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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT **S.C. Supreme Court**

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

MARK ELLIS BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001024

APPENDIX

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C O N T E N T S

INDEX OF EXHIBITS:

(THERE WERE NO EXHIBITS INTRODUCED.)

INDEX OF WITNESSES:

(THERE WERE NO WITNESSES CALLED.)

1 MS. CAMPBELL: YOUR HONOR, THE STATE WOULD CALL STATE
2 VS. MARK BROWN AND STATE VS. JACKIE BROWN. IT'S MY
3 UNDERSTANDING THEY ARE BOTH PLEADING GUILTY TO CHARGES
4 FROM RICHLAND COUNTY, AS WELL AS LEXINGTON COUNTY.

5 THE CLERK: RAISE YOUR RIGHT HANDS.

6 MARK AND JACKIE BROWN, AFTER BEING
7 DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE COURT: ARE THERE SUPPOSED TO BE SOME LEXINGTON
9 COUNTY CHARGES ON THIS?

10 MS. CAMPBELL: YES, SIR. THERE SHOULD BE A SEXUAL
11 EXPLOITATION, SECOND DEGREE, AND FILING A FALSE REPORT ON
12 JACKIE BROWN.

13 THE COURT: ALL RIGHT. ON MARK BROWN, IT WAS A
14 SEXUAL EXPLOITATION OF A MINOR, SECOND DEGREE. IS THAT
15 THE ONLY LEXINGTON COUNTY CHARGE ON HIM?

16 MS. CAMPBELL: YES, SIR.

17 THE COURT: SO ON MARK BROWN WE HAVE THREE C.S.C.'S
18 WITH A MINOR; ONE C.S.C. WITH A MINOR, SECOND DEGREE; AND
19 IS THERE TEN SEXUAL EXPLOITATIONS OF A MINOR, FIRST, AND
20 ONE SEXUAL EXPLOITATION WITH A MINOR, SECOND DEGREE,
21 RIGHT?

22 MS. CAMPBELL: NO, SIR. THEY SHOULD READ AS NINE
23 CRIMINAL SEXUAL CONDUCTS IN THE FIRST DEGREE, FOUR --

24 THE COURT: OH, I'M SORRY.

25 MS. CAMPBELL: -- SEXUAL EXPLOITATIONS, FIRST DEGREE.

1 THE COURT: ONE, TWO, THREE, ALL RIGHT. FOUR SEXUAL
2 EXPLOITATIONS WITH A MINOR, AND HOW MANY C.S.C.'S WITH A
3 MINOR, FIVE?

4 MS. CAMPBELL: NINE FIRST DEGREE, ONE SECOND.

5 THE COURT: ON HIM?

6 MS. CAMPBELL: ON HIM.

7 (PAUSE).

8 THE COURT: YOU'RE RIGHT.

9 MS. CAMPBELL: THANK YOU, SIR.

10 THE COURT: ALL RIGHT. ON THE C.S.C., IT'S 30 YEARS.
11 SEXUAL EXPLOITATION OF A MINOR IS...

12 MS. CAMPBELL: THREE TO 15, YOUR HONOR.

13 THE COURT: THREE TO 15.

14 MS. CAMPBELL: I'VE GOT THE STATUTE.

15 THE COURT: AND ON THE SEXUAL EXPLOITATION OF A
16 MINOR, SECOND DEGREE, IT'S --

17 MS. CAMPBELL: I BELIEVE IT'S ZERO TO TEN.

18 MR. MEADORS: TEN.

19 THE COURT: THREE TO TEN.

20 ALL RIGHT. MR. BROWN, DO YOU UNDERSTAND THAT ON EACH
21 OF THESE C.S.C. WITH A MINOR, YOU COULD GET UP TO 30 YEARS
22 IN PRISON?

23 MARK BROWN: YES, YOUR HONOR.

24 THE COURT: ON THE SEXUAL EXPLOITATION OF A MINOR
25 FIRST, YOU COULD GET UP TO 15 YEARS. YOU COULD GET THREE,

1 AND I THINK THEY HAVE TO BE RUN CONSECUTIVE. IS THAT
2 CORRECT, MADAM SOLICITOR?

3 MS. CAMPBELL: THAT'S RIGHT.

4 THE COURT: DO YOU UNDERSTAND THAT?

5 MARK BROWN: YES, YOUR HONOR.

6 THE COURT: AND ON THE C.S.C. WITH A MINOR, SECOND
7 DEGREE, YOU COULD GET UP TO TEN YEARS. IT COULD BE A
8 MINIMUM OF THREE, AND THAT HAS TO BE RUN CONSECUTIVE. DO
9 YOU UNDERSTAND THAT?

10 MARK BROWN: YES, SIR, YOUR HONOR.

11 MS. CAMPBELL: YOUR HONOR, ON THE CRIMINAL SEXUAL
12 CONDUCT, SECOND DEGREE, IT SHOULD BE ZERO TO 20, I
13 BELIEVE. THEN THERE SHOULD BE A SEXUAL EXPLOITATION,
14 SECOND DEGREE, WHICH IS ZERO TO TEN.

15 THE COURT: ALL RIGHT. ON THE C.S.C. WITH A MINOR,
16 SECOND DEGREE, YOU COULD GET UP TO 20 YEARS. DO YOU
17 UNDERSTAND?

18 MARK BROWN: YES, SIR.

19 THE COURT: ALL RIGHT. NOW, MRS. BROWN, YOU HAVE A
20 FILING A FALSE POLICE REPORT. DO YOU UNDERSTAND THAT?

21 JACKIE BROWN: YES, SIR.

22 THE COURT: A FELONY; SEXUAL EXPLOITATION OF A MINOR
23 SECOND DEGREE, C.S.C. WITH A MINOR FIRST, AND A SEXUAL
24 EXPLOITATION OF A MINOR. DO YOU UNDERSTAND THAT?

25 JACKIE BROWN: YES, SIR.

1 THE COURT: AND THE FALSE POLICE REPORT, WHAT'S THE
2 PENALTY ON THAT?

3 MS. HERBERT: ZERO TO FIVE.

4 THE COURT: ZERO TO FIVE?

5 MS. HERBERT: YES, SIR.

6 THE COURT: AND ON THE C.S.C. WITH A MINOR, YOU COULD
7 GET 30 YEARS ON THAT. DO YOU UNDERSTAND THAT?

8 JACKIE BROWN: YES, SIR.

9 THE COURT: AND ON THE SEXUAL EXPLOITATION OF A
10 MINOR, YOU COULD GET UP TO 15 YEARS, MINIMUM OF THREE
11 YEARS. THAT HAS TO BE RUN CONSECUTIVE WITH THE OTHER
12 SENTENCE. DO YOU UNDERSTAND THAT?

13 JACKIE BROWN: YES, SIR.

14 THE COURT: AND ON THE SEXUAL EXPLOITATION OF A
15 MINOR, SECOND DEGREE, YOU COULD GET UP TO TEN YEARS. IT
16 COULD BE A MINIMUM OF THREE YEARS. DO YOU UNDERSTAND
17 THAT?

18 JACKIE BROWN: YES, SIR.

19 THE COURT: ALL RIGHT. NOW, MR. BROWN.

20 MARK BROWN: YES, SIR.

21 THE COURT: YOU HAVE HAD AN OPPORTUNITY TO TALK TO
22 YOUR LAWYER ABOUT THESE MATTERS?

23 MARK BROWN: YES.

24 THE COURT: YOUR LAWYERS. HAVE YOU TOLD THEM
25 EVERYTHING YOU KNOW?

1 MARK BROWN: YES, SIR.

2 THE COURT: HAS HE ANSWERED ALL YOUR QUESTIONS?

3 MARK BROWN: YES, SIR, HE HAS.

4 THE COURT: HAVE THEY DONE EVERYTHING YOU ASKED THEM
5 TO DO --

6 MARK BROWN: EVERYTHING I WANTED.

7 THE COURT: -- CONDUCT AN INVESTIGATION, MAKE ANY
8 INQUIRIES YOU WANTED THEM TO DO?

9 MARK BROWN: EVERYTHING AND MORE.

10 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF
11 YOUR ATTORNEYS?

12 MARK BROWN: COMPLETELY.

13 THE COURT: AND YOU WANT TO ENTER A GUILTY PLEA ON
14 ALL OF THESE CHARGES HERE TODAY; IS THAT CORRECT?

15 MARK BROWN: YES, SIR. I'M SORRY I HAVE TO, BUT YES.

16 THE COURT: ALL RIGHT. NOW, MR. MOORE, YOU HAVE HAD
17 AN OPPORTUNITY TO DISCUSS THESE MATTERS WITH YOUR CLIENT?

18 MR. MOORE: I HAVE, YOUR HONOR.

19 THE COURT: AND YOU HAVE REVIEWED HIS RIGHTS WITH
20 HIM, GONE OVER EVERYTHING THAT YOU THINK IS NECESSARY FOR
21 HIM TO GO FORWARD WITH THIS PLEA HERE TODAY?

22 MR. MOORE: WE HAVE GONE THROUGH THEM TODAY.

23 THE COURT: DO YOU THINK IT'S IN HIS BEST INTEREST TO
24 GO FORWARD WITH THE GUILTY PLEAS?

25 MR. MOORE: YES, SIR.

1 THE COURT: DO YOU CONCUR WITH HIS DOING SO?

2 MR. MOORE: I DO, YOUR HONOR.

3 THE COURT: DO YOU THINK THE STATE PROBABLY WOULD
4 PREVAIL IF IT WENT FORWARD WITH THE TRIAL ON THESE
5 CHARGES?

6 MR. MOORE: YES, SIR.

7 THE COURT: ALL RIGHT. NOW, MR. BROWN, YOU
8 UNDERSTAND YOU DON'T HAVE TO PLEAD GUILTY?

9 MARK BROWN: YES, SIR.

10 THE COURT: YOU'RE PRESUMED TO BE INNOCENT. THE
11 STATE WOULD HAVE TO PROVE YOU GUILTY OF EACH AND EVERY ONE
12 OF THESE CHARGES AND PROVE YOU GUILTY BEYOND A REASONABLE
13 DOUBT. DO YOU UNDERSTAND THAT?

14 MARK BROWN: YES, SIR, I DO.

15 THE COURT: HOWEVER, BY ENTERING THIS PLEA HERE
16 TODAY, YOU'RE REMOVING THAT BURDEN FROM THE STATE.
17 THEY'RE NOT GOING TO HAVE TO PROVE YOU GUILTY AS TO ALL OF
18 THESE CHARGES. DO YOU UNDERSTAND THAT?

19 MARK BROWN: YES, SIR, I DO.

20 THE COURT: DO YOU UNDERSTAND THAT BY PLEADING
21 GUILTY, YOU'RE WAIVING SOME OF YOUR CONSTITUTIONAL RIGHTS
22 THAT YOU HAVE?

23 MARK BROWN: YES, SIR.

24 THE COURT: YOU HAVE A CONSTITUTIONAL RIGHT TO A JURY
25 TRIAL ON EACH AND EVERY ONE OF THESE CHARGES. DO YOU

1 UNDERSTAND THAT?

2 MARK BROWN: YES, SIR.

3 THE COURT: AND AT THAT JURY TRIAL, YOU COULD PUT UP
4 ANY DEFENSES THAT YOU WISH TO OFFER. YOUR LAWYER COULD
5 CONDUCT THIS TRIAL IN A MANNER THAT HE THINKS WOULD BE IN
6 YOUR BEST INTEREST, ALONG WITH YOUR INPUT. BY GOING
7 FORWARD WITH THESE GUILTY PLEAS, THOUGH, YOU'RE GOING TO
8 WAIVE YOUR RIGHT TO A JURY TRIAL. DO YOU UNDERSTAND THAT?

9 MARK BROWN: YES, SIR.

10 THE COURT: DO YOU UNDERSTAND THAT BY GIVING UP -- BY
11 GOING FORWARD WITH THESE PLEAS HERE TODAY, YOU'RE GOING TO
12 GIVE UP YOUR RIGHT TO SUPPRESS ANY EVIDENCE THAT YOU MIGHT
13 THINK MIGHT BE SUPPRESSED IN THIS MATTER OR ATTACK THE
14 STATE'S CASE IN ANY WAY?

15 MARK BROWN: YES, SIR.

16 THE COURT: DO YOU UNDERSTAND THAT?

17 MARK BROWN: YES, SIR.

18 THE COURT: AND DO YOU UNDERSTAND THAT BY PLEADING
19 GUILTY, YOU'RE GIVING UP YOUR CONSTITUTIONAL RIGHT TO
20 CONFRONT ANY WITNESSES THE STATE WOULD HAVE?

21 MARK BROWN: YES, SIR.

22 THE COURT: YOUR LAWYER WOULD HAVE A RIGHT TO
23 QUESTION THOSE WITNESSES, ATTEMPT TO IMPEACH THEM, IF YOU
24 WANT TO, DO WHAT YOU THINK IS IN YOUR BEST INTEREST IN THE
25 EXAMINATION OF THOSE WITNESSES. DO YOU UNDERSTAND?

1 MARK BROWN: YES, SIR.

2 THE COURT: AND DO YOU UNDERSTAND THAT BY PLEADING
3 GUILTY, YOU'RE WAIVING YOUR CONSTITUTIONAL RIGHT TO REMAIN
4 SILENT. YOU HAVE A RIGHT TO TESTIFY OR NOT TESTIFY.

5 IF YOU ELECTED NOT TO TESTIFY, I WOULD, IN FACT,
6 INFORM THE JURY THEY COULDN'T EVEN CONSIDER THAT IN THE
7 COURSE OF THEIR DELIBERATIONS. YOU DON'T HAVE TO HELP THE
8 STATE IN ANY WAY. YOU DON'T HAVE TO PARTICIPATE IN ANY
9 WAY, BUT BY PLEADING GUILTY, YOU'RE GIVING UP YOUR RIGHT
10 TO REMAIN SILENT. DO YOU UNDERSTAND THAT?

11 MARK BROWN: YES, SIR, YOUR HONOR.

12 THE COURT: ALL RIGHT. NOW, HAS THE STATE OR ANYONE
13 ELSE OFFERED OR PROMISED YOU ANYTHING TO GET YOU TO PLEAD
14 GUILTY HERE TODAY?

15 MARK BROWN: NO, SIR.

16 THE COURT: HAS ANYBODY THREATENED YOU, COERCED YOU,
17 OR PRESSURED YOU INTO PLEADING GUILTY?

18 MARK BROWN: NO, YOUR HONOR.

19 THE COURT: YOU'RE PLEADING GUILTY FREELY AND
20 VOLUNTARILY?

21 MARK BROWN: YES, SIR.

22 THE COURT: AND YOU'RE PLEADING GUILTY TO EACH OF THE
23 CHARGES BECAUSE YOU ARE GUILTY?

24 MARK BROWN: YES, SIR.

25 THE COURT: YOU'RE ADMITTING AS TRUE THE ALLEGATIONS

1 IN THE INDICTMENTS?

2 MARK BROWN: YES, SIR.

3 THE COURT: YOU HAVE REVIEWED THOSE INDICTMENTS WITH
4 YOUR ATTORNEYS?

5 MARK BROWN: YES, SIR.

6 THE COURT: ALL RIGHT. HAVE YOU HAD ANY ALCOHOLIC
7 BEVERAGES IN THE LAST 24 HOURS?

8 MARK BROWN: NO, SIR.

9 THE COURT: HAVE YOU TAKEN ANY DRUGS OR HAD ANY
10 MEDICATION IN THE LAST 24 HOURS?

11 MARK BROWN: JUST MEDICATION THAT I GET PRESCRIBED BY
12 THE LEXINGTON COUNTY DETENTION CENTER.

13 THE COURT: ALL RIGHT. WHAT IS THAT FOR?

14 MARK BROWN: SOMETHING FOR HIGH BLOOD PRESSURE AND
15 SOME PROZAC.

16 THE COURT: ALL RIGHT. WHEN DID YOU TAKE MEDICATION
17 LAST?

18 MARK BROWN: THIS MORNING.

19 THE COURT: ALL RIGHT. THE FACT THAT YOU HAVE TAKEN
20 THAT MEDICATION TODAY, DOES THAT AFFECT YOUR ABILITY TO
21 UNDERSTAND THE CHARGES AND THE PENALTIES TO THOSE CHARGES?

22 MARK BROWN: NO, SIR.

23 THE COURT: DOES IT AFFECT YOUR ABILITY TO
24 COMMUNICATE WITH YOUR ATTORNEYS IN ANY WAY?

25 MARK BROWN: NO, YOUR HONOR.

1 THE COURT: YOU'RE ABLE TO ASSIST THEM IN ANY MANNER
2 THAT THEY MAY REQUEST IN YOUR DEFENSE IN THIS MATTER?

3 MARK BROWN: YES, SIR.

4 THE COURT: DOES IT AFFECT YOUR ABILITY TO UNDERSTAND
5 THE PROCEEDINGS THAT YOU'RE INVOLVED IN HERE TODAY?

6 MARK BROWN: NO, YOUR HONOR.

7 THE COURT: DO YOU THINK YOU'RE COMPETENT TO GO
8 FORWARD WITH THIS PLEA?

9 MARK BROWN: YES, YOUR HONOR.

10 THE COURT: YOU'RE NOT ADVERSELY IMPACTED IN ANY WAY
11 BY VIRTUE OF THE MEDICATIONS YOU HAVE TAKEN?

12 MARK BROWN: YES, SIR.

13 THE COURT: ALL RIGHT. MR. MOORE, HAVE YOU SEEN ANY
14 INDICATION FROM YOUR CLIENT THAT HE IS IN SUCH A STATE BY
15 VIRTUE OF HIS MEDICATION THAT HE IS NOT COMPETENT TO GO
16 FORWARD WITH THIS PLEA?

17 MR. MOORE: NO, SIR.

18 THE COURT: ALL RIGHT. NOW, ARE YOU BEING TREATED BY
19 A PSYCHIATRIST FOR ANY MENTAL ILLNESS?

20 MARK BROWN: LEXINGTON COUNTY.

21 THE COURT: ALL RIGHT. YOU ARE SEEING A PHYSICIAN IN
22 LEXINGTON COUNTY? IS THIS A PSYCHIATRIST?

23 MARK BROWN: YES, SIR.

24 THE COURT: ALL RIGHT. THE FACT THAT YOU ARE HAVING
25 THIS TREATMENT OR THIS CARE, THIS COUNSELLING, DOES THAT

1 ADVERSELY IMPACT YOU IN ANY WAY HERE TODAY TO GO FORWARD
2 WITH THIS PLEA?

3 MARK BROWN: NO, SIR.

4 THE COURT: YOU THINK YOU'RE FULLY COMPETENT TO ENTER
5 THIS GUILTY PLEA?

6 MARK BROWN: YES, YOUR HONOR.

7 THE COURT: ALL RIGHT. NOW, DO YOU HAVE ANY
8 COMPLAINTS WITH THE SOLICITOR'S OFFICE EITHER HERE OR IN
9 LEXINGTON COUNTY?

10 MARK BROWN: NO, SIR.

11 THE COURT: DO YOU HAVE ANY COMPLAINTS WITH THE JAIL
12 IN LEXINGTON COUNTY OR IN RICHLAND COUNTY?

13 MARK BROWN: NO, SIR. I'VE BEEN TREATED VERY FAIRLY.

14 THE COURT: ALL RIGHT. ANY COMPLAINTS WITH ANY LAW
15 ENFORCEMENT OFFICIALS EITHER IN LEXINGTON OR RICHLAND
16 COUNTY?

17 MARK BROWN: NO, YOUR HONOR.

18 THE COURT: DO YOU UNDERSTAND THAT ONE OF THE CHARGES
19 TO WHICH YOU ARE PLEADING HERE TODAY IS A CHARGE THAT
20 ARISES OUT OF LEXINGTON COUNTY?

21 MARK BROWN: YES, SIR.

22 THE COURT: YOU HAVE A RIGHT TO HAVE THAT MATTER
23 HEARD IN LEXINGTON COUNTY BY A TRIAL OR TO ENTER A PLEA
24 OVER THERE IF THAT'S WHAT YOU WOULD LIKE. DO YOU
25 UNDERSTAND THAT?

1 MARK BROWN: YES, SIR.

2 THE COURT: YOU HAVE CONSENTED TO HAVE THIS LEXINGTON
3 COUNTY CHARGE HEARD HERE IN RICHLAND COUNTY AND THE PLEA
4 ENTERED, ALONG WITH ANY OTHER CHARGES THAT ARE PENDING
5 HERE IN RICHLAND COUNTY; IS THAT CORRECT?

6 MARK BROWN: YES, SIR.

7 THE COURT: ALL RIGHT. MR. MOORE, YOU CONSENT TO HIS
8 HAVING THAT LEXINGTON COUNTY CHARGE PLEA DONE HERE, AS
9 WELL?

10 MR. MOORE: YES, YOUR HONOR.

11 THE COURT: HAVE YOU EXPLAINED TO YOUR CLIENT HE HAS
12 THE RIGHT TO REQUIRE THE STATE TO HANDLE THAT MATTER IN
13 LEXINGTON COUNTY?

14 MR. MOORE: YES, SIR.

15 THE COURT: ALL RIGHT. NOW, DO YOU UNDERSTAND WHEN I
16 SENTENCE YOU HERE TODAY, YOU WILL HAVE TEN DAYS TO APPEAL
17 THESE SENTENCES?

18 MARK BROWN: YES, SIR.

19 THE COURT: ALL RIGHT.

20 ALL RIGHT. MR. BROWN, AS TO RICHLAND COUNTY
21 04-GS-40-102364, CRIMINAL SEXUAL CONDUCT WITH A MINOR
22 FIRST DEGREE, WHEREIN THE STATE ALLEGES THAT YOU DID IN
23 RICHLAND COUNTY BETWEEN MARCH 2000 AND JULY 26TH, 2001
24 WILLFULLY, UNLAWFULLY, FELONIOUSLY COMMIT A SEXUAL
25 BATTERY, TO WHIT SEXUAL INTERCOURSE AND/OR ANY INTRUSION,

1 HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY
2 OBJECT IN THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S
3 BODY ON THE VICTIM, Minor , WHO AT THE TIME WAS LESS
4 THAN 11 YEARS OF AGE, ALL IN VIOLATIONS OF THE STATUTES OF
5 THIS STATE. HOW DO YOU PLEAD?

6 MARK BROWN: GUILTY.

7 THE COURT: AS TO INDICTMENT 04-GS-40-10265 WHICH
8 SAYS YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000 AND
9 JULY 26TH, 2001 WILLFULLY, UNLAWFULLY, AND FELONIOUSLY
10 COMMIT A SEXUAL BATTERY, TO WHIT ANY INTRUSION, HOWEVER
11 SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY OBJECT IN
12 THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY OF
13 THE VICTIM, Minor WHO AT THE TIME WAS LESS THAN 11
14 YEARS OF AGE. HOW DO YOU PLEAD?

15 MARK BROWN: GUILTY, YOUR HONOR.

16 THE COURT: AS TO INDICTMENT 2004-GS-40-10267 WHICH
17 SAYS YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000 AND
18 JULY 26TH, 2001 WILLFULLY, UNLAWFULLY, AND FELONIOUSLY
19 COMMIT A SEXUAL BATTERY, TO WHICH CUNNILINGUS ON THE
20 VICTIM, Minor , WHO AT THE TIME WAS LESS THAN 11
21 YEARS OF AGE, ALL IN VIOLATIONS OF STATUTES OF THIS STATE.
22 HOW DO YOU PLEAD?

23 MARK BROWN: GUILTY, YOUR HONOR.

24 THE COURT: AS TO INDICTMENT 04-GS-40-10268, CRIMINAL
25 SEXUAL CONDUCT WITH A MINOR FIRST DEGREE, THE INDICTMENT

1 ALLEGES THAT YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000
2 AND NOVEMBER 10, 2000 WILLFULLY, UNLAWFULLY, AND
3 FELONIOUSLY COMMIT A SEXUAL BATTERY, TO WHIT SEXUAL
4 INTERCOURSE AND/OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY
5 PART OF A PERSON'S BODY OR ANY OBJECT INTO THE GENITAL OR
6 ANAL OPENING'S OF ANOTHER PERSON'S BODY UPON THE VICTIM,
7 Minor , WHO AT THE TIME WAS LESS THAN 11 YEARS OF
8 AGE. HOW DO YOU PLEAD?

9 MARK BROWN: GUILTY, YOUR HONOR.

10 THE COURT: AS TO INDICTMENT 04-GS-40-10261 WHICH
11 SAYS YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000 AND
12 NOVEMBER 10, 2000, WILLFULLY, UNLAWFULLY AND FELONIOUSLY
13 COMMIT A SEXUAL BATTERY, TO WHIT CUNNILINGUS ON THE
14 VICTIM, Minor , WHO AT THE TIME WAS LESS THAN 11
15 YEARS OF AGE, ALL IN VIOLATION OF STATUTE OF THIS STATE.
16 HOW DO YOU PLEAD?

17 MARK BROWN: GUILTY, YOUR HONOR.

18 THE COURT: AS TO INDICTMENT 04-GS-40-10266 WHICH
19 SAYS -- CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST
20 DEGREE. IT ALLEGES THAT YOU DID IN RICHLAND COUNTY
21 BETWEEN MARCH 2000 AND JULY 26TH, 2001 WILLFULLY,
22 UNLAWFULLY, AND FELONIOUSLY COMMIT A SEXUAL BATTERY, TO
23 WHIT SEXUAL INTERCOURSE AND/OR ANAL INTERCOURSE AND/OR ANY
24 INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY
25 OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF

1 ANOTHER PERSON'S BODY ON THE VICTIM, Minor , WHO AT
2 THE TIME WAS LESS THAN 11 YEARS OF AGE. HOW DO YOU PLEAD?

3 MARK BROWN: GUILTY, YOUR HONOR.

4 THE COURT: AS TO INDICTMENT 04-GS-40-5692, C.S.C.
5 WITH A MINOR FIRST DEGREE, THE INDICTMENT ALLEGES YOU DID
6 IN RICHLAND COUNTY IN THE YEAR 2001 WILLFULLY, UNLAWFULLY,
7 AND FELONIOUSLY COMMIT A SEXUAL BATTERY, TO WHIT, DIGITAL
8 PENETRATION AND/OR ORAL SEX, CUNNILINGUS, TO A PERSON WHO
9 WAS AT LEAST 11 YEARS OF AGE, ALL IN VIOLATIONS OF THE
10 STATUTES OF THIS STATE. HOW DO YOU PLEAD?

11 MARK BROWN: GUILTY, YOUR HONOR.

12 THE COURT: AS TO INDICTMENT 04-GS-40-10262 WHICH
13 ALLEGES THAT YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000
14 AND NOVEMBER 10, 2000 WILLFULLY, UNLAWFULLY, AND
15 FELONIOUSLY COMMIT A SEXUAL BATTERY, TO WHIT, INTO
16 INTRUSION, HOWEVER SLIGHT, OF ANY PERSON'S BODY OR OF ANY
17 OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER
18 PERSON'S BODY ON THE VICTIM, Minor , WHO AT THE TIME
19 WAS LESS THAN 11 YEARS OF AGE, ALL IN VIOLATIONS OF THE
20 STATUTES OF THIS STATE, HOW DO YOU PLEAD?

21 MARK BROWN: GUILTY, YOUR HONOR.

22 THE COURT: AS TO INDICTMENT 04-GS-40-5726 WHICH SAYS
23 YOU DID IN RICHLAND COUNTY, C.S.C. WITH A MINOR SECOND
24 DEGREE, YOU DID IN RICHLAND COUNTY BETWEEN FEBRUARY 17,
25 1996 AND THROUGH SEPTEMBER 30, 1999 WILLFULLY, UNLAWFULLY,

1 AND FELONIOUSLY COMMIT A SEXUAL BATTERY, TO WHIT, DIGITAL
2 PENETRATION AND/OR ORAL SEX, CUNNILINGUS, ON A PERSON WHO
3 WAS AT LEAST 11 YEARS OF AGE BUT LESS THAN 14 YEARS OF
4 AGE, OR THE VICTIM WAS AT LEAST 14 YEARS OF AGE BUT LESS
5 THAN 16 YEARS OF AGE AND THE DEFENDANT WAS OLDER THAN THE
6 SAID MINOR, ALL IN VIOLATION OF THIS STATE. HOW DO YOU
7 PLEAD?

8 MARK BROWN: GUILTY, YOUR HONOR.

9 THE COURT: AS TO INDICTMENT 04-GS-40-5725, SEXUAL
10 EXPLOITATION OF A MINOR, FIRST DEGREE, THE INDICTMENT
11 ALLEGES THAT YOU DID IN RICHLAND COUNTY BETWEEN
12 FEBRUARY 17, 1996 AND SEPTEMBER 30, 1999 KNOWING THE
13 CHARACTER OR CONTENT OF THE MATERIAL OR PERFORMANCE USE,
14 EMPLOY, COERCE, ENCOURAGE, OR FACILITATE A MINOR TO ENGAGE
15 OR ASSIST OTHERS TO ENGAGE IN A SEXUAL ACTIVITY FOR A LIVE
16 PERFORMANCE OR FOR THE PURPOSE OF PRODUCING MATERIAL THAT
17 CONTAINS A VISUAL REPRESENTATION DEPICTING THIS ACTIVITY,
18 ALL IN VIOLATIONS OF THE STATUTES OF THIS STATE, HOW DO
19 YOU PLEAD?

20 MARK BROWN: GUILTY, YOUR HONOR.

21 THE COURT: AS TO INDICTMENT 2004-GS-40-5693, SEXUAL
22 EXPLOITATION OF A MINOR, THE INDICTMENT STATES THAT YOU
23 DID IN RICHLAND COUNTY IN THE YEAR 2001, KNOWING THE
24 CHARACTER OR CONTENT OF THE MATERIAL OR PERFORMANCE USE,
25 EMPLOY, COERCE, ENCOURAGE, OR FACILITATE A MINOR TO ENGAGE

1 IN OR ASSIST OTHERS TO ENGAGE IN A SEXUAL ACTIVITY FOR A
2 LIVE PERFORMANCE OR FOR THE PURPOSE OF PRODUCING MATERIAL
3 THAT CONTAINS A VISUAL REPRESENTATION DEPICTING THIS
4 ACTIVITY ALL IN VIOLATION OF THIS STATE. HOW DO YOU
5 PLEAD?

6 MARK BROWN: GUILTY, YOUR HONOR.

7 THE COURT: AS TO INDICTMENT 04-GS-40-10270, SEXUAL
8 EXPLOITATION OF A MINOR, THE INDICTMENT STATES THAT YOU
9 DID IN RICHLAND COUNTY BETWEEN MARCH 2000 AND JULY 26TH,
10 2001 USE, EMPLOY, INDUCE, COERCE, ENCOURAGE, OR FACILITATE
11 A MINOR TO ENGAGE OR ASSIST OTHERS TO ENGAGE IN SEXUAL
12 ACTIVITY FOR A LIVE PERFORMANCE OR FOR THE PURPOSE OF
13 PRODUCING MATERIAL THAT CONTAINS A VISUAL REPRESENTATION
14 DEPICTING THIS ACTIVITY, ALL IN VIOLATIONS OF THE STATUTES
15 OF THIS STATE, HOW DO YOU PLEAD?

16 THE DEFENDANT: GUILTY, YOUR HONOR.

17 THE COURT: AS TO INDICTMENT 2004-GS-40-10269 WHICH
18 STATES THAT YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000
19 AND JULY 26TH, 2001 USE, EMPLOY, INDUCE, COERCE,
20 ENCOURAGE, OR FACILITATE A MINOR TO ENGAGE IN OR ASSIST
21 OTHERS TO ENGAGE IN SEXUAL ACTIVITY FOR A LIVE PERFORMANCE
22 OR FOR THE PURPOSE OF PRODUCING MATERIAL THAT CONTAINS A
23 VISUAL REPRESENTATION DEPICTING THIS ACTIVITY, ALL IN
24 VIOLATION OF THE STATUTES OF THIS STATE. HOW DO YOU
25 PLEAD?

1 MARK BROWN: GUILTY, YOUR HONOR.

2 THE COURT: AS TO INDICTMENT 2004-GS-40-10271, SEXUAL
3 EXPLOITATION OF A MINOR, FIRST DEGREE, THE INDICTMENT
4 STATES THAT YOU DID IN RICHLAND COUNTY BETWEEN MARCH 2000
5 AND NOVEMBER 10, 2000 USE, EMPLOY, INDUCE, ENCOURAGE OR
6 FACILITATE A MINOR TO ENGAGE IN OR ASSIST OTHERS TO ENGAGE
7 IN SEXUAL ACTIVITY FOR A LIVE PERFORMANCE OR FOR THE
8 PURPOSE OF PRODUCING MATERIAL THAT CONTAINS A VISUAL
9 REPRESENTATION, ALL IN VIOLATION OF THE STATUTES OF THIS
10 STATE, HOW DO YOU PLEAD?

11 MARK BROWN: GUILTY, YOUR HONOR.

12 THE COURT: AS TO THE LEXINGTON COUNTY CHARGE
13 INDICTMENT 2005-GS-32-4165, SEXUAL EXPLOITATION OF A MINOR
14 SECOND DEGREE, THE INDICTMENT STATES THAT YOU, ALONG WITH
15 JACKIE BURCH BROWN DID IN LEXINGTON COUNTY ON OR ABOUT
16 JULY 21, 2004 AND/OR DATES PRIOR THERETO, KNOWING THE
17 CONTENT OF THE MATERIAL, DID RECORD, PHOTOGRAPH, FILM,
18 DEVELOP, DUPLICATE, PRODUCE OR RECREATE MATERIAL THAT
19 CONTAINS A VISUAL REPRESENTATION OF A MINOR ENGAGED IN
20 SEXUAL ACTIVITY, TO WHIT, THAT KNOWING THE CONTENT OF A
21 VIDEOTAPE BEARING IMAGES OF MARK ELLIS BROWN ENGAGED IN
22 SEXUAL ACTIVITIES WITH A MINOR, Minor , DID DUPLICATE
23 OR RECORD ADDITIONAL COPIES OF THE SAID VIDEO ALL IN
24 VIOLATIONS OF THIS STATE. HOW DO YOU PLEAD?

25 MARK BROWN: GUILTY, YOUR HONOR.

1 THE COURT: I FIND THIS DEFENDANT TO BE REPRESENTED
2 BY COMPETENT COUNSEL. HE IS SATISFIED WITH THE SERVICES
3 OF HIS ATTORNEY. I FURTHER FIND THE DEFENDANT IS ENTERING
4 GUILTY PLEAS ON ALL OF THESE CHARGES FREELY AND
5 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY, AND I WILL
6 ACCEPT HIS GUILTY PLEA ON ALL OF THESE CHARGES.

7 ALL RIGHT. MRS. BROWN.

8 JACKIE BROWN: YES, SIR.

9 THE COURT: YOU, TOO, HAVE HAD AN OPPORTUNITY TO
10 DISCUSS THESE CHARGES?

11 JACKIE BROWN: YES, SIR.

12 THE COURT: EVERYTHING ABOUT THESE CHARGES WITH YOUR
13 ATTORNEY; IS THAT CORRECT?

14 JACKIE BROWN: THAT'S CORRECT.

15 THE COURT: HAVE YOU TOLD HER EVERYTHING YOU KNOW
16 ABOUT THESE MATTERS?

17 JACKIE BROWN: YES, SIR.

18 THE COURT: HAS SHE ANSWERED ALL YOUR QUESTIONS?

19 JACKIE BROWN: YES, SIR.

20 THE COURT: HAS SHE DOING EVERYTHING YOU ASKED HER TO
21 DO?

22 JACKIE BROWN: YES, SIR.

23 THE COURT: ARE YOU SATISFIED WITH HER SERVICES?

24 JACKIE BROWN: YES, SIR.

25 THE COURT: YOU WANT TO GO FORWARD WITH A GUILTY PLEA

1 ON THESE FOUR CHARGES; IS THAT CORRECT?

2 JACKIE BROWN: THAT'S CORRECT.

3 THE COURT: MS. HERBERT, YOU HAVE HAD CHANCE TO TALK
4 TO YOUR CLIENT ABOUT THESE CHARGES?

5 JACKIE BROWN: YES, SIR I HAVE.

6 THE COURT: AND HAVE YOU ADVISED HER ON HER RIGHTS
7 AND DISCUSSED THE MATTER FULLY WITH HER?

8 MS. HERBERT: YES, SIR.

9 THE COURT: ALL RIGHT. NOW, DO YOU CONCUR WITH HER
10 ENTERING THESE GUILTY PLEAS?

11 MS. HERBERT: I DO.

12 THE COURT: DO YOU THINK IT'S IN HER BEST INTEREST TO
13 DO SO?

14 MS. HERBERT: I DO.

15 THE COURT: DO YOU THINK THE STATE MOST PROBABLY
16 WOULD PREVAIL IF IT WENT FORWARD WITH A TRIAL?

17 MS. HERBERT: YES, SIR, I DO.

18 THE COURT: ON EACH OF THE CHARGES?

19 MS. HERBERT: YES, SIR, I DO.

20 THE COURT: MRS. BROWN, YOU UNDERSTAND TWO OF THESE
21 CHARGES ARE CHARGES THAT ARISE OUT OF LEXINGTON COUNTY?
22 DO YOU UNDERSTAND THAT?

23 JACKIE BROWN: YES, SIR.

24 THE COURT: YOU HAVE A RIGHT TO REQUIRE THE STATE TO
25 GIVE YOU A TRIAL IN LEXINGTON COUNTY OR LET YOU PLEAD IN

1 LEXINGTON COUNTY. DO YOU UNDERSTAND THAT?

2 JACKIE BROWN: YES, SIR.

3 THE COURT: AND DO YOU WANT TO GO AHEAD AND WAIVE
4 YOUR RIGHT TO HAVE THOSE TWO CHARGES HEARD IN LEXINGTON
5 COUNTY AND HAVE ME HEAR THEM HERE TODAY?

6 JACKIE BROWN: YES, SIR.

7 THE COURT: AND LET YOU GO FORWARD WITH A PLEA ON
8 THESE TWO CHARGES; IS THAT CORRECT?

9 JACKIE BROWN: YES, SIR.

10 THE COURT: ALL RIGHT. DO YOU CONCUR WITH YOUR
11 CLIENT WAIVING HER RIGHT TO REQUIRE THOSE TWO MATTERS,
12 FILING A FALSE POLICE REPORT AND SEXUAL EXPLOITATION OF A
13 MINOR, SECOND DEGREE --

14 MS. HERBERT: YES, SIR.

15 THE COURT: -- HANDLED IN LEXINGTON COUNTY?

16 MS. HERBERT: YES, SIR.

17 THE COURT: ALL RIGHT. NOW, MRS. BROWN, YOU
18 UNDERSTAND THAT YOU DON'T HAVE TO PLEAD GUILTY?

19 JACKIE BROWN: YES, SIR.

20 THE COURT: DO YOU UNDERSTAND THAT YOU'RE ENTITLED TO
21 REQUIRE THE STATE TO PUT YOU -- TO GIVE YOU A TRIAL AND
22 PROVE YOU GUILTY AND PROVE YOU GUILTY BEYOND A REASONABLE
23 DOUBT OF EACH OF THESE CHARGES. DO YOU UNDERSTAND THAT?

24 JACKIE BROWN: YES, SIR.

25 THE COURT: BUT BY PLEADING GUILTY HERE TODAY, YOU'RE

1 REMOVING THAT BURDEN FROM THE STATE. THEY'RE NOT REQUIRED
2 TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT BECAUSE
3 YOU'RE ADMITTING YOUR GUILT AND GOING FORWARD WITH A
4 GUILTY PLEA. DO YOU UNDERSTAND THAT?

5 JACKIE BROWN: YES, SIR.

6 THE COURT: ALL RIGHT. NOW, DO YOU ALSO UNDERSTAND
7 THAT YOU'RE WAIVING SOME OF YOUR CONSTITUTIONAL RIGHTS BY
8 VIRTUE OF THESE PLEAS?

9 JACKIE BROWN: YES, SIR.

10 THE COURT: DO YOU UNDERSTAND?

11 JACKIE BROWN: YES, SIR.

12 THE COURT: FOR INSTANCE, YOU HAVE A CONSTITUTIONAL
13 RIGHT TO A JURY TRIAL ON EACH OF THE CHARGES, AND THE
14 STATE CAN ATTEMPT TO PROVE YOU GUILTY WITH ALL OF THOSE
15 JURORS. IT WOULD HAVE TO BE A UNANIMOUS VERDICT. DO YOU
16 UNDERSTAND THAT?

17 JACKIE BROWN: YES, SIR.

18 THE COURT: YOU COULD PUT FORTH ANY DEFENSES THAT YOU
19 MIGHT WANT TO PUT FORTH IN THOSE DEFENSES -- IN THAT
20 TRIAL. DO YOU UNDERSTAND THAT?

21 JACKIE BROWN: YES, SIR.

22 THE COURT: BUT BY GOING FORWARD WITH THESE PLEAS,
23 YOU'RE GIVING UP YOUR RIGHT TO A JURY TRIAL ON EACH OF
24 THESE CHARGES. DO YOU UNDERSTAND THAT?

25 JACKIE BROWN: YES, SIR.

1 THE COURT: DO YOU UNDERSTAND BY GOING FORWARD WITH A
2 PLEA HERE TODAY ON EACH OF THESE CHARGES, YOU'RE GIVING UP
3 YOUR RIGHT TO CONTEST ANY EVIDENCE THAT MAY BE IN THIS --
4 THE STATE MAY WANT TO INTRODUCE IN THIS TRIAL. DO YOU
5 UNDERSTAND THAT?

6 JACKIE BROWN: YES, SIR.

7 THE COURT: ALL RIGHT. AND DO YOU UNDERSTAND YOU'RE
8 GIVING UP YOUR CONSTITUTIONAL RIGHT TO CONFRONT ANY
9 WITNESSES THE STATE MAY HAVE IN THIS CASE?

10 YOUR LAWYER WOULD HAVE AN OPPORTUNITY, AND YOU WOULD
11 HAVE AN OPPORTUNITY TO SEE WHO THESE WITNESSES WERE. YOUR
12 LAWYER WOULD HAVE AN OPPORTUNITY TO QUESTION THOSE
13 WITNESSES IF THEY WERE ACTUALLY PUT ON THE STAND,
14 CROSS-EXAMINED, ATTEMPT TO IMPEACH THEM, DO WHAT SHE
15 THOUGHT WAS IN YOUR BEST INTEREST.

16 BY PLEADING GUILTY, YOU'RE GIVING UP YOUR RIGHT TO
17 CONFRONT THESE WITNESS. DO YOU UNDERSTAND THAT?

18 JACKIE BROWN: YES, SIR.

19 THE COURT: AND YOU HAVE A CONSTITUTIONAL RIGHT
20 GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES TO
21 REMAIN SILENT. YOU WOULDN'T HAVE TO TESTIFY AT TRIAL.

22 I WOULD, IN FACT, INFORM THE JURY THEY COULDN'T EVEN
23 CONSIDER THAT DURING THE COURSE OF THEIR DELIBERATIONS.
24 YOU WOULDN'T HAVE TO DO ANYTHING, SAY ANYTHING. YOU
25 WOULDN'T HAVE TO HELP THE STATE IN ANY WAY.

1 AGAIN, BY PLEADING GUILTY, YOU'RE GIVING UP YOUR
2 RIGHT TO REMAIN SILENT. DO YOU UNDERSTAND?

3 JACKIE BROWN: YES, SIR.

4 THE COURT: ALL RIGHT. NOW, HAS THE STATE OR ANYONE
5 ELSE OFFERED OR PROMISED YOU ANYTHING TO GET YOU TO PLEAD
6 GUILTY HERE TODAY?

7 JACKIE BROWN: NO, SIR.

8 THE COURT: HAS ANYONE THREATENED YOU OR PRESSURED
9 YOU INTO PLEADING GUILTY?

10 JACKIE BROWN: NO, SIR.

11 THE COURT: AND YOU'RE PLEADING GUILTY FREELY AND
12 VOLUNTARILY?

13 JACKIE BROWN: YES, SIR.

14 THE COURT: AND YOU'RE PLEADING GUILTY TO EACH OF THE
15 CHARGES BECAUSE YOU ARE GUILTY; IS THAT CORRECT?

16 JACKIE BROWN: YES, SIR.

17 THE COURT: YOU HAVE REVIEWED THE INDICTMENTS, SEEN
18 THE ALLEGATIONS OF THE STATE IN THE INDICTMENTS?

19 JACKIE BROWN: YES, SIR.

20 THE COURT: BEEN OVER THEM WITH YOUR ATTORNEY?

21 JACKIE BROWN: YES, SIR.

22 THE COURT: AND ALL THE FACTS AS THEY ALLEGE IN THESE
23 INDICTMENTS YOU'RE ADMITTING AS TRUE; IS THAT CORRECT?

24 JACKIE BROWN: YES, SIR.

25 THE COURT: HAVE YOU HAD ANY ALCOHOLIC BEVERAGES IN

1 THE LAST 24 HOURS?

2 JACKIE BROWN: NO, SIR.

3 THE COURT: HAVE YOU TAKEN ANY DRUGS OR HAD ANY
4 MEDICATION IN THE LAST 24 HOURS?

5 JACKIE BROWN: YES, SIR.

6 THE COURT: NOW, TELL ME WHAT THAT IS, PLEASE.

7 JACKIE BROWN: PROZAC, AND SERAQUIL.

8 THE COURT: WHEN DID YOU TAKE THESE MEDICATIONS?

9 JACKIE BROWN: LAST NIGHT.

10 THE COURT: WHY ARE YOU TAKING THESE MEDICATIONS?

11 JACKIE BROWN: BECAUSE I HAVE BIPOLAR DISORDER.

12 THE COURT: ALL RIGHT. THE FACT THAT YOU TOOK THESE
13 MEDICATIONS LAST NIGHT, DOES THAT AFFECT YOUR ABILITY TO
14 UNDERSTAND WHY YOU'RE HERE TODAY?

15 JACKIE BROWN: NO, SIR.

16 THE COURT: DOES IT AFFECT YOUR ABILITY TO UNDERSTAND
17 THE CHARGES OR THE PENALTIES?

18 JACKIE BROWN: NO, SIR.

19 THE COURT: DOES IT AFFECT YOUR ABILITY TO
20 COMMUNICATE WITH YOUR LAWYER IN ANY WAY?

21 JACKIE BROWN: NO, SIR.

22 THE COURT: DO YOU UNDERSTAND THE PROCEEDINGS WE'RE
23 INVOLVED IN HERE?

24 JACKIE BROWN: YES, SIR.

25 THE COURT: DO YOU THINK YOU'RE COMPETENT TO GO

1 FORWARD WITH THE PLEA; IS THAT CORRECT?

2 JACKIE BROWN: YES, SIR.

3 THE COURT: HAVE YOU SEEN ANY INDICATION TODAY THAT
4 YOUR CLIENT IS ADVERSELY IMPACTED IN ANY WAY BY VIRTUE OF
5 HER HAVING TAKEN MEDICATION LAST NIGHT?

6 MS. HERBERT: NO, SIR. IN FACT, WE DID HAVE A
7 COMPETENCY EVALUATION.

8 MS. CAMPBELL: I'LL HAND THAT UP.

9 MS. HERBERT: THE SOLICITOR HAS, AND SO WE ARE
10 COMFORTABLE WITH HER COMPETENCY TODAY.

11 THE COURT: ALL RIGHT. BUT THE MEDICATION, HAS THAT
12 ADVERSELY IMPACTED IT?

13 MS. HERBERT: NO, SIR.

14 THE COURT: SHE'S ABLE TO COMMUNICATE WITH HER, AND
15 YOU'RE ABLE TO DISCUSS EVERYTHING WITH HER TODAY?

16 MS. HERBERT: YES, SIR.

17 THE COURT: SHE FULLY UNDERSTANDS WHAT IS INVOLVED
18 HERE?

19 MS. HERBERT: YES, SIR.

20 THE COURT: AND SHE UNDERSTANDS THE CHARGES AND THE
21 PENALTIES; IS THAT CORRECT?

22 MS. HERBERT: YES, SIR.

23 THE COURT: ALL RIGHT. I'VE BEEN HANDED A COPY OF
24 THE REPORT PROVIDED BY DR. JEFFERY MCKEE IS WHO APPARENTLY
25 IS A PSYCHOLOGIST.

1 HE'S A CLINICAL PROFESSOR AT THE DEPARTMENT OF
2 NEUROPSYCHIATRIC AT THE U.S.C. SCHOOL OF MEDICINE WHICH
3 INDICATES THAT MRS. BROWN IS COMPETENT, AND I WILL MAKE
4 THIS A PART OF THE RECORD.

5 HAVE YOU SEEN THE REPORT, MRS. BROWN?

6 JACKIE BROWN: YES, SIR.

7 THE COURT: YOU'RE NOT CONTESTING THAT IN ANY WAY,
8 ARE YOU?

9 JACKIE BROWN: NO, SIR.

10 THE COURT: MS. HERBERT, YOU'RE NOT CONTESTING IT IN
11 ANY WAY, ARE YOU?

12 MS. HERBERT: NO, SIR, WE'RE NOT.

13 THE COURT: ALL RIGHT. SO YOU HAVE BEEN SEEN BY A
14 PSYCHIATRIST?

15 JACKIE BROWN: YES, SIR.

16 THE COURT: ALL RIGHT. ARE YOU STILL BEING SEEN BY A
17 DOCTOR FOR SOME MENTAL OR EMOTIONAL CONDITION?

18 JACKIE BROWN: JUST TO --

19 THE COURT: PARDON ME?

20 JACKIE BROWN: I TAKE MEDICINE ON THE OUTSIDE.

21 THE COURT: ALL RIGHT. SO -- AND YOU'RE STILL TAKING
22 SOME WHILE YOU'RE IN THE LEXINGTON COUNTY DETENTION
23 CENTER?

24 JACKIE BROWN: YES, UH-HUH.

25 THE COURT: ALL RIGHT. NOW, THE FACT THAT YOU ARE

1 UNDER THE CARE OF A DOCTOR BECAUSE OF A MENTAL OR
2 EMOTIONAL CONDITION, DOES THAT AFFECT YOUR ABILITY TO GO
3 FORWARD WITH THIS PLEA?

4 JACKIE BROWN: NO, SIR.

5 THE COURT: YOU BELIEVE YOU'RE COMPETENT TO DO SO?

6 JACKIE BROWN: YES, SIR.

7 THE COURT: ALL RIGHT. I'M GOING TO FIND THAT
8 MRS. BROWN, SHE HAS TAKEN MEDICATION IN THE LAST 24 HOURS
9 FOR MENTAL HEALTH ISSUES AND ALSO IS UNDER THE CARE OF AT
10 LEAST THE DOCTOR AT THE LEXINGTON COUNTY DETENTION CENTER
11 AND WAS PRIOR TO HER BEING INCARCERATED, I GUESS, UNDER
12 THE CARE OF HER OWN PHYSICIAN.

13 SHE IS COMPETENT TO GO FORWARD. SHE UNDERSTANDS THE
14 CHARGES AND THE PENALTIES, AND SHE DOES NOT APPEAR TO ME
15 TO BE IMPACTED IN ANY WAY BY THE MEDICATION THAT SHE IS
16 TAKING. SHE'S RESPONSIVE TO THE QUESTIONS THAT I'VE ASKED
17 HER AND INDICATES THAT SHE IS FINE TO GO FORWARD WITH THIS
18 PLEA.

19 NOW, DO YOU HAVE ANY COMPLAINTS WITH THE SOLICITOR'S
20 OFFICE OF EITHER RICHLAND OR LEXINGTON COUNTY?

21 JACKIE BROWN: NO, SIR.

22 THE COURT: DO YOU HAVE ANY COMPLAINTS WITH LAW
23 ENFORCEMENT IN ANY OF THE COUNTIES?

24 JACKIE BROWN: NO, SIR.

25 THE COURT: ANY COMPLAINTS WITH LAW ENFORCEMENT OR

1 ANYBODY AT THE LEXINGTON OR RICHLAND COUNTY JAIL?

2 JACKIE BROWN: NO, SIR.

3 THE COURT: ALL RIGHT. DO YOU UNDERSTAND WHEN I
4 SENTENCE YOU HERE TODAY, YOU WILL HAVE TEN DAYS TO APPEAL
5 THESE SENTENCES?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: ALL RIGHT. MRS. BROWN, AS TO INDICTMENT
8 04-GS-40-5687, C.S.C. WITH A MINOR, WHEREIN THE STATE
9 STATES THAT YOU DID IN RICHLAND COUNTY IN THE YEAR 2000,
10 WILLFULLY, UNLAWFULLY, AND FELONIOUSLY COMMIT A SEXUAL
11 BATTERY, TO WHIT, DIGITAL PENETRATION OR ORAL SEX ON A
12 PERSON WHO IS AT LEAST 11 YEARS OF AGE, HOW IS IT YOU
13 PLEAD?

14 JACKIE BROWN: GUILTY.

15 THE COURT: AS TO 04-GS-40-5686, SEXUAL EXPLOITATION
16 OF A MINOR, WHEREIN THE STATE ALLEGES THAT YOU DID IN
17 RICHLAND COUNTY IN THE YEAR 2001 KNOWING THE CHARACTER OR
18 CONTENT OF THE MATERIAL OR PERFORMANCE USE, EMPLOY,
19 INDUCE, COERCE, ENCOURAGE, OR FACILITATE A MINOR TO ENGAGE
20 IN OR ASSIST OTHERS TO ENGAGE IN SEXUAL ACTIVITY FOR A
21 LIVE PERFORMANCE OR FOR THE PURPOSE OF PRODUCING MATERIAL
22 THAT CONTAINS A VISUAL REPRESENTATION DEPICTING THIS
23 ACTIVITY, ALL IN VIOLATION OF THE STATUTES OF THIS STATE,
24 HOW IS IT YOU PLEAD?

25 JACKIE BROWN: GUILTY.

1 THE COURT: AS TO INDICTMENT 2005-GS-32-4166, WHICH
2 ARE THE CHARGES OUT OF LEXINGTON COUNTY, SEXUAL
3 EXPLOITATION OF A MINOR, SECOND DEGREE. THE INDICTMENT
4 STATES THAT YOU DID, ALONG WITH MARK ELLIS BROWN, IN
5 LEXINGTON COUNTY ON OR ABOUT JULY 21, 2004 AND/OR OTHER
6 DATES PRIOR THERETO, KNOWING THE CONTENT OF THE MATERIAL
7 RECORD, PHOTOGRAPH, FILM, DEVELOP, DUPLICATE, PRODUCE, OR
8 CREATE MATERIAL THAT CONTAINS A VISUAL REPRESENTATION OF
9 THE MINOR ENGAGED IN SEXUAL ACTIVITY, TO WHIT, KNOWING THE
10 CONTENT OF THE VIDEOTAPE BEARING IMAGES OF MARK ELLIS
11 BROWN ENGAGED IN SEXUAL ACTIVITY WITH A MINOR, THE SAID
12 JACKIE BURKES BROWN, DID DUPLICATE OR RECORD ADDITIONAL
13 COPIES OF THE SAID VIDEOTAPE, ALL IN VIOLATIONS OF THE
14 STATUTES OF THIS STATE. HOW DO YOU PLEAD?

15 JACKIE BROWN: GUILTY.

16 THE COURT: AS TO INDICTMENT 2005-GS-32-4167, FILING
17 A FALSE POLICE REPORT, A FELONY, THE INDICTMENT STATES
18 THAT YOU DID IN LEXINGTON COUNTY ON OR ABOUT JULY 21, 2004
19 WILLFULLY AND KNOWINGLY FILE A FALSE POLICE REPORT OF A
20 FELONY, AND THAT THE SAID JACKIE BURKE BROWN DID FALSELY
21 REPORT THAT SHE WAS THE VICTIM OF AN ATTEMPTED KIDNAPPING
22 AND CAR JACKING, ALL IN VIOLATION OF THE STATUTES OF THIS
23 STATE. HOW DO YOU PLEAD?

24 JACKIE BROWN: GUILTY.

25 THE COURT: I FIND THIS DEFENDANT TO BE REPRESENTED

1 BY COMPETENT COUNSEL. SHE IS SATISFIED WITH THE SERVICES
2 OF HER ATTORNEY. I FURTHER FIND THE DEFENDANT IS PLEADING
3 GUILTY FREELY AND VOLUNTARILY TO EACH OF THE FOUR
4 CHARGES --

5 JACKIE BROWN: YES.

6 THE COURT: AND THAT HER PLEAS ARE ENTERED KNOWINGLY
7 AND INTELLIGENTLY TO EACH OF THE CHARGES, AND I WILL
8 ACCEPT HER GUILTY PLEA.

9 ALL RIGHT. MADAM SOLICITOR?

10 MS. CAMPBELL: MAY IT PLEASE THE COURT.

11 YOUR HONOR, THESE CHARGES ALL CAME TO LIGHT TO LAW
12 ENFORCEMENT ON THE AFTERNOON OF JULY 21ST, 2004. JACKIE
13 BROWN WAS IN HER AUTOMOBILE WHEN SHE ALLEGED, AND CALLED
14 911, ALLEGING THAT SHE HAD BEEN THE VICTIM OF AN ATTEMPTED
15 CAR JACKING AND/OR KIDNAPPING.

16 SHE STATED A BLACK MALE HAD APPROACHED HER CAR THAT
17 HAD A GUN. HE HAD ASSAULTED HER, ACTUALLY HITTING HER IN
18 THE FACE ONCE; THAT HE HAD DETAINED HER THERE AT THE SCENE
19 AND SHE WAS ABLE TO GET AWAY AND THEN GO CALL THE POLICE,
20 911.

21 SHE GAVE A DESCRIPTION OF THE DEFENDANT. AT THE
22 TIME, YOUR HONOR, THERE WAS A PERSON THAT WAS WANTED OUT
23 OF ORANGEBURG COUNTY FOR KILLING A POLICE OFFICER FROM
24 ORANGEBURG WHO HAD JUST THE DAY BEFORE DONE A CAR JACKING
25 HERE IN COLUMBIA.

1 THERE HAD BEEN A LOT OF MEDIA COVERAGE OF THIS. IT
2 HAD BEEN ON THE NEWS, AS WELL AS IN THE NEWSPAPER.
3 BASICALLY, THE DESCRIPTION SHE WAS GIVING OF THAT MAN THAT
4 HAD ASSAULTED HER AND TRIED TO CAR JACK HER WAS SIMILAR TO
5 THE DESCRIPTION THAT HAD BEEN GIVEN OUT OF THAT PERSON.

6 LAW ENFORCEMENT FROM RICHLAND COUNTY, FROM LEXINGTON
7 COUNTY, FROM S.L.E.D., ALL RESPONDED OUT TO THE SCENE ON
8 WESSINGER ROAD IN LEXINGTON COUNTY. SHE WAS ABLE TO GIVE
9 OFFICERS INFORMATION OUT THERE; BASICALLY WHAT I JUST TOLD
10 YOU.

11 SHE ALLEGED THAT SHE HAD BEEN STRUCK IN THE FACE AND
12 HAD A RED MARK ON HER FACE. SHE WAS GIVEN AN ICE PACK AND
13 SHE WAS TRANSPORTED BACK TO S.L.E.D. HEADQUARTERS TO BE
14 QUESTIONED FURTHER ABOUT THE ASSAULT.

15 WHEN OFFICERS RESPONDED OUT TO THE SCENE, THEY DID
16 FIND THE CAR IN THE MIDDLE OF THE ROAD. IT HAD BEEN
17 ABANDONED. IT WAS STILL RUNNING. THERE WAS NO EVIDENCE
18 OF ANY KIND OF STRUGGLE OR ANYTHING.

19 IT WAS READILY APPARENT TO THE OFFICERS, NOT THAT
20 THERE HAD TO BE. THERE WAS NO SIGN THAT ANYONE WAS IN THE
21 AREA. LAW ENFORCEMENT DID CANVAS THE WHOLE AREA.

22 ON THE WAY -- AGENT BARTON, AS WELL AS TRACY BARR
23 FROM THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT WERE
24 TRANSPORTING HER BACK TO S.L.E.D. HEADQUARTERS. THEY
25 NOTICED WHEN THEY LOOKED IN THE REAR-VIEW MIRROR, SHE

1 WOULD TAKE HER ICE PACK OFF AND START PINCHING HER CHEEK
2 IN A WAY THEY THOUGHT WOULD BE TRYING TO MAKE IT LOOK
3 REDDER.

4 AT THAT POINT, THEY TOOK HER BACK TO S.L.E.D. WHERE
5 SHE MET WITH AGENT CALDWELL AND DR. PAM CRAWFORD. THEY
6 WERE TRYING TO GET DETAILS OF THIS ASSAULT SINCE THIS
7 PERSON WAS WANTED FOR MURDER AT THE TIME.

8 DURING THE COURSE OF THE INVESTIGATION, SOME OF THE
9 THINGS SHE SAID DIDN'T REALLY MAKE SENSE. IT DIDN'T TRULY
10 APPEAR SHE HAD BEEN ASSAULTED. THEY BECAME SOMEWHAT
11 SUSPICIOUS THAT, IN FACT, IT MIGHT BE A FALSE REPORT.

12 BASED ON THAT INFORMATION, THEY CONSULTED AGENT
13 BARTON. THEY ALL DECIDED IT WOULD BE BEST IF THEY COULD
14 PERHAPS SEARCH HER RESIDENCE. THEY APPROACHED JACKIE AND
15 HER HUSBAND, WHO AT THIS POINT HAD COME TO HEADQUARTERS,
16 MARK BROWN.

17 THEY WERE PRESENT WHEN THEY ASKED IF THEY COULD
18 SEARCH THE HOUSE. THEY TOLD HER THEY WOULD BE SEARCHING
19 FOR NOT ONLY -- SHE WAS CONCERNED THE PERSON WHO ASSAULTED
20 HER MIGHT BE IN HER HOUSE.

21 THEY APPROACHED HER AND SAID THEY WOULD BE LOOKING
22 FOR THINGS THAT HAD TO DO WITH MEDIA SUCH AS VIDEO
23 REPORTS, NEWS CLIPPINGS, THINGS OF THAT NATURE. SHE
24 SEEMED TO UNDERSTAND WHAT THEY WERE SAYING.

25 IN FACT, MARK BROWN EVEN CAME UP TO THEM AND SAID

1 "WAIT A MINUTE, THERE MAY BE SOME MARIJUANA IN THE HOUSE.
2 YOU KNOW, IF YOU'RE GOING TO DO A SEARCH." THEY SAID
3 THAT'S NOT WHAT THEY WERE LOOKING FOR.

4 JACKIE BROWN AND MARK BROWN SPECIFICALLY ASKED THAT
5 THEY LOOK FOR THE PRESENCE OF THE INTRUDER WHO HAD DONE
6 THE ATTEMPTED CAR JACKING.

7 MARK BROWN GAVE THEM ADDITIONAL INFORMATION ABOUT AN
8 OUTHOUSE HE WANTED TO HAVE SEARCHED. BASED ON THE CONSENT
9 TO SEARCH, AGENTS FROM S.L.E.D. THEN WENT -- AND LEXINGTON
10 COUNTY WENT TO THE HOUSE, WHICH WAS IN LEXINGTON COUNTY,
11 YOUR HONOR.

12 ONCE INSIDE AGENT BARTON WALKED UP. THERE WAS A
13 V.C.R. SITTING ON TOP OF THE V.C.R. AREA. THERE WERE LIKE
14 C.D.'S AND DIFFERENT DISCS AND EVERYTHING ALL AROUND IT.
15 LATER HE NOTICED THERE WAS AN 8-MILLIMETER CAMERA RIGHT
16 ABOVE IT.

17 HE WENT TO PUT ONE OF THE V.C.R. TAPES INTO THE
18 RECORDER, AND HE FOUND OUT THERE WAS ONE ALREADY IN THERE.
19 AT THAT POINT HE PRESSED PLAY, AND AS HE OBSERVED OVER THE
20 NEXT MINUTE OR SO, YOUR HONOR, IT BECAME APPARENT THAT
21 THERE WAS A VIDEO OF CHILD PORNOGRAPHY ACTUALLY OF A GROWN
22 MAN HAVING SEX WITH A SMALL CHILD.

23 AT THAT POINT HE STOPPED. HE CLEARED EVERYONE OUT OF
24 THE HOUSE. HE THEN CONTACTED HEADQUARTERS. THEY THEN
25 BROUGHT DOWN AGENT CORLEY WHO WAS ABLE TO WRITE UP A

1 SEARCH WARRANT FOR THE -- THERE WAS ALSO A COMPUTER IN THE
2 HOUSE, AS WELL AS THE V.C.R. EQUIPMENT FOR ALL KINDS OF
3 ELECTRONIC ENVIRONMENT.

4 THEY WENT AND GOT THAT SIGNED. AT THAT POINT THEY
5 WERE ABLE TO CONFISCATE A COMPUTER, SOME C.D.R.'S AND A
6 V.C.R., AS WELL AS AN 8-MILLIMETER CAMERA AND THE TAPE
7 INSIDE IT.

8 WHEN THEY GOT BACK TO HEADQUARTERS, THEY DETERMINED
9 THE V.C.R. TAPE WAS ACTUALLY BEING DUBBED FROM THE
10 8-MILLIMETER CAMERA, WHICH IS AN HOUR AND FIVE MINUTE LONG
11 TAPE OF, IN FACT, WHAT TURNS OUT TO BE MARK BROWN HAVING
12 VARIOUS SEXUAL CONTACT AND SEXUAL PENETRATION WITH WHAT
13 WILL TURN OUT TO BE A THREE-YEAR-OLD CHILD.

14 BASED ON THIS INFORMATION, THEY CONFRONTED MR. BROWN
15 SEPARATELY FROM JACKIE BROWN. WHEN THEY CONFRONTED HIM,
16 THE FIRST THING HE SAID PRIOR TO INVOKING WAS "WELL, I
17 USED TO BE MESSED UP" -- OR "I HAD A PROBLEM", EXCUSE ME,
18 "BUT I'VE GOTTEN SOME HELP FOR IT." HE THEN DIDN'T WISH
19 TO SPEAK ANY LONGER.

20 JACKIE BROWN WAS CONFRONTED AT SOME POINT. SHE
21 DECIDED SHE WANTED TO CALL HER DAUGHTER. SHE WAS IN WITH
22 AGENT CALDWELL AND DR. CRAWFORD. SHE THEN MADE A PHONE
23 CALL TO HER DAUGHTER. AT WHICH POINT, SOME POINT IN THE
24 TAPE, SHE DID MAKE A STATEMENT WHEN HER DAUGHTER WAS
25 ASKING HER QUESTIONS, "WHAT WAS ON THE TAPE IS WHEN WE

1 WERE DRUGGING OUT. A LONG TIME AGO SOMETHING HAPPENED."

2 BASED ON SOME INFORMATION THEY WERE ABLE TO GET, THEY
3 DID TRACK DOWN THE IDENTITY OF THE CHILD, YOUR HONOR. HER
4 MOTHER IS HERE IN THE COURTROOM TODAY, AND I THINK SHE
5 WISHES TO ADDRESS THE COURT IN A MINUTE.

6 WHAT IT WAS WAS BACK IN THE YEAR 2000 AND 2001,
7 MS. SOUS, WHO IS THE MOTHER OF THREE-YEAR-OLD Minor WAS
8 FRIENDS WITH MS. BROWN OR WORKED WITH HER, WENT TO THE
9 RESTAURANT WHERE SHE WORKED, EXCUSE ME.

10 THEY HAD BECOME FRIENDS, AND THE BROWNS WOULD OFFER
11 TO BABYSIT FOR THE THREE YEAR OLD. THE CHILD WOULD STAY
12 WITH THEM OFTEN OVERNIGHT. ON MULTIPLE OCCASIONS, SHE
13 WENT OVER TO THEIR HOUSE WHEN THE MOTHER WAS NOT PRESENT.

14 THE TAPE, YOUR HONOR, AND I'LL SHOW YOU JUST PART OF
15 IT IN A MINUTE WAS FOUND. IN ADDITION TO THAT, YOUR
16 HONOR, THERE WERE SOME C.D.R.'S WHICH AGENT JEFF BOOTH
17 FROM THE SECRET SERVICE WAS ABLE TO DOWNLOAD, YOUR HONOR.

18 ON THE ADDITIONAL C.S.C. CHARGES, I WOULD NOTE THAT
19 THEY'RE KIND OF IN THREE DIFFERENT SETS SHOWING MARK BROWN
20 HAVING SEX WITH THE SAME CHILD YET AGAIN.

21 IN ADDITION TO THAT, YOUR HONOR, THE CRIMINAL SEXUAL
22 CONDUCT IN THE FIRST DEGREE, THERE IS A SERIES OF
23 PHOTOGRAPHS, I BELIEVE THERE ARE LIKE 15 OF THEM, THAT
24 SHOW WHAT APPEARS TO BE -- WHAT ENDS UP BEING A
25 14-YEAR-OLD GIRL WHO APPEARS TO BE PASSED OUT, AND IT ALSO

1 SHOWS MARK BROWN HAVING VARIOUS FORMS OF SEXUAL CONTACT
2 AND SEXUAL INTERCOURSE WITH HER.

3 THE VICTIM IN THAT CASE, YOUR HONOR, TURNED OUT TO BE
4 JACKIE BROWN'S ACTUAL NATURAL DAUGHTER. SHE IS NO
5 RELATION TO MR. BROWN.

6 WHEN AGENTS FROM RICHLAND COUNTY, SPECIFICALLY STAN
7 SMITH, CONFRONTED MS. JONES, SHE DENIED IT, SAID THERE HAD
8 NEVER BEEN ANY SEXUAL CONTACT WITH MR. BROWN. IT WAS
9 TRUE. SHE DIDN'T KNOW ABOUT IT BECAUSE APPARENTLY, AND
10 SHE DID REMEMBER IT AT A LATER TIME, ON ONE OCCASION WHEN
11 SHE WAS DRINKING SOME ORANGE JUICE MR. BROWN HAD PREPARED
12 FOR HER, THERE WERE PILLS AT THE BOTTOM.

13 WHEN POLICE DID A SEARCH OF THEIR HOUSE, A FOLLOW-UP
14 SEARCH, THEY DID FIND VARIOUS PSYCHIATRIC MEDICATIONS SUCH
15 AS PROZAC, AMBIEN, BENADRYL, AND OTHER MEDICATIONS, XANAX,
16 THAT COULD BE USED TO MEDICATE HER.

17 IN FACT, WHEN CAPTAIN SMITH HAD TO CONFRONT T.
18 WHO IS NOW A YOUNG ADULT, WITH THE PHOTOGRAPHS, IT
19 SURPRISED HER MORE THAN ANYONE. SHE HAD NO IDEA WHAT HAD
20 HAPPENED TO HER.

21 YOUR HONOR, THE TAPE -- AND I'LL JUST SHOW YOU A
22 SMALL PORTION OF IT. THEY WERE ABLE TO LOOK AT THE
23 BACKGROUNDS IN THE VARIOUS PICTURES, AND IN THE TAPE THEY
24 WEREN'T SURE EXACTLY WHERE THIS OCCURRED.

25 THEY ALSO GOT IN TOUCH WITH MS. SOUS. IT HAPPENED

1 HERE ON STREET HERE IN RICHLAND COUNTY, THE ACTUAL
2 TAPING OF THE SEXUAL ASSAULT OF THE CHILD. THAT'S WHY WE
3 ENDED UP IN RICHLAND COUNTY. THEY HAD RECENTLY MOVED TO
4 CHAPIN WHEN THIS HAD OCCURRED.

5 MR. MOORE: YOUR HONOR, I WOULD HAVE TO OBJECT TO ANY
6 PUBLIC DISPLAY OF THAT TAPE. IF THE COURT WOULD CARE TO
7 REVIEW THAT TAPE IN CAMERA, I WOULDN'T HAVE ANY OBJECTION,
8 BUT THERE ARE A HUGE NUMBER OF PEOPLE IN THE COURTROOM
9 TODAY.

10 THE COURT: WELL, IF --

11 MS. CAMPBELL: IT'S FACING YOU.

12 THE COURT: TURN IT A LITTLE BIT MORE.

13 MS. CAMPBELL: OKAY. IS THAT -- CAN YOU STILL SEE
14 IT?

15 (WHEREUPON, THE TAPE WAS PLAYED FOR HIS HONOR.)

16 THE COURT: IS THERE ANYTHING DIFFERENT ON THE TAPE
17 THAN THE STILL PHOTOGRAPH YOU HAVE SHOWN ME?

18 MS. CAMPBELL: IT'S A SEPARATE SESSION.

19 THE COURT: THE SAME VICTIM?

20 MS. CAMPBELL: THE SAME VICTIM, YES, Minor

21 MR. MOORE: YOUR HONOR, IT'S GOING TO BE THE SAME
22 SORTS OF ACTIVITIES. I THINK IT'S REPETITIVE, AND AGAIN I
23 WOULD OBJECT.

24 THE COURT: IS THIS THE TRANSCRIPT THAT I READ?

25 MS. CAMPBELL: YES, SIR.

1 THE COURT: I DON'T KNOW THAT I NEED TO SEE ANY MORE
2 OF THIS. I'VE SEEN THE PHOTOGRAPHS. I'VE READ THE
3 TRANSCRIPT.

4 MS. CAMPBELL: YOUR HONOR, AS FAR AS THE
5 ADDITIONAL -- THERE WERE EIGHT DIRECT PRESENTMENT OF
6 C.S.C.'S. BASICALLY, THERE WERE THREE DIFFERENT GROUPS OF
7 PHOTOGRAPHS THAT WERE RECOVERED FROM THE C.D.R.'S. WE
8 WERE ABLE TO NARROW THEM DOWN BY DATES BASICALLY USING THE
9 DATE THE FILE WAS CREATED AS A PARAMETER.

10 IN EACH GROUP -- I DIDN'T CHARGE FOR EVERY SINGLE ONE
11 THAT PORTRAYED A SEX ACT, JUST THE DIFFERENT KINDS OF SEX
12 ACTS. THE FIRST GROUP WAS THE DATE FILE CREATED 11/10/00.

13 WE KNEW THAT Minor WENT TO THE DEFENDANT'S HOUSE AT
14 THE EARLIEST IN MARCH OF 2000, SO THE DATES ON THAT ARE
15 BETWEEN MARCH OF 2000 AND NOVEMBER 10TH, 2000. THERE'S AN
16 INDICTMENT -- THERE WERE FOUR INDICTMENTS IN THAT GROUP,
17 ONE FOR ANAL PENETRATION, ONE FOR VAGINAL PENILE
18 PENETRATION, ONE FOR WHEN HE WAS PERFORMING SEX, ORAL SEX
19 ON THE CHILD, AND ALSO ANAL PENETRATION WITH THE PENIS.

20 THE SECOND SET OF PHOTOS, AND I'M JUST DOING THIS
21 FROM THE RECORD, YOUR HONOR, THE PHOTOS HAVE THE DATE ON
22 THEM OF JANUARY 1ST, '97. THE DATE ON THE PHOTO MAY NOT
23 BE ACCURATE DEPENDING ON THE CAMERA IT WAS CREATED ON.

24 THE FILES WERE CREATED ON 7/26/01, SO THE
25 INDICTMENTS, AGAIN, ON THAT, YOUR HONOR, REFLECT THE TIME

1 PERIOD OF MARCH 2000 TO JULY OF 2001. THE TWO TYPES --
2 THERE ARE MULTIPLE PHOTOGRAPHS OF THE TWO TYPES OF SEXUAL
3 BATTERY IN THOSE ARE VAGINAL PENETRATION, PENILE
4 PENETRATION AND THEN DIGITAL PENETRATION WITH THE
5 DEFENDANT USING HIS HAND.

6 IN THE FINAL GROUP, YOUR HONOR, THE DATE ON THE PHOTO
7 IS 7/22 OF '01. THE DATE THE FILE WAS CREATED ON THAT,
8 YOUR HONOR -- AND THERE ARE ACTUALLY DATES ON THOSE PHOTOS
9 WAS JULY 26TH, 2001, SO THE DATES AGAIN WOULD BE
10 MARCH 2000 AND JULY 26TH, 2001. THERE WERE TWO SETS IN
11 THAT. THAT WOULD BE ORAL SEX ON THE CHILD, THE DEFENDANT
12 PERFORMING ORAL SEX ON THE CHILD, AND THEN ANAL AND/OR
13 VAGINAL PENETRATION WITH THE DEFENDANT'S PENIS.

14 IN ADDITION TO THAT, YOUR HONOR, WE ALSO CHARGED HIM
15 FOR EACH GROUP ONE COUNT OF SEXUAL EXPLOITATION OF A MINOR
16 FIRST DEGREE.

17 THE COURT: THE CHARGES WITH RESPECT TO THE -- HER
18 DAUGHTER?

19 MS. CAMPBELL: HER DAUGHTER WAS 14 AT THE TIME, YOUR
20 HONOR. WE WERE ABLE TO DETERMINE THAT BASED ON THE
21 INFORMATION WE WERE ABLE TO GET FROM T. , AND THAT ALSO
22 OCCURRED AT THE SAME ADDRESS ON STREET. WE JUST
23 CHARGED WITH ONE COUNT, BUT YOU HAVE THE GROUP OF PHOTOS.

24 AS FAR AS PRIOR RECORDS GO, YOUR HONOR, JACKIE BROWN
25 HAS MULTIPLE FRAUDULENT CHECK CONVICTIONS OVER THE YEARS.

1 SHE ALSO HAS FROM 1996 A SIMPLE POSSESSION OF MARIJUANA.
2 AS FAR AS THE DEFENDANT, MARK BROWN, I BELIEVE HE HAS GOT
3 TWO D.U.I.S AND AN OLD -- I THINK A 1987 SIMPLE ASSAULT
4 AND BATTERY CONVICTION.

5 THE COURT: ALL RIGHT.

6 MS. CAMPBELL: YOUR HONOR, LAW ENFORCEMENT IS HERE.
7 I DON'T KNOW IF YOU WISH TO HEAR FROM ANY OF THEM.

8 THE COURT: ANYTHING YOU WANT ME TO HEAR.

9 MS. CAMPBELL: I THINK THIS CASE SPEAKS FOR ITSELF.
10 HOWEVER, THERE ARE MEMBERS OF -- MRS. BROWN'S DAUGHTER'S
11 FAMILY ARE HERE TO REPRESENT HER. THEY DON'T WANT TO
12 ADDRESS THE COURT. I JUST WANTED TO NOTE FOR THE RECORD.
13 THAT VICTIM, T. , DID NOT WANT TO BE HERE TODAY FOR THIS
14 PLEA.

15 YOUR HONOR, MS. SOUS IS HERE.

16 THE COURT: WELL, I NEED TO HEAR FROM MR. RIDDLE,
17 TOO, I ASSUME ON THESE LEXINGTON COUNTY CHARGES?

18 MR. RIDDLE: YOUR HONOR, I DON'T NEED TO ADD ANYTHING
19 TO WHAT MS. CAMPBELL SAID. JUST FOR THE RECORD ON THE
20 LEXINGTON COUNTY CHARGES, THE INITIAL V.C.R. OR V.H.S.
21 TAPE THAT MR. BARTON FOUND IN THE V.C.R. WAS ABOUT A THREE
22 OR FOUR MINUTE CLIP OF WHAT WAS AN HOUR LONG, OR AN HOUR
23 PLUS LONG TAPE, THAT WAS IN THE 8-MILLIMETER FORMAT.
24 THAT'S WHAT'S BEING DUBBED, AND THAT'S THE BASIS FOR THE
25 LEXINGTON COUNTY CHARGES.

1 THE COURT: ALL RIGHT. YES, MA'AM.

2 MS. CAMPBELL: THE VICTIM, I THINK, WOULD LIKE TO
3 ADDRESS THE COURT:

4 THE COURT: YES, MA'AM. TELL ME YOUR NAME, PLEASE?

5 THE VICTIM: YOUR HONOR, MY NAME IS CAROL R. SOUS. I
6 AM THE MOTHER OF ONE Minor . MY DAUGHTER
7 IS NOW SEVEN-AND-A-HALF.

8 THIS CRIME, MY DAUGHTER WAS THREE YEARS OLD, AND AT
9 THIS TIME I WAS TAKING CARE OF A BLIND MAN AND CAME TO
10 KNOW THE DEFENDANT AND CAME TO TRUST THEM VERY WELL. TIME
11 WENT ON AND I MOVED. THEN ONE DAY A DEPUTY FROM RICHLAND
12 COUNTY COMES TO SUMMERVILLE, SOUTH CAROLINA. THEY TELL ME
13 THEY'VE GOT SOME BAD NEWS.

14 OKAY. WELL, I SIT DOWN. THEY TELL ME EVERYTHING
15 THAT HAS HAPPENED. THAT WAS A STATE OF SHOCK FOR ME.
16 FROM THAT TIME ON, MY THREE-YEAR-OLD DAUGHTER COULDN'T
17 REMEMBER A THING BECAUSE SHE WAS SO YOUNG.

18 OKAY. SO PRIOR TO THIS, AND BECAUSE MY OLDEST
19 DAUGHTER, I ALSO HAVE AN 11 YEAR OLD NOW WHO WAS EIGHT
20 YEARS OLD AT THAT TIME HAD COME INTO CONTACT. THEY SAID
21 OKAY. WE NEED YOU TO DO THIS, DO THIS, DO THIS. WE NEED
22 YOU TO TAKE THEM TO A.R.C., HAVE THEM EVALUATED.

23 THIS WAS VERY TRAUMATIC FOR ME, MY DAUGHTER, AND MY
24 THREE YEAR OLD TAKING THEM TO A.R.C. MY DAUGHTERS DON'T
25 KNOW WHAT'S GOING ON. THEY ARE SO TERRIFIED OF WHAT'S

1 GOING ON, IT TAKES THREE HOURS JUST TO DO A NORMAL
2 PHYSICAL EXAMINATION.

3 WELL, TIME GOES ON AND MY DAUGHTERS ARE PROGRESSING
4 FINE, AND WE START SEEING A PSYCHIATRIST RIGHT AFTER THE
5 FACT.

6 YOUR HONOR, FOR TWO YEARS MY DAUGHTER AND I HAVE BEEN
7 SEEING A PSYCHIATRIST BECAUSE OF THE BETRAYAL OF A TRUST
8 OF SOMEBODY I TRUSTED WITH MY DAUGHTER IN MY DAUGHTER'S
9 CARE.

10 YOUR HONOR, THIS HORRENDOUS CRIME ON A CHILD WHO HAD
11 NOT EVEN TALKED, BECAUSE MY DAUGHTER DOES HAVE LEARNING
12 DISABILITIES, WE FOUND OUT LATER ON. SHE DIDN'T WALK AT A
13 PROPER AGE. SHE DIDN'T SPEAK AT A PROPER AGE, BUT TO BE
14 TAKEN ADVANTAGE OF, YOUR HONOR?

15 MY DAUGHTER NOW, IN THE LAST SIX WEEKS, HAS BEEN
16 SCREAMING, NIGHTMARES. SHE WETS HER BED. ONCE A WEEK I
17 MUST TAKE MY DAUGHTER, IF NOT TWICE A WEEK, I MUST TAKE MY
18 DAUGHTER TO THE INSTITUTE OF PSYCHIATRY BECAUSE SHE HAS
19 THESE DREAMS ABOUT PEOPLE WHO HAVE BETRAYED HER TRUST.

20 TO THIS DAY, MY DAUGHTER -- BECAUSE OF THESE DREAMS,
21 I HAVE HAD TO GO TO SCHOOL WITH HER TO KEEP HER CALM. SHE
22 IS NOW UNDER THE CARE OF ONE DR. SANDRA KELLER, ONE
23 LICENSED SOCIAL WORKER, A SUE KING OUT OF CHARLESTON.

24 ONCE A WEEK OR TWICE A WEEK I LEAVE SUMMERVILLE. I
25 HAVEN'T EVEN BEEN ABLE TO WORK BECAUSE MY DAUGHTERS MUST

1 HAVE A ROUTINE. IF THAT ROUTINE IS CHANGED, LIKE TODAY ME
2 COMING HERE, MY DAUGHTERS GET TERRIFIED.

3 BOTH OF MY DAUGHTERS ARE BOTH ON METADATE-D, RITALIN,
4 AND, YOUR HONOR, RIGHT NOW I'M ON LEXIPRO, AND I'M ON
5 CELEXA BECAUSE OF THIS THING. I HAVE TO WORK WITH MY
6 DAUGHTERS. I'M A SINGLE PARENT.

7 I'VE TRIED TO WORK, AND BECAUSE MY DAUGHTERS -- MY
8 TRUST FACTOR HAS BEEN REALLY SHOT. MY DAUGHTER, MY
9 YOUNGEST, JUST NOW SLOWLY TRUSTS PEOPLE. SHE'LL TRUST
10 DAYCARE PEOPLE, SHE'LL TRUST HER SCHOOL, BUT FOR ME, I'M
11 NOT ABLE TO WORK ON THE WEEKENDS BECAUSE MY DAUGHTER WON'T
12 TRUST ANYBODY. HER TRUST FACTOR HAS BEEN SHOT.

13 THE WETTING OF THE BED, THE TRYING TO TALK TO A
14 PSYCHIATRIST, HAS BEEN VERY EMOTIONALLY HARD. IT'S BEEN
15 FINANCIALLY HARD, AND I'VE HAD TO BE THE ROCK OF
16 GIBRALTAR, YOUR HONOR, BUT FOR THIS, THIS CRIME ON A THREE
17 YEAR OLD?

18 YOUR HONOR, RIGHT NOW I HAD -- I'M SORRY FOR
19 DISTURBING YOUR COURTROOM, YOUR HONOR, BUT THE SOUND OF
20 THAT TAPE --

21 THE COURT: OH, I UNDERSTAND THAT.

22 THE VICTIM: -- WAS BEYOND IT. THE -- I DON'T EVEN
23 WANT TO SEE THE PHOTOS, YOUR HONOR, BUT I KNOW THIS, AFTER
24 TODAY I'LL UNDERSTAND MY DAUGHTER A LOT MORE.

25 THE THING OF IT IS, MY DAUGHTER IS ONLY NOW COMING TO

1 TERMS, BUT DAUGHTER USED TO BE AN "A" AND "B" STUDENT. MY
2 DAUGHTER NOW HAS "F'S" BECAUSE SHE CAN'T CONCENTRATE.

3 MY DAUGHTER, LAST WEEK, I SPENT THURSDAY AND FRIDAY
4 IN SCHOOL. SHE IS SCREAMING IN THE MIDDLE OF THE SCHOOL
5 BECAUSE NOBODY KNOWS WHY. I GO UP. THEY CALLED ME. I
6 CALM HER DOWN. WE TALKED TO THE SCHOOL GUIDANCE
7 COUNSELOR. SHE HAD ACCIDENTALLY FALLEN ASLEEP AND DREAMED
8 THIS.

9 I MEAN, SHE IS SO TERRIFIED. I FOLLOW HER TO SCHOOL
10 MONDAY, TUESDAY, AND WEDNESDAY. I NOW HAVE A PHONE WHICH
11 I'M NOT PERMITTED TO BRING IN FRONT OF THE OFFICER, BUT IF
12 THERE'S ANY PROBLEM, THE SCHOOL KNOWS TO PICK IT UP.

13 THE SCHOOL HAS KNOWN, THE GUIDANCE COUNSELOR KNOWS,
14 AND THE THING OF IT IS, IF MY DAUGHTER HAS ANXIETY
15 ATTACKS, TOO, EVERYONE HAS TO KNOW.

16 MY DAUGHTER IS NOT JUST SCARRED FOR NOW, YOUR HONOR.
17 SHE IS SCARRED FOR LIFE. ANY RELATIONSHIP -- EVEN -- I
18 HAVE BEEN DATING A MAN WHO WANTS MY ADOPT MY DAUGHTER, BUT
19 HE IS WILLING TO GO IN WITH A PSYCHIATRIST TO WORK ON MY
20 DAUGHTER'S TRUST.

21 IT HAS EMOTIONALLY, PSYCHOLOGICALLY, AND PHYSICALLY
22 SCARRED HER FOR LIFE. NO EIGHT YEAR OLD SHOULD HAVE TO
23 WAKE UP IN A SCREAMING NIGHT WITH A WET BED NIGHT AFTER
24 NIGHT OR BEING AFRAID OF BEING TOUCHED OR COERCED OR ANAL
25 PENETRATION, VAGINAL, OR ORALLY. THAT IS A CRIME THAT IS

1 SO HORRENDOUS.

2 YOUR HONOR, THERE IS NOTHING, NOTHING TO TAKE AWAY .
3 THE INNOCENCE OF A CHILD. CHILDREN SHOULD BE ABLE TO GROW
4 UP FREE, .HAPPY, HEALTHY, WITH RESPECT.

5 HOW CAN A CHILD DO THIS IF NO ONE IS THERE TO TRUST,
6 TAKE CARE OF THEM? I PLACED THIS, BECAUSE ONE OF THE
7 REASONS THEY TOOK CARE OF MY CHILD, I HAD A CLOT NEXT TO
8 MY HEART. I HAD TO BE IN THAT HOSPITAL THIS TIME, AND I
9 COULD NOT TAKE CARE OF THEM. JACKIE OFFERED, "CAROL, MY
10 DAUGHTER, T. , YOU KNOW HER."

11 I KNEW T. WHEN SHE WAS UNDERAGE. I KNEW T.
12 VERY WELL. MY DAUGHTERS WOULD PLAY WITH EACH OTHER, BUT I
13 HAD TO GO INTO THE HOSPITAL FOR THREE DAYS SO THEY COULD
14 SAVE MY CLOT.

15 THE THING OF IT IS, TO COME FIND THIS, SOMEBODY I
16 TRUSTED. NOT JUST ME, YOUR HONOR. IT'S NOT ABOUT ME, BUT
17 IT IS ABOUT MY DAUGHTER. I AM THE ONE WHO LIVES WITH HER.
18 I AM THE ONE WHO TAKES CARE OF HER, BUT FOR THE REST OF
19 HER LIFE, I MUST BE THERE FOR HER.

20 THE PSYCHIATRIST WILL HAVE TO BE WITH HER FOR QUITE A
21 NUMBER OF YEARS. THIS IS NOT A SIMPLE CASE OF JUST OH,
22 I'M SORRY, WE'LL FALL AND DISAPPEAR.

23 MY DAUGHTER, ANY CRIME, AND I HAVE BEEN A CRIME OF
24 PASSION MYSELF, BUT WHEN IT EVEN COMES TO RELATIONSHIPS
25 WITH MEN, SHE WILL BE ADVERSELY AFFECTED, YOUR HONOR. TO

1 EVEN HAVE CHILDREN HERSELF? BECAUSE MY DAUGHTER WON'T LET
2 ANYBODY TOUCH HER. I CAN TOUCH HER. A TEACHER CAN TOUCH
3 HER, BUT ANY MAN WITHIN FIVE FEET OF HER, SHE WILL SCREAM
4 AT YOU. SHE IS THAT TERRIFIED.

5 I'M SORRY, YOUR HONOR, BUT I AM ASKING TO PROTECT
6 SOCIETY, TO PROTECT MY DAUGHTER. DON'T LET THEM HAVE ANY
7 EXPOSURE IN ANY WAY, SHAPE, OR FORM TO ANOTHER CHILD
8 BECAUSE THEY LEGALLY PLED GUILTY.

9 NOW, I ASK THE COURT WITH FULL IMPACT. NOT JUST AS A
10 MOTHER, BUT AS A PARENT REPRESENTING ANY OTHER PEOPLE, THE
11 PEOPLE WHO COULD NOT BE HERE, LET THEM KNOW THAT YES, THEY
12 HAVE THE RIGHT TO LEGAL REPRESENTATION, BUT FOR THEIR
13 CRIMES, THEY MUST PAY FOR THEM BY THE FULL EXTENT UNDER
14 OUR CONSTITUTIONAL LAW. THAT'S WHAT I ASK.

15 THE COURT: LET ME ASK YOU SOMETHING, IS YOUR
16 DAUGHTER MAKING PROGRESS BY VIRTUE OF HER GETTING THE
17 CARE?

18 THE VICTIM: SHE BACKSLID, YOUR HONOR. SHE COULDN'T
19 REMEMBER. SHE HAD SOME BED WETTING. WE WENT TO SEE THE
20 PSYCHIATRIST. WE TALKED ABOUT HER.

21 DR. KELLER SAID, "OKAY. DO YOU HAVE ANY BAD DREAMS?
22 DO YOU TALK TO YOUR MOTHER ABOUT THEM?" SHE SAID, "I WAS
23 AFRAID TO TELL MOMMY." "OKAY, IF YOU HAVE THEM TELL, YOUR
24 MOM."

25 THE COURT: SO SHE STARTED TO MAKE SOME PROGRESSING?

1 THE VICTIM: SHE BACKSLID.

2 THE COURT: SHE STRUGGLED A LITTLE BIT?

3 THE VICTIM: SHE IS STILL STRUGGLING, YOUR HONOR.

4 SHE IS A CHILD WHO HAS A.D.D. AND BECAUSE OF HER GRADES
5 DROPPING, YOUR HONOR, AND THE PSYCHIATRY, THE INSTITUTE OF
6 PSYCHIATRY, WHICH IS IN CHARLESTON CONNECTED WITH THE
7 MEDICAL UNIVERSITY OF SOUTH CAROLINA, IS -- AGAIN, TWO
8 YEARS AGO THEY PUT HER UNDER TESTS AND BATTERIES, THEY
9 A.R.C. AND EVERYTHING.

10 BECAUSE HER GRADES AND THE SCREAMING, FOR ALL PEOPLE
11 CONCERNED, AFTER PSYCHIATRIST ATTENTION, YOUR HONOR, MY
12 DAUGHTER -- AND IT WILL BE DETERMINED, BUT WE ALREADY KNOW
13 THE FORGONE CONCLUSION, SHE MUST REPEAT FIRST GRADE.

14 SHE NOT ONLY REPEATED KINDERGARTEN BECAUSE OF THE
15 PROBLEMS. AGAIN, SHE HAS TO REPEAT FIRST. BECAUSE OF ALL
16 OF THIS, SHE HAD LEARNING DISABILITIES THEN. THE
17 PSYCHIATRIST, AND I CAN PROVE AND I CAN HAVE THE
18 PSYCHIATRIST WRITE THIS, THIS HAS JUST IMPACTED EVERYTHING
19 ELSE SHE HAD.

20 THE COURT: I'M SURE OF THAT.

21 ALL RIGHT. WELL, I THANK YOU VERY MUCH FOR YOUR
22 COMMENTS.

23 THE VICTIM: YOU'RE WELCOME. THANK YOU FOR YOUR
24 TIME, YOUR HONOR.

25 THE COURT: I WISH YOU WELL.

1 THE VICTIM: THANK YOU.

2 THE COURT: I'M SORRY YOU HAD TO GO THROUGH THIS.

3 THE VICTIM: I UNDERSTAND, YOUR HONOR. THANK YOU.

4 THE COURT: ALL RIGHT. ANYTHING ELSE FROM ANYBODY
5 ELSE, MADAM SOLICITOR?

6 MS. CAMPBELL: NO, SIR.

7 THE COURT: ALL RIGHT. MR. MOORE?

8 MR. MOORE: TO BEGIN WITH, YOUR HONOR, THIS HAS BEEN
9 A VERY DIFFICULT CASE FOR ME PERSONALLY TO DEAL WITH. I
10 HAVE BEEN INVOLVED IN THIS CASE BECAUSE OF A LONG-STANDING
11 FRIENDSHIP WITH MR. BROWN AND HIS FAMILY.

12 I CAN TELL THE COURT MR. BROWN COMES FROM A VERY FINE
13 OLD LINE COLUMBIA FAMILY, GOOD PEOPLE, HARDWORKING PEOPLE.
14 MR. BROWN HAS ASKED ME TO EXPRESS TO THE COURT HIS SINCERE
15 REGRET FOR WHAT HAS TAKEN PLACE HERE.

16 HE KNOWS WITHOUT QUESTION THAT WHAT HE DID WAS NOT
17 ONLY WRONG BUT GROSSLY WRONG, AND HE RECOGNIZES THAT HE
18 OWES A TREMENDOUS DEBT TO SOCIETY.

19 HE IS HUMILIATED, EMBARRASSED, AND SADDENED BY WHERE
20 HIS LIFE HAS COME AT THIS POINT. MARK IS 40 YEARS OLD.
21 HE HAS TWO RIGHT SERIOUS HEALTH CONDITIONS.

22 WHEN THIS HAD GONE ON, HE BASICALLY HAD GOTTEN
23 INVOLVED IN THE USE OF SOME MIND ALTERING DRUGS. THEY
24 BASICALLY IMPACTED HIS LIFE DRASTICALLY. THEY IMPACTED
25 HIS URGES. THEY IMPACTED HIS REASON, HIS RATIONALE, AND

1 HIS DAILY LIFE.

2 MARK BASICALLY BECAME INVOLVED IN THE CONCEPT OF THIS
3 SORT OF ACTIVITY INITIALLY BY SURFING THE INTERNET. IN
4 HIS ALTERED STATE EMOTIONALLY, MENTALLY, HE BASICALLY
5 BECAME ATTRACTED TO THIS SUBJECT, AND WE WENT DOWNHILL
6 FROM THERE.

7 HE HAS NOW BEEN, I BELIEVE ABOUT A YEAR, IN JAIL.
8 HE'S CLEAN. HE KNOW IS CLEAR THINKING. HE IS BACK TO THE
9 MARK THAT I HAVE KNOWN FOR A LONG, LONG TIME, WHICH IS A
10 NORMAL, RATIONAL HUMAN BEING.

11 WHEN I FIRST GOT INVOLVED, I WAS ASKED TO COME OUT TO
12 S.L.E.D. THE NIGHT THEY BASICALLY FOUND ALL OF THIS. YOU
13 COULD TELL THERE WAS SOMETHING WRONG WITH MARK. HE WAS
14 VISIBLY JUST NOT RIGHT. TODAY HE IS CLEAR. HE
15 UNDERSTANDS, AND HE LOOKS BACK AND HE RECOGNIZES THAT HE
16 HAS SERIOUSLY HARMED TWO CHILDREN, AND THAT HE HAS
17 DESTROYED HIS MARRIAGE AND HAS PRETTY MUCH DESTROYED
18 HIMSELF.

19 HE KNOWS THE HOLD THAT THESE MIND ALTERING SUBSTANCES
20 HAVE. HE LOOKS BACK AT THAT TAPE, AND I WOULD ASSUME THAT
21 ONE OF THE THINGS HE ASKED ME TODAY IS ARE THEY GOING TO
22 PLAY THAT TAPE?

23 I THINK IT WOULD BE HARDER ON HIM THAN ANYBODY ELSE,
24 IF THAT'S BELIEVABLE, TO LOOK BACK AND SEE THE SORT OF
25 ACTIVITY HE WAS INVOLVED IN WHEN HE WAS BASICALLY IMPACTED

1 AND UP THERE.

2 IF YOU LOOK AT HIS RECORD, HE HAD TWO D.U.I.'S AND AN
3 OLD, OLD, OLD SIMPLE ASSAULT CHARGE. UNTIL THIS HAPPENED,
4 HE WAS A MODEL CITIZEN.

5 AGAIN, I DON'T MAKE EXCUSES FOR WHAT HAPPENED. HE
6 NEVER SHOULD HAVE GOTTEN INVOLVED WITH THESE MIND ALTERING
7 SUBSTANCES IN THE FIRST PLACE, AND HE CERTAINLY SHOULD
8 NEVER HAVE GOTTEN INVOLVED IN THIS ACTIVITY.

9 WHAT HE DID WAS WRONG, AND IT WAS BAD WRONG. HE
10 KNOWS AND WANTS AND EXPECTS TO PAY A SIGNIFICANT DEBT TO
11 SOCIETY FOR WHAT HE HAS DONE.

12 WHAT HE WOULD ASK THE COURT TO DO IS TO IMPOSE A
13 SENTENCE WHICH AT LEAST GIVES HIM SOME SEMBLANCE OF LIGHT
14 AT THE END OF THE TUNNEL, GIVING HIM AN OPPORTUNITY.

15 ONE OF THE OTHER THINGS HE HAS ASKED ME TO ASK THE
16 COURT, AND I DON'T KNOW IF YOU CAN FASHION THIS IN HIS
17 SENTENCE, BUT ONE OF THE THINGS THAT MARK WOULD LIKE TO DO
18 IS TO DO WHATEVER HE CAN TO ENSURE THAT THIS DOESN'T
19 HAPPEN TO ANYBODY ELSE.

20 HE HAS ASKED ME TO ASK THE COURT IF THERE'S SOME WAY
21 THAT HE COULD BE TAKEN AROUND TO SCHOOL GROUPS, ANY OTHER
22 GROUPS, AND TELL HIS STORY ABOUT WHAT HAPPENED. THAT
23 WOULD BE INCREDIBLY HUMILIATING, BUT HE WOULD LOVE NOTHING
24 BETTER THAN TO TELL THE DANGERS OF THESE MIND ALTERING
25 DRUGS, THESE LIFE CHANGING DRUGS, AND THE DANGER ALSO OF

1 INTERNET PORNOGRAPHY.

2 HE WAS HUMILIATED, EMBARRASSED, SORROWFUL FOR THE
3 TRAGEDY WHICH EXISTS IN THIS COURTROOM TODAY. IT IS A
4 TRAGEDY. IT IS A COMPLETE AWFUL MESS.

5 MARK REMAINS A FRIEND OF MINE. I'M PROUD TO BE HIS
6 FRIEND. I'M NOT PROUD OF WHAT HE GOT HIMSELF INVOLVED IN.
7 I THINK TODAY THAT THE URGES THAT WERE THERE AREN'T THERE
8 BECAUSE HE'S CLEAN, BUT I WOULD ASK THE COURT TO IMPOSE A
9 SENTENCE WHICH IS TOUGH TO BEAR AND WHICH AT LEAST GIVES
10 HIM SOME SEMBLANCE OF HOPE FOR SOME KIND OF LIFE AT THE
11 END OF PAYING A DEBT TO SOCIETY.

12 WE LOOKED AT THESE CASES. HOW DO YOU DEFEND THIS?
13 THANK YOU FOR LISTENING TO US, AND MARK HAS ASKED THAT HE
14 BE GIVEN AN OPPORTUNITY TO ADDRESS THE COURT AND THE
15 FAMILY, TOO. I THINK HE HAS GOT SOMETHING HE HAS WANTED
16 TO SAY FOR A LONG TIME.

17 THE COURT: ALL RIGHT. MR. BROWN.

18 MARK BROWN: YES, YOUR HONOR. I'M DEEPLY EMBARRASSED
19 AND REMORSED ABOUT HAVING TO STAND HERE FOR THESE CHARGES.

20 I, NEVER IN A MILLION YEARS, WOULD HAVE THOUGHT I
21 WOULD BE INVOLVED IN ANYTHING LIKE THIS. YOUR HONOR, I
22 REALLY HAVE NO EXCUSE BUT TO -- AND I CAN'T BLAME THE
23 INTERNET. IT DIDN'T MAKE ME DO ANYTHING. IT JUST LED ME
24 DOWN A ROAD I DIDN'T WANT TO GO.

25 I'M REQUESTING IF THERE'S ANY WAY POSSIBLE TO SOMEHOW

1 REDEEM MYSELF WHILE INCARCERATED, GIVE LECTURES, WRITE A
2 BOOK, ANYTHING POSSIBLE TO HELP THIS NOT HAPPEN AGAIN, TO
3 ALERT PEOPLE OF THE DANGERS OF THE INTERNET AND, OF
4 COURSE, ALSO OF DRUGS.

5 I WOULD NEVER HAVE DONE THIS IF IT HADN'T BEEN FOR ME
6 DOING DRUGS OR ANYTHING LIKE THAT. I WISH TO APOLOGIZE TO
7 ALL THE FAMILIES AND APOLOGIZE TO MY FAMILY AND MY WIFE'S
8 FAMILY.

9 THE COURT: ALL RIGHT. IS THERE ANYBODY ELSE THAT
10 YOU WOULD LIKE ME TO HEAR FROM WITH RESPECT TO MR. BROWN?

11 MR. MOORE: NO, SIR, YOUR HONOR.

12 THE COURT: ALL RIGHT. MS. HERBERT?

13 MS. HERBERT: THANK YOU, YOUR HONOR. MS. BROWN IS 42
14 YEARS --

15 THE COURT: LET ME JUST SAY ONE THING, THE SENTENCES,
16 I MISSPOKE AS TO THE SENTENCE. ON THE SEXUAL EXPLOITATION
17 OF A MINOR, FIRST DEGREE, THE SENTENCES ARE A MINIMUM OF
18 THREE YEARS, A MAXIMUM OF 20 YEARS, OF WHICH YOU HAVE GOT
19 TO SERVE THE MINIMUM THREE BEFORE YOU'RE ELIGIBLE FOR
20 PAROLE. I JUST WANT YOU TO UNDERSTAND THAT. DO YOU
21 UNDERSTAND THAT?

22 MARK BROWN: YES, YOUR HONOR.

23 THE COURT: AND, OF COURSE, YOU CAN'T SUSPEND ANY OF
24 THAT THREE YEARS. DO YOU UNDERSTAND THAT?

25 MARK BROWN: YES, YOUR HONOR.

1 THE COURT: I ASSUME THAT YOU CAN STILL MAX OUT
2 BEFORE THAT SENTENCE IS UP, BUT IT DOESN'T SAY DAY FOR DAY
3 LIKE THE MURDER CHARGE.

4 ALL RIGHT, AND ON THE SEXUAL EXPLOITATION OF A MINOR,
5 SECOND DEGREE, THE MINIMUM IS TWO YEARS. YOU MENTIONED
6 TEN YEARS BUT THE MINIMUM IS THREE AND TEN. IT'S TWO
7 YEARS ON THE SEXUAL EXPLOITATION OF A MINOR, SECOND
8 DEGREE. DO YOU ALL UNDERSTAND THAT?

9 MARK BROWN: YES.

10 THE COURT: MRS. BROWN, DO YOU UNDERSTAND THAT?

11 JACKIE BROWN: YES, SIR.

12 THE COURT: ALL RIGHT. ANYTHING?

13 MR. MOORE: NO, SIR. IT'S...

14 THE COURT: DOES IT HAVE ANY IMPACT ON YOU, MR. MOORE
15 OR YOU MS. HERBERT?

16 MS. HERBERT: NO, SIR.

17 THE COURT: ALL RIGHT. TELL ME WHAT YOU WANT TO TELL
18 ME.

19 MS. HERBERT: YOUR HONOR, THIS IS MS. BROWN. SHE'S
20 42 YEARS OLD. I HAVE NOT BEEN INVOLVED WITH THIS CASE AS
21 LONG AS MR. MOORE. I JUST RECENTLY GOT INVOLVED MAYBE
22 ABOUT SEPTEMBER.

23 THROUGHOUT THAT ENTIRE TIME, MRS. BROWN HAS ALWAYS
24 BEEN EXTREMELY REMORSEFUL. EVEN FROM READING THROUGH THE
25 DISCOVERY, I THINK THAT ONCE THE OFFICERS FOUND THE TAPE,

1 MY UNDERSTANDING IS THAT BOTH SHE AND MARK HAVE BOTH BEEN
2 COOPERATIVE THROUGHOUT.

3 HER PARTICULAR CHARGES DO ALL DEAL WITH ONE
4 PARTICULAR TAPE AS FAR AS THE C.S.C., AND THE SEXUAL
5 EXPLOITATION CHARGES. ALL OF THOSE ARE DEALING WITH ONE
6 VICTIM AND ONE TAPE.

7 IN MEETING WITH MRS. BROWN, IT WAS APPARENT THAT SHE
8 HAS HAD AN EXTENSIVE MENTAL HEALTH HISTORY. I THINK SHE
9 HAS STRUGGLED WITH MENTAL HEALTH ISSUES PROBABLY FOR AT
10 LEAST THE LAST 20 YEARS. SHE HAS BEEN ON SEVERAL
11 MEDICATIONS THROUGHOUT THAT TIME.

12 MY UNDERSTANDING, AND FROM READING HER MEDICAL
13 RECORDS, SHE HAS NOT BEEN CONSISTENT WITH THE MEDICATIONS
14 THAT SHE HAS BEEN PRESCRIBED.

15 I THINK THAT THAT COULD HAVE, AND HAS CONTRIBUTED TO
16 HER BEHAVIOR OVER THE YEARS. IN READING THE
17 RECOMMENDATIONS SET FORTH BY DR. MCKEE, MY UNDERSTANDING
18 IS THAT SHE IS CURRENTLY ON PROZAC AND LEXIPRO WHICH ARE
19 BOTH ANTIDEPRESSANTS, AS WELL AS GEODON WHICH IS AN
20 ANTIPSYCHOTIC MEDICATION.

21 HAD THESE MEDICATIONS CAUSED HER TO BEHAVE IN THE
22 MANNER IN WHICH SHE BEHAVED, I DON'T THINK, BUT THEY ARE
23 CONTRIBUTING FACTORS THROUGHOUT THE YEARS, AS WELL AS SHE
24 HAS ALSO HAD ISSUES WITH SUBSTANCE ABUSE.

25 AT THIS TIME, WE WOULD LIKE THE COURT TO CONSIDER A

1 REASONABLE SENTENCE FOR MRS. BROWN. I THINK SHE IS
2 EXTREMELY REMORSEFUL. IN MEETING WITH HER, AND AGAIN, SHE
3 HAS BEEN LOCKED UP, I THINK NEARLY 600 DAYS, ABOUT A
4 YEAR-AND-A-HALF.

5 I CAN TELL THAT THE CLEAR-MINDED PERSON I'M MEETING
6 WITH NOW IS PROBABLY NOT THE PERSON WHO WAS INVOLVED IN
7 THESE INCIDENTS YEARS AGO.

8 WE WOULD LIKE THE COURT TO CONSIDER A SENTENCE THAT
9 REFLECTS RESPONSIBILITY, BECAUSE IN NO WAY HAS MRS. BROWN
10 EVEN INDICATED THAT SHE IS TRYING TO ESCAPE
11 RESPONSIBILITY.

12 WE WOULD LIKE SOMETHING THAT IS REASONABLE AND THAT
13 IS JUST FOR HER TODAY. I DON'T BELIEVE THAT SHE WOULD
14 LIKE TO ADDRESS THE COURT.

15 THE COURT: ANYBODY ON MRS. BROWN'S BEHALF? ANYBODY
16 WANT TO SPEAK TO THE COURT?

17 MS. HERBERT: NOT THAT I'M AWARE OF, NO.

18 MR. MOORE: YOUR HONOR, IF I COULD ADD ONE MORE FACT,
19 WHICH I BELIEVE IS IN MITIGATION. WHEN THIS CASE
20 INITIALLY ARRIVED, LAW ENFORCEMENT WAS VERY MUCH WANTING
21 THE COOPERATION OF MR. AND MRS. BROWN IN REGARD TO A
22 MURDER CASE WHICH WAS UNRELATED TO THESE SEX CHARGES.

23 THIS AROSE IN REGARD TO AN ALLEGED CAR JACKING.
24 MR. BROWN, THROUGH ME BASICALLY, DID EVERYTHING, I
25 BELIEVE, THAT S.L.E.D. ASKED US TO DO, AND EVEN WHEN IT

1 CAME DOWN TO IDENTIFYING THE CHILD WHO WAS ON THE
2 VIDEOTAPE, WE COOPERATED WITH S.L.E.D, MR. BROWN AND
3 MRS. BROWN DID, IN PROVIDING THE NAME AND POTENTIAL
4 WHEREABOUTS OF THE CHILD. I THINK THAT BASICALLY SHOWS A
5 WILLINGNESS TO AT LEAST BEGIN THE EFFORT OF TRYING TO MAKE
6 AMENDS.

7 THE COURT: I'LL TELL YOU ONE THING, WOULD IT PRESENT
8 A PROBLEM TO -- I DON'T KNOW ABOUT ALL YOU FOLKS, BUT I
9 NEED TO -- I HAVE GOT TO DO SOME THINKING AND CALCULATING
10 ON THIS A LITTLE BIT.

11 MS. CAMPBELL: YES, SIR.

12 THE COURT: CAN WE RESUME AFTER LUNCH?

13 MS. CAMPBELL: YES, SIR.

14 THE COURT: DOES THAT PRESENT A PROBLEM?

15 MR. MOORE: NO PROBLEM, YOUR HONOR.

16 THE COURT: IT IS TEN AFTER ONE. WHY DON'T WE COME
17 BACK HERE ABOUT 2:15. WOULD THAT BE ALL RIGHT?

18 MS. CAMPBELL: THAT'S GOOD, WE'LL BE HERE.

19 THE COURT: IT'S GOT A NUMBER OF CHARGES.

20 ALL RIGHT. WE'LL RECESS UNTIL AFTER LUNCH.

21 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

22 MS. CAMPBELL: MAY IT PLEASE THE COURT.

23 THE COURT: YES, MA'AM.

24 MS. CAMPBELL: YOUR HONOR, THERE IS A SCRIBNER'S
25 ERROR IN ONE OF THE INDICTMENTS, WHICH IS INDICTMENT

1 NUMBER 2004-GS-40-5687. IT SHOULD BE AMENED TO SAY LESS
2 THAN 11 YEARS OF AGE, AND THAT'S ON JACKIE BROWN.

3 THE COURT: ANY OBJECTION TO THAT?

4 MS. HERBERT: NO, SIR.

5 THE COURT: ANY OBJECTION TO THAT, MRS. BROWN?

6 JACKIE BROWN: NO.

7 THE COURT: ALL RIGHT. MRS. BROWN, WELL, YOU'RE NOT
8 CHARGED WITH AS MANY THINGS, BUT YOUR PARTICIPATION IN
9 THIS IS AS REPREHENSIBLE TO ME AS YOUR HUSBAND'S. YOU
10 WERE THERE. I READ THE TRANSCRIPT. APPARENTLY, YOU WERE
11 ENCOURAGING THIS KIND OF BEHAVIOR. YOU WOULD HAVE HAD THE
12 OPPORTUNITY TO STOP IT BUT YOU DIDN'T.

13 ON THE CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST
14 DEGREE, THE SENTENCE OF THIS COURT IS YOU BE COMMITTED TO
15 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 30 YEARS,
16 PROVIDED UPON THE SERVICE OF 20 YEARS PLUS COST AND
17 ASSESSMENTS AS APPLICABLE, THE BALANCE IS SUSPENDED WITH
18 PROBATION FOR FIVE YEARS. WHILE YOU'RE ON PROBATION, YOU
19 ARE TO HAVE NO UNSUPERVISED CONTACT WITH ANY MINOR
20 CHILDREN.

21 ON THE SEXUAL EXPLOITATION OF A MINOR, THE SENTENCE
22 OF THIS COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF
23 CORRECTIONS FOR A TERM OF FIVE YEARS, AND THAT'S TO RUN
24 CONSECUTIVE TO YOUR C.S.C.

25 ON YOUR SEXUAL EXPLOITATION OF A MINOR, SECOND

1 DEGREE, THE SENTENCE OF THIS COURT IS YOU BE COMMITTED TO
2 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF FIVE YEARS,
3 AND THAT'S TO RUN CONSECUTIVE TO YOUR OTHER SEXUAL
4 EXPLOITATION OF A MINOR.

5 ON YOUR FILING A FALSE POLICE REPORT, THE SENTENCE OF
6 THIS COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF
7 CORRECTIONS FOR A TERM OF ONE YEAR PLUS COSTS AND
8 ASSESSMENTS. THAT WILL RUN CONCURRENT. I'M GIVING YOU
9 CREDIT FOR YOUR TIME SERVED ON YOUR C.S.C. CASE.

10 MR. BROWN, ON INDICTMENT 2004-GS-40-10264, THE
11 SENTENCE OF THIS COURT -- THAT'S C.S.C. WITH A MINOR
12 FIRST, THE SENTENCE OF THIS COURT IS YOU BE COMMITTED TO
13 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 30 YEARS PLUS
14 COSTS AND ASSESSMENTS AS APPLICABLE.

15 ON 04-GS-40-10265, C.S.C. WITH A MINOR, THE SENTENCE
16 OF THIS COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF
17 CORRECTIONS FOR A TERM OF 30 YEARS, PROVIDED UPON THE
18 SERVICE OF SIX YEARS PLUS COSTS AND ASSESSMENTS, THE
19 BALANCE IS SUSPENDED WITH PROBATION FOR FIVE YEARS. THAT
20 IS TO BEGIN -- NO UNSUPERVISED CONTACT WITH MINOR
21 CHILDREN.

22 ON 2004-GS-40-10264, THE SENTENCE OF THIS COURT IS
23 YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A
24 TERM OF 25 YEARS. THAT WILL RUN CONCURRENT TO YOUR C.S.C.
25 30 YEARS. I'M GIVING YOU CREDIT FOR YOUR TIME SERVED ON

1 YOUR C.S.C. FOR 30 YEARS.

2 ON 2004-GS-40-10268, THE SENTENCE OF THIS COURT IS
3 YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A
4 TERM OF 25 YEARS, PLUS COSTS AND ASSESSMENTS AS
5 APPLICABLE, AND THAT WILL RUN CONCURRENT.

6 C.S.C. WITH A MINOR FIRST, 2004-GS-40-10261, THE
7 SENTENCE OF THIS COURT IS YOU BE COMMITTED TO THE
8 DEPARTMENT OF CORRECTIONS FOR A TERM OF 25 YEARS, PLUS
9 COSTS AND ASSESSMENTS AS APPLICABLE. THAT IS TO RUN
10 CONCURRENT, AS WELL.

11 ON C.S.C. WITH A MINOR, 04-GS-40-10266, THE SENTENCE
12 OF THIS COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF
13 CORRECTIONS FOR A TERM OF 25 YEARS. THAT IS TO RUN
14 CONCURRENT.

15 ON 2004-GS-40-5692, C.S.C. WITH A MINOR, THE SENTENCE
16 OF THIS COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF
17 CORRECTIONS FOR A TERM OF 25 YEARS PLUS COSTS AND
18 ASSESSMENTS AS APPLICABLE.

19 ON 04-GS-40-10262, THE SENTENCE OF THIS COURT IS YOU
20 BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM
21 OF 25 YEARS PLUS COSTS AND ASSESSMENTS AS APPLICABLE.
22 THAT'S TO RUN CONCURRENT.

23 ON THE C.S.C. WITH A MINOR SECOND, 04-GS-40-5726, THE
24 SENTENCE OF THIS COURT IS YOU BE COMMITTED TO THE
25 DEPARTMENT OF CORRECTIONS FOR A TERM OF 20 YEARS PLUS

1 COSTS AND ASSESSMENTS AS APPLICABLE. THAT'S TO RUN
2 CONCURRENT.

3 ON 04-GS-40-10270, THE SENTENCE OF THIS COURT IS YOU
4 BE COMMITTED TO -- THAT'S A SEXUAL EXPLOITATION WITH A
5 MINOR, THE SENTENCE OF THIS COURT IS YOU BE COMMITTED TO
6 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF FIVE YEARS,
7 PLUS COSTS AND ASSESSMENTS AS APPLICABLE. THAT IS TO RUN
8 CONSECUTIVE TO INDICTMENT 04-GS-40-5693.

9 ON SEXUAL EXPLOITATION WITH A MINOR, 04-GS-40-5693,
10 THE SENTENCE OF THIS COURT IS YOU BE COMMITTED TO THE
11 DEPARTMENT OF CORRECTIONS FOR A TERM OF FIVE YEARS PLUS
12 COSTS AND ASSESSMENTS AS APPLICABLE. IT'S TO RUN
13 CONSECUTIVE TO 04-GS-40-45725.

14 ON 04-GS-40-5725, THE SENTENCE OF THIS COURT IS YOU
15 BE -- THAT'S SEXUAL EXPLOITATION OF A MINOR, THE SENTENCE
16 OF THIS COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF
17 CORRECTIONS FOR A TERM OF FIVE YEARS PLUS COSTS AND
18 ASSESSMENTS AS APPLICABLE. THAT IS TO RUN CONSECUTIVE TO
19 INDICTMENT 04-GS-40-10265.

20 2005-GS-32-4165, SEXUAL EXPLOITATION OF A MINOR,
21 SECOND DEGREE, THE SENTENCE OF THIS COURT IS YOU BE
22 SENTENCED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF
23 THREE YEARS. THAT'S TO RUN CONSECUTIVE TO 04-GS-40-10270.

24 ON THE SEXUAL EXPLOITATION OF A MINOR,
25 04-GS-40-10269, THE SENTENCE OF THIS COURT IS YOU BE

1 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF
2 THREE YEARS PLUS COSTS AND ASSESSMENTS AS APPLICABLE.
3 THAT'S TO RUN CONSECUTIVE TO 2005-GS-32-4165.

4 ON INDICTMENT 04-GS-40-10271, THE SENTENCE OF THIS
5 COURT -- THAT'S SEXUAL EXPLOITATION OF A MINOR, YOU BE
6 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF
7 THREE YEARS PLUS COSTS AND ASSESSMENTS AS APPLICABLE.
8 THAT'S TO RUN CONSECUTIVE TO 04-GS-40-10269.

9 I THINK THAT'S ALL OF THEM. YOU'RE GOING TO HAVE TO
10 PAY -- BOTH OF YOU -- WHERE IS MR. BROWN?

11 BOTH OF YOU ARE GOING TO HAVE TO PAY \$125 SURCHARGE
12 ON EACH ONE OF THESE INDICTMENTS PLUS THREE PERCENT. PAY
13 IT WHILE YOU'RE ON PROBATION.

14 IS THAT ALL OF THEM?

15 MR. RIDDLE: YOUR HONOR, DID YOU GET THE LEXINGTON
16 CHARGE ON MR. BROWN?

17 THE COURT: YES.

18 MR. RIDDLE: OKAY. I JUST MISSED IT. I'LL GET IT
19 OFF THE SENTENCE SHEET.

20 THE COURT: I GAVE HIM THREE YEARS ON THAT.

21 MR. RIDDLE: I'LL GET IT OFF THE SENTENCE SHEET.

22 THE COURT: CONSECUTIVE TO ONE OF THE OTHER SEXUAL
23 EXPLOITATION.

24 MS. CAMPBELL: AND JUDGE, JUST FOR CLARIFICATION, THE
25 FIRST TWO CRIMINAL SEXUAL CONDUCTS IN THE FIRST DEGREE

1 WERE RUN CONSECUTIVE?

2 (HIS HONOR NODS IN THE AFFIRMATIVE).

3 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, KAREN TRACY, OFFICIAL COURT REPORTER FOR THE 5TH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
RICHLAND COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF
FEBRUARY, 2006.

JULY 24TH, 2006

Karen Tracy

KAREN TRACY, COURT REPORTER

MY COMMISSION EXPIRES: 04/01/14

2007-CP-400-1156⁶⁷

FILED

2007 FEB - 6 PM 2:43

STATE OF SOUTH CAROLINA

County of RICHLAND

In the Court of James H. Scott
C.C.C. & G.S.

Mark Ellis Brown #313740

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

vs.

State of South Carolina

Name of Respondent.

**APPLICATION FOR
POST-CONVICTION RELIEF**

RICHLAND COUNTY
FILED
2007 FEB 21 PM 2:35
JAMES H. SCOTT
C.C.C. & G.S.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Sumter North #2240, Lee Correctional Institution,
Bishopville, South Carolina, 29010
2. Name and location of Court which imposed sentence Court of General Session, Fifth.
Judicial Circuit, Richland County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) SEE ADDENDUM PAGE (3)
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 6, 2006
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty Yes
- (b) after a plea of not guilty No
- (c) after a plea of nolo contendere No

6. Did you appeal from the judgment of conviction or the imposition of sentence?

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Trial counsel failed to inform of appeal
- (b) _____
- (c) _____

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

- (a) SEE ADDENDUM PAGES (4) thru (25)
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) SEE ADDENDUM PAGE (4) thru (25)
- (b) _____
- (c) _____

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(3). THE INDICTMENT NUMBERS (IF KNOWN) UPON WHICH AND THE OFFENSE
FOR WHICH SENTENCE WAS IMPOSED:

- (a). #04-GS-40-5685
- (b). #04-GS-40-5687
- (c). #04-GS-40-5692
- (d). #04-GS-40-5693
- (e). #04-GS-40-5725
- (f). #04-GS-40-5726
- (g). #04-GS-40-10261
- (h). #04-GS-40-10262
- (i). #04-GS-40-10263
- (j). #04-GS-40-10264
- (k). #04-GS-40-10265
- (l). #04-GS-40-10267
- (m). #04-GS-40-10268
- (n). #04-GS-40-10269
- (o). #04-GS-40-10270
- (p). #04-GS-40-10271

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9(a). Trial counsel demonstrated a deficient performance contrary to the full panoply of protections afforded by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Articles I, §3; and I, §14, of the South Carolina Constitution; and S.C. Code Ann. §17-13-140; whereas trial counsel, when faced with circumstances that would have challenged the validity of the Arrest Warrant(s) [H-819053] (also Arrest Warrant (H-819068) - Jackie Burke Brown, Applicant's wife), due to the fact that said Arrest Warrant(s) do not display (1) the issuing judge's name and a comprehensible signature; nor (2) are each confirmed by and date or notarization of such purported issuance. It is complained that this is a serious deficiency and these Arrest Warrant(s) should have been quashed. Trial Counsel was deficient for not challenging each of these Arrest Warrant(s).

10(a). On July 21, 2004, these Arrest Warrant(s) [H-819053] (and (H-819068), for Applicant's (and Applicant's wives), detention was purportedly prepared. At the time that these alleged Arrest Warrant(s) were purportedly issued, Applicant (and Applicant's wife) was represented by the Honorable S. Jahue Moore, Esquire, of the Richland County Bar. A copy of these purported Arrest Warrant(s) are attached hereto and incorporated herewith.

In the first analysis, we must determine whether the Arrest Warrant(s) are defective because there is not a

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sufficient "issuance" to effect Arrest upon, i.e. identifiable signature of a magistrate, municipal judicial officer, or judge of court of record. Although, the warrant statute does not specifically require that the Arrest Warrant be signed, it does require that the Arrest Warrant be "issued". See S.C. Code Ann. 17-13-140 (2003).

In Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894), [our Supreme] Court held that the warrant was not "issued" as required by law, and conferred no authority on the sheriff to make the arrest, because the magistrate did not sign at the foot as was his intent to do, and because he did not intend the endorsement on the back as his signature of the warrant. The failure to sign, and therefore, "issue" the warrant was a fatal flaw that made the arrest invalid. See also Dubose v. Dubose, 90 S.C. 87, 90, 72 S.E. 645, 646 (1911). Therefore, a warrant is not issue until signed by an appropriate magistrate, municipal judicial officer, or judge of a court of record. See 77-370 S.C. Op. Att'y Gen. 295 (1977)(stating a warrant is properly issued only when signed by the magistrate and upon a sworn affidavit). Thus, the warrant(s) in this case are defective because there exists no signature nor notarization of any alleged signature.

In State v. Surowiecki, 440 A.2d 798, 799 (Conn. 1981), the Connecticut Supreme Court held that a warrant is not "issued" without a lawful signature on the warrant by the person authorized to issue it. The Court reached the conclusion even though there was no doubt the judges intent was to sign the warrant, and failed to do so because of a "mere oversight", made

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the warrant defective and the arrest invalid.

In South Carolina, the statutory warrant requirement is separate and distinct from the prohibition in the federal and state constitutions against unreasonable searches and seizures. See S.C. Code Ann. §17-13-140 (2003); also U.S. Const. amend. IV; S.C. Const. art. I, §10. In fact, as the South Carolina Supreme Court has recognized, section §17-13-140 of the South Carolina Code actually imposes stricter warrant requirements than the constitutional provisions. State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (2000).

Trial Counsel was in a position to petition the trial court for immediate disposition of these Arrest Warrant(s), which in turn would have given the opportunity, and a window, in which to move the trial court to quash these Arrest Warrant(s). Since this claim is central to the statutory provisions for warrant requirements, there exists no place for the "good faith exception" doctrine, adopted by the United States Supreme Court in United States v. Leon. 468 U.S. 897 (1984). The Leon rule applies when a search warrant is defective on Fourth Amendment grounds. However, in this case, the Arrest Warrant(s) that should have been sought to be quashed were obtained due to a failure to properly and competently procure the "issuance" of the Arrest Warrant(s), this being in violation to the State statutory provisions, and not constitutional provisions. See State v. Covert, Opinion No. #4071 (Shearouse Adv. Sh. No. #3, 56 at 60)(S.C.App.Ct. filed January 17, 2006)(holding that evidence sought to have been excluded was obtained because of defective search warrant based on state statutory violation, not constitutional violation).

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The Arrest Warrant(s) that trial counsel failed to challenge, demonstrate a deficient "issuance", and therefore, Applicant (and his wife who was represented by trial counsel for a one year period, after the arrest), has been detained by illegal instruments and means. This argument demonstrates the defect within the Arrest Warrant(s) in effectuating and giving cause for the detentions of Applicant (and his wife); and furthermore, failing to move to quash these Arrest Warrant(s). It is Applicant's position that a "mark", such as the one on the warrant(s), does not comport or constitute a "signature", *per se*, and since this "mark" (which looks like the judges portion has been crossed out), is not validated by a competent verification nor notarization, seriously undermines the stability of these Arrest Warrant(s). Trial Counsel was ineffective for failing to challenge these Arrest Warrant(s).

Therefore, Applicant seeks the vacation of this guilty plea, upon these facts, evidence and applicable standards of law, preserved within this claim and issue; and furthermore, this case be remanded back to the Court of General Sessions for trial upon the merits of this case.

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9(b). Trial counsel demonstrated a deficient performance contrary to the full panoply of protections afforded by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; and Articles I, §3; and I, §14, of the South Carolina Constitution, whereas, trial counsel failed to develop a defense and record relating to Applicant's wife (Jackie Burke Brown) psychological history and complications, especially when Mrs. Brown's competence, at the time of the events that led to this arrest, were questionable and there existed sufficient evidences to substantiate further pursuit of this claim as a viable defense to support other arguments and issue within pre-trial motions, i.e. suppression.

10(b). This case was brought to the attention of Law Enforcement because of several unrelated events, and due to a "manhunt" of an alleged murderer, who was suspected in the location and vicinity where Mrs. Brown (Applicant's wife) had made a [911] call that an unknown male had attempted to car jack her. See Affidavit of Arrest Warrant (H-819068)(A copy is attached hereto and incorporated herewith).

Key facts and testimony should have led trial counsel to seek an independent outside psychological testing procedure and evaluation to discern the mind set or ability of Mrs. Brown's comprehension at the time of these occurrences. i.e. car jacking. Please permit this record to reflect that, attached hereto is a copy of a "Consent Order To Be Relieved As Counsel",

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filed by trial counsel. Trial Counsel (Moore), for approximately one (1) years time span, represented both Applicant and Mrs. Brown.

The analysis of competency must be weighed under due process standards because it interferes with the defendant(s) constitutional right to a fair trial. Drope v. Missouri, 420 U.S. 162, 178-83 (1975)(trial counsel's failure to make sufficient inquiry into defendant's suicide attempt and other irrational behavior violated due process); also Pate v. Robinson, 383 U.S. 375, 385-86 (1966)(trial courts failure to conduct competency hearing in light of defendants "pronounced irrational behavior" violated due process). As the following shall demonstrate, there existed sufficient evidence and statements of individuals to whom had experiences with Mrs. Brown, that made references to her conduct that would lead to her competency at the time of the [911] call questionable.

Let us first clarify one fact. Incompetency differs from insanity, as it involves the defendant's mental state at the time of trial rather than as the time of the offense. Lynch v. Overholser, 369 U.S. 705, 708-09 (1962)(for successful insanity defense, defendant must be found not guilty of charged crime because of insanity at time of its commission). An insanity defense and incompetency to stand trial are independent determinations because they involve defendant's mental state at different times and because ultimate questions differ). Although the trial courts duty was to focus on the mental state at the time of the proceedings, trial counsel should have focused upon Mrs. Brown's history of mental illness and

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attempt to present a defense of insanity, in preparation of pre-trial motions and trial proceedings. United States v. Leggette, 162 F.3d 237, 244 (3rd Cir. 1998).

Taking into consideration the following facts, this Court must wade through the evidence and statements that were available for trial counsel to develop the necessary pre-trial, post-trial and suppression motions; also an avenue of defense that would have afforded this Applicant, and Mrs. Brown, defenses that are exclusive for a trier of facts, consistent with due process and fundamental fairness.

The South Carolina Law Enforcement Division (SLED) issued an "INVESTIGATIVE REPORT", investigating the allegations that Mrs. Brown had been the victim of an alleged "car jacking" and "robbery". In the introduction of this Report, it has been documented that Mrs. Brown suffers from "bi polar condition", and had not taken her prescription medications for several days, prior to this incident. It is further noted that, Mrs. Brown claimed to have been assaulted in the cheek area of face by the alleged car jacker. (See incident Report, July 21, 2004, unit Number 270)(See attached hereto and incorporated herewith a true and accurate copy thereof).

When questioning Mrs. Brown, through colloquy by the trial court, it was disclosed that Mrs. Brown was unable to function competently without the appropriate amount of psychotropic medications. (See Plea Tr.p. 27, ll. 3-14). Simply because Mrs. Brown may have been presumed competent for the plea proceedings, was largely due to the fact that the social workers at the Detention Facility where she had been housed for eighteen

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months, had had ample time in which to regulate her medications. Please further note that Mrs. Brown only testified that she was on two medication, when in fact, she was prescribed: (1) Geodon (2 - 100mg at night); (2) Prozac (3 - 20mg per day); (3) Seroquel (4 - 200mg - night); (4) Trazadone (2 - 100mg at night); and (5) Lexipro. (See attached a handwritten document served with trial counsels case/manual filed)(Marked as Document (1); also (Plea Tr.p. 27, l. 7); and (Plea Tr.p. 57, ll. 18-20). These are very powerful psychotropic medications that were developed to quell or deal with extreme, and often, dangerous chemical and personality disorders. The very awareness of these medications should have placed trial counsel on notice to investigate the necessary defense of insanity, that may have cause a jury to find favorably to these defendant(s).

The evidence in which should have given trial counsel sufficient notice that such an extreme defense was available, was in part of the statements and documents that were disclosed to him in discovery.

Mr. Roger Ray Jones, the ex-husband of Mrs. Brown's, related a story that should have been substantiated through school and/or medical records, because it demonstrated the beginning of irrational behavior concerning an incident at her son's school. Mr. Jones offered damaging insight into Mrs. Brown's psychological profile and makeup. He went as far as to state that Mrs. Brown rubbed her son's elbows on the payment until they began to bleed. This statement was issued July 26, 2004. (See a copy of this statement attached hereto and incorporated herewith).

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It was Mrs. Brown's statement that the purported perpetrator "punched me in the face", "grabbed my by my arm and pulled me out (sic) I was getting out." (See attached hereto and incorporated herewith a true and accurate copy of this statement, dated July 21, 2004). Yet, in the Investigative Report, (page 3 of 3), the R/O did not observe any injuries on Mrs. Brown.

In an Investigative Report issued concerning the events related to the original incident, i.e. [911] call, S/A Barton and Inv. Barr "noticed that Mrs. Brown had taken the ice pack off her cheek and was constantly squeezing and pushing on an area of her cheekbone." (See page 2). This very report relayed information that should have alerted trial counsel as to some serious questions about a competency proceeding. If the fact that Mrs. Brown was acting suspicious by "pinching" her cheekbones was not an irrational act, *per se*, the other fact is that Mrs. Brown had "not taken her medications in the last few days." (See page 1). (See attached hereto and incorporated herewith a coy of the "Investigative Report, marked as "File 32-04-0094"). We must be mindful that once the Law Enforcement discovered the renewed prescriptions for psychotropic medicines on the front seat of the abandoned automobile, that they reached a conclusion she was delusional and/or irrational enough to invent and connive such a story.

Trial counsel was aware of the mental history of Mrs. Brown, and her competency at the time of these occurrences was essential to Applicant's position during pre-trial motions, i.e. suppression. During the plea proceedings, Ms. Tina Hergert, Esquire, (counsel for Mrs. Brown), recognized and testified to

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the many years that Mrs. Brown had struggled with mental illness. And the inconsistent manner that Mrs. Brown would take her medicines. There is no exact way to measure how long Mrs. Brown had been without her prescribed psychotropic medicines at the time she made the [911] call; and she allegedly gave consent to search. (See Plea Tr.p. 57, ll. 12-20). At the time of the plea, the counselor staff had ample opportunity in which to have her medication corrected, the dosages monitored to prepare her for trial. As the record shows, a period of nearly 600 days, or about a year-and-a-half. (See Plea Tr.p. 58, ll. 2-4).

The failure to present the mental health records to support the pre-trial suppressions motion was a fatal error on the part of trial counsel, because this would have caused a sufficient enough showing to question the competency and intelligent ability of Mrs. Brown to purportedly consent to search the residence for evidence of the alleged car jacking. This issue was essential as a tool to challenge and impeach Mrs. Brown's competency at the time of the July 21, 2004, incident. See State v. Meckler, Opinion No. #4035 (Shearouse Adv. Sh. No. #41, 15 at 23)(S.C.App.Ct. filed October 31, 2005); rehearing denied (holding that it is reversible error to cause a defendant not to impeach an individual when just cause is shown).

Applicant is of a belief that trial counsels failures and shortcomings, as relate to this claim, have deprived him of due process. The United States Supreme Court in Cooper v. Oklahoma, 517 U.S. 348, 366-67 (1996), held that, an Oklahoma criminal statute that required defendants to prove incompetency by clear and convincing evidence violated due process. The Court

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found that defendant's right to due process out weighed the state's interest in the efficient operation of its justice system. Therefore, the "large share of risk" that accompanies a clear and convincing evidence standard could not be allocated to any defendant in a competency hearing. Trial counsel had an opportunity to make the challenge to the sufficiency of mental capacity, at the time of the July 21, 2004, purported consent to search issue, and such is irrelevant as to Mrs. Brown is competent to stand trial. This was an error that caused trial counsel to abandon the suppression motion that is central to the next issue (9(c)). And further caused this Applicant to unintelligently and involuntarily waive his Constitutional rights and plead guilty. Had Applicant had known of this error, he would have demand the right to proceed to trial, and presented his case to an empaneled jury. It is Applicants belief that, if, he had of went to trial, that the outcome would have been different. Therefore, Applicant would move this Court to reverse or vacate this guilty plea, where it is evident by the facts and evidence that this claim would have been meritorious, and proper for a panel of jurors to consider, consistent with the protections afforded under the Fifth, Sixth and Fourteenth Amendments, and Article I, §3; and I, §14.

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9(c). Trial counsel demonstrated a deficient performance, in violation to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; and Articles I, §3; and I, §14, of the South Carolina Constitution, whereas trial counsel filed two (2) Motions To Suppress Evidence, due to the argument that evidence was seized contrary to the protections of the Fourth Amendments; Article I, §10; and S.C. Code Ann. §17-13-140, furthermore, failing to pursue the suppression because of: (1) Applicant's wife being allegedly incompetent to authorize and consent to search; (2) search purportedly consented to, evidence was beyond the scope of the allegedly consented search; and (3) Law Enforcement had no probable cause to exceed the allegedly consented search and the evidence seized. Trial counsel was ineffective for failing to pursue the suppression motion, where the evidence seized is "fruit of a poisonous tree".

10(c). Applicant would assert this argument began in Issue 9(b). & 10(b). of this application, and has bearing upon this current issue. The position taken is one that, trial counsel (S. Jahue Moore, Esquire), was familiar with and had personal knowledge concerning Mrs. Browns psychological history and behavioral patterns. (See Plea Tr.p. 51, ll. 9-11). These mental incapacitations are alleged to be an important factor in the first portion of this claim, where Applicant's wife was suppose to have given consent to search for evidence or matters that were

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related to "some form" of fascination with a murder suspect named, Mikal Deen Mahdi. There was an intense manhunt by every law enforcement agency to capture this individual. At the time that Mrs. Brown was to have given her consent to search her (and Applicants) residence, the materials or "things" sought were related to Mr. Mahdi. (See Newspaper Article, marked Document #2).

Yet, the present point remains that, Mrs. Brown was not mentally stable at the moment that she was supposed to have voluntarily consented. The record, thus far, clearly demonstrates that there were newly obtained psychotropic medications in a pharmaceutical bag where she had just went and refilled the prescriptions; there is testimony and evidence within the record received from trial counsel that would show Mrs. Brown's consistent failure to take these medications properly and consistently. And, we must keep in mind that there exists no document, i.e. consent to search form, that has been authorized or signed by this Applicant.

Applicant takes a position, in this first stance that, the Law Enforcement, after conferring with each other about specific matters in 9(b) & 10(b), chose Mrs. Brown to consent while being aware of her incompetency at that time. The inability to utilize rational thought, and argued substantiated irrational behavior, is argued to be that Mrs. Brown did not comprehend, nor appreciate, the very right that she was being coerced to waive. See United States v. Benitez-Arrequin, 973 F.2d 823, 825-26 (10th Cir. 1992). And when Mrs. Brown was transported to SLED Headquarters, in an official police car, by Investigators, she

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believed she was "arrested", felt "detained", due to the condition of her incompetency at the time. See United States v. Jones, 846 F.2d 358, 360-61 (6th Cir. 1988)(per curiam). Furthermore, the anxiety of Law Enforcement in the search for Mr. Mahdi, made them inform Mrs. Brown that, if necessary a search warrant could be obtained, and that would only make things harder on her. This creates the position that the alleged search consent was obtained without just cause, and therefore, invalid. See United States v. Tovar-Rico, 61 F.3d 1529, 1536 (11th Cir. 1995)(consent to search not voluntary because agents told defendant they would return with warrant if he did not consent).

These circumstances were sufficiently intimidating such that Mrs. Brown could reasonably have believed that she was not free to disregard the law enforcement and go about her business. Even Applicant was being held in the same building, awaiting the outcome of Mrs. Brown's situation. See Michigan v. Chestnut, 486 U.S. 567, 576 (1988); see also People v. In Interest of H.J., 931 F.2d 1177, 1181 (Colo. 1997); Ferris v. State, 735 A.2d 491 (Md. 1999).

Furthermore, once trial counsel filed the suppression motion, the State bore the burden of establishing the voluntariness of the consent. State v. Harris, 277 S.C. 274, 286 S.E.2d 137 (1982); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct.App. 2003). And the standard of whether a consent search was voluntary was a question of fact that should have been determined by the totality of circumstances. State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003). Since this issue of whether the consent was voluntary, by a reasonably minded person, can be

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contested by contradictory evidence, was an issue for the circuit court judge. Mattison, 352 S.C. at 584-85, 575 S.E.2d at 856. Trial counsel failed in this manner, and his performance was contrary to well-settled standards of law.

Secondly and thirdly, even had the trial court had an opportunity in which to establish or determine that Mrs. Brown's competency diminished and the argument that she was unable to make an intelligent decision, equal to that of a reasonably minded individual, the search and discovery exceeded the scope that Mrs. Brown purportedly consented to. The type of search invaded this Applicant's (and Mrs. Brown's) private interest because it had the "wide-ranging exploratory search the Framers [of the Constitution] intended to prohibit." See Maryland v. Garrison, 480 U.S. 79, 84 (1987); Adreson v. Maryland, 427 U.S. 463, 480 (1976)(particularity requirement "prevents the seizure of one thing" while describing another); Marron v. United States, 275 U.S. 192, 196 (1927); also Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971)(plurality opinion)(particularity requirement protects against "general, exploratory rummaging in a person's belongings").

If the Court would take the time to examine the transcript of the plea proceedings, it can be reasonably discerned that government agents were wanting the cooperation, i.e. consent to search, in regard to a murder investigation that was unrelated to the charges that Applicant was pleading to. (See Plea Tr.p. 58, 11. 20-22). Although, according to the testimony offered by trial counsel that the basis of the search was for the search of an alleged murderer, the allegations now in question,

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and the evidence that was seized outside the intent and suspicion of the governmental intrusion, was obtained and is the "fruit of a poisonous tree".

The reasonable suspicion required a "particular and objective basis that would lead one to suspect another of the alleged criminal activity." See State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002). "In determining whether reasonable suspicion exists, 'the totality of the circumstances -- the whole picture --' must be considered." United States v. Cortez, 449 U.S. 411, 417-18 (1981); see also State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct.App. 2001) ("The term 'reasonable suspicion' requires a particularized and objective basis that would lead one to suspect another of criminal activity. In determining whether reasonable suspicion exists, the whole picture must be considered"). Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. State v. Butler, 343 S.C. 198, 202, 539 S.E.2d 414, 416 (Ct.App. 2000).

As the records and investigative reports clearly show, Law Enforcements intent to search this residence was limited to the alleged car jacking attempt incident and whether the perpetrator had taken Mrs. Brown's keys and was using her residence to hide from the law enforcement agencies. Law Enforcement used Mrs. Browns known psychological concerns and deficiencies to have her allegedly consent to a search, using the investigation about the alleged murderer, and having knowledge that Mrs. Brown's concerns were for her key ring, that the officers had along with her automobile. The exceeding of the

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scope of the search that caused Mrs. Brown's consent, taking into consideration her mental health and condition at the time, because of lack of medications, and there existing no probable cause for the furtherance of that scope, would show that relief should be available to Applicant. Especially where trial counsel abandoned the suppression motion, without benefit of a hearing, thereby failing to protect Applicant's due process rights in these matters. See South Carolina Dep't. of Social Services on Behalf of State of Texas v. Holden, 319 S.C. 72, 459 S.E.2d 846 (1995)(Due process is adhered to if there has been a meaningful opportunity to be heard, even if a party is not given the opportunity to confront witnesses); also Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision), 332 S.C. 551, 505 S.E.2d 598 (Ct.App. 1998)(due process, at a minimum, requires notice, an opportunity to heard in a meaningful manner, and judicial review).

Applicant would take a stance that this claim of ineffective assistance of trial counsel is meritorious, because (1) trial counsel filed a Motion To Suppress Evidence, and failed to pursue the motion; and (2) the matters now sought relief upon in this action would have made the evidence seized outside the scope of the purported consent search, inadmissible, and there exists no evidence that any alleged victim remembered any alleged incident. This would have seriously undermined the prosecutions case and caused the outcome to be different. See Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994)(citing Lockhard v. Fretwell, ___ U.S. ___, ___, 113 S.Ct. 838, 844, 122 L.Ed.2d 180 (1993); also Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9

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L.Ed.2d 441 (1963); State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981). The "fishing" expedition that the officers took was contrary to the protections of the Fourth Amendment.

Therefore, Applicant would seek to have this Court to vacate and remand to the Court of General Sessions for proceedings consistent with this argument, due to trial counsels ineffectiveness to pursue a meritorious issue and claim.

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9(d). Trial counsel demonstrate a deficient performance, in violation to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Article I, §3; and I, §14, of the South Carolina Constitution; S.C. Code Ann. §17-19-20 and §17-19-90, where it is alleged that trial counsel failed to challenge key indictments [#04-GS-40-5692; 5693; 5725; 5726; 10269; 10270; and 10271], due to the insufficiency and defectiveness of each indictment where there is no alleged "victim" identified for each of the criminal offenses charged.

10(d). An indictment is a notice document. A challenge to an indictment on the grounds of insufficiency or defectiveness must be made before the jury is sworn as provided by S.C. Code Ann. §17-19-90 (2003) ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards"). If the objection is timely made, the trial court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. State v. Gentry, Opinion No. #25949 (Shearouse Adv. Sh. NO. #11, 37 at 44-45) S.C. Sup. Ct. filed March 7, 2005) (citing State v. Wilkes, 353

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S.C. 462, 578 S.E.2d 717 (2003); see also S.C. Code Ann. §17-19-20 (2003)(sufficiency of indictment). In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981). Furthermore, whether the indictment could be more definite or certain is irrelevant. State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003); also State v. Gunn, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993).

As stated in State v. Faile, 43 S.C. 52, 59-60, 20 S.E. 798, 801 (1895), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991)(citations omitted): "The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined."

An indictment must meet due process requirements, in that the criminal defendant be properly served with a valid indictment. An indictment is a notice document that is required by our State Constitution and statutes. Evans v. State Opinion No. 25963 (Shearouse Adv. Sh. No. #15, 52 at 60)(S.C.Sup.Ct. filed April 4, 2005); also State v. Smalls, Opinion No. #25988 (Shearouse Adv. Sh. No. #21, 37 at 39)(S.C.Sup.Ct. filed May 23, 2005)(same).

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Applicant would take the position that trial counsel was of a duty and obligation in which to challenge and/or move the trial court to quash the indictments (#04-GS-40-5692; 5693; 5725; 5726; 10269; 10270; and 10271), where it is apparent an essential element of the crime is not a part of the language of the body of the indictment. For example, indictments (#04-GS-40-10261; 10262; 10263; 10264; 10265; 10266; 10267; and 10268), do not reflect the same defect or insufficiency.

Indictments are notice documents that establish the crime to be charged, to effectively place the defendant upon notice of the accusations that he must be able to defend against. The insufficiencies that exist within these complained insufficient indictments is that there is no "victim" named within any body of any indictment. The complained of insufficient indictments do not specify any victim for the purposes of taking this case to trial, and Applicant having the opportunity to be placed upon notice as to the actual person, i.e. victim, these allegations arise from.

Applicant would assert that there must be a victim for there to be a crime. Especially with a serious criminal offense such as these. And, Respondents must clearly demonstrate the failure to name the victim(s) within these indictments. In the other indictments, it charges the various sexual acts were committed against a "victim". i.e. Minor. And, another point of consideration must come to mind that, if, the purported victim were "unknown", then why not name them as "Jane or John Doe", until the victim could be identified? The indictments do not even specify the sexuality of the purported

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victim. Applicant cannot create a defense, nor defend against an allegation where there is no known victim, nor a sexual allegation where there is no "gender specified". This is a serious defect or insufficiency that places the validity of the indictment in question, and further asks how the prosecution could even procure such an instrument? Even if it was purposely excluded, the minimum due process would require is that the victim be listed as a "gender specific".

The allegations seriously places into question the performance of trial counsel during the proceedings within the Court of General Sessions. It is Applicant's position that, had trial counsel filed a motion to quash the complained of indictments, the trial court would have struck the indictments as presented. Furthermore, trial counsel has seemed to interject his personal feelings into this case and its issues, by permitting the prosecution to pile up charges, and to have him enter guilty pleas against defective and insufficient indictments.

Therefore, Applicant would respectfully make demand that an evidentiary hearing be had upon all issues and claims exclusively contained herein, and/or this case be vacated and remanded for proceedings consistent with this petition.

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

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

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

If you answered "yes" to (13), identify:

which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) 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) Initial PCR Application

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

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

i. S. Jahue Moore, Esquire

ii. _____

iii. _____

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

i. guilty plea

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of sentence and a new trial

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

STATE OF SOUTH CAROLINA

County of RICHLAND

VERIFICATION

I, Mark Ellis Brown #313740, 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.

Mark Ellis Brown

Mark Ellis Brown
#313740 Sumter North #2240
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

SWORN to and subscribed before me this 1st

day of Feb

2007

Debra Suris (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Mark Ellis Brown #313740, 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 therefor.

Mark Ellis Brown

Mark Ellis Brown ^{Applicant}
#313740 Sumter North #2240
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

SWORN or affirmed to and subscribed before me this

1

day of Feb

2007

Debra Suris
Notary Public

My Commission Expires 11-4-2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2007-CP-40-1156
	)	
Mark Ellison Brown, 313740,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 21, 2007¹, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the October 2004 term of the Richland County Grand Jury for criminal sexual conduct with a minor – first degree (04-GS-40-5692), criminal sexual conduct with a minor – second degree (04-GS-40-5726), and two counts of sexual exploitation of a minor – first degree (04-GS-40-5693; 5725). Applicant was indicted at the November 2004 term of the Richland County Grand Jury for six counts of criminal sexual conduct with a minor – first degree (04-GS-40-10262, 10264, 10265, 10266, 10267, 10268) and three counts of sexual exploitation of a minor – first degree (04-GS-40-10269; 10270; 10271). Applicant was represented by S. Jahue “Jake” Moore, Esquire. On February 6, 2006, Applicant pleaded guilty as indicted. Applicant

¹ The Application shows an original filing date of February 6, 2007, making this application timely. However, through some error the Application was returned to Applicant without a C/A number. Upon return to the clerk, the application was assigned a C/A number and re-clocked in.

was sentenced by the Honorable James R. Barber, III, to confinement for a period of thirteen (13) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records, from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel failed to challenge arrest warrants;
2. Ineffective assistance of counsel in that counsel failed to "develop a defense and record relating to the Applicant's wife (Jackie Burke Brown) psychological history and complications, especially when Mrs. Brown's competence, at the time of the events that led to this arrest, were questionable..."
3. Ineffective assistance of counsel in that counsel failed "to pursue suppression because of: (1) Applicant's wife being allegedly incompetent to authorize and consent to search; (2) search purportedly consented to, evidence was beyond the scope of the allegedly consented search; and (3) Law Enforcement had no probable cause to exceed the allegedly consented search and the evidence seized;" and
4. Ineffective assistance of counsel in that counsel "failed to challenge key indictments [04-GS-40-5692; 5693; 5725; 5726; 10269; 10270; and 10271], due to the insufficiency and defectiveness of each indictment where there is no alleged "victim" identified for each of the criminal offenses charged."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

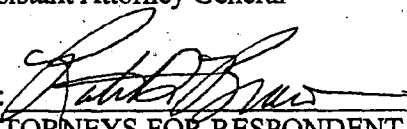
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT L. BROWN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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May 8, 2007

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2007-CP-40-1156

Mark E. Brown, 313740

Applicant,

vs

State of South Carolina,

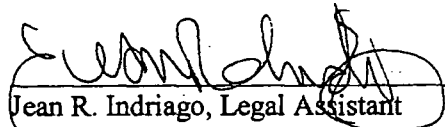
Respondent.

)
)
)
) 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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Charlie J. Johnson, Jr., Esquire
Post Office Box 11212
Columbia, South Carolina 29211-1212

DATED this 5th day of June, 2007.


Jean R. Indriago, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND

COURT OF COMMON PLEAS

3
4
5 MARK BROWN)

6 APPLICANT,)

7 . V.)

8 STATE)
9 _____)

TRANSCRIPT OF RECORD
07-CP-40-1156

10
11 JUNE 26, 2008
12 COLUMBIA, SOUTH CAROLINA

13 B E F O R E:

14 THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

15
16 A P P E A R A N C E S:

17 BRYAN JEFFRIES, ESQUIRE
18 ATTORNEY FOR THE APPLICANT

19 BRIAN T. PETRANO, ASSIST. ATTORNEY GENERAL
20 ATTORNEY FOR THE STATE

21
22
23
24 STACY L. SHEPPARD
25 CIRCUIT COURT REPORTER

1		I N D E X			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Mark Brown				
4	By Mr. Jeffries	5		17, 27	
4	By Mr. Petrano		12		18, 28
5	S. Jahue Moore				
6	By Mr. Petrano	30			
6	By Mr. Jeffries		43		
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1

EXHIBITS

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NO.DESCRIPTIONID.EVD.

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5

(There were no exhibits.)

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1 (The following proceedings were held on June
2 26, 2008.)

3 **THE COURT:** What's the next case?

4 **MR. PETRANO:** This is 2007-CP-40-1156, Mr. Mark
5 Brown, which is a PCR application filed February
6 21st, 2007. The applicant was indicted by the
7 October 2004 term of the Richland County Grand Jury
8 for CSC with a minor first degree, that's
9 04-GS-40-5692; CSC with a minor second degree,
10 that's 04-GS-40-5726; two counts of sexual
11 exploitation of a minor first degree, 04-GS-40-5693
12 and 5725.

13 The November 2004 term of the Grand Jury
14 indicted him for six additional counts of CSC with a
15 minor first degree, that's 04-GS-40-10262, 10264,
16 10265, 10266, 10267, 10268; and three counts of
17 sexual exploitation of a minor first degree,
18 04-GS-40-10269, 10270, 10271.

19 On February 6th, 2006, the applicant pled
20 guilty as indicted, was sentenced by the Honorable
21 James R. Barber, III to confinement for a period of
22 13 years. There was no appeal.

23 And on that, I'll turn it over to Mr. Bryan S.
24 Jeffries, applicant's current counsel of record.

25 **MR. JEFFRIES:** Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Yes, sir.

3 MR. JEFFRIES: The applicant would call Mark
4 Brown.

5 MARK BROWN,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JEFFRIES:

9 Q Mr. Brown, do you readily recall the charges
10 and the sentences that Mr. Petrano just told the
11 Court about?

12 A Yes, sir.

13 Q And do you recall -- what's the total length of
14 your sentence that you're serving right now?

15 A When I got to South Carolina Receiving and
16 Evaluation, they told me it was a total of 42 years.
17 I max out in 2038.

18 Q And even given the fact that you're serving a
19 42 year sentence, are you aware and have I advised
20 you that potentially, if your PCR is granted here
21 today, that you could potentially, after going back
22 through the conviction process if you were again
23 found guilty of these offenses, face more time than
24 what you're serving currently?

25 A Yes, sir.

MARK BROWN - DIRECT BY MR. JEFFRIES

6

1 Q And do you still wish to go forward?

2 A Yes, sir.

3 Q And who was representing you at the time of
4 your guilty plea on these charges?

5 A Mr. Joshua (sic) Moore.

6 Q And am I correct that your guilty plea was what
7 we call a straight-up plea. There was no
8 recommendation, no negotiation?

9 A Yes, sir.

10 Q Did your attorney speak to you about what
11 amount of time you were exposed to?

12 A Yes, sir.

13 Q And what was your understanding?

14 A It was my understanding that if I went before
15 the judge, basically threw myself on the mercy of
16 the court and pled guilty, that he really didn't
17 have any idea how much time I'd get.

18 Q And did you -- you did plead guilty; is that
19 correct?

20 A Yes, sir.

21 Q Now, did you feel at the time you were facing
22 these charges, that you had any defenses to the
23 charges?

24 A Yes, sir, there are a few that I felt could
25 have been argued.

1 Q And, specifically, were there any evidentiary
2 issues, search issues that you recall being
3 legitimate?

4 A I believe so, yes, sir, searching of the
5 property.

6 Q Describe what it was about the search you feel
7 that may have been -- that you might have had the
8 opportunity to argue at trial?

9 A Two issues about the search is that basically
10 when SLED had asked my wife to go to their
11 headquarters to take a lie detector test, she
12 volunteered to go. When she got there, she was
13 detained. And through correspondence with her,
14 while at Lexington County and at the department of
15 corrections, she told me that she felt like she was
16 being detained by SLED. And they basically
17 separated us. I was there.

18 I know there's an issue of -- there's really no
19 issue about the house being solely in my name and
20 all that, us being husband and wife, but they never
21 once approached me about searching the house. They
22 separated us and basically coerced her into, you
23 know, agreeing to search pertaining to an attempted
24 carjacking, nothing to do with the charges that we
25 were charged with.

MARK BROWN - DIRECT BY MR. JEFFRIES

8

1 Q Let me stop you there and kind of follow up on
2 that. You were ultimately developed as a suspect in
3 all of these offenses. Are you aware of any ongoing
4 investigation that was -- that you were the target
5 of or anything like that that led up to your arrest?

6 A No.

7 Q Are you aware of -- there was a -- the alleged
8 victim in this case whether or not she had, or
9 victims, had ever made complaint to the sheriff's
10 office to have initiated this investigation?

11 A None, no complaints, nothing was initiated.

12 Q Is it fair to say that you were developed as a
13 suspect and ultimately charged based on evidence
14 that law enforcement came upon at your residence
15 totally unrelated to the charges?

16 A Correct.

17 Q But, ultimately, you did plead guilty. Let me
18 ask you, did you have any idea that you would
19 receive a 42 year sentence?

20 A No, sir. Honestly, I was told the maximum was
21 a 30 and that's what I was kind of maybe expecting.

22 Q I asked you if you expected. Let me ask you,
23 did you in any way have any idea that you might
24 receive a 42 year sentence?

25 A No.

1 Q And let me ask you, did your attorney talk to
2 you about the possibility of getting 42 years?

3 A He said there's a possibility that they could
4 all, if I say this right, run like consecutive. Is
5 that the correct word?

6 Q That's correct. And if it did -- if you were
7 told it could run consecutive, what type of sentence
8 did you believe would then be possible?

9 A That basically -- I don't know, it's...

10 Q What were you thinking going into that guilty
11 plea that you could -- the time that you were
12 ultimately exposed to, worse case scenario sentences
13 running --

14 A The rest of my life in prison, yeah.

15 Q Okay. And let me ask you at any point during
16 your conversations with your attorney, Mr. Moore,
17 did you ever talk to him about an appeal?

18 A I had actually written him a letter about that.

19 Q At what point did you write that letter?

20 A That was after the plea and I'd written a
21 letter asking -- well, actually, I'd talked to him
22 before we went up to the plea agreement, we met at
23 the -- I was downstairs here in one of the cells, he
24 came to see me, him and his associate, Mr. Myers,
25 Stanley Myers, who basically Mr. Myers is the one

MARK BROWN - DIRECT BY MR. JEFFRIES

10

1 that I had contact with through the majority of all
2 this, most correspondence came back from him signed
3 by Mr. Myers. All phone calls were the major -- the
4 ones that did get through were accepted by
5 Mr. Myers. The few visits I got were from Mr. Myers
6 not really Mr. Moore in particular. But on that
7 particular day when we came to court, Mr. Moore and
8 Mr. Myers came and met me downstairs, basically said
9 it was in my best interest to plea, that there was
10 no need to pursue the motion to suppress evidence.

11 Q You indicated that you at some point had wrote
12 a letter to Mr. Moore about an appeal. When is
13 that?

14 A That was -- I was shipped the very next day to
15 R and E when I got -- after the plea. So I did that
16 from Kirkland R and E as soon as I got there and was
17 able to get my hands on the things I needed to
18 write, but that day downstairs I did ask, you know,
19 if I plead guilty, can, you know, what would be our
20 next step. And I was basically informed we'll take
21 it one, you know, one thing at a time.

22 Q And after you entered that guilty plea, did you
23 have the opportunity to talk to your attorney about
24 an appeal?

25 A To talk, no. I was escorted out. And like I

1 said, I wrote a letter when I was at R and E.

2 Q And are you now or were you then aware that
3 there is a time limit for which you can file a
4 notice of an appeal?

5 A I am now.

6 Q Were you ever advised of that by your attorney?

7 A No.

8 Q Did you have any idea that there was a time
9 limit at the time you were convicted as to when you
10 could perfect a notice of appeal?

11 A I did not know there was a time limit.

12 Q And did you have the opportunity to appeal this
13 case?

14 A Did I have opportunity, no.

15 Q And along those same lines, did you understand
16 then or do you understand now that you had the
17 opportunity to make a motion to the court for the
18 judge to reconsider the sentence you received?

19 A I do now.

20 Q When were you made aware of that?

21 A After being advised and some research after I
22 got to Lee County Correctional.

23 Q You say being advised, was that by your
24 attorney?

25 A No.

MARK BROWN - CROSS BY MR. PETRANO

12

1 Q Did you ever speak with your attorney -- did
2 your attorney ever speak with you about a motion to
3 reconsider the sentence?

4 A No.

5 Q And are you now aware that that motion would
6 have been -- had to have been made very shortly
7 after your conviction?

8 A Yes, sir, now.

9 Q And did you have the opportunity to file a
10 motion to reconsider?

11 A No, sir.

12 MR. JEFFRIES: I don't have any other questions
13 of Mr. Brown.

14 THE COURT: All right. Cross?

15 MR. PETRANO: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PETRANO:

18 Q Mr. Brown, I'm going to go a little out of
19 order, I'm sorry. Oh, first of all, I think I said
20 that you had a sentence of 13 years when I was doing
21 the intro. I do apologize for that. Obviously,
22 that was a misstatement. I'm sorry, sir.

23 You had said you decided to plea and not
24 pursue, and I may be -- I'm just trying to get this
25 right, not pursue the suppression issue. Is that

1 what you said on direct?

2 A No, I did not pursue. Mr. Moore said that
3 pretty much we were not -- that he was not pursuing
4 the suppression.

5 Q And had that already begun? Was that something
6 y'all had discussed and had gone over trying to
7 suppress the evidence?

8 A I know that I had received paperwork that he
9 had filed motions to suppress evidence, yes.

10 Q And do you recall any -- him advising you
11 whether that would probably be successful or not?

12 A He did not say one way or the other.

13 Q Okay. But ultimately suggested that it might
14 be the best course to go ahead and I think you
15 characterized it as throwing yourself on the mercy
16 of the court and plead guilty?

17 A That day we went to court, yes.

18 Q Okay. And then you said you wrote a letter at
19 Kirkland at, I think you call it, what is it,
20 receiving and processing?

21 A R and E, receiving and evaluation.

22 Q And regarding an appeal. Can you characterize
23 the contents of the letter?

24 A I have a copy and I believe Mr. Jeffries might
25 have a copy, I sent him a copy of it, just basically

1. asking him what is our next step now. And I believe
2 in one letter, it actually asks why was I not
3 informed of an appeal, that we could appeal.

4 Q And what type of reply did you get?

5 A I got no reply regarding an appeal. I wrote a
6 letter asking how much time we had -- or, excuse me,
7 I had. And the letter came back frankly saying that
8 they were confused about how much time I had.

9 Q And have you gotten a copy of the transcript of
10 the guilty plea since? Have you gone over that?

11 A I believe Mr. Jeffries has that copy.

12 Q Have you looked at it?

13 A Yes, sir.

14 Q Did you notice any inaccuracies as far as the
15 transcription itself goes?

16 A Inaccuracies as in?

17 Q As in, you know, you're like, no, that's not
18 what happened.

19 A I notice at some parts of the transcript when
20 someone's talking, it just has dot, dot, dot, dot
21 and there's no more of that particular conversation.

22 Q Okay. Well, what is in here as far as you
23 remember is correct? I'm not trying to --

24 A I don't remember everything that was said.

25 Q I'm not trying to trick you.

1 **A** No. I've read it and I honestly do not
2 remember some of those things being said. I don't
3 know if it was a, you know, whatever reason.

4 **Q** And this is a bifurcated plea. This was you
5 and, I'll say, co-defendant?

6 **A** Right.

7 **Q** Okay. And --

8 **MR. PETRANO:** May I approach, Your Honor?

9 **THE COURT:** Yes.

10 **BY MR. PETRANO:**

11 **Q** And I'm just going to give you one page, I've
12 got page 14. Could you start reading from line 11
13 through 14?

14 **A** The court: Have you explained to your client
15 he has the right to require the State to handle that
16 matter in Lexington County?

17 **Mr. Moore:** Yes, sir.

18 **The court:** All right. Now, do you understand
19 when I sentence you here today, you will have ten
20 days to appeal these sentences?

21 **Mr. Brown:** Yes, sir.

22 **The Court:** All right.

23 **Q** Thank you. And then you'd said that you also
24 had gone over the issue of an appeal prior to
25 appearing before the plea judge?

MARK BROWN - CROSS BY MR. PETRANO

16

1 A Pardon me?

2 Q You had said on direct that you had also gone
3 over the issue of an appeal prior to going up for
4 the --

5 A Going over would have been me asking, you know,
6 what would be the next step after this and it will
7 be we'll take it one thing at a time.

8 Q Okay. And I didn't do the math, but as far as,
9 I think you characterized the possible sentence, if
10 you're successful here, will go back on all the
11 charges, would basically be hundreds of years, I
12 think you characterized it as the rest of your life?

13 A Just life in prison.

14 Q And you're aware of that risk if you're
15 successful here?

16 A I'm pretty much doing a life sentence now.

17 Q Thank you. I appreciate your candor. You had
18 said that you didn't provide any permission to
19 search the residence. There's something in the
20 transcript regarding one of the investigators said
21 that you came up and said, hey, if you're going to
22 be searching the place, there may be some marijuana.
23 Do you recall that?

24 A That was my wife.

25 Q Okay. So the marijuana -- there may be

1 marijuana comment came from your wife not you?

2 A Right.

3 Q And do you recall in the guilty plea when you
4 had basically admitted what you'd done and
5 apologized?

6 A (Witness nodded head.)

7 MR. PETRANO: I've got nothing further, Your
8 Honor. Thank you.

9 THE COURT: Redirect?

10 MR. JEFFRIES: Just a couple questions, Your
11 Honor.

12 REDIRECT EXAMINATION

13 BY MR. JEFFRIES:

14 Q Mr. Petrano asked you about what, if anything,
15 you knew about the appeals process. Let me just ask
16 you, had you known that you -- at the time of your
17 guilty plea, had you known that you would not be
18 able to communicate with your attorney any further,
19 would you have entered -- after your guilty plea,
20 would you have entered your guilty plea?

21 A If I'd known I would not be able to get in
22 contact with him, no, I do not.

23 Q And is it not a fact that after your guilty
24 plea, after you were sentenced, you had no more
25 contact with your attorney?

MARK BROWN - RECROSS BY MR. PETRANO

18

1 A With Mr. Moore, no. I had one letter from
2 Mr. Myers.

3 Q Okay. And you indicated that you were told by
4 either Mr. Myers or Mr. Moore that as it related to
5 your appeal, that was something y'all would talk
6 about afterward. In other words, let's take care of
7 one step first, that was --

8 A That was before the plea.

9 Q What did that lead you to believe about the
10 appeal?

11 A That led me to believe that there was more
12 process. This was my first time in trouble, I'd
13 known nothing about the system. It led me to
14 believe that there was -- after the guilty plea, we
15 would meet and discuss what the next steps were.

16 MR. JEFFRIES: That's all I have.

17 THE COURT: Recross?

18 MR. PETRANO: Briefly, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. PETRANO:

21 Q You said that was your first time in trouble?

22 A Uh-huh.

23 Q You didn't have two DUIs?

24 A Well, felony, excuse me.

25 Q Okay. Did you appear before a court for those

1 DUIs?

2 A Pardon me?

3 Q Did you appear before a judge for those DUIs?

4 A No.

5 Q Did you have an attorney for those?

6 A One I did.

7 Q And you were convicted?

8 A Yes.

9 Q Did you appeal?

10 A No.

11 Q Were you aware that you could appeal the DUIs?

12 A No.

13 MR. PETRANO: Thank you. Nothing further.

14 THE COURT: Anything further of this witness?

15 MR. JEFFRIES: No, Your Honor.

16 THE COURT: All right. Mr. Brown, your
17 application for post-conviction relief is much
18 longer than a normal one. It's 28 pages long.

19 MR. BROWN: Yes, sir.

20 THE COURT: There's a whole lot of material in
21 here. Have you covered everything that you want to
22 present?

23 MR. BROWN: At this hearing, no, sir, I have
24 not. I have not gone over it yet.

25 THE COURT: I can't hear you.

1 MR. BROWN: No, sir, not yet, we have not.

2 THE COURT: Well, go ahead and tell me what you
3 want to tell me.

4 MR. BROWN: Well, I believe that the motion to
5 suppress evidence, that I should have had a right
6 for the judge to make a decision whether that
7 evidence should have gone forward or not. I never
8 had that right. I mean, that would have, you know,
9 I should have been able to have the judge do that
10 before I entered my plea. I would have still --
11 could have entered a guilty plea after the judge
12 said, okay, we're going to let the evidence go
13 through, or, you know, I could have made another
14 decision whether he would have said, well; I'm not
15 going to let the evidence go.

16 The scope of the search, I believe, was
17 violated. The original consent that my wife gave
18 was related to an attempted carjacking that had
19 happened. After SLED had asked her to go to their
20 headquarters and take a lie detector test about it,
21 they said they did not believe her once they found
22 out that she was under 20 years of mental health
23 supervision and was on certain medication for her
24 mental health. She agreed to go take the lie
25 detector test and gave them permission to search

1 because they led her to believe that the carjacker
2 could have her keys and her information and may
3 possibly be at our residence when all along they had
4 possession of her car keys, her purse, her car and
5 everything. She gave them consent. And they went
6 in there and violated the scope of the consent to
7 search by going into things that did not pertain to
8 the carjacking.

9 I also believe that my wife was coerced into
10 giving consent. They knew her mental instability,
11 did not believe her about the carjacking, separated
12 us and coerced her into giving consent without even
13 approaching me when I was on the premises the whole
14 time, but they just kept us separated.

15 I feel that my wife's mental health background
16 could have been an issue with the consent to search,
17 that she was not mentally capable of understanding
18 what they were asking of her. And I also believe
19 that both counsel, Mr. Moore and Ms. -- I'm drawing
20 a blank on my wife's counsel's name.

21 **MR. JEFFRIES:** Herbert.

22 **MR. BROWN:** Both mentioned in the transcript
23 about her mental background that that should have
24 been something to pursue.

25 There are some issues about one of the warrants

1 -- or, excuse me, one of the indictments does not
2 give an age or a sex or anything of the victim, it's
3 just a general indictment. The initial arrest
4 warrant the night of our arrest does not even look
5 like it was signed by a judge. The area where a
6 judge is supposed to put his number and signature
7 there is, it looks like, a cross mark, an X, almost
8 to indicate that the -- it was not needed, like a
9 signature was not needed.

10 And forgive me, Your Honor, I'm trying to
11 rattle this stuff off the top of my head. I have a
12 few things in that folder over there that --

13 **THE COURT:** You can have your folder if you
14 want.

15 **MR. JEFFRIES:** May I approach the witness, Your
16 Honor?

17 **THE COURT:** Sure.

18 **MR. BROWN:** This is just general summaries of
19 everything that is in the PCR application. The
20 first one was the warrant was not properly or
21 legally issued. It was not signed by a judge or
22 magistrate, it is a mark, and looks like the portion
23 of the warrant was crossed out as to signify it was
24 not needed of the original arrest warrant.

25 **THE COURT:** Which warrant?

1 MR. BROWN: Sir?

2 THE COURT: Which warrant?

3 MR. BROWN: The original arrest warrant.

4 THE COURT: Well, there's a bunch of them.

5 MR. PETRANO: I think it's 81503.

6 THE COURT: You think it's what?

7 MR. PETRANO: Pardon me, Your Honor. I'm
8 trying to find it right now. It starts with an
9 eight. The number is in the PCR application as
10 well.

11 MR. BROWN: Would have challenged the validity
12 of arrest warrants H-819053, also arrest warrant
13 H-819068.

14 MR. PETRANO: It should be in your packet, Your
15 Honor. It's a Lexington warrant, judge code 886 and
16 then some, I'll agree, some type of mark.

17 THE COURT: Okay. I see what you're saying.
18 That's the way Judge Whittle signs his name. I work
19 in Lexington County a lot so I see his signature a
20 lot, that's the way he signs his name. It does look
21 like an X.

22 MR. BROWN: It just didn't look like a valid
23 signature.

24 THE COURT: I understand. I fully agree. I
25 fully understand why you had a question. Go ahead.

1 MR. BROWN: As stated previously just a few
2 minutes ago that the lawyers knew of Jackie's mental
3 health history and the transcripts, there are
4 several pages that relate to this, she has, if I can
5 phrase it right, bipolar -- manic depressant and
6 she's bipolar, schizophrenic. I do not think she
7 had the capability to give consent to understand the
8 consequences of the search or what she was doing
9 when she gave consent. She felt she was coerced.
10 Basically, she felt like she was being detained and
11 arrested by SLED.

12 When she gave the consent, they basically made
13 her feel like if she didn't give consent, a warrant
14 could be given and it would make things much worse
15 on her. It was best for them just to go ahead and
16 let her (sic) search the residence for this
17 attempted carjacker and make sure everything was all
18 right.

19 And then as far as the search goes, I feel that
20 counsel did not pursue or follow up on the motion to
21 suppress evidence that was filed. Again, my wife is
22 not stable to give the consent. Law enforcement
23 knew this and coerced her. Law enforcement went
24 beyond the scope of the alleged consent, which is
25 stated on pages 18 and 19 of my PCR application.

1 Like I said, the alleged consent had to do with
2 the attempted carjacking. They said they wanted to
3 make sure the carjacker did not go into the house or
4 hide because he got Jackie's information, keys and
5 address and purse when they had it all along. I
6 feel law enforcement had no probable cause to exceed
7 the alleged consent to search.

8 And like I said, the judge did not get a chance
9 to determine the evidence was seized illegally.
10 According to how it's stated in some of the books,
11 fruit of the poisonous tree, that the officers went
12 on basically a fishing expedition. And it was
13 contrary to protection of some of my rights and
14 amendments, particularly the Fourth Amendment. And
15 that's all that I have, Your Honor.

16 **THE COURT:** Did the search relate to all of
17 these different charges or just some of them?

18 **MR. BROWN:** Pardon me, Your Honor?

19 **THE COURT:** Did the search, the things you're
20 challenging related to the search, did those things
21 that the law enforcement officers obtained are
22 which, as you said, would be fruit of the poisonous
23 tree, in other words, it would taint anything they
24 found thereafter, did those things relate to all of
25 these charges or just some of these charges?

1 **MR. BROWN:** The evidence that they used against
2 us was obtained through a search that my wife had
3 given consent to related to an attempted carjacking,
4 not to do with any of these charges. There was no
5 allegation --

6 **THE COURT:** No. I'm not -- what they got at
7 your house --

8 **MR. BROWN:** Yes, sir.

9 **THE COURT:** -- that you say if your lawyer had
10 pursued it properly, you may have had an opportunity
11 to get thrown out, did that evidence go to all of
12 these charges or just some of these charges? You've
13 got charges from Lexington and you've got charges
14 from Richland.

15 **MR. BROWN:** They extended to -- the evidence
16 led them to those charges.

17 **THE COURT:** So it related to all of the
18 charges?

19 **MR. BROWN:** If I'm understanding you, yes, sir,
20 I believe the answer is yes.

21 **THE COURT:** All right. Thank you.

22 Do you all have anything in light of the
23 Court's questions or anything that Mr. Brown brought
24 up?

25 **MR. JEFFRIES:** Just a couple things, Your

1 Honor.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. JEFFRIES:

5 Q Given what you just told the Court in reference
6 to Mr. Moore's representation, more specifically in
7 reference to what you felt could have been done to
8 assist you, did you have an opportunity to put these
9 things to your attorney? Did y'all discuss these
10 various issues?

11 A Before the guilty plea?

12 Q Right.

13 A We didn't discuss it. I had it in writing to
14 him, yes.

15 Q Okay. And do you feel like he adequately took
16 those things in consideration in representing you?

17 A At this point, no, I do not. I do not think
18 so.

19 Q And in your opinion, had he taken those things
20 into consideration and more aggressively
21 investigated those issues, would you have entered a
22 guilty plea or would you have gone to trial?

23 A I would have at least had a right to hear the
24 judge say he was or was not going to allow the
25 evidence. I would have not gone directly in there

1 and gave a guilty plea knowing that I had a right to
2 have a judge determine that.

3 MR. JEFFRIES: That's all I have, Your Honor.

4 THE COURT: Anything else of the witness?

5 MR. PETRANO: Yes, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. PETRANO:

8 Q You had mentioned during the judge's
9 questioning the alleged carjacker. Was there a
10 carjacker?

11 A Yes.

12 Q There was?

13 A Uh-huh.

14 Q It wasn't just a figment of the co-defendant's
15 imagination?

16 A They never proved that it wasn't.

17 MR. PETRANO: Okay. Thank you. Nothing
18 further, Your Honor.

19 THE COURT: Mr. Brown, you've covered
20 everything you need to cover with me?

21 MR. BROWN: I hope so, Your Honor.

22 THE COURT: Do you need a chance to think about
23 it?

24 MR. BROWN: I hate to ask, but if I could just
25 look through this real quick.

1 **THE COURT:** That's fine.

2 **MR. BROWN:** I know this is my one shot.

3 **THE COURT:** That's exactly right. I'll tell
4 you what, we'll just be at ease. You can't discuss
5 anything with anybody, but if you want to just
6 review your materials up there, that's fine. We'll
7 just be at ease and let me know when you're ready,
8 okay.

9 **MR. BROWN:** Thank you, Your Honor.

10 (Brief Recess.)

11 **THE COURT:** All right. Mr. Brown, anything
12 else.

13 **MR. BROWN:** No, sir. I believe I touched
14 basically on everything that is in my PCR
15 application.

16 **THE COURT:** Okay. Thank you.

17 Counsel, anything else before the witness
18 leaves the stand?

19 **MR. JEFFRIES:** None from the applicant, Your
20 Honor.

21 **MR. PETRANO:** Nothing from the State, Your
22 Honor.

23 **THE COURT:** You can step down. Thank you, sir.
24 Any further witnesses for the applicant?

25 **MR. JEFFRIES:** No, Your Honor.

S. JAHUE MOORE - DIRECT BY MR. PETRANO

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1 THE COURT: Does the State have any witnesses?

2 MR. PETRANO: We do have Mr. Moore. I think he
3 stepped out to use the telephone.

4 (Pause.)

5 S. JAHUE MOORE,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PETRANO:

9 Q Thank you for coming, Mr. Moore. Do you recall
10 your representation of the applicant?

11 A Yes, sir, I do.

12 Q And about how long have you been practicing
13 law?

14 A Thirty-two years.

15 Q Would you say that's been criminal or civil or
16 both?

17 A Both.

18 Q Were you retained or appointed?

19 A Retained.

20 Q Had you represented the applicant before?

21 A I had.

22 Q And in criminal matters?

23 A Civil.

24 Q Okay. Did you meet with him and go over the
25 charges?

1 A Very definitely.

2 Q About how many times do you think?

3 A Several.

4 Q Did you do motion for discovery, Brady, Rule
5 Five?

6 A I did.

7 Q Did you go over the results of those with the
8 applicant?

9 A I'm sure Mr. Myers, I think, did and I did as
10 well, yes, sir.

11 Q And Mr. Myers is an associate?

12 A He's an associate who helps me on many of my
13 criminal cases.

14 Q But you're ultimately the attorney of record?

15 A We both were.

16 Q Okay. I'm going to jump right to the evidence
17 itself. The applicant had mentioned that one of his
18 allegations is that it should have been suppressed
19 or that suppression should have been more properly
20 explored. Could you go into that at all?

21 A Certainly. I think it's important to
22 understand what happened. There was a serious
23 criminal running around Columbia doing carjackings
24 and other violent acts. And Mr. Brown's wife
25 contended, and I believe, that she was assaulted in

S. JAHUE MOORE - DIRECT BY MR. PETRANO

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1 a parking lot of a convenient store where someone
2 was attempting to carjack her car. It sounded like
3 the manner of operation of the person with whom SLED
4 was worried.

5 The law enforcement is called to the scene and
6 they began talking to Ms. Brown and they had
7 questions as to whether or not she was telling the
8 truth. They secured her permission to search the
9 home. She was a person in possession of the home
10 along with her husband. She was residing in the
11 home. She had control over the home. And based
12 upon the research that we did, it appeared
13 relatively clear that she had the authority to grant
14 permission to law enforcement to search the home.
15 She did not place any restrictions on the grant of
16 permission to search the home.

17 Law enforcement went into the home and found
18 what turned out to be some right serious and very
19 incriminating evidence against Mr. Brown and against
20 Mrs. Brown. There's no need, I don't think, to go
21 into the nature of that evidence. It was not
22 pretty.

23 Q Thank you.

24 A There basically was no way to win the case if
25 that evidence came into the record. We knew that

1 and we discussed that with Mark. And as the
2 materials that had been seized from the home
3 pursuant to the consent to search became more
4 demonstrative, as they secured more information off
5 of the materials in the home, the case got worse and
6 worse. So we did a significant amount of research
7 as to can we suppress this evidence. The research
8 didn't come back promising, but it's the only shot
9 we had. It was the only shot we had other than to
10 try and plead for some kind of mercy.

11 We had cases pending in Lexington County. We
12 had cases pending in Richland County. And we tried
13 to negotiate something with the Solicitor's office.

14 And Solicitor Campbell had the case. She is a
15 hard-nosed prosecutor. And as they would say, I
16 could not get air in a jug. My response is when I
17 can't get anything, I will normally say, okay, try
18 the case, so that's what she set out to do. Since I
19 could get no concessions, absolutely zero
20 concessions from her, the response was try the case.
21 I said, okay, we'll try the case.

22 Explained to the client that we could try the
23 case and the only hope we would have of winning
24 would be the motion to suppress and that if we lost,
25 as we would, we could appeal that decision.

1 We came over with the case having been called
2 for trial and we went back into chambers and my
3 response was if I can't get some concessions, I'm
4 going to trial.

5 We had a pretrial discussion with Judge Reggie
6 Lloyd. Now, I don't know if you ever appeared
7 before Judge Lloyd, he's no longer a judge, but he
8 was not sympathetic to criminal cases. He was harsh
9 on sentencing and would bend over backwards to make
10 positive the State was taken care of.

11 We -- in the pretrial conference, we discussed
12 the suppression motion. At which time, it was
13 readily apparent to me that the results of my
14 research were fairly well correct and that we had
15 about zero chance of winning that suppression
16 hearing before Judge Lloyd.

17 My problem is that when I look at the facts of
18 the search and the consent which was given, I also
19 came to the conclusion that we would have had a
20 marginal at best, probably no chance of winning the
21 suppression hearing on an appeal. The lady did have
22 emotional problems, but she wasn't out of her mind
23 and she did give consent to search with no
24 limitations at all.

25 So I'm going to hang the case up one side and

1 down the other on some hopes of having that search
2 suppressed and especially when you look at the
3 horrible nature of the evidence that was actually
4 found, the chance of winning that either before
5 Judge Lloyd -- I knew the chances of winning it
6 before Judge Lloyd, slim to none, would be a
7 gracious exaggeration, the chances of winning that
8 on appeal would have been remote at best. And we
9 had the discussions with Judge Lloyd. And the
10 response basically understood in chamber is if you
11 do a plea, we'll take something off. If you try it,
12 you know, lots of luck.

13 We had that discussion with the client that we
14 felt he would receive some concession, although
15 could not guarantee that, if we pled without having
16 the motion for exclusion heard. Told him what we
17 thought our chances of winning the motion for
18 exclusion were and left the decision in that regard
19 to the client.

20 He asked me what he (sic) thought I should do
21 and I told him that we had two choices: A, if I
22 were going to do anything, that I would waive a jury
23 trial, there was no need for that. If this evidence
24 got before a jury, it's just making things worse in
25 regard to sentencing because the evidence we had was

1 horrific, some of the worst I have ever seen. I
2 mean, when I say it was bad, it was bad. And told
3 him that if we did the nonjury trial, I felt the
4 sentence would be harsher than as if we did the plea
5 and I left that decision up to him. He asked me
6 what I thought. I told him if it were me,
7 considering the unrealistic possibility of winning
8 the exclusionary motion, that I would probably do
9 the plea, but the decision was his not mine.

10 I hated this for him because I really like the
11 man and I like his family. And I'm sorry he has had
12 the problem that he has had. He made the decision
13 to enter the plea. I advised the court that we were
14 going to do the plea, not insist upon the
15 exclusionary motion and we went in and did the plea.
16 That's basically what happened.

17 Q Without going into the specifics of the
18 evidence itself, I just want to characterize this
19 cat -- what category this was, a video tape and
20 still photos?

21 A Yes.

22 Q An audio and visual -- okay, I didn't mean to
23 go any further.

24 A I mean, that's -- yeah. I mean, there was a
25 video tape of Mark in the act of sex with a very

1 young child who appeared to be drugged.

2 Q As far as the suppression tactically, and I'm
3 not trying to lead you, I just want to steer in the
4 right direction, basically what you indicated is you
5 would have to be -- the suppression would be based
6 on the co-defendant's individual rights, personal
7 rights?

8 A Right.

9 Q This applicant, you would have to demonstrate
10 some type of standing for him to assert someone
11 else's personal rights vicariously?

12 A No. He had standing. There's no doubt in my
13 mind but that he had standing to make the motion.
14 You must remember that the home was actually titled
15 in his name. So he had, according to the research
16 we did and, obviously, according to the law, he had
17 a possessory interest in that home and an
18 expectation of privacy.

19 The problem is under the law that his right to
20 possess the home was not exclusive to him. And
21 under the research we did, it basically indicates
22 that anyone with the right to possess and control
23 the property would have the right to give law
24 enforcement the right to search the premises. And
25 his wife had -- I mean, I did a lot of research. I

1 looked -- I did everything I knew -- I looked in the
2 Fourth Amendment every way I knew how trying to find
3 something.

4 You had several issues: A, could she give the
5 right to search the house when the house belonged --
6 was titled in his name? The answer to that, I'm
7 afraid, is yes.

8 Then the answer is -- the next question was,
9 okay, did she have the mental capability to give a
10 search? Was she coerced? You know, she did have
11 emotional problems, but she knew and understood the
12 nature of her acts, she was coherent, she was lucid
13 times the three -- I mean, she had the -- she was
14 coherent as to person, place and time and she knew
15 and understood the nature of her act. You ain't
16 going to go anywhere with that.

17 The next thing is, you know, was there some
18 sort of coercion, but I couldn't find any. It was
19 readily apparent that she was upset, but that she
20 gave the cops the right to go into the house and to
21 search. I mean, she knew that she was letting them
22 go in and search. She told them, you know, yes, you
23 may go search and that's exactly what they did. So
24 was she coerced? The answer is, from a legal
25 standpoint, from what the court requires to show

1 legal coercion, the answer, I'm afraid, is a
2 resounding no.

3 Was she incapable mentally of giving the right
4 to search? From the cases that I have seen, the
5 answer again is a resounding no. She was perfectly
6 capable.

7 The next thing, did they exceed the scope?
8 There were no limitations placed upon the scope.
9 And their argument, in talking with them as to what
10 they were looking for, there's a legitimate reason
11 why they popped in the VCR and found the sex tape.

12 Q And let me stop you right there. And that's
13 kind of explained in the guilty plea transcript in
14 there.

15 A I know. I know.

16 Q And would you characterize that as correct as
17 far as --

18 A I don't know if it's correct or not, I wasn't
19 there, but I know that's what the police say.

20 And the next issue is, did she have the lawful
21 right to give a search of a house titled in his
22 name? She lived there and the case law is right
23 specific that if you basically are a occupying
24 party, that a wife can give the permission to search
25 the husband's home. There are actually cases

1 directly on point.

2 Each one of these issues was basically broken
3 down and searched -- researched independently and
4 there was not a thing I could find -- could I make
5 an argument? Yeah. Is it going anywhere? No. And
6 we explained to Mark that the chances of winning --
7 I think he would agree with me that we explained to
8 him the chances of winning the exclusionary motion
9 were slim to none and that he would probably get
10 some concession, although we didn't know what, if he
11 waived that and pled as opposed to forcing the thing
12 to a trial.

13 With that understanding, he decided to plead
14 guilty. I thought it was a reasonable decision in
15 light of the legal precedent that we knew existed
16 and the fact that all we had to hang our hat on for
17 the entire case was Fourth Amendment exclusionary
18 motion under these facts.

19 I couldn't get Luck to back up. And believe me
20 we had almost -- we had several almost shouting
21 matches over this case. And, you know, I hate the
22 result, but I also -- the act was pretty grotesque
23 and the law was pretty clear. It's one of those you
24 do the best you can and, at that point in time, the
25 system has to basically take over.

1 Q Did you explore the possibility of going to
2 trial as to whether the applicant would testify or
3 take the stand?

4 A There's no way in the world he could have
5 testified.

6 Q And just my last topic as far as the appeal,
7 did you go over the issues of an appeal?

8 A My understanding was, and I thought that he
9 understood when we pled, that when you basically
10 plea, the only thing that you really can appeal is
11 whether or not the plea is done properly and as to
12 whether or not the sentence is going to basically be
13 overly harsh. This was a discretionary call on the
14 part of the judge. I had no control over that. The
15 statute gives him great latitude as to what he does
16 and what he doesn't do. And true to his word, he
17 didn't give him the max, he did give him something
18 for -- it wasn't much, but he gave him something for
19 entering the plea as opposed to forcing the case to
20 trial.

21 Q Did the applicant indicate to you that he did
22 want to appeal?

23 A No.

24 Q And he had mentioned a letter as far as saying,
25 I think he characterized it as, well, what's the

1 next step. Was there anything in there as far as he
2 wanted -- indicated that he wanted to appeal?

3 A I believe he did send a letter and I think it
4 did say he wanted to appeal. I think that I got
5 that -- I believe I got that letter or saw that
6 letter after the time to appeal had run, but I also
7 would have come to the conclusion the same thing
8 that we had, I thought, understood that a plea is a
9 plea and that there really was no meritorious appeal
10 there. There was simply nothing there to appeal.

11 Q And did you have a chance to discuss anything
12 with him on any topic whatsoever directly following
13 the appeal before he was taken to processing--
14 directly following the plea before he was taken to
15 processing?

16 A You know, I'm certain that we had an
17 understanding that the plea was basically it, that
18 this is basically where we were. The next step
19 would be whatever could be done through the
20 probation, pardon and parole board and that he would
21 be serving a long time. I mean, he understood that
22 he was going to jail for a long time with a plea. I
23 don't think there's any doubt about that.

24 MR. PETRANO: Thank you. Nothing further on
25 direct.

1 **THE COURT:** All right. Cross?

2 **MR. JEFFRIES:** Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. JEFFRIES:**

5 **Q** Good morning, Mr. Moore. I think it's still
6 morning.

7 **A** Just barely.

8 **Q** I'm Bryan Jeffries. I represent Mr. Brown.
9 Mr. Petrano asked you -- and I don't have a whole
10 bunch of questions because you were very thorough in
11 your direct examination, so I don't have a whole lot
12 of questions, but a couple things I do want to
13 cover. Mr. Petrano asked you specifically about
14 your conversations with Mr. Brown as they relate to
15 an appeal and you felt like there wasn't any
16 appealable issue because it was a guilty plea; is
17 that correct?

18 **A** Well, obviously, I understand that there are
19 certain things that can be appealed in regard to a
20 guilty plea. But if the question is, did I feel
21 there were any appealable issues, the answer is no.

22 **Q** Okay. But you agree that a motion to
23 reconsider his sentence is another available option
24 after a client's been convicted of this type of
25 sentence?

1 A That is true.

2 Q But you did not explore a motion to reconsider
3 the sentence?

4 A Did not.

5 Q And I think you've covered most of this, but I
6 have a couple questions I want to ask you. You made
7 it clear on your direct examination that you did not
8 feel like you had a winning argument on suppression
9 of the evidence?

10 A That's correct.

11 Q But you would agree that, at some point, you
12 felt that there was at least enough issues so that
13 you filed a motion here in Richland County to
14 suppress that evidence?

15 A The answer is yes and let me explain that. We
16 knew that with this evidence, there's no winning
17 this case. So the only thing to do is to file the
18 motion for suppression. You know, you kind of got
19 to have something to fight with. If you can't win
20 on the facts, win on the law. If you can't win on
21 the law, win on the evidence. You know, do the best
22 you can with what you have.

23 You know, there are certain times that people
24 bring factual situations to you where the client
25 becomes a relatively heavy load. This was one of

1 those cases. I fired away -- it was like shooting
2 at a cannon with a pea shooter, but I at least shot
3 with what I had. And I attempted to make my pea
4 shooter into at least a .22 rifle. Every time I
5 went to the books trying to find another way to
6 attack it, I wound up with a case that shot me down.
7 You know, but we did file the suppression motion
8 because it was, quite frankly, it was all we had.

9 Q But that motion was never heard by the court;
10 is that correct?

11 A It was never heard. And, I mean, believe me,
12 we had -- we had discussed hearing it and the judge
13 had indicated that he was going to hear the motion
14 right before trial.

15 Q Okay.

16 A And if you've ever been told that by a judge,
17 you have an idea of what that basically means. Then
18 when you sit down with the judge and he tells you
19 that he's not really impressed with your theories in
20 regard to suppression at a pretrial conference, you
21 also know what that means and then you understand
22 that if you plea, you'll get something and if you
23 don't, that he's going to load you up with anything
24 he can. And after having preliminarily reviewed the
25 evidence, it's pretty obvious that he's not happy

1 with your client or with you.

2 Q And you testified earlier, you would agree,
3 that even given that, what the suppression hearing
4 would have allowed you is a little more to work with
5 on appeal should you have gone that route?

6 A That's right. What you're going to have to do
7 if you argue the suppression motion, you are then
8 going to have to try the case, which would have
9 worked, but remember, if you had the suppression
10 hearing and then plead, you're in no better position
11 and -- except the fact that the judge has then had
12 even more opportunity to see the evidence, and you
13 understand that there's going to be at least some
14 concession provided you more than likely if you do
15 what the judge is suggesting by way of a plea.

16 You know, the only way that you could have
17 preserved the issue in regard to the motion to
18 suppress would have been to have had a full blown
19 trial. Now, that full blown trial would have almost
20 guaranteed giving you the complete maximum sentence
21 on everything run consecutive. Then you're praying
22 that you can win the motion for suppression before
23 the Court of Appeals or Supreme Court.

24 With the record that you would be looking at,
25 the gravity of the evidence basically having -- the

1 gravity of the evidence and the facts giving rise to
2 the search, you tell me what kind of chance I've got
3 before the South Carolina Supreme Court or the
4 Federal District Court or the Fourth Circuit Court
5 of Appeals in winning that suppression hearing.
6 It's basically zero -- I think you would probably
7 agree with me that it's basically zero, or if it's
8 not zero, it's awfully close.

9 Q And you agree without, I guess, without --
10 without necessarily weighing the options, you would
11 agree that at least one option would have been to
12 have the suppression hearing pretrial and then if
13 the court would have ruled that the evidence would
14 come in at trial, that you would have an opportunity
15 to plead him guilty without a jury hearing the
16 evidence in that case?

17 A Oh, absolutely. And we made it clear to the
18 court that we were wanting the suppression hearing
19 heard and the court understood that. And, you know,
20 we went back in chambers. We had a discussion. The
21 court gave me an indication as to what it was
22 inclined to do.

23 Q Of course, that was not on the record; is that
24 right?

25 A That was definitely not on the record. And as

1 you're aware under our practice, many times we do
2 have pretrial meetings in chambers which aren't on
3 the record, which basically is supposed to fill my
4 brain and let me think on how I should advise a
5 client to proceed or at least what I should tell a
6 client in regard to what I'm seeing, which is what I
7 did.

8 Q And the concession that you received in this
9 case was 42 years as opposed to life?

10 A Pretty much.

11 Q You would agree there was no recommendation, no
12 negotiation?

13 A And believe me I tried to get that. I was, you
14 know, I think I started out with begging for like
15 ten years or something and Luck dug in her heels, as
16 she will do from time to time. She was obviously
17 personally offended by what she had seen with these
18 pictures. I have seen her loaded up, but I don't
19 think I've ever seen her as steamed over a case as
20 she was over this one. She was damned well
21 determined, excuse my language, that she was going
22 to give him life in prison. And I will tell you
23 this, when the sentence came down to 42 years, she
24 wasn't satisfied with it.

25 And, you know, as bad as 42 years was, it could

1 have been a lot worse and I know a max out date is a
2 long way out, but a parole date is not as long out,
3 although it's still going to be a long time with the
4 way this thing was sentenced and we discussed that.

5 But there was no recommendation either way. We
6 understood that. It was a straight-up plea. I
7 couldn't get them to drop anything. I did -- I
8 think this was good for Mark. I did get the -- I
9 believe I got the Lexington cases either dropped or
10 sent over here so it was all handled at the same
11 time so we didn't have to go before two judges.

12 MR. JEFFRIES: That's all we have of this
13 witness, Your Honor.

14 THE COURT: Redirect?

15 MR. PETRANO: Nothing, Your Honor. Thank you.

16 THE COURT: Thank you, Mr. Moore. You may step
17 down.

18 Anything further from the State?

19 MR. PETRANO: Your Honor, may the witness be
20 excused?

21 THE COURT: Any objection to the witness being
22 released?

23 MR. JEFFRIES: None from the applicant, Your
24 Honor.

25 THE COURT: You're free to go. Thank you.

1 Anything else from the State?

2 **MR. PETRANO:** Nothing, Your Honor. We stand by
3 the record and the return. Thank you.

4 **THE COURT:** Argument?

5 **MR. JEFFRIES:** Just briefly, Your Honor.
6 You've heard all the testimony. You know, it's the
7 petitioner's position in this case, first of all,
8 that his attorney failed to meet the reasonable
9 standards set forth in this state basically based on
10 the fact that he did not fully investigate this
11 issue as to the suppression hearing. I think that's
12 his strongest argument.

13 As you've heard from the testimony, there was
14 no concession for not going to trial on this case.
15 He pled straight up, as we call it, with no
16 recommendation, no negotiation, no guidance from the
17 court as to what type of sentence he would get. He
18 was set and ready for trial.

19 You know, had there been a suppression hearing,
20 he would have at least had some guidance as to where
21 his case was going at trial. And, again, there was
22 nothing preventing him from having the suppression
23 hearing and then afterward pleading guilty still
24 before a judge rather than a jury who might be even
25 more offended by the evidence they heard in the

1 case.

2 Your Honor, secondly, the issue of as to
3 whether or not he had the opportunity to speak to
4 counsel about an appeal or a motion to reconsider
5 the sentence, even Mr. Moore's testimony was that
6 they did not talk about, you know, a motion to
7 reconsider the sentence. Mr. Brown's testimony was
8 that he spoke to his attorneys and he was told that
9 let's handle this first and at some point later,
10 we'll, you know, discuss the next step.

11 Meanwhile, he's shipped off to R and E. He's
12 writing letters. He never has an opportunity to
13 speak with his attorneys. It's his position that he
14 should have had this discussion before he entered
15 the guilty plea so he's fully aware of all the
16 consequences and all of the options he would have
17 once he's entered this guilty plea.

18 Your Honor, it was his testimony that had he
19 known he would not be able to communicate with his
20 attorney at any point after his guilty plea, he
21 would not have entered that guilty plea. It's also
22 his testimony that had he been able to have a
23 hearing before a judge on the suppression of the
24 evidence, which I think we all agree, the State,
25 first of all, hung its hat on, it was the most

1 damaging evidence, the most incriminating evidence
2 and it was the evidence -- that evidence that would
3 have been dealt with at the suppression hearing that
4 led to everything after that.

5 Your Honor, taking that into consideration, the
6 fact that he would not have entered a guilty plea
7 had he been adequately represented, it's his
8 position that under the objective standards set
9 forth in Cherry and other cases, that Mr. Moore was
10 ineffective in his assistance and because of that,
11 Mr. Brown entered a guilty plea when he would have
12 otherwise went to trial and we don't know what the
13 outcome of that would have been.

14 He's fully aware that should the Court grant
15 his PCR application, that he will be back in that
16 same posture, exposed to much more time, but it's
17 his belief that had he had the opportunity to
18 litigate the suppression hearing -- suppression
19 issue, he quite possibly may have been acquitted in
20 this case. Thank you, Your Honor.

21 **THE COURT:** Anything else from the State?

22 **MR. PETRANO:** Thank you, Your Honor, just
23 briefly. There's been no indication that the
24 applicant ever timely asked for an appeal. Trial
25 counsel testified they saw nothing wrong with the

1 plea itself. Our standard in this state, Rowe v.
2 Florez Ortega, when a guilty plea occurs, it's a two
3 part test, whether there was something wrong or
4 whether the defendant indicated a wish to appeal --
5 a timely wish to appeal, excuse me, none of those
6 have been met, certainly not both.

7 As far as the suppression goes, I think that
8 avenue was fully explored, the testimony reveals
9 that as does the record. Additionally, I believe
10 that trial counsel was able to establish a tactical
11 decision as far as deciding to go ahead and plea
12 rather than pursue the -- rather than pursue the
13 suppression hearing, I think he characterized it as
14 giving the sentencing judge more opportunity to look
15 at the horrendous evidence. We stand by the return
16 and the record. And thank you, Your Honor.

17 **THE COURT:** Anything else?

18 **MR. JEFFRIES:** No, Your Honor.

19 **THE COURT:** Thank you very much. I'll notify
20 you of my decision in writing. Thank you.

21

22

END OF PROCEEDINGS

23

24

25

C E R T I F I C A T E

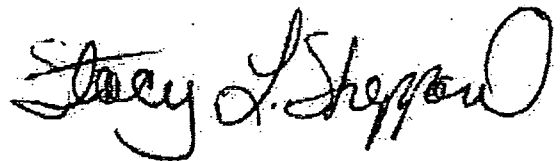
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Civil Court for Richland County, South Carolina, on the 26th of June, 2008.

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

November 24, 2008



Stacy L. Sheppard
Circuit Court Reporter

State of South Carolina)
)
 County of Richland)

In the Court of Common Pleas
 Fifth Judicial Circuit
 2007-CP-40-1156

Mark E. Brown,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

Transcript of Record

January 18, 2013
 Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge

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

Alex Postic, Esquire
 Attorney for the Applicant

Rob A. Corney, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

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No Exhibits Introduced.

1 THE COURT: You may proceed.

2 MR. CORNEY: Yes, sir, Your Honor. The state would
3 call the PCR application of Mark E. Brown at this time.

4 THE COURT: Mr. Postic, does your client need a free
5 hand to write with?

6 MR. POSTIC: That would be nice.

7 THE COURT: Just one hand, whichever one he normally
8 writes with.

9 (A PAUSE.)

10 THE COURT: All right, Mr. Corney.

11 MR. CORNEY: Yes, sir, Your Honor. This is the PCR
12 action of Mark E. Brown, docket number 2007-CP-40-1156.
13 Kind of an extensive procedural history that I'll run
14 through very -- as briefly as I can, Your Honor.

15 Mr. Brown was true-bill indicted at the October 2004
16 term of Richland County Grand Jury for criminal sexual
17 conduct with a minor in the first-degree, criminal sexual
18 conduct with a minor in the second degree, two counts of
19 sexual exploitation of a minor in the first degree, and he
20 was also indicted at the November 2004 term of the Richland
21 County Grand Jury for six counts of criminal sexual conduct
22 with a minor in the first degree, and three counts of
23 sexual exportation of a minor in the first degree.

24 He pled guilty February 6, 2006, as indicted before
25 Judge Barber, at which time he was sentenced to -- I

1 believe the Department of Corrections has him doing a
2 forty-one-year aggregate sentence on all of those charges.

3 Your Honor, he had a PCR application filed February
4 21, 2007. There was an evidentiary hearing on the
5 application June 26, 2008, at which Mr. Brown was present
6 with counsel, and that was Mr. Bryan Jeffries at the time.
7 A transcript of that hearing is included in Your Honor's
8 packet that I've handed up, and it's been made part of the
9 record of this hearing here today. By order filed
10 September, in September of 2009, Judge Keesley denied and
11 dismissed that application with prejudice, finding counsel
12 was not ineffective in his representation of Mr. Brown.

13 A notice of appeal was filed, and Mr. Brown filed a
14 pro se motion with the Supreme Court, claiming a conflict
15 of interest with I believe one of his counsel. Either his
16 PCR counsel or PCR appellate counsel, who was Kat Hudgins,
17 as his wife had also been represented, who was a
18 codefendant in this case, by that, by that appellate
19 attorney, I believe.

20 On June 24, 2009, the Supreme Court remitted the
21 matter back to the Circuit Court due to that conflict. A
22 hearing was held before Judge Manning January 14, 2010, at
23 which Charlie Johnson, I believe, represented Mr. Brown in
24 that issue with dealing with this conflict of interest.

25 Judge Manning granted the applicant a de novo PCR hearing

1 at that hearing, or at the hearing on the conflict after
2 the remand, and that's what brings us here today, Your
3 Honor.

4 Mr. Brown essentially, his prior PCR is essentially
5 vacated and he was granted a de novo hearing due to the
6 conflict of interest. That's why the 2007 case has, as
7 Your Honor is aware, kind of an older docket number. It
8 has gone through the PCR process once, and the Supreme
9 Court remanded it for a new hearing.

10 So, we are here today; we are prepared to go. We have
11 Mr. Jake Moore here prepared to testify, and he is
12 represented by Mr. Alex Postic, and I will turn it over to
13 them, Your Honor.

14 THE COURT: Mr. Postic.

15 MR. POSTIC: Your Honor, I don't represent Mr. Moore.
16 I represent Mr. Brown.

17 MR. CORNEY: I apologize if I misspoke.

18 MR. POSTIC: Your Honor, Mr. Moore has asked to be
19 taken out of order, and I don't mind doing that. I don't
20 know what the process is, if that's a possibility or not.
21 I mean, I don't mind if he goes before Mr. Brown.

22 THE COURT: I have no preference.

23 MR. POSTIC: But I, I was not planning on calling Mr.
24 Moore.

25 THE COURT: Oh.

1 MR. POSTIC: I imagine that the Attorney Generals
2 were. So, I don't mind. If they consent, I don't mind
3 switching.

4 THE COURT: What's the state's position?

5 MR. CORNEY: Your Honor, I'm fine with that. Just as,
6 as -- just to make sure I protect myself here, just
7 assuming that the allegations that I have been given are
8 the only allegations we're going forth on today, I'm fine
9 with that. I don't want to release Mr. Moore from his
10 subpoena and then need him on reply if the applicant gets
11 up there and throws out a whole bunch of new allegations
12 that I've never heard before, and that would be my only
13 concern. Otherwise, obviously I have no objection to that.
14 I'd be happy to call Mr. Moore forward.

15 THE COURT: All right, let me see. Mr. Postic, I have
16 an application. Let me just make sure. It's dated
17 February 21, 2007, which contains an addendum. I guess
18 it's an addendum to the form, the form application. What
19 I'm looking to see, if there are other subsequent
20 amendments to the application that are in the hands of the
21 state. In other words, following up on his caveat that I
22 wouldn't want to release Mr. Moore and then have
23 allegations made in his absence and have to call him back.

24 MR. POSTIC: I understand, Your Honor, and I'll, I'll
25 -- I mean, I can't speculate what my client ---

1 THE COURT: Well, let me do this. Mr. Moore, what's
2 your schedule?

3 MR. MOORE: Your Honor, I'm at the court's leisure all
4 day. I'm as -- my wife has requested my presence at home
5 by noon, but other than that, I've, I've got the entire
6 morning, and certainly if I have to tell my wife I can't be
7 there, I'm at your leisure.

8 THE COURT: Well, is it a medical emergency or
9 anything like that?

10 MR. MOORE: No, sir. It's a family vacation.

11 THE COURT: All right. Well, I think we'd better
12 proceed in the normal fashion so that (A) Mr. Moore is
13 aware of and the Attorney General are aware of what your
14 client has to say.

15 MR. POSTIC: Thank you, Your Honor. That's fine with
16 me. I'm sorry to ---

17 THE COURT: Mr. Moore, we'd like to accommodate you.

18 MR. MOORE: I appreciate it.

19 THE COURT: But sometimes it doesn't work out that
20 way.

21 MR. POSTIC: And I actually will be easier with that,
22 Your Honor.

23 THE COURT: All right. Go ahead, Mr. Postic.

24 MR. POSTIC: Thank you, Your Honor. We call our only
25 witness, and that's Mr. Mark Brown.

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

8

1 THE COURT: Come around, Mr. Brown.

2 MARK E. BROWN, BEING DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 THE COURT: Have a seat in the witness box. State
5 your full name for the record.

6 WITNESS: My name is Mark E. Brown.

7 THE COURT: You may proceed.

8 MR. POSTIC: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. POSTIC:

10 Q. Good morning, Mr. Brown.

11 A. Good morning.

12 Q. Mr. Brown, I'm going to ask you if you've heard the
13 history as it was recited by the assistant attorney
14 general. Is that the way you are remember this case
15 happening?

16 A. Yes, sir.

17 Q. And if you could just come up a little closer to the
18 microphone? Thank you. I'm going to ask you. Do you
19 remember the sentence that you got from Judge Barber back
20 in '07?

21 A. Yes, sir.

22 Q. Or '06 and what was that sentence?

23 A. A total of forty-two years.

24 Q. And what were you facing? Do you know what the total
25 amount of time that you are facing was?

1 A. Could've been -- well, basically life in prison,
2 which at my age, that forty-two-year sentence is life in
3 prison.

4 Q. I understand that. I just want to make sure you
5 understand that and put on the record that it could have
6 been substantially more than forty-two years.

7 A. Yes, sir.

8 Q. And you understand that if your PCR is granted today
9 and you are returned to your pre-conviction state, that you
10 could face that sentence?

11 A. Yes, sir.

12 Q. And we've discussed that?

13 A. Yes, sir.

14 Q. And you'd like to go forward today with your PCR?

15 A. Yes, sir.

16 Q. Okay. So, let me take you back to the time that these
17 charges were pending. When were you arrested on these
18 charges?

19 A. It was in two thousand -- July 21, 2004.

20 Q. And did you bond out?

21 A. No. No, sir.

22 Q. Okay. Did you have counsel immediately?

23 A. Yes, sir. Mr. Moore.

24 Q. Okay, and so you've had Mr. Moore since your arrest or
25 even before your arrest?

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

10

1 A. Yes, sir, before. Actually before. I requested his
2 presence when I was -- when we were at SLED.

3 Q. For, for a statement?

4 A. Yes, sir.

5 Q. Okay, and what was -- during the pendency of your
6 case, how long -- you were, you were housed in Richland
7 County Detention Center?

8 A. Lexington County.

9 Q. Lexington County?

10 A. Yes, sir.

11 Q. That's right. These charges are out of two counties.
12 Is that correct?

13 A. Yes, sir.

14 Q. Is that right, and did you have a bond or was it
15 denied?

16 A. Originally I had a bond, and then at a second hearing
17 I was denied bond.

18 Q. Okay, and how long did you stay in the Richland County
19 -- I mean, the Lexington County Detention Center?

20 A. A little over eighteen months.

21 Q. Eighteen months, okay. Did you meet with Mr. Moore
22 several times while you are in there, or can you just sort
23 of go through that?

24 A. Yes. After the initial meeting at SLED, we met a few
25 times at the detention center and -- along with a Mr.

1 Myers, who was assisting him.

2 Q. That's Stanley Myers who's in ---

3 A. Yes.

4 Q. --- who's in Mr. Moore's firm?

5 A. Yes, sir.

6 Q. Okay, and over that eighteen months, just, just a
7 general idea of how many times you spent with either Mr.
8 Myers or Mr. Moore or anybody else from his firm?

9 A. Including the initial at SLED, I believe four.

10 Q. During those meetings, did he go into the evidence of
11 your case, the evidence the state would present in your
12 case?

13 A. Yes, sir.

14 Q. Okay, and just briefly give us an idea of what that
15 evidence would have been.

16 A. It was evidence that they discovered at a residence me
17 and my wife had just moved into, lake house that I
18 inherited through the decease of my mother. It was
19 evidence found on a computer and videotape.

20 Q. And was that evidence seized as a result of a search
21 warrant?

22 A. It was seized. There -- it's kind of a complicated
23 situation as far as part of my argument because my wife has
24 an extensive mental illness history.

25 Q. We'll, we'll get to that, Mark. I just want to ask

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

12

1 just ---

2 THE COURT: Mr. Brown, would you still pull up? I'm
3 having a hard time hearing you.

4 WITNESS: I'm sorry.

5 THE COURT: I have to hear what you have to say.

6 WITNESS: I'm sorry.

7 THE COURT: It's all right.

8 WITNESS: Yes, sir.

9 THE COURT: That's better.

10 WITNESS: Thank you.

11 BY MR. POSTIC:

12 Q. I just wanted to ask about the arrest, and I wanted to
13 just sort of briefly go through your pre-plea situation
14 while you in the department -- I'm sorry, in the detention
15 center.

16 A. The -- what was seized was -- purported search consent
17 my wife gave concerning a fugitive that authorities were
18 looking for that they thought might had been involved in
19 the attempted carjacking my wife reported. Had nothing to
20 do with the charges.

21 Q. And she gave consent to search the house at that time,
22 or consent to allow the officers into your home? Is that
23 correct?

24 A. She -- they say she did, she purportedly gave consent.
25 She, she believed she was being detained. She was escorted

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 to SLED in an official vehicle, separated from me, held at
2 a different area.

3 Q. And just as way of background because the judge does
4 not know the background of your case. Your wife reported
5 a ---

6 A. She reported an attempted carjacking.

7 Q. Okay.

8 A. And when she called police and everybody came in and
9 she gave a description of the inmate, authority believed
10 it was in a inmate they were looking for and who they
11 thought was in the area that, if I'm not mistaken, they
12 believed that he killed an officer, a police officer or
13 something.

14 Q. Yes, and so they came as a result of that, and then
15 they realized that there might have been -- that she, she
16 may have invented this story?

17 A. Yes, sir. They found, matter of fact, they found
18 prescription of psychotropic medication that she was
19 prescribed by a competent psychiatrist that she had just
20 refilled that morning.

21 Q. Okay.

22 A. In her car.

23 Q. And so what I'm trying to get to is how they got from
24 that stage to the search because they ended up searching
25 your home, finding videotapes that ultimately led to these

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

14

1 charges. Is that correct?

2 A. Correct.

3 Q. Okay, and so they went in and they went in on this, on
4 this carjacking report. Is that correct?

5 A. Yes, and they, they said that she gave consent to
6 search concerning -- search of the residence for this
7 fugitive. They told her that they were concerned she might
8 -- he might be there, if he'd gotten any of her
9 information, and they wanted to secure the residence.

10 Q. And at that point, they were drawn to these
11 videotapes. Is that correct?

12 A. I -- how, how they went about finding this, I have no
13 idea. They, they, you know, they were looking for evidence
14 concerning this fugitive, but yet they go to a VCR and
15 start putting in tapes and pressing play and doing
16 whatever.

17 Q. And it led to these charges. Is that correct?

18 A. Yes, sir.

19 Q. And did Mr. Moore or Mr. Myers ever talk to you about
20 the search and about suppressing the evidence that led to
21 your ultimate arrest on these charges?

22 A. Yes, sir. He filed two motions to suppress evidence
23 finding that the search was beyond the scope of the
24 original search warrant, and that the evidence seized was
25 fruit of the poisonous tree.

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

15

1 Q. Okay, and were those motions argued?

2 A. Not to my knowledge. I was told that they were -- my
3 best bet was just to plead guilty.

4 Q. Did Mr. Moore ever indicate to you that if you pled
5 guilty, that you would never be able to raise the issue of
6 the improper search?

7 A. No, sir.

8 Q. Did Mr. Moore indicate to you that he had spoken to
9 the solicitor's office about any sort of plea bargain?

10 A. My understanding, it's my understanding the solicitor
11 was not entertaining any bargain.

12 Q. But did he tell you that he had, that he tried to find
13 a plea bargain for you?

14 A. The best of my recollection, he, he approached them
15 that, you know, that I would -- was willing to plea and
16 that they were not willing to give.

17 Q. Thank you. I jumped ahead. I'm sorry, Mark. Tell
18 me. Tell me just briefly, if you could, the issues that
19 would have been raised if there was a suppression motion
20 hearing. Were you able to review the, the -- was it a
21 physical motion? I mean, was it, was it briefed? Was it a
22 piece of paper that you had with the motion to suppress?

23 A. Yes. Yes. Mr. Myers, on behalf of Mr. Moore's law
24 firm, filed it.

25 Q. Did you get a copy of that motion?

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 A. Yes, sir.

2 Q. Okay, and just briefly, just -- I don't want you to
3 read the motion, anything like that, or rehash it all, but
4 I need to, I need to establish that there were true grounds
5 for a suppression. So, if you could just briefly tell us
6 what those grounds would have been?

7 A. Well, basically it's just a one-page motion
8 suppressing, you know, requesting suppression of evidence
9 due to the fact that authorities overstepped their
10 boundaries in the search. They exceeded the scope, you
11 know; they had no reason to search what they did.

12 Q. Was there any indication with it, any indication from
13 Mr. Moore, Mr. Myers, or his firm that they would have
14 brought into question the mental state of your wife to give
15 consent?

16 A. No.

17 Q. Okay, and what was the mental state of your wife?

18 A. My wife has a severe mental illness. She is bipolar;
19 she suffers from delusions and extreme panic attacks.

20 Q. And delusions?

21 A. She is, she is -- she has been treated by the Columbia
22 Area Mental Health for well over twenty years.

23 Q. Were you, were you home when the, when officers from
24 SLED came to your house?

25 A. No. I was at home when they contacted me and told me

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 to come to my wife.

2 Q. While they were searching your home?

3 A. No. They had -- no, they were not searching my home
4 while -- where the carjacking attempt was supposed to have
5 taken place up the road, which wasn't far, and I got a call
6 and said that I was needed. They told me I was needed up
7 there because of my wife's condition. She was, basically
8 she was losing it.

9 Q. Okay. So, let me, let me understand. That happened
10 prior to the search of your home?

11 A. Yes, sir.

12 Q. Okay. So, did you go -- and how much prior? Days,
13 weeks, hours?

14 A. No. No. The search happened that same day.

15 Q. Same day?

16 A. Uh-huh.

17 Q. So, were you -- did you give any consent to allow them
18 into your house?

19 A. No, sir. We ---

20 Q. Where were you? Where did you go?

21 A. We were transported. Well, they transported my wife
22 in an official vehicle of a couple of investigators with
23 SLED, and I was told that I -- to follow. So, I went down
24 to SLED and I was -- they had separated us, and I was with
25 SLED waiting on her when she supposedly gave consent to

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 search. And they never, they never contacted me, or they
2 basically told me they were going into the house that day.

3 Q. Did they ever ask you about the mental condition of
4 your wife?

5 A. No.

6 Q. And you're saying -- how do you know that during the
7 search they found these, these prescription drugs?

8 A. I believe it's in the report from SLED agents.

9 Q. Is there anything else you want to bring up about this
10 suppression issue?

11 A. Well, I believe that, you know, if a defense had been
12 made about my wife's mental illness, that would have led
13 to, you know, the suppression, the grounds for the
14 suppression motion.

15 Q. And as far as you know, there was never a hearing in
16 front of the judge to suppress that evidence?

17 A. I was -- I never attended anything in front of a judge
18 about that.

19 Q. Okay. Did -- so, a, you know, year goes by while
20 you're in detention center. Is there a discussion with Mr.
21 Moore about what is -- about the final disposition of this
22 case, about how y'all were going to dispose it? What I
23 mean is about going to trial versus a plea.

24 A. Well, basically I did more conversing or letters or
25 phone or whatever with Mr. Myers.

1 Q. Okay, well then Mr. Myers.

2 A. That, you know, he had basically told me that -- you
3 know, what to expect if we went to trial, what kind of
4 sentence I might get, but that we were going to try the
5 suppression motion.

6 Q. Okay, and then were you ever told what was going to
7 happen to that suppression motion? What were you told
8 about that suppression motion?

9 A. On the day that we were going to trial, Mr. Moore and
10 -- came down and met with me downstairs here and said that
11 basically the suppression motion was dead.

12 Q. Okay.

13 A. They had ---

14 Q. Did he explain to you what he meant by that?

15 A. Well, he said the judge said he was going to allow the
16 evidence.

17 Q. Did he -- were you -- did you guys have any discussion
18 about what could happen at trial and how a trial would
19 proceed? That -- you know, the way evidence would have to
20 come in and that sort of thing?

21 A. No. I think it all -- basically through Mr. Myers.
22 Everything hinged on the suppression motion.

23 Q. Okay. Was there any sort of discussion about if you
24 had gone to trial that -- the possibility of a jury
25 returning a verdict of not guilty?

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 A. No.

2 Q. Okay. Was there any discussion of if you had gone to
3 trial, trial that there would have been a possibility a
4 jury returning a verdict of guilty but of a lesser-included
5 offense?

6 A. No, sir.

7 Q. Or, or a conviction on some of the charges but not all
8 of the charges?

9 A. No, sir.

10 Q. Was there any discussion with Mr. Myers or Mr. Moore
11 about trying this matter in front of a judge or a jury, the
12 differences between those?

13 A. No, sir.

14 Q. So, was it your, was it your belief on the day that
15 you pled guilty -- what did you think was going to happen
16 when you came -- when they brought you from Lexington to
17 here? Did you think it was going to be a trial, or what
18 did you think at that time?

19 A. Well, when I originally got here I thought I was going
20 to trial, but then after meeting with Mr. Moore, it was
21 told to me my best interest would be to plead guilty.

22 Q. Was there any discussion with Mr. Moore about how you
23 would present a guilty plea to a judge?

24 A. Not other than just agree to the charges, plead
25 guilty, and accept what the -- and throw myself at the

1 mercy of the court.

2 Q. Did he review with you the rights that you would be
3 giving up if you pled guilty?

4 A. I think the only thing was mentioned that I, you know,
5 if I plea guilty, I couldn't, I couldn't, I couldn't
6 appeal.

7 Q. You could not appeal?

8 A. I'm, I'm sorry for my ignorance of the, of the law,
9 but I'm not even sure if I'm stating it right. I could not
10 appeal or direct appeal or something. I don't know. If I
11 pled guilty, that was it.

12 Q. Okay.

13 A. That was it.

14 Q. Did you understand that to include the suppression
15 motion?

16 A. No. No, sir.

17 Q. Did, did, did Mr. Moore or Mr. Myers talk to you
18 about, about an evaluation at any point, mental evaluation
19 of yourself?

20 A. No, sir.

21 Q. Was that ever sought by the state or by Mr. Moore's
22 firm?

23 A. No, sir. I never saw anybody.

24 Q. Did you see any sort of counselor when you were, when
25 you were in the, in the detention center?

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 A. I was having anxiety and stress and problems in the
2 detention center, and I saw, I guess, their resident
3 psychiatrist or whatever may be.

4 Q. Was any report from a psychiatrist presented during
5 your guilty plea?

6 A. No, sir.

7 Q. Any sort of assessment from a counselor or anyone like
8 that?

9 A. No, sir.

10 Q. Were any family members or coworkers -- were you
11 working at the time you were arrested?

12 A. No, sir.

13 Q. Okay.

14 A. I basically shut down my company because of economic
15 times and had sold a house I'd lived in in Columbia and
16 moved up to the house that I inherited up in Chapin.

17 Q. Okay. Were, were any family members brought to the...

18 A. No, sir.

19 Q. Where are you from originally?

20 A. Originally Columbia.

21 Q. Do you have family in Columbia?

22 A. A little bit left, yes, sir.

23 Q. Any former coworkers, were any former coworkers
24 brought to the guilty plea to speak on your behalf?

25 A. There was no one. No, sir.

1 Q. Do you know if Mr. Moore or his firm made any sort of
2 attempts to reach out to the victim in this matter?

3 A. I do not know.

4 Q. Were there any other legal issues there you felt are,
5 were germane to your case?

6 A. Well, at my PCR, and if I'm understanding your
7 question here, what my concerns are as far as my PCR, I
8 basically had four arguments. The first was that counsel
9 failed to question the original arrest warrants where, you
10 know...

11 Q. What was the issue with the original arrest warrants?

12 A. Just one second, please. That the -- challenge the
13 validity of them for us being arrested and our detainment
14 because the arrest warrants were not properly issued. The
15 statutory -- they did not meet statutory requirements
16 because there is a area on the warrants where a judge is
17 supposed to sign and date them, and if you look at them,
18 it's just, it's almost like X marks the spot. There's no
19 signature. There's not a, there's not intelligible or
20 valid, comprehensive signature or name.

21 Q. Is this an issue that you raised with Mr. Moore?

22 A. No.

23 Q. And as far as you know, there was no research done on
24 that issue?

25 A. No, sir.

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 Q. And what other issues? Well, you said there were
2 four.

3 A. My next, my next issue was Mr. Moore knew of my wife's
4 history of mental illness and that he did not try to build
5 a defense with that or use that to -- you know, her
6 competency at the time of events was essential to pretrial
7 motion, being the suppression of evidence.

8 Q. So, that would be part of the suppression motion?

9 A. Right.

10 Q. So, and, and you do know that they did, they did at
11 least research that?

12 A. Excuse me, sir?

13 Q. That they did research that suppression issue.

14 A. They filed the -- yeah, they filed it. Now, when you
15 say research...

16 Q. All right, and what is -- that's two.

17 A. Well, you know, because part of the trial trans -- my
18 original trial ---

19 Q. Transcript?

20 A. Transcript.

21 Q. Plea transcript?

22 A. Uh-huh. I mean, there's several pages that identify,
23 identify her mental illness. It's referred to within it
24 and, you know, no evaluation was ever made on Jackie at the
25 time of these occurrences to see how long she had been

1 without her medication because that goes into the consent
2 to search, you know, her ability to understand what was
3 happening at the time she consented to search.

4 Q. What else? Did you have an issue with the indictment,
5 Mark?

6 A. Yes, sir, I had another issue with the indictment.

7 Q. I thought that was the fourth one.

8 A. That was my last one. Okay, my wife's mental illness,
9 you know, it should have, should have been used to that --
10 her incompetent ability to authorize a consent to search.
11 The consent to search was for, the alleged consent to
12 search was for the carjacking victim. That was not
13 supposed to be for any of the stuff that, you know,
14 authorities came upon and that we were indicted on. The
15 evidence seized was beyond the scope of the alleged
16 consent, and law enforcement had no probable cause to go on
17 the fishing expedition that they did for this evidence.

18 Basically, they coerced my wife with -- they separated
19 us. Didn't contact me, question me, anything about
20 anything that was going on. Singled her out after they
21 figured out -- you know, after they discovered the
22 medication was when they decided to take her to SLED. They
23 offered to give her a lie detector test. She offered to
24 take it. They never did.

25 Q. That was about the carjacking?

M. BROWN - DIRECT EXAMINATION BY MR. POSTIC

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1 A. Yes, sir.

2 THE COURT: Let me ask something just factually.

3 Where were you when the search took place?

4 WITNESS: I was at SLED, at SLED headquarters.

5 THE COURT: This was after the report of the fugitive?

6 WITNESS: After my wife reported the carjacking, yes,
7 sir.

8 THE COURT: I mean the carjacking.

9 WITNESS: Yes, sir.

10 THE COURT: Where were you then?

11 WITNESS: At the time, the report of the carjacking?

12 THE COURT: Yes.

13 WITNESS: I was at the residence. I was at my house.

14 THE COURT: So, you were in your house when they came
15 in?

16 WITNESS: No, sir.

17 THE COURT: I just need a little ---

18 MR. POSTIC: I can, Your Honor ---

19 THE COURT: --- factual.

20 MR. POSTIC: She made the report. SLED called him
21 from his house. He came to her. They said she was
22 having ---

23 WITNESS: Yeah, I was, I was contacted at the house by
24 authorities saying that she was saying she had been
25 attacked, and she was breaking down. So, I left my

1 residence to go to where they had her, where, where the
2 carjacking attempt supposedly took place.

3 THE COURT: And then they came back to the house?

4 WITNESS: No, sir. I never went back.

5 THE COURT: Law enforcement went to the house.

6 WITNESS: Yes, sir.

7 MR. POSTIC: Yes, Your Honor, while, while he was at
8 SLED because at that point ---

9 THE COURT: At that point, she had given SLED the
10 authority to enter the house?

11 MR. POSTIC: Not until she was taken to SLED.

12 THE COURT: That's what I meant.

13 MR. POSTIC: This was the, just by way of background,
14 this was the, the -- I can't remember the defendant's name.
15 This was the death penalty case in Calhoun County several
16 years ago where law enforcement, retired SLED agent had
17 been shot and killed and ended up -- I think Judge Newman
18 tried that just by way of background.

19 WITNESS: They, they had ---

20 MR. POSTIC: And that explains the SLED presence.

21 WITNESS: Correct. They -- when she'd given a
22 description of the individual, they had basically -- well,
23 this is the guy we're looking for. This is -- when she
24 gave a description and they gave, you know -- then they
25 showed her a pic -- different, I guess, sketch artist or

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1 different little shots. And she picked out one that
2 she said looked most like the person who attempted to
3 carjack her, and they told her, well, you're lucky to be
4 alive. This is -- we're look -- we've been looking for
5 this man.

6 BY MR. POSTIC:

7 Q. And so, and -- but at, at ---

8 A. That's when she started to lose it, and that's when
9 they called me and I went to the location.

10 Q. And where was that location?

11 A. It was about two miles up the road right in front of a
12 little, like a minimart, convenience store.

13 Q. Sort of the Chapin area?

14 A. Yes, sir.

15 Q. And from there, they took both of you to SLED for
16 further questioning. Is that correct?

17 A. They -- no, they didn't take me for questioning. They
18 took Jackie.

19 Q. For further questioning?

20 A. Yeah. Two investigators put her in a car and drove
21 her to SLED after they discovered the medication, and due
22 to her stress, her losing it, wiggling out, they said that,
23 you know, for me to follow and I followed.

24 Q. All right, and she gave consent, as far as you know
25 and research that Mr. Moore did. As far as you know, the

1 consent to search was given at SLED?

2 A. She was -- yeah, she was separated, detained. Well,
3 she felt she was being detained at SLED. We were
4 separated. They came in and said that she had given
5 consent.

6 Q. Mark, before I -- before we sit down or before, I'm
7 sorry, before you get cross-examined, is there any other
8 issue that you'd like to raise?

9 A. Well, there are a couple of indictments that just did
10 not state any victim or anything. They did not state
11 sexuality or anything. It was like a -- you know, they
12 were deficient indictments. I believe they should have
13 been challenged and squashed just like the arrest warrant
14 should be challenged and squashed because of deficiencies.

15 Q. Anything else? This might be the last chance.

16 A. No, I believe that's it. Just that, you know...

17 (A PAUSE.)

18 A. I believe that's it. I believe those four issues.
19 The arrest, questioning the arrest warrant, no defense on
20 my wife's, due to my wife's mental illness, which should
21 have led to suppression, which ---

22 Q. Yes.

23 A. --- suppression motion. I'm sorry. I can't word
24 these properly or not. The fishing expedition the police
25 went on. You know, counsel, he just abandoned the motions

M. BROWN - CROSS-EXAMINATION BY MR. CORNEY

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1 to suppress evidence without any kind of hearing. I was
2 not brought up to it. I did not know of anything. I was
3 just told that the evidence was allowed, and then the last
4 one was the indictments.

5 MR. POSTIC: Thank you, and you've been through this
6 before, so I can explain to you at this point the assistant
7 attorney general is going to cross-examine you. If I feel
8 it's necessary, I may ask some redirect questions.

9 WITNESS: Yes, sir.

10 MR. POSTIC: Please answer any questions that he has
11 for you.

12 WITNESS: Okay.

13 THE COURT: You may proceed.

14 MR. CORNEY: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. CORNEY:

16 Q. Mr. Brown, you knew Mr. Moore prior to your arrest on
17 this incident, correct?

18 A. Yes, sir.

19 Q. He had previously represented you?

20 A. Me and my sister in a litigation case against my uncle
21 on my mother's estate.

22 Q. Okay. So, you had somewhat of a personal relationship
23 with Mr. Moore prior or -- yeah, with Mr. Moore, I
24 apologize, prior to his representation of you on these ---

25 A. Yes, sir.

1 Q. --- charges?

2 A. Yes, sir.

3 Q. Now, as far as this carjacking that your wife was
4 allegedly involved in, are you aware of whether that
5 carjacking ever actually happened or not?

6 A. I believe, I believe my wife thinks it happened. Like
7 I said, she, you know...

8 Q. There's nothing to disprove that that never happened.
9 I mean, there's nothing that's come out that says that's --
10 that was a figment of her imagination or it never happened,
11 correct?

12 A. SLED didn't -- SLED's report stated they believe it
13 did not happen.

14 Q. Okay. At the prior PCR that you had, you testified
15 that -- to exactly that. You said that there was nothing
16 that had ever come out to prove that it didn't happen.

17 A. Right.

18 Q. No ---

19 A. They, they stated they did not believe it happened.

20 Q. Right, and I'm saying at the prior PCR, you testified
21 it had never been disproven. That there was no way to say
22 that was a figment of her imagination, and it may have, in
23 fact, happened, correct?

24 A. Yes, sir.

25 Q. Okay. Your wife entered a guilty plea the same day as

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1 you, correct?

2 A. Yes, sir.

3 Q. Okay, and at the guilty plea hearing, her mental
4 health history had been discussed in front of the judge,
5 correct?

6 A. Yes, sir.

7 Q. And at that point in time, her attorney said that she
8 had been evaluated, mentally evaluated, right?

9 A. I do not believe so. Ms. Herbert only represented
10 Jackie for a period, a period less than six months, and she
11 testified to Jackie's inconsistency to take her medication.

12 MR. CORNEY: If I may approach the witness very
13 briefly, Your Honor?

14 BY MR. CORNEY:

15 Q. What I'm going to hand up here, Mr. Brown, is a copy
16 of the plea hearing February 6, 2006, before Judge Barber,
17 and if you don't mind me getting close to you for a minute
18 to bring this up to you? I know you got a hand free, so I
19 don't have to flip it for you or anything.

20 If you would, just on page 28 of that plea transcript,
21 start at line 3 for me, and if you'll read down to line 10
22 for me?

23 A. It says:

24 The Court: Have you seen any indication today
25 that your client is adversely impacted in any way

1 by virtue of her having taken medication last
2 night?

3 Ms. Herbert said: No, sir. In fact, we do not
4 have -- we did have a competency evaluation.

5 Ms. Campbell: I'll hand that up.

6 Ms. Herbert: The solicitor has and so we are
7 comfortable with her competency today.

8 Q. Okay, but -- so, the transcript reflects she was
9 evaluated prior to the plea hearing, correct?

10 A. To that plea hearing, yes, sir.

11 Q. Okay, and that evaluation ---

12 A. To ---

13 Q. --- found her competent, correct?

14 A. For that -- today, as it states.

15 Q. Okay.

16 A. Says today.

17 Q. Okay.

18 A. They had a year and a half to evaluate her and
19 medicate her and get that medications back in her before we
20 went to court.

21 Q. Okay. Now, you played a part in the discussions with
22 the SLED agents before they went in and actually conducted
23 the search of your house, correct?

24 A. The only thing that I was a participant to was -- you
25 know, they said they were going into, they told me they

M. BROWN - CROSS-EXAMINATION BY MR. CORNEY

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1 were going into the house to search, and I told them there
2 might be some marijuana in the house.

3 Q. Okay, and you actually participated in part of that
4 conversation where you asked them to search an outhouse
5 behind your house as well?

6 A. When they said they were going to secure the house, I
7 asked them to secure that, the shed that was out back.

8 Q. Okay, but you were part of some of those discussions
9 with SLED when they were talking about going out to your
10 house to search, and you said while you were there, make
11 sure you look in the outhouse as well. Make sure nobody's
12 in there.

13 A. Yes, sir. I told them to secure the house. I was --
14 they, when they told me they were going, I asked him to
15 secure the house and the shed.

16 Q. Okay. You stated before you had not been evaluated at
17 any time prior to the plea hearing, correct?

18 A. Correct.

19 Q. Are you alleging today that you were incompetent or
20 had some mental deficiency at the time of your plea? Is
21 that -- I don't know.

22 A. No.

23 Q. I just want to clarify your allegation.

24 A. Mr. Polock [sic] asked a question and I answered.

25 Q. But you haven't been evaluated before coming in today,

1 and you don't have any evaluation reports or anything to
2 hand in to the court, do you?

3 A. No, sir.

4 Q. Along the line of this suppression hearing for the
5 search that was done in your house, actually prior -- or
6 actually plea hearing, you told the judge you were
7 completely satisfied with Mr. Moore's representation of
8 you, didn't you?

9 A. Yes, sir.

10 Q. Now, you told the judge that he had done everything
11 you wanted him to do, and I think your words were that you
12 were completely satisfied with him. Correct?

13 A. Yes, sir.

14 Q. The court advised you during your plea hearing that by
15 pleading guilty, you would be giving up the right to
16 challenge the evidence and suppress any evidence the state
17 may choose to introduce against you, didn't they?

18 A. I do not recall. I was -- the stress and magnitude of
19 everything of that day.

20 Q. All right.

21 MR. CORNEY: And if I may approach again, Your Honor,
22 and I don't want to belabor the point, but I think this is
23 pretty critical to the court's analysis. I'll direct the
24 court's attention to page 9 of the plea hearing.

25 BY MR. CORNEY:

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1 Q. All right, and, Mr. Brown, if you could just read for
2 me starting at line 10 and down to line 15? I believe that
3 is where you answer.

4 A. Court: Do you understand that by giving up.

5 And then it's got a couple of dashes.

6 By going forward with these pleas here today, you
7 are going to give up your right to suppress any
8 evidence that you might think might -- that you
9 might think might be suppressed in this matter or
10 attack the state's case in any way.

11 Yes, sir.

12 Q. Okay. So, the judge advised you that by pleading
13 guilty that day, you'd be giving up your right to suppress
14 any evidence the state wished to introduce against you at
15 trial?

16 A. For the, for the trial, yes, sir.

17 Q. Okay. So, you knew moving forward after you entered
18 that plea, a motion to suppress the videotape and the other
19 evidence seized from your house was out of the question?

20 A. I was told it was going to be submitted anyway. That
21 the suppression motion was dead.

22 Q. Right, but by pleading guilty, you knew for sure you
23 were giving up that right, and going forward you weren't
24 going to be able to challenge that, correct?

25 A. Yeah. I wasn't going to trial, yeah.

1 Q. The judge also asked you at your plea hearing if you
2 had any complaints against the Richland or Lexington County
3 law enforcement and the way they investigated and handled
4 your case, and you said no, correct?

5 A. I was told to -- yes, sir. I just did what I was told
6 to do: agree to all charges and accept the plea.

7 Q. Okay. You're not indicating Mr. Moore told you
8 specifically how to answer that question at the plea
9 hearing, are you?

10 A. I was advised to accept all the charges, agree to
11 everything, and accept the plea.

12 Q. Okay. So, so is that, was that a truthful answer to
13 the court? I mean, I don't think I understand your
14 response. Was that truthful when you answered that, or was
15 that just what Mr. Moore told you to answer?

16 A. What are you asking me to...

17 Q. I mean, when you were asked do you have any complaints
18 against the Richland and Lexington County law enforcement
19 agencies and the way they conducted your case, you said
20 no, sir. I just want to know. Is that a truthful answer,
21 or is that an answer you're saying Mr. Moore fed to you
22 just ---

23 A. To the best of my knowledge ---

24 Q. --- to give to the court?

25 A. --- at the time, I agreed, yes, sir, I agreed to that

M. BROWN - CROSS-EXAMINATION BY MR. CORNEY

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1 because that is what I was instructed to do. Just to agree
2 to all charges and accept the plea.

3 Q. At your prior PCR hearing, you testified that you
4 were, and I believe you testified again today, you were
5 aware that there was a potential life sentence on the table
6 if ---

7 A. Right.

8 Q. --- you -- after your plea hearing, correct?

9 A. Yes, sir.

10 Q. Okay. You also testified at prior PCR hearing you had
11 received paperwork prior to the plea that counsel had filed
12 a motion to suppress this videotape, right?

13 A. Yes, sir.

14 Q. At your prior PCR hearing, you raised the issue about
15 the sufficiency of the warrant based on that signature that
16 was on there?

17 A. Yes, sir.

18 Q. And you said there was just an X signed on there, and
19 that's what you testified to today as well, correct?

20 A. Yes, sir.

21 Q. All right. At your prior PCR hearing, and that was in
22 front of, I believe that was in front of Judge Keesley.

23 Judge Keesley actually test -- or didn't testify but noted
24 that there was a judge, a magistrate judge in Lexington

25 County named Judge Whittle who that was. His signature was

1 an X, and that he recognized that as Judge Whittle's
2 signature, correct?

3 A. That's what the judge stated.

4 Q. Okay, and if that's in your prior PCR application -- I
5 mean, in your prior PCR transcript, you wouldn't disagree
6 with that?

7 A. If it's in the transcript, that's what the judge
8 stated, yes.

9 Q. Okay, that Judge Keesley recognized that signature as
10 a magistrate's signature in Lexington County, and if that
11 is a magistrate's signature on there, then, I mean,
12 obviously it's not -- there's nothing wrong with that
13 search warrant. At that point in time, it's signed by a
14 magistrate. It's just your contention that was not a valid
15 signature?

16 A. Well, it looked to be a deficiency in arrest warrant.
17 I mean, if that's his signature, I mean, is that what his
18 checks look like? Is that what other arrest warrants look
19 like? It doesn't look like a signature.

20 Q. When the SLED officers were going to conduct the
21 search on your house, they made clear to you as well as
22 your wife that what they were looking for was any news
23 articles, any, any, anything along those lines, news
24 articles, videotapes of news feed, anything along those
25 lines that would relate to this person?

M. BROWN - CROSS-EXAMINATION BY MR. CORNEY

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1 A. They were going to look to see if there was any -- if
2 she had anything that might have been related to that
3 individual. They did not state no videotapes or anything
4 in that manner.

5 MR. CORNEY: Beg the court's indulgence for one
6 minute, Your Honor. I apologize.

7 (A PAUSE.)

8 BY MR. CORNEY:

9 Q. All right, and at your plea hearing, the solicitor ---

10 MR. CORNEY: And I'll direct the court's attention to
11 page 35 of the plea transcript.

12 BY MR. CORNEY:

13 Q. The solicitor in the statement of facts said, and I'll
14 just quote it from here and tell me if this is your
15 recollection: They -- meaning the SLED agents. -- approached
16 her -- meaning your wife, Ms. Brown ---

17 And said they would be looking for things that
18 had to do with media such as video reports, news
19 clippings, and things of the nature. She seemed
20 to understand what they were saying.

21 Do you recall that recitation of facts by the
22 solicitor at your plea hearing?

23 A. No, I do not recall. I do not recall that.

24 Q. You would contest it?

25 A. It may be in there but like I said. It was a very

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1 overwhelming day. I do not recall them stating that. You
2 know, they did not tell me that's what they were going to
3 be looking for when they told me they were going in.
4 Again, that's directed towards her.

5 Q. You had the opportunity to view these videotapes that
6 the state's referring to, correct?

7 A. Yes.

8 Q. Would you agree that they were extremely damaging if
9 they had been shown to a jury at trial?

10 A. Yes.

11 Q. And they're not pretty. They're, they're very
12 incriminating?

13 A. Yes.

14 MR. CORNEY: That's all I have, Your Honor. Thank
15 you.

16 THE COURT: Redirect?

17 MR. POSTIC: Just, just briefly, Your Honor.

18 REDIRECT EXAMINATION BY MR. POSTIC:

19 Q. When the sentencing judge, Judge Barber, asked you,
20 told you that you understood that you were giving up the
21 right to appeal -- sorry, not to appeal. Giving up the
22 right to suppress evidence, did you understand that to mean
23 that by pleading guilty, there was going to be no trial?
24 There was going to be no motion?

25 A. There'd be no trial, yes.

M. BROWN - REDIRECT EXAMINATION BY MR. POSTIC

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1 Q. Did you, did you understand that to mean that you
2 would -- that you were giving up for eternity the right to
3 appeal or to suppress, to appeal anything about a
4 suppression hearing and that if there had been a
5 suppression hearing, that you could appeal if the finding
6 was to, to grant the search?

7 A. No. It was my understanding I was just basically
8 giving up everything for that trial. Nothing down the
9 road, nothing else.

10 Q. And when you were asked if you had any complaints
11 about Richland and Lexington law enforcement, were you
12 asked whether you had any complaints about the SLED agents?

13 A. No, sir.

14 MR. POSTIC: That's all I have.

15 THE COURT: Anything further?

16 MR. CORNEY: No further questions from state.

17 THE COURT: All right, sir, you may come down.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Let me take five minutes. I need to make
20 a phone call.

21 Mr. Moore I assume you're next. Any objection?

22 MR. CORNEY: No, sir.

23 THE COURT: Stand at ease for five minutes.

24 (OFF THE RECORD.)

25 THE COURT: State call Mr. Moore? Mr. Moore.

1 S. JAHUE MOORE, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 THE COURT: State your full name for the record.

4 WITNESS: My name is Stephen Jahue Moore.

5 THE COURT: You may proceed.

6 MR. POSTIC: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. CORNEY:

8 Q. Mr. Moore, do you recall representing Mr. Brown on the
9 charges we're here for today?

10 A. I do. It's been about six years, and I will tell you
11 that my memory is somewhat failing.

12 Q. You've had the opportunity to at least flip very
13 briefly through the prior PCR transcript? I know very
14 briefly.

15 A. I actually read my testimony from the last one this
16 morning.

17 Q. Do you recall becoming involved in this case and how
18 that happened?

19 A. Yes.

20 Q. And you were retained for this matter?

21 A. I was.

22 Q. You had some sort of a prior relationship with Mr.
23 Brown prior to this particular case, correct?

24 A. I did.

25 Q. You had recommended him, I think, on a previous

1 unrelated matter?

2 A. That's true.

3 Q. You had incorporated the help of one of your
4 associates on this case. I think Mr. Brown referred to Mr.
5 Myers?

6 A. That's correct.

7 Q. And he was, he was an associate of yours, a business
8 associates of yours?

9 A. He was an associate at the time. He now is my
10 partner.

11 Q. Do you recall meeting with Mr. Brown to discuss the
12 charges that he was facing?

13 A. I do.

14 Q. And I think his testimony was that you met with him
15 about four times from what he remembers. Is that an
16 accurate number from your recollection?

17 A. I know I met with Mark on several occasions. I can't
18 tell you the exact number, and for me to estimates after
19 those six years would be very difficult for me.

20 Q. Okay. Did you have the opportunity to review the
21 elements of the charges he was facing and the potential
22 sentences he was facing on those charges?

23 A. Oh, yeah.

24 Q. Did you ever have any concerns with his competency or
25 ability to participate and understand your conversations?

1 A. No.

2 Q. Any need to have him evaluated at any point?

3 A. No.

4 Q. If you would, just give the court a -- from what you
5 remember. I know it's been a long time, but just very
6 brief factual background of how these charges came about,
7 just to try to enlighten the judge a little bit on the
8 background.

9 A. Well, Mark was and is my friend and is my client. I'm
10 sorry he has had these problems, and I am sorry that he had
11 this propensity.

12 I had the privilege of representing Mark and his
13 sister in regard to a business issue which lasted for a
14 while but produced a relatively favorable result. The
15 litigation was aggravating, it was long, but in the end we
16 did okay, and we left that litigation I think good friends,
17 and I think we still are, and I left with a great deal of
18 respect for him and his sister and valued their friendship
19 and their business.

20 I received a telephone call from Mark, I believe, that
21 something was going on with his wife and so forth and so
22 on, and as I recall they were at SLED, and I went down to
23 SLED, and I believe -- I thought that they were initially
24 together but got separated. I don't know, but I spoke with
25 Mark at length about what was going on.

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1 It was during the period of time, I believe, that I
2 was actually at the SLED location that we learned there was
3 a videotape of Mark having sex with -- I believe it was
4 about an eight or ten-year-old child and that the
5 videotaping was being filmed by his wife. The child
6 appeared to be drugged, and there was, there was videotape
7 of the actual act. I obviously became distressed to learn
8 that was there. And it turned out that the wife had given
9 them permission to search the house.

10 What had happened was there was this killer or some
11 vicious, violent criminal on the loose. Ms. Brown claimed,
12 and I think she was telling the truth, that she had been
13 attacked in the parking lot in some fashion by someone who
14 appeared to have met the description. During their
15 discussions, law enforcement became suspicious that she was
16 not telling the truth and that she had made this call just
17 to get some attention or something of that nature. Why
18 they came to those suspicions is totally beyond my ability
19 to comprehend, but they basically wanted to go to the house
20 and to search it and to see if there was anything at the
21 house that would verify their suspicions that, in fact, she
22 was making up the carjacking attack complaint.

23 She told them that they could go and search her house.
24 Now, in the video player -- they had an eight-track, not an
25 eight-track but VCR player set up in the house -- was the

1 homemade video of Mark having sex with this very young
2 child. And somehow or another the officer, just looking
3 around, going to check to see if there were anything on
4 that tape that might verify, popped it into the TV and low
5 and behold, there's a picture of Mark in the middle of
6 intercourse with a -- what appeared to be drug -- drugged
7 child of about ten years of age with him having a
8 conversation with his wife, who's videotaping. And the
9 charges basically got made, and I was asked to defend them.

10 I'm not certain I've ever seen a sex case where the
11 evidence is the defendant actually engaged in the act with,
12 with the documented evidence actually doing it, but that's
13 what I was looking at from a factual standpoint.

14 Q. And at the prior PCR, I believe that you described
15 that videotape as, I think your word was horrific, and you
16 said there was no way to win the case if that came in at
17 trial. Is that an accurate recollection, and do you agree
18 with that statement today?

19 A. In my humble opinion, from the factual standpoint,
20 there was zero chance of winning the case unless I guess I
21 could prove in some form or fashion that that wasn't him.
22 But if you looked at him in the face and you looked at the
23 pictures, there was very little question about who was
24 doing what to be child. There was zero chance to win the
25 case if you could not keep that evidence out. That

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1 evidence comes in, you lose. If the evidence stays out,
2 you win because at that point in time, they've got nothing.

3 Q. And was that something you were able to discuss with
4 Mr. Brown, to kind of go over the importance of the
5 suppression hearing and keeping that evidence out?

6 A. I discussed with Mark, yes, I discussed with him (A)
7 what the heck was going on and why. And discussed with him
8 that the only hope that I could see with the case would be
9 is if we could make and win a suppression hearing in some
10 form or fashion.

11 Q. Okay, and just to be clear, there were no plea offers
12 on the table in this case?

13 A. What you had -- I don't know if you know Luck
14 Campbell, but she is an incredibly hard-nosed prosecutor.
15 She is a very competent and skilled trial lawyer. There
16 are those who would say she's mean. She can be incredibly
17 difficult to deal with, and she is aggressive. I respect
18 Luck Campbell greatly. She's a very fine, hard-nosed
19 litigator. She's tough as nails.

20 I did everything in my power to try to secure some
21 concessions out of her in regard to allowing us to plead to
22 something that would not put this man in jail for the rest
23 of his life, and she -- I have, I have seen her, I have
24 seen her aggressively wanting to pursue a case, but I'm not
25 sure I have ever seen her quite as fervent as she was on

1 this one. She was absolutely determined to do anything and
2 everything she could possibly do to this man and refused to
3 engage in any type of plea negotiations.

4 Q. And you had discussions in that regard with Mr. Brown?

5 A. I did. I let him know full well that I was unable to
6 secure any type of concessions from the solicitor's office
7 with regard to a plea, and that in my mind we basically had
8 nothing to lose by going to trial and forcing the issue.
9 He was reluctant to do that because it would be
10 embarrassing but understood. So, our strategy was to move
11 forward with our suppression hearing as best we could and
12 to basically raise all the Cain we can raise, trying to
13 raise every procedural problem we could find, and just to
14 try to doggone thing.

15 Q. And you did, in fact, file a motion to suppress with
16 the court, correct?

17 A. I filed the motion after I had done serious research
18 myself into whether I could find any anything under God's
19 earth to argue about with regards to suppression.

20 Q. Did your investigation and research include the issue
21 with his wife and her competency and ability to consent to
22 a search of the house?

23 A. You know, I did not seek to have his wife mentally
24 evaluated. It was explained to me that she was bipolar. I
25 understand what the disease of bipolar basically is. I did

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1 research the issue on what I would have to show in order to
2 convince a court that she was unable to make an informed
3 decision about consent. With what I had seen of her and
4 knew of her, the chances of securing some medical testimony
5 in that regard would, in my humble opinion, have probably
6 been nil.

7 Q. Okay, and when you filed the motion, that motion to
8 suppress with the court, was Mr. Brown given a copy of it?

9 A. I would hope that he was; I think he was. I, I
10 couldn't tell you. Could I tell you I handed him a copy of
11 the suppression order? No. Our normal practice when we
12 file a motion is to send to the client a copy of it. Now,
13 at this time Mark would it be incarcerated, so we would
14 have probably sent it to the jail. I just heard him
15 testify that he had a copy of it, so I'm assuming we was
16 sent by mail, or Stanley or I gave it to him.

17 Q. Okay. At some point in time, and it might have been
18 the morning that this was called to trial, but you had the
19 opportunity to meet with the solicitor and judge in
20 chambers, correct?

21 A. We did.

22 Q. Okay, and you had the discussion about the motion to
23 suppress with the solicitor and judge?

24 A. Yes, we did.

25 Q. And that was Judge Reggie Lloyd?

1 A. Yes.

2 Q. And what was the result of that conversation?

3 A. Well, first of all, you've got to understand that
4 Judge Lloyd was known as being not somebody you want to
5 appear before in criminal court. He was not particularly
6 open to intellectual legal arguments in regard to
7 suppressions. He wasn't very sympathetic to defendants,
8 and he was, in my humble opinion, way too harsh in regard
9 to his sentencing. That's my opinion.

10 English translation: Judge Lloyd would not have been
11 my judge of choice. He would have been Luck's judge of
12 choice and since she was the solicitor, had the right to
13 call the case. I was stuck with Reggie Lloyd.

14 Reggie Lloyd's a friend of mine; I like him. I just
15 think he was too harsh as a judge.

16 But we, we went back into chambers, and he basically
17 wanted to know what the suppression hearing was about. And
18 I very -- for a significant period of time, we discussed
19 the issues that we had related to the suppression.

20 My primary thrust was that the, the search basically
21 was unrealistic, considering the scope of what was
22 supposedly being looked for. That there was no reason, if
23 you looking for some evidence of fabrication, that you
24 would basically turn on a television and plug in a video
25 cassette. And I was arguing that, I believe I was arguing

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1 that -- again, it's six years ago, but I think I was also
2 arguing that she didn't have the understanding and the
3 knowledge in regard to what she was consenting to when she
4 gave the consent.

5 He wasn't impressed and basically -- I mean, I'm sure
6 you've been in in-camera discussions where they say
7 something. Well, I'm not ruling on this, you understand,
8 but. You know, there's no way in the world he was going to
9 grant that motion. He made it abundantly clear in chambers
10 that he (A) was not impressed with the motion, was not
11 inclined to grant it, and basically was not going to grant
12 it.

13 We then entered into discussions in regard to, well,
14 okay, if you not going to grant the motion as it appears
15 you're not going to, you know, I can't get Luck to move off
16 maximum everything. So, if I plead, what can you do for
17 me, at which time it was basically let known to me look. I
18 can't tell you what I'll do for you, but I believe it will
19 be easier on you if you plead than if you go to trial and
20 get convicted.

21 So, I had the option of either trying the case nonjury
22 -- I could have waived a jury trial. The state could have
23 demanded one, but I don't think they would have. Or I
24 could have, I could have gone nonjury and simply made the
25 suppression hearing motion, which ---

1 Well, the reason -- every time I did the research on
2 it, every time I thought I had another issue, I would run
3 up to another case that just shot me in the foot. The law
4 was just tough and the facts were tough. One of the things
5 I've learned as a lawyer is that I can argue the law, but I
6 don't make the facts. You just had a heavy burden.

7 Mark was -- trying to determine what to do with Mark
8 was heavy. I had two choices. I could just go great guns
9 and defend the case, but if I lost it, which I was going to
10 do, it was going to be harsher on sentencing than if I pled
11 him. On the other hand, I knew full well if I pled him,
12 they were going to load him up. So, when I have situations
13 like that, what I normally do is explain what I see to the
14 client and let the client make the decision as to what he
15 wants to do.

16 I went down and I talked to Mark, and I said here's
17 the deal. We can try this case. I can argue the
18 suppression motion. We're going to lose it. If we lose
19 it, we're going to lose at the actual trial. They're going
20 to load you up with time.

21 At that point in time, I can appeal and argue the
22 suppression motion on appeal. The chances of winning that
23 appeal are going to be very slim, but they are there. On
24 the other hand, if I lose the appeal, then you've been
25 loaded up with the maximum of what they can do.

1 The only hope that I know that you have is to, you
2 know -- if the indication I have from the court is that if,
3 if you plead, they will be a little bit lighter on you, but
4 you need to understand they're going to load you up either
5 way.

6 So, I explained it to him, and Mark's a smart man. He
7 understood what he was looking at, and he understood what I
8 was looking at. I don't know if I answered your question
9 or not.

10 Q. I think you did, and I didn't want to stop you when
11 you're on a roll there. So, fair to say that by conducting
12 the actual suppression hearing, the judge hearing it, who
13 would have been Judge Lloyd I believe is your testimony,
14 would have heard and seen the entirety of that video during
15 that suppression hearing most likely?

16 A. Probably, yeah.

17 Q. And is there ever a strategy to not have a suppression
18 hearing in front of a judge because if you lose it and he
19 pleads guilty at a later date, you know, in front of that
20 same judge, he's seen the damaging evidence at that point?

21 A. Well, we were up for trial. We were ready to try the
22 case; we were going to try it that day. We were. I simply
23 had the suppression hearing pending, and we were going to
24 hear that and then go directly into the trial of the case.

25 Q. And there was a portion of that videotape actually

1 played for Judge Lloyd during the plea hearing, correct?

2 A. You know, I'm certain that Judge Lloyd saw portions of
3 the video at some time. I am not positive that they were
4 actually played in open court; I sure hope they weren't,
5 but I just don't remember.

6 MR. CORNEY: Okay and, and if counsel will just let me
7 lead him for just a moment on this?

8 BY MR. CORNEY:

9 Q. If the transcript reflects that it was shown that you
10 had made an objection to the public and actual gallery
11 seeing it, you wouldn't contest that, correct?

12 A. Now that you mention it, I think that's what happened.

13 Q. Okay, and the TV being turned so only Judge Lloyd
14 could see it at that time?

15 A. I think that's correct.

16 Q. All right.

17 A. It was incredibly graphic, and one of the worst pieces
18 of evidence that I have ever seen in my years of practice.
19 It was hard for me to watch.

20 Q. At the prior PCR hearing, you had testified that --
21 and I just want to make sure this is clear. I heard you
22 mention something about this before, but you had said there
23 was some indication that if he pled, there would be some
24 time taken off the sentence? He would get some
25 consideration from the judge for that?

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1 A. The judge basically said something to that effect,
2 that I'll give you some consideration for basically not
3 making us go to trial.

4 Q. And all these discussions you've had in chambers with
5 Judge Lloyd, were those things you were able to review with
6 Mr. Brown?

7 A. Sure. I mean, the people who would have been in there
8 would've been Stanley Myers, me, Luck Campbell, the judge,
9 the judge's law clerk, and I believe an assistant solicitor
10 who was working with Luck.

11 Q. In the end, do you believe that you made it abundantly
12 clear to Mr. Brown that it was ultimately his decision
13 whether to pursue the suppression hearing or to plead
14 guilty and waive that suppression hearing?

15 A. Now that I'm positive of.

16 Q. And did he understand by pleading guilty, he would be
17 waiving that suppression hearing and any appeal he might
18 have from the suppression hearing?

19 A. I told him that.

20 THE COURT: Let me interrupt you just for a minute.

21 MR. CORNEY: Yes, sir.

22 THE COURT: The plea transcript that I have is in
23 front of Judge Barber.

24 MR. CORNEY: And I apologize. I believe I said Judge

25 ---

1 WITNESS: We did, we did -- I believe what we did --
2 quite frankly, I believe that what we actually did is, I
3 believe one of the concessions that I actually got was I
4 didn't have to plead before Judge Lloyd. I think I asked
5 for Judge Barber. I think that's one of the concessions I
6 was able to get, and I think we were able to talk to Judge
7 Barber ahead of time, but Judge Barber, I think, did do the
8 plea.

9 MR. CORNEY: And I apologize for confusing the record,
10 Your Honor.

11 THE COURT: I didn't know if ---

12 BY MR. CORNEY:

13 Q. If it was called to trial that day, it would have been
14 called in front of Judge Lloyd and a jury?

15 A. Yeah, it would have been. I mean, what, what
16 basically happened -- again, it's six years ago. It was
17 being called before Judge Lloyd, and we ultimately were
18 able to get it in front of somebody who is more reasonable
19 when it comes to sentencing.

20 Q. I believe Mr. Brown up here on the stand earlier --
21 and you were -- you've been here today and heard his
22 testimony, correct?

23 A. Sure.

24 Q. I believe earlier you testified as to no witnesses
25 being brought in in his mitigation. Could you address any

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1 conversations you had with him about how you would handle
2 mitigation and your strategy there?

3 A. I don't know who I would've brought in. The only real
4 relative I knew of that he was close to would be his wife,
5 who was a codefendant, and his sister, who I believe had
6 moved out of state. The other relatives that he basically
7 had, he had been in litigation with. There really, there
8 really wasn't a whole lot that you were going to be able to
9 do there.

10 Q. And because of your personal relationship prior to
11 this with Mr. Brown, you were able to kind of vouch for him
12 during the mitigation, correct?

13 A. Did everything I could.

14 Q. And I want to ask you about, there was also an issue
15 raised with the indictment. Just as a brief background,
16 Mr. Moore, how long have you been practicing law?

17 A. Thirty-six years.

18 Q. And how much is that is dedicated to criminal defense
19 work?

20 A. A good bit. I've tried a number of cases.

21 Q. By statute, a motion to quash an indictment has to be
22 made before the jury is sworn, correct?

23 A. Now, to quash the indictment? Yes, yes.

24 Q. And jeopardy doesn't attach until a jury is sworn,
25 correct?

1 A. That's right.

2 Q. So, is there anything stopping the state from
3 re-indicting somebody if a motion to quash is successful?

4 A. If the motion to quash had been successful, all they
5 had to do is re-indict him, that's right. We were in a
6 position with this case where we were grasping at straws.
7 We were trying everything we could think of. We looked, we
8 looked at the indictments. We looked at the warrants. We
9 looked at facts. I'd have tried this thing if I had not
10 been able to, to at least get a concession that, you know,
11 we'll give him something for considering a plea.

12 Q. Do you recall there being any issues with the
13 indictment? I know it's been a long time, but...

14 A. I didn't see any that I thought were worth making but,
15 I mean, if someone will point one out to me, I'll give you
16 my humble opinion as to whether it's valid or invalid.

17 MR. CORNEY: Beg the court's indulgence for just one
18 moment. Just make sure I touched on everything.

19 BY MR. CORNEY:

20 Q. Were you able to have any discussions with Mr. Brown's
21 wife's counsel prior to the hearing?

22 A. Yes. Now, to tell you that I have any real
23 recollection of those conversations would not be true but
24 yes, I have had discussions with her counsel.

25 Q. You don't recall whether you ever went into

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1 competency, her mental health history, anything like that
2 with him specifically?

3 A. No. You know, I don't -- to tell you -- I'm not going
4 to guess. I, I, I know I looked at the issues that I could
5 think of in -- I looked at everything I could conceivably
6 think of in regard to that suppression hearing, and I
7 couldn't find anything that made a lick of sense based upon
8 what I could find in the statutes and the, and the case
9 law. I knew it was all I had, and it was like a pea
10 shooter shooting in a tank. It's just you had, you had
11 such an uphill battle. Just wasn't there, but it's all I
12 had. So, I'll take my pea shooter and go into battle if I
13 have to.

14 Q. And the reason you didn't do that was because Mr.
15 Brown decided he didn't want to go forward with that
16 suppression hearing?

17 A. Well, I explained it to him, and now one thing Mark
18 clearly understood that what -- to do with it, it's not my
19 decision. It's his and I told him that. I mean, I always
20 tell them that. It's never my decision.

21 Q. Did you recall at the prior PCR an issue being raised
22 with the signature on the arrest part of the search warrant
23 that was issued?

24 A. I don't recall it, but I'm sure it -- basically what
25 I've heard today was an issue there, sure.

1 Q. Okay, and you haven't had the opportunity to look at
2 it today to see if you recognized the signature, have you?

3 A. I haven't, but if it's, if it's described as kind of
4 looking like a X, that's Scott Whittle's signature. That's
5 the way he signs everything. I have raised that issue with
6 other cases and -- only to be told that that's Scott
7 Whittle's signature.

8 Q. And he's a Lexington County magistrate, correct?

9 A. Yes, he is.

10 Q. You've heard the testimony here from Mr. Brown.
11 Anything else that you disagree with or wanted to address
12 before I sit down for a moment?

13 A. No. I wish Mark nothing but the best, and I
14 understand why I'm here today, and that's okay, too.

15 MR. CORNEY: Thank you very much, Mr. Moore. That's
16 all I have for you.

17 WITNESS: Thank you.

18 THE COURT: Mr. Postic.

19 MR. POSTIC: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. POSTIC:

21 Q. Mr. Moore, I'll try to move quickly.

22 A. You're okay.

23 Q. Thank you. Let me ask you. Do you believe in your
24 extensive experience as a lawyer, did you think that there
25 was merit to his issue on the search?

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1 A. No.

2 Q. You did not believe that?

3 A. You know, when you say merit, one of the -- you kind
4 of put me in a box there because I cannot make a motion
5 that I don't believe has merit. If I do that, I've
6 committed an ethical violation

7 Was there enough technical merit to at least be able
8 to try to argue something? Yeah, yeah. I mean, you could
9 argue that the lady did not know and understand what she
10 was doing when she gave the consent.

11 You could argue, the best argument that we had was
12 that the search was overly broad. That if they were trying
13 to find newspaper articles and so forth and so on, what in
14 the name of goodness were they doing watching
15 videocassettes at the house. You know, who gave them
16 permission to turn the TV on? Who gave them permission to
17 basically push the play button on the VCR? The best
18 argument that I had was over broad search.

19 Q. Let me ask you this. I just thought of this. You
20 were at SLED while they were being questioned. Is that
21 correct? Did they, did the SLED ---

22 A. Yes.

23 Q. Did the SLED officers know that you were there as
24 their representative?

25 A. Yes.

1 Q. Was there -- did they -- were you given a chance to
2 counsel Mark and his wife?

3 A. Yes.

4 Q. Alone?

5 A. The problem is by the time I got there -- now, now
6 I'm, now I am going from memory. I stand to be corrected
7 on this, but I believe by the time I got to SLED, they had
8 already found -- I'm sure they had. Well, I'm not sure.
9 I'm almost sure they already had the videotape by the time
10 I got there. They had done their search and had already
11 found it.

12 Q. By the time you got there?

13 A. Right.

14 Q. Would you have -- would you say it was a fair
15 assumption that she was, she was being held at that point
16 at SLED as a suspect for making a false report?

17 A. Yes.

18 Q. And are you certain that they found the videotape
19 before you arrived?

20 A. No.

21 Q. Okay, and let me ask you this, just skipping around a
22 little bit. And, and that sixth amendment right to counsel
23 is not something that was raised in your suppression motion
24 or wasn't ---

25 A. No.

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1 Q. --- something that you had thought of?

2 A. No.

3 Q. Were you told that they had found it before you
4 arrived?

5 A. I do not remember. I, I'm sorry.

6 Q. That's fine.

7 A. I just don't remember. I, I know this. That if I had
8 gotten there, and if I had known that they were searching
9 the premises, I would have said stop.

10 Q. And you were not told that they were going to search
11 the premises?

12 A. You know, Mark, Mark's going to have to correct me on
13 this. I, I don't remember. Basically what I know is I was
14 asked to come out there because she was basically taken out
15 there, and I'm almost certain, I'm almost certain that they
16 had the video before I got there. But I don't know that
17 for sure.

18 Q. Understood. As far as the suppression goes, you
19 explained to Mark -- is it your testimony, do you remember
20 specifically telling Mark that he could never -- that that
21 issue would be dead if he pled guilty?

22 A. I told him if it was, if it was -- if he pled guilty,
23 it was over.

24 Q. It was over?

25 A. Over.

1 Q. And in, in your prior -- the reason I ask you
2 specifically is in your prior testimony in the PCR, you
3 said you thought that you told him that.

4 A. Let me -- I told him. I always tell them. Now, you
5 know, can I tell you where I was when I told him that? No,
6 but, I mean, I always tell them that. Look. Plead guilty,
7 you're -- that's the end of the train. Do I have the --
8 can I tell you where I was when I had that discussion? No.

9 Q. And you, and you heard him today say that he was not
10 told that by you?

11 A. Well, yes, I heard him say that today.

12 Q. So, you disagree with that?

13 A. Yeah, I do.

14 Q. Okay.

15 A. And I believe he said on the record that he -- I
16 believe if you look at the record, and again it's six years
17 ago. But I think if you'll look at the record, the judge
18 asked him do you understand if you plead guilty, it's
19 pretty much this is it, and he said yes. So, he'd had to
20 get that understanding from me or Stanley.

21 Q. And I understand that. My reading of the record does
22 not indicate that the judge said anything about appealing
23 the suppression.

24 A. That, that ---

25 Q. But I might be incorrect.

S.J. MOORE - CROSS-EXAMINATION BY MR. POSTIC

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1 THE COURT: I think you are.

2 MR. POSTIC: I am incorrect?

3 THE COURT: Well, he says -- I highlighted it. In his
4 colloquy he says:

5 Do you understand that by giving up and by going
6 forward with these pleas here today, you're going
7 to give up your right to suppress any evidence
8 that you might think might be suppressed in this
9 matter or attack the state's case in any way?

10 That's page 9, line 10.

11 MR. POSTIC: Yes, sir.

12 THE COURT: Okay.

13 MR. POSTIC: And -- but going further from that, that
14 he would have a right to appeal that is what we're basing
15 our PCR on, or part of our PCR on.

16 BY MR. POSTIC:

17 Q. You've covered a lot of this already, Mr. Moore, so
18 we're not going to rehash it. Did you discuss with, with
19 Mark the possibility that a trial could be the potential of
20 a not guilty verdict some, some charges? To conviction on
21 some charges and not the others? The possibility of lesser
22 included verdicts?

23 A. For me to sit here and tell you that I had that
24 specific discussion with him, I don't have a specific
25 recollection of that. Now, I would -- in getting ready for

1 a trial, you would always do that. I mean, if I didn't do
2 it, it's probably the first case that I haven't done it in,
3 but, I mean, it was -- I, I don't have a specific
4 recollection. I can't -- if I followed my standard
5 practice, which I'm sure I did, we would have had those
6 discussions. The problem you have, though, is trying to
7 figure out how you would have won any of them.

8 Q. Right.

9 A. The evidence was so overwhelming that factually -- the
10 evidence was so bad in this case that you couldn't even let
11 the people in the audience see it during the plea because
12 of the risk of embarrassing the client or offending those
13 people who would be watching.

14 Q. Let me ask you. When you had negotiations with, with
15 Ms. Campbell, and I've read that -- how -- that they --
16 very heated talks with her. Did you ever have any sort of
17 specific plea bargains that you were talking to her about
18 that you can talk about today?

19 A. Yeah, and again the thing that was so absolutely --
20 and you got to know me. I'll negotiate with anybody any
21 time anything. If I ever get somebody who basically puts
22 me in a box, I will fight with everything in my power. I
23 almost begged that lady to give me something by way of a
24 plea, and her response basically was you're dreaming.

25 Q. Okay.

S.J. MOORE - CROSS-EXAMINATION BY MR. POSTIC

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1 A. The only thing that she would ever say is that she
2 would take a straight-up plea. That there'd be no
3 negotiation, no plea bargain, and that if she could -- I
4 was going to exaggerate -- but if she could, if she could
5 have, she would have put him in the electric chair and
6 killed him. She was that just totally aggressively
7 disgusted by this case, and she was on a mission. I
8 couldn't get air in a jug.

9 When that happens to me, I will normally just say
10 okay. Tee it up, which is what I did. We showed up.
11 We're called for trial. We showed up and fine. Knock
12 yourself out. At some point in time that -- I was able to
13 get the concessions, that I believe one of those
14 concessions was I wouldn't have to plead before Reggie
15 Lloyd.

16 Q. Yes, and that -- I was about to mention that there was
17 concession that you did get and I'm sure you asked for.

18 A. Absolutely, and I think that I did a good job asking
19 for that concession. I think most people would agree that
20 I did, and we were able to get some -- the sentence could
21 have been worse.

22 Q. As far as you know, was the state prepared to go to
23 trial on that day?

24 A. I was called. Okay, my recollection is I was called
25 for trial, and I think they were.

1 Q. Okay. So, you, as far as you know, they had witnesses
2 and everyone prepared to go?

3 A. I was told they were. I know I was ready to go.

4 Q. I understand. Did you plead on that day? Was it a
5 Monday?

6 A. Can't tell you. Don't know. I actually think -- I
7 don't remember. That's a good question. I do not recall
8 that.

9 Q. If you pled ---

10 A. It may have been that Judge Barber was holding plea
11 court and Judge Lloyd was holding trial court, and I know
12 that they gave me the courtesy of allowing me to speak to
13 Judge Barber in Chambers, too, which I think I did.

14 Q. And did you -- I mean, you've done a lot of pleas I
15 know. I've seen you. You're a good lawyer, and you knew
16 -- Mark is from a pretty, pretty well-known family in
17 Columbia.

18 A. The Tokanographer [phonetic] is who he's kin to.

19 Q. Yeah. Did you have, did you have any mitigation that
20 you would bring in or that you had thought of bringing in
21 for a plea?

22 A. I can't remember.

23 Q. Okay.

24 A. I can't remember. I, I do not don't remember if I --
25 I don't remember.

S.J. MOORE - CROSS-EXAMINATION BY MR. POSTIC

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1 Q. Did you explore the possibility of trying to get an
2 assessment or evaluation of Mark to understand why he might
3 have done this?

4 A. No, and there's a reason. Mark explained to me what
5 -- why he had done this.

6 Q. But it's obviously -- I mean, it's, it's apparent
7 behavior.

8 A. Oh, it's aberrant behavior. It's criminal behavior.
9 I mean, I'm trying to be delicate.

10 Q. Understand.

11 A. Mark had explained to me why he had done this and had
12 explained to me the problem that he had. I understood that
13 problem; I understood the problem that he had. You didn't
14 need a psychiatrist or a psychologist to basically explain
15 it. There's no doubt that he knew and understood what he
16 was doing, and there is no doubt that he had a serious,
17 serious problem, which any psychologist or psychiatrist who
18 would have evaluated this would have basically told you
19 what that problem is, but Mark knew what it was.

20 MR. POSTIC: Beg the court's indulgence.

21 (A PAUSE.)

22 BY MR. POSTIC:

23 Q. Are you talking about, are you talking about
24 pedophilia?

25 A. Yes.

1 Q. And, and that he admitted to you that he was a
2 pedophiliac or pedophile, I guess?

3 A. Yes.

4 Q. Did he discuss that he had a drug problem?

5 A. Yes.

6 Q. And that, that he felt that that led to this?

7 A. That he thought that contributed to this, but what
8 basically happened is, what I recall, he had gotten
9 involved in this interest simply by surfing the Internet.
10 The Internet had basically tweaked this interest, and the
11 interest became a drive, and the drive became an illness,
12 and he basically was attracted to children, and somehow --
13 you got to understand that his wife was his cameraman.

14 This was a thought-out act of what appeared to be a
15 drugged ten-year-old. Anybody who is a trained
16 psychologist or psychiatrist is going to basically say
17 aberrant behavior -- pedophile knows and understands what
18 he's doing, knows and understands the potential
19 consequences of his act. On the tape ---

20 Q. I understand that, Mr. Moore, but would, would --
21 couldn't you feel that a psychologist or somebody could
22 present a course of action to treat someone with this, with
23 this issue?

24 A. Yeah. Yes, I guess.

25 Q. Okay.

S.J. MOORE - CROSS-EXAMINATION / REDIRECT EXAMINATION 72

1 A. I mean, most judges that I know who have practiced law
2 any length of time or seen criminal courts understand the
3 nature of pedophile and what basically is there. You know,
4 if I had -- once we decided that we were going to plead, if
5 I were going to try to use something in mitigation, the die
6 was cast. We were, we were in a plea stage at that point
7 in time.

8 Q. I understand. Now let me ask you this. Did you -- I
9 mean, this is rare that we even do this, but did you ever
10 make any attempt to reach out to the victim in this matter?

11 A. No.

12 Q. How about these other issues? We've covered the
13 arrest warrant, the consent to search, and deficient -- and
14 I believe you did talk about the deficient indictment.

15 A. I don't even -- I don't presently recall even what the
16 issues were with the indictment. I just don't remember
17 them.

18 MR. POSTIC: Beg the court's indulgence.

19 (A PAUSE.)

20 MR. POSTIC: Thank you, Mr. Moore. That's all I have.

21 THE COURT: Redirect?

22 MR. CORNEY: Just two brief follow-up questions.

23 REDIRECT EXAMINATION BY MR. CORNEY:

24 Q. Mr. Moore, you were asked about lesser-included
25 offenses, whether you reviewed that with Mr. Brown. When

1 the evidence here clearly showed Mr. Brown engaged in
2 sexual intercourse with a young child who is drugged, do
3 you think there is any basis to even get a jury charge on a
4 lesser-included offense other than criminal sexual conduct
5 in the first degree?

6 A. Getting a jury trial from Reggie Lloyd in that regard
7 would certainly have been difficult. No, I don't think
8 that you were -- honestly, the lesser-included offense
9 arguments, they're sort of non-issues.

10 Q. And you were asked about reaching out to the victim.
11 The victim in at least one of these instances wasn't even
12 aware this had occurred to them until the video was shown
13 to them after Mr. Brown's arrest, correct?

14 A. That's right.

15 Q. Not a high likelihood that the victim was going to be
16 sympathetic, helpful based on that?

17 A. No.

18 MR. CORNEY: That's all the questions I have, Your
19 Honor. Thank you.

20 THE COURT: Anything further?

21 MR. POSTIC: No, Your Honor.

22 THE COURT: All right, you may come down, Mr. Moore,

23 WITNESS: Thank you, Your Honor.

24 (THE WITNESS EXITS THE STAND.)

25 WITNESS: May I be excused from my subpoena?

1 THE COURT: We made your 12:00 deadline.

2 WITNESS: Thank you, Your Honor.

3 THE COURT: Have a pleasant vacation.

4 WITNESS: Thank you so much.

5 THE COURT: Anything further from the state?

6 MR. CORNEY: Nothing from the state, Your Honor, no.

7 THE COURT: Anything further from the defense?

8 MR. POSTIC: Other than argument.

9 THE COURT: All right. All right, Mr. Postic, you may
10 proceed.

11 MR. POSTIC: Briefly, Your Honor. I think the
12 strongest issue that Mark has are -- the reason I -- and I
13 did send to your clerk a copy of the case that I'm going to
14 be relying on, which is *Barry vs. State*, which is where, it
15 was a case where enhancing -- defendant had a prior
16 paraphernalia charge that enhanced his sentence. That was
17 not raised by the, by counsel for the defendant, and I can
18 hand you a copy of that. I'm sorry about that. I thought
19 I had sent you a copy.

20 THE COURT: Thank you.

21 MR. POSTIC: And briefly, Your Honor, it's a case
22 where the, where the, where the Court of Appeals reversed
23 trial court's granting of a PCR because the, the, the, the
24 attorney for the defendant failed to raise that issue, and
25 I am drawing a comparison to that.

1 I couldn't find anything on point as far as not
2 presenting a germane issue, and that's why we had to go
3 into some detail as to the issue of the suppression. That
4 it, that it is an issue with some merit. It's a very, very
5 strange case how this came about and, and the defendant
6 states clearly that he was not told that he could not never
7 appeal that issue. Whether or not in that time of the
8 plea, I understand the point, the highlighted portion of
9 the, of the transcript that Your Honor raised. However, I
10 would state that that is the sort of thing that Mr. Moore
11 should have explained in detail to defendant since it was
12 the only thing he had, and I think he was relying heavily
13 on that suppression.

14 The other issue that I think is, is very strong from
15 the defendant as far as ineffective assistance of counsel
16 is that when you have a plea, and by Mr. Moore's own
17 admission just the most horrific, abhorrent situation. And
18 when there is so much aggravation as far as the charge,
19 that's when as a defense attorney, defendant attorney,
20 mitigation should be brought in heavily.

21 I, I, I would state that on -- as part, as part of his
22 application for PCR that the -- that Mr. Moore should have
23 brought in more mitigation, should have asked for time to
24 prepare for a plea. Had somebody, a counselor to come in
25 and explain that there is possible treatment for pedophiles

1 and drug addicts, as well as bringing in family members. I
2 don't think Mr. Brown had an extensive record. I don't
3 remember his criminal record at all. So, mitigation could
4 be could have been brought forward to lesson the sentence.

5 The, the other issues, Your Honor, nonjury trial
6 versus jury trial, Mr. Moore states that he did explain
7 that to the defendant. The defendant states he did not.
8 That's going to be an issue for the court, I imagine.

9 The -- as far as going through a plea negotiation,
10 raise that ever since the Pittman case of a few years ago.
11 It does seem like the defendant -- Mr. Moore did address
12 that with Ms. Campbell and the Lexington County solicitor's
13 office.

14 So, the two big issues, Your Honor, that, that, that
15 Mr. Brown has in his PCR would be the failure to, to
16 explain to him that he could never appeal this very -- this
17 issue that, that has merit, and that he did not present
18 mitigation at a plea for, by his own terms, the most, one
19 of the most aggravating cases he's ever seen.

20 THE COURT: You think despite his testimony that in
21 chambers he raised the issue of the suppression hearing and
22 felt that Judge Lloyd would not grant it, do you think
23 there was failure nevertheless to put that on the record
24 and pursue it? In other words, force that issue?

25 MR. POSTIC: Yes, Your Honor, and that -- and

1 obviously you can't appeal a conversation that he had in
2 chambers

3 THE COURT: I understand that.

4 MR. POSTIC: And that if he felt that there -- if, if
5 his client felt that there was merit in that issue, that
6 that should've been explained to him that he would never be
7 able to raise that issue in court.

8 THE COURT: All right. Mr. Corney?

9 MR. CORNEY: Your Honor, the state would mostly rely
10 on the record of the credible testimony state submits from
11 Mr. Moore on the stand today that this video was coming in
12 at trial. Judge Lloyd all but told him it was coming in at
13 trial.

14 Mr. Brown knew that. He knew he could still challenge
15 the video through a suppression hearing if he wanted to.
16 He knew it was ultimately his decision if he wanted to
17 challenge that and proceed with the hearing or plead
18 guilty, and he made a voluntary and informed decision not
19 to proceed with that in favor of pleading guilty to get
20 some consideration from the court.

21 Now, granted he could have forced the state's hand and
22 pushed for a suppression hearing and had the judge actually
23 make a ruling on the record for it. But the point is
24 there's some danger to that as well. If he goes in front
25 of Judge Lloyd and has Judge Lloyd watch this, what the

1 transcript reflects is an hour-long video of him engaged in
2 sexual intercourse with a ---

3 THE COURT: That wouldn't be the issue ---

4 MR. CORNEY: But, but ---

5 THE COURT: --- at a suppression hearing. The
6 suppression hearing would only, in my opinion, have been
7 the scope of the consent, and what the purpose of the
8 consent was for was to look for this other ---

9 MR. CORNEY: But if, if that ---

10 THE COURT: --- alleged escapee.

11 MR. CORNEY: Yes, sir, Your Honor, absolutely. Well,
12 I think to go into the prejudice prong of that, I don't
13 think that, as, as Mr. Moore got up there testified, that a
14 suppression hearing would have been so successful. There's
15 nothing to indicate it would have been successful, and I
16 don't think the applicant has met his burden of proving had
17 he done that, he would have been successful. That goes
18 directly to the fact that even if he had done that, it was
19 preserved for appeal, he hasn't proven it would have been
20 overturned on appeal. And that burden just hasn't been met
21 here today, and there's been nothing produced to show that,
22 that there was some grounds that the suppression hearing
23 would have either won at trial or been overturned on
24 appeal, which is the prejudice prong in *Strickler vs.*
25 *Washington*, Your Honor.

1 It was a gruesome case. Obviously it was videotaped.
2 If it came in and the suppression hearing wasn't
3 successful, which I will again note it was Mr. Moore's
4 testimony that Mr. Brown made the ultimate decision whether
5 he wanted to do that or not. He said he was ready to go
6 and do the suppression hearing. Mr. Brown knew he had the
7 ability to do the suppression hearing, and Mr. Moore left
8 in his hands to decide whether he should go to the
9 suppression hearing or not.

10 Mr. Brown chose not to do the suppression hearing.
11 That's the ultimate, that's the ultimate credible testimony
12 before this court that I would point to. It was Mr.
13 Brown's own choice not to have the suppression hearing, and
14 he did that knowing if he pled guilty and didn't have that
15 suppression hearing, that forever foreclosed his ability to
16 challenge the evidence.

17 It's plain in the transcript. The judge advises him
18 if you plead guilty today without going forward to trial or
19 suppression hearing, you're forever foreclosing your
20 ability to challenge that. I would submit, the state would
21 submit that refers to his ability to directly appeal that,
22 forever foreclosing him from it.

23 The case of *Jeter vs. State*, which J-e-t-e-r vs.
24 State, I believe it's from South Carolina. The Supreme
25 Court held that where there's overwhelming evidence of

1 guilt against the defendant, he can't meet his burden in
2 proving resulting prejudice in the *Strickler vs. Washington*
3 analysis.

4 Assuming this video comes in at trial or the
5 suppression hearing isn't successful, there is no
6 reasonable likelihood that this outcome, the outcome at
7 trial would have been any different. They have him on
8 videotape engaged in this horrific act. That's
9 overwhelming evidence of guilt, Your Honor, and the
10 applicant can't meet, applicant cannot meet his burden of
11 proof resulting prejudice past the suppression issue which
12 I've addressed previously.

13 And with all that, considering what the state would
14 submit is Mr. Moore's credible testimony today, and the
15 record before this court, we would ask that the application
16 be denied. Thank you, Your Honor.

17 THE COURT: All right, anything further?

18 MR. POSTIC: Our position is, is clear. I mean, it
19 should -- that he would not, not -- the facts of the case,
20 yes, truly, but, I mean, obviously the, the issue is the,
21 the, the constitutional rights as far as search goes and
22 the scope of the search. And that he would have -- you
23 know, if this was an issue that Mr. Moore felt had enough
24 merit to discuss in chambers with the judge, that he should
25 have clearly explained to his client that they could raise

1 the suppression issue. If they lost it, they could go
2 forward nonjury. He said he felt that it could go nonjury
3 and potentially appeal that issue if they had lost that
4 suppression hearing. And that that was not explained to my
5 client, according to my client.

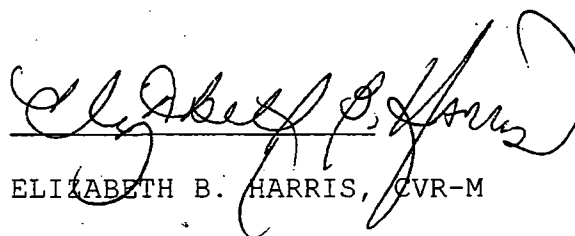
6 THE COURT: All right. All right, thank you very
7 much, counsel. Please submit proposed orders within thirty
8 days.

9 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 18TH DAY OF JANUARY, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

OCTOBER 25TH, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mark E. Brown, #313740,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2007-CP-40-01156

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed February 21, 2007. An evidentiary hearing into the matter was convened on Monday, January 14, 2013, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Alex Postic, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Jake Moore, Sr., Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the relevant records of Applicant's prior post-conviction relief action and appeal, the transcript of Applicant's prior PCR hearing and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the October 2004 term of the Richland County Grand Jury for Criminal Sexual Conduct with a Minor – First Degree, Criminal Sexual Conduct

with a Minor – Second Degree and two (2) counts of Sexual Exploitation of a Minor – First Degree (2004-GS-40-2726, -5692, -5693, -5725). He was thereafter additionally indicted at the November 2004 term for six (6) counts of Criminal Sexual Conduct with a Minor – First Degree and three (3) counts of Sexual Exploitation of a Minor – First Degree (2004-GS-40-10262 through -10271). He was represented by Jake Moore, Sr., Esquire, on the charges. On February 6, 2006, Applicant appeared with counsel before the Honorable James R. Barber, III, where he pled guilty to the charges as indicted and was sentenced to an aggregate forty-one (41) year term of imprisonment. No direct appeal was filed.

On February 21, 2007, Applicant filed the current application for PCR. He was represented by attorney Bryan Jeffries, Esquire, on the action. On June 26, 2008, an evidentiary hearing was held before the Honorable William P. Keesley at the Richland County Courthouse, at which Applicant was present and testified. Also testifying was Applicant's former plea counsel, Jake Moore, Sr., Esquire. By order filed September 22, 2008, Judge Keesley denied and dismissed the application with prejudice. A notice of appeal was filed with the South Carolina Supreme Court, after which Applicant submitted a *pro se* letter to the Court alleging a conflict of interest with his appointed counsel. On June 24, 2009, the Supreme Court remanded the matter back to the circuit court for a hearing on the alleged conflict. On January 14, 2010, a hearing was held by circuit court judge L. Casey Manning; at the close of the hearing, Judge Manning ordered Applicant be granted a *de novo* PCR hearing due to the alleged conflict. By order filed February 9, 2010, Judge Keesley deferred to Judge Manning's ruling and a *de novo* hearing was granted. The January 2013 hearing followed.

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

1. Ineffective Assistance of Counsel
 - a. Failure to Challenge Arrest Warrant
 - b. Failure to Investigate Wife's Mental Health History
 - c. Failure to Challenge Evidence Seized as Result of Consensual Search
 - d. Failure to Challenge Faulty Indictments

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Challenge Invalid Warrant

Applicant first contends counsel was ineffective for failing to challenge the arrest warrant issued as it was not "properly issued". Specifically, Applicant alleges the warrant simply bears an "X" on the signature line and, therefore, the warrant is not properly sworn by a magistrate judge as required. Applicant testified counsel never raised this issue nor was he aware of counsel ever researching this issue to be raised at trial.

Counsel's testimony in this regard was very brief. Counsel stated he did have the opportunity to review the arrest warrant prior to Applicant's plea hearing and noted the "X" shaped marking in the warrant is in fact the signature of Lexington County Magistrate Scott Whittle. Counsel noted he is very familiar with Judge Whittle and recognized his signature on the warrant immediately.

This Court finds this claim to be without merit. Based on counsel's very credible testimony in this regard, it is clear the arrest warrant was properly authorized and sworn by an

active Lexington County Magistrate Judge with the authority to issue such a warrant. Counsel is familiar with Judge Whittle's signature and recognized it on the warrant, thereby eliminating any need to raise a challenge based upon the alleged invalid signature. Accordingly, this Court finds counsel to have acted objectively reasonable in not challenging the validity of the warrant on that ground.

Further, this Court finds Applicant has failed to satisfy his burden in proving resulting prejudice. It is been well-established by both the United States Supreme Court and the South Carolina Supreme Court that an unlawful arrest is not grounds for dismissal of the resulting charges. In U.S. v. Crews, 445 U.S. 463, 100 S.Ct. 1244 (1980), the Court specifically noted that "[a]n illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction." Id. at 474, 100 S.Ct. 1251. "The exclusionary principle", the Court went on to say, "delimits what proof the Government may offer against the accused at trial, closing the courtroom door to evidence secured by official lawlessness... Respondent is not himself suppressible 'fruit' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct." Id. See also Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509 (1952). The condemning evidence against Applicant was seized as a result of a consensual search of his house and Applicant was not arrested until *after* the search uncovered a videotape of Applicant performing sex acts on an incapacitated minor. Therefore, the alleged "unlawful arrest warrant" would not work to suppress the fruit of the search conducted on Applicant's house well in advanced of Applicant's arrest, nor would it deprive the state of its ability to prosecute Applicant on the charges. Accordingly, Applicant has failed to prove that had the arrest warrant been found invalid, there is a "reasonable probability" the outcome of the case would have been different.

Failure to Challenge Search of Applicant's Home

Applicant next contends counsel was ineffective for failing to challenge law enforcement's search of his home in an effort to suppress the evidence obtained during the course of that search at trial. In raising this contention, Applicant alleges counsel also failed to properly investigate his wife's mental health history to raise a challenge to her ability to give valid consent to such a search. Both of those allegations are addressed collectively herein.

Applicant testified he was arrested July 21, 2004, on the current charges after which he spent roughly eighteen (18) months at the Lexington County Detention Center without making bond. He stated counsel and counsel's associate, Stanley Meyers, Esquire, met with him at the Detention Center a few times to review the charges he was facing and the state's evidence against him. Applicant said the state had seized his computer and numerous videotapes as a result of his wife's consent to search their home.

In reviewing the facts leading thereto, Applicant stated his wife alleged she had been ~~carjacked by a man fitting the description of a fugitive wanted at the time for killing a police~~ officer. Applicant said when his wife was taken to the police station to answer questions for law enforcement about the alleged carjacking, she gave full consent for them authorities to search the house to "clear" it, ensuring the perpetrator was not there. Applicant said he was called to the police station where law enforcement "told" him they were going to search the house, but did not ask for his permission. Once inside the house, Applicant said, police found and played a videotape loaded in the VCR which depicted Applicant having sexual intercourse with an incapacitated young child. Applicant noted he did not know how police went about finding the VCR videotape or why they decided to play the tape.

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Applicant alleges counsel was ineffective for failing to argue for suppression of that videotape and the other evidence obtained during the consensual search. He did concede counsel filed two (2) motions to suppress the evidence prior to trial, both of which Applicant received copies of, but said counsel failed to ensure the motions were heard and ruled upon. Applicant stated counsel should have challenged the search as it exceeded the scope of his wife's consent and because his wife lacked the ability to consent to such a search due to her mental health issues. Applicant testified law enforcement found anti-psychotic medication in his wife's car and alleged his wife had a long history of mental health problems affecting her competency, including bipolar disorder. Applicant stated his chances at trial hinged entirely on the state's ability to admit the videotape, and on the day of trial counsel informed him the trial judge intended to admit the tape at trial. Applicant contends had counsel pursued the suppression hearing based on the grounds above, the videotape would have been suppressed and he would not have pled guilty.

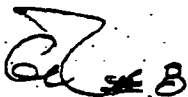
Finally, Applicant alleges he was not aware at the time that he was waiving his ability to challenge the admissibility of the tape on direct appeal by pleading guilty and, had he known a guilty plea without a suppression hearing would waive that issue, he would have insisted on proceeding with the suppression hearing. Applicant noted counsel *did* tell him he would be waiving his ability to raise almost all meritorious issues on appeal by pleading guilty, but said he did not believe that included the issue of suppression. On cross-examination, Applicant readily conceded the plea judge had advised him that by pleading guilty he would "give up [his] right to suppress any evidence that [he] might think might be suppressed in [the] matter or attack the state's case in any way", which he said he understood. Applicant also agreed on cross-examination that the videotapes recovered by police were "not pretty" and "very incriminating".

Counsel testified he recalled his representation of Applicant on the challenged charges and stated he was retained by Applicant in the matter. He noted Applicant is a friend of his whom he had represented in the past on unrelated litigation and said he "was sorry [Applicant] had these problems". Counsel stated on the day of the incident, Applicant received a call from Applicant stating "something was going on" with Applicant's wife and they were with law enforcement officers at SLED. He noted that when he arrived at SLED, Applicant and his wife were in separate rooms and the consensual search of Applicant's house had already been conducted and the videotape already uncovered.

Counsel stated the videotape showed Applicant having sex with a child roughly eight (8) years old while the child was drugged and incapacitated. Applicant's wife, counsel said, could be heard speaking from behind the camera as she filmed and there was no question the man in the video was Applicant. Counsel explicitly noted he did not recall any sex case he had seen in his career with such clearly documented evidence of the act. He plainly testified there "was zero chance of winning" at trial if the video was admitted.

Counsel stated he reviewed with Applicant the option of arguing for suppression through a pretrial hearing, and said he filed the appropriate motion to suppress after "serious research" on how to most effectively attack admissibility. Specifically, counsel said, he did extensive research on arguing for suppression due to Applicant's wife's alleged "inability to consent" as a result of her mental illnesses including bipolar disorder, but said his research revealed the chances of winning suppression on that basis were "nil".

On the day of trial, counsel met in chambers with the prosecuting solicitor, Luck Campbell, and the trial judge scheduled to hear the case, the Honorable Reggie Lloyd. Counsel noted he believed Judge Lloyd was a very strict judge and said he generally did not want to go to



trial before Judge Lloyd, but the solicitor was calling the case that day and Judge Lloyd was not going to continue the matter. During the meeting, counsel articulated the bases for suppression to Judge Lloyd, including exceeding the scope of consent and Applicant's wife's inability to consent. Counsel said Judge Lloyd was "not impressed" with those arguments and, although the judge was not ruling on the motion at that time in chambers, there was "no way in the world he was granting the motion" to suppress. Counsel plainly stated Judge Lloyd made it clear he would deny the motion and allow the evidence to be admitted.

Counsel said after his meeting with Judge Lloyd, he explained all of this to Applicant and let him make the independent decision as to how he wanted to proceed. He said he told Applicant they would lose the motion to suppress and then likely lose the trial, but he could then challenge the issue of suppression on direct appeal. Counsel articulated that, based on those discussions, he was "positive" Applicant was aware that by pleading guilty without conducting the suppression hearing he would be waiving his right to such a hearing and his ability to challenge admissibility of the tape on direct appeal.

Counsel said he "did everything in his power" to get plea concessions from the state during plea negotiations, but the prosecuting solicitor was "absolutely determined" to convict Applicant and therefore did not extend any plea offers prior to trial. Counsel said he discussed this with Applicant, and Applicant himself testified at the PCR hearing he was aware there were no plea offers on the table. Counsel went on to say there was some indication from Judge Lloyd during their pretrial in-chambers meeting that he would give some consideration to Applicant in sentencing if he pled guilty. Counsel also noted the state was willing to let the plea be heard by Judge Barber rather than Judge Lloyd if Applicant did decide to plead, which counsel thought

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would be beneficial for Applicant. Counsel finished by stating it was ultimately solely Applicant's decision whether to plead guilty or go to trial where he could argue for suppression.

After a thorough review of the record and testimony presented at the evidentiary hearing, this Court finds counsel was not ineffective in his representation of Applicant in this regard. Counsel's testimony regarding his discussions with Applicant, preparation/evaluation of the case, and in-chambers discussions is **very credible** to this Court. Conversely, to the extent it contradicts with counsel's clear and convincing testimony or the underlying record, this Court finds Applicant's testimony to be **not credible**. Counsel undertook an extensive, diligent and objectively reasonable investigation into the issue of potential suppression of the evidence obtained by law enforcement during the search of Applicant's house. All the while, Applicant was continuously, sufficiently informed of all relevant matters pertaining to potential suppression by counsel.

The credible testimony reflects counsel meticulously reviewed the facts leading to the search, the execution of the search, the evidence obtained as a result of the search and a plethora of law to compile an argument in support of suppression. Applicant was well aware of counsel's potential arguments to support such a motion, as well as the fact that he would waive his right to argue for suppression and appeal the outcome if he pled guilty. With all of this in mind, Applicant made the informed, intelligent and voluntary decision to waive his right to raise such an issue, both at trial and on appeal, in order to enter a plea before Judge Barber.

Applicant has failed to present any evidence or legal argument as to why trial counsel's conclusion about their being "zero chance" of suppression was in error. Further, counsel articulated valid strategic reasons for not attempting to present a meritless argument at the

GR 10

suppression motion hearing any that by pleading guilty, concessions would be available for Applicant.

Further, the record before this Court is clear in showing Applicant's wife was mentally evaluated prior to the February 6, 2006, plea hearing and found to be competent and able to stand before the plea judge. Applicant failed to produce any credible evidence to convince this Court that counsel failed to uncover some mental health issue(s) with Applicant's wife that could have been effectively presented in support of suppression. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("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."). Applicant's lay testimony regarding his wife's mental capacity is unpersuasive, not credible and insufficient to carry his burden in proving his wife in fact suffered from a mental defect so pervasive it rendered her consent to the search invalid. For all of these reasons, this Court finds counsel's performance was not deficient.

~~Additionally, this Court finds Applicant has failed to prove resulting prejudice as this~~
Court can find no "reasonable probability" that had counsel prepared the suppression motion in some other manner and argued it to the trial judge, the outcome of Applicant's case (either at trial or on direct appeal) would have been different. Counsel's credible testimony reflects Judge Lloyd fully intended to deny the motion if argued in pretrial. Applicant failed to provide this Court with any evidence or argument to contest that such a ruling would have resulted. Further, Applicant failed to convince this Court such a denial would be overturned by the Court of Appeals if preserved and raised thereafter. "When reviewing the circuit court's ruling on a motion to suppress based on the Fourth Amendment, 'an appellate court must affirm if there is any evidence to support the ruling', and will reverse only when there is clear error." State v.

Cheeks, 400 S.C. 329, 334, 733 S.E.2d 611, 614 (Ct. App. 2012), *quoting State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). Applicant presented nothing to show such a denial would not have been supported by *any* evidence, or that such a denial would have been a *clear error of law* on Judge Lloyd's part. Accordingly, this Court finds Applicant has entirely failed to carry his burden in proving resulting prejudice as well.

Failure to Move to Quash Defective Indictments

Applicant finally argues counsel was ineffective for failing to move to quash the indictments against him as they were defective. In particular, Applicant alleges the indictments failed to set forth any victim's name. Counsel testified he did not see any basis to move to quash the indictments against Applicant and noted that had he done so, there was nothing to prevent the state from simply procuring a new indictment for the charges against Applicant.

This Court finds Applicant has failed to meet his burden in proving counsel was ineffective in this regard. In State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007), the South Carolina Court of Appeals opined:

"An indictment is sufficient if the offense is stated with [enough] certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead acquittal or conviction thereon. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet."

Id. at 97 – 98, 654 S.E.2d at 853. "Therefore, an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. Applicant's indictment on the charges challenged tracks the statutory language of each charge precisely. Further, counsel

plainly noted making such a motion would not stop subsequent prosecution on the charges. Accordingly, counsel's performance was not objectively unreasonable based on professional norms in failing to file a motion to quash the indictment(s).

Further, this Court finds Applicant cannot prove resulting prejudice. Even if counsel had filed such a motion and been successful in quashing the indictments, the state could have reindicted Applicant on the same charges and subsequently pursued prosecution. Under S.C. Code Ann. § 17-19-90 (2003), "every objection to any indictment for any defect apparent on the fact thereof shall be taken... on motion to quash such indictment before the jury shall be sworn and not afterwards." Since the Double Jeopardy Clause of the Fifth Amendment attaches in a jury trial only once the jury is sworn, a successful motion to quash, by its very definition, will not work to bar subsequent prosecution on the same allegation on that grounds. See State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983). Likewise, jeopardy does not attach in a guilty plea setting until the defendant's plea is actually accepted by the plea judge. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1992). Accordingly, any motion to quash the indictment would not have prevented the state from pursuing the charges at a later date. Therefore, Applicant was not prejudiced by this alleged error.

Having found the allegations raised by Applicant at the PCR hearing to be wholly without merit, this Court finds the current application for post-conviction relief must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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application. Therefore, this application for post conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

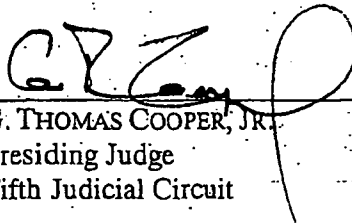
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

68-14

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of MARCH, 2013.



G. THOMAS COOPER, JR.
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mark E. Brown, #313740,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2007-CP-40-01156

MOTION

[59(e) Motion To Alter Or Amend The Judgment]

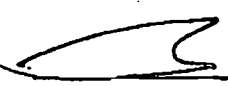
FILED
RICHLAND COURT
2013 MAR 15 PM 3:27
JEANETTE W. McARDLE
CLERK, CP & GS

NOW COMES the Defendant, by and through his undersigned counsel of record, pursuant to Rule 59 (e) of the Rules of Civil Procedure, moving this Court to alter or amend its Order to include the following ineffective assistance of counsel issues raised by the Applicant:

1. That trial counsel failed to inform applicant that he could not challenge pretrial issues (such as improper search) if he pled guilty;
2. That trial counsel failed to inform applicant of the possibility of a bench trial to preserve the appeal issues, or the possibility of conviction on lesser included offense;
3. That trial counsel failed to present adequate mitigation at the plea.

Based on the above, the Applicant moves for the Order to be altered or amended.

ISO MOVE!

By: 

Alex Thomas Postic
Attorney For The Applicant
Post Office Box 11926
Columbia, SC 29211
(803)771-8081
alex@posticlawfirm.com

The Law Offices of Alex Thomas Postic, P.A.

1830 Marion Street
Post Office Box 11926
Columbia, South Carolina 29211

Telephone (803) 771-8081

Facsimile (803) 771-4888

March 14, 2013

Hand Delivered

G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201

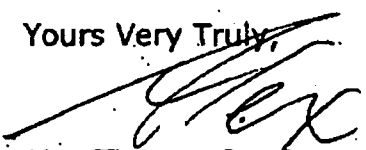
Re: Mark Ellison Brown v. State Of South Carolina
2007-CP-40-1156

Dear Judge Cooper,

Please find enclosed a 59(e) Motion in the above Post Conviction Relief case.

Thanking you in advance for your attention, and with warmest personal regards, I remain

Yours Very Truly,


Alex Thomas Postic

Cc: Robert Corney, Assistant Attorney General

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Mark E. Brown, #313740)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2007-CP-40-01156

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

RICHLAND COURT
FILED
2013 APR 24 AM 8:56
JANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of Defendant Mark E. Brown's Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). Specifically, Defendant asks this Court to reconsider its denial of Post Conviction Relief.

After careful consideration of the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded. Accordingly, this Court hereby DENIES Applicant's Motion pursuant to Rule 59(e) SCRCP to reconsider. Pursuant to Rule 59(e) the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.

April 23, 2013
Columbia, South Carolina


G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

MARK E. BROWN

AKA:

Race: W

Sex: M

Age: 39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29036

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

04

-GS-

40

5692

AW#:

H714263

Date of Offense:

2001

S.C. Code §:

16-3-655(1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: CSC W/MINOR

in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0 / 3 / 8 / 5

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James F. Smith
01 / 1 / 10
2/6/06

Court Reporter:

Barbara A. Scott
Clerk of Court Deputy Clerk'sBarbara P. Scott
CLERK OF COURT

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

(S) Inv. Terry Downie, RCSD (S)

ARREST WARRANT NUMBER

H714263

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 20 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-5692

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2004

42

THE STATE
vs.

MARK ELLIS BROWN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1STSC Code: 16-3-655(1)
CDR Code: 0385
Class FEL/A(V)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.

ATTACHED
A TRUE COPY
Barbara C. Hunt
C.C.C. P. A. G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK ELLIS BROWN did in Richland County in the year 2001, willfully, unlawfully and feloniously commit a sexual battery to wit: digital penetration and/or oral sex (cunnilingus) who was at least eleven (11) years of age. All in violation of SC Code of Laws §16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

ARREST WARRANT

H-714263

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

 THE STATE RSCO#0407229922
 against

MARK ELLIS BROWN

Address: CHAPIN SC 29036 - 0000

Phone: SSA

Sex: M Race: W Height: 6 Weight: 195

DL State: SC DL#:

DOB: Agency ORI#:

Prosecuting Agency: RICHLAND COUNTY SHERIFF'S

Prosecuting Officer: TERRY C DOWNIE

Offense: CRIMINAL SEX CONDUCT W/M

INOR 1ST DEGREE Offense Code: 0385

Code/Ordinance Sec. 16-03-0655(1)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is, to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant MARK ELLIS BROWN

on 7-23-04

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 RICHLAND COUNTY BOND COURT
 201 JOHN MARK DIAL DRIVE
 COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 Personally appeared before me the affiant TERRY C DOWNIE who
 being duly sworn deposes and says that defendant MARK ELLIS BROWN
 did within this county and state on 7/21/04 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
 in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL SEX CONDUCT W/MINOR 1ST DEGREE

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 THAT ON OR ABOUT THE YEAR 2001 WHILE AT ST. IN THE
 WAVERLY MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE MARK E.
 BROWN DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT WITH A
 MINOR 1ST DEGREE IN THAT HE DID ENGAGE IN A SEXUAL BATTERY OF A
 FEMALE CHILD WHO WAS UNDER THE AGE OF 11. THE DEFENDANT WAS
 POSITIVELY IDENTIFIED ON A RECOVERED VHS TAPE AS HE WAS NOTED TO
 BE ACTUALLY ENGAGING IN A SEXUAL BATTERY OF THE CHILD. THE TAPE
 WAS DISCOVERED BY AGENTS OF SLED DURING A LAWFUL SEARCH OF THE
 DEFENDANT'S CURRENT RESIDENCE ON 07/21/04. SUBSEQUENT
 INVESTIGATION REVEALED THE IDENTITY OF THE VICTIM, AS WELL AS THE

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

 Affiant's Address: RICHLAND COUNTY SHERIFF'S DEPT
 COLUMBIA SC 29223 - 0000
 Affiant's Telephone: 803 576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 7/21/04 defendant MARK ELLIS BROWN
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below

 DESCRIPTION OF OFFENSE: CRIMINAL SEX CONDUCT W/MINOR 1ST DEGREE
 INCIDENT LOCATION, WHICH WAS THE DEFENDANT'S RESIDENCE AT THE TIME OF THE
 ASSAULT. AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on 7/22/04

 Signature of Issuing Judge
 Judge Code: GS

 Judge's Address: JUDICIAL CENTER
 COLUMBIA SC 29201 - 0000

 Judge's Telephone: 803 576-1800
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Sunko

on 7/23/04

Type and Amount: \$60,000 (c) 10%

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

sition: _____

entence: _____

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

VS.
MARK E. BROWN

AKA:

Race: WA

Sex: M

Age: 39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29336

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

04

INDICTMENT/CASE#:

GS:

40

5693

A/W#:

H714262

Date of Offense:

2001

S.C. Code §:

16-15-395(D)

CDR Code #:

0 / 3 / 7 / 9

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: SEXUAL EXPLOITATION OF MINORin violation of § 16-15-395(D) of the S.C. Code of Laws, bearing CDR Code # 0, 3, 7, 9☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2/6/06 04-65-40-5725☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott

Clerk of Court/Deputy Clerk

Court Reporter:

H. TracyATTEST
A TRUE COPY[Signature]

PTUP

2/6/06 04-65-40-5725
days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

James K. Bault
101 1 1 1 1 0

Sentence Date:

2/6/06

White - Clerk

Green - Corrections

Clerk of Probation

P. & G. L. Defendant

SCCA/217 (7/2003)

WITNESSES

(S) Inv. Terry Downie, RCSD

[Signature]

ARREST WARRANT NUMBER

1714262

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 20 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40- 5693

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2004

42

THE STATE
vs.

MARK ELLIS BROWN

Indictment for

SEXUAL EXPLOITATION OF A MINOR

1ST DEGREE

SC Code: 16-15-395(D)

CDR Code: 0379

Class FEL-E

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.

ATTEST
A TRUE COPY
[Signature]
C. C. C. P. L. S. & G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

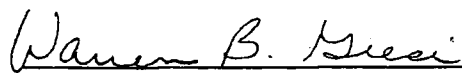
INDICTMENT

At a Court of General Sessions, convened on October 20, 2004 the Grand Jurors of Richland County present upon their oath:

SEXUAL EXPLOTATION OF A MINOR 1ST DEGREE

That MARK ELLIS BROWN did in Richland County in the year 2001, knowing the character or content of the material or performance, use, employ, induce, coerce, encourage or facilitate a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. All in violation of S.C. Code of Laws §§16-15-395.

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


WARREN B. GIESE, SOLICITOR

CRIMINAL WARRANT 2004

H-714262

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

THE STATE RSCO#0407229922
against

MARK ELLIS BROWN

Address: CHAPIN SC 29036 - 0000

Phone: SS
Sex: M Race: W Height: 6 Weight: 195
DL State: DL#:

DOB: Agency ORI#:
Prosecuting Agency: RICHLAND COUNTY SHERIFF'S
Prosecuting Officer: TERRY C DOWNIE
Offense: SEX/SEXUAL EXPLOITATION
OF MINOR-1ST DEG Offense Code: 0379
Code/Ordinance Sec. 16-15-0395(D)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

Copy of this arrest warrant was delivered to
defendant MARK ELLIS BROWN
on 7-23-04

Charles C. Croft - RCSI
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
RICHLAND COUNTY BOND COURT
201 JOHN MARK DIAL DRIVE
COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
RICHLAND COUNTY)

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant TERRY C DOWNIE who
being duly sworn deposes and says that defendant MARK ELLIS BROWN
did within this county and state on 7/21/04 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars:
DESCRIPTION OF OFFENSE: SEX/SEXUAL EXPLOITATION OF MINOR-1ST DEG

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON OR ABOUT THE YEAR 2001 WHILE AT ST. IN THE
WAVERLY MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE MARK E.
BROWN DID COMMIT THE CRIME OF SEXUAL EXPLOITATION OF A MINOR 1ST
DEGREE IN THAT HE DID PARTICIPATE IN THE PRODUCTION OF A FILMED
RECORDING WHICH REVEALED HIM ACTUALLY HAVING SEX WITH A MINOR
CHILD. THE DEFENDANT WAS POSITIVELY IDENTIFIED ON A RECOVERED VHS
TAPE AS HE WAS NOTED TO BE ACTUALLY PARTICIPATING IN THE FILMING
OF THE SEXUAL ACTS, WHICH HE HIMSELF WAS PERFORMING UPON THE SAME
CHILD. THE TAPE WAS DISCOVERED BY AGENTS OF THE RICHLAND COUNTY SHERIFF'S DEPT. DURING A LAWFUL
SEARCH OF THE DEFENDANT'S CURRENT RESIDENCE ON 07/21/04. AN 8MM

Signature of Affiant

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
RICHLAND COUNTY)

Affiant's Address: RICHLAND COUNTY SHERIFF'S DEPT
COLUMBIA SC 29223 - 0000
Affiant's Telephone: 803 576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 7/21/04 defendant MARK ELLIS BROWN
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: SEX/SEXUAL EXPLOITATION OF MINOR-1ST DEG
RECORDING WAS ALSO RECOVERED DURING THE SAME SEARCH. THAT TAPE IS DEEMED
TO BE AN ORIGINAL. SUBSEQUENT INVESTIGATION REVEALED THE IDENTITY OF THE
VICTIM, AS WELL AS THE INCIDENT LOCATION, WHICH WAS THE DEFENDANT'S
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 7/22/04

RESIDENCE AT THE TIME OF THE ASSAULT. AFFIANT AND
OTHERS ARE WITNESS TO PROVE THE SAME.

Signature of Issuing Judge (L.S.)
Judge Code: GS

Judge's Address: JUDICIAL CENTER
COLUMBIA SC 29201 - 0000
Judge's Telephone: 803 576-1800
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Surleson 7/23/04Type and Amount: \$100,000.00 (C) 1000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

hv

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

MARK VS E. BROWN
 AKA: _____
 Race: W Sex: M Age: 39
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: CHAPIN SC 29036
 DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

04 INDICTMENT/CASE#: 40 5725
 A/W#: 4714387
 Date of Offense: 2/17/96 - 9/30/99
 S.C. Code §: 16-15-395(D)
 CDR Code #: 0 / 3 / 7 / 9
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: SEXUAL EXPLOITATION OF MINORin violation of §16-15-395(D) of the S.C. Code of Laws, bearing CDR Code # 0, 3, 7, 9
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2/6/06 04-65-40-12265☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Barbara A. Scott
 Clerk of Court Deputy Clerk

Court Reporter: H. Tracy

ATTEST
 A TRUE COPY

Barbara A. Scott
 Clerk of Court Deputy Clerk

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James R. Scott
 01 / 1 / 1 / 10
 2/6/06

White - Clerk Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

(S) Inv. Terry Downie, RCSD

ARREST WARRANT NUMBER

H714387

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 20 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40- 5725

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2004

42

THE STATE

vs.

MARK ELLIS BROWN

Indictment for

SEXUAL EXPLOITATION OF A MINOR

1ST DEGREE

SC Code: 16-15-395(D)

CDR Code: 0379

Class FEL-E

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.

ATTEST
A TRUE COPY

Barbara P. Lee
P. O. C. P. & G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2004 the Grand Jurors of Richland County present upon their oath:

SEXUAL EXPLOTATION OF A MINOR 1ST DEGREE

That MARK ELLIS BROWN did in Richland County between February 17, 1996 and September 30, 1999, knowing the character or content of the material or performance, use, employ, induce, coerce, encourage or facilitate a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. All in violation of S.C. Code of Laws §§16-15-395.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

ARREST WARRANT

H-714387

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

 THE STATE RCSD04078348-29
 against

MARK ELLIS BROWN

 Address: **CHAPIN SC 29036 - 0000**

 Phone: _____ S
 Sex: **M** Race: **W** Height: **6** Weight: **195**

 DL State: _____
 DOB: _____ Agency ORI#: _____

 Prosecuting Agency: **RICHLAND COUNTY SHERIFF'S**
 Prosecuting Officer: **TERRY C DOWNIE**

 Offense: **SEX/SEXUAL EXPLOITATION**
OF MINOR-1ST DEG Offense Code: **0379**

 Code/Ordinance Sec. **16-15-0395(D)**

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

 Copy of this arrest warrant was delivered to
 defendant **MARK ELLIS BROWN**
 on **7-30-04**

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
RICHLAND COUNTY BOND COURT
201 JOHN MARK DIAL DRIVE
COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

AFFIDAVIT

 Personally appeared before me the affiant **TERRY C DOWNIE** who
 being duly sworn deposes and says that defendant **MARK ELLIS BROWN**
 did within this county and state on **2/17/96** violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
 in the following particulars:
 DESCRIPTION OF OFFENSE: **SEX/SEXUAL EXPLOITATION OF MINOR-1ST DEG**

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT THE PERIOD OF 2/17/96-09/30/99 WHILE AT
ST IN THE WAVERLY MAGISTERIAL DISTRICT OF RICHLAND COUNTY,
ONE MARK E BROWN DID COMMIT THE CRIME OF SEXUAL EXPLOITATION OF
A MINOR 1ST IN THAT HE DID PARTICIPATE IN THE PRODUCTION OF
PHOTOGRAPHS WHICH REVEALED HIM ACTUALLY HAVING SEX (ORALLY AND
DIGITALLY) WITH A MINOR CHILD. THE VICTIM HAS PROVIDED A SWORN
STATEMENT IDENTIFYING THE DEFENDANT AND THE INCIDENT LOCATION.
THE PHOTOGRAPHS WERE RECOVERED BY AGENTS OF SLED DURING THE
EXECUTION OF A LEGAL SEARCH WARRANT AT THE DEFENDANT'S CURRENT
RESIDENCE. AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

 Affiant's Address **RICHLAND COUNTY SHERIFF'S DEPT.**
COLUMBIA SC 29223 - 0000

 Affiant's Telephone **803 691-9000**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on **2/17/96** defendant **MARK ELLIS BROWN**
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of _____) as set forth below:

 DESCRIPTION OF OFFENSE: **SEX/SEXUAL EXPLOITATION OF MINOR-1ST DEG**

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

 on **7/29/04**

Signature of Issuing Judge (L.S.)

 Signature of Issuing Judge
 Judge Code: **GS**

 Judge's Address **JUDICIAL CENTER**
COLUMBIA SC 29201 - 0000

 Judge's Telephone **803 576-1800**

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Shealy
on 7-30-04
Type and Amount: Bond Denied
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
by _____
Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

MARK E. BROWN VS.

AKA:

Race:

W

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

CHADIN, SC 29036

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

04

INDICTMENT/CASE#:

-GS-

A714386

5726

A/W#:

Date of Offense:

2/17/96 - 9/30/99

S.C. Code §:

16-3-655(2)

CDR Code #:

0 / 3 / 9 / 6

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

CSC WITHIN 9022

in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code #

0, 3, 9, 6

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed 30 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James R. Scott
201 1 1 1 1 0
2/6/06

Court Reporter:

Clerk of Court Deputy Clerk

A TRUE COPY

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

(S) Inv. Terry Downie, RCSD

ARREST WARRANT NUMBER

H714386

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 20 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-40-5726

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2004

42

THE STATE
vs.

MARK ELLIS BROWN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 2ND

SC Code: 16-3-655(2)
CDR Code: 0396
Class FEL/C(V)

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.

ATTB STS
A TRUE COPY
Barbara H. Scott
C. C. C. P. & G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2nd DEGREE

That MARK ELLIS BROWN did in Richland County between February 17, 1996 through September 30, 1999 willfully, unlawfully and feloniously commit a sexual battery, to wit: digital penetration and/or oral sex (cunnilingus), who was at least eleven (11) years of age but less than fourteen (14) years of age or the victim was at least fourteen (14) years of age but less than sixteen (16) years of age and the defendant was older than said minor. All in violation of SC Code of Laws §16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

ARREST WARRANT

H-714386

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

 THE STATE RCSD04078348-29
 against
MARK ELLIS BROWN
 Address **CHAPIN SC 29036 - 0000**

Phone: _____ S: _____

Sex: M Race: W Height: 6 Weight: 195

DL State: _____

DOB: _____ Agency ORI#: _____

Prosecuting Agency: **RICHLAND COUNTY SHERIFF'S**Prosecuting Officer: **TERRY C DOWNIE**Offense: **CRIMINAL SEX CONDUCT****W/MINOR 2ND** Offense Code: **0396**Code/Ordinance Sec. **16-03-0655(2)**
 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 _____ (L.S.)
 Signature of Judge

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant **MARK ELLIS BROWN**
 on 7-30-04

 Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
RICHLAND COUNTY BOND COURT
201 JOHN MARK DIAL DRIVE
COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

AFFIDAVIT

 Personally appeared before me the affiant **TERRY C DOWNIE** who
 being duly sworn deposes and says that defendant **MARK ELLIS BROWN**
 did within this county and state on **2/17/96** violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
 in the following particulars:
DESCRIPTION OF OFFENSE: **CRIMINAL SEX CONDUCT W/MINOR 2ND**
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT THE PERIOD OF 2/17/96-09/30/99 WHILE AT
ST IN THE WAVERLY MAGISTERIAL DISTRICT OF RICHLAND COUNTY,
ONE MARK E BROWN DID COMMIT THE CRIME OF C S C WITH A MINOR 2ND
IN THAT HE DID ENGAGE IN SEXUAL BATTERY ON A FOURTEEN YEAR OLD
FEMALE (HIS STEP DAUGHTER) THROUGH DIGITAL PENETRATION AND ORAL
SEX. VICTIM WAS IDENTIFIED THROUGH PHOTOGRAPHS RECOVERED DURING
THE EXECUTION OF A LEGAL SEARCH WARRANT BY AGENTS OF SLED. VICTIM
HAS PROVIDED A SWORN STATEMENT IDENTIFYING THE DEFENDANT.
AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

 Affiant's Address **RICHLAND COUNTY SHERIFF'S DEPT**
COLUMBIA SC 29223 - 0000
 Affiant's Telephone **803 691-9000**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on **2/17/96** defendant **MARK ELLIS BROWN**
 did violate the criminal laws of the State of South Carolina (or ordinance of _____)
☐ County/ ☐ Municipality of _____ as set forth below:
DESCRIPTION OF OFFENSE: **CRIMINAL SEX CONDUCT W/MINOR 2ND**
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on 7/29/04

 _____ (L.S.)
 Signature of Issuing Judge

 Judge's Address **JUDICIAL CENTER**
COLUMBIA SC 29201 - 0000
 Judge's Telephone **803 576-1800**
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit
 Judge Code: **GS**

ORIGINAL

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

BAIL set by

Judge Shealy
 on 7-30-04
 Type and Amount: BOND DENIED
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 or _____
 Defense Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 in _____
 y _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)

sition: _____

WITNESSES

Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

RICHLAND

MARK E. BROWN

AKA:

Race: W S-x: m Age: 39

DOB: SS#:

Address:

City, State, Zip CHAPIN SC 29036

DL# SID#

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

INDICTMENT/CASE#:

GS-40

10261

DP 04530

3/00 - 11/10/00

16-3-655(C)

0 / 3 / 8 / 5

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: CSC W/ MINOR

in violation of § 16-3-655(C) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

days/hours Public Service Employment _____

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

Court Reporter: _____

Clerk of Court/Deputy Clerk: _____

ATTEST
A TRUE COPY

White - Clerk

Green - Corrections

Canary - Probation

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04530

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-40-10261

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK BROWN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1STSC Code: 16-3-655(1)
CDR Code: 0385
Class FEL/A(V)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.

ATTEST
A TRUE COPY

Richard C. Hunt

C. C. C. P. L. S. A. N. D. G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and November 10, 2000, willfully, unlawfully and feloniously commit a sexual battery to wit: cunnilingus on the victim, Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

VS. MARK E. BROWN

AKA:

Race: W

Sex: M

Age: 39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN, SC 29036

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

04

INDICTMENT/CASE#:

10262

A/W#:

DP04531

Date of Offense:

3/00 - 11/10/00

S.C. Code §:

16-3-655(1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

CSC W/MINOR

in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code #

0 / 3 / 8 / 5

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott
Clerk of Court/Deputy Clerk

Court Reporter: H. Tracy

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James L. Daulton
01 / 1 / 10
2/6/06ATTEST
A TRUE COPY

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

C. C. C. P. & G. B.

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04531

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-40-10262

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK BROWN

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(1)
CDR Code: 0385
Class FEL/A(V)

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.

ATTACHED
A TRUE COPY

Barbara L. Smith
D. O. C. P. & G. B.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

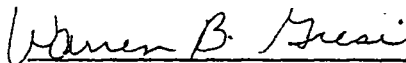
INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and November 10, 2000, willfully, unlawfully and feloniously commit a sexual battery to wit: any intrusion, however slight, of any part of a person's body or of any object in the genital or anal openings of another person's body, on the victim, Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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


Warren B. Giese, SOLICITOR

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04532

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-10263

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

**THE STATE
vs.**

MARK BROWN

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST**

SC Code: 16-3-655(1)

CDR Code: 0385

Class FEL/A(V)

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.

**ATTEST
A TRUE COPY**

Barbara C. Scott

G. C. C. P. & G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and November 10, 2000, willfully, unlawfully and feloniously commit a sexual battery to wit: anal intercourse and/or any intrusion, however slight, of any part of a person's body or of any object in the genital or anal openings of another person's body, on the victim, Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

MARK E. BROWN VS

AKA:

Race: W

Sex: m

Age: 39

DOB:

SS#:

Address:

City, State, Zip

CAADIN, SC 29036

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

04

GS

40

10264

AW#:

DP04533

Date of Offense:

3/00 - 7/26/01

S.C. Code §:

16-3-655(1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: CSC1 W/MINOR

in violation of §16-3-655(1) of the S.C. Code of Laws, bearing CDR Code #

0, 3, 8, 5

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James R. Smith
601 11 110
2/6/04

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Smith
Clerk of Court/Deputy Clerk

Court Reporter:

H. Tracy

ATTEST
A TRUE COPYBarbara A. Smith
Clerk of Court/Deputy Clerk

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

C. C. C. P. & C. R.

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04533

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-10264

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK BROWN

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(1)

CDR Code: 0385

Class FEL/A(V)

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.

A TRUE COPY

Richard L. Scott

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and July 26, 2001, willfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or any intrusion, however slight, of any part of a person's body or of any object in the genital or anal openings of another person's body, on the victim, Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

VS.

MARK E. BROWN

AKA:

Race: W

Sex: M

Age: 39

DOB:

SS#:

Address:

City, State, Zip

CHAPN SC 29020

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

04

INDICTMENT/CASE#

40 - 10265

A/W#:

DP04534

Date of Offense:

3/06 - 7/26/01

S.C. Code §:

16-3-655(1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

CSC W/MINOR

in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code #

0, 3, 8, 5

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 400, provided that upon the service of 30 days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2/6/06 04-GS-40-10265☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$
\$100	\$
\$12	\$
\$500	\$
\$25	\$
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$
\$	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: NO unsupervised contact with minors☒ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James F. Barth
201 / 1 / 10
2/6/06

Court Reporter:

Barbara A. Scott

Clerk of Court Deputy Clerk

A TRUE COPY

Barbara A. Scott

White - Clerk

Green - Corrections

Purple - Probation P. A. Clerk

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04534

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-10265

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK BROWN

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(1)

CDR Code:0385

Class FEL/A(V)

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.

IN THE
A TRUE COPY
Richard C. Scott
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

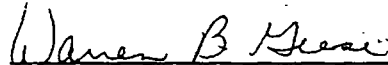
INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and July 26, 2001, willfully, unlawfully and feloniously commit a sexual battery to wit: any intrusion, however slight, of any part of a person's body or of any object in the genital or anal openings of another person's body, on the victim, Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

RICHLAND

VS.

MARK E. BROWN

INDICTMENT/CASE#:

04

-GS-

40

10266

AKA:

Race:

W

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29036

DL#

SID#

AW#:

DP04535

Date of Offense:

3/00 - 7/26/01

S.C. Code §:

16-3-655C1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

CSC W/MINOR

in violation of § 16-3-655C1) of the S.C. Code of Laws, bearing CDR Code # 0, 3, 8, 5

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

K. Tracy

Solicitor

Mark E. Brown

Defendant

James Z. Scott

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Barbara A. Scott
Clerk of Court/Deputy Clerk

Court Reporter:

K. Tracy

ATTEST
A TRUE COPY

Barbara A. Scott

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James Z. Scott
0 / 1 / 1 / 1 / 0
2/6/06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD
Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04535

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-10266

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK BROWN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(1)
CDR Code: 0385
Class FEL/A(V)

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.

ATTEST
A TRUE COPY

Barbara C. Pratt

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and July 26, 2001, willfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or anal intercourse and/or any intrusion, however slight, of any part of a person's body or of any object in the genital or anal openings of another person's body, on the victim, Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

VS.

MARK E. BROWN

AKA:

Race:

W

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29006

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

04

INDICTMENT/CASE#:

40

10267

AW#:

OP04536

Date of Offense:

3/00 - 7/26/01

S.C. Code §:

16-3-655(1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

CSC WIMINOR

in violation of §16-3-655(1) of the S.C. Code of Laws, bearing CDR Code #

0, 3, 8, 5

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Court Reporter:

Barbara A. Scott

Clerk of Court/Deputy Clerk

ATTEST

A TRUE COPY

Barbara A. Scott

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James Z. Scott
06111110
2/6/04

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04536

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-10267

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE

vs.

MARK BROWN

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST**

SC Code: 16-3-655(1)

CDR Code:0385

Class FEL/A(V)

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.

ATTACHED
A TRUE COPY
Barbara C. Downie
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and July 26, 2001, willfully, unlawfully and feloniously commit a sexual battery to wit: cunnilingus on the victim Minor , who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

VS.

MARK E. BROWN

AKA:

Race:

W

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29036

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

04

-GS-

40

10268

A/W#:

DP04537

Date of Offense:

3/00 - 11/10/00

S.C. Code §:

16-3-655(1)

CDR Code #:

0 / 3 / 8 / 5

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

CSC W/MINOR

in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code #

0, 3, 8, 5

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$ 35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James L. Smith
01 / 11 / 10
2/6/06

Court Reporter:

Clerk of Court Deputy Clerk

A TRUE COPY

White - Clerk Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04537

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-40-10268

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK BROWN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1STSC Code: 16-3-655(1)
CDR Code: 0385
Class FEL/A(V)After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

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.

A T T E S T
A TRUE COPYBarbara L. Smith
V. G. S. P. A. G. E.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

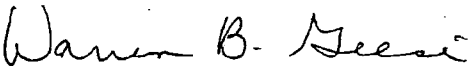
INDICTMENT

At a Court of General Sessions, convened on November 17, 2004, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That MARK BROWN did in Richland County between March 2000 and November 10, 2000, willfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, on the victim, Minor who at the time was less than eleven (11) years of age. All in violation of SC Code of Laws § 16-3-655.

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

RICHLAND

STATE

VS.

MARK E. BROWN

AKA:

Race:

W

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

CHADIN, SC 29036

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

04

INDICTMENT/CASE#:

GS-

40

10269

A/W#:

DP04538

Date of Offense:

3/00 - 7/26/01

S.C. Code §:

16-15-395(D)

CDR Code #:

0 / 3 / 7 / 9

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: SEXUAL EXPLOITATION OF MINORin violation of § 16-15-395(D) of the S.C. Code of Laws, bearing CDR Code # 0 / 3 / 7 / 9☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ 2000, provided that upon the service of 3 days/months/years and/or payment of \$ 2000; plus costs and assessments as applicable*; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2/6/06 2005-65-02-415☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Smith
Clerk of Court/Deputy ClerkCourt Reporter: H. Tracy **TRUE COPY**[Signature]
Barbara A. Smith

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
2-11-10

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04538

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

NOV 18 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-40- 10269

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

**THE STATE
vs.**

MARK ELLIS BROWN

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
1ST DEGREE**

SC Code: 16-15-395(D)

CDR Code: 0379

Class FEL-E

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.

AT THE 5TH
A TRUE COPY
Richard P. Brown
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004 the Grand Jurors of Richland County present upon their oath:

SEXUAL EXPLOITATION OF A MINOR 1ST DEGREE

That MARK ELLIS BROWN did in Richland County between March 2000 and July 26, 2001 use, employ, induce, coerce, encourage, or facilitate a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. All in violation of SC Code of Laws §16-15-395.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

RICHLAND

MARK E. BROWN

AKA:

Race: W

Sex: M

Age: 39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29036

DL#

SID#

04

INDICTMENT/CASE#:

10270

A/W#:

DP04539

Date of Offense:

3/00 - 7/26/01

S.C. Code \$:

16-15-395(D)

CDR Code #:

0 / 3 / 7 / 9

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: SEXUAL EXPLOITATION OF MINOR

in violation of §16-15-395(D) of the S.C. Code of Laws, bearing CDR Code #

0, 3, 7, 9

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3/6/06 04-95-40-5697☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

SPECIAL CONDITIONS:

PTUP

3/6/06 04-95-40-5697
days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

101 1 1 1 1 0

Sentence Date:

2/4/06

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott

Clerk of Court Deputy Clerk

Court Reporter:

K. Tracy

ATTEST
A TRUE COPY

Barbara P. Scott

White - Clerk

Green - Corrections

Candy - Probation - P. & G. - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

DP04539

ACTION OF GRAND JURY**TRUE BILL**

Foreperson of Grand Jury

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40-10270

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

THE STATE
vs.

MARK ELLIS BROWN

Indictment for**SEXUAL EXPLOITATION OF A MINOR
1ST DEGREE**

SC Code: 16-15-395(D)

CDR Code: 0379

Class FEL-E

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.

A TRUE COPY

Richard A. Brown
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004 the Grand Jurors of Richland County present upon their oath:

SEXUAL EXPLOTATION OF A MINOR 1ST DEGREE

That MARK ELLIS BROWN did in Richland County between March 2000 and July 26, 2001 use, employ, induce, coerce, encourage, or facilitate a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. All in violation of SC Code of Laws §16-15-395.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

RICHLAND

MARK E. BROWN

AKA:

Race:

W

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

CHAPIN SC 29516

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

04

-GS-

40

10271

A/W#:

DP 04540

Date of Offense:

3/00 - 11/00

S.C. Code §:

16-15-395(D)

CDR Code #:

0 / 3 / 7 / 9

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: **SEXUAL EXPLOITATION OF MINOR**in violation of § 16-15-395(D) of the S.C. Code of Laws, bearing CDR Code # 0 / 3 / 7 / 9☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3/6/04 04-45-40-10269☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott
Clerk of Court Deputy ClerkCourt Reporter: H. Tracy

A TRUE COPY

Barbara A. Scott
C. C. C. P. A. S.

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James R. Balth
201 1 1 1 1 0
2/6/06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Lieutenant Stan Smith, RCSD

Investigator Terry Downie, RCSD

ARREST WARRANT NUMBER

BP04540

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 18 2004

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-40- 10271

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

42

**THE STATE
vs.**

MARK ELLIS BROWN

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
1ST DEGREE**

SC Code: 16-15-395(D)

CDR Code: 0379

Class FEL-E

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.

ATTEST
A TRUE COPY
Barbara A. Seaton
C. C. C. P. L. S. AND G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 17, 2004 the Grand Jurors of Richland County present upon their oath:

SEXUAL EXPLOTATION OF A MINOR 1ST DEGREE

That MARK ELLIS BROWN did in Richland County between March 2000 and November 10, 2000 use, employ, induce, coerce, encourage, or facilitate a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. All in violation of SC Code of Laws §16-15-395.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR