail because of them and you aint doin
15 shit to stop it and I'm here to tell you that your being
16 there doesn't make a damn bit of difference and your
17 indenial if you think it does I get treated like shit for
18 givin a fuck about my brothers and my niece because they
19 dont deserve to be taken away from their family because
20 of everyone elses bullshit but no I'm always the bitch
21 startin shit and I'm put down and everyone else comes
22 before me and you let them . you're my mom and I feel
23 like you don't give a fuck about me so guess what i'm
24 gonna quit givin a fuck about everyone and everything and
25 worry about me because all yall are doing is distracting

1 me from what I need to be focused on . i'm tired of
2 worryin bout my niece all the time and whether she's
3 being watched or not I shouldn't have to . that's my
4 babygirl and I'm no longer gonna be there for her because
5 its hurting me way too much and I can't take it anymore
6 i'm coming to get my shit from your house and I'm not
7 comin back bye."

8 Q Who wrote that post, do you know?

9 A That actually wasn't a post. That was a message she
10 sent to me on Facebook messenger.

11 Q Okay. Facebook messenger?

12 A Yes.

13 Q I called it a Facebook post. Facebook messenger.

14 Did she send messages to you in anger often?

15 MR. LARRABEE: Objection, Your Honor. Relevance.

16 THE COURT: Response, Mr. Wilkes?

17 MR. WILKES: Your Honor, I believe it's relevant
18 because I'm going to go into what this is and why it's
19 important at the trial.

20 THE COURT: Okay. I'll allow it.

21 THE WITNESS: She would send messages, but sometimes
22 it would be phone calls.

23 BY MR. WILKES:

24 Q Okay. Tell me, leading up to the charges in this
25 case, what -- did she make threats?

1 A To me, yes.

2 Q Okay. Did this message come out prior to the case
3 -- or to the charges?

4 A She said that to me. I believe it was the night
5 before she made the accusations she sent that message.
6 She called me that night, and then she called me that day
7 at work before calling and making the accusations.

8 Q Okay. So this message preceded the allegations by a
9 day.

10 A Yes, sir.

11 Q Okay. And did you provide that on paper for the
12 defense attorney? Do you know if he had that in
13 writing?

14 A I honestly don't know. I know the message was sent
15 to me. I'm -- I'm really not sure where he pulled it
16 because, at one point in time when I tried to go back and
17 retrieve it, it was all gone.

18 Q Okay.

19 A But then -- then it came back.

20 Q But he had it to read it in court.

21 A Yes.

22 Q Okay. Now, tell me, at trial, I think you tried to
23 testify the reason that Mr. Williams didn't want to be
24 alone with the prosecutrix.

25 A Is that what you're asking?

1 Q Yes.

2 A From the time MINOR 1 was very young, there would be
3 numerous times that she would tell things and DSS would
4 come to the house against me that wasn't true. She had
5 also made allegations. At that point in time, it was
6 against one man who was a neighbor. So with that going
7 on, I was -- I didn't want anyone else to keep her so I
8 left her with my parents.

9 Q Okay. Were there other instances of allegations she
10 made that were of concern of you or Mr. Williams as far
11 as Mr. Williams being alone with her?

12 A Most of her allegations when DSS would investigate,
13 she would always say stuff about me, never him until this
14 incident.

15 Q Did she ever make allegations of a sexual nature
16 about other people that you believe were false or
17 Mr. Williams believed was false?

18 MR. LARRABEE: Objection, Your Honor that's hearsay.

19 THE COURT: I'm going to allow it. So overruled.

20 THE WITNESS: Yes. She had accused also her
21 paternal grandmother's boyfriend. That was maybe a
22 couple of years after she accused the neighbor. And then
23 it's hard to remember all the dates. I believe maybe
24 around 2009 she had made accusations of forceful rape
25 against a guy. And ---

1 BY MR. WILKES:

2 Q Do you remember the guy's name?

3 A Tyler Gilstrap.

4 MR. LARRABEE: Your Honor, this gets into the
5 evidence we had talked about wanting to discuss the
6 possibility of being included.

7 THE COURT: Okay. All right. I will hear your
8 objection on that.

9 MR. LARRABEE: Your Honor, we believe that the
10 accusations against Tyler Gilstrap and the truth or lack
11 thereof does not qualify for testimony. We believe it
12 violates the rape shield statute. We also believe that
13 if it had been admitted at trial, it would have confused
14 the issue, and we believe that much of the testimony
15 that's going to be about it is going to contain hearsay.

16 THE COURT: And is this getting into the Boiter?

17 MR. WILKES: Yes.

18 MR. LARRABEE: It is.

19 THE COURT: And I believe that I told you -- well,
20 now that I'm hearing it, I am -- I think the Court has
21 addressed this in the decision specifically about the
22 Boiter analysis. I'm going to sustain the State's
23 objection. I will allow you to proffer it, though.

24 MR. WILKES: Thank you, Your Honor.

25 THE COURT: So let me know when your proffer ends.

1 I will let you, if you need to, ask any questions on the
2 proffer, and then we'll move back.

3 MR. WILKES: Give me just a second. I'm going to
4 try to figure out how to segment it so we don't go back
5 and forth. I'll continue with her before I get into
6 proffered stuff, I think. And if he objects that it's
7 proffered material, then we can change over. But I'm
8 going to try to keep it ---

9 THE COURT: Want to protect the record.

10 BY MR. WILKES:

11 Q Ms. Williams, would Mr. Williams often be alone with
12 the prosecutrix, with MINOR 1?

13 A No, no.

14 Q Isn't that unusual? Why not?

15 A He -- because of all the things that she had said
16 even prior to he and I ever being together where I had
17 dealt with DSS numerous times over things against me that
18 weren't true and then you add in the accusations with the
19 neighbor, you know, I can't tell you that was true or not
20 true. But I do feel like, with the paternal
21 grandmother's boyfriend, that that was out of anger and
22 especially knowing how she had done this to me since she
23 was very young, especially if she would talk to her
24 father on the phone, like the next day, you know, DSS was
25 at my door. And it was, you know, that she had been beat

1 or whatever. I dealt with that basically from the time
2 she was around 5, 6 years old all the way up into her
3 teens of it reoccurring.

4 So with him not being the father -- and he did have
5 a drinking problem as well. So no. I just didn't want
6 to leave him in charge of her. So when I worked, she was
7 with my parents.

8 Q Okay. Very good.

9 Now, was Mr. Williams's attorney aware of this?

10 A Yes.

11 MR. WILKES: Okay. Now -- okay. This will cross
12 over into proffer, Your Honor.

13 THE COURT: Okay. And just to be clear so we're not
14 jumping all around, just state your objection on the
15 record.

16 MR. LARRABEE: We have a continuing objection that
17 this information violates the rape shield statute and
18 confuses the issue.

19 THE COURT: Okay. I'll allow you to proffer.

20 MR. WILKES: Thank you, Your Honor.

21 BY MR. WILKES:

22 Q Ms. Williams, were you aware of the allegations your
23 daughter made against Tyler Gilstrap?

24 A Yes.

25 Q And did she make allegations that they were forcible

1 rape?

2 A Yes.

3 Q And at the end of that case, did Mr. Gilstrap get
4 convicted of forcible rape or statutory rape?

5 A Statutory rape.

6 Q Okay. Was Mr. Williams aware of the Gilstrap
7 incident ---

8 A Yes.

9 Q --- and allegations?

10 A Yes.

11 MR. WILKES: Okay. Nothing further of Ms. Williams.

12 THE COURT: Would you like to ask any questions
13 concerning proffer?

14 MR. LARRABEE: Yeah. Cross-examination. I guess I
15 should do part of -- the part before the proffer or after
16 the proffer.

17 THE COURT: Yeah. So are you finished with your
18 questions, period, or with the proffer?

19 MR. WILKES: I'm through with Ms. Williams, proffer
20 and all.

21 THE COURT: Okay. All right.

22 CROSS EXAMINATION

23 BY MR. LARRABEE:

24 Q Good afternoon, Ms. Williams. How are you?

25 A I'm good. How are you?

1 Q Good.

2 Do you remember the trial in this matter?

3 A Do I remember the trial?

4 Q Yes.

5 A Yes.

6 Q Do you remember the Facebook posts or message that
7 you read to us being read at the trial?

8 A I don't remember that one being read. I remember
9 the actual Facebook post being read, that one. And I'm
10 not saying that it wasn't read, but I don't -- I don't
11 remember.

12 Q You don't recall it being read twice?

13 A (No verbal answer.)

14 Q Was there anything in the message she sent to you
15 that said I'm going to explicitly falsify a report of
16 rape against my stepfather?

17 A In that message, no.

18 Q Okay. What you've testified here today with the
19 exception of the proffered matter that we'll talk about
20 in a moment, have you testified to anything different
21 than what you testified at the trial?

22 A No.

23 Q And, in fact, you discussed some of the previous
24 allegations at the trial, didn't you?

25 A You mean with ---

1 Q Some of MINOR 1's previous allegations.

2 A Yes.

3 Q You testified to those.

4 A Yes.

5 MR. LARRABEE: And, Your Honor, I would go into the
6 proffered matter at this point.

7 THE COURT: Okay. Thank you for making that clear
8 on the record.

9 BY MR. LARRABEE:

10 Q As far as the Gilstrap allegation ---

11 A Yes.

12 Q --- you took MINOR 1 to the police, didn't you?

13 A I did.

14 Q She didn't initially want to go to the police, did
15 she?

16 A She came to my job where I was working and told me.
17 And, yes, she did want to go. And I originally took her
18 to Pickens County, but then they found out the occurrence
19 was in the city so they moved it to the City of Pickens.

20 Q But you took her to the police station.

21 A When she come to my job and told me that he had
22 raped her, yes, I took her to the police department.

23 Q And you, at some point, had told Mr. Gilstrap that
24 your daughter was 13 years old.

25 A Was underage, yes.

1 MR. LARRABEE: With that, I have nothing further,
2 Your Honor.

3 THE COURT: Okay. Do you have any further
4 questions, Mr. Wilkes? Any redirect?

5 MR. WILKES: None, Your Honor.

6 THE COURT: Okay. May this witness be excused?

7 MR. WILKES: Yes, Your Honor.

8 MR. LARRABEE: Yes, Your Honor.

9 THE COURT: You may step down. Thank you.
10 Next witness?

11 MR. WILKES: Thank you, Your Honor. Let's see. I
12 call Angelina Barton.

13 MR. LARRABEE: And, Your Honor, just to clarify for
14 the record, I believe this will all be under proffer.

15 MR. WILKES: All proffer.

16 THE COURT: All proffer? Okay.

17 And as far as her testimony, again, just state your
18 objection on the record.

19 MR. LARRABEE: Again, it's getting into matters that
20 violate the rape shield statute and it is confusing the
21 issue.

22 THE COURT: And I will sustain your objection. I'm
23 going to allow a proffer.

24 THE CLERK: Ms. Barton, please place your left hand
25 on the Bible and raise your right hand.

1 WHEREUPON,

2 ANGELINA BARTON

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you. You may be seated. Please
5 state your full name for the record.

6 THE WITNESS: My name's Angelina Marie Barton.

7 DIRECT EXAMINATION

8 BY MR. WILKES:

9 Q Ms. Barton, you remember an incident involving, I
10 believe, Tyler Gilstrap?

11 A Yes, sir.

12 Q Where he was charged for rape of MINOR 1; is
13 that correct?

14 A Yes, sir.

15 Q Were you there that night?

16 A Yes, sir.

17 Q Did you give a statement to the police?

18 A Yes, sir.

19 Q And is this the statement that you gave to the
20 police?

21 A Yes, sir.

22 Q You recognize that?

23 A That is my chicken scratch. Yes, sir.

24 MR. WILKES: Can we mark this as our exhibit under
25 proffer?

1 (WHEREUPON, Applicant's Exhibit Number 2 was marked for
2 identification.)

3 BY MR. WILKES:

4 Q Ms. Barton, do you still remember the events?

5 A Yes, sir. Most of them are pretty clear. It's
6 actually interesting how it stays. Once you hear about
7 it, it comes all flooding back.

8 Q And I'm going to just ask an overall summary of it.
9 You were there and in the same house and interacting with
10 Mr. Gilstrap and Ms. MINOR 1, correct?

11 A Yes, sir.

12 Q Do you believe that you heard, saw enough to form an
13 opinion on whether or not she was actually forcibly
14 raped?

15 A No. I wasn't in the room as they were doing it, but
16 I did hear them getting busy in the room.

17 Q From what -- without going through all the details
18 because I marked your statement, is your statement
19 accurate?

20 A Yes, sir.

21 Q Okay. Without going into all the details, do you
22 believe, from what you heard and saw throughout the
23 night, that MINOR 1 was forcibly raped?

24 A No, sir.

25 Q And you put the facts you saw in.

1 A Yes. So in my mind, it was an intentional. She had
2 planned it all together, like we had discussed, you know,
3 what her ideas and situation was about what was going to
4 happen. And then they went to their room, and they
5 stayed together all night until the morning.

6 Q Okay. So you were with her beforehand.

7 A Yes, sir. She was staying at my house, and we told
8 her mom that we were going -- we told my dad we were
9 going to her house and her mom thought we were still at
10 my house. And we snuck out, and we were together for
11 almost all week that week.

12 Q Okay. And this happened roughly December of '09.

13 A Yes.

14 MR. WILKES: Very good. No further questions.

15 THE COURT: Questions from the State?

16 MR. LARRABEE: Yes, Your Honor.

17 CROSS EXAMINATION

18 BY MR. LARRABEE:

19 Q Just a couple, Ms. Barton. This was 15 years ago,
20 correct?

21 A Yes, sir.

22 Q How old were you at the time?

23 A 14.

24 Q Okay. And how old was MINOR 1 at the time?

25 A We were about the same age. We were in school

1 together. We were classmates.

2 Q Okay. Do you happen to remember how old Tyler
3 Gilstrap was at that time?

4 A I knew there was a little confusion to where at
5 first he said he was 18, but at the same time a few days
6 later we found out he was really 21, around that age at
7 the time.

8 Q Okay. And it's true as you said earlier, right,
9 that you were never in the room?

10 A I was not in the room when they were doing
11 intercourse, but everything leading up to it, yes.

12 Q So you don't really know what was going on in her
13 head.

14 A I don't know what was going on in the room or in the
15 head, but after they were done, she bragged about it.
16 She told me about all of the details, I mean, when she
17 went home with me that whole day. And I didn't even know
18 it was rape until she went to her mom, and her mom had
19 came and I had to write a statement.

20 Q You can answer my questions yes or no.

21 A Sorry.

22 Q No. It's not -- just...

23 Finally, you were very close with Mr. Gilstrap,
24 weren't you?

25 A Not really. I was more close to MINOR 1.

1 Q Didn't you tell the police that he was like your
2 brother?

3 A When we hung out, every time we would hang out, he
4 was like a brother to everybody. Everyone, all of our
5 group -- should I say "yes" or "no"?

6 Q Yes. And then explain.

7 A Okay. Not really. He was a friend, like a brother.
8 He was a brother to everybody. He was a good friend to
9 everybody. But I -- I wouldn't really look at him like I
10 don't -- I don't -- I'm confused. I'm sorry.

11 MR. LARRABEE: That's okay.

12 Nothing further, Your Honor.

13 THE COURT: Anything else, Mr. Wilkes?

14 MR. WILKES: No, your Honor.

15 THE COURT: Okay. Mrs. Barton, you can step down.
16 Can she be released?

17 MR. WILKES: Yes, Your Honor.

18 MR. LARRABEE: No objection from the State.

19 THE COURT: Next witness?

20 MR. WILKES: If I can have just one second.

21 THE COURT: Okay.

22 MR. WILKES: Thank you.

23 THE COURT: No rush.

24 MR. WILKES: Your Honor, we call Corey Bruce.

25 THE CLERK: Mr. Bruce, please place your left hand

1 on the Bible and raise your right hand.

2 WHEREUPON,

3 COREY BRUCE

4 After having been duly sworn, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 MR. LARRABEE: Your Honor, this testimony will also
7 be under proffer.

8 MR. WILKES: That's correct.

9 THE COURT: Same objection?

10 MR. LARRABEE: Yes.

11 THE CLERK: Please state your full name for the
12 record.

13 THE WITNESS: Corey Nathaniel Bruce.

14 DIRECT EXAMINATION

15 BY MR. WILKES:

16 Q Mr. Bruce, do you recall an incident with Mr. Tyler
17 Gilstrap back in December of '09?

18 A Yes, sir.

19 Q Did you give a written statement to the police
20 involving the events of that evening?

21 A Yes, sir.

22 Q And would this be that statement?

23 A Yes, sir.

24 (WHEREUPON, Applicant's Exhibit Number 3 was marked for
25 identification.)

1 BY MR. WILKES:

2 Q Mr. Bruce, was your statement accurate?

3 A As far as I remember, it is. Yes, sir.

4 Q Okay. It's been a long time, but you would have
5 told the truth in your statement back then?

6 A Oh, absolutely.

7 Q Okay. So without going through all of the details
8 of the statement on the record, in short, you were there
9 that evening that Mr. Gilstrap was accused of raping
10 MINOR 1 .

11 A Yes, sir.

12 Q And were you there before then or just that evening?
13 Or how did that -- do you remember?

14 A It was at my house.

15 Q Oh, okay. So you were there.

16 So were you in close proximity with Tyler Gilstrap,
17 MINOR 1 while the evening was going on?

18 A Periodically. A lot of times they were in their own
19 room.

20 Q Okay. In short, from your observations that night,
21 before and after, do you believe that Tyler Gilstrap
22 forcibly raped MINOR 1 ?

23 A I believe that he took advantage of her.

24 Q But do you believe he forcibly raped her?

25 A I don't know if I can really ---

1 Q This was set up for a while, wasn't it? It was
2 planned that y'all would all get together? Or did you
3 know it was planned?

4 A If I remember correctly, me and him were hanging out
5 that day and had decided that day to go hang out with the
6 girls.

7 Q Okay. And when did -- how long were they there?
8 What happened afterwards? How did the evening or the day
9 break up?

10 A Well, they were there all night. And by the next
11 morning, maybe afternoon-ish, they left. It was
12 definitely all night.

13 Q Okay. And they left morning? noon?

14 A I don't remember. It might have -- it was probably
15 morning. I don't remember, honestly.

16 MR. WILKES: Okay. Very good.

17 No further questions.

18 THE COURT: Anything from the State?

19 MR. LARRABEE: A couple things, Your Honor.

20 CROSS EXAMINATION

21 BY MR. LARRABEE:

22 Q Good afternoon, Mr. Bruce.

23 A Good afternoon.

24 Q A few questions for you.

25 You were never in the room with MINOR 1 and Tyler

1 when whatever was happening between them was happening
2 between them; is that correct?

3 A Correct.

4 Q Okay. And you have also said before, have you not,
5 that you heard MINOR 1 say "no"?

6 A Yes, I did.

7 Q Okay. And you said later that Tyler kind of brushed
8 that off, right?

9 A Yes.

10 Q Were you close to Tyler?

11 A No.

12 Q Well, he was coming over to your house. You were
13 playing Guitar Hero together. You weren't close to him
14 at all?

15 A That was the first time we hung out. I knew him
16 through another mutual friend, and we just happened to
17 hang out that day. And that's the only time we hung out.

18 MR. LARRABEE: Okay. Nothing further, Your Honor.

19 THE COURT: Anything else, Mr. Wilkes?

20 MR. WILKES: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. WILKES:

23 Q Did you also say in your statement that they were
24 laughing in between all of this?

25 A Yeah. There was -- yes. There was laughing.

1 Through the door, you could hear laughing and it was kind
2 of like she was saying "no" like through laughter maybe
3 to ease the situation, maybe. As I'm older, it seems a
4 little bit different.

5 Q Okay. But you heard laughing.

6 A I heard laughing, yes.

7 MR. WILKES: Very good.

8 No further questions, Your Honor.

9 THE COURT: Anything else from the State?

10 MR. LARRABEE: No. No, Your Honor. Nothing
11 further.

12 THE COURT: Okay. Can this witness be released?

13 MR. WILKES: Yes.

14 MR. LARRABEE: Yes, sir.

15 THE COURT: You can step down, sir.

16 Mr. Wilkes?

17 MR. WILKES: Yes, Your Honor. If I could have one
18 second to step outside. I have to comply with some
19 procedural duties. Well, I'll do that later.

20 THE COURT: Did you need a break, Mr. Wilkes?

21 MR. WILKES: No, sir. We need to keep going if
22 we're going to get done. So I'll continue. I can deal
23 with that ---

24 THE COURT: Well, I mean, if you need to do
25 something...

1 MR. WILKES: I can deal with that later.

2 THE COURT: Okay.

3 MR. WILKES: We would call Chris Williams, Your
4 Honor.

5 THE CLERK: Mr. Williams, please place your left
6 hand on the Bible and raise your right hand.

7 WHEREUPON,

8 CHRIS WILLIAMS

9 After having been duly sworn, testified as follows:

10 THE CLERK: Thank you. You may be seated. Please
11 state your full name for the record.

12 THE WITNESS: Christopher Alan Williams.

13 MR. WILKES: To avoid confusion between proffer and
14 unproffer, I'll be asking him questions as I did one of
15 the previous witnesses about his knowledge of false
16 allegations, the material that was excluded at trial. So
17 I'm asking him about why -- the testimony he would have
18 given ---

19 THE COURT: If it had not been excluded.

20 MR. WILKES: --- if it had not been excluded as to
21 why Mr. Williams testified that he wouldn't be alone with
22 the prosecutrix.

23 MR. LARRABEE: Your Honor, we would continue to
24 object under -- we would object to this witness as well
25 under the rape shield statute. We would also -- we also

1 believe that the defendant was able to explain himself at
2 trial. So I'm not sure what the relevance is.

3 THE COURT: Well, I think he was limited in his
4 ability to explain himself.

5 MR. LARRABEE: Well, I just want to preserve our
6 objection under the rape shield statute.

7 THE COURT: Okay. Just please identify that so we
8 have a clean record.

9 MR. WILKES: Thank you, Your Honor. And I believe
10 I'm in legitimate grounds outside of proffer, I believe.

11 DIRECT EXAMINATION

12 BY MR. WILKES:

13 Q Mr. Williams, tell me your relationship to Joseph
14 Williams.

15 A He's my brother.

16 Q And going back to when MINOR 1 lived with him,
17 would you see Mr. Williams be alone with MINOR 1?

18 A No.

19 Q Now, that is unusual, right, would you agree for a
20 stepfather never to want to be alone with a stepchild?

21 A I suppose, yeah.

22 Q Why would he not want to be alone with MINOR 1
23 ?

24 A Well, MINOR 1 did make allegations against the
25 neighbor ---

1 MR. LARRABEE: Objection, Your Honor. This is
2 getting into the testimony that we object to under the
3 rape shield statute.

4 THE COURT: Well, it was my understanding this was
5 proffer right now.

6 MR. LARRABEE: He had said he was under the
7 impression it was not proffer.

8 MR. WILKES: I understood -- I could see the
9 Gilstrap matter being the proffer. Well, I can proffer
10 it and then move to admit it after you hear. Let's do
11 that.

12 THE COURT: That's fine. We'll do that. That'll be
13 cleaner.

14 BY MR. WILKES:

15 Q I'm sorry. If you will start over again. Why did
16 -- are you aware that Mr. Williams never wanted to be
17 alone with MINOR 1?

18 A Yes.

19 Q Why?

20 A MINOR 1 had made allegations against the neighbor
21 that lived behind them previous to this. And my brother
22 and I, we talked about it. And I -- you know, we -- I
23 came and just talked with him that he should never be
24 alone with her due to those previous allegations.

25 Q Was it enough allegations that it was a serious

1 concern?

2 A Yes. I guess any allegation would be enough to be a
3 serious concern.

4 Q But enough history for him to be concerned that
5 there might be a false allegation against her or against
6 him.

7 A Yes.

8 MR. WILKES: Okay. No further questions.

9 THE COURT: All right. Cross?

10 CROSS EXAMINATION

11 BY MR. LARRABEE:

12 Q Mr. Williams, you said that this was a neighbor who
13 lived behind MINOR 1's family previously? That was the
14 allegation that was lodged?

15 A Yes, sir.

16 Q It wasn't a family member?

17 A No family.

18 Q It wasn't a parental figure, to your knowledge?

19 A No, sir.

20 MR. LARRABEE: Okay. Thank you. Nothing further.

21 THE COURT: Mr. Wilkes, anything else?

22 MR. WILKES: No, sir, Your Honor.

23 THE COURT: You can step down.

24 THE WITNESS: Thank you, sir.

25 MR. WILKES: If you'll give me just a second. I

1 lost the certified copies of the Gilstrap case.

2 (Pause in proceedings.)

3 MR. WILKES: Your Honor, we would mark this as an
4 exhibit. And this would be under our proffer, scope of
5 proffer, certified copies of Mr. Gilstrap's indictment
6 and sentencing sheet showing that he was charged with a
7 forcible rape and was, I think, convicted of a statutory
8 rape.

9 MR. LARRABEE: No objection.

10 THE COURT: No objection?

11 MR. LARRABEE: Oh, excuse me. Sorry. Subject to --
12 subject to our objection about the incident in general.
13 Other than that, no objection.

14 THE COURT: Okay.

15 (WHEREUPON, Applicant's Exhibit Number 4 was marked for
16 identification.)

17 MR. WILKES: If I could have just a second.

18 (Pause in proceedings.)

19 MR. WILKES: Your Honor, we move to mark as our
20 Number 5 under the proffer additional Gilstrap records.

21 MR. LARRABEE: And, again, Your Honor these are
22 subject to that same objection from the State.

23 (WHEREUPON, Applicant's Exhibit Number 5 was marked for
24 identification.)

25 THE COURT: And your objection is sustained as it

1 was earlier.

2 MR. LARRABEE: But they're offering it as a proffer.
3 We understand.

4 (Pause in proceedings.)

5 MR. WILKES: Your Honor, there is one more thing
6 that I want to introduce and I had actually made a
7 photocopy of it. And it is floating around in my file
8 somewhere. So I'm going to do it this way. Outside of
9 the proffer, Your Honor, we offer -- never mind. We
10 offer as our exhibit, whichever the next number is ---

11 THE COURT: Number 6.

12 MR. WILKES: --- Number 6 will be the court exhibits
13 from the trial which are part of the jury questions.

14 MR. LARRABEE: Your Honor, it's already in the
15 record, so no objections.

16 THE COURT: And they have put it in the record.

17 (WHEREUPON, Applicant's Exhibit Number 6 was marked for
18 identification.)

19 THE COURT: And, Counsel, for my clarification, I
20 would like to know how -- in the appellate decision,
21 there were certain -- I guess certain testimony that was
22 excluded by Judge Gravely. And it's my understanding
23 that a lot of that was found to be properly excluded, is
24 that correct, by the appellate court, by the Supreme
25 Court?

1 MR. WILKES: It is difficult to say when a decision
2 -- I think this decision came down on -- didn't we have a
3 failure to preserve, I think, ruling?

4 THE COURT: Well, there was some of that, but then
5 there was other parts where -- and I think getting into
6 the mental state under 803, and I believe that they said
7 the statement does not -- this was referencing the
8 victim's state of mind, that the statement does not meet
9 the mental state exception.

10 MR. WILKES: Right, right. But that was ground for
11 admissibility. But I don't think that precludes us from
12 offering it as -- for the purposes of why he would not be
13 alone with the prosecutrix. And I think they left the
14 actual issue open. I think there is fault with the
15 restraints that he had on him as far as explaining it.
16 And that's where -- I think that was the second where the
17 Court actually said how unfortunate it is that the
18 solicitor then turned around and argued that he didn't
19 produce any evidence of why he would never be alone with
20 the prosecutrix.

21 THE COURT: Yeah. And that is in the footnote.

22 MR. WILKES: And so that's really where I'm going
23 with this. They pointed that out. And I think we have
24 the burden at this stage to actually produce the evidence
25 that was excluded.

1 THE COURT: Let me simplify this. All right. Any
2 of the proffered evidence that you put up, was any of
3 that found by the Court to have been properly excluded?

4 MR. WILKES: No.

5 THE COURT: Okay.

6 MR. WILKES: I don't think so. I mean, there was
7 blanket -- and -- okay. So the transcript says --
8 defense counsel said, "I'm not doing that." I mean, it's
9 clear in the transcript. Defense counsel said, "I'm not
10 asking about that stuff." So he intentionally didn't ask
11 about it. There was some stuff that was kept out, but, I
12 mean, the record shows that he wasn't asking about a lot
13 of this. And so ---

14 THE COURT: Well, I mean, the solicitor had stuff.

15 MR. WILKES: I know. There's stuff that came in.
16 It's a mixed bag. But I think from the opinion of the
17 Supreme Court in the footnotes that they put in there
18 that they certainly appeared critical of the exclusion of
19 some evidence and then the solicitors then using the
20 absence of the evidence and arguments. So I think for
21 us, we have to attempt to put in that evidence that was
22 excluded that wasn't properly excluded. Because whether
23 or not there's a holding that you can take away from
24 cases where there's failure to preserve rulings, you
25 can't really take a holding from a case when they rule

1 that the issue is not preserved. Because anything that
2 they do say arguably is dicta. The Supreme Court's often
3 said that anything said in that circumstance isn't
4 necessarily holding.

5 MR. LARRABEE: But, Your Honor, just to clarify, the
6 Court of Appeals did, in fact, do a Boiter analysis on
7 this evidence. And, in fact, they said as to the
8 exclusion of the evidence, we find that the trial court
9 did not err in excluding evidence of the veracity of the
10 victim's prior allegations of sexual misconduct by men
11 other than Williams. And then it went through a brief
12 Boiter analysis.

13 Now, that is an unpublished opinion.

14 THE COURT: And that's where I was reading from
15 earlier, and I apologize. I may have said the Supreme
16 Court. I do know that the Supreme Court is where the
17 footnote was made specifically regarding the exclusion
18 and then arguing that there was lack of it. And the
19 Supreme Court was concerned about that.

20 Okay. I just wanted to see if there was any
21 clarification on that.

22 Mr. Wilkes?

23 MR. WILKES: For my case, I think I'm done with my
24 witnesses. But I think I would move again, preserve the
25 record for my proffered material to be accepted as

1 evidence. And that being said, then I'll rest.

2 THE COURT: I assume you would object?

3 MR. LARRABEE: Yes, Your Honor. We believe that
4 this is evidence that violates the rape shield statute.
5 We also believe that it is not evidence that is accepted
6 under Boiter. In fact, the Boiter court itself said
7 that, first of all, you have to prove to -- the trial
8 judge should first determine whether such accusations was
9 false. And I don't believe that the evidence was
10 sufficient here to prove that. It also says that,
11 finally, the trial court shall consider the factual
12 similarity between prior and present allegations to
13 determine relevancy.

14 In this case, we have two allegations made against
15 someone who is not a relative of the victim, who is not a
16 father figure of the victim.

17 And as far as the Gilstrap evidence goes, that goes
18 to somebody who was almost a peer who was 20 and she was
19 13. And, in fact, that is rape under the statutes of the
20 state. As the convictions show, he was convicted of
21 rape. It may have been statutory rape instead of
22 forcible rape, but it was still rape.

23 And so for those reasons, we believe that all of
24 this evidence should be excluded under the rape shield
25 statute.

1 THE COURT: Thank you. I sustain your objection.

2 MR. WILKES: Your Honor, and just for the record,
3 I'll point out the allegations in this case weren't --
4 they're delayed allegations. So the date of the
5 allegations against Mr. Williams, that they were supposed
6 to have occurred are, if I'm not mistaken looking at
7 those copies of the indictments and all, I believe it was
8 within a week or two of the allegations she made in
9 Gilstrap, if I'm not mistaken. So in other words, years
10 later, she says, oh, during this time, I was raped. She
11 apparently was all -- made the same claim in Gilstrap.
12 Supposedly, those two time frames are very close together
13 for whatever that's worth. They're very close together.

14 MR. LARRABEE: Your Honor, that still leaves the
15 other two factors which we would, again, argue are not
16 satisfied.

17 THE COURT: Thank you. All right. So you rest?

18 MR. WILKES: I do, Your Honor.

19 THE COURT: All right.

20 MR. LARRABEE: Your Honor, the State calls Scott
21 Dover to the stand.

22 WHEREUPON,

23 SCOTT DOVER

24 After having been duly sworn, testified as follows:

25 THE CLERK: Please state your full name.

1 THE WITNESS: Robert Scott Dover.

2 DIRECT EXAMINATION

3 BY MR. LARRABEE:

4 Q Mr. Dover, what do you do for a living?

5 A Among other things, I'm an attorney.

6 Q How much experience do you have in that?

7 A I was admitted to practice in November of 1987. So,
8 what, 37 years.

9 Q And your practice areas generally are?

10 A General trial lawyer. I try lots of criminal
11 defense cases, personal injury cases, Family Court,
12 workers comp, that type of thing.

13 Q Did you have an opportunity to be involved in the
14 case that we're talking about today?

15 A Absolutely.

16 Q How was that involvement? What was that
17 involvement?

18 A Jodi's family hired me.

19 Q Okay. And did you bring your records with you
20 today?

21 A I did not.

22 And I was thinking as I saw Wendy testify, we had a
23 storage facility several years ago that got flooded and I
24 lost a lot of files at that time. But I believe -- I
25 can't say, but hearing Wendy testify, after the trial, I

1 knew I met with the family. I can't remember if I filed
2 the direct appeal or not, but I gave them all the
3 evidence. I gave them my paper file at that time.

4 Q Okay. Just give us some insight, I guess, into your
5 strategic considerations as you came into this case.
6 What was your strategy for attacking the prosecution's
7 case?

8 A Her credibility. I never intended to call Jodi as a
9 witness. I didn't want to put up a defense. I was going
10 to attack the credibility of the victim, the alleged
11 victim. And that's what I set out to do.

12 Q Okay. And you did try to make some ground with ---

13 A I read the transcript. I think I did a fairly good
14 job of that.

15 Q What did you find out about any other allegations
16 that MINOR 1 may have -- just generally, were you aware of
17 other allegations?

18 A I absolutely was aware of that. That was my
19 strategy. That's what we were going for in the case.

20 In reading the transcript and looking over it, did I
21 overkill that case? Did I overkill that or not? Maybe.
22 I mean, I called the young girl -- I mean, she was 21 at
23 the time of testifying. In my closing arguments, I
24 called her a veteran of reporting sexual abuse. I hope
25 the jury didn't take, you know, her -- Jodi because of

1 that. I don't think they did. But, I mean, I attacked
2 her as hard as I could. We went after her. She had
3 repeatedly charged -- or stated all sorts of people had
4 sexually assaulted her.

5 Q Okay. And where did your evidence from those other
6 allegations come out?

7 A From Jodi and his wife, the mother of the child.

8 Q Okay. Now, the rape shield statute played a role in
9 this.

10 A Yeah. It was listed in some of those questions in
11 the proffer. And I want to put on the record, I would
12 have never -- this transcript says this -- I would have
13 never asked that young lady those questions because
14 that's all totally improper. It violates the rape shield
15 statute. I was trying to get into her false allegations
16 to attack her credibility, but no court would allow me to
17 get into that right there they just got into.

18 Q But you had an understanding of the rape shield
19 statute and the exceptions to it when you began this
20 trial?

21 A Yes, I did. I would have never -- I think
22 Mr. Wilkes said in the transcript, one place it said that
23 I was -- never intended to ask the young lady those
24 questions because I clearly think those violate the law,
25 those questions would have.

1 Q And some of the evidence of the allegations was
2 referred to sort of in a sideways manner by some of the
3 witnesses.

4 A In looking over the transcript, we got into a lot
5 that the judge said I couldn't get into. We had sidebar
6 conferences, we had -- I knew very well what the roadmap
7 was from Judge Gravely and what I could get into and what
8 I could not get into. But the State's witnesses opened
9 the door for a few things and allowed me greater
10 latitude, and I got to go into some of those things.

11 Q Okay. As far as this Facebook post that has been
12 spoken about, was that presented to the jury?

13 A Absolutely.

14 And I want Mr. Williams to know when I talk about
15 that, I would not have asked those questions that are
16 improper. I did everything in my power to represent him
17 to the best of my ability. I make mistakes every day,
18 and I made mistakes in his case, minor mistakes. But I
19 did everything I could possibly do only to say that about
20 my prior testimony.

21 The Facebook post, I had that. We had that Facebook
22 post. I knew that I didn't want to offer it into
23 evidence because I wasn't going to put up any defense and
24 I wasn't going to lose that last argument to the jury.
25 So the way I was going to get that in was I was going to

1 cross-examine the victim, the alleged victim of that and
2 see if she admitted to making those statements and then
3 have her publish that to the jury. And that's exactly
4 what I got to do. I did not offer those into evidence on
5 purpose.

6 Q And what happened during jury questions regarding
7 that Facebook ---

8 A They asked the question to read the Facebook post.
9 And when the judge told them that those had not been
10 offered into evidence, our smart Pickens County jury
11 decided they wanted to hear all the testimony again. So
12 it was all read again. And they got to hear the Facebook
13 post a second time.

14 Q Okay. Do you believe that your representation of
15 Mr. Williams in this case was effective?

16 A Was effective?

17 Q Yes.

18 A I believe this young lady did a tremendously good
19 job of testifying. Ms. Odom tried the best case I've
20 ever seen her try. And I had those two things working
21 against me.

22 But we were as effective as I possibly could be. I
23 represented him as hard and as viciously as I could, and
24 I attacked the witnesses. And I read that transcript
25 again. Looking back at it, the only thing I would have

1 done differently was I would have asked Judge Gravely
2 when they asked to see those Facebook -- or to see the
3 evidence on the Facebook post. And he told them it was
4 not in evidence, I wish I had asked him to state to the
5 jury -- I don't think he would have, but I wish I would
6 have put on the record that he should have told the jury
7 that although the actual post was not in evidence, the
8 testimony was in evidence.

9 Q And he did not -- now, just to be clear, he did not
10 tell the jury -- or did he ever tell the jury in any way
11 to disregard the Facebook post?

12 A He did not. And that was something -- the Allen
13 charge. I mean, this jury hung up on a -- I mean, if you
14 believe this victim and the way she testified, it should
15 have been a slam dunk for the State. I think I was
16 effective. I convinced somebody. But then the Allen
17 charge defeated Mr. Williams and I.

18 MR. LARRABEE: Thank you.

19 Nothing further, Your Honor.

20 THE COURT: Anything in cross?

21 MR. WILKES: A few questions, Your Honor.

22 CROSS EXAMINATION

23 BY MR. WILKES:

24 Q Mr. Dover, you said it was a close call?

25 A I don't know the count, but it was -- the jury could

1 not make a decision. They sent two notes to the trial
2 court saying that what happens if they can't reach a
3 decision. And he Allen-charged them before the decision
4 was made.

5 Q Would you say ---

6 A As a trial lawyer, that's a moral victory. I hate
7 it for Mr. Williams. But as a trial lawyer, I mean,
8 that's our job is to create doubt between those two
9 people, and I felt like we did.

10 Q So the defense included a theory that this was made
11 up, correct?

12 A Absolutely.

13 Q And part of the defense being -- or I guess the main
14 part of the defense being that she made it up because she
15 got really mad at mom or them or somebody?

16 A And I couldn't get into the motive of that. But I
17 was -- if you're asking my thoughts, I thought there
18 might have been some jealousy between the younger sister
19 and the victim over Mr. Williams. I tried to explore
20 that. I never could come up with a clear motive of why
21 she was doing that, but it had to do something with her
22 dislike for her mother or in trying to punish her mother
23 through Mr. Williams or some jealousy of her sister or
24 niece and Mr. Williams.

25 Q And would you agree that the Facebook post, the

1 questions about that were an essential part of the
2 defense?

3 A I don't think it was an essential part of the
4 defense. It was part of the defense. It was going to,
5 you know, her motive of why she would be making those
6 statements about Mr. Williams. But then there's also all
7 those other allegations about the other people that had
8 apparently abused her.

9 And I thought one of the strongest things of our
10 case was that this young lady was in counseling all of
11 her life, and she was able to -- and their hired gun,
12 their expert, the lady at the Julie Valentine Center
13 whose name escapes me at the moment, they called her in.
14 And one of their strongest parts, you know, is about this
15 delay in reporting and all that. And this young lady was
16 in counseling. She was able to talk to her counselors
17 about other people that was abusing her at the same time
18 and she couldn't talk about her stepfather abusing her?
19 I found that incredible.

20 Q Shauna Galloway.

21 A Shauna Galloway-Williams, yes.

22 Q So the Facebook post would show motive ---

23 A Yes. One of them, yes.

24 Q --- to make up an allegation.

25 And you said you didn't introduce the Facebook post

1 that you had at the time as an exhibit.

2 A I did not.

3 Q Now, if you looked at the closeness of the case and
4 the jury questions being hung up, I think you said in
5 hindsight ---

6 A I shouldn't have put up a defense. I shouldn't have
7 called any witnesses. I should have rested and I might
8 have won this case. That was the mistake that we made
9 collectively, Mr. Williams and I, after duly consulting
10 with him about it. I shouldn't have put up any evidence.

11 Q So the Facebook post, you said you intentionally did
12 not admit that because that would have been a case.

13 A That would have made me go second in the closing
14 arguments.

15 Q And -- now, it does appear that the jury found the
16 contents of that post important.

17 A It does.

18 Q And they wanted to see the post.

19 A They did. They asked to see it.

20 Q There was a response to the question which was at
21 the Trial Court's Exhibit 2 at the trial. The first
22 question the jury asked was can we read the Facebook
23 post.

24 A They did.

25 Q And the response was, although referenced, the

1 Facebook post was not admitted as evidence.

2 A That was the response.

3 Q Do you see that as troubling?

4 A In hindsight, I should have asked -- maybe I should
5 have asked Judge Gravely to elaborate more on that. I'm
6 not sure that he would have. But that's something I can
7 tell you that in looking at it as a Monday morning
8 quarterback, I make mistakes in every trial and I
9 probably should have said something about that. But I
10 think it was cured when the jury asked the next question.
11 They wanted to hear the testimony again. And they did.
12 They heard all of the Facebook a second time.

13 Q But if they interpreted the response that it's not
14 evidence, could that have been interpreted by the jury as
15 even if they heard it again on cross, it's still not
16 evidence?

17 A I think the judge said it was not in evidence. But
18 I don't know what he said, so let me look and see.

19 Q Read that and see.

20 A (Reviews document) That certainly could have caused
21 some confusion with the jury.

22 Q And the response reads, "Although referenced, the
23 Facebook post was not admitted as evidence."

24 A Correct. It says so.

25 Q And, in fact, it actually would have been evidence

1 through cross-examination, but they could have
2 misinterpreted this to believe it was not.

3 A They could have.

4 I want Mr. Williams to know that our strategy, the
5 only reason I didn't put that into evidence was that I
6 didn't intend to call him, I wasn't going to put up a
7 defense and I wasn't going to lose my right to that
8 closing argument at that stage of the game.

9 Q Oh, absolutely. Absolutely. But the issue that
10 arose later was if that response to the jury has any
11 potential to confuse them and take away that evidence
12 from their consideration, that would have been easy to
13 make an objection to and explain that to the judge.

14 A Repeat that question. Are you asking me if I would
15 do ---

16 Q What I'm saying is I understand you had a strategy
17 not to introduce the actual post to avoid losing your
18 argument and instead read it in cross-examination, which
19 can be effective, right?

20 A Correct.

21 Q And, unfortunately, though, the jury question when
22 they want to see the post, if they are told something
23 that they interpret as that's not evidence, the judge
24 also instructed them don't consider anything that's not
25 evidence, right?

1 A Correct.

2 Q It's very possible that the jury could have
3 misinterpreted that.

4 A It's possible. And, you know, like I said earlier,
5 Monday morning quarterback, I should have maybe said
6 something about that.

7 Q Oh, absolutely. I mean ---

8 A But in the middle of a trial and the heat of things,
9 you don't -- I did not do that.

10 Q And if that were misinterpreted by the jury, that
11 would undermine the verdict in this case.

12 A It could.

13 Q Very good.

14 A It could have.

15 MR. WILKES: No further questions, Your Honor.

16 THE COURT: Anything in redirect?

17 MR. LARRABEE: Briefly.

18 REDIRECT EXAMINATION

19 BY MR. LARRABEE:

20 Q Mr. Dover, have you ever tried a perfect case?

21 A No. I don't think anyone has.

22 Q And you look back on every case, even the best cases
23 you've done, and think of any mistakes you've made?

24 A The wins, I could have done a lot better. And the
25 losses, obviously, you can do better every time you lose.

1 But I learn a lot from a loss. You don't learn anything
2 from a win.

3 Q And as far as the Facebook post evidence, just to
4 touch on a couple of things about that, the Facebook post
5 evidence was read into the record the second time after
6 the judge made the statement about it being admitted as
7 evidence.

8 A It was. I thought it was -- I thought it was a
9 great thing. The jury -- I was very happy with that. I
10 was going, like, you know, our citizens here in Pickens,
11 they're pretty smart. They're not going to get away with
12 just -- they want to hear that. And they did get to hear
13 it.

14 Q And how often do you try as a defense attorney to
15 get that last word if you could?

16 A In every case. I rarely put up a defense. You
17 know, Jodi, I shouldn't have done it in your case, but
18 this victim was so good. And I felt like -- and I told
19 Jodi, of course I left it up to him, I gave him -- it was
20 his decision to make, and we went over that. But I
21 probably led him to make the decision to testify, because
22 in the middle of the trial in that particular case, I
23 felt like the jury needed to hear him say I didn't do
24 that.

25 Q Things changed during the trial that made you decide

1 that it was maybe worth it to put up a case.

2 A After her testimony. I mean, she cried. She was
3 emotional. I thought she was very effective. And
4 Ms. Odom did a very good job. And I won the last two CSC
5 cases over there. This is a third one going in there.
6 And I felt, you know, like we had things going right but
7 that she did a great job and the victim did a great job
8 and I had to change my strategy in midcourse.

9 MR. LARRABEE: Thank you very much. Nothing
10 further.

11 THE COURT: Anything else, Mr. Wilkes?

12 MR. WILKES: Maybe one or two questions, Your Honor.

13 THE COURT: Okay. Recross.

14 THE WITNESS: It is past 5:00. Zorba's at 5:00,
15 Mr. Wilkes. You remember that on Wednesday, right? I'm
16 just kidding.

17 RECROSS EXAMINATION

18 BY MR. WILKES:

19 Q So you did choose to put up evidence. Why not
20 introduce the post once you put up -- decided to put
21 up ---

22 A I would have had to call the victim back on the
23 stand. And I already had my teeth kicked in one time. I
24 wasn't going to get them kicked in the second time. I
25 wouldn't have called her back.

1 Q Why not put up a witness to authenticate it?

2 A Well, the mom testified about it. I guess I could
3 have asked the mom to put it in. I don't know that --
4 she wasn't the author of it.

5 Q But you could have tried.

6 A As a trial, I don't -- I think I'd had to -- yeah.
7 I could have tried that. But I think the best way to get
8 that in would be call the victim back up and have her
9 authenticate it, and it's her post, and offer it into
10 evidence at that time. And I certainly wasn't going to
11 do that.

12 Q But the victim didn't give you the post.

13 A Yes. But the victim was the author of the post.
14 And it came through, and the mother gave it to me.

15 Q Right.

16 A She received it.

17 I think the mother testified about it, but I don't
18 remember that. But I did not -- I did not ask -- I did
19 not offer the evidence -- the Facebook post into evidence
20 through the mother. And if that's ineffective, then
21 that's ineffective.

22 MR. WILKES: No further questions.

23 THE COURT: Anything else from the State?

24 MR. LARRABEE: No, sir, Your Honor.

25 THE COURT: Mr. Dover, you may step down.

1 THE WITNESS: Thank you, sir. May I be excused?

2 MR. LARRABEE: Yes, indeed.

3 THE COURT: May this witness be excused?

4 You may be excused.

5 More witnesses?

6 MR. WILKES: None from us, Your Honor.

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

8 MR. WILKES: And I'm not one to make any kind of
9 closing as I said before, but in this one I would like to
10 just point out that we have a belated appeal issue that I
11 think the Court, the Supreme Court, has already
12 recognized with the failure to preserve an issue. So I
13 think that that's on the table. We had two appeal issues
14 unpreserved, and all the briefs. The arguments are in
15 the briefs.

16 And other than that, I think the record is what it
17 is.

18 THE COURT: All right. Any response from the State
19 as far as just the two issues? I guess that's ---

20 MR. LARRABEE: Your Honor, again, as far as the
21 Facebook post, we believe it was read into evidence
22 twice. The jury heard it twice. And I don't think you
23 can prove any prejudice even if it should have been
24 admitted.

25 As far as the other evidence, again, all of that

1 evidence, we believe, would have been excluded at trial
2 in any case under the rape shield statute, and so we
3 don't believe, again, that there's any prejudice that can
4 be shown there even if it was ineffective assistance of
5 counsel. And we thought that Mr. Dover testified as to
6 why he didn't want to go into that, and that was a
7 strategic calculation on his part.

8 THE COURT: How about the footnote about -- and I'm
9 just quoting right now from the Supreme Court decision.
10 And it says, "The State's response to this ostensibly
11 meritorious argument is to follow the lead of the Court
12 of Appeals and assert the issue was not properly
13 preserved in the trial court." And I think this was
14 specifically referencing failure to make an objection
15 during closing.

16 MR. LARRABEE: Yes, Your Honor.

17 THE COURT: Wasn't it limited to that? I mean,
18 that's what they were talking about?

19 MR. LARRABEE: Yes, Your Honor. And quite honestly,
20 I struggle to find the portion of the closing argument
21 that the Court was referring to there. Maybe that's my
22 lesser skills than the Supreme Court. I'm not going to
23 say that they were wrong. But I would encourage Your
24 Honor to look over that.

25 THE COURT: And it could be the way that you look at

1 it, I mean, you know, from your side. But that decision
2 goes on to state, "We are constrained to agree with the
3 Court of Appeals that this issue is not preserved for
4 direct appellate review. We further find Williams'
5 effort to bolster his evidentiary challenge through the
6 purportedly improper closing argument of the prosecutor
7 was not preserved in the trial court," footnote.

8 And then in that footnote, it just says the
9 prosecution successfully prevented Williams from fully
10 explaining why he did not want to be alone with the minor
11 victim. The trial court then prevented Williams from
12 making a full proffer. Seizing upon this, the
13 prosecutor, in closing argument, attacked the defense for
14 the absence of such evidence. We recognize the
15 regrettable practice, parentheses, a tactic utilized by
16 prosecutors and defense attorneys alike, parentheses, to
17 successfully exclude evidence and then leverage the lack
18 of that evidence in closing argument. There was no
19 objection to the State's closing argument as with the
20 primary issue raised in petitioner's brief. The issue
21 may be addressed in a collateral proceeding.

22 And that was -- I mean, that basically is quoting
23 from the Supreme Court opinion.

24 I would like to hear from both of you just quickly
25 on that. I know you've already discussed a little bit

1 about it, but...

2 MR. WILKES: And I believe, Your Honor, that the --
3 for the purposes of the collateral attack is for the lack
4 of preservation to then allow belated appeal. And I
5 think that that is procedurally where we would be. There
6 is the failure to object and no preservation and
7 therefore, the issues weren't addressed. And I think
8 that entitles him as part of the PCR order -- and I get
9 confused as to whether it's -- you know, part of the
10 order is granted or not granted and how it's handled.

11 But ultimately, it's a belated appeal issue. He's
12 entitled to go back up now on those appeal issues. I
13 don't think the Court has to rule on the validity of the
14 issues. I think it's just a matter that we're entitled
15 to present those on direct appeal just as they would have
16 been on -- well, present them in a belated appeal just as
17 though we did in the direct appeal.

18 THE COURT: Mr. Larrabee, you've already commented
19 on your reading of the closing argument. Do you have
20 anything else to add or ---

21 MR. LARRABEE: No, sir, Your Honor. I think that
22 that pretty well encapsulates ---

23 THE COURT: Okay. And then when you say "belated,"
24 I mean, would you be arguing -- I guess this is
25 different. This is failure to raise something and

1 preserve it for appeal as opposed to failure to appeal.

2 MR. LARRABEE: Exactly.

3 MR. WILKES: Exactly, exactly. But still a belated
4 appeal because the issues had not been addressed on
5 direct appeal on the merits. And the only way to do that
6 is through them coming back up in a belated appeal on the
7 PCR.

8 MR. LARRABEE: But, Your Honor, I think that gets
9 back into the issue of this is a different kind of case
10 than your normal case for a belated appeal. This is not
11 something where the defendant did not get an appeal. He
12 got an appeal. Now, the preservation blocked that, but I
13 think that Mr. Dover testified in many cases as to why he
14 didn't want to bring in that evidence or how he got it in
15 anyway.

16 MR. WILKES: That's different than preserving the
17 issue for appeal.

18 THE COURT: Okay. Thank you both.
19 One other thing?

20 MR. LARRABEE: Yes, Your Honor. I did want to
21 clarify something just because of the testimony that was
22 put in. The Facebook message did come in during a
23 witness that was called by the defense. So I just wanted
24 to clarify that because I didn't want to leave the Court
25 with a misimpression about that state, the state of the

1 case.

2 THE COURT: Thank you both. Anything else?

3 MR. WILKES: No, Your Honor.

4 THE COURT: All right. I appreciate you both.

5 Thank you.

6 MR. LARRABEE: Thank you.

7 THE COURT: Thank you. All right. Y'all take care.

8 Safe travels back to Cola.

9 (WHEREUPON, proceedings concluded at 5:16 PM.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF PICKENS)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Pickens County, South Carolina, on the
14 9th day of October, 2024.

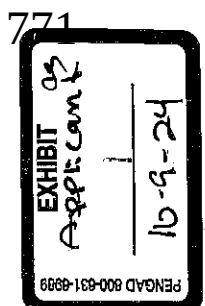
15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 December 15, 2024

19
20
21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25



1 A. Yes, Alexa is my niece. This was my
2 main concern.

3 Q. Go ahead.

4 SOLICITOR ODOM: Objection. I am going
5 to ask that she be allowed to read the whole
6 thing and that he not insert ---

7 THE COURT: Right, then you can explain
8 later.

9 SCOTT DOVER: I apologize.

10 CROSS EXAMINATION CONTINUED

11 BY SCOTT DOVER:

12 Q. Please continue.

13 A. (Reading): "alexa is wondering
14 around inside and outside not bein watched
15 walkin around with knives outta the
16 dishwasher cuz she aint bein watched last
17 time I checked dss has done said if they get
18 a wiff of this shit again that shit would be
19 done . and its like no one down there cares
20 and obviously you don't neither cuz you allow
21 them down there anyway Katie is gonna end up
22 dead or in jail because of them and you aint
23 doin shit to stop it and I'm here to tell you
24 that your being there doesn't make a damn bit
25 of a difference and your indenial if you

VOLUNTARY STATEMENT

DATE 12/3/09 PLACE Pickens Middle School TIME STARTED 9:15 M.
 I, the undersigned, Angelina Marie Barton am 14 years of age, my date and place of

birth being the [REDACTED] 1995 at East

I now live at [REDACTED]

Before answering any questions or making any statements, BRAND SMITH

a person who identified himself as a POLICE OFFICER
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

Well it all started at my house MINOR 1 was txting tyler wanting him to come over and she was txting him telling him that she wanted to have sex and back and forth about that. Okay well my dad told i was asleep when she told me they were him we were (Tyler & Corey) coming over to "hang out" around at her house
 something they showed up and all that was planned was to hang out that evening i knew of she told me she had sex 5 times with him she was willin and that she would be back after
 she basically "begged" me to go to corey's house were they could spend some time together they been dating on and off for about 3 months and they decide I guess they were ready to move on with there relationship well we got to corey's house and MINOR 1 and tyler was kissing touchy touchy but MINOR 1 didn't seem to care and me, her, tyler, and corey played guitar here almost the whole time then me MINOR 1 went to the bath room then she's like is that thing still in your bag i asked wat thing and she got my bag and pull out my sleeping shirt thing (white & key see throw) and put it on with nothing but bra & underwear walking around it got late MINOR 1 told me not to bother them there goin to coreys mom room & having sex. So me and corey went in his room and started watching tv. she was laughing &

I have read each page of this statement consisting of _____ page(s), each page of which bears my signatures, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 9:39 A.M. on the 3rd day of DEC, 2009

WITNESS: [Signature]

Angelina Barton

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

DATE _____ PLACE _____ TIME STARTED _____ M.
 I, the undersigned, _____ am _____ years of age, my date and place of
 birth being the _____ day of _____
 I now live at _____

CONTINUED

Before answering any questions or making any statements, _____

a person who identified himself as a _____
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any
 questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses
 concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning
 or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime
 during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I
 choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already
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 present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without
 coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

talking to tyler basically having fun. She woke me up a
 few times during the night ~~and~~ laughing + going on with
 "that" stuff she came woke me up at 7:30 in the morning
 bragging about it it was better than her ex and bigger
 and it was so funny ~~and~~ and keep going and going ok
 they went in there and went to sleep + in a life sleeper
 I didnt hear nothing they were out me + corey got
 up about 9 something woke them up + sat in the
 living room me + **MINOR 1** went in coreys room locked the
 door and watched tv till tyler got out the shower
 me + **MINOR 1** then got in the shower then she got out
 and wanted to leave the bathroom with nothing but a towel
 she finally got dressed and we both decided to
 go home "my house" so ~~were~~ corey ~~took~~ took us
 home and they stayed like 5 mins and her and
 tyler were still kissing and going on like nothing ~~thats~~
 they then left and later that night she tried
 to say he raped her but he didn't (hes like my
 brother) **MINOR 1** didn't really start sayin this intill
 she found out about tylers old sex life and that
 he has a baby on the way later the next day
 she got me to go with her to police office
 "The End"

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify
 that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of
 this statement, nor at any time before it was finished and I request that this statement be stopped. I also declare that I was not told or prompted what to say in
 this statement.
 This statement was completed at 9:35 A M. on the 3rd day of DEC, 2009

WITNESS: R L J

Angie Barton

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

DATE _____ PLACE _____ TIME STARTED _____ M.
 The undersigned _____ am _____ years of age, my date and place of
 birth being the _____ day of _____
 I now live at _____
 Before answering any questions or making any statements, _____

CONTINUED

a person who identified himself as a _____
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

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I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

• see called me in there think after the 3 time and showed me a "wet" place on the bed "

• i saw them just ~~hugging~~ hugging kissing that it all i really saw ~~them~~ them do outside of the room they were in like when we were in living room.

• Friday-saturday 11/27-11/28

F

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 9:39 P.M. on the 3rd day of DEC, 2009.

WITNESS: hlf Smt

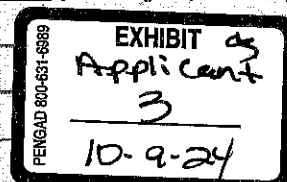
Angie Barton

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

DATE 12/7/09 PLACE Pickens PD TIME STARTED 4:40 P.M.
 I, the undersigned, Corey Bruce, am 17 years of age, my date and place of
 birth being the [REDACTED] 1992 at Anderson S.C.
 I now live at [REDACTED]



Before answering any questions or making any statements, Det. Riggs

a person who identified himself as Police officer
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

I was leaving my dad's house to come to pickens to pick tyler up so we could go ~~up~~ to Angie's house. When we got there **MINOR 1** was there. We all hung out at Angie's house for a hour or so then me + tyler wanted to go to my house so eventually we all decided to go so we did. When we got there we played rock band for a while then went and got some food and things like that. After a little while me and Angie went to my room + tyler + **MINOR 1** went in my room. me + Angie was watching tv and we could hear tyler + **MINOR 1** in my moms room so me + Angie went to the door to listen to them and we could hear **MINOR 1** + tyler having sex I could hear **MINOR 1** saying NO tyler but she was laughing while she was saying it. To me it seemed like she was just joking around so then after that we all went back in the living room to play more rock band + so tyler + them could take a smoke break then after we was done we would go back to our rooms hang out some more me + angie would watch more tv and hang out and I assume **MINOR 1** + tyler ~~do~~ would do it some more and this would happen all through out the night tyler would come up to me and we would talk about what they did. He would

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 4:55 P.M. on the 7th day of December, 2009.

WITNESS: [Signature]

Corey Bruce

Signature of person giving voluntary statement

WITNESS: _____

VOLUNTARY STATEMENT

DATE 12/7/09 PLACE Pickens PD TIME STARTED 4:40 P.M.
 I, the undersigned, Corey Bruce, am 17 years of age, my date and place of
 birth being the [REDACTED] 1992 Anderson S.C
 I now live at [REDACTED]

Before answering any questions or making any statements, Det. Riggs

a person who identified himself as a Police Officer

duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

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I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

Say stuff like she was saying no because she couldn't take it. And he would say she was tight and how she would stop because she was in pain. When I would talk to MINOR 1 she was fine & happy. She didn't seem to have any problems. We would start to joke around with her saying that Tyler probably has some type of diseases and that she should probably watch out for that we were just joking having a good time. Then the next morning she came up to me and angle bragging about them doing it like 5 times then about an hour later she would talk about going home saying that she wanted to so I took her and angle back home. I didn't hear about her being forced until later that day when MINOR 1 texted me & said that Tyler forced her to have sex with her the last time that morning.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 4:55 P.M. on the 7th day of December, 2009

WITNESS: [Signature]

WITNESS: _____

Corey Bruce

Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.
Tyler Lee GilstrapAKA: _____
Race: WHITE Sex: M Age: 21
DOB: 1989 SS#: _____
Address: _____
City, State, Zip: Pickens, SC 29671
DL#: _____ SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

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

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: TOOKER 78999 1D 1116
Tooker, Sam 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 18 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 18 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3months/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. 1200415☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>18.90</u>
TOTAL	\$	\$ <u>648.90</u>

IN THE COURT OF GENERAL SESSIONS 777

INDICTMENT/CASE#: 2010GS3901143A/W#: 1336114Date of Offense: 11/27/2009S.C. Code § : 16-03-0655(B)CDR Code #: 0396

SENTENCE SHEET

0-20

☐ CONVICTED OF or ☒ PLEADS

PTUP

15 days/hours Public Service EmploymentObtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

Certified Copy

Harold P. Welborn Jr.Clerk of Court
Pickens County, SC☒ Appointed PD or appointed other counsel, 10-4-24§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Danette Hanks

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2Sentence Date: 8/22/11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

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

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

JUN 15 2010

That TYLER LEE GILSTRAP did in Pickens County, between the dates of November 27, 2009 and November 28, 2009, commit a sexual battery on **MINOR 1** who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Wellman

**Clerk of Court
 Pickens County, SC**

Dated 10-4-24

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

[Signature]

SOLICITOR

WITNESSES

Davis Riggs

Pickens Police Department

12/30/2009

ARREST WARRANT NUMBER

I336114

TRUE BILL

ACTION OF GRAND JURY

Date JUN 15 2010

Mary A. Smith
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-39-PT

1143

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010 TERM 2010

THE STATE

vs.

TYLER LEE GILSTRAP

Indictment for

0396

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

VIOLATION § 16-03-0655(B)

WITNESSES

Travis Riggs

Pickens Police Department

12/30/2009

ARREST WARRANT NUMBER

I336114

ACTION OF GRAND JURY

TRUE BILL

Date JUN 15 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

780 Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-39-

PT

1143

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010 TERM 2010

THE STATE

vs.

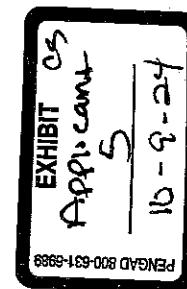
TYLER LEE GILSTRAP

Indictment for

0396

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

VIOLATION § 16-03-0655(B)



STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

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

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

JUN 15 2010

County present upon their oath:

That TYLER LEE GILSTRAP did in Pickens County, between the dates of November 27, 2009 and November 28, 2009, commit a sexual battery on **MINOR 1** who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Walker

**Clerk of Court
Pickens County, SC**

Dated 10-4-24

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

[Signature]
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF 782 Pickens
STATE VS.

Tyler Lee Gilstrap

AKA:

Race: WHITE Sex: M Age: 21

DOB: [REDACTED] 1989 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Pickens, SC 29671

DL#: [REDACTED] SID#: [REDACTED]

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

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

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

in violation of § 16-03-0655(B)

of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

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

ATTEST:

Tooker, Sam

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 18 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 3

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 appliedby the State Department of Corrections. 120 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 18.90
TOTAL		\$ 648.90

Clerk of Court/ Deputy Clerk

Court Reporter: Danette Hanks

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSION

INDICTMENT/CASE#: 2010GS3901143

A/W#: 1336114

Date of Offense: 11/27/2009

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

0-20

☐ CONVICTED OF or ☒ PLEADS

☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant

SC Bar#

☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ 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 3

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

PTUP

15 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: _____

Certified Copy

Harold P. Welborn Jr.

Clerk of Court
Pickens County, SC

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

Presiding Judge

Judge Code: _____

Sentence Date: 8/22/11

WITNESSES

783

avis Riggs

Pickens Police Department

12/30/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 11-08-1989

ACTION OF GRAND JURY

TRUE BILL

JUN 15 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-39-
PT

1144

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010 TERM 2010

THE STATE

vs.

TYLER LEE GILSTRAP

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

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

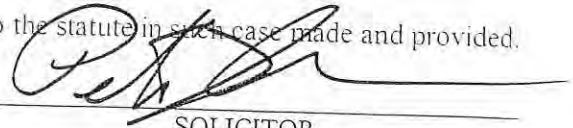
JUN 15 2010

the Grand Jurors of Pickens

That TYLER LEE GILSTRAP did in Pickens County, between the dates of November 27, 2009 and November 28, 2009, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of **MINOR 1** a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Certified Copy
Harold P. Wells
Clerk of Court
Pickens County, SC
Dated 10-4-24

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STAT

Pickens

VS.

Tyler Lee Gilstrap

AKA:

Race: WHITE Sex: M Age: 21

DOB: 1989 SS#:

Address:

City, State, Zip: Pickens, SC 29671

DL#: SID#:

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

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

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

in violation of § 16-15-140

of the S.C. Code of Laws, bearing CDR Code # 2468

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

ATTEST:

Tooker, Sam

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 10 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. 1200 hrs☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

_____ 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 Certified CopyOther: Harold P. Welborn Jr.

Clerk of Court

Pickens County, SC

Dated 10-4-24☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Donette Hanks

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2 6 3 0Sentence Date: 8/22/11

✓
WITNESSES

Travis Riggs

Pickens Police Department

12/30/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 11-08-1989

TRUE BILL

ACTION OF GRAND JURY

~~FILED~~ JUN 15 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

86

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-39-

PT

1144

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010

TERM 2010

THE STATE

VS.

TYLER LEE GILSTRAP

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

INDICTMENT FOR
LEWD ACT UPON A CHILD

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

JUN 15 2010

the Grand Jurors of Pickens

That TYLER LEE GILSTRAP did in Pickens County, between the dates of November 27, 2009 and November 28, 2009, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of MINOR 1 a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Walker

**Clerk of Court
Pickens County, SC**

Dated 10-4-24

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

SOLICITOR

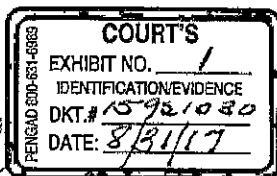
2016
2 8/22/17 0

DATE _____

PURPOSE _____

CUE COLUMN

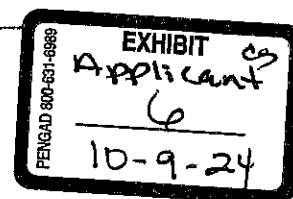
NOTES



Forrest A. Ballen

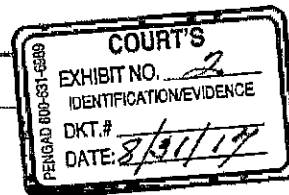
Foreman (RM)

SUMMARY



CUE COLUMN

NOTES



#1

Question:

Can we read
the Facebook post?

Arrest Ballew

Response:

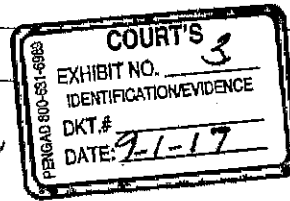
Although referenced, the Facebook
post was not admitted as
evidence.

Per Arrest
9/1/17

SUMMARY

COLUMN

NOTES



Can we hear or
read the transcript
from MINOR 1's Aunt?

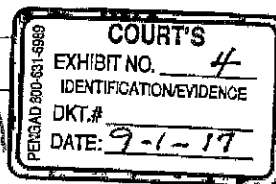
Forrest Ballen

9/1/17

SUMMARY

CUE COLUMN

NOTES



#3

Can we hear or
read the transcript
from the Weady
Williams testimony?

9/1/17

Forrest Ballou

SUMMARY

DATE _____

PURPOSE _____

COLUMN

NOTES

Q#4

Can we hear
MINOR 1's Testimony,
again?

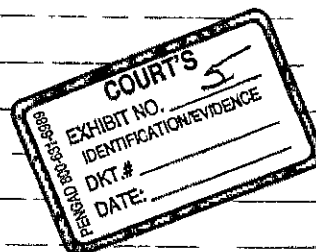
Forrest Ballou

9/1/17

Response:

This testimony
is approximately
90 minutes.

Do you want
to hear a
specific portion
or all of it?



My lms
9/1/17

Several want
to hear it
again
- Ballou

SUMMARY

CUE COLUMN

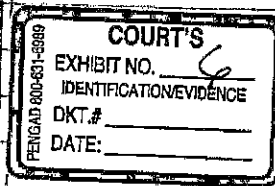
NOTES

#5

If we can not
agree on a verdict
unanimously what
do we do?
What happens?

Forrest Ballou

9/1/17



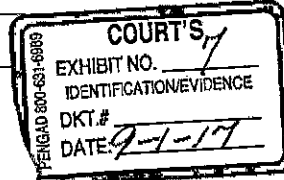
Response: At this point, I will
ask for you to continue
your deliberations, but if
you continue to have an
impasse, I will give
you additional instructions
at that time.

WJ, on 9/1/17

SUMMARY

COLUMN

NOTES



#6

What is the next step
we can't get
a unanimous
verdict?

Insert Ballot

9/1/17

SUMMARY

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

Joseph Campbell Williams, #373746)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2022-CP-39-00795

ORDER OF DISMISSAL

Clerk of Court Pickens County, SC
APR 10 '25 PM 12:44

Joseph Cambell Williams II (Applicant) filed his first application for post-conviction relief with the Court of Common Pleas in Pickens County on July 5, 2022. He sought to challenge his convictions for criminal sexual conduct with a minor (CSC), second degree, and CSC with a minor, first degree. He filed an amended application on September 10, 2024. The State filed its return on October 28, 2024, after having served it in Applicant's counsel on October 9, 2024.¹ An evidentiary hearing was held on October 9, 2024, at the Greenville County Courthouse² before the Honorable Patrick Cleburne Fant III. Applicant was present and represented by J. Falkner Wilkes, Esq. The State was represented by Assistant Attorney General R. Brandon Larrabee, Esq. Upon careful consideration of the transcript of Applicant's criminal trial along with the evidence produced at the PCR hearing, this Court finds that Applicant failed to meet the burden of proof for granting relief. As a result, this Court denies relief and dismisses the application with prejudice.

¹ This is when the return was recorded in the record. A paralegal for the State in this matter certified that the return was served by hand delivery on October 9, 2024, the date of the hearing in this matter.

² Applicant agreed to waive venue to allow the proceedings to go forward in Greenville. The State also consented.

PROCEDURAL HISTORY³

Applicant is presently confined in the South Carolina Department of Corrections, Perry Correctional Institution, pursuant to orders of commitment from the Pickens County Clerk of Court. A Pickens County grand jury indicted Applicant in July 2015 on the charge of CSC with a minor, first degree (2015-GS-39-1031). The indictment was amended in August 2017; Applicant was also indicted for CSC with a minor, second degree, in March 2017.

A jury trial was held on August 31 and September 1, 2017, with the Honorable Perry H. Gravely presiding. Scott Dover, Esq., represented Applicant and Assistant Solicitor Shannon Odom prosecuted the case. The jury found Applicant guilty on both counts, and Judge Gravely sentenced Applicant to thirty (30) years for CSC with a minor, first degree, and ten (10) years for CSC with a minor, second degree, to be served consecutively.

Applicant timely filed a notice of appeal.

Direct Appeal

J. Falkner Wilkes, Esq., represented Applicant on appeal. By final brief of appellant filed May 31, 2018, in the South Carolina Court of Appeals appellate counsel raised the following issues:

- I. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
- II. Did the court commit reversible error in excluding evidence as to the Appellant's state of mind?

³ Relevant to the procedural history, the State misstated some dates and locations; those have been corrected here. For example, Applicant has been confined to Perry Correctional Institution since at least December 2022. Further, the petition for rehearing in the South Carolina Court of Appeals was dated July 14, 2020. Counsel informed the Court of this error, and those details are corrected here.

The State filed its final brief on May 24, 2018. By unpublished opinion filed on July 1, 2020, the Court of Appeals affirmed Applicant's conviction. *State v. Williams*, Unpublished Op. No. 2020-UP-199, 2020 WL 3571979.

Appellate counsel filed a petition for rehearing on July 14, 2020, asking the Court of Appeals to reconsider its opinion and grant Applicant a rehearing based on the following:

This Court's decision overlooked evidence showing that the other allegations of abuse were made specifically for the purposes of medical diagnosis or treatment and therefore were admissible under Rule 803(4).

The Court of Appeals denied the petition on August 24, 2020.

Appellate counsel then filed a petition for writ of certiorari along with the appendix in the Supreme Court of South Carolina on September 21, 2020, seeking further review. Applicant raised the following issues:

1. Did the court commit reversible error in limiting evidence of prior false accusations by complainant against persons other than the defendant?
2. Did the court commit reversible error in excluding evidence or prior false accusations so as to prove the Petitioner's state of mind and thereby explaining his actions?

The State filed its return on October 21, 2020. Our Supreme Court granted the petition on May 7, 2020, and ordered that the parties proceed with briefing. Applicant filed his brief on June 7, 2021, and the State filed its brief on July 28, 2021. Oral arguments were held on November 10, 2021. Mr. Wilkes argued on behalf of Applicant and Assistant Attorney General Joshua A. Edwards, Esq., of the South Carolina Attorney General's Office, represented the State. In a memorandum opinion filed January 12, 2022, our Supreme Court affirmed the Court of Appeals. *State v. Williams*, Unpublished Op. No. 2022-MO-001, 2022 WL 110793. The remittitur was issued on February 2, 2022. Applicant now seeks post-conviction relief.

Present Allegations

Applicant makes the following allegations in support of his claim of ineffective assistance of counsel:

1. Trial counsel failed to properly handle the issue of the victim's prior false allegations such that the evidence was excluded by the trial court. Trial counsel failed to offer or proffer witness testimony or other evidence to show the falsity of the allegations. Counsel further failed to offer evidence and argument sufficient to cause a Boiter type of review as to the admissibility of the prior false allegations. Counsel further failed to promptly preserve the issue in trial court to allow for direct appellate review.
2. Trial counsel failed to properly object to improper closing argument where the prosecution attached [sic] the defense for the absence. Trial counsel further failed to properly preserve the issue in the trial court to allow for direct appellate review.
3. Trial counsel failed to introduce evidence relating to prior false allegations as substantive evidence and for the purpose of impeachment of the victim's credibility.
4. Trial counsel failed to introduce evidence of threats made by the victim towards the Applicant and his family as substantive and impeachment evidence.
5. Trial counsel failed to properly introduce evidence and argue law during an attempt to proffer evidence.
6. Applicant also reserves the right to amend his application after additional investigation and research.

The Applicant requested that his conviction be reversed and for the granting of a new trial. Through counsel, Applicant amended his application in a filing received by the State on September 3, 2024, to clarify the allegations.

PCR ISSUE 1. Trial counsel erred in failing to properly raise and preserve the issues at trial that Applicant raised on direct appeal. Applicant is entitled to a belated appeal on the issues raised in his direct appeal, and which the Supreme Court found were not properly raised or preserved.

APPEAL ISSUE I. THE COURT ERRED IN EXCLUDING EVIDENCE OF PRIOR FALSE ACCUSATIONS BY COMPLAINANT AGAINST PERSONS OTHER THAN THE DEFENDANT.

APPEAL ISSUE II. THE COURT ERRED IN REFUSING TO ALLOW WITNESSES OFFER TESTIMONY TO EXPLAIN THE APPELLANT'S STATE OF MIND.

PCR ISSUE 2: Trial counsel failed to render effective assistance of counsel failing to properly introduce a Facebook post made by the prosecutrix that was highly probative and essential to the defense of the case. Counsel further failed to object to the Court's improper response to the jury's request to have the Facebook post in their deliberations.

PCR ISSUE 3: [Trial] counsel failed to introduce additional evidence of threats made by the prosecutrix towards the Applicant and his family.

SUMMARY OF TRIAL

Applicant's trial was held August 31 and September 1, 2017. During the trial, Applicant's counsel argued that certain evidence regarding the victim's allegations of sexual assault against other individuals should be admitted. Trial counsel argued that, first, the other allegations were necessary to explain why the victim was in counseling for sexual abuse unrelated to his client; and, second, to point out that the victim had reported others for sexually abusing her but did not accuse Applicant until much later.

The solicitor argued that potential questions could violate the Rape Shield Statute. For example, the solicitor argued that under the Statute, Applicant could not ask the victim whether she falsely claimed that one of the other individuals raped her.

Applicant's counsel conceded that questions about whether other claims of sexual abuse were unfounded would not be appropriate. But he argued that bringing up the fact that the victim

had made allegations against other individuals, but not Applicant, after Applicant had allegedly abused her, would not be inappropriate.

The trial court ruled that he would allow Applicant to ask about the fact that the victim discussed other allegations in counseling, but that the specifics of those cases would not be allowed. The trial court also ruled that it would exclude evidence of a previous allegation the victim had made that led to arrest of another individual.

During the trial, the victim testified that the abuse began when she was seven or eight.⁴ She said Applicant, who was her stepfather, laid down on a pallet on the floor with her and began discussing “problems” that he was having with the victim’s mother. She testified that Applicant kissed her on the side of her head and rubbed on her legs near her genitals. During questioning, she elaborated that “[h]e basically rubbed me everywhere.” She described how the abuse progressed to include oral sex. She described how Applicant would make her brush her teeth afterwards.

The victim said that shortly before she turned thirteen, Applicant took her to the home of her boyfriend, where she had intercourse with her boyfriend. She said that about a week after that, Applicant came to her and asked her for forgiveness.

The victim said she reported the abuse when she was 17 years old, in November 2013, because of concerns she had regarding the safety of her niece.

During cross-examination, trial counsel pointed to discrepancies in prior testimony by the victim about where the oral sex took place; whether she told the father of her child about the abuse; and certain details of certain incidents. The victim also testified that she did not remember telling

⁴ The victim later indicated that in regard to some of the allegations, she had difficult remembering her age with precision.

her counselors about other alleged incidents of abuse. She acknowledged previous that she did not tell her counselors about any claims against Applicant and had in fact denied that anything had taken place.

Trial counsel also had the victim concede, on the stand, that ten hours before reporting the abuse she had posted on Facebook:

I think its funny people wanna say they beat someones ass when in reality they the ones who got beat. Pussy ass n[----]s wanna run wont face a man but wanna talk shit when everybodys gone. world war 3 is about to begin and everybody gonna wish they never fucked with me ! that aint a threat , that's a promise!

Trial counsel also had the victim read a private Facebook message to her mother before the jury:

You tell daddy I aint gonna control your house ? I aint trying to control your house that's what all them teenagers are there for you and your fucked up daughter [redacted] . you sit there and allow all those punks at your house and let them come back after they get [redacted] to fight me and are doin all those drugs at your house smoking weed in the building and letting [redacted 2] come right in there with em.

[. . .]

[Redacted 2] is wondering around inside and outside not bein watched walkin around with knives outta the dishwasher cuz she aint bein watched last time I checked dss has done said if they get a wiff of this shit again that shit would be done . and its like no one down there cares and obviously you don't neither cuz you allow them down there anyway [redacted] is gonna end up dead or in jail because of them and you aint doin shit to stop it and I'm here to tell you that your being there doesn't make a damn bit of difference and your indenial if you think it does I get treated like shit for givin a fuck about my brothers and my niece because they dont deserve to be taken away from their family because of everyone elses bullshit but no I'm always the bitch startin shit and I'm put down and everyone else comes before me and you let them . you're my mom and I feel like you don't give a fuck about me so guess what i'm gonna quit givin a fuck about everyone and everything and worry about me because all yall are doing is districting me from what I need to be focused on . i'm tired of worryin bout my niece all the time n whether she's watched or not I shouldnt have to . that's my

babygirl and I'm no longer gonna be there for her because its hurting me way too much and i can't take it anymore i'm coming to get my shit from your house and I'm not comin back bye.

Among the other witnesses the trial court heard from Angela Farmer, a counselor in at Behavioral Health Services in Pickens County who was qualified as an expert in child sexual abuse counseling and treatment. Ms. Farmer testified that over time, the victim had reported sexual assault against two other individuals and rape against a third.

After the State rested, trial counsel called Wendy Williams, who was separated from Applicant and was the mother of the victim. She testified that the Applicant was never left alone with the victim. During cross-examination, Ms. Williams also testified:

But there had been previous accusation made by [the victim], and my other daughter, against other men. Because of that, I was already leery. [Applicant] wasn't their father and I just feel comfortable leaving the girls alone or having him take care of them anywhere alone when they were little.

Ms. Williams also testified that because of allegedly false accusations to DSS that the victim had made against her, she wanted to protect Applicant from accusations.

Ms. Williams and Rebecca Miller, the victim's maternal aunt, also testified about the victim's various living situations during this time. Ms. Miller testified that the victim "primarily" lived with her grandparents around the time relevant to her allegations against Applicant.

Applicant also testified at trial. He generally denied the victim's allegations and said that he was never alone with the victim at night. Applicant further testified that he was never alone with the victim "[b]ecause I was fearful that she may make up some kind of allegations toward me." He also indicated that Ms. Williams wanted to keep Applicant away from her children because "she said that she didn't really trust them."

On rebuttal, the state called Fred Kelley, the victim's maternal grandfather, who testified that he was aware of times when Applicant and the victim were alone, or at least when Ms. Williams was not there.

After about 40 minutes of deliberation, the jury asked to have "the FaceBook post" read to them. The trial court responded that the post was not in evidence. The jury then asked to hear the testimony of the victim's aunt and Wendy Williams. That was played for them. The jury then asked to hear the victim's testimony. The testimony was replayed, during which the jury heard the Facebook post from several hours before the victim reported the abuse and the Facebook message.

After several hours of deliberation, the judge gave the jury an *Allen* charge. The jury then deliberated another 20 minutes before finding Applicant guilty of first degree criminal sexual conduct with a minor and second degree criminal sexual conduct with a minor.

SUMMARY OF PCR HEARING

Because of the nature of some of the evidence in this hearing, the Court heard a great deal of testimony as a proffer. The Court will endeavor to identify throughout this section what testimony was presented under objection.

Applicant's Case

Applicant's first witness was Wendy Williams, the mother of the victim in this case and wife of Applicant.⁵ Ms. Williams testified about a Facebook message that was read into the record at trial. She read from the trial transcript of the cross-examination of the victim's testimony:

[Redacted 2] is wandering around inside and outside not bein watched walkin around with knives outta the dishwasher because she ain't bein watched. The last time I checked dss has done said if they get a wiff of this shit again this shit would be done . and its like no one down there cares and obviously you don't neither because you allow them down there anyway [redacted] is gonna end up dead

⁵ Ms. Williams said she and Applicant are separated but have not yet gotten a formal divorce.

or in jail because of them and you aint doin shit to stop it and I'm here to tell you that your being there doesn't make a damn bit of difference and your indenial if you think it does I get treated like shit for givin a fuck about my brothers and my niece because they don't deserve to be taken away from their family because of everyone elses bullshit but no I'm always the bitch startin shit and I'm put down and everyone else comes before me and you let them . you're my mom and I feel like you don't give a fuck about me so guess what i'm gonna quit givin a fuck about everyone and everything and worry about me because all yall are doing is distracting me from what I need to be focused on . i'm tired of worryin bout my niece all the time and whether she's being watched or not I shouldn't have to . that's my babygirl and I'm no longer gonna be there for her because its hurting me way too much and I can't take it anymore i'm coming to get my shit from your house and I'm not comin back bye.

Ms. Williams said her daughter sent the message to her the night before Ms. Williams made the allegations of sexual abuse against Applicant. Ms. Williams also said that the victim had told DSS untruthful information about Ms. Williams, made allegations against a neighbor, and made allegations of a sexual nature against her paternal grandmother's boyfriend.

Ms. Williams then began to testify about a previous accusation the victim had made against a man named Tyler Gilstrap. The State objected to this evidence on the grounds that it violated the state's Rape Shield Statute, would have confused the issue if introduced at trial, and could contain hearsay. This Court sustained the objection but ruled that it would allow the evidence to be proffered.

Before going into proffered testimony, Applicant elicited testimony from Ms. Williams that Applicant would not be left alone with the victim because of previous allegations she had made.

On proffer—and after the State had reiterated its objection to the testimony for violating the Rape Shield Statute and confusing the issue—Ms. Williams testified that the victim had accused Gilstrap of forcibly raping her. Ultimately, Ms. Williams testified, Gilstrap was convicted of statutory rape. She testified that Applicant was aware of the allegations.

On cross-examination, Ms. Williams confusingly testified about the message: “I don’t remember that one being read. I remember the actual Facebook post being read, but I don’t -- I don’t remember.” She also testified that she had related at trial some information about the victim’s previous allegations.

Turning to the proffered testimony, Ms. Williams testified that she had taken her daughter to the police after she made allegations about Gilstrap, and that Ms. Williams had previously told Gilstrap that the victim was a minor.

The next witness, Angelina Barton, testified entirely under proffer after the Court sustained the State’s objection that her testimony would violate the Rape Shield Statute and confuse the issue.

Barton identified her statement to law enforcement at the time of the incident with Gilstrap. She testified that she was at the house where the incident occurred that evening. Barton testified that she was not actually in the room during the alleged incident, “but I did hear them getting busy in the room.” She further testified that her statement to law enforcement was accurate. She said she did not believe the victim had been forcibly raped. Barton testified that she believed the victim intended to have sexual intercourse with Gilstrap.

On cross-examination, Barton said the victim had bragged about the incident. Barton did not deny that she had told law enforcement in her statement that Gilstrap was like a brother to her. But at the PCR hearing, she downplayed the significance of that statement, saying Gilstrap “was like a brother to everybody” who hung out with them and the statement did not indicate she and Gilstrap were particularly close.

The Court likewise heard testimony under proffer from Corey Nathaniel Bruce about the incident. Bruce also identified his statement from the time. He testified that the incident took

place at his house. Asked whether Bruce believed that Gilstrap had forcibly raped the victim, he testified: "I believe that he took advantage of her."

On cross-examination, Bruce testified that he had heard the victim say "no" to Gilstrap at one point. On redirect, he said that he also heard her laugh.

Applicant also called Christopher Alan Williams, Applicant's brother, to testify. He said that Applicant never wanted to be left alone with the victim. As Christopher Williams was to begin testifying about another allegation that the victim had made, the State again objected under the Rape Shield Statute. This Court again sustained the objection but allowed the testimony to go forward under proffer. Christopher Williams then testified that Applicant was hesitant to be alone with the victim because of an accusation she had made against a neighbor.

After conclusion of the case, Applicant reiterated his proffer, and the State reiterated that it objected under the rape shield statute and *Boiter*.

The State's Case

The State called a single witness: Robert Scott Dover, trial counsel for Applicant. Dover, who was admitted to the practice of law in 1987, said that his strategy for Applicant's defense was to attempt to attack the victim's credibility. Counsel said he was aware of the other allegations that the victim had made, and that he attempted to make the jury aware that the victim was "a veteran of reporting sexual abuse." Counsel agreed, though, that some of the testimony raised at the PCR hearing would violate the Rape Shield Statute, and he did not want to offer it for that reason. Counsel in fact said that the defense "got into a lot that the judge said I couldn't get into."

Counsel also testified that he had not intended to offer the Facebook post into evidence because he wanted to try to preserve the last closing argument. He noted that after the judge denied

the jury's request to hear the message again, the jury successfully asked to have the testimony during which the message was read into the record repeated.

Counsel attributed the State's success to the victim's testimony and the solicitor trying "the best case I've ever seen her try." Counsel said his only potential regret in hindsight was not asking the judge to tell the jury that while the post itself was not in evidence, the testimony containing it was in evidence.

On cross-examination, counsel said he wanted to try to explore tensions between the victim and her sister, including possible jealousy between the two of them, and the victim and her mother. He testified that he considered the Facebook post an element of his defense, but that he did not consider it "an essential part of the defense." Counsel said that if he made a mistake, it was in putting up a defense at all. As to the failure to get Judge Gravely to instruct the jury about the post's role in evidence, Counsel thought it was "cured" when the jury instead asked to hear the testimony concerning the post. He conceded that the jury might have otherwise been confused.

On redirect, Counsel again said he regretted putting up a defense, but that he changed course because of the victim's testimony. He said he advised Applicant to testify because of the quality of victim's testimony.

On recross, Counsel testified that he did not offer the post into evidence once he put up a case because he believed that doing so might have required the victim to testify again in order to authenticate it, and he "already had my teeth kicked in one time." He conceded that he could have tried to get it admitted during the mother's testimony, but that he believed re-calling the victim might have been necessary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

During the PCR hearing, this Court heard a mixture of unobjected to and proffered testimony from Wendy Williams, Angelina Barton, Corey Bruce, Chris Williams, and Scott Dover. This Court finds Ms. Barton has credibility issues, given that in her written statement she said that Gilstrap was “like my brother” before testifying almost 15 years later that she was referring to Gilstrap’s “being a brother to everybody.” The Court finds Mr. Bruce’s testimony credible. The Court also finds that Ms. Williams’ and Chris Williams’ credibility is harmed by their relationships with Applicant. Finally, the Court finds the testimony of trial counsel to be highly credible.

PCR Issue 1: Ineffective Assistance of Counsel/Belated Appeal

This case comes to the Court under a slightly different theory than the run-of-the-mill belated appeal issue. Here, Applicant is not arguing that he was never informed of the right to appeal, or that his case was not appealed—it was, in fact, appealed all the way to our supreme court, which affirmed the conviction on procedural grounds in an unpublished opinion. *See generally Rolan v. State*, 384 S.C. 409, 415, 683 S.E.2d 471, 475 (2009) (“[T]here must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant of the right to appeal.”); *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995) (“The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.”).

Instead, the Applicant is arguing that he should be granted a belated appeal for the very reason that our supreme court affirmed the case—that trial counsel did not “properly raise and preserve the issues at trial that Applicant raised on direct appeal.” In other words, Applicant is not arguing that trial counsel’s ineffective assistance led to the result at trial—his conviction—but that

it was ineffective assistance not to directly raise the claims raised here so that our appellate courts could consider them.

Any difference, though, is one of degrees. The only way counsel could be ineffective for raising an issue is if the trial court would have been reversed on appeal based on existing law at the time of Applicant's conviction. See *Patterson v. State*, 359 S.C. 115, 118, 597 S.E.2d 150, 151 (2004) ("An attorney is not required to anticipate potential changes in the law, which are not in existence at the time of the conviction."); *Chappell v. State*, 429 S.C. 68, 79, 837 S.E.2d 496, 501 (Ct. App. 2019) ("For an ineffective assistance claim, the PCR court must 'determine whether counsel was ineffective *at the time of the alleged error*.' Thus, the court must consider the law as it existed at the time of trial and 'not as it has evolved today' " (quoting *Pantovich v. State*, 427 S.C. 555, 562–63, 564, 832 S.E.2d 596, 600, 601 (2019))).

For trial counsel to be ineffective for failing to raise an issue, it had to be an issue on which the trial court would have either ruled differently or have been found by an appellate court to have ruled in error under the then-current state of the law. To be clear: the deficiency prong of the *Strickland*⁶ test would be the failure to raise an issue that trial counsel should have raised; the prejudice prong would be that the trial court would have ruled differently or been in error. As explained below, Applicant has not shown that to be the case.

Claims About Victim's History of Abuse Reporting

⁶ See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984) ("First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.").

The State objected to the vast majority of the evidence that Applicant sought to admit, and this Court sustained those objections. Virtually all of the objections dealt with the state's "Rape Shield Statute," S.C. Code Ann. § 16-3-659.1, so this Court will first address whether this evidence was admissible. It is worth noting that if the evidence is not admissible here—or would not have been admissible at trial—then the Applicant cannot meet Strickland's prejudice prong. *See Strickland v. Washington*, 466 U.S. 668, 695, 104 S. Ct. 2052, 2068–69, 80 L. Ed. 2d 674 (1984) ("When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt."). If the evidence would not have been admissible at trial, then trial counsel's failure to seek its admission—ineffective or not—could not have any impact on the verdict and could not serve as a basis for a belated appeal. Here, the Court finds that the evidence would not have been admissible under our state's Rape Shield Statute and our supreme court's decision in *State v. Boiter*, 302 S.C. 381, 396 S.E.2d 364 (1990); as a result, the counsel's failure to introduce it could not possibly have prejudiced Applicant.

The Rape Shield Statute and Boiter

Like many states, South Carolina has codified protections for victims of criminal sexual conduct who testify against their assailant. *See* § 16-3-659.1. Subsection (1) of the statute is particularly relevant here, as it lays out the dimensions of the protection.

Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible in prosecutions under Sections 16-3-615 and 16-3-652 to 16-3-656; however, evidence of the victim's sexual conduct with the defendant or evidence of specific instances of sexual activity with persons other than the defendant introduced to show source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and

that its inflammatory or prejudicial nature does not outweigh its probative value. Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded.

S.C. Code Ann. § 16-3-659.1(1). None of the evidence that Applicant sought to introduce at the PCR hearing had anything to do with the origin of semen, pregnancy, disease, or adultery on the part of the victim. Under the plain terms of the statute, then, any evidence about other sexual encounters of the victim is inadmissible.

But our courts have encountered cases requiring that the statute be interpreted in light of a defendant's rights under the Confrontation Clause of the Sixth Amendment. In a landmark opinion interpreting the statute, our supreme court held that "[t]he statute does not prohibit all evidence of the victim's past sexual conduct." *State v. McCoy*, 274 S.C. 70, 73, 261 S.E.2d 159, 161 (1979). In *State v. Finley*, our supreme court said that because the victim's encounter with a third person "was offered for purposes other than to attack the complainant's character by revelation of her sexual activity with a third party, we conclude that such evidence does not come within the purview of the Rape Shield Statute." 300 S.C. 196, 200, 387 S.E.2d 88, 90 (1989). Our court of appeals "has concluded the *Finley* decision held 'the Rape Shield Statute did not bar evidence of a victim's sexual conduct if the evidence was offered for a purpose other than to attack the victim's morality.'" *State v. Grovenstein*, 340 S.C. 210, 216, 530 S.E.2d 406, 409 (Ct. App. 2000) (quoting *State v. Lang*, 304 S.C. 300, 301, 403 S.E.2d 677, 678 (Ct. App. 1991)).

These concerns are particularly significant when it comes to past allegations of sexual assault or sexual misconduct by a victim. After all, the Rape Shield Statute applies to evidence of the victim's sexual conduct, not necessarily evidence of the victim's allegations of sexual conduct. Filling in the gap is our supreme court's holding in *State v. Boiter*, 302 S.C. 381, 396 S.E.2d 364

(1990). That court did not explicitly address the Rape Shield Statute, but did discuss when allegedly false allegations by a victim of sex crimes can be used as (essentially) impeachment evidence.

We hold that in deciding admissibility of evidence of a victim's prior accusation, the trial judge should first determine whether such accusation was false. If the prior allegation was false, the next consideration becomes remoteness in time. Finally, the trial court shall consider the factual similarity between prior and present allegations to determine relevancy.

Id. at 383–84, 396 S.E.2d at 365.

Boiter, then, is the starting place for this court’s analysis, because it would have determined whether the trial counsel should have raised the issue and whether the trial court, had it ruled for the State, would have been reversed on appeal. But this court does not begin with a completely blank slate, because the *Boiter* issues in this case have not gone completely unaddressed.

It is true, as Applicant contends, that our supreme court did not take up the *Boiter* issues during his direct appeal. *See State v. Williams*, Op. No. 2022-MO-001, 2022 WL 110793, at *1 (S.C. S. Ct. Jan. 12, 2022) (memorandum). Rather, the court stressed that it was “constrained to agree with the court of appeals that this issue is not preserved for *direct* appellate review.” *Id.*

The court of appeals, though, did analyze the *Boiter* issues in this case. *See State v. Williams*, Op. No. 2020-UP-199, 2020 WL 3571979, at *1 (S.C. Ct. App. July 1, 2020). And while this opinion is unpublished, it can still be instructive for this Court as it does its own *Boiter* analysis. In its opinion, the Court of Appeals found that Applicant “did not proffer witness testimony or other evidence to show the falsity of the allegations. In any event, we find the prior allegations were too remote to be admitted as evidence.” *Id.*

At the PCR hearing, Applicant was allowed to proffer evidence that the prior accusations were false. Nonetheless, this Court finds that the Applicant failed to carry his burden to show that

the allegations were false. He did nothing to address the court of appeals' finding regarding the remoteness of the allegations. And he did not show that any of the cases were factually similar enough to Applicant's case that the allegation was relevant. So even if trial counsel had preserved the issue and an appellate court had addressed it, the evidence still would have been barred under *Boiter*.

The Gilstrap Allegations

Applicant contends that the allegations the victim made against Tyler Gilstrap when she was 13 years old should have been offered at trial. Regardless of whether the evidence would have violated the Rape Shield Statute, it would not have been admitted under the *Boiter* test—and so trial counsel was not ineffective for failing to elicit it, and there was no prejudice to Applicant even if he was.

Again, the *Boiter* test requires this court to (1) find that the allegation was false; (2) consider its remoteness in time; and (3) consider whether it was similar enough to the crime at issue to be relevant. Applicant does not get past the first requirement.

During the PCR hearing, Applicant put a great deal of emphasis on whether the victim's allegations against Gilstrap consisted of statutory rape or "forcible rape." It does not make any difference and certainly does not constitute a reason for finding the victim's entire account false.

As to Ms. Williams' testimony on Gilstrap, she said that her daughter accused Gilstrap of forcible rape, Gilstrap was convicted of statutory rape, and that Applicant was aware of the allegations. On cross-examination, she testified that she took her daughter to law enforcement after hearing the allegation and that she had told Gilstrap that the victim was underage.

Setting aside whether there is a meaningful legal difference between statutory rape and forcible rape, Applicant fell well short here of showing the kind of truth or falsity that *Boiter* is

concerned with. Under all the available evidence regarding the Gilstrap incident, a 20-year-old man had sexual intercourse with a 13-year-old girl. That is rape under the laws of this state. All that Applicant musters to disprove that are 15-year-old statements—one from a witness who testified at the PCR hearing that he now regards the incident differently than he did at the time—and the testimony of a witness with credibility issues. None of the testimony indisputably disproves allegations of force. And none of it changes the fact that Gilstrap was convicted of raping the victim in this case. It is important to remember that Applicant in this case does not—and cannot—raise a defense of consent to these charges. His contention is that no sexual abuse happened at all. To that extent, whether the victim had “consensual” sex with Gilstrap or was forcibly raped, no one has produced evidence that her claims of having sexual intercourse with Gilstrap were false. Likewise, it does not matter here whether Applicant used force to abuse the victim; what is at issue is her testimony that the sexual acts took place.

Turning to remoteness, Applicant argued at the PCR hearing that the alleged sexual abuse by Applicant, at least at its latest point, was close in time to the Gilstrap incident. The State did not vigorously contest this, pointing to the other factors. It is possible that the time elapsed between the allegations—and not the time elapsed between the alleged incidents of abuse—is the proper frame of reference. *See Vanover v. State*, 433 S.C. 31, 46, 856 S.E.2d 160, 168 (Ct. App. 2021) (Lockemy, J., dissenting) (arguing that evidence should have been allowed because “the accusations” against one witness “were not so remote in time compared to those against Petitioner because *the two accusations were between one and three years apart*” (emphasis added)). Here, the victim’s accusations against Gilstrap were made in 2009, and those against Applicant were made five to six years later. Reading the time elapsed between the allegations, rather than the incident, is reinforced by a good faith reading of the court of appeals’ analysis of this case.

Regardless, there is virtually no similarity between the two sets of allegations here. One is that a slightly older man whom the victim viewed as a boyfriend had sexual intercourse with her several times over the course of an evening. The other is that her stepfather repeatedly abused her, largely through oral sex and fondling, for a number of years. The Gilstrap allegations involved no familial ties and a completely different dynamic; as a result, the crimes are too dissimilar to be considered. Further, as the testimony took place when the victim was 21 years old, it cannot fairly be said to explain her knowledge of sexual relations. *See Grovenstein*, 340 S.C. at 219, 530 S.E.2d at 411 (“[E]vidence of a child victim's prior sexual experience is relevant to demonstrate that the defendant is not necessarily the source of the victim's ability to testify about alleged sexual conduct.”).

As a result, this Court finds that the allegations against Gilstrap did not qualify for admission under *Boiter*. Even if the evidence is considered by this Court—despite its exclusion at the PCR hearing—it should not have been admitted by the trial court, and the trial court’s decision not to allow it would not have been grounds for reversal on appeal. So trial counsel was not ineffective in failing to offer the evidence and trial, and—because it should have been excluded in any case—Applicant can show no prejudice from the failure to attempt to introduce it.

The Neighbor

Likewise, the cursory allegations about the victim’s allegations against a neighbor should not be considered by this Court, nor would they have survived a *Boiter* analysis at trial. As a result, this court will also deny any relief related to them.

The Court is skeptical that Applicant provided any proof that the allegations of abuse by the neighbor were false. In fact, Ms. Williams appeared to testify that she did not know whether the accusations against the neighbor were true. There was certainly not enough for this Court to

conclude that the allegations were false. As a result, the evidence would fail to pass the first step of the *Boiter* test.

Additionally, the allegations that a neighbor with no familial ties to the victim abused her is different enough from allegations that her stepfather abused her that this factor is, at best, neutral and perhaps cuts against Applicant.

As a result, this Court finds that Applicant has not shown that the evidence should have been admitted at trial, or that a decision to exclude it would have constituted a basis for appeal. For those reasons, trial counsel was not ineffective in failing to offer the evidence, and the failure to offer the evidence could not prejudice Applicant because it would have been excluded in any case.

Applicant's State of Mind

Applicant also alleges that his attorney failed to preserve an issue of whether the trial court unduly restricted his ability to discuss why he might have been reluctant to be around the victim.

First, to the extent that any of the evidence is not relevant under *Boiter*, it would not have been relevant to explain Applicant's state of mind. To the extent that other evidence was aimed at proving this ground, Applicant cannot show prejudice.

In any case, much of this evidence came in during the trial, if sideways. For example, during the solicitor's cross-examination of Ms. Williams, she explained why she did not like leaving Applicant with her daughters.

But there had been previous accusations made by [the victim], and my other daughter, against other men. Because of that, I was always leery. [Applicant] wasn't their father I just feel comfortable [sic] leaving the girls alone or having him take care of them anywhere alone when they were little.

Ms. Williams also testified about her experiences with what she said were unjustified reports to DSS: “I was always worried because I had been put in that situation, I didn’t want him to be put in that situation.”

It is true that the trial court later said during Applicant’s testimony that “he can say, ‘I was fearful of being accused of anything’ but I don’t think that he can say because of her previous allegations.” As the trial court also acknowledged, though: “I mean, that’s already in the record anyway but I don’t think he can say.” As a result, Applicant did testify to the jury that he avoided being alone with the victim “[b]ecause I was fearful that she may make up some kind of allegations toward me.” Applicant also testified on cross examination that he understood Ms. Williams not wanting him to be around her daughters “because she said that she didn’t really trust them” and that he “was fearful to ever watch them or babysit them in any kind of way.”

This brings us to the PCR hearing. First, the Court will note that while the objections on this ground had to do with Applicant’s state of mind, Applicant did not testify at the PCR hearing. Ms. Williams testified about the victim’s previous accusations to DSS against her, as well as allegations against the neighbor and the paternal grandmother’s boyfriend. She also referenced the allegations against Tyler Gilstrap, at which point the State objected and the remainder of her testimony about the Gilstrap matter took place under proffer. Outside of proffer, she also testified that she believed the allegations against the grandmother’s boyfriend were “out of anger.”

Applicant’s brother, Chris Williams, proffered testimony that his brother was worried about the allegation against the neighbor.

[The victim] had made allegations against the neighbor that lived behind them previous to this. And my brother and I, we talked about. And I -- you know, we -- I came and just talked with him that he should never be alone with her due to those previous allegations.

Williams also said that the allegation was a serious cause of concern, because it indicated the victim might make a false report about Applicant.

The Court finds that even if trial counsel did not do a perfect job of preserving his attempts to get some of this testimony into the record, there is no showing of prejudice. The fact that Applicant was afraid to be alone with the victim was put before the jury. And that fact that the victim had made previous allegations was put before the jury. Therefore, the essence of the alleged state of mind evidence—that Applicant was afraid to be alone with the victim because of her previous allegations—was there for the jury to consider. Additionally, as the Court noted, Applicant did not testify at the PCR hearing. While the Court does not hold this against Applicant, it leaves a hole in the record about his state of mind.

For these reasons, the request for relief on this part of Ground One is **DENIED**.

PCR Issue 2: The Facebook Message

Applicant also alleges that trial counsel erred by not formally entering into evidence a Facebook message from the victim to Ms. Williams that was read before the jury at trial. The Court here finds that there was a strategic reason for trial counsel's initial decision not to introduce the evidence, that there was a strategic reason for not doing so later, and that in any event there was no prejudice because the jury was able to consider the information in the Facebook message.⁷

⁷ There appears to have been some confusion during the PCR hearing about when, precisely, the Facebook message was read before the jury. For example, the State at one point said during the hearing that the Facebook message “did come in during a witness that was called by the defense.” That is incorrect. Additionally, the trial counsel more equivocally suggested that Ms. Williams testified about it, though he admitted he did not remember. Based on the record from the trial, the Court finds these statements were incorrect. There was one Facebook post and one direct message read at trial; the post was read by counsel during cross-examination of the victim, and the message was read by the victim. Counsel for the State notified the court of his error while preparing a proposed order.

First, the trial counsel articulated a reasonable strategy for not entering the Facebook message into evidence during his cross-examination of the victim. Counsel testified that he wanted the opportunity to have the final closing argument before the jury—something that would have required presenting no evidence in Applicant’s defense. Counsel was concerned that admitting the Facebook post into evidence would foreclose his ability to have the last word.⁸

Counsel changed his calculation after the victim testified. However, he testified that submitting the Facebook message into evidence at that point might have required re-calling the victim to the stand. Trial counsel testified he did not want to risk the possibility that additional testimony from the victim could further damage Applicant’s case. These are reasonable calculations for trial counsel to make, and those decisions are afforded great deference.

Second, the Facebook message was read to the jury not once, but twice. Trial counsel did not have to get the evidence admitted in order for it to be considered by the jury. This might be a different case if counsel had not put the message before the jury in any way. But he did. And when the judge blocked the reading of the Facebook message itself to the jury, the jurors figured out an alternative route—they had the witness testimony containing the Facebook message read back to them. The jurors succeeded in hearing what they wanted to hear again; there was no prejudice.

Applicant’s contention that the judge’s comments that the Facebook message was not in evidence could have influenced the jury’s view of it also fails. If the jury understood the judge’s

⁸ The Court is aware of *Weldon v. State*, 436 S.C. 69, 870 S.E.2d 183 (Ct. App. 2021). In that case, the court of appeals questioned whether counsel’s testimony about wanting the final closing argument was unequivocal. In that case, the counsel had not called alibi witnesses and ventured speculation that it might have been about having the final word. That is dissimilar to this case, where the counsel found other ways to get the evidence before the jury even if it was not formally admitted. Further, the Facebook message itself was not as significant a defense as alibi witnesses.

comments to mean they could not consider the Facebook message at all, it seems unlikely that they would then ask the Court to re-read that testimony to them. And even if this Court ignores that, this speculation is far from enough to carry Applicant's burden. As a result, even if the Court were to find ineffective assistance, it would not find prejudice. Applicant's request for relief on this ground is **DENIED**.

PCR Issue 3: Additional Threats

This Court finds very little of the alleged "additional evidence of threats" was submitted at the PCR hearing. Ms. Williams testified briefly that the victim made unspecified threats. Applicant has not appeared to offer substantial evidence on this ground, and so it is **DENIED**.

CONCLUSION

Based on the above, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This Court finds Trial Counsel provided effective representation. Therefore, the application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE**.

Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *See Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Pursuant to Rule 71.1(g), SCRCP, if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief I denied and the application for post-conviction relief be dismissed with prejudice.
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 7th day of April, 2025.


The Honorable Patrick C. Fant, III
At-Large Circuit Court Judge

Clerk of Court, Pickens County, SC
APR 10 '25 PM 1:09

WITNESSES

23 Jan Kelley

CD Dickens County Sheriff's Office

4/24/2014

ARREST WARRANT NUMBER
2014A3910300185

ACTION OF GRAND JURY

~~TRUE BILL~~

~~DATE~~ AUG 22 2017

William Davis
Foreperson of Grand Jury

VERDICT

Guilty

J. A. Galloway
Foreperson of Petit Jury
Date: 9-1-17

AMENDED DOCKET
NO. 2015-GS-39-1030

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 22 2017

TERM 2015

THE STATE

vs.

JOSEPH CAMPBELL WILLIAMS II

Amended Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

AUG 22 2017

the Grand Jurors of Pickens

County present upon their oath:

That JOSEPH CAMPBELL WILLIAMS II did in Pickens County, between the dates of July 8, 2003 and July 8, 2007, commit a sexual battery on MINOR 1 who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

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

Shirley S. Odom 71891
SOLICITOR BAR #

025

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/24/2014

ARREST WARRANT NUMBER
2014A3910300185

ACTION OF GRAND JURY

TRUE BILL

Date

JUL 14 2015

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-39-^{SBT} 1030

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUL 14 2015

TERM 2015

THE STATE

vs.

JOSEPH CAMPBELL WILLIAMS II

*Being
amended
8/22/17*

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

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

JUL 14 2015

MINOR 1

B. J. L. 7599

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/24/2014

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
DOB: 04-08-1972
SS #: 248-23-9692

ACTION OF GRAND JURY

TRUE BILL
Date MAR 21 2017

Melanie Davis
Foreperson of Grand Jury

VERDICT

Guilty

J. M. Ballew
Foreperson of Petit Jury
Date: 9-1-17

DOCKET NO. 2017-GS-39-SSO 0700

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 21 2017 TERM 2017

THE STATE

vs.

JOSEPH CAMPBELL WILLIAMS II

Indictment for

0396

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

VIOLATION § 16-03-0655(B)(1)

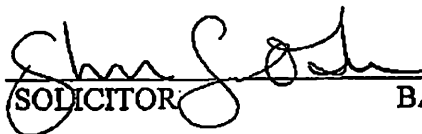
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

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

At a Court of General Sessions, convened on **MAR 21 2017** the Grand Jurors of Pickens
County present upon their oath:

That JOSEPH CAMPBELL WILLIAMS II did in Pickens County, between the dates of July 8th, 2007
and July 8th, 2009, commit a sexual battery on **MINOR 1**, who was fourteen years of age or less but who
was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the
South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 77891

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/24/2014

ARREST WARRANT NUMBER

2014A3910300186

ACTION OF GRAND JURY

~~TRUE BILL~~

~~Date~~ AUG 22 2017

Michael H. Davis
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED DOCKET
NO. 2015-GS-39-1031

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 22 2017

TERM 2015

THE STATE

vs.

JOSEPH CAMPBELL WILLIAMS II

Amended Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

AUG 22 2017

the Grand Jurors of Pickens

County present upon their oath:

That JOSEPH CAMPBELL WILLIAMS II did in Pickens County, between the dates of August 8, 2004 and September 8, 2009, commit a sexual battery on MINOR 2, who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

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

Shm S. Odom T7891
SOLICITOR BAR #

031

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

4/24/2014

ARREST WARRANT NUMBER
2014A3910300186

ACTION OF GRAND JURY

TRUE BILL

Date

JUL 14 2015

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015 GS-39- ^{SBT} 1031

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUL 14 2015 **TERM 2015**

THE STATE

vs.

JOSEPH CAMPBELL WILLIAMS II

Indictment for

0385

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

VIOLATION § 16-03-0655(A)(1)

13
23

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **JUL 14 2015** the Grand Jurors of Pickens
County present upon their oath:

That JOSEPH CAMPBELL WILLIAMS II did in Pickens County, between the dates of August 8, 2004
and September 8, 2013, commit a sexual battery on **MINOR 2**, who was less than eleven years of age. This
is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as
amended

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


SOLICITOR. BAR # 70577

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens
STATE VS.

Joseph Campbell Williams II

AKA:

Race: WHITE Sex: M Age: 45DOB: 1972 SS#: [REDACTED]

Address:

City, State, Zip: Liberty, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Criminal Sexual Conduct, 1st Deg W/Minor <11 Yr

INDICTMENT/CASE#: 2015GS3901030A/W#: 2014A3910300185Date of Offense: 7/8/2003S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

SENTENCE SHEET

25 years - life☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shannon Odum
Odum, ShannonMPA1
SC Bar#

Defendant

DOVER, SCOTT
DOVER, SCOTT09807
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 9/1/17☐ 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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforc. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$130 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(j) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Deborah Garrison

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 1275Sentence Date: 9/1/17

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Joseph Campbell Williams II

AKA:

Race: WHITE Sex: M Age: 45

DOB: 1972 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Liberty, SC

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

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

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

ATTEST:

[Signature] Odom, Shannon

SC Bar# 77891

Defendant

PRO SE

9999

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3900700

A/W#: 2017GS3900700

Date of Offense: 7/8/2007

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

up to 20 years

☒ CONVICTED OF or ☐ PLEADS

9/1/17

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2755
9/1/17