

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

LARRY DURANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001799

APPENDIX

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

No. 20-_____

RECEIVED

Dec 11 2020

S.C. SUPREME COURT

Larry Durant,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITION FOR WRIT OF *CERTIORARI* TO
THE SUPREME COURT OF SOUTH CAROLINA

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QUESTIONS PRESENTED

I.

The jurors deliberating about Larry Durant's guilt or innocence informed the trial judge they were split eight to convict, three to acquit, with one juror not deliberating. Addressing the jurors, the trial judge branded the non-deliberating juror "not helpful to the situation at all" because the juror might "ensure that we have a mistrial if you continue to refuse to even vote even if the 11 other folks do reach a unanimous decision." The trial judge also instructed, "So in light of that, let me send you back. However long it is you want to take *this evening*, we'll be here as long as you want to be here. You know, I'll leave it at that." Less than 34 minutes after receiving these instructions, the jurors convicted Larry Durant of second-degree criminal sexual conduct with a minor. Was this instruction unconstitutionally coercive under the Sixth Amendment, *Allen v. United States*, 164 U.S. 492 (1896), and its progeny?

II.

Ulanda McRae testified for the prosecution at Larry Durant's jury trial. Based on a mistake in spelling McRae's last name, the prosecutor informed defense counsel that McRae did not have a criminal history. After trial, defense counsel learned McRae had a criminal history and moved for a new trial, alleging a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). After holding the prosecution violated *Brady*, the Supreme Court of South Carolina held McRae's criminal history was not material under *Brady* and *United States v. Bagley*, 473 U.S. 667, 682 (1985), based on the other evidence presented by the prosecution and without considering the evidence presented by the defense. Did the Supreme Court of South Carolina apply the correct standard of review for materiality of McRae's criminal history when it failed to consider the evidence presented by Larry Durant?

LIST OF PARTIES

Larry Durant and the State of South Carolina are the only parties to this petition.

CORPORATE DISCLOSURE

Larry Durant is a natural person. The respondent is the State of South Carolina. No corporations are parties to this petition.

LIST OF PRIOR PROCEEDINGS

The State of South Carolina charged Larry Durant with second-degree criminal sexual conduct with a minor in the Court of General Sessions for Sumter County. *State v. Durant*, Indictment No. 2014-GS-43-00947. On May 26, 2016, the jurors convicted Durant and the trial judge imposed a sentence of twenty years imprisonment. Appendix (hereinafter “A.”) 7, 74-76. On June 8, 2016, the trial judge convened a hearing on Durant’s motion for a new trial, which was denied. A. 77-105.

Durant appealed his conviction and sentence to the Court of Appeals of South Carolina. *State v. Durant*, Appellate Case No. 2016-001264. On January 11, 2019, the Supreme Court of South Carolina certified the case for its review pursuant to Rule 204, SCACR. A. 8.

On May 6, 2020, the Supreme Court of South Carolina affirmed Durant’s conviction and sentence. *State v. Durant*, 430 S.C. 98, 844 S.E.2d 49 (2020) (Appellate Case No. 2016-001264; Opinion No. 27964). A. 1-6. On July 8, 2020, the court below denied Durant’s petition for rehearing and issued the remittitur. A. 10-12.

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The sentence imposed by the Court of General Sessions for Sumter County is unpublished and reprinted in the appendix. A. 7.

The opinion of the Supreme Court of South Carolina is published at *State v. Durant*, 430 S.C. 98, 844 S.E.2d 49 (2020), and reprinted in the appendix. A. 1-6.

JURISDICTIONAL STATEMENT

The Supreme Court of South Carolina issued its opinion on May 6, 2020. A. 1-6. After receiving an extension of time (A. 9), Durant filed a timely petition for rehearing on June 10, 2020 (A. 133-85). The Supreme Court of South Carolina denied the petition and issued the remittitur on July 8, 2020. A. 10-12.

This Court has jurisdiction to review this petition, seeking review of the decision of the Supreme Court of South Carolina, pursuant to 28 U.S.C.A. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution, applicable to the State through the Fourteenth Amendment, provides, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . .” Question I implicates this Court’s opinions in *Allen v. United States*, 164 U.S. 492 (1896), *Jenkins v. United States*, 380 U.S. 445 (1965), and *Lowenfield v. Phelps*, 484 U.S. 231 (1988).

The Fourteenth Amendment to the United States Constitution provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Question II implicates this Court's opinions in *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Bagley*, 473 U.S. 667 (1985).

STATEMENT OF CASE

The Supreme Court of South Carolina summarized:

[Larry] Durant was the founder and lead pastor at Word International Ministries, a church in Sumter. He is a double amputee below his knees and is legally blind. In 2013, four teenage girls who belonged to the church accused Durant of sexually assaulting them. Two of the girls were cousins, another was a God-sister, and the fourth was a close friend. The State indicted Durant on one count of second-degree criminal sexual conduct with a minor,¹ stemming from an alleged sexual battery against one of the girls, and three counts of third-degree criminal sexual conduct² pertaining to conduct with the other three. However, the State only proceeded to trial on one count.³

Durant, 430 S.C. at 102, 844 S.E.2d at 50-51 (2020) (footnotes added).

From May 23-26, 2016, the State tried Durant before the Honorable Roger M. Young, Sr. and a jury on one count of second-degree criminal sexual conduct with a minor. "Initially, the jury indicated they were at an impasse and that one juror refused to vote." *Id.*, 430 S.C. at 103, 844 S.E.2d at 51. Over Durant's objection, the trial judge "gave an *Allen* charge and added that refusing to vote was not an option." *Id.*, 430 S.C. at 103, 844 S.E.2d at 52. "Shortly thereafter, the jury found Durant guilty, and the court sentenced him to 20 years' imprisonment." *Id.*, 430 S.C. at 103-04, 844 S.E.2d at 52.

The court below summarized the post-trial events:

¹ S.C. Code Ann. § 16-3-655(B).

² S.C. Code Ann. § 16-3-654.

³ The trial judge admitted the testimony of the other women pursuant to Rule 404(b), SCRE, as interpreted by *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009). On the same day it decided *Durant*, the Supreme Court of South Carolina overruled *Wallace* in *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020), but still affirmed Durant's conviction and sentence under the new framework announced in *Perry*.

A few hours after sentencing, defense counsel received a call from [Ulanda] McRae's ex-husband inquiring why he did not question McRae about her prior criminal convictions. Defense counsel did not believe McRae had a criminal background because the State previously had disclosed a report from the National Crime Information Center (NCIC) stating she did not have a criminal record. Counsel conducted a [South Carolina Law Enforcement Division public access criminal history] search using her name, date of birth, and social security number, which revealed numerous prior convictions under nine aliases for offenses such as shoplifting, fraudulent checks, and forgery spanning from 1991-2005.

Thereafter, Durant moved for a new trial, arguing the State's case was based entirely on credibility and the State's failure to disclose McRae's record prevented him from impeaching a critical witness or further developing his defense that Johnson stole the residence owned by Durant, thereby creating the need to fabricate the charges against him. The State responded it had run McRae's criminal history using the NCIC under the name "McCrae" rather than the correct spelling. The State argued its failure to disclose McRae's criminal history did not amount to a *Brady* violation because it was unaware she had one and, in any event, it was immaterial to Durant's guilt. Durant disagreed, asserting the State was in possession of the criminal history for *Brady* purposes because it could have run a proper search but failed to do so.

The circuit court found the State was not in possession of the evidence and that it would not have affected the outcome of the trial. While some of McRae's convictions were likely inadmissible, the court noted it may have allowed one or more into evidence that would have been favorable to the defense, but regardless, the case boiled down to whether the jury believed the testimony of the victim and the three other witnesses regarding assaults.

Id., 430 S.C. at 104-05, 844 S.E.2d at 52 (internal footnotes omitted).

In his direct appeal to the Supreme Court of South Carolina, Durant raised the following issues:

- After the jurors announced a deadlock, did the trial judge err by giving an *Allen* charge that singled out the sole non-voting juror, directing that juror not to prevent a unanimous verdict, after which the jurors returned a unanimous verdict in less than thirty-four minutes?
- Did the trial judge err by denying Pastor Larry Durant's new trial motion based on a *Brady* violation resulting from the prosecutor not disclosing the prior criminal history of Ulanda McRae when her prior criminal history for dishonesty impeached her credibility?

After filing his briefs, but while his direct appeal was still pending in the court below, Durant submitted supplemental citation letters, pursuant to Rule 208(b)(7), SCACR, calling attention to *Brewster v. Hetzel*, 913 F.3d 1042 (11th Cir. 2019) (jury's guilty verdict for armed robbery was impermissibly coerced, and therefore failure of trial counsel to object and move for mistrial was prejudicial, as would support *habeas corpus* petition), and *State v. Taylor*, 427 S.C. 208, 216, 829 S.E.2d 723, 728 (Ct. App. 2019) (citing *Brewster* and holding trial court did not err in giving deadlocked jury *Allen* charge, but *Allen* charge was coercive). A. 131-32.

The state Supreme Court rejected Durant's *Allen* charge issue, relying on its own precedent, by holding:

It is apparent the trial court did not err in directing the juror to fulfill the oath he took at the outset of trial, as the court did not urge the jurors to vote in any specific way. Moreover, the court's suggestion that the jurors would have to deliberate for as long as they wanted to be there that evening does not render the charge coercive.

Durant, 430 S.C. at 111, fn. 6, 844 S.E.2d at 55, fn. 6 (2020) (citing *Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) ("A trial judge has a duty to urge, but not coerce, a jury to reach a verdict."); *Tucker v. Catoe*, 346 S.C. 483, 490, 552 S.E.2d 712, 716 (2001) ("Whether an *Allen* charge is unconstitutionally coercive must be judged in its context and under all the circumstances."); *Johnson v. Sam English Grading, Inc.*, 412 S.C. 433, 454-57, 772 S.E.2d 544, 554-57 (Ct. App. 2015) (holding an *Allen* charge was not improperly coercive where the court instructed the jury on the Friday before Labor Day that they could deliberate into the night, as well as Saturday, or the following Tuesday)).

Regarding the *Brady* issue, the state Supreme Court held, "[T]he evidence was clearly favorable to Durant, as defense counsel could have used it to impeach McRae." *Durant*, 430 S.C. at 107, 844 S.E.2d at 54. After finding a *Brady* violation, the court below held, "Durant cannot demonstrate the evidence was material because there was not a reasonable probability the result of

the proceedings would have been different.” *Id.*, 430 S.C. at 110, 844 S.E.2d at 55 (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985) (“A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.”)). In so holding, the state Supreme Court noted “the State presented cumulative evidence in the form of the girls’ testimony,” and, “[a]s a result, the jury had ample evidence supporting its verdict.” *Id.*

On June 10, 2020, Durant petitioned for rehearing. A. 133-85. Regarding the *Allen* charge, he argued “the historical significance of the *Allen* charge,” the increased pressure on the non-deliberating juror because “the judge knew the split of the jurors,” the trial judge branded the non-deliberating juror “not helpful to the situation at all,” the trial judge’s threat to hold the jurors “[h]owever long it is you want to take *this evening*,” and how quickly the jurors rendered a verdict after the *Allen* charge. A. 142-43.

Regarding the *Brady* violation, Durant argued the state Supreme Court “did not review the entire record,” did not consider evidence presented by Durant, did not “consider the fact that this case turned on the credibility of witnesses,” and “did not correctly apply the standard for a *Brady* violation.” Durant pointed out *Bagley* modified the holding in *United States v. Agurs*, where this Court observed:

The proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt. It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed. This means that the omission must be evaluated in the context of the entire record. If there is no reasonable doubt about guilt whether or not the additional evince is considered, there is no justification for a new trial. On the other hand, if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.

427 U.S. 97, 112-13 (1976). A. 144-46.

On July 8, 2020, the Supreme Court of South Carolina denied Durant's petition for rehearing and issued the remittitur. A. 10-12. This petition for a writ of *certiorari* follows.

REASONS WHY THIS COURT SHOULD GRANT THE WRIT

I.

The jurors deliberating about Larry Durant's guilt or innocence informed the trial judge they were split eight to convict, three to acquit, with one juror not deliberating. Addressing the jurors, the trial judge branded the non-deliberating juror "not helpful to the situation at all" because the juror might "ensure that we have a mistrial if you continue to refuse to even vote even if the 11 other folks do reach a unanimous decision." The trial judge also instructed, "So in light of that, let me send you back. However long it is you want to take *this evening*, we'll be here as long as you want to be here. You know, I'll leave it at that." Less than 34 minutes after receiving these instructions, the jurors convicted Larry Durant of second-degree criminal sexual conduct with a minor. Was this instruction unconstitutionally coercive under the Sixth Amendment, *Allen v. United States*, 164 U.S. 492 (1896), and its progeny?

Knowing the split of the jurors, the trial judge instructed the jurors to continue deliberating, singled out the non-deliberating juror, admonished the non-deliberating juror to not prevent a unanimous verdict, and threatened to hold the jurors until they reached a unanimous verdict. The jurors returned a unanimous verdict in less than thirty-four minutes after hearing this instruction. This instruction deprived Larry Durant of his Sixth Amendment right to have his guilt or innocence determined by jurors free from coercion.

The Sixth Amendment to the United States Constitution guarantees an accused the right to a trial by impartial jurors. The Sixth Amendment is applicable to the states through the Fourteenth Amendment. *E.g. Klopfer v. North Carolina*, 386 U.S. 213 (1967), *Pointer v. Texas*, 380 U.S. 400 (1965), *Gideon v. Wainwright*, 372 U.S. 335 (1963). "The verdict of the jury should represent the opinion of each individual juror." *Allen*, 164 U.S. at 501. A trial court may properly instruct jurors to consider "opinions of each other" and "decide the case if they could conscientiously do so." *Id.* "[J]urors may not be coerced into surrendering views conscientiously held." *Jenkins v. United*

States, 380 U.S. 445, 446 (1965). Determining whether “the jury was improperly coerced requires that [an appellate court] consider the supplemental charge given by the trial court in its context and under all the circumstances.” *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988) (citing *Jenkins*, 380 U.S. at 446).

Brewster reviewed the history of trial courts coercing jurors to reach a verdict. “From the fourteenth through the eighteenth centuries, one method of accelerating unanimity was to prohibit jurors from eating or drinking until they all agreed on a verdict.” 913 F.3d at 1046 (citing 3 William Blackstone, *Commentaries* 375). Judges could “carry” jurors around “the circuit from town to town in a cart. . . . until a judgment bounced out.” *Id.* (internal quotations and citations omitted) (citing Blackstone at 376 and *Renico v. Lett*, 559 U.S. 766, 780 (Stevens, J., dissenting)). *Brewster* acknowledged our judicial system has “come a long way and now accept[s] that some jury deliberations will end in deadlock.” 913 F.3d at 1047. In *Brewster*, the trial judge gave a “lengthy charge emphasiz[ing] that the jurors had taken an oath to follow the law, which meant they must deliberate more [and] his instructions with the challenge that he had taken his oath seriously and hoped they would do the same.” 913 F.3d at 1047. “[W]hen told that the one juror who wouldn’t vote to convict was doing crossword puzzles, the judge ordered all the reading materials taken out of the jury room.” *Id.* Eighteen minutes later, the jurors returned a guilty verdict. *Id.* *Brewster* observed, “Though the judge addressed his admonitions to the entire jury, the lone holdout must have felt as though they were aimed at her.” 913 F.3d at 1055. After all, “the holdout juror was using [crosswords puzzles] to keep holding out” and resist the pressure of the majority jurors. *Id.* 913 F.3d at 1054. *Brewster* held, “the coercive circumstances that led to the verdict undermined the fundamental fairness of the trial and the reliability of the verdict.” 913 F.3d at 1056. *Brewster*

thus recognized the Sixth Amendment allows a juror to cease deliberating to protect a consciously held view from the pressure of the majority jurors.

The facts set forth herein support this claim and, by this specific reference, the facts raised elsewhere in this petition relevant to this claim are fully incorporated herein.

Durant's jurors began deliberating at 2:16 p.m. At 5:11 p.m., the trial judge announced "something different" had occurred and summarized a note from the jurors:

Your Honor, after two hours and 45 minutes, presumably, and it says the vote is after four attempts, and it tells me what the break is between guilty and not guilty, but the unusual thing is they have one juror who will not vote....

I've never had that. And I don't know how to deal with that other than bring them in, give them an *Allen* charge, ask them to try and tell them not voting is just not an option. They need to vote guilty or not guilty, but not voting doesn't do anything. I'm completely open to suggestions on it. It's such a baffling thing, I'm almost certain that it would be unique.

A. 88-90.

The State suggested substituting one of the alternate jurors for the juror refusing to vote, but the trial judge already had discharged the alternates. Defense counsel objected to the trial judge giving an *Allen* charge because "there's case law that suggest[s] that it may unfairly target the minority juror." A. 91. The jurors returned to the courtroom at 5:15 p.m., and the trial judge gave an *Allen* charge which concluded with the following admonition:

Now, I don't know who the person is, and I'm not asking who the person is that won't vote, but that's really not helpful to the situation at all. All that will do is ensure that we have a mistrial if you continue to refuse to even vote even if the 11 other folks do reach a unanimous decision. So that's not a helpful process and really under the process we have, we need all 12 people to vote. I don't care how you vote, but it really does – it really is necessary for you to vote in order for us to have a verdict. Whether it's guilty or not guilty, it's got to be unanimous one way or the other. So we do need you to participate whoever this person is at this point is saying I'm not voting.

So in light of that, let me send you back. However long it is you want to take this evening, we'll be here as long as you want to be here. You know, I'll leave it at that.

And Mr. Foreman, go ahead and send your jury back and see what you can come up with.

A. 92-95.

The jury resumed deliberations at 5:21 p.m. The jurors returned to the courtroom at 5:55 p.m.—only thirty-four minutes after they were previously sent out to resume deliberations—with a verdict finding Durant guilty of second-degree criminal sexual conduct with a minor. A. 95-96.

During sentencing, the trial judge observed:

Well, the charges in this case were really unlike any I've heard before. The evidence that the State presented was compelling. The defense made a strong case. And the jury chose to believe the young ladies.

A. 75. The trial judge then sentenced Durant to twenty years imprisonment, the maximum sentence allowed by S.C. Code Ann. § 16-3-655(B). A. 7, 97-98.

Here, the decision of the state Supreme Court is contrary to this Court's opinions in *Allen*, *Jenkins*, and *Lowenfield* for four reasons.

First, the trial judge knew the jurors were split eight to three for conviction, with one juror not deliberating. A. 88. "Pressure on jurors, especially on holdout jurors, is increased when the instructions to keep trying to reach unanimity come from a judge who knows how split the jury is and in which direction." *Brewster*, 913 F.3d 1054-55. The nonvoting juror, no doubt, understood who the trial judge was addressing.

Second, the trial judge branded the nonvoting juror "not helpful to the situation at all" because the juror might "ensure that we have a mistrial if you continue to refuse to even vote even if the 11 other folks do reach a unanimous decision." The trial judge thus instructed the nonvoting juror to vote with the majority. The juror singled out by this instruction is similarly situated to the

non-deliberating juror in *Brewster*, 913 F.3d at 1047 (“when told that the one juror who wouldn’t vote to convict was doing crossword puzzles, the judge ordered all the reading materials taken out of the jury room”).

Third, thirty-four minutes after the *Allen* charge, the jurors returned a verdict finding Durant guilty of second-degree criminal sexual conduct with a minor. A. 95-96. *Cf. Brewster*, 913 F.3d at 056 (“The final circumstance contributing to our conclusion that the verdict was coerced is how quickly the jury unanimously agreed on a verdict after the court’s last instruction and action. A verdict of conviction ‘bounced out’ of the jury room only 34 minutes after the last instruction from the judge” and 18 minutes after removing reading materials.).

Fourth, the trial judge instructed, “So in light of that, let me send you back. However long it is you want to take *this evening*, we’ll be here as long as you want to be here. You know, I’ll leave it at that.” A. 95 (emphasis added). When the trial court gave this instruction, the judge knew the jurors had made four unsuccessful attempts to reach a verdict. A. 88. The trial judge did not offer the jurors dinner, an opportunity to resume deliberations on a later date, or anything else for the comfort of the jurors.⁴ *Cf. Brewster*, 913 F.3d at 1046 (“one method of accelerating unanimity was to prohibit jurors from eating or drinking until they all agreed on a verdict.”)

This Court, accordingly, should grant the writ and consider whether the trial court’s *Allen* charge was unconstitutionally coercive.

⁴ Thus, Durant’s case is distinguishable from *Johnson v. Sam English Grading, Inc.*, a case relied on by the court below, where the trial judge made provisions for the jurors’ comfort. 412 S.C. 433, 457, 772 S.E.2d 544, 556 (Ct. App. 2015) (“The trial court’s statement about ordering dinner and about his wife being out of town were not coercive. Additionally, the trial court was not going to force the jury to come back on Saturday; he also offered the option of Tuesday.”).

II.

Ulanda McRae testified for the prosecution at Larry Durant's jury trial. Based on a mistake in spelling McRae's last name, the prosecutor informed defense counsel that McRae did not have a criminal history. After trial, defense counsel learned McRae had a criminal history and moved for a new trial, alleging a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). After holding the prosecution violated *Brady*, the Supreme Court of South Carolina held McRae's criminal history was not material under *Brady* and *United States v. Bagley*, 473 U.S. 667, 682 (1985), based on the other evidence presented by the prosecution and without considering the evidence presented by the defense. Did the Supreme Court of South Carolina apply the correct standard of review for materiality of McRae's criminal history when it failed to consider the evidence presented by Larry Durant?

The prosecutor withheld Ulanda McRae's criminal history.⁵ Trial counsel discovered McRae's criminal history after the trial. During the hearing on Larry Durant's motion for a new trial, the trial judge stated the court would have admitted at least one of McRae's convictions, as impeachment, pursuant to Rule 609, SCRE. Withholding McRae's criminal history denied Durant his due process right to evidence that impeached McRae's credibility, thereby undermining confidence in the jury's verdict.

"[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. Due process requires the prosecution to disclose impeachment evidence. *E.g. Giglio v. United States*, 405 U.S. 150, 92 (1972). "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Napue v. Illinois*, 360 U.S. 264, 269 (1959). A due process violation may result from the prosecution's "failure to assist

⁵ Durant never alleged the prosecution intentionally withheld McRae's criminal history. In finding a *Brady* violation, the Supreme Court of South Carolina correctly concluded, "[W]hether the prosecution acted in good or bad faith is irrelevant in determining whether a *Brady* violation occurred." *Durant*, 430 S.C. at 107, 844 S.E.2d at 54 (citing *Brady*, 373 U.S. at 87).

the defense by disclosing information that might have been helpful in conducting the cross-examination.” *Bagley*, 473 U.S. at 678. “[A] constitutional error occurs, and the conviction must be reversed, only if the evidence is material.” *Id.* “The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.* at 682. “A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.” *Id.* The withheld evidence “must be evaluated in the context of the entire record.” *Agurs*, 427 U.S. at 113.

The facts set forth herein support this claim and, by this specific reference, the facts raised elsewhere in this petition relevant to this claim are fully incorporated herein.

Prior to trial, Durant requested disclosure of “favorable material” pursuant to *Brady*, *Giglio*, and *Napue*, including any criminal histories of prosecution witnesses. A. 13-17. The prosecution’s evidence at trial consisted of the four “girls,” Lizzy Johnson, and Ulanda McRae. *Durant*, 430 S.C. at 103, 844 S.E.2d at 51. McRae “is one of the girls’ mother” and “the daughter of Lizzy Johnson.” *Id.* “Durant previously dated” Johnson. *Id.* At trial,

Durant contended that Johnson, who lived in a property purportedly owned by Durant around the time the allegations surfaced, forged a deed conveying that property to Johnson sometime earlier. When the allegations arose, a deed was recorded conveying the property back to Durant. The defense believed these fraudulent transfers served as a motive to fabricate the girls’ allegations of sexual abuse. Defense counsel also stressed the lack of DNA, the fact that Durant was a double amputee and legally blind, suffered from erectile dysfunction, and had a chronic sexually transmitted disease that none of the alleged victims contracted.

Id. Durant also presented testimony from Myer Mack (A. 30-53) and Elvin Vaughn (A. 53-64), which is not mentioned in the state Supreme Court’s opinion, to demonstrate it is extremely improbable that the alleged sexual abuse occurred. The court below agreed “with the trial court that McRae’s conviction for obtaining a signature under false pretenses likely would have been admissible. *Durant*, 430 S.C. at 110, 844 S.E.2d at 55.

McRae's importance to the prosecution flowed from her claim she overheard two of the girls discussing Durant's sexual abuse. A. 22-24. While Durant's defense included the property dispute with Johnson, it also relied on a conspiracy between Johnson, McRae, and the girls to fabricate the allegations of sexual abuse. McRae, Johnson, and all four girls knew each other. During closing arguments, the prosecution relied on the credibility of McRae overhearing the "accidental disclosure." A. 70-71.

The Supreme Court of South Carolina did not consider McRae's criminal history "in the context of the entire record." *Agurs*, 427 U.S. at 113. Rather, the court below focused on the prosecution's case when it held, "[T]he State presented cumulative evidence in the form of the girls' testimony," meaning "the jury had ample evidence supporting its verdict." *Durant*, 430 S.C. at 110, 844 S.E.2d at 55. In passing, the court below noted that Durant "never suggested that McRae—as opposed to Johnson—forged the deed." *Id.* As seen, Durant's defense was not based on an allegation that McRae forged the deed. Rather, his defense was based on Johnson, McRae, and the girls conspiring to present false testimony.

The Court below should have examined the entire record, including Durant's evidence, to determine whether "there is a reasonable probability that, had [McRae's criminal record] been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, at 682. Durant strongly contested the state's evidence, but the Supreme Court of South Carolina did not consider McRae's criminal history in the context of any of this evidence. The trial judge's observation that the "defense made a strong case" but "the jury chose to believe the young ladies" is evidence McRae's criminal history, if known to the jurors, would have changed the result of the proceedings. A. 97. That the jurors remained deadlocked after four votes is additional evidence

McRae's criminal history, if known to the jurors, would have changed the result of the proceedings.

A. 88.

This Court should grant the writ and consider whether the court below applied the proper test for materiality of a *Brady* violation. If this Court concludes the Supreme Court of South Carolina did not apply the proper test for materiality of a *Brady* violation, then this Court should remand to the court below to apply the proper test.

CONCLUSION

For the foregoing reasons, this Court should grant the writ and consider the issues.

Respectfully submitted,

By /s/E. Charles Grose, Jr.

E. Charles Grose, Jr.

Counsel of Record

The Grose Law Firm, LLC

404 Main Street

Greenwood, SC 29646

(864) 538-4466

(864) 538-4405 (fax)

charles@groselawfirm.com

Counsel for Petitioner Larry Durant

October 6, 2020.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

RECEIVED

FEB 25 2021

S.C. SUPREME COURT
Scott S. Harris
Clerk of the Court
(202) 479-3011

February 22, 2021

Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

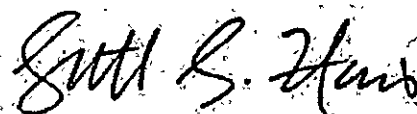
Re: Larry Durant
v. South Carolina
No. 20-6725
(Your No. 2016-001264)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

2021 JUN 22 PM 1:55

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Larry Durant, SCDC No. 00138605

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2021-CP-43-1059

CERTIFIED TRUE COPY
OF ORIGINAL FILEBarbara Singer
DEPUTY CLERK OF COURT
SUMTER COUNTY
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 Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence General Sessions Court, Sumter, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which

RECEIVED

Revised 3/2003

JUN 25 2021

Referred to PCR

Answered _____

sentence was imposed:

(a) 2014-GS-43-947

(b) ____

(c) ____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 26, 2016

(b) ____

(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. South Carolina Supreme Court

ii. United States Supreme Court

iii. ____

(b) the result in each such Court to which you appealed:

i. Conviction affirmed

ii. Petition for Writ of Certiorari denied

iii. ____

(c) the date of each such result:

i. May 6, 2020

ii. February 22, 2021

iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 430 S.C. 98, 844 S.E.2d 49 (2020)

ii. Denial of Writ of Certiorari was not published

iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) ____

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel failed to adequately prepare for trial.

(b) Trial counsel failed to object to the improper bolstering testimony of Natalie

Kelly

(c) Trial counsel failed to require the state to open fully in their opening argument.

(d) Trial counsel failed to object to improper closing arguement of the state which improperly shifted the burden to the defendant.

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 introduce evidence to the jury that the pastor's study where many of the alleged sexual acts occurred, had a second door leading to a library or book store that was not locked.

(2). Trial counsel was aware the state was planning to use several other alleged victims to prove a common scheme or plan. Trial counsel failed to call many other witnesses who would have testified that they were counseled by the Applicant in his office and the Applicant made no sexual advances on them. This testimony would have shown the common scheme or plan of the Applicant was not to make sexual advances on young woemn he counseled, but to pray for them and give them guidance.

(3). Trial counsel failed to call as a witness the wife of the Applicant who could have refuted the testimony as to the signing of the deed.

(4). Trial counsel failed to call the Applicant to refute the testimony that he cried when confronted with the allegations. This statement was false. As trial counsel did not otherwise impeach this testimony through cross examination, the jury was given no alternative to the unrefuted false claim.

(b) The state called as a witness Detective Natalie Kelly. Over pages 244 to 249, this witness improperly bolstered the testimony of the complaining witness by repeating the allegation made by the witness. Detective Kelly was then permitted to testify that based upon the statements by the complainant witness, she obtained a warrant. This was tantamount to the Detective saying she believed the complaining witness. Trial counsel should have objected.

(c) Trial counsel failed to object to the State not opening fully on the law and the facts. This failure to object permitted the State to make arguments to which the Defendant did not have the opportunity to respond.

(d). Trial counsel failed to object to the the arguemnt of the state on page 736 of the transcript when the State argued, "Why would these girls be lying? They get nothing out of this. They have absolutely no motivation to lie." This argument had the effect of shifting the burden to the defendant to prove why they girls would lie. In addition, saying they had no motivation to lie is an expression of the opinion of the prosecutor as to the truthfulness of the witnesses which is also improper.

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. N/A

ii. —

iii. —

iv. —

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

i. N/A

ii. —

iii. —

iv. —

(c) the disposition thereof:

i. N/A

ii. —

iii. —

iv. —

(d) the date of each such disposition:

i. N/A

ii. —

iii. —

iv. —

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

i. N/A

ii. —

iii. —

iv. —

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

No

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

(a) which grounds have been presented:

i. —

ii. —

iii. —

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

i. —

ii. —

- iii. —
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) —
- (b) —
- (c) —
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered “yes” to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Shaun C. Kent, P. O. Box 117, Manning, SC.
- ii. Cameron J. Blazer, 1037-D Chuck Dawley Blvd., Suite 100, Mount Pleasant, SC
- iii. E. Charles Grose, 404 Main Street, Greenwood, SC
- iv. C. Rauch Wise, 305 Main Street, Greenwood, SC
- (b) the proceedings at which each such attorney represented you:
- i. Mr. Kent and Ms. Blazer represented me in pre-trial matters, trial and sentencing.
- ii. Mr. Grose represented in the direct appeal and the Petition for Writ of Certiorari to the United States Supreme Court.
- iii. Mr. Wise represented me in preparation of this Post Conviction Relief application.
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?

No

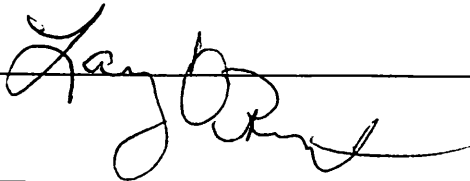
STATE OF SOUTH CAROLINA)

)

VERIFICATION

County of Greenville)

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



SWORN to and subscribed before me this _____
day of _____, 2____.

Notary Public (L.S.)

My Commission Expires: _____

RECORDED
2021 JUN 22 PM 1:55
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

RECORDED

STATE OF SOUTH CAROLINA 2021 OCT 7 5 PM 12:04
 COUNTY OF SUMTER JAMES S. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.
 Larry Durant, #138605,) Case No. 2021-CP-43-1059
)
 Applicant,)
)
 v.) RETURN
) (Counsel retained)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

Respondent, making its Return to the application for post-conviction relief (PCR) filed by Larry Durant (Applicant) on June 22, 2021, and received by Respondent on June 28, 2021, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In October 2014, the Sumter County Grand Jury indicted Applicant for second-degree criminal sexual conduct (CSC) with a minor (2014-GS-43-0947). Shaun C. Kent and Cameron J. Blazer, Esquires, represented Applicant. Assistant Attorneys General Kinli Bare Abee and David Fernandez prosecuted the case. On May 23-26, 2016, Applicant proceeded to a jury trial before the Honorable Roger M. Young. The jury convicted Applicant as indicted, and Judge Young sentenced him to twenty years' imprisonment.

Applicant filed a timely notice of appeal, and E. Charles Grose, Jr., represented him on appeal. Applicant filed a brief raising six issues: whether the trial court erred in declining to order a mistrial after misinforming the jury of Applicant's charges, whether the trial court erred on various grounds for admitting the testimony of three other victims to show a common plan or scheme, whether the trial court's Allen charge was erroneous for singling out the minority juror,

whether the trial court erred in denying Applicant's motion for a new trial based on Brady, and whether the cumulative error doctrine entitled Applicant to a new trial. After both parties filed briefs, Applicant moved to certify the case from the Court of Appeals, and the South Carolina Supreme Court granted his motion on January 11, 2019, and transferred the case.

The Supreme Court heard oral arguments on May 9, 2019. On May 6, 2020, the South Carolina Supreme Court affirmed Applicant's conviction. State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020). On July 8, 2020, the South Carolina Supreme Court denied Applicant's motion for rehearing and issued the remittitur. Applicant then filed a petition for writ of certiorari in the United States Supreme Court on October 6, 2020, which was denied on February 22, 2021.

Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel failed to adequately prepare for trial.
 - a. "Trial counsel failed to introduce evidence to the jury that the pastor's study where many of the alleged acts occurred had a second door leading to library or bookstore that was not locked."
 - b. "Trial counsel was aware the State was planning to use several other alleged victims to prove a common plan or scheme. Trial counsel failed to call many other witnesses who would have testified that they were counseled by Applicant in his office and the Applicant made no sexual advances on them. This testimony would have shown the common plan or scheme of the Applicant was not to make sexual advances on the young women he counseled, but to pray for them and give them guidance."
 - c. Trial counsel failed to call Applicant's wife as a witness "who could have refuted the testimony as to the signing of the deed."

- d. Trial counsel failed to call Applicant “to refute the testimony the testimony that he cried when confronted with the allegations.”
- 2. Trial counsel failed to object to the improperly bolstering testimony of Natalie Kelly.
 - a. “Over pages 244 to 249, this witness improperly bolstered the testimony of the complaining witness. . . . Detective Kelly was then permitted to testify that based upon the statements by the complaining witness, she obtained a warrant. This was tantamount to the Detective saying she believed the complaining witness. Trial counsel should have objected.”
- 3. Trial counsel failed to require the State to open fully in their opening argument.
 - a. Trial counsel failed to object when the State did not open fully on the law and the facts, which allowed the State “to make arguments to which the Defendant did not have the opportunity to respond.”
- 4. Trial counsel failed to object to improper closing argument of the State which improperly shifted the burden to the defendant.
 - a. Trial counsel failed to object to the argument of the State on page 736 of the transcript. “This argument had the effect of shifting the burden to the defendant to prove why the girls would lie. In addition, saying they had no motive to lie is an expression of the opinion of the prosecutor as to the truthfulness of the witnesses which is also improper.”

Applicant seeks a new trial as relief.

III. SUMMARY OF TESTIMONY AT TRIAL

K.R. began attending Applicant’s church when she was five years’ old. Her aunt, Ulanda McRae, was one of Applicant’s “armor bearers” (members of the church with additional responsibilities ranging from helping Applicant prepare for a service or standing guard outside the door to his office) and her grandmother, Lizzie Johnson, helped manage the churches’ finances. K.R. testified her first sexual interaction with Applicant occurred in 2012, when she was thirteen and in the eighth grade. Applicant ordered one of his armor bearers retrieve her for a special “prayer session” during which he inserted his fingers into her vagina. Applicant claimed the prayer was to help her “not like girls” and avoid diseases. The assaults continued over time, usually Wednesdays, Fridays, and Sundays and occurred in his offices at both of his churches and

progressing to sexual intercourse. The intercourse would occur with K.R. lying on Applicant's desk with him standing. During one such session of intercourse, K.R. noticed Applicant's penis had a pink pigmentation on parts, but flesh colored elsewhere. Applicant often remarked he wanted K.R. to "have his baby." (Tr.p.72, line 21–Tr.p.83, line 5).

A.R., K.R.'s cousin and McRae's daughter, recounted her abuse by Applicant. She began attending Applicant's religious services at age four, and would show up at the church Tuesdays or Wednesdays, Fridays, and Sundays for worship services, bible studies, and other groups. The first incident of abuse occurred in 2012 when she was eighteen. Applicant had summoned her to his office for a special prayer session to ensure she "wouldn't get any diseases and no harm would come to [her] body," including unplanned pregnancies. Instead, he inserted his fingers into her vagina. Eventually, Applicant began having sex with A.R., bending her over his desk while he stood. A.R. recalled Applicant's penis had "specks of pink" pigmentation all over his penis, but that the remainder was normal. Their sexual relationship terminated on Mother's Day of 2013. When A.R. terminated the relationship, Applicant claimed she would no longer be blessed and things in her life, including her applications to colleges and general health would be negatively impacted. During cross examination, she recalled that on a few occasions Applicant gave her small amounts of money, no more than \$20. (Tr.p.92, line 9–Tr.p.106, line 17).

T.H., another victim testified regarding her experiences with Applicant. She began attending Applicant's church around the age of four. Her mother was a member of the church choir and a Sunday school teacher. T.H. went to the churches Wednesdays, Fridays, and Sundays for worship services and other activities. When she was approximately "fourteen or fifteen,"¹

¹ On cross-examination, Applicant admitted she may have actually been sixteen when the abuse occurred. (Tr.p.116, line 1–Tr.p.118, line 10).

Applicant invited her into his office for a special prayer session to protect her from sexually transmitted diseases, breast cancer, and other things which could harm her. Instead, he fondled her breasts and vagina. This behavior occurred for a couple months, with Applicant summoning T.H. to his office through the use of his armor bearers. The abuse ended when she disclosed these incidents to her mother and her “God sister,” A.R. (Tr.p.112, line 1–Tr.p.122, line 23).

D.B., the final victim, testified she could not recall her exact age when she started attending Applicant’s churches, but knew she was “really young.” Her mother was an usher and her nephew was an armor bearer. Her first encounter with Applicant occurred when she was thirteen, around 2012 or 2013, after one of his armor bearers asked her to go back to his office. When she arrived, Applicant informed D.B. he wanted to pray for her, to protect her and that if she refused his request “something bad” would happen to her. Later, when Applicant discovered D.B. had a bladder infection, “prayers” to heal that ailment were included in their sessions. After Applicant discovered D.B. was pregnant with another man’s child, he claimed he could “bump the seed” out of her. When D.B. tried to end the relationship, Applicant claimed the blessings promised to her and her family would not occur and that “something bad” would happen to them. The abuse occurred for approximately a year, during which Applicant would assault her in his offices and his home. During that period, he would penetrate D.B.’s vagina with either his fingers or his penis. When they had intercourse in his office, D.B. would lie on the desk while Applicant stood. She noticed Applicant had a pink discoloration over much of his penis. On cross-examination, D.B. recalled Applicant also gave D.B.’s mother \$500 for an abortion. (Tr.p.124, line 5–Tr.p.132, line 15).

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

a. Failure to Prepare for Trial

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation, to call particular witnesses, or to introduce particular evidence does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate or introduce evidence must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

To establish counsel failed to adequately prepare for trial, Petitioner must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel’s failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d

129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Additionally, “[i]n most PCR cases in which the applicant seeks relief for trial counsel’s failure to call witnesses, the PCR court’s analysis – and the analysis by the appellate court – is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2108) (citing Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011) (deferring to trial counsel’s strategic considerations); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770-71 (1998) (same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same)). This Court’s “analysis of [C]ounsel’s strategic decisions must be ‘highly deferential’ to counsel’s judgment, and ‘a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.’” Id. at 320-21, 815 S.E.2d at 440 (quoting Strickland, 466 U.S. at 689).

b. Failure to object to improper bolstering and failure to require State to open fully on the law and facts

Applicant alleges trial counsel was constitutionally ineffective for failing to object to the allegedly bolstering testimony of Detective Natalie Kelly and for failing to require the State to open fully on the laws and facts during opening arguments. However, “decisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.’ What motions to file and ‘whether to put on evidence so as to preserve the final word in closing argument’ are also strategic and tactical decisions to be made by trial counsel.” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct.

App. 2014) (internal citations omitted).

Additionally, “trial counsel is repeatedly required during any trial... to make split-second decisions on many subjects, including whether to object to testimony. There are a variety of reasons counsel may soundly choose not to make such an objection, including the reality that not all evidence offered by the State is harmful to the defendant. Under certain circumstances, therefore, counsel may employ a strategy of not objecting—even when counsel has a good argument for exclusion—if counsel reasonably perceives the benefits of doing so are outweighed by some other consideration.” For example, in Caprood v. State, the South Carolina Supreme Court reversed the PCR Court’s finding that trial counsel was ineffective for failing to move to strike or request limiting instructions after his objection to hearsay was sustained. 338 S.C. 103, 108-09, 525 S.E.2d 514, 516-17 (2000). At the evidentiary hearing, trial counsel testified he did not request curative instructions “as a trial strategy... because they tend to bring into focus precisely the item the objector has kept out.” Id. at 110, 525 S.E.2d at 517. The Supreme Court found because trial counsel “articulated a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Id.

“Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)). Trial counsel’s strategy is reviewed under “an objective standard of reasonableness.” Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004). Moreover, “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691, 104. To establish prejudice, Applicant is required to show “there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. Therefore, Applicant must also prove he was prejudiced by trial counsel's allegedly deficient performance at trial.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

c. Failure to object to solicitor's closing statement

Finally, Applicant alleges trial counsel rendered ineffective assistance in failing to object to the solicitor's closing argument regarding whether the testifying victims were telling the truth.

A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (internal citations omitted). The argument must not be calculated to arouse the jurors' passions or prejudices, and its

content should stay within the record and reasonable inferences that may be drawn therefrom. Id. However, “[i]f a Solicitor’s closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs. Undoubtedly, a Solicitor may argue the State’s version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.” State v. New, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) (internal citations omitted). The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id., 383 S.C. at 516, 680 S.E.2d at 915.

Respondent submits Applicant can satisfy neither requirement of the Strickland test as to any of these allegations. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. AMENDMENTS AND DISCOVERY PROCESS

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRCP. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially

by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRCP (explaining how to amend a pleading).

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

VI. DENIAL OF ALL OTHER ALLEGATIONS

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

VII. PRAYER FOR RELIEF

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

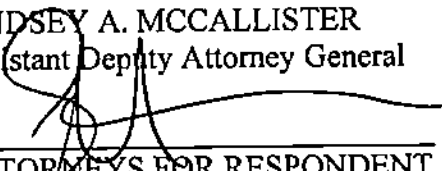
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

10/1/, 2021

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2021 OCT -5 PM 12:34

IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT

2021-CP-43-1059

LARRY DURANT, #138605, SUMTER COUNTY, S.C.

Applicant,

vs

STATE OF SOUTH CAROLINA,

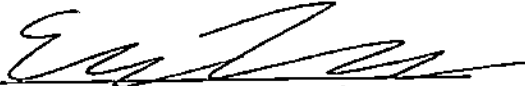
Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

DATED this the 1st day of October, 2021.


Erik Marcusson, Legal Assistant
For Respondent

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Larry Durant, SCDC No. 00138605

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

REC
2022 JAN 2
JAMES C. C
CLERK OF
SUMTER CO.

IN THE COURT OF COMMON PLEAS

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shaper

DEPUTY CLERK OF COURT

SUMTER COUNTY
SOUTH CAROLINA

2021-CP-43-01059

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 Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence General Sessions Court, Sumter, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

(a) 2014-GS-43-947

(b) ____

(c) ____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 26, 2016

(b) ____

(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. South Carolina Supreme Court

ii. United States Supreme Court

iii. ____

(b) the result in each such Court to which you appealed:

i. Conviction affirmed

ii. Petition for Writ of Certiorari denied

iii. ____

(c) the date of each such result:

i. May 6, 2020

ii. February 22, 2021

iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 430 S.C. 98, 844 S.E.2d 49 (2020)

ii. Denial of Writ of Ceriorari was not published

iii. —

9. If you answered “no” to (7), state your reasons for not so appealing:

(a) —

(b) —

(c) —

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel failed to adequately prepare for trial.

(b) Trial counsel failed to object to the improper bolstering testimony of Natalie Kelly

(c) Trial counsel failed to require the state to open fully in their opening argument.

(d) Trial counsel failed to object to improper closing argument of the state which improperly shifted the burden to the defendant.

(e) Appellate counsel failed to include in the record on appeal charts prepared by trial counsel that illustrated the lack of similarity of the 404b witnesses.

(f) Since the trial, the applicant has learned that the jury decided his cases upon an improper basis which constitutes juror misconduct.

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 introduce evidence to the jury that the pastor's study where many of the alleged sexual acts occurred, had a second door leading to a library or book store that was not locked.

(2). Trial counsel was aware the state was planning to use several other alleged victims to prove a common scheme or plan. Trial counsel failed to call many other witnesses who would have testified that they were counseled by the Applicant in his office and the Applicant made no sexual advances on them. This testimony would have shown the common scheme or plan of the Applicant was not to make sexual advances on young women he counseled, but to pray for them and give them guidance.

(3). Trial counsel failed to call as a witness the wife of the Applicant who could have refuted the testimony as to the signing of the deed.

(4). Trial counsel failed to call the Applicant or otherwise refute the testimony that he cried when confronted with the allegations. This statement was false. As trial counsel did not otherwise impeach this testimony through cross examination, the jury was given no alternative to the unrefuted false claim.

(5). Trial counsel failed to interview and call as a witness Rolnd McRae, the former husband of Ulanda McRae. Had Mr. McRae been interviewed before trial, trial counsel would have learned of the criminal history of Ulanda McRae before trial would have been able to successfully impeach her testimony.

(b) The state called as a witness Dectective Natalie Kelly. Over pages 244 to 249, this witness improperly bolstered the testimony of the complaing witness by repeating the allegtion made by the witness. Dectective Kelly was then permitted to testify that based upon the statements by the complainint witness, she obtained a warrant. This was tantamount to the Dectective saying she belived the complaining witness. Trial counsel should have objected.

(c) Trial consel failed to object to the State not opening fully on the law and the facts. This failure to object permitted the State to makes arguments to which the Defendant did not have the opportunity to respond.

(d). Trial counsel failed to object to the the arguemnt of the state on page 736 of the transcript when the State argued, "Why would these girls be lying? They get nothing out of this. They have absolutely no motivation to lie." This argument had the effect of shifting the burden to the defendant to prove why they girls would lie. In addition, saying they had no motivation to lie is an expression of the opinion of the prosecutor as to the truthfulness of the witnesses which is also improper.

(e) Applellate counsel failed to include inthe record on appeal the charts that had been prepared by trial counsel to show the lack of similarity of the testimony of the Rule 404b witnesses presented by the state.

(f) Since the trial, applicant has learened fromone of the jurors that the juror used the 404b testimony for an improper purose. The applicant is informed and belives the juror said that they used the 404b testimony to conclude the applicant was guilty simply because so many witnesses testified against him.

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. N/A
 - ii.
 - iii.
 - iv.
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii.
 - iii.
 - iv.
 - (c) the disposition thereof:
 - i. N/A
 - ii.
 - iii.
 - iv.
 - (d) the date of each such disposition:
 - i. N/A
 - ii.
 - iii.
 - iv.
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
 - ii.
 - iii.
 - iv.
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered “yes” to (14) identify:
- (a) which grounds have been presented:
 - i.
 - ii.
 - iii.
 - (b) the proceedings in which each ground was raised:
 - i.
 - ii.
 - iii.
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a)
 - (b)
 - (c)
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered “yes” to one or more parts of (17), list:

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

- i. Shaun C. Kent, P. O. Box 117, Manning, SC.
- ii. Cameron J. Blazer, 1037-D Chuck Dawley Blvd., Suite 100, Mount Pleasant, SC
- iii. E. Charles Grose, 404 Main Street, Greenwood, SC
- iv. C. Rauch Wise, 305 Main Street, Greenwood, SC

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

- i. Mr. Kent and Ms. Blazer represented me in pre-trial matters, trial and sentencing.
- ii. Mr. Grose represented in the direct appeal and the Petition for Writ of Certiorari

to the United States Supreme Court.

iii. Mr. Wise represented me in preparation of this Post Conviction Relief application.

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

A new trial.

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

No

STATE OF SOUTH CAROLINA

)
)

VERIFICATION

County of Greenville

)

I, Larry Durant, 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.

Larry Durant

SWORN to and subscribed before me this 12th
day of January, 2022.

Tamara Conwell (L.S.)

Notary Public

My Commission Expires: September 25, 2023

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

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

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

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2_____.

Notary Public

My Commission Expires: _____

RECORDED
2022 FEB - 1 PM 3:44

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

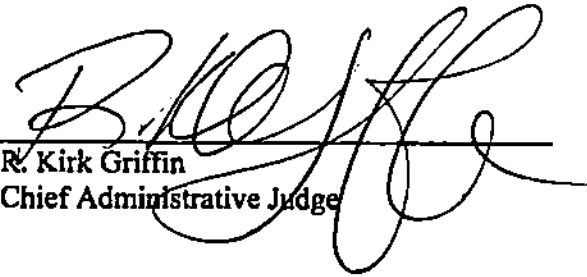
Larry Durant, SCDC No 138605)
Applicant,)
-vs-) ORDER
State of South Carolina,) 2021-CP-43-1059
Respondent.)

This matter come before me upon the Motion of Larry Durant, the Applicant, and with the consent of the State, to continue this matter beyond the present term of court. Mr. Durant filed his Post Conviction Relief petition on June 22, 2021. On January 24, 2021 he filed an Amended Post Conviction Relief Petition. In the Amended Petition, he brought an allegation against appellate counsel and an additional ground against trial counsel.

This matter was scheduled for a virtual post conviction relief hearing during the week of February 14, 2022. The Applicant has objected to conducting a virtual Post Conviction Relief hearing and has requested a continuance. The State has no objection to the continuance based upon the fact that with the amended petition the State will have to obtain at least one additional witness for the hearing. In addition, the State will need time to further investigate the new allegations.

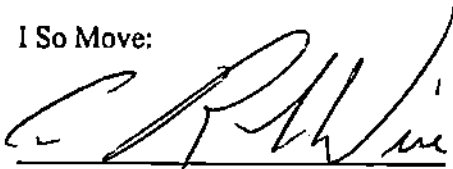
Therefore, upon the Motion of the Larry Durant, the Applicant and with the consent of the State, this matter is continued beyond the February 14, 2022 term of Court.

February 1
January 1, 2022


R. Kirk Griffin
Chief Administrative Judge

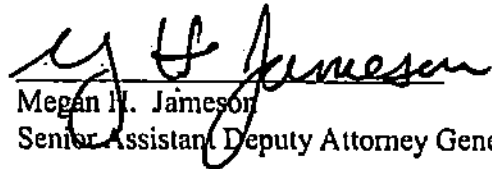
RKG#1

I So Move:



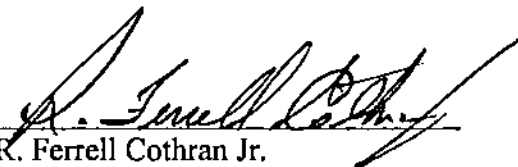
C. Rauch Wise
Attorney for Applicant

I consent:



Megan H. Jameson
Senior Assistant Deputy Attorney General

AND IT IS SO ORDERED this 6 day of March, 2023.


R. Ferrell Cothran Jr.
Chief Administrative Judge
Third Judicial Circuit

Manning, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	Case No.: 2021-CP-43-01059
	)	
Larry Durant,	)	
Applicant,	)	
vs.	)	
State of South Carolina,	)	
Respondent.	)	November 22, 2024

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING

BEFORE THE HONORABLE KRISTI CURTIS
Circuit Court Judge, presiding

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

For Applicant:	C. Rauch Wise, Esquire 305 Main Street Greenwood, SC 29646
For Respondent:	T. Cruise Mitchell, Esquire S.C. Attorney General's Office P.O. Box 11549 Columbia, SC 29211

Recorded by:	DCRP
Transcribed by:	Teresa B. Johnson CVR-M-CM, RVR, RVR-M P.O. Box 2812 Greenville, SC 29602

I N D E X

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JEREMIAH DURANT	
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SHAUN KENT	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
APPLICANT			
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7	Photo	29	29
8	Photo	29	29

P R O C E E D I N G S

(Proceedings begin on the 22nd day of
November 2024, at 10:28 a.m.)

THE COURT: Good morning.

MR. MITCHELL: Good morning, Your Honor.

MR. WISE: Good morning.

THE COURT: I see we've got Mr. Durant here
in the courtroom.

Okay. So for the record: This is Case
No. 2021-CP-43-1059, Larry Durant versus the State
of South Carolina. Ready when you are.

MR. MITCHELL: That's correct, Your Honor.
Your Honor, may I approach with the court packet.

THE COURT: Please.

MR. MITCHELL: May it please Court.

THE COURT: Yes, sir.

MR. MITCHELL: This is the post-conviction
relief matter of Larry Durant v. State, Case
No. 2021-CP-43-01059, out of Sumter County. I'm
Cruise Mitchell on behalf of the State of
South Carolina. Applicant is present and
represented by Council Rauch Wise.

In October 2014 the Sumter County Grand Jury
indicted Applicant for second degree criminal
sexual conduct with a minor. Shaun C. Kent and

1 Cameron J. Blazer represented Applicant.
2 Assistant Attorneys General Kenley Bayer Avey
3 [phonetic] and David Fernandez prosecuted the
4 case.

5 On May 23 through May 26, 2016, Applicant
6 proceeded to a jury trial before the Honorable
7 Roger M. Young. The jury convicted Applicant as
8 indicted, and Judge Young sentenced him the 20
9 years imprisonment.

10 Applicant filed a timely notice of appeal,
11 and E. Charles Gross Jr. represented him on
12 appeal. After both parties filed briefs,
13 Applicant moved to certify the case from the Court
14 of Appeals, and the South Carolina Supreme Court
15 granted his motion on January 11, 2019, and
16 transferred the case.

17 On May 6, 2020, the South Carolina Supreme
18 Court affirmed Applicant's conviction in a
19 published opinion. On July 8, 2020, the South
20 Carolina Supreme Court denied Applicant's motion
21 for rehearing and issued the remittitur.
22 Applicant then filed a petition for writ of
23 certiorari in the United States Supreme Court on
24 October 6, 2020, which was denied on
25 February 22, 2021. Applicant then timely filed

1 this application on June 22, 2021.

2 And with that, Your Honor, I'll turn it over
3 to Mr. Wise to put on the record the allegations
4 he'll be going forward on today.

5 **MR. WISE:** Your Honor, we -- we're going to
6 withdraw some allegations in the application. And
7 if you look on page 3, under E, where appellant
8 counsel failed to include the record (inaudible),
9 we're withdrawing that one. We're withdrawing the
10 jury deciding the trial on an improper basis,
11 which is F. We're withdrawing -- well, my
12 numbering may be not quite correct -- 11A2 and
13 11A3, as well as 11A4.

14 **THE COURT:** And this is on the amended
15 application for PCR?

16 **MR. WISE:** Right. Uh-huh.

17 **THE COURT:** Gotcha. Okay.

18 **MR. WISE:** All right.

19 And with that, we'll start out calling up
20 Larry Durant.

21 **THE COURT:** Okay. If you'll come on up, sir,
22 to be sworn.

23 **THE BAILIFF:** Sir, place your right hand on
24 the Bible. Right here. Right here.

25 **MR. WISE:** He has trouble with his vision.

1 **THE BAILIFF:** Oh, he does? Okay.

2 State your name.

3 **THE WITNESS:** Larry Durant.

4 **THE BAILIFF:** Do you solemnly swear or affirm
5 your testimony to the court should be the truth,
6 the whole truth, and nothing but the truth so help
7 you God?

8 **THE WITNESS:** I do.

9 **THE BAILIFF:** Thank you much, sir.
10 State your name and spell your last name.

11 **THE WITNESS:** Larry Durant. D-u-r-a-n-t.

12 **MR. WISE:** Your Honor, some of the
13 allegations are pure legal issues, which I will
14 briefly touch. But for those, we primarily rely
15 on the record. He hasn't been to law school yet
16 to give an opinion it.

17 **LARRY DURANT**

18 having first been duly sworn, testifies as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. WISE:**

21 **Q** Mr. Durant, where did you live before you
22 were incarcerated?

23 **A** ████ Bridges Road, Sumter, South Carolina,

24 **Q** All right. And what was your occupation,
25 then?

1 **A** A minister of the gospel.

2 **Q** All right. And what church was that?

3 **A** Word International Ministries.

4 **Q** Can you speak up just a little bit?

5 **A** Word International Ministries.

6 **Q** Okay. And you eventually arrested in charge
7 of criminal sexual conduct involving several young
8 women?

9 **A** That's correct.

10 **Q** All right. And who did you hire to represent
11 you in this case?

12 **A** Shaun Kent.

13 **Q** All right. Do you know how long after your
14 arrest that you actually retained him?

15 **A** First, I obtained David Weeks. And then
16 about January of -- in the following year, I obtained
17 Shaun.

18 **Q** Okay. That been January 2015?

19 **A** January 24 -- 2014.

20 **Q** 2014 is when you got arrested?

21 **A** 2013.

22 **Q** Okay. Now, did you meet with Mr. Kent to
23 prepare for this trial?

24 **A** Yes.

25 **Q** All right. Now, among the things that I want

1 to ask you about, there was some but not always
2 alleged -- alleged assaults occurred in the pastor's
3 study?

4 A That's correct.

5 Q All right. Did you meet with Mr. Kent to
6 discuss the layout of the study?

7 A Yes. And Mr. -- yes, I did. And Mr. Kent
8 hired an investigator sitting there to talk with me
9 about it.

10 Q Okay. Did you meet with -- you know who
11 Ronnie McRae is?

12 A Yes.

13 Q And who is he?

14 A He's -- he was an elder at my church.

15 Q All right. Did you meet with Mr. McRae and
16 yourself and Mr. Kent or his investigator at the
17 church?

18 A Yes.

19 Q And what was the purpose of that
20 conversation?

21 A To show him the layout of the church and
22 where everything was situated.

23 Q And why was the layout of the church and
24 where everything's situated important in this case?

25 A It's shown the -- the impossibility or the

1 inlikelihood [sic] of these things taking place without
2 someone knowing it, or someone being able to pull this
3 off without someone walking in on us.

4 **Q** And why is that?

5 **A** Because of the arrangement of it and the
6 access to my office through different doors.

7 **Q** All right. There was testimony at the trial
8 about two armor-bearers at the door -- the main
9 entrance to your office off the hall?

10 **A** Yes.

11 **Q** All right. And what was the purpose of
12 their -- what was that purpose for being there after
13 church service?

14 **A** Their purpose was to escort me wherever I
15 needed to be escorted to, and to carry my robe, books,
16 whatever material necessary for me to get where I was
17 going.

18 **Q** Okay. And you're double amputee?

19 **A** Yes, sir.

20 **Q** And --

21 **A** And legally documented blind.

22 **Q** Okay. And at that time, did you have any
23 prosthesis?

24 **A** Yes.

25 **Q** Okay. Now, did -- you still need help to get

1 around?

2 A Yes.

3 Q Okay. So who had access to your office at
4 the church?

5 A My children, my grandchildren, my wife -- my
6 wife had keys; the ministers, I mean.

7 Q Now, your children, did they -- what kind of
8 access did they have?

9 A Unfettered. I mean, they came in when they
10 got ready.

11 Q Meaning -- when you say "unfettered" meaning
12 what?

13 A That mean they came in when they got ready to
14 come in.

15 Q All right. And did they do that?

16 A Yes, they did. They came in when they wanted
17 to. They came in for -- they came in the morning to
18 get money for Sunday school. They came in just to come
19 in.

20 Q Would the -- would the armor guard -- bearers
21 stop them?

22 A They knew better than to stop my children.

23 Q Okay. And did your children regularly come
24 into the office?

25 A Yes, sir.

1 **Q** All right. What -- what buildings were
2 off -- not building -- what offices were off the side
3 of -- of your office?

4 **A** What rooms?

5 **Q** Well, which room of importance was adjoining
6 your office?

7 **A** Well, we had a -- a room with a television in
8 it and a couch and -- where the children came in from
9 time to time to watch TV while they waited on me. And
10 we had another room on the other side where we had
11 conference meetings and for the church staff from time
12 to time. And we had another room where they had a
13 little bookstore -- candy -- where they sold candy and
14 tapes and different whatnots.

15 **Q** All right. Let's talk about the room that
16 was bookstore slash candy store. What was it used for?

17 **A** Just what I said. I mean, you know, they
18 sold different things in there, you know, sold
19 different little things in there for the -- -- for the
20 children, for the adults, and, you know, for -- extra
21 little change for the youth -- for the youth -- for
22 youth trips and --

23 **Q** And was that -- was that room occupied after
24 a church service?

25 **A** Yeah. Before and after.

1 **Q** Okay. And for what purpose?

2 **A** To sell, like I say, candies and tapes and --
3 and different items.

4 **Q** The door -- did that office have a door
5 leading into your office?

6 **A** Yes, it did.

7 **Q** Was that door ever locked?

8 **A** No, it wasn't.

9 **Q** Do you know of any key to that door?

10 **A** No. I never had one.

11 **Q** Okay. Did people who occupy in that room --
12 room also occasionally enter your office?

13 **A** Yes.

14 **Q** All right. What about the acoustics in that
15 room as far as hearing what's going on in your office?

16 **A** Like I told Shaun that day and his
17 investigator -- and we talked about it -- it's a flat
18 top roof, cement floors, block walls. You can speak in
19 it. It will vibrate. It -- I mean, sound will travel.
20 Good acoustics. I mean, you can speak and you can hear
21 it all over. You know, it travels.

22 **Q** And you -- you met with Mr. Kent and
23 Mr. McRae?

24 **A** Yes.

25 **Q** All right. Was any of the testimony that you

1 just gave about access to your study presented in your
2 defense?

3 A It was not.

4 Q Do you think it would have been -- made a
5 difference?

6 A It would have been a great difference.

7 Q And why is that?

8 A Because people would have seen that it
9 wasn't -- it wasn't what it appeared to be, like we was
10 in some hidden away room where I was just taking
11 advantage of these young ladies, like I was some
12 monster or something, as I was painted by the
13 prosecution -- like I was a monster by the prosecution
14 and the liars that painted me as a villain, which I
15 wasn't.

16 Q Were you expecting Mr. McRae to testify?

17 A I was. And -- and -- and not only Mr. McRae,
18 but all the other people I -- young men and women I
19 counseled in my office that was not -- what -- did not
20 say they were molested outside of the family.

21 Q During the testimony, did -- did you testify
22 in your trial?

23 A No, I didn't.

24 Q Did you want to?

25 A Yes, I did.

1 **Q** Why didn't you?

2 **A** Mr. Kent said if I was to testify that the
3 prosecution would bring up a whole bunch of women
4 saying that they slept with me.

5 **Q** All right. Was there important testimony?
6 -- was there testimony in your trial about your
7 reaction when you were accused of allegedly molesting
8 these young girls?

9 **A** What's that?

10 **Q** Was there -- was there testimony in your
11 trial about how you react -- allegedly reacted when you
12 were told about --

13 **A** Yeah.

14 **Q** -- allegations --

15 **A** Oh, yeah. When Lizzie -- Ms. Johnson said
16 when she called me that I cried, and that's an outright
17 lie. And when -- when Ms. Johnson called me and told
18 me about the situation, I told her, "Let's -- let's get
19 to the" -- well, I used a word I don't you normally use
20 -- "let's get to the church and let's talk about this
21 stuff. Bring the girl. Bring Yolanda. Let's go to
22 the church and let's talk about it. And let's --
23 let's -- let's get it cleared away."

24 **Q** Do you remember Mr. Kent cross-examining her
25 at all about the crying?

1 **A** No.

2 **Q** Do you think that your failure to refute
3 the -- the crying allegation was prejudicial to your
4 case?

5 **A** Yes, it was.

6 **Q** Was there any other testimony -- was any
7 testimony at the trial involved in the refuting of the
8 allegation that you cried when this allegedly happened?

9 **A** There was no refuting of any testimony
10 refuting my -- my -- my response to that call of me --
11 saying that I cried.

12 **Q** All right. You and I have discussed some of
13 the legal issues involved in your -- this PCR hearing,
14 correct?

15 **A** Yes, we have.

16 **Q** Prior to our discussion, were you aware of
17 any of these legal issues?

18 **A** No, I wasn't.

19 **Q** Okay. Among the legal issues, were the
20 testimony of a -- of a Detective Kelly, in which he
21 repeated the allegations of the -- the four witnesses?

22 **A** Uh-huh.

23 **Q** And were you aware of any of the nature of --
24 of that being improper before you and I had this
25 discussion?

1 **A** Not before you told me. But once you told
2 me, I looked it up.

3 **Q** Now --

4 **A** Had someone look it up for me.

5 **Q** And Mr. Kent did not require the state open
6 fully on the law and the evidence? He gave an opening
7 statement and then the state gave one?

8 **A** Yes.

9 **Q** Okay. You remember the -- the closing
10 argument of the state when they said, you know, "Why
11 would these girls be lying?"

12 **A** Yes.

13 **Q** And I believe that was in -- Mr. Kent didn't
14 have a chance to respond to that?

15 **A** That's correct.

16 **Q** And no objection was raised?

17 **A** Right. And she went on and on and on.

18 **Q** And when he made the statement about "Why
19 would the girls be lying?" did that -- well, do you
20 think that was a proper argument?

21 **A** I -- I -- I -- I don't -- I didn't study
22 law --

23 **Q** Okay.

24 **A** -- but I got my degree in divinity.

25 **Q** So was -- as far as you knew, was Mr. McRae

1 ready, willing and able to testify in the trial?

2 A Yes, he was.

3 Q All right. And you had several children too
4 that were old enough to testify.

5 A Yes, sir.

6 Q And as far as you know, were they willing --
7 ready, willing, and able?

8 A As far as I know, they were, sir.

9 MR. WISE: Thank you. That's all I have of
10 this witness.

11 THE COURT: Mr. Mitchell?

12 MR. MITCHELL: Yes, Your Honor. Just
13 briefly.

14 **CROSS-EXAMINATION**

15 **BY MR. MITCHELL:**

16 Q Mr. Durant, armor-bearer did testify in your
17 defense, correct?

18 A You got -- they -- they testified.

19 Q Excuse me?

20 A Yes, they testified.

21 Q Mr. Mile Wack and Elvin Vaughn; is that
22 correct?

23 A Yes.

24 Q And Mr. Wack testified that he was always in
25 front of your door, correct?

1 A He testified to that.

2 Q And that he could hear everything?

3 A He testified to that.

4 Q Because the walls were paper thin?

5 A That was Mr. Vaughn.

6 Q That was Mr. Vaughn?

7 A Yes.

8 Q And that the door was always unlocked?

9 A That the door was what?

10 Q Always unlocked. He testified to that,
11 correct?

12 A I can't remember his exact testimony.

13 Q So the testimony about -- you -- you stated
14 that you told Mr. Kent that you could hear everything,
15 correct?

16 A Right.

17 Q But that testimony was brought out of your
18 trial through the armor-bearers, correct?

19 A I can't remember. He said he could hear
20 everything; the wall was -- he said -- I know one of
21 them said they was paper thin. Yeah. That was
22 Mr. Vaughn said it was paper thin.

23 Q Right.

24 A Right.

25 Q And that he could hear everything that goes

1 on inside?

2 A Uh-huh. Right.

3 Q And in total, four -- four girls testified
4 against you, correct?

5 A In total, yeah.

6 Q And three of which were minors, correct?

7 A Yes.

8 Q And they-all testified that you sexually
9 assaulted them in your office, correct?

10 A One wanted to recant, but y'all made her not
11 recant.

12 Q And Mr. Durant, do you remember waiving your
13 right to testify on the record?

14 A No, I didn't.

15 Q You did not?

16 A No, I did not waive any right to testify.

17 Q Would you like to look at the transcripts
18 of --

19 A Yes. Yeah.

20 MR. WISE: Your Honor, his eyesight is so
21 deteriorated that he would not be able to read a
22 transcript. So if counsel would just simply read
23 the questions and answers, I think that'll be the
24 best way to approach.

25 MR. MITCHELL: May I proceed, Your Honor?

1 **BY MR. MITCHELL:**

2 **Q** Mr. Durant, for your references and for the
3 court's reference --

4 **A** Uh-huh.

5 **Q** -- it's on page 704 of the transcript.

6 "THE COURT: Okay" --

7 **THE COURT:** Hang on.

8 **MR. MITCHELL:** -- "Mr. Durant" --

9 **THE COURT:** Hang on just second. Let me get
10 to --

11 **MR. MITCHELL:** Yes, ma'am.

12 **THE COURT:** -- if you don't mind.

13 **MR. MITCHELL:** Yes, Your Honor.

14 **MR. WISE:** And what was the page number?

15 **MR. MITCHELL:** 704.

16 **MR. WISE:** 7?

17 **MR. MITCHELL:** 704.

18 **MR. WISE:** All right.

19 **THE COURT:** And just to make sure that I've
20 got the -- okay. Looks like that is -- sometimes
21 you've got the record numbers and the transcript
22 numbers, but looks like --

23 **MR. MITCHELL:** Yes, Your Honor.

24 **THE COURT:** -- this is the right spot.

25 **THE WITNESS:** If I did, I don't remember it,

1 then. Please read it.

2 **BY MR. MITCHELL:**

3 **Q** The Court stated.

4 "Okay. Well, Mr. Durant, I want to talk
5 to you again one last time. Your lawyer --
6 your lawyer has told me now that you're not
7 planning on testifying. I've told you now
8 throughout the trial that this is your
9 decision and your decision alone. If you
10 want to testify, you certainly can. And
11 again, you would be subject to not only
12 answering questions from your lawyers, but
13 also from the state as well.

14 "But if you do not want to testify, I
15 will instruct the jury that this is your
16 constitutional right, and they are not to
17 hold that against you at all while they are
18 deliberate. Do you understand that?"

19 And you responded, "Yes, sir. I do."

20 The Court asks you, "Do you -- you have any
21 questions you want to ask me about that or your
22 lawyers?"

23 You responded, "No, sir. I don't."

24 And the Court, "All right. You made -- you
25 made the decision you do not want to testify?"

1 And you responded, "That's correct, sir."

2 **A** Could you tell me what point in the trial was
3 that?

4 **Q** That was after -- I believe that was after
5 the last witness had been called in your defense right
6 before you rested.

7 **A** Well, if it in there, that's -- I guess
8 that's what it was. I probably done blacked out by
9 then. Yeah, I guess that what it was.

10 **Q** I believe that's all the questions I have for
11 you, Mr. Durant.

12 **A** All right.

13 **MR. WISE:** I -- I have no further questions.

14 **THE COURT:** Okay.

15 **MR. WISE:** You can come down.

16 Like to call Ronald McRae.

17 **THE BAILIFF:** Sir, place your left hand on
18 the Bible and raise your right hand and state your
19 name.

20 **THE WITNESS:** Ronnie McRae.

21 **THE BAILIFF:** Do you solemnly swear or affirm
22 your testimony to the court shall be the truth,
23 whole truth, and nothing but the truth, so help
24 you God?

25 **THE WITNESS:** I do.

1 **THE BAILIFF:** Sir, step around, please.
2 State your name for the record and spell your
3 last name, please.

4 **THE WITNESS:** Ronnie McRae, M-c --

5 **MR. WISE:** You've got -- you're going to need
6 to pull your mask down. I can tell that already.
7 There we go.

8 **THE WITNESS:** Ronnie McRae, M-c-r-a-e.

9 **RONNIE MCRAE**

10 having first been duly sworn, testifies as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. WISE:**

13 **Q** All right. Mr. McRae, where do you live?

14 **A** In Sumter.

15 **Q** And how long have you been living in Sumter?

16 **A** Ooh. 13, 14 --

17 **Q** All right.

18 **A** -- yes.

19 **Q** Say that again.

20 **A** 13, 14 years.

21 **Q** All right? And what do you do for a living?

22 **A** I own a dry cleaners.

23 **Q** Own a dry cleaners?

24 **A** Yes, sir.

25 **Q** Okay. Do you know Larry Durant?

1 **A** Yes, sir.

2 **Q** And how do you know him?

3 **A** He used to be my pastor.

4 **Q** He used to be your pastor?

5 **A** Uh-huh.

6 **Q** And for about how long was he your pastor?

7 **A** Since 2005.

8 **Q** Okay. You're going to need to speak up a
9 little bit.

10 **A** Since 2005.

11 **Q** Perfect.

12 Did you hold any positions in the church?

13 **A** Yes. I was brotherhood president. I was his
14 armor-bearer. I was his -- one of the -- one of the
15 elders in the church.

16 **Q** And for the edification of the court, what is
17 an armor-bearer?

18 **A** Well, a armor-bearer is one who helps the
19 pastor with his -- with everything -- preparing him for
20 service. Sometimes we have to look up scriptures for
21 him. After service, we help him to his room, help him
22 undress.

23 **Q** Now, you remember when Larry Durant got
24 arrested?

25 **A** Yes.

1 **Q** All right. Did you meet with anyone in
2 preparation for trial?

3 **A** Yes.

4 **Q** And who did you meet with?

5 **A** Shaun Kent.

6 **Q** Okay. And where did y'all meet?

7 **A** At the church on Guignard.

8 **Q** And what was the purpose of that meeting and
9 the -- what was the general gist of that discussion?

10 **A** Well, he was asking me questions about --
11 well, asking questions about what went on and all that
12 stuff.

13 **Q** All right. Were the issues of Reverend
14 Durant's children having access to his study after the
15 church service discussed?

16 **A** Yes.

17 **Q** All right. And what was discussed about
18 that?

19 **A** Well, how they like to just barge on in the
20 room.

21 **Q** Like to barge in?

22 **A** Yeah, like to barge --

23 **Q** Okay.

24 **A** -- in the room.

25 **Q** Were you occasion armor-bearer at the door?

1 A Uh-huh.

2 Q Had you ever seen them do that?

3 A Yes.

4 Q All right.

5 A And that they used -- I used to get upset
6 with them a lot because they do that.

7 Q Was there discussion also about the library
8 book room or snack room that -- that adjoins the study?

9 A Yes.

10 Q All right. Hold on one second.

11 I'm gonna hand you a series of pictures --
12 I'm gonna take one out because I think it's a
13 duplicate. It's a series of one, two, three, four,
14 five, six, seven -- seven, eight pictures -- and ask
15 you have you seen those before?

16 A Yes.

17 Q And what do they represent?

18 A Well, the first picture is --

19 Q Well, don't -- don't go -- generally what
20 they represent. We'll go specifically later.

21 A Oh. Well, it -- where the book room slash
22 canteen area. Because after service, a lot of the kids
23 used to want to go buy sodas and drinks and stuff like
24 that after service.

25 Q What else does it show?

1 **A** What else it shows?

2 **Q** What else do the picture show beside that
3 room?

4 **A** Oh, it shows food.

5 **Q** Well, not -- not -- not what's in the
6 picture, but it shows pictures of the -- of the canteen
7 slash bookstore. What other room does it show?

8 **A** Oh. It's -- it's an adjoining room to his
9 office.

10 **Q** Okay. All right. Does it show his office?

11 **A** Yeah. Well, it show the door to his office.

12 **Q** Well, look through all of them.

13 **A** Uh-huh.

14 **Q** Is his office showing in there too?

15 **A** Yes, sir.

16 **Q** Okay.

17 **A** Uh-huh.

18 **Q** All right. Let me see those back.

19 **MR. WISE:** I moved to introduce these,
20 Your Honor. I showed them to counsel before
21 trial.

22 **MR. MITCHELL:** No objection.

23 **MR. WISE:** They were all part of the
24 discovery pictures in this case.

25 **THE COURT:** Okay. And so we're going to mark

1 those as one?

2 **MR. WISE:** We could -- well, I'd like to mark
3 them individually. Because they -- I'm going to
4 talk about them individually.

5 **THE COURT:** If you'll tell me how many you've
6 got there.

7 **MR. WISE:** Excuse me.

8 **THE COURT:** How many photos are you marking,
9 sir?

10 **MR. WISE:** Eight, I believe. Eight.

11 **THE COURT:** Okay. We'll call those
12 Applicant's 1 through 8. And they are admitted
13 without objection; is that -- that's correct,
14 Mr. Cruise?

15 **MR. MITCHELL:** Yes, Your Honor.

16 **THE COURT:** Okay.

17 (Applicant Exhibit Nos. 1 through 8 are marked for
18 identification and admitted into the record.)

19 **BY MR. WISE:**

20 **Q** All right. I'm going to hand you Applicant's
21 Exhibit 7. And tell us what -- what does that picture
22 describe?

23 **A** His office.

24 **Q** All right. And the door to the bookstore
25 slash candy store is which door in that picture?

1 A The one on the left.

2 Q Right. And I show you Applicant's No. 1. Is
3 that a picture of that door?

4 A Yes.

5 Q Okay. Now, was that door ever locked to your
6 knowledge?

7 A No.

8 Q Do you -- did you ever have a key to it?

9 A I don't think nobody had a key to that door?

10 Q Okay. You -- so you don't recall anybody
11 ever having a key to it?

12 A Not to that door.

13 Q Okay. And on the other side of that door --
14 well, let me back up a second.

15 I hand you Applicant's 2. And what does that
16 show?

17 A The room to the book room.

18 Q Okay. Now, was the book room like that back
19 when Larry Durant was minister of that church?

20 A Oh, no. It was more organized than that.

21 Q More organized?

22 A Yeah.

23 Q So these were taken after that?

24 A Yeah.

25 Q Okay. And if you open the door shown in

1 Applicant's -- what number is that? -- in

2 Applicant's 2, where would you go?

3 A Straight in his office.

4 Q Straight into Larry Durant's office?

5 A Yes, sir.

6 Q Do you have any knowledge of whether or not
7 people, on occasion, would simply go into his office?

8 A Yes.

9 Q And would they do that?

10 A Uh-huh.

11 Q Okay. And I show you Applicant's 3. And
12 tell us what it shows in that.

13 A That's the -- that's the book room slash
14 canteen -- well, we call it the "canteen area."

15 Q Okay.

16 A And that's going right into his office.

17 Q And I show you Applicant's 4. And is that
18 what you see out the door?

19 A Yeah, because that's his bathroom in his
20 office and his --

21 Q That's the bathroom in his office?

22 A Right.

23 Q And that's showing outside the door?

24 A Right.

25 Q All right. And then, Applicant's 6 -- or 5,

1 6, and 8, are other pictures of that little, small
2 office?

3 A Yes.

4 Q Now, after church service, was that office
5 occupied?

6 A Yes, because somebody had to be in there,
7 because somebody always wanted to buy -- matter of
8 fact, a lot of times there were people be in there
9 before service was over.

10 Q Okay. So that room -- you ever recall at any
11 time that room not being occupied after church service?

12 A Oh, no.

13 Q That was a regular thing?

14 A Uh-huh.

15 Q Okay. And what kind of -- and what kind of
16 access did somebody from that office have to -- to
17 Larry Durant's office?

18 A Direct access. A lot of time -- a lot of
19 time, that room door will be open. If it got too loud
20 or too many people come into the --

21 Q Uh-huh.

22 A -- canteen area --

23 Q Uh-huh.

24 A -- then he would close that door because it
25 got too loud, because he was counseling or he was

1 talking to someone in there.

2 Q All right. So a lot of times, that door
3 would just be open?

4 A Right.

5 Q And you could see straight in?

6 A Right.

7 Q But if it got --

8 A Too loud.

9 Q -- or if he wanted to speak to somebody
10 privately --

11 A Right.

12 Q Thank you.

13 Okay. Now, were you issued a subpoena for
14 this -- for the trial?

15 A Yes, sir.

16 Q Did -- did you actually go to court?

17 A No.

18 Q Did you expect to be called as a witness?

19 A Yes.

20 Q Were you surprised when you weren't?

21 A Yes.

22 Q And I believe your phone call kind of led to
23 a post-trial hearing?

24 A Yes.

25 Q And who did you call after you heard the

1 verdict?

2 A Well, I called Shaun.

3 Q Did you have -- have his cellphone number?

4 A Yes.

5 Q Had he -- who -- how'd you get it?

6 A I called his cell phone.

7 Q No. How did you get his number?

8 A Oh, he gave it to me.

9 Q He gave it to you?

10 A Uh-huh.

11 Q When you met earlier?

12 A Uh-huh.

13 Q Okay. And I believe it was your ex-wife that
14 became a point of controversy in the case --

15 A Right.

16 Q -- on a post-trial motion?

17 A Yes, sir.

18 Q Okay. And had you discussed her testimony --
19 or not her testimony, her background with Mr. Kent
20 before the hearing?

21 A Yes, sir.

22 Q Thank you. Answer any questions the state
23 may have.

24 **CROSS-EXAMINATION**

25 **BY MR. MITCHELL:**

1 Q Mr. McRae, you weren't present every time
2 Mr. Durant met with someone in his office, were you?

3 A Say that again.

4 Q Every time Mr. Durant met with someone in his
5 office, you weren't there every single time, correct?

6 A I was at service all the time.

7 Q But you weren't in his office every time --

8 A Oh, no. Because the armor-bearers are
9 outside his office.

10 Q The arm -- okay. Yeah. And two of them
11 testified at his trial, if you remember, correct?

12 A Sir?

13 Q And two of them testified at his trial,
14 correct, if you know that?

15 A Say that --

16 Q Two of the armor-bearers testified at his
17 trial, correct?

18 A Who -- who are the armor-bearers?

19 Q Um.

20 A That's what you asking me?

21 Q During Mr. Durant's trial --

22 A Uh-huh.

23 Q -- two of the armor-bearers testified in his
24 defense. Do you know that?

25 A Yes.

1 **Q** Yes.

2

3 **MR. MITCHELL:** No further questions, Your
4 Honor.

5 **MR. WISE:** Thank you. You may step down.
6 Call Jeremiah Durant.

7 **THE BAILIFF:** Sir, place your left hand on
8 the Bible and raise your right hand and state your
9 name.

10 **THE WITNESS:** Jeremiah Durant.

11 **THE BAILIFF:** Do you solemnly swear or affirm
12 your testimony to the court should be the truth,
13 the whole truth, and nothing but the truth so help
14 you God?

15 **THE WITNESS:** I do.

16 **THE BAILIFF:** Thank you. (Inaudible).
17 State your name for the record and spell your
18 last name.

19 **THE WITNESS:** My name is Jeremiah Durant.
20 And my last name is D-u-r-a-n-t.

21 **JEREMIAH DURANT**

22 having first been duly sworn, testifies as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. WISE:**

25 **Q** All right. Speak up just a little bit?

1 **A** My name --

2 **Q** As I was told in court one time, use your
3 outside voice.

4 **A** All right. My name is Jeremiah Durant, and
5 how you spell my last name is D-u-r-a-n-t.

6 **Q** All right. And what kin are you to Larry
7 Durant?

8 **A** That's my father.

9 **Q** All right. Were you aware of his trial back
10 in 2016 when it went on?

11 **A** Yes, sir.

12 **Q** Okay. Were you ever called to testify in the
13 trial?

14 **A** No, sir.

15 **Q** Were you ever interviewed by any of the
16 lawyers for your father?

17 **A** No, sir.

18 **Q** Okay. What can you -- well, let me get a
19 picture here.

20 You recognize Applicant's Exhibit 7?

21 **A** Yes, sir.

22 **Q** And what is that?

23 **A** That's the office.

24 **Q** All right. What kind of access did you and
25 your -- back up a second.

1 You have some siblings?

2 **A** Yes, I do.

3 **Q** All right. One of them is sick today?

4 **A** Yeah.

5 **Q** And one of them is out of town on a trip?

6 **A** Yes, sir.

7 **Q** All right. And one of them, the youngest
8 daughter, is -- was how old back in 2016?

9 **A** I think she was too -- too young. She was
10 young. I don't remember what age, but she was
11 definitely --

12 **Q** Okay.

13 **A** -- young.

14 **Q** She was very young?

15 **A** Yeah.

16 **Q** All right. So tell us what kind of access
17 you had to -- to your father's study after church
18 service, or before.

19 **A** Before and after, I had full access. I
20 always go in my dad's office because, like, I just used
21 to go in there all the time.

22 **Q** You what?

23 **A** I used to always go in my dad's office, all
24 the time.

25 **Q** Did anybody stop you from going in?

1 A No, sir.

2 Q And did you have to ask permission to go in?

3 A No, sir. I used to walk straight in.

4 Q Just walked straight in?

5 A Yes, sir.

6 Q Well, what if you walked in and he was
7 counseling with somebody?

8 A I would still go in there -- I mean, I try to
9 go in there and he'll say, like, hold up for a second,
10 but he'll definitely let me go in.

11 Q Was there a room off his office that you --
12 you and your siblings used to go to for the TV?

13 A Yes, I remember that.

14 Q Excuse me?

15 A Can you repeat -- repeat that?

16 Q Was there a room off his office with a TV
17 that you and your siblings used to go to?

18 A Yes, sir. Yes, sir.

19 Q Okay. So y'all would go in there, and if he
20 was seeing somebody, watch TV and shut the door?

21 A Yes, sir.

22 Q All right. Do you ever recall at any time
23 anyone ever stopping you from entering your father's
24 office?

25 A No, sir.

1 **Q** It never happened?

2 **A** Never happened. My -- my dad didn't play
3 there. We were always allowed to go in.

4 **Q** Were you available to testify in 2016 at this
5 trial?

6 **A** Yes, sir.

7 **Q** Would you had been willing to testify?

8 **A** Definitely.

9 **Q** Thank you. Answer any questions Mr. Cruise
10 may have.

11 **CROSS-EXAMINATION**

12 **BY MR. MITCHELL:**

13 **Q** Mr. Durant, how old are you currently?

14 **A** I'm 20 years old.

15 **Q** And how old were you at the time of trial?
16 Just trying to get --

17 **A** Probably around like 13.

18 **Q** And you're Mr. Durant's son, correct?

19 **A** Yes, sir. I am.

20 **Q** Thank you. That's all the questions I have.

21 **A** Okay.

22 **MR. WISE:** Give me one second.

23 (Pause in proceeding.)

24 **MR. WISE:** With that, the applicant rests,
25 Your Honor.

1 **THE COURT:** Okay. Thank you. You can step
2 down, sir.

3 **THE WITNESS:** Thank you.

4 **THE COURT:** Okay. Mr. Mitchell.

5 **MR. MITCHELL:** Your Honor, the state calls
6 Mr. Shaun Kent to the stand.

7 **THE BAILIFF:** Place your left hand on the
8 Bible and raise your right hand.

9 State your name.

10 **THE WITNESS:** Shaun Kent.

11 **THE BAILIFF:** Do you solemnly swear or affirm
12 your testimony to the court should be the truth,
13 the whole truth, and nothing but the truth so help
14 you God?

15 **THE WITNESS:** I do. Thank you. (Inaudible).

16 **THE BAILIFF:** State your name for the record
17 and spell your last name.

18 **THE WITNESS:** Shaun Kent, K-e-n-t.

19 **MR. MITCHELL:** May it please the Court,
20 Your Honor?

21 **THE COURT:** Yes.

22 **SHAUN KENT**

23 having first been duly sworn, testifies as follows:

24 **DIRECT EXAMINATION**

25 **BY MR. MITCHELL:**

1 **Q** Good morning, Mr. Kent. How are you?

2 **A** Good morning.

3 **Q** Mr. Kent, did you represent Mr. Durant in the
4 underlying case?

5 **A** I did.

6 **Q** Can you explain how you came to represent
7 Mr. Durant?

8 **A** His testimony was pretty close as I remember.
9 He was being represented by David Weeks at the time. I
10 think we knew this was going to be a trial. We sat
11 down and met several times, got very comfortable each
12 other, came up with a fee agreement, and then he
13 retained us.

14 **Q** And just for the Court's benefit, will you
15 briefly explain the allegations in the case?

16 **A** These were sexual allegations -- sexual
17 conduct with a minor. It was alleged that Mr. Durant
18 had molested several of the individuals who were in his
19 church -- four females. And that's it. Those are the
20 allegations that he had done it in the study at the
21 church.

22 **Q** And there's just one actual victim for being
23 charged with one charge?

24 **A** Correct. Yes.

25 **Q** And the other three were state's 404(b)

1 witnesses?

2 **A** You got it. Correct.

3 **Q** And Mr. Kent, did you meet with Mr. Durant
4 prior to trial?

5 **A** Several times. Many times.

6 **Q** And during those meetings -- explain your
7 investigation in this case to the best of your
8 recollection.

9 **A** The easiest way to describe it is it's hard
10 to disprove a negative. Mr. Durant maintained his
11 innocence as much as any client that I ever had. He
12 was very clear that he was innocent of these matters.
13 And so one of the things that we did were we were
14 trying to figure out what could have happened, why
15 these allegations possibly happened.

16 We had a private investigator. We took on
17 ourself to engage in another attorney, Cameron Blazer.
18 The two of us together went. We looked through witness
19 statements, went through the discovery. We went to the
20 scene. We went into the background of individuals. We
21 went through the -- what we thought what the woman who
22 was mainly behind this entire situation, the fact that
23 she had possibly done this before to somebody else,
24 things of that nature. We went to see -- we did a lot.
25 Let's put it that way. There was a lot of

1 investigation that went into this case.

2 Q And Mr. Kent, as part of that investigation,
3 did you -- you stated you visited the scene, so you
4 visited the church?

5 A Yes, I did. Yes, I did.

6 Q And do you remember the layout of the office?

7 A No. Candidly, I don't specifically remember
8 the layout.

9 Q There's been a lot of testimony about the
10 store that was always unlocked. Do you recall anything
11 about that?

12 A I -- if I was to sit here and tell you I had
13 independent recollection of it, I'd be lying. I
14 definitely remember -- one of the things that we
15 focused on during the testimony was that Mr. Durant had
16 armor-bearers. The easiest way to describe that are
17 security guards who would follow him everywhere to make
18 sure -- because of his condition -- it was hard for him
19 to get around with his eyesight and his prosthetics --
20 he had two individuals who would make sure he was
21 secure at all points in time.

22 And we felt that those individuals were able
23 to testify to the -- we were going with almost
24 impossibility that the allegations that the state were
25 making were almost impossible to happen. There were

1 two witnesses who would have been outside the door at
2 all point in time, and they would have been able to
3 hear if anything happened.

4 Q And you also elicited testimony from
5 armor-bearers that the door was generally unlocked and
6 they could walk in at any time?

7 A Yes.

8 Q Which is similar to the allegations today?

9 A Yes.

10 Q I believe you also presented other witnesses
11 in this case; is that correct?

12 A Yes.

13 Q I know Mr. Durant -- prior to the hearing
14 was -- the claim was abandoned, but Mr. Durant
15 referenced it, so I might as well bring it up?

16 A Yes, sir.

17 Q Having other members of the congregation
18 testify on his behalf that he didn't do this. He did
19 present testimony from a Kashana Edwards --

20 A Uh-huh.

21 Q -- who was a member of the congregation? And
22 she testified she never had any -- she was never
23 sexually assaulted by Mr. Durant?

24 A And we thought about that. Myself and
25 Ms. Blazer talked about that. But candidly, bringing a

1 cavalcade of witnesses from the church -- because
2 Mr. Durant had a wonderful reputation -- but bringing
3 30 or 40 witnesses to say nothing ever happened to me,
4 I didn't think it was a sound strategy. That'd be like
5 if somebody was convicted of murder and bringing in the
6 rest of the population and say, "He never killed me."
7 I didn't think that was a sound strategy. I think it's
8 hard to disprove a negative, and it was complicated for
9 me.

10 **MR. WISE:** Your Honor, may I move over here?

11 I --

12 **THE COURT:** Abso- --

13 **MR. WISE:** I'm having trouble hearing counsel
14 with his back to me.

15 **THE COURT:** Yes, please. Come on up.

16 **BY MR. MITCHELL:**

17 **Q** And Mr. Kent, do you remember interviewing
18 Ronald McRae prior to the trial?

19 **A** I do.

20 **Q** And was that -- will you explain that?

21 **A** Yeah. And that is -- and I think I've told
22 you. I've told Mr. Wise. I've told everybody who will
23 listen. That -- and I will scream this from the top of
24 the rooftop. Like that is a mistake myself and
25 Ms. Blazer wholeheartedly believe that we made in this

1 situation.

2 Ronald McRae -- and I look back at my notes.
3 I have a copy of them. Ronald McRae -- and this is
4 what made it strange -- Ronald McRae was interviewed
5 specifically about the church, where -- where
6 Mr. Durant would have met, things of that nature. I
7 don't remember anything about the second door. I'll be
8 honest. I'll say that I don't remember the second
9 door, but my notes even reflect that we talked about
10 the church, talked about the -- how it was set up,
11 things of that nature.

12 The first line of the notes when we talked to
13 Mr. McRae specifically was about -- about the fact that
14 he knew about the accusations, his ex-mother-in-law,
15 his ex-wife, and the fact that they had done this to
16 somebody before in the past. And he discussed this
17 with me. It was a brief conversation, but he discussed
18 it with me.

19 I'll be very -- after the trial -- I will
20 never forget the conversation. After the trial, me and
21 Mr. -- I was driving back to go back to my office. I
22 received a call from Mr. McRae. He asked me what
23 happened. He said, "How come you did not call me to
24 testify?" I told him -- because I was focused on the
25 armor-bearer situation -- just, like, I didn't think

1 that would be necessary because we already had that
2 out -- because I was very distraught about -- about him
3 being convicted. And before he got off the phone, he
4 made a comment. He said, "She's going to get away with
5 it again."

6 And I said, "What are you talking about?"
7 Because he was ready to get off the phone. I was like,
8 "What are you talking about?"

9 And he mentioned the witness who testified,
10 who's been the source of all of this information. And
11 he said, "How was she able to get" -- and he brought it
12 up -- "how was she able to get on the stand without
13 having a criminal record?"

14 And I said, "What are you possibly talking
15 about? She doesn't have a criminal record."

16 He said, "Mr. Kent, you're just wrong on that
17 one." And Mr. McRae and I become very close on that
18 situation.

19 I called Cameron Blazer. Cameron Blazer did
20 a SLED catch. She went -- she saw that this person had
21 a record. And so that's when all of this -- the
22 Supreme Court matter started.

23 The reason I felt personally that we made a
24 mistake was very simple. Had I done a better job, had
25 I done a more thoughtful interview with Mr. McRae, had

1 I sat down with Mr. McRae and talked to him in full
2 detail, I believe he would have given me more
3 background on the witness. I would have known about
4 her prior criminal record. Knowing about her prior
5 criminal record, I believe the strategy at -- because
6 remember, the strategy at trial -- and the trial -- I
7 disagree; the trial went very well. I think we did a
8 very good job.

9 However, that one simple strategy over this
10 witness could have been controlling these girls and
11 getting them to say things has always bothered me
12 because I believe if I was able -- if I would have
13 talked to Mr. McRae in more detail, I would have had
14 that information, would have been able to cross-examine
15 her in more detail, and would have changed her entire
16 strategy. So yes, I think that went a little more than
17 you asked for, but --

18 Q No. No. No. I always like when witnesses
19 expound.

20 Now, just -- just for clarification, the
21 mistake you think you made pertaining to the prior
22 convictions of Ms. Yolanda McRae, a witness for the
23 state, correct?

24 A The prior conviction -- and that's the one
25 thing I keep saying -- and I -- I've read the Supreme

1 Court opinions. I think everybody focuses on the prior
2 conviction; what I'm focused on is the interview of
3 Mr. McRae. Had I sat down and interviewed Mr. McRae, I
4 would have known more of the background of the prior
5 conviction. Because the prior conviction, to me, was
6 the entire gravamen of why we thought this witness was
7 lying, and how she put these girls up, and why she
8 would have put these girls up to lie.

9 And when it was a close trial anyway, and the
10 jury had to get an Allen charge, I believe had I been
11 able to interview -- not had I been able to -- had I
12 interviewed Mr. McRae in more detail, I think that
13 would have changed -- and I can't even say the
14 strategy, because that was our strategy, so I can't sit
15 here and would have changed it -- but it would have
16 made it make more sense to the jury.

17 It would have gone to questions that Mr. Wise
18 was asking, "Why would these witnesses lie?" Well, we
19 had the reason why they would have lied. This woman
20 has done it once before with these specific girls.

21 **Q** Now, in terms of going back to the second
22 door, you -- you have no recollection of anyone ever
23 mentioning that to you?

24 **A** None. And I'm not saying it didn't happen.
25 I have no personal recollection of the second door.

1 None. And there's not referenced in my notes. I
2 brought my notes today. I think Mr. Blazer looked at
3 my notes. It's not in any of my notes.

4 Q Do you remember interviewing Mr. Jeremiah
5 Durant?

6 A I do not. I do not have any recollection
7 that I had interviewed -- and I'll sit here right
8 now -- I probably wouldn't have interviewed him. I
9 wouldn't have called him on the stand. Even looking
10 back and hearing these questions, I wouldn't have put a
11 13-year-old on the stand that says, "I never walked
12 into my daddy doing anything." I don't -- that's
13 disproving a negative. It doesn't make any sense. It
14 would not have been a sound trial strategy for me.

15 Q Based on age, the bias --

16 A Age, the bias, and it -- it didn't make sense
17 for me to call individuals to say, "I didn't see
18 anything." Our trial strategy was it didn't happen as
19 opposed to bringing a bunch of witnesses on the stand
20 that says, "Well, it didn't happen when I was there,"
21 because the cross-examination would have written
22 itself. Well, you weren't there all the time. You
23 weren't there all these times. You weren't around him
24 all the time. So no, at the time, it didn't make any
25 sense.

1 **Q** And you were able to present testimony from
2 two direct eye -- the armor-bearers?

3 **A** Yes.

4 **Q** Who, once again, they testified that they
5 were always outside the door?

6 **A** Yes.

7 **Q** They didn't hear anything; they could walk in
8 at any time?

9 **A** Absolutely.

10 **Q** And so the jury did hear that information?

11 **A** Absolutely.

12 **Q** And sorry. Going back one more time,
13 Mr. Kent, to the -- the interview with Ron McRae --

14 **A** Yes, sir.

15 **Q** -- and when you found out about the
16 conviction or prior record of Ms. Yolanda, did you file
17 a motion for new trial after that?

18 **A** I think we immediately, if I'm not mistaken.
19 Like before I even made it to Manning,
20 South Carolina -- it was very strange because I know
21 Ms. Blazer was on the -- try to -- I don't want to
22 accuse her of breaking the law, but she was typing and
23 doing things that she was driving as we were trying to
24 file it before I even made it back to Manning and
25 contacted the court, contacted a prosecutor, and

1 contacted everybody.

2 Q And I know you didn't represent Mr. Durant on
3 his appeal, but are you aware that this was an issue on
4 his direct appeal?

5 A Generically, yes. But I don't have specifics
6 about it, no, sir.

7 Q And briefly just to touch on some of the more
8 legal issues that I can -- we can hash out later in
9 summations, but the improper bolstering of -- from
10 Detective Natalie Kelly -- I could show you.

11 MR. MITCHELL: Beg the Court's indulgence.

12 May I approach the witness, Your Honor? And
13 for the Court's reference, I'm looking at page 246
14 this is the direct examination of Ms. Kelly.

15 BY MR. MITCHELL:

16 Q Mr. Kent?

17 A Yes, sir.

18 Q Will you read for yourself just lines 15 on
19 that page up until -- upside down --

20 A Uh-huh.

21 Q -- where they got the search warrant?

22 A Okay. (Reviews document.)
23 Okay.

24 Q And did you see anything objectionable there?

25 A I don't. I -- I -- and if I'm wrong, I'm

1 wrong, I mean, but -- but I don't.

2 **Q** So the reason for not -- your reason for not
3 objecting would just be that you didn't think it was
4 objectionable?

5 **A** At the time, I did not think it was an
6 objectionable. I guess looking at a different lens,
7 someone can see it differently, but I wouldn't have
8 objected. No.

9 **Q** And Mr. Durant testified about how he wished
10 he would have -- he requested to testify at his trial?

11 **A** He did. He definitely did at first.

12 **Q** Okay.

13 **THE COURT:** And can I -- I'm sorry to
14 interrupt you, but I understand that Mr. Durant
15 needs a short break. Is that what I'm
16 understanding?

17 So let's allow them to take him out. And
18 we'll take just like a 10-minute break, and let --
19 let them take care of him for just a minute. And
20 then we'll resume.

21 **MR. MITCHELL:** Yes, Your Honor.

22 (Recess is taken.)

23 **MR. MITCHELL:** May it please the Court,
24 Your Honor?

25 **THE COURT:** Yes, sir.

1 **BY MR. MITCHELL:**

2 **Q** Mr. Kent, I believe I was going to ask you
3 about when Mr. Durant -- we were talking about the
4 discussion with Mr. Durant testifying.

5 **A** Yes, sir.

6 **Q** And so just how did those discussions play
7 out?

8 **A** When we're getting ready for trial, we always
9 prep the witness in case he's going to testify. I
10 remember specifically we talked about testifying for
11 some time. If I'm not mistaken, Cameron Blazer was
12 going to take his testimony, so we kept preparing him
13 as if he was going to testify.

14 Then, during the course trial, we received
15 from the attorney general's office a couple of things:
16 One, they had made it clear that they were going to
17 make some allegations that he had had relationships
18 with other individuals inside of the church. They also
19 had done some checking on his eyesight. They believed
20 that he had gone and gotten a valid driver's license
21 within a short period of time. They were going to
22 bring up the fact that he was overexaggerating his
23 eyesight situation.

24 That and the potential of other sexual
25 encounters coming in myself, Ms. Blazer, Mr. Durant,

1 and his wife, Melody, at the time, all sat down in the
2 room. I advised that given what -- how I thought the
3 trial was going at the time, the information and how
4 poorly it could hurt him. Among some other things that
5 we talked about that would make it very easy on
6 cross-examination, we thought it would be a bad idea
7 for him to testify, but we said it would be up to him.
8 And he chose not to testify.

9 Q So the decision was ultimately his to make?

10 A The decision is always the client's. I have
11 never forced a client. I've never made a client do
12 any -- now, I give my choices and tell them what I
13 think is in his best interest, which I do. And Ms
14 Blazer was there. His wife was there. And we chose
15 not to testify, but it was his ultimate choice.

16 Q And you actually presented a defense witness,
17 a doctor, I believe --

18 A Correct.

19 Q -- to testify as to his erectile dysfunction?

20 A Yes.

21 Q And so allegations regarding sexual
22 encounters with other members, that would have kind
23 of -- that wouldn't have been a good thing to be
24 brought out?

25 A It wouldn't. We had -- and -- and not to get

1 too much into it, but we brought in things about
2 potential sexual transmitted diseases. We brought in
3 things such as his erectile dysfunction, things about
4 his knees and his eyesight all came in through this
5 doctor. We were very worried that if he testified,
6 that that would undermine the defense that we were
7 putting on.

8 Q And with all of those potential downsides of
9 him testifying, did you think it would be worth it to
10 call to him testify just to refute that he cried when
11 he --

12 A No, no. And I didn't think -- and -- and you
13 read testimony, you hear testimony, and how it came
14 across, I didn't think that testimony landed very much,
15 to the point that I barely remembered it. But no,
16 calling him just for that didn't seem to be very
17 interested. And that witness was not a strong witness.
18 She really wasn't. I remember that specifically. She
19 was caught in a lot of inconsistencies. Just did not
20 think it was necessary just to do that because of all
21 the problems that could have happened if he did
22 testify.

23 Q And, Mr. Kent, with regard to the closing
24 argument, Mr. Durant's alleging that you should have
25 objected for not forcing the state to open fully on the

1 law and facts. What year did this trial occur?

2 A I was about to say -- good gosh -- what is
3 this? 2016 was his trial? May 2016?

4 MR. DURANT: May. May 2016.

5 BY MR. MITCHELL:

6 Q And at the time of the trial, did you see any
7 reason to object to that?

8 A No.

9 Q And do you believe your case was harmed by
10 the state not opening and closing?

11 A No. I remember the AG gave a very good and
12 very impassioned closing argument. And Mr. Wise is
13 right; it probably would have been beneficial to go
14 after her at some point in time. But no, it wouldn't
15 have changed because we would have put a case on. It
16 wouldn't have changed our strategy.

17 Q And the state would still have final
18 argument?

19 A And they still would have had final argument.
20 Yes, sir.

21 Q Mr. Kent, I believe that's all I have for
22 you. Thank you.

23 THE WITNESS: I have your --

24 MR. MITCHELL: Oh, yeah.

25 May I approach, Your Honor?

1 **THE COURT:** Uh-huh.

2 **MR. MITCHELL:** Thank you, sir.

3 **THE WITNESS:** You're welcome.

4 **CROSS-EXAMINATION**

5 **BY MR. WISE:**

6 **Q** Mr. Kent, let's go back when you met with
7 Mr. McRae and, I believe, Mr. Durant at the church.

8 **A** Yes, sir.

9 **Q** All right. Y'all met in his study?

10 **A** I think so. I don't have independent
11 recollection of that meeting.

12 **Q** I want to show you Applicant's Exhibit 7 and
13 see if that refreshes any of your memory.

14 **A** (Reviews document.)

15 No, sir.

16 **Q** Okay. Do you remember there were numerous
17 stores in the study that opened into other offices or
18 build -- rooms?

19 **A** Mr. Wise, being perfectly candid, I have no
20 independent recollection. I'm not saying it's not
21 true, but I --

22 **Q** I understand.

23 **A** -- I really don't.

24 **Q** All right. And so did you ever have any
25 discussions with Mr. McRae about armor-bearers?

1 **A** From my notes, yes. Yes. Yes, sir.

2 **Q** And the function of armor-bearers?

3 **A** Yes, sir.

4 **Q** All right. Was the subject ever brought up
5 about his children and their ability to enter the --
6 the -- the study without hindrance.

7 **A** I mean remembering slightly about it after
8 hearing testimony today, but I had no independent
9 recollection. But I do remember talking about children
10 having unfettered access. Yes, sir?

11 **Q** His children?

12 **A** Yes, sir.

13 **Q** Okay.

14 **A** Yes, sir.

15 **Q** So your basic theory was basically the
16 impossibility of this really happening?

17 **A** Yes, sir.

18 **Q** And if his children were able to just open
19 the door and walk in, would that make that
20 impossibility even greater?

21 **A** I think you have to repeat that. I think my
22 brain just shut down.

23 **Q** Your theory of defense pretty much, was
24 this -- it -- it didn't happen?

25 **A** Correct. Yes, sir.

1 **Q** If these alleged acts occurred in an office
2 where his children could walk in at any time, would
3 that make it less likely to ever happen?

4 **A** I think the best way to answer your question
5 is: Yes. That could have bolstered our theory of the
6 case --

7 **Q** Uh-huh.

8 **A** -- if we would have called his children to
9 say, "We could have walked in at any point in time."
10 That's a possibility. Yes, sir.

11 **Q** Or an armor-bearer?

12 **A** Or an armor-bearer, yes, sir. That's a
13 possibility.

14 **Q** Anyone who knew such a thing, but bring
15 anyone who knew that the children just walked in and
16 walked out at their leisure?

17 **A** Could have been a possibility, yes, sir.

18 **Q** Okay. And as you said, this was not --
19 this -- this -- the jury struggled with a verdict?

20 **A** 100 percent, yes, sir.

21 **Q** Okay. Now when you say that you -- your
22 background investigation of Mr. McRae's ex-wife, what
23 did you discuss with him in that initial interview?

24 **A** Here's --

25 **Q** From your notes?

1 **A** Here's the best way to say it: Not enough.

2 **Q** Do what?

3 **A** Not enough is the best --

4 **Q** Right. But what --

5 **A** -- way to say it.

6 **Q** But what did you discuss, not what you
7 didn't.

8 **A** Well, that's the point. Like, when -- even
9 when I read my background notes, Mr. Wise, like it
10 says -- I'm reading them to you right now -- "knows
11 about accusation and ex-mother-in-law, LJ, no one has
12 talked. No LD -- known LD as long as Wanda. Doesn't
13 know color of penis." Like, they're not significant
14 notes to justify what I did. I should have gone and
15 looked in more detail, is what I'm telling you.

16 **Q** So you knew that this McRae was his ex-wife?

17 **A** Yes, sir.

18 **Q** It's an unusual last name.

19 **A** Yes, sir. Yes, sir.

20 **Q** All right. And you say that you failed to
21 inquire him enough about her background?

22 **A** 100 percent. Yes, sir.

23 **Q** And that would be part of normal
24 investigation for a lawyer?

25 **A** The -- and not to throw myself under the bus,

1 the most basic lawyer should have done better than what
2 I did in that situation.

3 Q Do your notes reflect your asking him, "What
4 do you think about your ex-wife?"

5 A No, sir. They do not.

6 Q So you were totally unaware that she had
7 pulled similar schemes earlier?

8 A I'm sorry. Mr. Wise, I -- I -- I want to be
9 honest. I remember thinking -- I can't sit here and
10 specifically say I was totally unaware. I think there
11 was some knowledge. Because even if you look at the
12 way I asked questions, I knew something about it.

13 Q So you didn't have the details?

14 A Exactly.

15 Q All right.

16 A I think that's the best way to say it. I did
17 not have enough specifics and details.

18 Q If you're investing -- if you investigated
19 the details better, but you would have been better
20 prepared?

21 A Absolutely. Because if we would have gone
22 through the details significantly more, it wouldn't
23 have just been random cross-examination; it would have
24 been cross-examination with specifics.

25 Q Now -- okay. But you did go to the church

1 and look around?

2 A Yes, sir. Yes, sir.

3 Q You just don't recall really what it looked
4 like?

5 A I don't. No, sir,

6 Q And you did meet with Mr. McRae and
7 Mr. Durant?

8 A Yes. I do not see where I met with them at
9 the same time.

10 Q Okay.

11 A And I don't think I did. Because my notes
12 reflect that I met with a lot of people at the church.

13 Q Uh-huh.

14 A And I wouldn't have met with them with
15 Mr. Durant. So I met with people individually. I know
16 they said that I met with them at the same time, but my
17 notes don't reflect that.

18 Q And do your notes reflect about the --
19 Mr. McRae telling you the children have access to
20 the -- to the room?

21 A They don't -- they don't reflect that. I'm
22 not saying that did not happen, but my notes don't
23 reflect that.

24 Q You got that from another witness?

25 A I just can't remember, Mr. -- I mean, I --

1 it --

2 Q But you remember something about?

3 A Yes, sir. Yes, sir.

4 Q And whether it came from Mr. McRae or another
5 armor-bearer, you're not sure.

6 A Not sure. And let me make this clear, Rauch,
7 I -- I'm sorry -- Mr. Wise. It's a large file, so I'm
8 not even going to sit here and say I've gone through
9 all of the notes. It probably is in the notes. I'm
10 just saying, right now, I don't have independent
11 recollection.

12 Q The information is in the note from somebody,
13 somewhere?

14 A Somebody, somewhere, yes, sir.

15 Q All right. Now, you didn't require the state
16 to open fully on the -- the law and the facts?

17 A No, sir.

18 Q You're aware that was that movement out there
19 in 2016?

20 A I -- I know there was something about it. I
21 don't think it was law at that point in time, but there
22 was a movement out there, yes, sir.

23 Q You had been educated that this is coming?

24 A Yes, sir.

25 Q All right.

1 A That is a true statement.

2 Q Did you ever consider asking the state to
3 open fully on the law and the facts?

4 A Never considered it. No, sir.

5 Q The state, in their closing argument, made
6 reference that you said the police were crooked.

7 A I don't remember.

8 Q I don't think you ever did, but that's what
9 they argued.

10 A Yes, sir.

11 Q All right. If the state had made that in
12 their opening statement, would you have had a chance to
13 to -- to --

14 A To address it. Yes, sir.

15 Q -- to address it?

16 A Yes, sir.

17 Q All right. And because you didn't, you
18 didn't have a chance to address it?

19 A Absolutely true point. Yes, sir.

20 Q You remember the state making a comment,
21 correct -- and that's another question -- but that the
22 forensic interview is for children who are uncertain?

23 A I do not remember it independently, but I
24 remember reading it. Yes, sir.

25 Q Let me look refresh -- your memory here.

1 Look at the transcript record of 739. And
2 I'm -- line for 740

3 **THE COURT:** And I'm sorry that's page 739?

4 **MR. WISE:** 7 -- well, it's -- it's the real
5 page 739 not the record's page.

6 **THE WITNESS:** So Mr. Wise, you want me to
7 read, starting on line 17 on page 739 --

8 **MR. WISE:** Right.

9 **THE WITNESS:** -- to 740?

10 **BY MR. WISE:**

11 **Q** Yeah. That'll give you enough to get the
12 gist of that argument to see if it refreshes your
13 memory.

14 **A** (Reviews document.)

15 Yes, sir. I read from 739 to 740.

16 **Q** And basically, the state said that you -- you
17 only do forensic interview of children who are not
18 certain?

19 **A** Yes, sir.

20 **Q** Implying that these children were certain?

21 **A** Yes, sir.

22 **Q** Is that correct statement of --

23 **A** That is not a correct statement of the law.

24 **Q** All right. If you had made the state open
25 fully on the law and the facts, would you have been

1 able to refute that in a closing argument?

2 **A** Absolutely. Yes, sir.

3 **Q** Okay. Let me have it back.

4 **A** Yes, sir.

5 **Q** You also had an interesting issue in this
6 case about acid phosphates.

7 **A** Man, I don't remember that.

8 **Q** All right. Hold on.

9 Look at page 741, lines 16 through 21?

10 **A** Yes, sir.

11 **Q** And see if that refreshes your memory.

12 **A** (Reviews document.)

13 Yes, sir. I remember.

14 **Q** All right. Do y'all -- they testified that
15 they tested positive for -- or somebody testified for
16 the state tested positive for acid phosphate.

17 **A** Yes, sir.

18 **Q** And you were able to cross-examination to
19 point out that, without doing further tests, a lot of
20 things have --

21 **A** A lot of things have acid phosphate.

22 **Q** Is that right?

23 **A** Yes, sir. I do remember.

24 **Q** And had you required the state open fully on
25 the law and the facts, could you have come up with

1 evidence from the record to refute that?

2 A Absolutely. Yes, sir.

3 Q Okay. All right. And the -- you -- you had
4 several armor-bearers to testify?

5 A Yes, sir. I think two, I think.

6 Q All right. Now, look at page 745, line --
7 beginning with line 13. They talk about the
8 armor-bearers in this case.

9 A (Reviews document.)

10 Yes, sir.

11 Q All right. They ridiculed your
12 armor-bearers?

13 A 100 percent. Yes, sir.

14 Q All right. And if you had had a chance to
15 hear that in their initial opening statement, would you
16 had been able to refute that also in your closing
17 argument?

18 A Absolutely possibility. Yes, sir.

19 Q Now, you recall the testimony, I believe,
20 Ms. Johnson, where she said that when Mr. Durant was
21 confronted with this, he started crying?

22 A I do remember that, yeah.

23 Q Okay. Was there any testimony in the record
24 that you're aware of that ever refuted that in any way?

25 A No, sir.

1 **Q** All right. Was that a concern of yours, that
2 you're unable to refute an allegation -- an unanswered
3 allegation that he was crying when he told this?

4 **A** Looking back, that's also always a
5 possibility. At the time, we didn't think that the
6 jury had given it much merit.

7 **Q** And -- and -- you -- you saw the witness
8 as --

9 **A** Yeah. Exactly.

10 **Q** I understand that.

11 **A** And at the time, we thought we have two
12 options. We can highlight it, Mr. Wise --

13 **Q** Uh-huh.

14 **A** -- and start attacking it and then it gives
15 it more credibility, or just let it go. And that's --

16 **Q** Now, you said that the state had told you
17 what about Mr. Durant that you thought would hurt if he
18 was cross-examined about it?

19 **A** And I want to make sure -- and again, these
20 aren't -- because these were conversation.

21 **Q** Okay.

22 **A** But we were -- there were several women who
23 were ready to testify that they had had sexual
24 relations --

25 **Q** Adults?

1 **A** Adults. Some younger than they should have
2 been; things of that situation. Some who are already
3 married. It wouldn't have been -- and again, I'd --
4 I'd have to talk to Ms. Blazer, but it was not
5 something that we would have wanted in the trial, and
6 we discussed that with him.

7 **Q** Do you have a theory under which the state
8 could have made it admissible?

9 **A** Well, it -- that wasn't the only situation.

10 **Q** Excuse me?

11 **A** That was not the only situation.

12 **Q** Okay.

13 **A** Because I think if -- I want to say there was
14 some question and Mr. Durant had said he had never had
15 an extramarital affair, or never had relationships
16 outside of his marriage, things of that situation.
17 Again, this is just from memory.

18 **Q** Right.

19 **A** There were definitely questions about eye
20 tests, his vision. And there were definitely --
21 there -- there were just a lot that went into it that
22 made her decision not to put him on the stand.

23 **Q** Do you know of any legal theory by which any
24 alleged extramarital affair by Mr. Durant would have
25 been admissible in this trial?

1 **A** If Mr. Durant would have opened the door.
2 And I found that he was not going to be the type of
3 witness who would have been able to control himself on
4 the stand.

5 **Q** So if he had said, "I've never had a marital
6 affair" --

7 **A** Exactly.

8 **Q** Would you have ever asked him that question?

9 **A** No. But those are the things you worry about
10 when you put a witness on the stand, is if they would
11 open the door for things to come in that we have to
12 protect them from themselves.

13 **Q** All right. On page 203 -- excuse me, not
14 203. Let me get the right number. 287. Right? No, I
15 have the wrong one. I thought I had it.

16 Oh, yeah. Yeah. It is. You had -- you were
17 cross-examining Natalie Kelly?

18 **A** Yes, sir.

19 **Q** All right. And in the question, if you look
20 at line 23, you're welcome to read the whole question.

21 **A** What page, Mr. Wise? 257 or 258?

22 **Q** Oh, it's on the left-hand page.

23 **A** Okay. So then I'm reading from page 257,
24 line 23.

25 **Q** Yeah.

1 **A** (Reviews document.)

2 Yes, sir.

3 **Q** You made reference to a victim?

4 **A** Yes, sir.

5 **Q** Was there any strategy behind that?

6 **A** What do you mean, by saying the word

7 "victim" --

8 **Q** Yeah.

9 **A** -- rather than the name?

10 **Q** Yeah.

11 **A** Usually -- and there's two schools of
12 thought. Some people like to use "name." I like to
13 use the word "victim." Some people think "victim"
14 sounds different. I just don't like to give people
15 personal names.

16 **Q** In a trial in which you your theory is there
17 are no victims, you elected to use the word "victim"?

18 **A** I'm one of those people, Mr. Wise, that I --
19 I think when lawyers say don't use the word "victim,"
20 don't use things of that nature, I -- I don't enjoy
21 that. I always think it's worse to give somebody a
22 human name, and so we make them exist in front of a
23 jury that says there's a difference between calling
24 somebody "Little Kelly" or "Little Susan" as opposed to
25 victim. That's just the way that I am, that I just

1 think that's an innocuous word. So yes, it's a
2 strategy.

3 Q All right. Let's go to page 343. All right.
4 And this is a portion of what the attorney general's
5 office showed you earlier. But to -- at the top of the
6 page, all right -- what is the question the state asked
7 this Natalie Kelly?

8 A "Please tell me what first made you conduct
9 an investigation into Larry Durant."

10 Q All right. So they mentioned Larry Durant?

11 A Yes, sir.

12 Q All right. And when you said that you found
13 nothing objectionable about her interviews with the
14 witnesses later, was that premised upon the Rule 801 --
15 and I forgot what subsection -- that read "rape victims
16 are able to testify as to time and place"?

17 A That's correct. Yes, sir.

18 Q But not mention a -- not mention a name?

19 A Yes, sir.

20 Q And if they mention a name, that's improper?

21 A Yes, sir. You're correct.

22 Q So first of all, the state asked Ms. Kelly
23 if -- what she did to investigate Larry Durant,
24 correct?

25 A Yes, sir.

1 Q All right. That's a name.

2 A Larry Durant, yes, sir?

3 Q Correct?

4 A Yes, sir.

5 Q And then they ask each individual girl,
6 basically, "Were you sexually assaulted?"

7 A Yes, sir.

8 Q Isn't that, in essence, telling each girl
9 saying Larry Durant assaulted me because of the way it
10 started?

11 A I guess you could look at it that way, yes,
12 sir.

13 Q All right. And if you look -- and -- and
14 I'll agree, in their direct examination, they never
15 asked the name of the girl of "who assaulted you?"

16 A Yes, sir.

17 Q And then -- let me get the paper here.

18 A Yeah. No problem.

19 Q And then the state asked a question after
20 going through all these, look on page 249, at line one.
21 And now -- and what's the first thing the state asked
22 the witness after she testified about all these girls
23 being sexually assaulted?

24 A You said 249 on line 1?

25 Q Yes.

1 **A** "And what did you charge Mr. Durant with?"

2 **Q** Correct.

3 **A** Yes.

4 **Q** So, basically, after these girls correctly
5 comply with 801, the state asked, "What did you charge
6 Mr. Durant with -- with?" Didn't it?

7 **A** Uh-huh.

8 **Q** All right. And in essence, the state then
9 said, "Each girl said Mr. Durant did it." That
10 correct?

11 **A** Yes, sir.

12 **Q** All right. And if the girl had said that
13 directly, it would have been objectionable.

14 **A** Yes, sir. Potentially.

15 **Q** And it's -- do you think it's objectionable
16 if the state tries to get it in through the back door?

17 **A** It's objectionable. Did I think it hurt?
18 No.

19 **Q** Uh-huh.

20 **A** But is it objectionable? Absolutely. Did I
21 think it hurt me? No, sir.

22 **Q** You're aware that the South Carolina Supreme
23 Court and Court of Appeals have repeatedly said
24 improper bolstering, such as this, is prejudicial and
25 reversible?

1 A Absolutely.

2 Q Do you know -- well, you wouldn't know that?

3 A Not me.

4 Q I was going to ask you to read somebody's
5 mind. I can't do that.

6 So from what you've read there, is the state
7 being tricky in getting around the 801 rule?

8 A I guess, benefit of a hindsight, yes. Rauch,
9 you can look back and see that. I'd say yes,
10 sir. That's a --

11 Q I understand when the state started, you
12 didn't know where they were going?

13 A Absolute possibility.

14 Q While Mr. Durant's name wasn't mentioned by
15 the witness, it was named by the officer in relation to
16 these interviews?

17 A Yes, sir.

18 Q Okay. Give me one minute.

19 A No problem. No problem.

20 (Mr. Rauch consults with Applicant.)

21 **BY MR. WISE:**

22 Q I do -- do have one more question.

23 A Yes, sir.

24 Q Did you ever consider objecting to the
25 prosecutor's closing argument that "Why would these

1 girls lie?"

2 **A** And that is a great question. And I get --
3 consider it, yes. You know, again, being in a trial,
4 watching a jury, watching how the closing is going at
5 the time that I think it would have highlighted,
6 because I really -- Rauch, I don't like to object
7 during closing arguments unless it is something that I
8 believe is really hurting the client at the time. And
9 at the time, I did not believe -- but again, with the
10 benefit of hindsight, reading it, looking back, yeah,
11 that's a possibility we could have.

12 **Q** Clearly, such an argument switches the burden
13 of proof?

14 **A** Yes.

15 **Q** Make you prove how they were lying?

16 **A** Yes. And these cases are just those --
17 they're just different. I believe that the jury had
18 that thought in their mind the entire time anyway.

19 **Q** And again, had you made the state open fully.
20 And they'd argue that you would have been able to
21 discuss with the jury the state -- the state can't
22 prove its case because it's making us prove it?

23 **A** That is correct.

24 **Q** In essence?

25 **A** That is -- that is a great point.

1 **Q** And that would have been helpful?

2 **A** That is a great point.

3 **Q** All right.

4 **A** Yes, sir.

5 **Q** Thank you. That's all.

6 **MR. MITCHELL:** Just very briefly, Your Honor.

7 **THE COURT:** Uh-huh.

8 **REDIRECT EXAMINATION**

9 **BY MR. MITCHELL:**

10 **Q** Mr. Kent, the names of the victims that
11 Detective Kelly referenced --

12 **A** Yes, sir.

13 **Q** -- that we just went over, they-all testified
14 at trial, correct?

15 **A** They-all testified. Yes, sir.

16 **Q** And so the jury would have known their name?

17 **A** Absolutely, yes, sir.

18 **Q** And the jury would have known their
19 accusations as well?

20 **A** Absolutely. Yes, sir.

21 **Q** Cause they-all testified they were sexually
22 assaulted by Mr. Durant, correct?

23 **A** Yes, sir.

24 **Q** That's all the questions I have here for you,
25 Mr. Kent.

1 **A** Thank you.

2 **MR. WISE:** Just -- just one question.

3 **RECROSS-EXAMINATION**

4 **BY MR. WISE:**

5 **Q** Are you aware of the cases in South Carolina
6 where the -- it's been reversed for improper
7 bolstering, even when the complaining witness
8 testifies?

9 **A** (Inaudible). That is correct.

10 **Q** Thank you. That's it.

11 **MR. MITCHELL:** No further questions,
12 Your Honor.

13 **THE COURT:** All right.

14 Thank you, sir. You can step down.

15 **THE WITNESS:** I can't stay?

16 **THE COURT:** You cannot.

17 **THE WITNESS:** Thank you, Judge. Have a good
18 holiday.

19 **THE COURT:** Thank you.

20 **THE WITNESS:** Am I free to go?

21 **THE COURT:** Any objection to him being
22 excused?

23 **MR. MITCHELL:** No objection.

24 **MR. WISE:** I have no objection?

25 **THE COURT:** Thank you, sir.

1 **MR. MITCHELL:** Your Honor, at this time, the
2 state rests.

3 **THE COURT:** Okay.

4 Anything in rebuttal or any closing
5 statements you'd like to make?

6 **MR. MITCHELL:** Your Honor, I would like a
7 brief amendment to respond to some of the
8 allegations.

9 **THE COURT:** Sure.

10 **MR. MITCHELL:** We'll start with the one we
11 left off with. Regarding Detective Natalie
12 Kelly's testimony, it -- Mr. Durant's alleging
13 that was improper bolstering. Frankly, Your
14 Honor, it just -- it just isn't improper
15 bolstering. Nowhere in the testimony did Natalie
16 Kelly testify that she believed the victim.

17 The first time she was asked about these
18 statements was in response to a question about why
19 you'd begun the investigation. The case law is
20 clear that and this is usually in the context of
21 hearsay, but evidence is not hearsay unless
22 there's an out-of-court statement offered to prove
23 the truth of the matter asserted. And if -- an
24 out-of-court statement is not hearsay if it's
25 offered for the limited purpose of explaining why

1 a government investigation was undertaken.

2 So the fact that she got search warrants --
3 testified that she receives -- got search warrants
4 because of statements that witnesses have made to
5 her is proper under the case law for the limited
6 reason for why she got a search warrant.

7 And Detective Natalie Kelly answering the
8 question about what you charge Mr. Durant with,
9 and her response was criminal sexual conduct with
10 a minor in the second degree, I don't know what's
11 improper about that because that's exactly what
12 happened. He was clearly arrested for it because
13 that's why they're on trial in the first place.
14 The jury has seen the indictment where it says
15 criminal sexual conduct in the -- minor second
16 degree. So none of that was a secret to anybody.
17 And frankly, there just wasn't any improper
18 bolstering because the witness never gave her
19 personal assurance that -- that she was lying.

20 And once again, there's no prejudice.
21 There's no reasonable probability the outcome of
22 the trial would have been different. Because all
23 the victims testified at Mr. Durant's trial, they
24 knew that they were accusing Mr. Durant of
25 sexually assaulting them, and their names were

1 before the jury. So even if it was improper,
2 there's no prejudice because there's no reasonable
3 probability the outcome would have been different
4 because the jury would have heard all this
5 information anyway.

6 With regard to the improper vouching from the
7 solicitor's closing argument regarding they had no
8 motivation to lie, solicitors are allowed to argue
9 credibility of witnesses in a closing argument.
10 It only becomes improper when they give their
11 personal assurance or -- that a victim isn't
12 lying, or a witness isn't lying, or indicating
13 that something outside of the record is why they
14 believe they should.

15 If you go further on, Your Honor, there was
16 testimony elicited on cross examination of -- I
17 believe Lizzie Johnson was the mother -- about how
18 her -- her child -- one of the witnesses about her
19 prior lies, about lying about grades, about lying
20 about not having a cell phone.

21 The solicitor brought that up during her
22 closing, saying:

23 "She had a reason to lie. She lied
24 about her grades because she didn't want to
25 get in trouble. She lied about not having a

1 phone because she wanted to keep having her
2 phone."

3 And then the solicitor said:

4 "But here, there is no motivation to lie
5 because she was -- what's -- what's the
6 reason to lie about being sexually assaulted
7 by your preacher?"

8 And then went on to explain that if she was
9 lying, why didn't she just tell everybody? And that's
10 just not what occurred.

11 And so the solicitor was properly using
12 evidence in the record to argue for the credibility of
13 these witnesses. And especially -- and even if it
14 was -- it's still an invited reply based on the
15 defense's argument that they're not credible because
16 they've lied in the past. So for those reasons, it
17 wasn't improper vouching. And if it was, it was an
18 invited reply based on the defense of counsel.

19 Regarding the state not opening fully on the
20 law and facts, Your Honor, this -- this trial was in
21 2016. *State v. Beatty* which mandated that the state
22 needs to open fully on law and facts came out in 2018.

23 Case law is clear that in the context of a
24 post-conviction relief, attorneys are not expected to
25 anticipate changes in the law, nor be clairvoyant about

1 the law. And the law the time, there was nothing wrong
2 with this. So for those reasons, Your Honor, that's
3 just -- counsel was not ineffective.

4 Regarding the second door from Mr. Durant's
5 office, there's been a lot of testimony about that.
6 Mr. Kent said there's nothing in his notes, nor his
7 discussions with Mr. McRae that -- anything about the
8 second door. So I would just, first of all, say that
9 Mr. Durant hasn't met his burden showing that this
10 information was relayed to counsel in the first place.

11 Either way, he was not prejudiced by any such
12 failure, since, as Mr. Kent testified to and as the
13 record reflects, he was able to present testimony from
14 two armor-bearers who essentially testified the same
15 thing. They were outside the door. They were -- they
16 were allowed to walk in whenever they wanted. The door
17 was always unlocked. They could hear everything that
18 was going on in the office. And they heard nothing and
19 they saw nothing nefarious. So for those reasons, he
20 was not prejudiced by any alleged deficiency.

21 And not calling the child witness. Mr. Ken
22 articulated a valid reason. He was 13 years old. He
23 was the son of the defendant. There's an age, bias,
24 and you just don't want to run the risk of putting a
25 minor on the stand at their father's criminal trial.

1 And in relation to that, Mr. Kent testified
2 that they did have discussions with Mr. Durant about
3 whether he wants to testify or not. Mr. Kent gave
4 several reasons why he advised Mr. Durant not to -- the
5 prior sexual assaults that he was worried -- God bless
6 you, Your Honor -- he was worried would come in had
7 Mr. Durant opened the door. Also, the major theme for
8 the defense was his eyesight. That would have been
9 able to be refuted had Mr. Durant testified. All of
10 which are valid reasons.

11 Mr. Durant didn't articulate what he would
12 have testified to had he testified with the exception
13 of refuting him crying when confronted with the
14 allegations. As Mr. Kent said, I don't -- there was
15 nothing that he saw that was problematic to the defense
16 for that testimony. And I agree. I think that -- I
17 don't see what's inculpatory about someone being
18 presented with allegations. And even if they were
19 false, him crying, that would still -- I don't see how
20 that's damaging.

21 And regarding the failing to investigate
22 further Ronald McRae to -- to find out the prior
23 convictions and record of Yolanda McRae, Your Honor,
24 it's my -- it's the state's position that this issue
25 has been foreclosed on in -- an addressed in his direct

1 appeal. The Supreme -- this was addressed in the
2 Supreme Court in a published opinion, and as to the
3 deficiency prong, Your Honor, I believe the Supreme
4 Court opinion will guide us here, in that they stated
5 faulting defense counsel for failing to discover
6 material information about the state's own witness,
7 especially when the state in their Brady said that she
8 had no prior record, lessens the state's duty to
9 disclose exculpatory evidence.

10 I read that as the state -- as the Supreme
11 Court saying that it's not unreasonable for an attorney
12 to rely on their Brady information that was given to
13 them by the state, and they're not ineffective for
14 failing to keep investigating something when the state
15 has explicitly told them shouldn't exist.

16 As the prejudice, Your Honor, once again, the
17 Supreme Court, I believe, has foreclosed this. In the
18 opinion, the Supreme Court noted that the defense never
19 suggested that McRae forged the deed. Also, the state
20 presented cumulative evidence in the four girls'
21 testimony -- the minor girls who were allegedly
22 assaulted. And for those very same reasons, Mr. Durant
23 has failed to prove a reasonable probability the
24 outcome of trial would have been different had Yolanda
25 McRae been impeached with her criminal record. The

1 Supreme Court has basically already ruled that there's
2 no prejudice. And so for those reasons, counsel was
3 not ineffective in that regard either.

4 And if there's anything I missed, Mr. Honor,
5 I believe the testimony and the record refute anything
6 else. So that -- thank you.

7 **THE COURT:** Mr. Wise.

8 **MR. WISE:** May it please the Court. Our
9 South Carolina Supreme Court has held for decades
10 that it is improper bolstering for a witness to
11 relay the conversation with alleged victim in a
12 criminal sexual conduct case saying who did it.
13 There's no question about that. It seems to me
14 that what the state has done here in this case is
15 figured out what I call a sneaky way to get around
16 it.

17 They first start out by asking the witness,
18 "Who were you investigating? Or what were you,
19 you know, investigating in relation to
20 Mr. Durant?" And that started.

21 Then they had the witness, for no real
22 evidentiary purpose, to repeat her conversation
23 with four girls. And they were very particular
24 not to say who did this alleged sexual act, even
25 though they had started the -- the examination

1 with, "Were you investigating Larry Durant?" All
2 right. They go through those four. And then they
3 conclude by saying:

4 "After that, what did you do?

5 "I got an arrest warrant for Larry
6 Durant."

7 That is a sneaky way of the state saying to
8 the jury, all these girls accused Larry Durant.
9 And that's wrong. That has been wrong for
10 decades. I've -- I've got some cases I'm 'a hand
11 up to the -- to the court that doesn't even
12 exhaust them. But that's the -- you know, no
13 court would allow that Officer Kelly to testify,
14 "Witness 1 told me Larry Durant did it. Witness 2
15 told me Larry Durant did it. Witness 3 told me
16 Larry Durant did it. And Witness 4 told me Larry
17 Durant did it." That would be totally
18 inadmissible.

19 And they cannot, in good conscience, sneak in
20 that testimony by sandwiching the testimony
21 between two allegations about Larry Durant. And
22 that's what they did in this particular case. I
23 think that -- and the court has always said that's
24 prejudicial?

25 **THE COURT:** But Mr. Wise, then, all four

1 girls then offered direct testimony that he was
2 the person, so tell me how it's prejudicial.

3 **MR. WISE:** I -- I can pass up cases to the
4 court -- and I will. I've -- I've got copies for
5 counsel -- that say even when the person
6 testifies, it's prejudicial.

7 **THE COURT:** Okay. I'm glad to take a look.

8 **MR. WISE:** And there are -- there are plenty
9 of cases if you want to research beyond this. So
10 they have always said improper bolstering is
11 prejudicial. And it is -- it is close to being
12 per se. Because there is a case that I did not
13 copy where the dissent says the state's -- the --
14 the dissent says "the majority is making it a per
15 se rule." And I don't think it should be per se.
16 But no, it -- what they testify -- in virtually
17 every case, they testify. So the bolstering is
18 what's -- what's bad about it?

19 And it seems to me too, Your Honor, while
20 we're dealing with it, the Rule 801 that has the
21 subsection about repeating statements by the
22 alleged victim as to time and place, that makes a
23 lot of sense if you're talking about the initial
24 cry of, "I've been -- I've been attacked." You
25 know, when a -- when a 12-, 13-year-old child goes

1 to the mother and says, "So-and-so raped me," you
2 know, the jury knowing that this is when the
3 complaint was first made without a name, kind of
4 makes sense. But to permit the state -- and they
5 could do this if they wanted to under the state's
6 theory -- to have the children interviewed by
7 three separate witnesses, and have each witness
8 come up and testify to what they said being
9 repeated again, just leaving the name of the
10 defendant out, that just, to me, would violate due
11 process under the state and federal constitutions,
12 certainly is not close to what I would call a fair
13 trial.

14 There's really no probative evidence of
15 having an investigating officer come up and
16 testify as to what these girls told them, other
17 than simple bolstering. And -- and I think that's
18 a real problem that exists in this case.

19 The other legal issue deals with the order of
20 closing arguments. Mr. Kent acknowledged that he
21 was aware of the movement before Beatty to require
22 the state to open fully on the law and the facts.
23 And he cited very many instances where the state
24 had made some statements that were misleading that
25 had he had a chance to respond to him, he could

1 have, and that certainly leaving a jury with an
2 improper impression of the law, certainly, is
3 prejudicial.

4 The jury argument by the state of "Why would
5 these girls lie?" is simply nothing but a
6 burden-shifting argument. If, when you ask a
7 juror, why -- why would these girls lie, it then
8 becomes incumbent on the defendant to prove why
9 they lied. And that's never been burden.

10 Regardless of what Mr. Kent argued, for the
11 state to argue that the burden is on the defendant
12 to prove something is, to me, improper and -- and
13 should be a ground for new trial. Also, on the
14 testimony about the investigation, Mr. -- Mr. Kent
15 testified that he was aware -- he wasn't sure of
16 the source -- that someone had told him that
17 Mr. Durant's children had unfettered access to the
18 study after church.

19 If Mr. Durant's children had unfettered
20 access to the church or his study, that certainly
21 makes it extremely less likely that any of this
22 ever happened because Mr. Durant knows his
23 children would come in unexpectedly and would
24 never know when they're coming in unexpectedly.
25 And -- and that's, I think, important. And if you

1 read the transcript, I don't believe any
2 armor-bearer ever testified that they saw any of
3 these four complaining witnesses enter the study
4 after church on any -- on any particular Sunday on
5 that. So certainly, that would be substantial
6 evidence that would allow Mr. Durant to have a new
7 trial on -- on that issue alone because that
8 certainly -- certainly, would make it
9 substantially less likely to have happened.

10 As to Mr. Durant testifying, I think Mr. Kent
11 even conceded that there was no other refuting
12 testimony about he cried. There was no
13 cross-examination about it. It -- from the
14 record, it appears as an accepted fact. And to
15 me, the accepted fact that a man who is accused of
16 sexually molesting a young child cried is really
17 damaging to a case. And it was a mistake, I
18 think, not to put Mr. Durant on the stand to
19 testify. Had the --

20 **THE COURT:** So is it your feeling that that's
21 some kind of indicia of guilt? I mean, tell me
22 what your theory is with him crying that that's
23 some kind of indicia of guilt.

24 **MR. WISE:** Well, from -- from the testimony,
25 yes, that's the impression I got, be frank with

1 you, from reading the transcript. It stood out.
2 And we-all may read it differently. Who knows?
3 But the point is: When I read it, it really
4 struck me as very unfavorable testimony to
5 Mr. Durant when they said he cried. He first
6 denied it and all this stuff. And then they said
7 he cried. And that -- that, to me, bothered me on
8 on that respect on that. So I think on those
9 basis that Mr. Durant is entitled to a -- a new
10 trial in this case.

11 I will hand up to the court my -- what I call
12 my "bolstering cases."

13 **THE COURT:** Please.

14 **MR. WISE:** And in those bolstering cases, as
15 I mentioned, the -- the witness testified as to
16 who did it. But even, you know -- and I think
17 we've got the equivalent here where the state
18 sandwiched their testimony between two allegations
19 about Mr. Durant, and unfairly to Mr. Durant,
20 basically told the jury that's what the girls were
21 saying. But the -- but the alleged victims
22 testifying has never been a basis for saying it
23 wasn't prejudicial.

24 **THE COURT:** Okay. Thank you.

25 I will, of course, take a good look at this.

1 I will read carefully through the materials, the
2 transcripts, the case law, before I give you-all
3 my ruling.

4 **MR. WISE:** Okay. All right.

5 **MR. MITCHELL:** Thank you, Your Honor.

6 **THE COURT:** Thank you.

7 (Proceedings conclude at 12:29 p.m.)
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2 I, the undersigned, Teresa B. Johnson, Official
3 Court Reporter, who listened to the digital recording
4 created by DCRP, do hereby certify that said hearing is
5 a true, correct, and verbatim transcript of said
6 recorded, discernible proceedings, except for the
7 portions noted where no transcript was possible due to
8 the lack of discernible wording, noted by (inaudible):
9 4 times.

10 I do further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties
12 connected with the action, nor am I financially or
13 otherwise interested in the outcome of the action.

14
15 Dated: 2/11/2025

16
17 /s/Teresa B. Johnson

18 Teresa B. Johnson

19 Official Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Larry Durant, SCDC #138605,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2021-CP-43-01059

ORDER OF DISMISSAL

RECORDED
2025 JUL -1 AM 11:02
JUL 1 2025
SOUTH CAROLINA

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Larry Durant ("Applicant") on June 22, 2021. On November 22, 2024, a hearing into the matter was convened before the Honorable Kristi F. Curtis at the Sumter County Courthouse. Applicant was present and represented by C. Rauch Wise, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant, Ronnie McCrae, Jeremiah Durant, and Shaun C. Kent, Esquire ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In October of 2014, the Sumter County Grand Jury indicted Applicant for second-degree criminal sexual conduct (CSC) with a minor (2014-GS-43-0947). Shaun C. Kent and Cameron J. Blazer, Esquires, represented Applicant. Assistant Attorneys General Kinli Bare Abee and David

Fernandez prosecuted the case. On May 23-26, 2016, Applicant proceeded to a jury trial before the Honorable Roger M. Young. The jury convicted Applicant as indicted, and Judge Young sentenced him to twenty years' imprisonment.

Applicant filed a timely notice of appeal, and E. Charles Grose, Jr., represented him on appeal. Applicant filed a brief raising six issues:

- 1) whether the trial court erred in declining to order a mistrial after misinforming the jury of Applicant's charges,
- 2) whether the trial court erred on various grounds for admitting the testimony of three other victims to show a common plan or scheme,
- 3) whether the trial court's Allen charge was erroneous for singling out the minority juror,
- 4) whether the trial court erred in denying Applicant's motion for a new trial based on Brady,
- 5) whether the cumulative error doctrine entitled Applicant to a new trial.

After both parties filed briefs, Applicant moved to certify the case from the Court of Appeals, and the South Carolina Supreme Court granted his motion on January 11, 2019, and transferred the case.

Our Supreme Court heard oral arguments on May 9, 2019. On May 6, 2020, the South Carolina Supreme Court affirmed Applicant's conviction. *State v. Durant*, 430 S.C. 98, 844 S.E.2d 49 (2020). On July 8, 2020, the court denied Applicant's motion for rehearing and issued the remittitur. Applicant then filed a petition for writ of certiorari in the United States Supreme Court on October 6, 2020, which was denied on February 22, 2021.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being detained unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to adequately prepare for trial.
 - i. "Trial counsel failed to introduce evidence to the jury that the pastor's study

where many of the alleged sexual acts occurred had a second door leading to a library or book store that was not locked.”

- ii. “Trial counsel was aware the state was planning to use several other alleged victims to prove a common scheme or plan. Trial counsel failed to call many other witnesses who would have testified that they were counseled by the Applicant in his office and the Applicant made no sexual advances on them. This testimony would show common scheme or plan of the Applicant was not to make sexual advances on young women he counseled, but to pray for them and give them guidance.”
 - iii. “Trial counsel failed to call as a witness the wife of the Applicant who could have refuted the testimony as to the signing of the deed.”
 - iv. “Trial counsel failed to call the Applicant to refute the testimony that he cried when confronted with the allegations. This statement was false. As trial counsel did not otherwise impeach this testimony through cross examination, the jury was given no alternative to the unrefuted false claim.”
 - v. “Trial counsel failed to interview and call as a witness Rolnd [sic] McRae, the former husband of Ulanda McRae. Had Mr. McRae been interviewed before trial, trial counsel would have learned of the criminal history of Ulanda McRae before trial would have been able to successfully impeach her testimony.”
- b. Trial counsel failed to object to the improper bolstering testimony of Natalie Kelly.
 - i. “The state called as a witness Detective Natalie Kelly. Over pages 244 to 249, this witness bolstered the testimony of the complaining witness by repeating the allegation made by the witness. Detective Kelly was then permitted to testify that based upon the statements by the complainant witness, she obtained a warrant. This was tantamount to the Detective saying she believed the complaining witness. Trial counsel should have objected.”
 - c. Trial counsel failed to require the state to open fully in their opening argument.
 - i. “Trial counsel failed to object to the State not opening fully on the law and the facts. This failure to object permitted the State to make arguments to which the Defendant did not have the opportunity to respond.”
 - d. Trial counsel failed to object to improper closing argument of the state which improperly shifted the burden to the defendant.
 - i. “Trial counsel failed to object to the argument of the state on page 736 of the transcript when the State argued, “Why would these girls be lying? They get nothing out of this. They have absolutely no motivation to lie.” This argument had the effect of shifting the burden to the defendant to prove why the girls would lie. In addition, saying they had no motivation to lie is an expression of the opinion of the prosecutor as to the truthfulness of the

witness which is also improper.”

- e. Appellate counsel failed to include in the record on appeal charts prepared by trial counsel that illustrated the lack of similarity of the 404(b) witnesses.
 - i. “Appellate counsel failed to include in the record on appeal the charts that had been prepared by trial counsel to show the lack of similarity of the testimony of the Rule 404(b) witnesses presented by the state.”
- f. Since the trial, the applicant has learned that the jury decided his cases upon an improper basis which constitutes juror misconduct.
 - i. “Since the trial, applicant has learned from one of the jurors that the juror used the 404(b) testimony for an improper purpose. The applicant is informed and believes the juror said that they used the 404(b) testimony to conclude the applicant was guilty simply because so many witnesses testified against him.”

Applicant waived allegations 1(a)(ii), 1(a)(iii), 1(e), and 1(f) at the outset of the evidentiary hearing.

Before this Court are the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the records of the current action.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s

performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be

substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. 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. *Id.* at 696–97.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Introduce Evidence of Second Door in Applicant’s Study

Applicant alleges Counsel was ineffective for failing to introduce evidence to the jury that the pastor’s study where many of the sexual acts occurred had a second door leading to a library or bookstore that was not locked. Applicant alleges Counsel should have called Ronnie McRae and Applicant’s son, Jeremiah Durant, to testify as to this second door. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he, along with Ronnie McRae and either Counsel or Counsel’s investigator, visited the church where many of the alleged sexual acts

occurred, Applicant explained that his children had unfettered access to his study and came in whenever they wanted. Applicant testified his office had a connecting door to a candy shop/bookstore that was never locked. Applicant explained the acoustics in the office were such that sound traveled outside the office. Applicant averred that had Counsel presented this at trial, the outcome would have been different.

Ronnie McRae testified he served as an "armor-bearer" at the church. He testified he met with Counsel at the church where they discussed the unrestricted access that Applicant's children and other members of the congregation had to the Applicant's office. Ronnie explained that the connecting door to the candy shop/bookstore was never locked and nobody had a key to it. Ronnie testified that after church services the canteen area was always crowded with people and would get loud enough where Applicant would need to close the door.

Jeremiah Durant testified he is the son of Applicant. Jeremiah explained that he did not testify at Applicant's trial. He stated that he had unrestricted access to Applicant's office. He noted he never asked permission to enter the office even when Applicant was holding a counseling session.

Counsel testified to the preparation he undertook prior to trial, including multiple meetings with Applicant, hiring a private investigator, and engaging another attorney, Cameron Blazer. Counsel reviewed discovery materials, examined witness statements, and looked into the backgrounds of key individuals. Counsel also visited the church where the assaults occurred. He noted Applicant was often accompanied by "armor bearers," likened to bodyguards. Although Counsel could not recall specifics about an unlocked second door, he testified the defense strategy centered on showing the assaults were implausible due to the constant presence of these armor

bearers. Counsel explained testimony was introduced to show that the office door was usually unlocked and that sounds from inside were easily heard from the outside.

Counsel testified that he does not specifically remember interviewing Applicant's son, Jeremiah Durant, and likely did not do so. He explained that he would not call a 13-year-old to testify that he never saw his father commit sexual assaults, as the child's age and clear bias would undermine the testimony. Counsel emphasized that the defense strategy was that the crimes did not occur at all—not that they did not happen while the son was present. He further explained that the prosecution could easily counter such testimony by showing the son was not always present. Given these considerations, Counsel determined it did not make strategic sense to call Jeremiah Durant as a witness.

Counsel testified he interviewed McRae specifically about the church and he does not recall anything being mentioned about the second door. (PCR Tr. 47). Counsel explained that he chose not to have Roland McRae testify because the information he would testify to was already in front of the jury and he was concerned about McRae's prior convictions.

This Court finds Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). “[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). Counsel reasonably explained that, although he did not have a specific recollection of the alleged unlocked second door, he presented evidence at trial aimed at demonstrating the implausibility of the sexual assaults through the testimony of the armor bearers. Further, this Court finds that Counsel articulated a valid strategic reason for not calling Applicant's

son as a witness—namely, the child’s age, inherent bias, and the limited probative value of his testimony. Additionally, Counsel elected not to call Roland McRae as a witness because the substance of his testimony was already before the jury and there was a risk his prior convictions could undermine his credibility. Because Counsel presented the relevant information through other witnesses and articulated valid reasons for not calling these witnesses, Applicant has failed to meet his burden of demonstrating Counsel’s performance was deficient.

Furthermore, neither Roland McRae nor Jeremiah Durant’s testimony was necessary to establish any point that was not already before the jury. The testimony was merely cumulative to the testimony of Meyer Whack and Elvin Vaughn. Whack, a 20-year member of International Word Ministries who served as both an elder and armor bearer, testified in detail about the office environment. Whack explained that an armor bearer’s duty is to serve and protect the church leader, and that armor bearers were always stationed directly outside Applicant’s office when someone wished to meet with Applicant. He testified that sounds inside the office could be heard on the outside, and he never heard anything inappropriate. Whack further stated that meetings in the office never lasted more than 5-10 minutes. (R. 575–577). He emphasized that the office door was never locked and that he would have been alerted if it had been. Whack also testified that he could enter the office at any time and often did so while Applicant was meeting with others. He reiterated that, even during meetings with the victims, he never heard anything inappropriate occurring inside the office. (R. 578–579).

Similarly, Elvin Vaughn, a minister and armor bearer at Word International Ministries, testified regarding Applicant’s physical disabilities, specifically that Applicant is blind and is a double amputee. As a result, Vaughn stated that Applicant required constant assistance and was always accompanied by an armor bearer, both during and after church services. Vaughn testified

that following services, visitors would sometimes meet with Applicant in his office; however, an armor bearer was always stationed nearby, with unrestricted access to enter the office at any time. (R. 596–598).

Vaughn testified that he is personally familiar with each of the victims and affirmed that none of them were ever alone with Applicant. (R. 599). He explained that any meetings with Applicant were brief in nature, generally lasting no more than five minutes. Vaughn also noted the walls were thin enough that conversations within the office are audible from the outside. (R. 600). Vaughn stated he never heard anything inappropriate occurring inside Applicant's office. (R. 601).

Petitioner has failed to prove he was prejudiced because McRae and Jeremiah Durant's testimony were both cumulative to other testimony presented at trial. *See Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) (finding no prejudice where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial).

Accordingly, this allegation is DENIED.

Failure to Object to Improper Bolstering

Applicant contends Detective Natalie Kelly bolstered the testimony of the complaining witness by repeating the allegation made by the witness. Specifically, Applicant argues Detective Kelly was permitted to testify that based upon the statements by the complaining witness, she obtained a warrant and that this was tantamount to the Detective saying she believed the complaining witness. Applicant avers Counsel should have objected. This Court finds Applicant has failed to prove this allegation.

"In South Carolina, a sexual assault victim's prior consistent statements limited to the time and place of the alleged incident are not hearsay if the victim testifies at trial and is subject to cross-examination" *State v. Jeffcoat*, 350 S.C. 392, 395-96, 565 S.E.2d 321, 323 (Ct. App. 2002)

(citing SCRE 801(d)(1)(D)). "This rule incorporates our state's previously recognized hearsay exception for 'limited corroborative testimony in a sexual conduct case.'" *Id.* (quoting *State v. Whisonant*, 335 S.C. 145, 154, 515 S.E.2d 768, 771 (Ct. App. 1999) "The rule expressly allows other witnesses to testify the victim complained of the assault, but only as to 'time and place'; it specifically circumscribes such testimony by 'excluding details or particulars.'" *Id.*

Detective Natalie Kelly testified that she interviewed the victim and each of the 404(b) witnesses in this case. She testified that the victim informed her she was sexually assaulted beginning in the later part of 2012 and continuing throughout 2013. The victim told her the sexual assaults occurred at two different Word International Ministry locations. (R. 189–190). The victim clarified the sexual assaults occurred in the pastor's office of both churches. (R. 190). Detective Kelly further testified she interviewed each of the 404(b) witnesses who all informed her of when and where they were sexually assaulted. (R. 191–193).). Detective Kelly testified that, after conducting her interviews, she obtained search warrants for those locations and Applicant was subsequently charged with second degree criminal sexual conduct with a minor. (R. 193–195).

Detective Kelly did not testify as to the identity of the perpetrator nor recite any of the specific details of the assaults as reported to her by the victims. Additionally, all the victims in this case testified at trial and were subject to cross-examination. Detective Kelly's testimony was confined to the time and place of the alleged sexual assaults as reported by the victims, and thus did not constitute inadmissible hearsay.

Applicant contends that Detective Kelly's testimony that she obtained a warrant and arrested Applicant was tantamount to her bolstering the victim's testimony. "Improper bolstering . . . occurs when a witness testifies for the purpose of informing the jury that the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness

believes the victim is telling the truth.” *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 505 (Ct. App. 2019)

This Court finds this testimony was not improper bolstering. Detective Kelly was merely testifying to a procedural fact and in no way offered any opinion regarding the credibility or truthfulness of the victim’s allegations. Moreover, the jury was already aware Applicant had been arrested and indicted for second degree criminal sexual conduct with a minor, as this information was conveyed to them by the trial judge at the outset of trial. Given that the jury was actively engaged in a criminal proceeding wherein the State alleged that Applicant committed second degree criminal sexual conduct with a minor, Detective Kelly’s testimony explaining Applicant had been arrested for second degree criminal sexual conduct did not prejudice Applicant.

Accordingly, this allegation is DENIED.

Trial Counsel Failed to Object to the State Not Opening Fully on the Law and Facts

Applicant alleges Counsel was ineffective for failing to object to the State not opening fully on the law and the facts. This failure to object allegedly permitted the State to make arguments to which the Applicant did not have the opportunity to respond. This Court finds this allegation is without merit.

Applicant cites to *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) in support of his argument. Applicant’s trial occurred before the opinion in *Beaty* was published. Only law that existed at the time of Applicant’s trial may be used to determine whether Counsel was deficient for failing to object. *See, e.g., Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law” (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999); *Thornes*, 310 S.C. at 309–

10, 426 S.E.2d at 765 (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”). At the time of Applicant’s trial, and still today, there is no rule regarding the order of closing arguments. In practice, it was common for the defense to present their closing first, followed by the State in situations where the defense has presented evidence. Consequently, Applicant has failed to prove Counsel was deficient in failing to require the State to fully open on the law and facts. Furthermore, this case is distinguishable from *Beaty*. In *Beaty*, the Court considered the propriety of the State’s *reply* argument. Here, by contrast, the State waived its initial closing and instead presented its full closing argument after the Applicant’s, which does not implicate the same concerns raised in *Beaty*.

Even if this Court determined *Beaty* applies in this case, Applicant has failed to demonstrate any due process violation occurred as a result of the State’s closing argument. *Beaty* does not require the State to open fully on the facts and restrict reply argument solely to matters raised by the defendant—in fact, *Beaty* specifically states that the Supreme Court does not have the requisite authority to unilaterally mandate such a rule. *State v. Beaty*, 423 S.C. 26, 43, 813 S.E.2d 502, 511 (2018). *Beaty* held that the Court’s duty is to merely “address due process considerations as they arise.” *Id.* at 46, 813 S.E.2d at 513. *Beaty* notes “the relevant inquiry in determining whether the State’s closing argument violated defendant’s due process rights is whether the State’s comments ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’” *Id.* at 44, 813 S.E.2d at 511 (quoting *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002)). Here, the State’s closing was proper and did not render the trial fundamentally unfair. Accordingly, Applicant has not shown that the argument so infected the trial with unfairness as to constitute a violation of due process.

First, Applicant contends the State, during its closing, improperly characterized Counsel's statements as accusing law enforcement of being "crooked." Applicant further argues that had the State been required to open fully on the facts and law, Counsel would have had the opportunity to rebut this point in his closing. During his closing argument, Applicant argued the following:

Did they really do an investigation or did they make an assumption? . . . So what do we do? If somebody gives us evidence that's important. If somebody tell us something we need to know. What are we going to do? Ignore it. That's what they said on the stand. We will ignore important information. *We will ignore important evidence.*

(R. 663–664) (emphasis added).

All the money, all the power, all of the influence of the State of South Carolina has come against Mr. Durant. *We've had officers hiding evidence.* We've had young ladies creating stories that are just not realistic. And the one thing we have not had presented to us is evidence.

(R. 669) (emphasis added).

The State made the following remarks during its closing argument:

They want you to believe this is some sort of botched investigation. That these are a bunch of crooked police officers that had nothing but tunnel vision, that they focused on one idea to the exclusion of all others and paid no attention to anything else. That is not this case.

(R. 685).

The record reflects that Counsel argued law enforcement ignored and concealed evidence. In response, the State asserted that the defense was suggesting a theory involving "crooked cops." The State's reference to "tunnel vision" directly addressed the defense's claim that law enforcement prematurely concluded Applicant's guilt and disregarded contrary evidence. Moreover, the State supported its argument by referencing evidence presented at trial to counter the defense's claim of insufficient evidence. Thus, the State's remarks were a fair response to the defense's closing and did not constitute a due process violation.

Second, Applicant contends Counsel was unable to rebut the State's closing argument that forensic interviews are for children who are uncertain in their disclosures. This claim lacks merit. During the cross-examination of Detective Natalie Kelly, Counsel thoroughly elicited testimony regarding the absence of a forensic interview with the victim. (R. 200–205). Specifically, Counsel established that forensic interviews are typically conducted with individuals under the age of 14 (R. 201); that such interviews are recorded (R. 202); that the purpose of forensic interviews is to mitigate suggestibility (R. 202); that the victim in this case was under 14 (R. 205); and that there was no forensic interview conducted with the victim (R. 205). During its closing argument, the State made the following remarks:

[The defense] wants to draw your attention to the fact that a forensic interview wasn't done in this case. But your investigators weren't serving and acting as forensic interviewers. They were acting as investigators. Forensic interviews are done, you heard, when a child is not clear in their disclosure, that it's hard to figure out what happened. It's clear to figure out what happened in this the entire time. Forensic interviews are done when children are suggestible. And David Kellin told you himself that the level of suggestibility changes over age. A four-year-old is lot more suggestible than a 14-year-old. An eight-year-old is more suggestible than an 18-year-old. So these girls didn't needed forensic interviews. But this is the type of stuff that the Defense wants you to think about.

(R. 685–686).

The State's comments were clearly responsive to Counsel's cross-examination of Detective Kelly, where Counsel emphasized the lack of a forensic interview. The State argued that forensic interviews are typically used when a child's disclosure is unclear or the child is particularly suggestible. The State further argued that suggestibility varies by age, and that the victim in this case did not require a forensic interview. The State's remarks in closing were thus proper rebuttal, supported by evidence in the record, and in no way amounted to a violation of Applicant's due process rights.

Third, Applicant contends that Counsel could have refuted the State's assertion during closing argument that the high level of acid phosphates present on the hand sanitizer bottle indicated the presence of semen. Jessica Stowe, an expert in forensic serology, testified she conducted an acid phosphate test on the bottle of hand sanitizer recovered from Applicant's office to assess the possible presence of semen. (R. 297). She explained that semen contains high levels of acid phosphate and that the test results were positive, indicating the likely presence of semen. (R. 297). On cross-examination, Ms. Stowe acknowledged that acid phosphates can be found in other bodily fluids, not exclusively semen. (R. 301). During Applicant's closing argument, Counsel made the following remarks:

We have witnesses for the State of South Carolina who said we didn't find anything. And we have experts who says we definitely didn't find anything. We've got no DNA. We've got a fully intact hymen. We've got a normal sexual exam. All of this stuff shows normal. All of this shows is no evidence.

(R. 667)

During its closing argument, the State made this brief reference to the acid phosphate test:

But what there was an allegation of was how Pastor Durant would clean up afterwards. [Redacted] told you that he used hand sanitizer to clean up. So they collected that hand sanitizer bottle. They waved a light on it and they did a test. And it teste positive for acid phosphate, which is found in high concentrations in semen. Exactly just like [redacted] told you. She said that he would pull out, ejaculate in his hand and then she'd have to clean him up. And he's clean up with that hand sanitizer. And high levels of acid phosphates were found on the bottle.

(R. 687).

Once again, the State's argument was a direct rebuttal of Counsel's assertion that the State presented no scientific evidence in this case and was fully supported by evidence in the record. As such, the State's argument was entirely proper and did not violate Applicant's due process rights.

Lastly, Applicant contends the State "ridiculed" the armor bearers in its closing argument and Counsel could have rebutted this point had the State been required to fully open on the law

and facts. This Court finds this is without merit. During closing argument, Counsel emphasized that the armor bearers were positioned immediately outside the office door and heard nothing improper, suggesting that no misconduct occurred within the office. (R. 667). In its closing, the State argued that the armor bearers' testimony lacked credibility due to their bias and that the walls of Applicant's office were not "paper thin," as characterized the defense, but were in fact made of cinder block. This argument was directly supported by evidence in the record and was responsive to the defense's theory that the armor bearers would have necessarily overheard any inappropriate conduct. Additionally, the remarks regarding the armor bearers' lack of credibility and bias were not intended to ridicule them, but rather to present an argument based on evidence in the record. Thus, the State's remarks regarding the armor bearers did not render Applicant's trial fundamentally unfair.

Each of the State's challenged remarks during closing argument served as a proper rebuttal of Counsel's assertions and were supported by evidence in the record. Therefore, none of the challenged statements violated Applicant's due process rights, as they did not compromise the fundamental fairness of the trial.

Based on the foregoing, this allegation is DENIED.

Failure to Call Applicant to Refute Testimony That He Cried When Confronted with the Allegations

Applicant contends Counsel was ineffective for failing to call the Applicant to refute testimony that he cried when confronted with the allegations of sexual abuse. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified that he did not take the stand at trial because Counsel advised him that, if he did, the State would present multiple women claiming to have had

sexual relations with him. Applicant also stated that a State's witness testified that he cried when first confronted with the allegations, which he contends is false. Applicant avers that, had he testified, he could have rebutted this claim.

Counsel testified he specifically recalled discussions surrounding whether Applicant should testify. Counsel explained that he and Cameron Blazer prepared Applicant as if he was going to testify. Counsel explained that during the trial, the State informed him that if Applicant testified they were going to make allegations that he had had relationships with other individuals inside of the church. Additionally, the State had investigated Applicant's vision and discovered that he had recently obtained a valid driver's license. Counsel explained that the State was going to use this as evidence that Applicant was exaggerating the extent of his vision impairment.

Counsel stated that he, Cameron Blazer, Applicant, and Applicant's wife met to discuss these issues. Counsel advised Applicant that these matters would likely be raised during cross-examination and recommended that he not testify. Counsel clarified that while the ultimate decision to testify rests with the client, he does advise the client on what he believes is in their best interest. Counsel explained Applicant ultimately chose not to testify based on Counsel's advice. Counsel further explained that calling Applicant to the stand to refute the crying allegation was not reasonable. Counsel also explained that the witness was not a strong witness for the State, as her testimony contained numerous inconsistencies. It was therefore not necessary to call Applicant solely to refute the allegation he cried when confronted with the sexual assault allegations, given the significant problems that could have arisen during cross-examination. Counsel testified, that although the State calling women to testify about Applicant's extramarital affairs may not be admissible on its face, his concern was that Applicant would open the door to this information with his testimony.

This Court finds Counsel's advice against testifying was reasonable, given that the State intended to introduce damaging evidence had Applicant testified. This is particularly true considering that Applicant asserted his sole reason for wanting to testify was to refute testimony that he cried when confronted with the allegations. Counsel credibly explained that the witness who offered this testimony was not a strong witness for the State, and that the Applicant testifying solely to refute this innocuous statement would likely have caused more harm than good, particularly considering the issues that could have arisen on cross-examination. Accordingly, this Court finds Applicant has failed to prove Counsel was deficient in providing that advice.

Furthermore, Applicant has failed to prove he was prejudiced. As Counsel credibly explained, the decision whether to testify ultimately rested with Applicant. The trial record reflects that the court expressly advised Applicant the decision to testify was his alone, and Applicant affirmed under oath that he understood his rights and did not wish to testify. (R. 650). Additionally, Applicant has failed to establish a reasonable probability that the outcome of trial would have been different had he testified solely to refute the testimony that he cried when confronted with the allegations. This Court finds that the statement in question was innocuous and was made by a weak witness for the State. Thus, having Applicant testify could have caused more harm than benefit to his defense.

Accordingly, this allegation is DENIED.

Failure to Object to Allegedly Improper Closing Argument

Applicant contends Counsel was ineffective for failing to object to a portion of the State's closing argument where Applicant alleges burden shifting and improper vouching occurred. This Court finds this allegation is without merit.

Applicant cites to this statement made by the State in closing that was allegedly improper:

So does it make common sense that Lizzie Johnson is the mastermind of this great lie in order to have a house and she put her daughter and her granddaughter and two other girls she cares about through this? Through days of sitting up here and listening to testimony of embarrassing things. Does it make sense that she put them up to this, for what, a house? It makes no sense. Why would these girls be lying? They get nothing out of this. They have absolutely no motivation to lie.

Does it make sense that this is the type of attention that these girls want? Does it make sense that [Victim] wants to be known as the girl who was sexually assaulted by her pastor? No 14-year-old, 17-year-old, 21-year-old, 40, 50, 60, 70, no one wants to be known as the girl that was sexually assaulted by her pastor. So is that the type of attention she wants? Is that what she's getting out of this lie is attention?

Well, then, maybe she's lying, I don't know, to get out of trouble. Maybe she's in trouble. She says she was lying about it back then. She said she was lying about good things, right? She was lying about her grades so she could play basketball. She said she was lying about having a cell phone so she could continue to talk on it without it getting taken away. But what does she get out of this lie? She gets nothing but the embarrassment of telling what happened to her in a room full of strangers. If this was a lie, why wouldn't she be screaming it from the roof tops? Why wouldn't she tell every single person in that congregation? Why wouldn't she tell every single police officer? Why would she have waited to tell? She didn't tell because she was embarrassed. She didn't tell because she was scared. She didn't tell because she wanted the Defendant to be right. She wanted him to be right when he told that he could stop her from liking girls because she knew it upset her grandmother. She believed in him and wanted him to be right. He took advantage of all of that.

(R. 683-684).

Applicant contends this was both burden shifting and improper vouching. At the evidentiary hearing, Counsel testified he did not object because it would have highlighted the comment to the jury and Counsel does not like to object during closing unless it is really hurting the client. This Court finds this is a valid reason for not objecting.

Furthermore, these comments were neither burden shifting nor improper vouching. The State never suggested anywhere in these remarks that the defense has the burden in this case. On

the contrary, the State informed the jury “we had to prove our case to you beyond a reasonable doubt.” (R. 695). Nor are these remarks made by the State improper vouching. A solicitor may not vouch for the credibility of a witness based on personal knowledge or other information outside the record. *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). “Vouching” occurs where the prosecutor indicates to the jury that her argument regarding the credibility of a witness is based on something *other* than the evidence admitted—i.e., that the prosecutor “knows something about the credibility of a witness that the jury does not know.” *State v. Busse*, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023).

On the other hand, when the solicitor bases her credibility arguments on evidence *within* the record, or on reasonable or common-sense inferences therefrom, no improper vouching occurs. *State v. Caldwell*, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990), *overruled on other grounds by State v. Evans*, 371 S.C. 27, 30, 637 S.E.2d 313, 315 (2006); *see also Busse*, 439 S.C. at 109, 886 S.E.2d at 211 (“A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial.”). A solicitor has the right to argue to the jury regarding the weight that should be given to a witness’s testimony. *State v. Gibbs*, 438 S.C. 542, 553, 885 S.E.2d 378, 384 (2023). In fact, “a prosecutor is *expected* to comment on the credibility of the witnesses when making a closing argument. Far from improper, . . . doing so is one of the fundamental responsibilities of a lawyer.” *Busse*, 439 S.C. at 111, 886 S.E.2d at 212 (emphasis added). Such comments are especially necessary when the case involves a “swearing contest” between a witness and the defendant. *State v. Raffaldt*, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995).

Here, the arguments made by the State concerning the victim's credibility were properly based on the record and reasonable inferences therefrom. First, the State argued in closing that the defense's theory that Lizzie Johnson orchestrated this whole lie in order to get a house does not make sense because the girls get nothing out of this. This theory was posited by the defense during trial and in closing argument.

Let's remember the case earlier. You remember Lizzie Johnson? You all remember Lizzie? Remember Lizzie testified? Remember what Lizzie told you about the house, the deed, the things she has stolen? Remember all the stuff that she told you? Remember, she's still fighting over this house right now? She looked you in your faces and what did she tell you? I didn't sign that second deed. Remember, all the girls giggled. I think we all heard them, they were laughing back there. I found that a little peculiar, but they all started giggling at that point in time.

(R. 665).

The entire defense theory was that the victims were lying in order for Lizzie Johnson to fraudulently obtain a house. The State was using evidence that *the defense presented* to argue it makes no sense that these girls were lying. The State was clearly well within their rights to rebut this by arguing . against the plausibility of that theory.

During the cross-examination of victim, Counsel elicited the following testimony:

Q. And I don't have too many questions. First, I want to talk about some of the stuff when Ms. Abee was asking you questions, okay?

A. Yes, sir.

Q. One of the first things you talked about, back in that time, you were lying real bad?

A. Yes, I was.

Q. Did people know that you were lying - - and I don't want to call you a liar, I'm just going from what you were saying.

A. Yes, sir.

Q. You were lying real bad. And was it just about grades or was there anything else that you were lying about?

A. And I said I was lying about having a cell phone.

Q. So you had a cell phone at that point in time?

A. Yes, sir, I did.

Q. And you weren't allowed to have a cell phone?

A. No, I wasn't.

Q. Was there anything else that you were lying about real bad back then?

A. No, just the cell phone and I lied about my grades.

Q. And you lied about your grades, also?

A. Uh-huh.

(R. 243–244).

During its closing, the State rebutted the defense's implication that the victim was a liar by arguing that, in previous instances, the victim had lied either to avoid trouble or to gain something. In contrast, the State contended, the victim had nothing to gain by lying about the sexual assault, and thus had no motivation to fabricate the claim. This Court finds that the State's remarks during closing were proper arguments regarding the victim's credibility and were based on evidence in the record.

Accordingly, this allegation is DENIED.

Trial Counsel Failed to Call and Interview Ronnie McRae

Applicant contends Counsel was ineffective for failing to call and interview Ronnie McRae, the former husband of Ulanda McRae. Applicant alleges that had Mr. McRae been interviewed before trial, trial counsel would have learned of the criminal history of Ulanda McRae

and would have been able to successfully impeach her testimony. This Court finds Applicant has failed to prove this allegation.

At the evidentiary hearing, Ronnie McRae testified that he called Counsel to discuss Ulanda McRae's background, which later became a point of contention during a post-trial motion. Counsel testified that McRae contacted him, distraught over Counsel's failure to cross-examine Ulanda regarding her prior criminal convictions. Counsel explained that, had he conducted a more thorough interview with McRae, he would have learned more about Ulanda McRae's background. He further stated that knowing about Ulanda's criminal history before trial would have strengthened the defense strategy and helped the jury understand why the girls were lying.

First, this issue was raised during Applicant's direct appeal. Following the trial, Counsel filed a motion for a new trial, arguing that a Brady violation occurred because the State incorrectly informed the defense that the witness, Ulanda McRae, had no prior criminal convictions. The motion was denied after a hearing. The issue was subsequently raised on direct appeal. In its opinion affirming Applicant's convictions, the South Carolina Supreme Court stated the following:

Moreover, when the State discloses *Brady* material, the defense has the right to rely on its veracity. We find it entirely unreasonable to shift the burden to the defense to independently investigate the criminal background of each of the State's own witnesses when the State has affirmatively claimed that its witness does not have a criminal background. It is not incumbent on the defense to review the State's NCIC search for misspelled names.

As our Supreme Court suggests, Counsel was not unreasonable in relying on the State's representation that the witness had no criminal background. Accordingly, this Court finds that Counsel was not deficient for failing to more thoroughly interview McRae to potentially discover Ulanda McRae's prior convictions.

Additionally, Applicant has failed to prove he was prejudiced as to this allegation. Again, the Supreme Court opinion guides our analysis:

Initially, we note McRae's criminal history included several convictions, many of them over ten years old, so it is unlikely that most of them would have been admissible. While we agree with the trial court that McRae's conviction for obtaining a signature under false pretenses likely would have been admissible, the defense never suggested that McRae—as opposed to Johnson—forged the deed. Perhaps more importantly, the State presented cumulative evidence in the form of the girls' testimony. As a result, the jury had ample evidence supporting its verdict. Accordingly, Durant cannot demonstrate the evidence was material because there was not a reasonable probability the result of the proceeding would have been different.

Additionally, Applicant has failed to establish prejudice with respect to this allegation. The defense theory at trial was that Lizzie Johnson—not Ulanda McRae—forged the deed and directed the victims to fabricate the sexual assault allegations. Accordingly, this Court finds that the discovery of Ulanda McRae's prior conviction would not have resulted in a different outcome at trial. Although Counsel testified that knowledge of Ulanda's prior conviction may have helped the jury understand the motivation for the victims to lie, this Court finds that, while such impeachment evidence may have affected Ulanda's credibility, the connection between her credibility and that of the four victims is tenuous at best.

Accordingly, allegation is DENIED.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). Rule 71.1(g), SCRCR, provides that 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. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the State.

AND IT IS SO ORDERED this 19th day of June, 2025.

Kristi F. Curtis

THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Larry Durant, SCDC #138605,	)	Case No. 2021-CP-43-01059
	)	
Applicant,	)	
	)	
v.	)	Rule 59(e) Motion
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Larry Durant moves for this Court to alter or amend the order entered in this matter on July 1, 2025 based upon the following:

1. This Court erred in failing to recognize that the testimony of Officer Natalie Kelly violated Rule 801(d)(1)(D). The substance of the testimony of Officer Kelly in which she repeated the statements given by the complaining witnesses and then testifying at the end of the interview she issued an arrest warrant for Larry Durant had the effect of telling the jury the complaining witnesses had named Mr. Durant as the perpetrator of the alleged sexual acts. The state should not be permitted to do indirectly that which they could not do directly.

This Court failed to recognize that having Officer Kelly repeat her interviews with the complaining witnesses and then testify she obtained arrest warrants for the arrest of Mr. Durant is simply a back door violation of the hearsay rule and should have been objected to by trial counsel. As the South Carolina Supreme Court has said, "These accounts of their conversations

with Victim meet the definition of hearsay under Rule 801(c), and these accounts provided information outside the time and place restriction set forth in Rule 801(d)(1)(D).” *Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018). The interviews of the complaining witnesses by Officer Kelly was not essential to the case of the State. The interview testimony served no purpose other than to violate Rule 801(d)(1)(D). This testimony was prejudicial to Mr. Durant.

Furthermore, the testimony of Officer Kelly as to the alleged sexual abuse happening in the Word International Ministry at 710 Manning Avenue and 1010 North Guinyard drive had the effect of identifying Mr. Durant as the alleged perpetrator. Tr. at 244, ll 3-7. Testimony by Officer Kelly that a complaining witness told her the alleged abuse happened at her church in her pastor’s study also had the effect of identifying Mr. Durant. Tr. at 245, ll 20-25. Also Officer Kelly again repeated the identity as to the third complaining witness when Officer Kelly again said it happened at her church in the pastor’s office. Tr. at 246, ll 15-17. As to the last complaining witness, when Officer Kelly testified the complaining witness stated the alleged sexual abuse occurred at the Word International Ministry at 1010 North Guinyard Drive and the home of her pastor. Tr. at 247, ll 7-10. All of this testimony simply served to identify Mr. Durant as the alleged perpetrator.

The court failed to appreciate that the testimony of Officer Kelly was not the testimony of the first person to whom any of the complaining witnesses made the initial report. To permit the State to have one or a dozen officers interview the minor child and then permit them all to testify under Rule 801(d)(1)(D) is to abuse the rule to the prejudice of a defendant in violation of Rule 801(d)(1)(D).

2. The Court erred in failing to appreciate that the testimony from the witnesses for Mr. Durant at the Post Conviction Relief hearing was not for the purpose of establishing the pastor's study was not sound proof but to establish that people on occasions would enter the pastor's study from the second door which was a fact known to Mr. Durant and therefore would make the fact that he would sexually abuse a person in the study less likely.

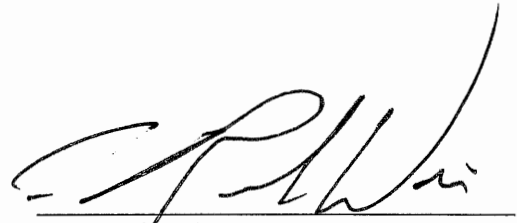
Likewise, the Court appeared not to appreciate the fact that the testimony as to his son was that he and his siblings had free access to the pastor's study at any time. The fact that the children of Mr. Durant had free access to the study after church services, and this fact was known to Mr. Durant, made the fact that Mr. Durant would allegedly sexually abuse a person in his office after church much less likely to happen. As such the testimony was admissible under Rule 401. Had the jury heard such testimony, then there is a likelihood of the verdict being different.

3. As to the testimony of Ronnie McRae, this Court failed to appreciate that Mr. McRae testifying as to the dishonesty of his former wife is very different from the prior convictions referred to by the South Carolina Supreme Court.

4. This court appears to have failed to appreciate that Myer Whack, while she did testify as to her duties as an armor bearer at the trial, was never asked about another door to the pastor's office. Trial counsel simply failed to introduce the pictures showing the other door. These pictures were introduced at the Post Conviction Relief hearing. The Court failed to recognize that Ms. Whack was never asked about access to the office from another door. She also was never asked about the children coming into the pastor's study unannounced. Thus, the testimony of Mr. McRae and Mr. Durant's son covered important facts that other witnesses, including Ms. Whack, did not cover.

For the forgoing reasons, this Court should alter or amend the previous order in this matter and grant Larry Durant a new trial.

July 7, 2025

A handwritten signature in black ink, appearing to read 'C. Rauch Wise', is written over a horizontal line.

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S. C. Bar № 6188

Attorney for Larry Durant

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Civil Action Number 2021-CP-43-01059

Larry Durant,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

**Order Denying Applicant's Motion
to Reconsider**

RECORDED
2025 AUG 29 PM 4:46
JAMES C. BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter is before the Court upon Applicant's timely Motion for Reconsideration of the Order of Dismissal entered on July 1, 2025, pursuant to Rule 59(e), SCRCPP. The Motion asks this Court to alter, amend, or reconsider its order dismissing the application for post-conviction relief.

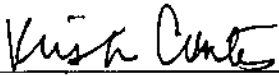
The purpose of Rule 59(e), SCRCPP, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may wish to file such a motion when he believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam*, 361 S.C. at 24, 602 S.E.2d at 779.

After reviewing the applicable law and considering the arguments raised in the motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Court concludes that altering, amending, or reconsidering its prior Order is unwarranted, and the issues raised in the Motion do not change the Court's reasoning or conclusions. As such, Plaintiff's Rule 59(e) Motion is respectfully denied.

IT IS SO ORDERED.

July 31, 2025
Sumter, South Carolina.



The Honorable Kristi F. Curtis

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

Criminal Sexual Conduct with a
Minor 2nd Degree

INDICTMENT

At a Court of General Sessions, convened on October 23, 2014 the Grand Jurors of
Sumter County present upon their oath:

Criminal Sexual Conduct with a Minor 2nd Degree

On or about sometime between December 26, 2012 through May 10, 2013, the
Defendant, Larry Durant, did in Sumter County unlawfully engage in sexual battery
upon the body of **MINOR** date of birth **██████** 1999, the victim being less than sixteen
years of age, in violation of § 16-03-655(B), THE CODE OF LAWS OF SOUTH
CAROLINA, (1976), as amended.

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



ALAN WILSON (KWH)
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

Sumter Police Department, Det. N Kelly
Investigator Valerie Williams

ARREST WARRANT NUMBER

2013A4310200767; 768

ACTION OF GRAND JURY

True Bill
M. D. Anderson
Foreperson of Grand Jury
ate: 10-23-14

VERDICT

Guilty
Roy S. S. S.
5/26/16
Foreperson of Petit Jury
Date:

Docket Number 2014-GS-43- **947**

The State of South Carolina
County of Sumter

COURT OF GENERAL SESSIONS

October, 2014

THE STATE

vs.

Larry Durant
DEFENDANT

Indictment for

Criminal Sexual Conduct with a Minor
2nd Degree

SC Code §16-03-655(B)
CDR Code: 396

ALAN WILSON, ATTORNEY GENERAL

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. Pls. And G.S.