

VOL II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

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S.C. Supreme Court

JIMMY D. MEGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE 2014-000548

APPENDIX

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VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

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Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

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STATE OF SOUTH CAROLINA,

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APPENDIX

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team player #8

503

DIRECT EXAMINATION BY MR. REDMOND

501

1 Mr. Meggs?

2 A. No, sir.

3 Q. Did you notice any of the younger children being
4 uncomfortable around Mr. Meggs?

5 A. No, sir.

6 Q. You do know ^{team players 2 & 3} ?

7 A. Yes, I do.

8 Q. Do you know the ^{victims 1 & 2} ?

9 A. Yes, sir.

10 Q. And did you have a chance to observe the ^{victims #1 & 2}
11 and the ^{team players 2 & 3} while at the paint ball camp?

12 A. Yes, sir.

13 Q. Did you ever notice them being apprehensive in anyway
14 towards Mr. Meggs?

15 A. No, sir.

16 Q. Did you ever notice them trying to stay away from
17 Mr. Meggs?

18 A. No, sir.

19 Q. Now, did you ever observe any kind of push-ups or
20 anything like that where people with their boxers? In
21 other words, did you notice anybody having to strip down to
22 their boxers?

23 A. No, sir, I didn't.

24 Q. Did you ever notice any kind of push-ups activities
25 with one boy under another boy just dressed in boxers or

1 naked?

2 A. No, sir.

3 Q. When did you stop going to paint ball camp, do you
4 recall?

5 A. I think I believe it was after Thanksgiving.

6 Q. Okay. And would you have continued to go to paint
7 ball?

8 A. Yes, sir.

9 Q. And why did you stop going to paint ball? What
10 happened that caused you to stop going to paint ball?

11 A. I'm not sure.

12 Q. Were you aware -- in other words, were you able to go
13 to paint ball with Jimmy?

14 A. Yes, sir.

15 Q. Okay. I'm talking about when you stopped, were you
16 then unable to go to paint ball with Jimmy?

17 A. Was now.

18 Q. Let me rephrase that. If -- were you aware that Jimmy
19 was arrested?

20 A. I read it in the paper that's the only way I knew.

21 Q. But if he had not been arrested, would you have
22 continued to go to paint ball?

23 A. Yes, sir.

24 MR. REDMOND: Beg the Court's indulgence. That be
25 all I have, Your Honor.

team player #8

CROSS EXAMINATION BY MR. STEINBERG

503

- 1 THE COURT: Mr. Steinberg.
- 2 CROSS EXAMINATION BY MR. STEINBERG:
team player #8
- 3 Q. Your name is . . . ?
- 4 A. Yes, sir.
- 5 Q. And you're . . . years old now?
- 6 A. Yes, sir.
- 7 Q. Could you tell the jury how old were you around
- 8 Thanksgiving a month beforehand or a month after in the
- 9 year 1999?
- 10 A. . . .
- 11 Q. Could you stand up please. Could you stand up and
- 12 walk out here so the jury can see. Are you bigger or
- 13 smaller than Jimmy Meggs?
- 14 A. A little bigger.
- 15 Q. A little bit bigger than Jimmy Meggs?
- 16 A. Uh-huh.
- 17 Q. Thanksgiving of 1999, were you bigger or smaller than
- 18 Jimmy Meggs?
- 19 A. I was a bit bigger. I was little overweight.
- 20 Q. I understand. You can have a seat please. You said .
- 21 you went a total of three to four times to play paint ball?
- 22 A. Yes, sir.
- 23 Q. And that was in both Lamar and Pamplico?
- 24 A. Yes, sir.
- 25 Q. When did you first go to Pamplico?

team players 8

CROSS EXAMINATION BY MR. STEINBERG

504

1 A. I think it was when they first bought the field the
2 first time they ever went out there.

3 Q. Did Jimmy Meggs tell you he first bought the field?

4 A. Yeah.

5 THE COURT: Just slip up a little closer to that
6 microphone so everyone can hear you, sir. All right, sir.

7 Q. Jimmy told you he actually bought the field?

8 A. He said he was in the process of buying it.

9 Q. Okay. If I told you he did not buy the field, does
10 that's surprise you?

11 A. I wouldn't know.

12 Q. Okay. You said when he first bought the field about
13 when was that?

14 A. I'm not sure.

15 Q. Okay. And how many times -- not including Lamar, I'm
16 just talking about Pamplico. How many times were you at
17 Pamplico?

18 A. Two or three times.

19 Q. Two or three times. You were there two weekends
20 before Thanksgiving?

21 A. I believe so.

22 Q. Do you know if you were there one weekend before
23 Thanksgiving?

24 A. No, sir.

25 Q. Do you know if you were there one weekend after

1 Thanksgiving?

2 A. No, sir.

3 Q. Did you spend the night there?

4 A. I never spent the night.

5 Q. You didn't spend Friday night there?

6 A. No, sir.

7 Q. You spend Saturday night there?

8 A. No, sir.

9 Q. Which day would you go Saturday or Sunday?

10 A. I would go like during the day like Friday or
11 something.

12 Q. Go Friday. Well, during the school year when school
13 is naturally in session for children, what day would you
14 go?

15 A. Be on the weekend.

16 Q. Did ever go Saturday and Sunday?

17 A. Yes, sir.

18 Q. Okay. And about what time would you leave?

19 A. Around dark time eight o'clock or nine.

20 Q. If something happened while you were gone, would you
21 know what happened?

22 A. No, sir.

23 Q. If you saw Jimmy Meggs engage in any thing sexual
24 inappropriate with children, what would you have done?

25 A. I never seen anything.

Team player #8

CROSS EXAMINATION BY MR. STEINBERG

REDIRECT EXAMINATION BY MR. REDMOND 506

1 Q. I know, but if you had what would you have done?

2 A. Ask him -- I'm not sure.

3 Q. You don't know what you would have done?

4 A. No, sir.

5 MR. STEINBERG: Beg the Court's indulgence. I have
6 no further questions, thank you.

7 THE COURT: Redirect, sir.

8 MR. REDMOND: Yes.

9 REDIRECT EXAMINATION BY MR. REDMOND:

10 Q. If you had seen anything inappropriate happen the last
11 question the prosecutor asked, would you have gone back to
12 paint ball with Jimmy Meggs if you seen something that was
13 inappropriate was going on with the children?

14 A. No, probably wouldn't have.

15 MR. REDMOND: That's all I have, Your Honor.

16 THE COURT: Thank you, sir, you can step down.

17 (The witness left the witness stand.)

18 THE COURT: Folks, it will be about five minutes
19 before the next witness. So I will ask you to go back to
20 the jury room and I'll call you out in just a minute.

21 (The jury was excused to the jury room.)

22 THE COURT: Mr. Propps, if you will bring out the
23 jury, please.

24 (The jury returned to the courtroom.)

25 THE COURT: Mr. Cox.

teen player #9

Team Player pg

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team player #9

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team player #7

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feeding layer #9

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team & group

1 A. Yes, sir.

2 Q. And how do you know Jimmy Meggs?

3 A. Well, at first, I meet him playing paint ball. He was
4 pretty good playing with my dad. He would come to the
5 house and we would play video games and stuff, pretty good
6 friends.

7 Q. Okay. And when you say your father, who's your
8 father?

9 A. Chris Gough.

10 Q. Chris Gough?

11 A. Yeah, that's my stepfather.

12 Q. Your stepfather. At any time, did you go and
13 participate made the paint ball games or wars?

14 A. Yes.

15 Q. And when you would participate in those, where would
16 you go?

17 A. We went to Pamplico, a field in Pamplico.

18 Q. Okay. And was the group -- did the group have a name?

19 A. Not that I know of. I don't remember.

20 Q. Okay. And approximately how many people would take
21 parts in the games?

22 A. Well, it was about 16 to 17 regulars that would come.

23 Q. And if you know how many total do you think took part,
24 although they may not be regulars took part?

25 A. Maybe about 30.

team player #9

- 1 Q. Thirty. And what period of time are we talking about?
- 2 A. Like what do mean?
- 3 Q. Over what we talking about months or weeks?
- 4 A. I don't know maybe a month or two.
- 5 Q. Maybe a month or two. Now, in the paint ball, did you
- 6 have any kind of rank or position?
- 7 A. No, I was just -- we were -- I was one of the
- 8 commanders.
- 9 Q. You were one of the commanders. Who was the other
- 10 commanders?
- 11 A. I and
- 12 Q. I and Now, how often in a month, would
- 13 you go take part in paint ball?
- 14 A. Well, I went about almost every weekend.
- 15 Q. Every weekend. Would you go during the day?
- 16 A. Yes, during the day.
- 17 Q. Would you spend the night?
- 18 A. I spent the night one time.
- 19 Q. One time?
- 20 A. Yes, sir.
- 21 Q. Okay. During the day if you would, just tell the
- 22 Court what you would do as commander with the paint ball?
- 23 A. Well, first we would wake up and then -- well, the
- 24 time I stayed, we woke up and went to the Flea Market so we
- 25 would get some new equipment. And then while the other

Team play 1/29

DIRECT EXAMINATION BY MR. COX

510

1 boys were there -- I never stayed the night, but I get
2 there and we do stuff like we have to run around the field
3 a couple of times. And then we would start to play paint
4 ball after that.

5 Q. And when you played paint ball, describe to us what
6 you actually do?

7 A. Basically, it's like a war game where you can use
8 either wood ball or either speed ball. And the speed ball
9 takes place in a field. You hide behind barriers that you
10 build. And wood ball you go out into the woods and play.
11 It's almost like a war game.

12 Q. Okay. And can you describe what you did the time that
13 you spent the night? Describe what an average day would be
14 if you went just for the daytime?

15 A. Well, we get there and we like I said run laps and
16 then we start playing paint ball. We played paint ball
17 until it got dark. Then sometimes we went -- he take us
18 out to McDonald's and we would then we go home.

19 Q. For what reason would you run laps?

20 A. Just so when you were running through the woods or
21 through the field, you pull a muscle.

22 Q. Okay. So you warm up?

23 A. Yeah.

24 Q. Okay. At any time, did you do stuff like you would in
25 Army march in groups or?

1 A. Yeah, sometimes.

2 Q. How would you do that?

3 A. I only remember while I was there we only did it one
4 time.

5 Q. Okay. While you were there, were you one of the older
6 olds boys or one of the younger boys?

7 A. I was basically one of the younger range in the
8 midsection of them.

9 Q. Right in the midsection?

10 A. Yeah.

11 Q. Okay. While you were there, were there ever any
12 adults there?

13 A. Yes, it was Jimmy and my dad went one time. And I
14 can't remember the man's name wears glasses, big old
15 glasses.

16 Q. Okay. At any time did anyone provide you a uniform?

17 A. Yeah, the man I just described to you.

18 Q. What he provided?

19 A. He provided fatigue winter jacket, pants, regular
20 jacket, the brown shirt and hats.

21 Q. At any time while you were there with the paint ball
22 and other participates, did you ever see anything that you
23 could consider to be unsafe?

24 A. Well, one time we weren't playing paint ball and we
25 went to bowling alley. And I remember some of the boys

team player #9

DIRECT EXAMINATION BY MR. COX

512

1 they were running around and being out of hand as you say.
2 And Jimmy stood them up on the table and said, you want me
3 to make an example of you. What he said -- what he defined
4 as being example before we went into the bowling alley, was
5 that he would strip us down on the table.

6 Q. Strip you down on the table?

7 A. Yes.

8 Q. Okay. Do you remember who that boy was that made
9 example of?

10 A. *team player #1*

11 Q. *team player #1* Okay. Now, at any time, did you ever
12 see anybody with the paint guns do anything that you
13 thought you shouldn't do with a paint gun?

14 A. No, sir.

15 Q. At any time did you ever see anyone shoot somebody
16 with a paint gun where maybe it was too close to them?

17 A. Not while I was there. I heard stories about that
18 though.

19 Q. At any time did you ever see Jimmy Meggs correct the
20 boys out at the field or were you with them other than the
21 bowling alley?

22 A. No, sir.

23 Q. You ever remember occasions where the boys were taken
24 stuff from a store?

25 A. I do remember that.

team player #9

DIRECT EXAMINATION BY MR. COX

513

1 Q. Tell me about that?

2 A. We went to the store, but it was before we went to the
3 baseball field over in Darlington. We were gone watch a
4 game. And *team player #2* he took some gum out the store.
5 He told me about it and I went and told Jimmy and later
6 Jimmy went back and paid for the gum.

7 Q. Okay. Now, this was the time before you were going to
8 the ball game?

9 A. Yeah, we were just riding and he said do you want to
10 stop here and watch the game and we all agreed said that
11 was fine.

12 Q. And do you remember what type of vehicle you were in?

13 A. I believe it was a truck.

14 Q. A truck?

15 A. Yes.

16 Q. At any time while you were with Mr. Meggs, did you
17 ever see Mr. Meggs pull a trailer behind the truck?

18 A. Well, the time that Jimmy was pulling the trailer, I
19 was grounded because of my grades in school, but he did
20 come to my house with a trailer.

21 MR. Cox: Beg the Court's indulgence for one second.

22 Q. I've asked you about anyone pointing a paint ball gun
23 or shooting someone with the paint ball gun too close.
24 Other than the bowling alley, did you ever see anyone at
25 the paint ball field having to perform or take part in

*team player #9*DIRECT EXAMINATION BY MR. COX
CROSS EXAMINATION BY MR. STEINBERG 514

1 anything with their clothes off?

2 A. No, I didn't see it, but I heard about it.

3 Q. Okay. But you did not see it yourself?

4 A. No, sir, I did it with my eyes.

5 Q. At any time before coming to court, has anyone
6 contacted you about what you may have seen or known at the
7 paint ball field?

8 A. Lets see two private investigators come to the house
9 and then I forget his name him right there, he talk to me,
10 yeah.

11 Q. I know him as Officer Bryan Kennedy?

12 A. Yeah.

13 Q. And you had a conversation with him?

14 A. Yeah.

15 Q. Okay. What did y'all talk about?

16 A. Well, he asking me basically the same as everyone that
17 I've talked to about how did I know Jimmy and whatnot and
18 what kind of relationship did I have with him; that was
19 about -- have Jimmy ever done anything to me that was about
20 it.

21 Q. Did you answer his questions?

22 A. Yes, sir.

23 MR. REDMOND: Answer any questions the attorney
24 general may have.

25 CROSS EXAMINATION BY MR. STEINBERG:

- team player #9
- 1 Q. How are you today, ?
- 2 A. Fine. You?
- 3 Q. I'm doing fine. Thank you. My name is Howard
- 4 Steinberg I'm a prosecutor. Do you know what a prosecutor
- 5 is?
- 6 A. Not really.
- 7 Q. It's a lawyer that works for the State?
- 8 A. Okay.
- 9 Q. Do you like Jimmy Donald Meggs?
- 10 A. He's an all right guy.
- 11 Q. All right guy. Is he a friend of yours?
- 12 A. Yeah, he was.
- 13 Q. Why is he a friend of yours?
- 14 A. Well, he was always really nice to me. We played
- 15 paint ball with me. He took me and my sisters out to eat
- 16 at Fuji's and ---
- 17 Q. Excuse me. Where?
- 18 A. Fuji's the Japanese restaurant.
- 19 Q. Okay. Thank you.
- 20 A. And we would go play video games at the arcade and we
- 21 would go to the batting cage. He was good friend.
- 22 Q. Okay. And did he as a good friend give you any gifts?
- 23 A. I remember he bought me a -- it was Star Wars Episode
- 24 One computer game.
- 25 Q. Did he ever buy you anything else?

1 A. I'm trying to remember. He bought me a paint ball
2 mask that it was like a \$70 paint ball mask.

3 Q. Did he ever buy you any gifts that you weren't allowed
4 to keep?

5 A. Oh, he bought me a pair of skates that he was supposed
6 to buy me as an early Christmas present, but my mother
7 wouldn't let me keep them because she said that was too
8 much money.

9 Q. Okay. Do you know why he bought you these gifts?

10 A. Not really.

11 Q. You said earlier sometimes you didn't go to the paint
12 ball camp because you were grounded?

13 A. Yes.

14 Q. How many times -- I don't care about the reasons.
15 About how many times were you not able to go because you
16 were grounded?

17 A. It's hard for me to remember let me think a second. I
18 say about three times.

19 Q. Three times you couldn't go?

20 A. Yeah.

21 Q. Were you ever sick during this period. Let me define
22 it for you so that you will know what I'm talking about.

23 I'm talking about a month, a month and a half maybe before
24 Thanksgiving maybe a couple of weeks after Thanksgiving.

25 Were you ever sick during that time and unable to go to

1 paint ball?

2 A. Not that I remember, no, sir.

3 Q. And how many times total do you think you went to
4 paint ball with Jimmy Meggs?

5 A. I say about maybe four times at the most.

6 Q. About four times. And did you ever spend the night?

7 A. I spent the night one time.

8 Q. Did you go on both Saturday and Sunday?

9 A. Well, I think I spent the night on a Saturday and I
10 was there Sunday.

11 Q. On the time when you didn't spend the night, did you
12 both Saturday and go back again on Sunday or just one or
13 the other?

14 A. I would go Saturday and then I go back again on
15 Sunday, too.

16 Q. But you wouldn't spend the night there?

17 A. No.

18 Q. Okay. What did you wear at this paint ball camp?

19 A. Army fatigue, like camouflage pants, jacket, the
20 normal.

21 Q. Who gave you this the camouflage pants?

22 A. That man right there.

23 Q. You talking to the -- for the record he's pointing to
24 former witness Reggie Sumner. Who introduced you to
25 Mr. Meggs?

1 A. We meet him -- see we had a friend named Raymond that
2 lived near us that we would go to Lamar to play paint ball
3 with him and Jimmy had some of the boys out there playing
4 paint ball and that's how I meet him because we had got put
5 on each other teams.

6 Q. Okay. And is that when your father met him?

7 A. Yes, sir.

8 Q. Okay. What other adults would be out there at this
9 paint ball camp?

10 A. I don't really remember the names. It was just a
11 group of people and most of them were adults they like
12 bring some kids out there and play.

13 Q. So you're saying at the paint ball camp in Pamplico
14 were mostly adults?

15 A. No, there was Jimmy and sometimes my dad and my mom
16 and my older sister would go out there and watch and Reggie
17 was out there one time.

18 Q. One time?

19 A. Yeah.

20 MR. STEINBERG: Beg the Court's indulgence. Thank
21 you very much, Austin.

22 MR. COX: Nothing further.

23 THE COURT: Thank you, sir, you may step down.

24 (The witness left the witness stand.)

25 MR. COX: Chris Gough is the next witness in the

CHRIS GOUGH DIRECT EXAMINATION BY MR. COX

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1 room out there. Chris, place your left hand on the Bible
2 and raise your right hand to be sworn.

3 CLERK OF COURT: Do you swear the testimony you give
4 in this case be the truth, the whole truth, and nothing but
5 the truth so help you God?

6 MR. GOUGH: I do.

7 CLERK OF COURT: Be seated and state your name for
8 the record?

9 MR. GOUGH: I'm Chris Gough.

10 CHRIS GOUGH, being first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. COX:

13 Q. Chris, how do you spell your last name?

14 A. G-o-u-g-h.

15 Q. G-o-u-g-h. And where do you live?

16 A. *Team player #9*

17 Q. And to whom are you married?

18 A. Billie Gough.

19 Q. And you have a stepson?

20 A. Yes, sir.

21 Q. And what is his name?

22 A. *Team player #9*

23 Q. We just got to meet *team player #9 who* just testified?

24 A. Yes, sir.

25 Q. And do you know Jimmy Meggs?

1 A. Yes, sir.

2 Q. How or when did you meet Jimmy Meggs?

3 A. I guess been period over -- well, year and a half now.
4 I met Jimmy out in Lamar playing paint ball.

5 Q. Do you remember what year that was?

6 A. Lets see well it wasn't last fall. It was the fall
7 before so almost a year.

8 Q. Fall of '99?

9 A. Yes, sir.

10 Q. And what were you doing in Lamar at the paint ball
11 field?

12 A. Well, my neighbor -- well, like maybe I bring my -- I
13 was actually see it on T.V. like ESPN and see the paint
14 ball going on. And a neighbor of mine lives like three
15 blocks down found out that he knows some people were
16 getting together. So I went out like three or four times
17 -- three times before I meet Jimmy.

18 Q. Okay. And tell us if you will about the times you met
19 Jimmy Meggs in Lamar?

20 A. When I met Jimmy he -- I guess he found out that I was
21 in the Air Force and he was asking me about that. We begin
22 talking. He said, so you're in the Air Force. He was just
23 talking to me asking me about my past. I gave him my
24 number. He called me we end up talking that way.

25 Q. At any time did you ever assist Jimmy Meggs with paint

1 ball?

2 A. Well, I did. It was a period of probably out of six
3 months, eight months went by after we played and got to
4 know Jimmy as a friend. He mentioned something about doing
5 something for the kids, to support the kids being like in a
6 big brother type of deal. And I told him that would be a
7 good idea and he asked me would I be willing to help him
8 out. And I said, sure, you know, I'll help you out. So, I
9 guess that was back in October.

10 Q. Okay. Now, did you ever go to a location in Pamplico
11 where they doing paint ball?

12 A. Yes, sir, that's where Jimmy had his little setup.

13 Q. Okay. When -- how many times did you go there?

14 A. Well, I had -- well, we went like as far as the
15 technical going there five times or more setting up
16 everything. We get pallets and different store owners
17 around town they said that I could help myself to the
18 pallets and whatnot in setting up different obstacles and
19 that kind of thing. But actually, maybe two sessions where
20 the kids went daytime messing around playing paint ball and
21 he talked me into spending the night with the kids. I
22 brought my tent and took my -year-old daughter one
23 night.

24 Q. Okay. And if you will, why did you need the pallets?

25 A. Well, it was like a farm bed and there was like stalks

1 of corn and whatnot. There was really nothing to hide
2 behind with paint ball. So that was something to hide
3 behind, obstacles different things like that.

4 Q. Okay. And at any time, did anyone provide uniforms to
5 the boys?

6 A. He did. I forgot his name, but he had uniforms they
7 were too small that I remember throwing away from the
8 armory. Camouflage T-shirts and things that type of thing.

9 Q. So approximately how many times do you think you were
10 at Pamplico when the paint ball games were going on?

11 A. Actually the games going on, just -- it's been awhile,
12 three times.

13 Q. And any time when you were there, did you see anything
14 that you thought was unsafe?

15 A. Unsafe. Not really unsafe, no. Well, the reason why
16 I say that because some of the kids were rowdy a little bit
17 because of their age. Their age they need some
18 supervision. There was supervision but nothing ever
19 happened.

20 Q. Okay. And the one time you spent the night, do you
21 remember about when that was?

22 A. I guess it was about -- I'm saying around the end of
23 November.

24 Q. The end of November?

25 A. Or maybe the first of December or less than that.

1 Q. And during that night, did you again see anything that
2 you though should not be ---

3 A. No, because I'm the type person I would have spoke up
4 about it. I hadn't seen nothing since I been there.

5 Q. At any time did Jimmy Meggs ever tell you that he was
6 in the National Guard?

7 A. When I met him, he mentioned that he was in the
8 National Guard. I think he said he was a captain. And I
9 was like really and he said something about having drills
10 or whatnot. I'm not sure what he said, but we really
11 didn't talk about it too much and that was when I first met
12 him.

13 Q. Did you later learn that he was not in the National
14 Guard and not a captain?

15 A. I later learned that because he spent a lot of time at
16 my house and I was always asking him when you have your
17 next drills because I was in the National Guard for two and
18 a half years. So he kind of avoided my questions. So I
19 thought well anyway, but I guess I later learned that he
20 wasn't.

21 Q. At any time did Jimmy Meggs lead you to believe he had
22 an engineering degree from the University of the North
23 Carolina?

24 A. Yes, sir.

25 Q. Okay. Did you ever find out that that was not true?

1 A. I didn't find out really anything about that until
2 this came about.

3 Q. And how did you find out about that through this
4 coming about?

5 A. Through Mr. Kennedy I believe.

6 Q. Mr. Kennedy here?

7 A. I believe, yes, sir.

8 Q. And did you have occasion to have conversation with
9 Mr. Kennedy about Jimmy Meggs?

10 A. Well, I remember he called. I use to work for Carly
11 Pines in Hartsville physical therapy over there. And he
12 had paged -- let me see exactly when that was. It's been a
13 year now.

14 Q. Okay. And what did that conversation let you know
15 Jimmy Meggs was not an engineer?

16 A. Well, as we got into the conversation a bit.

17 Q. What was it about the conversation that Mr. Kennedy
18 pointed out that he was not?

19 MR. STEINBERG: Your Honor, I'm going to object
20 because this is going to be hearsay asking what Mr. Kennedy
21 had to say.

22 THE COURT: What else can he say other than I found
23 out that he wasn't a graduate?

24 MR. COX: Judge, I don't know, but I respectfully
25 submit with Mr. Kennedy sitting here. He said I had a

1 conversation with that man right there that's what he can
2 say, Your Honor.

3 MR. STEINBERG: Well, I think, Your Honor, the
4 proper method is actually to call Investigator Kennedy
5 ahead of time and he give the circumstances.

6 THE COURT: I sustain that objection.

7 Q. Did you answer all the questions that Mr. Kennedy
8 asked you?

9 A. Yes, sir.

10 Q. Were you ever asked a question that you didn't have an
11 answer for?

12 A. No -- well, he was asking me what -- it's kind of hard
13 for me to explain unless I tell you what the conversation
14 -- what happened in the conversation because, you know,
15 besides to tell you exactly what he said.

16 Q. The judge has to decide that. Did he ask you for help
17 on the case?

18 A. Yes, sir, he did.

19 Q. Were you able to help him?

20 A. I wanted to help him, but I told him I would try to if
21 I could.

22 MR. COX: Answer any questions...

23 CROSS EXAMINATION BY MR. STEINBERG:

24 Q. Good afternoon, Mr. Gough, how are you today?

25 A. Good. How are you?

1 Q. Fine. Thank you. My name is Howard Steinberg. I
2 never met you before. I'm a prosecutor. Let me ask you a
3 couple of questions in response to what the opposing
4 attorney asked you. You talked about your relationship
5 that you had with Jimmy Donald Meggs. Was your son friends
6 with him?

7 A. Yes, sir.

8 Q. Were you friends with him?

9 A. Yes, sir.

10 Q. Why were you friends with him?

11 A. Because I was friends with him. Well, I guess I was
12 friends with him because he showed interest in being my
13 friend first. And he was really interested in my lifestyle
14 and he tried to be a friend with me and in return -- well,
15 I just returned it back because he was a very nice guy so.

16 Q. You said you were friends. Were you concerned that he
17 didn't tell you the truth about the National Guard
18 experience?

19 A. Well, some period went by before I found that out. So
20 we were really good friends before that and still are. So
21 we were still friends, but I confronted him on that because
22 I was concerned that he lied to me about it. It's hard to
23 say what you're asking me. Me and Jimmy are still friends
24 that brings up other issues though.

25 Q. Why is that?

1 A. Just because I found out he wasn't a captain that he
2 was not my friend after that; that's not the kind of friend
3 I am. He was still my friend and I was concerned about it.

4 Q. Did he tell any other untruths?

5 A. He told me some untruths about things he did that we
6 discussed earlier what he done because Jimmy tried to make
7 himself look a little taller than what he was.

8 Q. Do you know why he did that?

9 A. He was kind of insecure about himself a little bit.

10 Q. Did you know that he gave your son some gifts?

11 A. Well, he bought paint ball guns for everybody pretty
12 much and he said you can't really keep it at your home.
13 But he came over and spent sometime with all of us. Him
14 and Austin went bowling a few times.

15 Q. Did he ever try to give your son gifts that you
16 thought were inappropriate?

17 A. Well, my memory is kind of vague, but there was a time
18 where it seems like there was a discussion where he was
19 gone buy ^{team playing} something and I thought it was a little
20 expensive. I told him, no, that wouldn't be appropriate.
21 So he said, okay, that's fine I understand. He was just
22 trying to be helpful and be nice and show ^{team player #9} he was a
23 friend to him.

24 Q. You said I think one time during the prior testimony
25 that you attended paint ball camp while the children were

1 there two times and another time you spent three times you
2 said. Do you remember the two or three times in Pamplico
3 were there other boys around?

4 A. Well, that's kind of a question -- to the question is
5 cause I been three times to setup. You have to understand
6 when you -- because I went there a few times to help setup.
7 There were times when I was setting up that we kind of
8 horsed around. So if you technical to say well, did you
9 actually planned to do nothing but play the game during
10 setup or did you play at all while you were setting up. So
11 they go both ways with it. You know, it's hard to find
12 exactly in that matter, you know.

13 Q. Okay. Would you agree that you went to Pamplico no
14 more than three times?

15 A. I went more than that because like I said we setup.

16 Q. I apologize did you say that. Let me rephrase that.
17 Would you agree that you went out not regarding the setting
18 up of pallets. Would there be playing -- little boys
19 around?

20 A. Right.

21 Q. Do you agree you went there no more than three times?

22 A. Again, that's hard to speculate because at the times I
23 went to setup and we actually played -- I guess actually
24 planned not to setup about three times. I'm just guessing.

25 Q. And how many nights did you spend there?

1 A. One.

2 Q. Do you know if it was a Friday or Saturday night?

3 A. That's been a long time ago.

4 Q. Let me ask this. I'll try to clarify it. Did you
5 spend both a Friday and a Saturday night or just one of the
6 nights?

7 A. Well, if I would have spent both that be two nights.

8 I only stayed one night. I just don't know if it's a

9 Friday or Saturday night.

10 Q. Okay. Do you remember which night you spent?

11 A. Well, that was two years ago. When I was interviewed,
12 I might have given a night if it was recorded. Whatever I
13 said then; that it was two years ago I think it's been
14 awhile.

15 Q. Do the fact that Jimmy had told you untruths in the
16 pass that didn't affect your friendship? Did that affect
17 your willingness to allow your son to go out with him?

18 A. I did question that at one time, but what I did in
19 that as soon as I recognized that fact, I spoke with Jimmy
20 about it at length. I told him I said, a friendship is
21 about trust and he agreed to me and with me that he
22 apologized. He told me that he was just trying because he
23 found out that I had done so much and been places, I guess.
24 He was just trying to, you know, polish himself up, I
25 guess, for more -- I don't know. I guess -- I don't want

1 to speculate. I just told him I said, Jimmy, you don't
2 have to od that just be whoever you are. I don't care what
3 you do and I'm still your friend. He just basically
4 apologized and told me that -- from here on out so to speak
5 he wouldn't lie to me or whatever.

6 Q. Did Jimmy ever tell you any lies after that?

7 A. From that point on, I don't think he did. I don't
8 think he did.

9 Q. How old are you, sir?

10 A. I'm 32...

11 Q. Are you bigger or smaller than Jimmy Donald Meggs Jr.?

12 A. I'm bigger.

13 Q. Do you think Jimmy Meggs can hurt you?

14 A. Well, that's a technical question. Size doesn't
15 matter as far as -- no.

16 Q. You're not scared of Jimmy Meggs?

17 A. No, sir.

18 Q. I think this question was asked somewhat different
19 form by opposing counsel. But if you saw Jimmy Meggs
20 ordering boys to engage in something that was improper for
21 example sexual, what would you have done?

22 A. Well, the thought about it upsets me just thinking
23 about it because I'm not a batterer or apart of anything
24 like that. I have three kids that I have raised for ten
25 years and that -- if I would have found that out myself, I

1 probably would have brought everything out myself. I'm not
2 about anything sexual for that matter or any kind of
3 misconduct because Jimmy -- I think that he told me that he
4 appreciated that fact because I was very honest and
5 trustworthy.

6 Q. He appreciated the fact?

7 A. He appreciated the fact of my honesty and I was very
8 blunt.

9 Q. You said you would have brought it out yourself the
10 sexual allegations?

11 A. Oh, definitely.

12 Q. Are those your words not mine?

13 A. I would have brought it out if I had seen anything,
14 but I did not.

15 Q. If he were to have done it any sexual abuse involving
16 the children, would he have done it in your presence?

17 A. Well, because he knows who I am I'm sure he wouldn't.

18 Q. When you were out there, how many other adults were
19 out there?

20 A. Well, when I was out there, I was -- me and Jimmy were
21 the only adults the two of us.

22 Q. And any young children out there?

23 A. Well, various occasions there were probably on a
24 minimum five children at the most 15.

25 Q. There were as few as five people children and as many

1 as 15 children?

2 A. I'm just guessing.

3 Q. Okay. What time did you tend to go home on nights
4 when you didn't spend the night?

5 A. When I didn't spend the night?

6 Q. Yes, sir.

7 A. Well, it's hard to say how many, but there were like
8 -- I'm just guessing a couple of occasions where I remember
9 we went out and we got a late start and we had all those
10 pallets to unload. It was getting dark anyway, but we were
11 committed so we get them off the truck and it was probably
12 I don't know nine or ten o'clock before we left and came
13 home.

14 Q. Was that the latest you ever stayed out there?

15 A. Well, the night I spent the night.

16 Q. Besides the night you spent the night?

17 A. Right.

18 Q. Did you ever go home before that?

19 A. Yes, sir.

20 Q. Did you tend to try to get home before it was dark?

21 A. Of course, if possible.

22 Q. Did you go out there in November?

23 A. Yes, sir.

24 Q. Does it tend to be darker in Florence in November than
25 in August?

1 A. Well, it is darker because of the fall back and spring
2 forward.

3 MR. STEINBERG: Beg the Court's indulgence.

4 A. But when I said that we stayed out there later, it was
5 because it was earlier. When time changed and I spent the
6 night, it was later. But when we was setting up, it was
7 kind of earlier too. So it kind of went through the time
8 change as we were setting up.

9 MR. STEINBERG: Thank you, sir, I appreciate it.

10 THE COURT: Any redirect, sir?

11 MR. COX: No, sir. Your Honor, we asked that he be
12 excused to join his family in the courtroom.

13 THE COURT: Yes, you may step down, sir.

14 (The witness left the witness stand.)

15 MR. REDMOND: The defense would next call Dr. Lisa
16 Jackel to the stand. We apologize for the delay.

17 THE COURT: Place your left hand on the Bible and
18 raise your right hand.

19 CLERK OF COURT: Do you swear the testimony you give
20 in this case will be the truth, the whole truth, and
21 nothing but the truth so help you God?

22 DR. JACKEL: I do.

23 CLERK OF COURT: Be seated and state your full name
24 for the record?

25 DR. JACKEL: Dr. Lisa Jackel.

1 LISA JACKEL, being first
2 duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. REDMOND:
4 Q. And, Dr. Jackel, where do you work?
5 A. I have my own practice in Florence.
6 Q. Okay. And what type of practice do have?
7 A. I'm a generally child and family psychology counseling
8 and evaluations.
9 Q. And do you engage in child sex abuse and allegations
10 of sexual abuse?
11 A. Yes, I do. I treat victims as well as perpetrators of
12 sexual abuse.
13 Q. Okay. And have you in fact had -- have you ever in
14 the pass have referrals from law enforcement?
15 A. Yes.
16 Q. And have you, of course, had defense referrals from --
17 and in fact, we have retained you to evaluate; is that
18 correct?
19 A. Yes.
20 Q. Let me just ask you by way of background. Just
21 because you have been retained by a party to do any
22 evaluation, does that mean that your evaluations are
23 favorable to them?
24 A. No, sir.
25 Q. Okay. And in fact have there been times that it has

1 not been favorable to the party that retained?

2 A. Yes, sir.

3 Q. Okay. Thank you. Let me go through your educational
4 background if you don't mind. Could you explain to the
5 court your education starting with the time you were in
6 college on forward?

7 A. Undergraduate in Psychology. I attended the
8 University of New York, Albany and graduate work and
9 doctorate University of South Carolina.

10 Q. Okay. And when did you complete those studies?

11 A. I completed my doctorate in 1994 and was licensed in
12 1995.

13 Q. Okay. And how long have you been working with child
14 abuse cases?

15 A. Well, five years I have been in practice and plus two
16 years prior gain my license after receiving my degree, plus
17 a year internship. So that's eight years plus and probably
18 some more cases in graduate school.

19 Q. And how often have you testified in court and been
20 qualified as an expert in such cases?

21 A. I've testified in family court in child victim and
22 perpetrator cases. I been qualified as an expert in
23 Florence and surrounding counties over the past five and a
24 half years. I'd say approximately 20 times.

25 MR. REDMOND: Your Honor, at this point I would move

1 to have Dr. Jackel introduced as an expert in the field of
2 sexual abuse crimes.

3 MR. STEINBERG: Your Honor, I object to the field of
4 sexual abuse crimes.

5 MR. REDMOND: I'll rephrase that child psychology as
6 it relates to victims of alleged sexual abuse.

7 MR. STEINBERG: I like to ask just one or two
8 questions.

9 THE COURT: Sure you may.

10 INQUIRY BY MR. STEINBERG:

11 Q. Dr. Jackel, my name is Howard Steinberg with the
12 attorney general's office. I'm reading your curriculum
13 here. Do you have a specialty in the field of psychology?

14 A. Yes.

15 Q. What is that field?

16 A. Well, child and family specifically within that area
17 dealing in child custody and child sexual abuse.

18 Q. Okay. About how many children have you interviewed
19 during the course of your profession?

20 A. Be in 100's close to a 1,000.

21 Q. You say you testified in court before?

22 A. Yes, sir.

23 Q. You been qualified as expert witness?

24 A. Yes, sir.

25 Q. What kind of court have been qualified?

1 A. In family court. For example, DSS cases with both
2 pertaining to child victims as well as alleged
3 perpetrators.

4 Q. Have you ever been qualified to testify in the court
5 of general sessions, in criminal court?

6 A. Not that I recollect.

7 MR. STEINBERG: I have no further questions, Your
8 Honor. Your Honor, I make no position.

9 THE COURT: Tell me again the area of which you will
10 offer her as an expert.

11 MR. REDMOND: Your Honor, if I could ask her one
12 additional question.

13 **DIRECT EXAMINATION CONTINUED BY MR. REDMOND:**

14 Q. Do you run an adolescence sex offender treatment
15 program?

16 A. Yes, sir.

17 Q. And how long have you been running that program?

18 A. The most recent group I initially had been on going
19 since last August. The perpetrator program been there for
20 almost a year. They pick individual family and group
21 therapy obviously weekly and basically maintain contact
22 with probation officers who report to the judge on their
23 progress.

24 MR. REDMOND: Your Honor --

25 THE COURT: If y'all can come up just a moment.

1 (A bench conference was held in the presence of the
2 jury, but out of the hearing of the jury.)

3 THE COURT: Folks, I apologize for having had that
4 discussion out of your hearing. We need a greater
5 discussion and I think with the attorneys I need to do that
6 outside of your presence. So I'm sending you back to the
7 jury room and I will call you back in a few minutes.

8 (The jury was excused to the jury room.)

9 THE COURT: All right, sir. Lets review what we
10 discussed. First what is the purpose for which Dr. Jackel
11 is being offered and what area is it that you going to ask
12 her to pine about?

13 MR. REDMOND: I'm going to ask her, if it please the
14 Court, I will ask her to pine about the bases of her
15 evaluation of the interview conducted by the alleged
16 victims or conducted of the alleged victims issues
17 regarding things we heard Ms. Sturkie testify. I think
18 delayed reporting, piecemeal disclosure. And there were
19 questions -- and Ms. Sturkie gave opinions as it related to
20 the accuracy of those particular processes. And that is in
21 essence the crux of our questioning as to Dr. Jackel. And
22 I'll be glad to go through a proffer, but we would be
23 proposing to enter her as an expert in the field of child
24 psychology regarding sexual allegations of sexual abuse
25 with children.

1 THE COURT: Well, you're not offering her to pit her
2 against the other expert. You're offering her to express
3 opinion that may be different from the other; is that
4 correct?

5 MR. REDMOND: That is correct, Your Honor. Now, in
6 doing so in all candor and that's why I indicate the
7 proffer. There are going to be questions that are going to
8 relate as to Dr. Jackel will testify to the way that she
9 observed the interview being conducted, not directly. And
10 we understand the issues concerning hearsay, but as it
11 relates to her opinion of the interviews and how that could
12 affect an impact upon a child responses because Ms. Sturkie
13 has testified about the fact that she believed that there
14 is -- there has been sexual abuse that has occurred and
15 basically we're proffering Dr. Jackel to sort of break down
16 the factors that would have been involved in coming to such
17 a determination as to Ms. Sturkie. And quite Frankly that
18 would be a differences of opinion.

19 THE COURT: Mr. Steinberg.

20 MR. STEINBERG: Your Honor, the State would have to
21 oppose going into what in particular what victims have to
22 say. If Dr. Jackel wish to talk about the reliability in
23 her field of delayed reporting, certainly she can go into
24 that. Ms. Sturkie went into that piecemeal reporting. I
25 have no opposition to that whatsoever. If she's going to

1 break apart each witnesses statement there, I just don't
2 see the role of the expert witness.

3 MR. REDMOND: And she is not being proffered for
4 that reason, Your Honor, we are not going to ask her
5 specific questions regarding specific witnesses. The only
6 thing -- and again, the only thing that I am really getting
7 into with Dr. Jackel with regards to the manner of the
8 interviews, the control, the factors that go toward making
9 a determination of whether or not you believe someone who
10 is -- for instance someone who is giving a piecemeal story
11 whether or not that reduces the credibility.

12 Dr. Jackel will be in a position to cite research
13 that would differ from that which Ms. Sturkie testified to.
14 And again in her testimony, Mr. Sturkie mentioned the
15 research as it relates to things like delayed reporting, as
16 it relates to things like piecemeal disclosure.

17 MR. STEINBERG: I have absolutely no objection
18 whatsoever to that and limited just to that and not going
19 to be any bleed over into to hearsay or bleed over into any
20 pitting. If that's it just the research, the piecemeal,
21 and delayed reporting.

22 MR. REDMOND: Just to make it clear, I hear
23 Mr. Steinberg, but I don't want to have to get interrupted
24 again and that's why I mentioned the proffer. Your Honor,
25 one of the things concerning questions are going to deal

1 with some of the questions -- the nature of the questions
2 by the interview as that impacts upon the reliability of
3 the particular interview itself and reliability of what the
4 child is saying. I'm not going to be mentioning individual
5 children. I'm not going to be pitting or bringing up any
6 testimony.

7 In other words, Your Honor, I'll just give an
8 example. As far as the manner of the questioning, if there
9 was repetitive questioning that might tend to prompt an
10 answer, is that something that was observed in your
11 evaluation of the material; that is one of the questions
12 that I am proposing asking.

13 MR. STEINBERG: There be no answers just only
14 questions.

15 MR. REDMOND: No answers, just the questions. I'm
16 just talking about the manner of the questions.

17 MR. STEINBERG: I have no objection to that. I will
18 see how it develops. I have no objection to that.

19 MR. REDMOND: Beg the Court's indulgence. Again,
20 just out of abundance of precaution.

21 MR. STEINBERG: Just very briefly, Dr. Jackel has a
22 report where she discusses the investigation, problems with
23 the investigation particularly with the law enforcement
24 side of it. I'd ask that she not be allowed to discuss
25 that. She also made some statements in her report dealing

1 with improper child care and that also I object to that
2 coming in. Now, words once spoken cannot be taken back and
3 asked I'll be too bad we didn't know.

4 MR. REDMOND: Now, Your Honor, I am going to ask her
5 her opinion of the interview as conducted. I want to make
6 sure that's understood. I'm going to ask her opinion on
7 that as it relates to the reliability of the information
8 that was received that is my intention. As it relates to
9 any discussion on the investigation of things like that,
10 I'm not planning on getting into that.

11 THE COURT: All right.

12 MR. STEINBERG: Beg the Court's indulgence, Your
13 Honor. We have no further objections, Your Honor.

14 THE COURT: Mr. Propps -- well, anyone needs a
15 recess before we start.

16 MR. REDMOND: No, Your Honor.

17 THE COURT: Bring them back out, Mr. Propps.

18 (The jury returned to the courtroom.)

19 THE COURT: All right. You may continue, but before
20 I do that, let me say as I did yesterday when a witness was
21 offered as an expert witness she will be permitted to
22 express an opinion in areas in which she has specialized
23 training, education, and experience. The jury will be
24 reminded of what instruction I gave you at that point and
25 how you evaluate the testimony of the witness who are

1 called expert witness.

2 THE COURT: Mr. Redmond.

3 MR. REDMOND: Thank you, Your Honor. May it please
4 the Court?

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION CONTINUED BY MR. REDMOND:

7 Q. Dr. Jackel, we'll pick up where we left off. Now,
8 again one question I would ask you. Do you also do
9 referrals for law enforcement as well as private
10 situations?

11 A. Yes, I got a couple of referrals from the Sheriff's
12 department to victims.

13 Q. Okay.

14 THE COURT: Can you speak a little louder than you
15 are speaking, please, ma'am.

16 Q. If you can just repeat that to make sure everybody
17 heard it.

18 A. Yes, just got two referrals from the Sheriff's
19 department for victims.

20 Q. Okay. Thank you. Did you have the opportunity to
21 review an interview or several interviews that were
22 conducted in reference to the case we're here on today?
23 I'm sorry in other words, did you have a chance to review
24 the evaluation conducted I think at the Durant Center by
25 Ms. Sturkie and there were more than one. I think there

1 were a few of them?

2 A. Yes, sir.

3 Q. Okay. Now, could you first tell the jury in a
4 situation where there are allegations of sexual abuse, what
5 are some of the factors that are considered when initially
6 encountering the child that is making the allegations?

7 A. Well, there's many factors. One would be the context
8 in which the allegation is made. One would be the setting
9 in which children are interviewed. An attempt to avoid
10 multiple professionals and more progressive state have
11 account in the state have formed sort of a multiple
12 professional get together interview the children jointly.
13 There's an interview format that we use to reduce the risk
14 contaminating the children.

15 Q. Let me stop you there. When you say contamination,
16 could you explain to the jury what things could contaminate
17 the information proffered by a child in situation such as
18 that?

19 A. Yes, well, certainly repeated interviews have been
20 shown in research to be contaminating of children reports
21 and children's study show that if children are interviewed
22 by law enforcement alone several times, for never mind,
23 never mind by the medical examiners or there lawyers
24 or parents. And even if it's not intentional, the leading
25 question is asked and it contains information that is given

1 to the child like, well, John told me about some stuff that
2 happened. He told some nasty stuff happened. Well, that
3 interview information nasty, then low and behold a child
4 being -- you have that word nasty. Well, that happened
5 after one and never mind the numerous interviews by
6 repeated professionals. Certainly, the interview being
7 biased can affect the accuracy of the children's report.
8 Lawyers and law enforcement to want make their case and
9 sometimes they look for evidence that fits the case and
10 sort of just ignore evidence that doesn't fit the case.

11 MR. STEINBERG: I object to that.

12 THE COURT: I sustain that. The jury is instructed
13 to disregard that last statement.

14 Q. Dr. Jackel, as it relates to interview bias getting
15 back as it relates to this case. In your review of the
16 evaluations were without stating specifically incidents or
17 specific things were said, could you just give us your
18 opinion as it relates to whether there was interview bias
19 in this situation and to the best that you explain to the
20 jury why?

21 A. Yes, I believe there was interview bias. I think that
22 the interviews had preconceived notions of what had
23 happened and clearly who the alleged perpetrator was. And
24 they guided the interview according to that supposition.
25 If other perpetrators are mentioned...

1 Q. Continue.

2 A. At least one other perpetrator was mentioned numerous
3 times.

4 MR. STEINBERG: Objection, Your Honor, that's false
5 and I ask to approach.

6 THE COURT: I sustain that. Ma'am, you've already
7 been told not to mention what was said in the course the
8 answers to those questions.

9 MR. REDMOND: I can rephrase the question, Your
10 Honor.

11 MR. STEINBERG: Can we approach.)

12 (A bench conference was held in the presence of the
13 jury, but out of the hearing of the jury.)

14 Q. Dr. Jackel, in your evaluation of the interview, did
15 you notice times when the interviewer might have stepped
16 out of the room and come back into room and started asking
17 more questions?

18 A. Yes, I did.

19 Q. And does that concern you or is that significant in
20 your opinion that you can express today?

21 A. Yes.

22 Q. And could you explain why?

23 A. Well, it would again it could be in an attempt to
24 shape interview rather than just gathering all the
25 information. Sort of being unbiased neutral information

1 that's gathered. They are perhaps -- there was an attempt
2 to ascertain what information was being ---

3 MR. STEINBERG: Your Honor, speculation.

4 THE COURT: I sustain that.

5 A. Well, in speaking ---

6 THE COURT: Ma'am, make sure you respond to the
7 questions that Mr. Redmond's ask. He asks you a question
8 and then answer that question.

9 Q. As I was asking and I will restate the question. As
10 far as the investigator walking out and I mean inside the
11 interview walking out then coming back in and asking more
12 questions. What would without getting into any hearsay or
13 any issues that we discussed earlier, could you tell us
14 what concerns you had about that?

15 A. Shaping of the interview was going on. I believe it
16 was sort of ---

17 MR. STEINBERG: I have to object.

18 THE COURT: Wait a minute.

19 MR. REDMOND: Your Honor, I think she's allowed to
20 express her opinion. May we approach, Your Honor.

21 THE COURT: No, I think we better send these folks
22 back to the jury room to discuss it fully.

23 (The jury was excused to the jury.)

24 MR. STEINBERG: Your Honor, I hate to be so
25 objectionable, but the witness is trying to get into

1 speculation of what she thinks Sandra Sturkie said to Byran
2 Kennedy. That's way outside the rules of evidence, Your
3 Honor.

4 THE COURT: And, Mr. Redmond, it does seem that
5 she's kind of guessing or speculating about what may have
6 happened. Now, you know if her training is that, you don't
7 do that; that's one thing, but for her to say it looks like
8 she's shaping the interview. What this ultimately leads to
9 how is a jury to know because they haven't seen those
10 interviews. They don't know what was said and so it's
11 really creating a difficult situation for that.

12 MR. REDMOND: Beg the Court's indulgence, Your
13 Honor.

14 THE COURT: Sure.

15 MR. REDMOND: Your Honor, just to address the
16 particular objection as it relates to her opinion. Again,
17 she is entitled to give an opinion and I understand what
18 the State is arguing and I don't agree with it. In other
19 words, they are saying well, any opinion is speculation in
20 that regard. I mean that's what an opinion is.

21 THE COURT: No. And I apologize for interrupting
22 you. I think the objection is that she's saying what she
23 thinks may have happened when the interviewer went back out
24 of the room and how that -- she may have gotten more
25 information to shape the interview. I think that was

1 opinion. I think that was what she thinks may have
2 happened.

3 MR. REDMOND: And I understand that, Your Honor.
4 And if that's the nature of the objection, then I can
5 rephrase it. I have no problem with that. I'm just trying
6 to make sure this is not a situation where obviously she's
7 not allowed to state a valid opinion based on her
8 qualifications, but as it relates to specific incidents, I
9 don't have any problem. I can resolve that as far as the
10 questioning is concerned and, of course, I would ask the
11 witness to observe the judge's admonishment, but the
12 overall -- and I'm just making sure there's not any
13 objection to the overall line of questions as much so as it
14 is to the response.

15 I'm not trying to revoke a specific response on the
16 -- or what speculation might have happened outside. My
17 specific issue and my question was whether or not the
18 interviewer leaving and then coming back, whether that in
19 her opinion would raise some concerns and why without
20 getting into what somebody else did.

21 MR. STEINBERG: Your Honor, I guess I have no
22 concern unless why -- bringing us back to the very same
23 problem we have here, Your Honor.

24 THE COURT: I think he's actually right,
25 Mr. Redmond. You ask her why and then we got to get

1 Ms. Sturkie back up here to make sure she didn't leave the
2 room and to go to the restroom, just a simple incident as
3 that who knows.

4 MR. REDMOND: I know why it concerns you and I think
5 the first part of her answer was sufficient. I think the
6 issue may have been more detailed. I can resolve that
7 because I think she answered the question. I think it just
8 went a little further.

9 THE COURT: Let me ask perhaps starting with the
10 ultimate question that you gone ask her and go from there.
11 What is the ultimate opinion that you're ---

12 MR. REDMOND: The ultimate opinion is whether or not
13 based on her evaluation whether or not she thinks that the
14 interview as conducted, was conducive to getting a reliable
15 response from the children in the realm of whether or not
16 there was sexual abuse that had occurred. Based on what we
17 talked about as far as piecemeal disclosure. Based on what
18 we talked about in terms of delayed reporting. Do those
19 things in and of themselves raise the spectrum that the
20 information gathered is not accurate.

21 MR. STEINBERG: Your Honor, the State's witness did
22 not comment on the victim's reliability. She said it's
23 consistent with child sexual abuse and if they're going to
24 offer opinion in that area, that's fine. But Ms. Sturkie
25 did not go into actual reliability.

1 MR. REDMOND: If I may, Your Honor, and I know, Your
2 Honor, is considering the issue, but one thing I would add.
3 Counsels last question to Ms. Sturkie was to a reasonable
4 degree of medical certainty. Something to the effect of do
5 you believe that there was some sexual abuse; that in and
6 of itself, is the issue of whether or not she thinks it's
7 reliable. He may not have asked it that way, but that is
8 the effect of it.

9 And I think I'm being, I guess, that would ham
10 string me if he's proffered that out there and I'm not
11 allowed to respond to it; that question in and of itself
12 has reliability underneath it. I mean, the only issues
13 regarding reliability are the only issues regarding sexual
14 abuse are accused of being alleged against my client.

15 So when she says that, then there's only one
16 conclusion that without us being able to present what we
17 think as far as the evidence and the evaluation, that only
18 leads to one conclusion. If it's allowed to stand that,
19 yes, it's credible but that there was sexual abuse, who has
20 there been an allegation of sexual abuse against,
21 Mr. Meggs. And so if that's allowed to stand and we cannot
22 respond to it, I think we are very much prejudice in that
23 regard.

24 MR. STEINBERG: Two things, Your Honor. Ms. Sturkie
25 very careful questioning not to let Ms. Sturkie discuss

1 Jimmy Meggs by name. I'll point out that our objection is
2 not going to be to any technique the witness wishes to
3 comment on or she thinks to be an improper technique. The
4 State has no problem with that. But if she's going to go
5 into reasons because of this improper technique, the
6 following information is incorrect and that's not within
7 the realm of any expert witness, Your Honor, or spectrum to
8 inform or to speculate as to what else is going through
9 somebody else's mind.

10 MR. REDMOND: I'm not asking her to speculate. If I
11 may, Your Honor, I'm not asking her to speculate what was
12 going through Ms. Sturkie's mind. My concern is issues
13 capable to what was going through those kids minds and that
14 is where an issue of what Dr. Jackel well be in a position
15 to testify to as it relates to, yes, reliability of that.
16 I think that issue needs to be put in by the State.

17 THE COURT: Let's take about a five minute recess.
18 Then you all come back in chamber as we can talk about how
19 this might happen. Doctor, you can step down if you like.

20 (Court is in recess.)

21 (Court has reconvened.)

22 MR. REDMOND: Okay. Your Honor, we're ready
23 proceed.

24 THE COURT: Doctor, let me make sure I know you know
25 when the other attorney stands up to object or says I

1 objected, that's your cue to stop what you're saying and
2 wait for me to decide whether or not you will go any
3 further. All right.

4 Mr. Propps, if you will bring them out.

5 (The jury returned to the courtroom.)

6 THE COURT: All right. You may continue.

7 MR. REDMOND: Thank you, Your Honor. May it please
8 the Court.

9 Q. Dr. Jackel, again you had a chance to review the
10 interviews of several children from the Durant Center; is
11 that correct?

12 A. Yes.

13 Q. And based on those interviews, have you formulated an
14 opinion as to the or as to whether or not sexual abuse
15 occurred?

16 A. There's no way that as an expert or examiner it would
17 be difficult to say whether you know the victims are
18 telling truth or not ---

19 Q. Okay. So in other words ---

20 A. --- as to whether sexual abuse occurred or not.

21 Q. Okay. So in other words, could you say to a
22 reasonable degree of certainty that sexual abuse did occur
23 based on your evaluations of those interviews?

24 A. No, sir.

25 Q. Now, what is it that -- were any concerns that you had

1 regarding techniques that worked, that techniques employed
2 by the interview in those tapes I believe

3 Ms. Sturkie?

4 A. Yes.

5 Q. Okay. And could you state some of the concerns
6 dealing with Ms. Sturkie and her techniques that may have
7 concerned you as it relates to the overall evaluations that
8 were done?

9 A. Well, again, when the interviewer has strong
10 preconceived notion of what occurred that can influence the
11 interview or the victim's report.

12 Q. Well, let me stop you there and ask you a specific
13 question regarding control. Let ask you about that. Are
14 there certain controls or certain things that can be
15 inquired into helping someone, an interviewer, to determine
16 whether or not the story that they're getting is accurate?

17 A. Yes, certainly begin the interview by establishing
18 whether the child knows the difference between a truth and
19 a lie and what might constitute a lie. Feel free if you
20 don't know the answer, to say I don't know. Rather many or
21 a lot of times children especially with an authority figure
22 as an adult feels compelled to please authority. So they
23 don't know an answer is expected from them. They could
24 possibly fabricate information. So children can be told
25 that it's okay if they don't know.

1 Q. Now, based on your review of the tapes, were you able
2 to determine whether or not there was any -- in the
3 interview with Ms. Sturkie whether or not she employed any
4 techniques to assure that there were no third-party sources
5 feeding information to the children. For example, were
6 there any techniques that would assure that the parents may
7 not or the grandparents may not have been fussing
8 information to the children?

9 A. No, sir. In an interview, it would be asked only to
10 tell what they themselves have seen happen and not what
11 they heard or what somebody else said that you want to talk
12 to me about something.

13 Q. Okay. Would you ask the children or go through a line
14 of questioning to ensure that what they're telling you is
15 what they have told instead of what somebody else may have
16 told them?

17 A. Yes.

18 Q. And what was done in this situation?

19 A. If it was done, I don't recall that it was done. If
20 it was done, it would be minor.

21 Q. Okay. How about a situation involving fabrication or
22 asking the children questions about who else they may have
23 told. Would you ask the child who else they may have told
24 what allegedly occurred?

25 A. Yes.

1 Q. And was that done in this situation to the best that
2 you can recall?

3 A. No, sir.

4 Q. Okay. Now, we heard talk about -- first, we'll deal
5 with delayed reporting and then we heard about I think it
6 was piecemeal disclosure. Have you had an opportunity to
7 research those particular issues and as it relates to
8 determining the reliability of the information proffered by
9 the child?

10 A. Delayed reporting is a clear issue in the field in
11 some places children do delay reporting abuse for various
12 reasons. However, if research doesn't point to that
13 general character, that typically in fact has been studied
14 and done where children have witnessed certain events and
15 been told not to tell and, you know, a large majority even
16 small children three and five years old did tell and up to
17 60 percent do tell. Certainly that wasn't an issue of
18 sexual abuse. But, you know, it's sort of a mix bag of
19 research whether children will report or delay reporting.

20 The piecemeal disclosure that must be a new term
21 that's been discussed before. Clinically children tell
22 little bits at a time. The problem with writing books or
23 articles discussing their experience is that it tends to be
24 small numbers of work in certain offices, certain settings
25 with certain small numbers of individuals. We look at it

1 that's been done hundreds of research with these children
2 that adds up to a thousands of children are compared. It's
3 not as strong as what children might see, just on personal
4 experience.

5 Q. Okay. I'm sorry continue please?

6 A. And certainly the piecemeal information if you will,
7 could be due to being repeatedly interviewed and
8 information being introduced to children in those
9 interviews and whoever else they talk to outside the
10 interview. If there's a lot of media coverage on the
11 issue, they may not have seen or heard anything and may not
12 have known anything until it came out in the paper. With
13 all this information, they could possibly talk to other
14 children involved, parents can get together and talk to
15 each other one time in front of the children. And a lot of
16 information could be shared with the children and that then
17 could become apart of this piecemeal and not actually an
18 event that has occurred.

19 Q. In your experience and in your research in your field
20 on the reliability of piecemeal disclosure, is piecemeal
21 disclosure -- what are issues of reliability. In other
22 words, let me just ask you like this. The more I add on to
23 it as time goes by, does that increase the reliability of
24 what I'm telling or does it decrease the reliability of
25 what I'm telling you?

1 A. Typically decreases the reliability.

2 MR. REDMOND: Beg the Court's indulgence.

3 THE COURT: Sure.

4 MR. REDMOND: That's all I have, Your Honor.

5 THE COURT: Mr. Steinberg.

6 CROSS EXAMINATION BY MR. STEINBERG:

7 Q. Dr. Jackel, you talked about piecemeal. Do all
8 children always tell the full complete story to strangers
9 the first time?

10 A. No.

11 Q. You said you made your -- opportunity to review
12 videotapes of interviews?

13 A. Yes.

14 Q. Do you frequently make your professional opinions from
15 videotapes done by other interviewers?

16 A. I wasn't being asked to make a professional opinion as
17 to whether sexual abuse occurred or not.

18 Q. Do you normally interview the victims or witnesses
19 yourself?

20 A. It depends on what's in the case. I was being asked
21 to evaluate the interview process. Certainly, if I was
22 asked to evaluate the victims and the perpetrator and to
23 treat the victim, then, yes, I would say then.

24 Q. Did you sit down with ^{Victim #1 & #2}

25 A. No, I did not.

LISA JACKEL CROSS EXAMINATION BY MR. STEINBERG
LISA JACKEL REDIRECT EXAMINATION BY MR. REDMOND

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- 1 Q. Did you sit down with ?
- 2 A. No.
- 3 Q. You said you reviewed those videotapes?
- 4 A. Yes.
- 5 Q. And under controls to make sure the children know the
- 6 difference between the truth and a lie?
- 7 A. Yes.
- 8 Q. You had the opportunity to view videotapes?
- 9 A. Yes.
- 10 Q. Would you agree with me that the children were told to
- 11 only to tell the truth?
- 12 A. Ms. Sturkie stated that in the beginning.
- 13 Q. Okay. And it was discussed earlier, but I don't know
- 14 the actual amount. How much were you paid to come to
- 15 testify in this hearing today?
- 16 A. \$1,200. Well, not just to testify but reviewing
- 17 information and research to prepair for today.
- 18 Q. Who were you paid by?
- 19 A. The defendant and his family.
- 20 MR. STEINBERG: Thank you, Doctor.
- 21 THE COURT: Any redirect?
- 22 MR. REDMOND: Yes, briefly, Your Honor.
- 23 REDIRECT EXAMINATION BY MR. REDMOND:
- 24 Q. Dr. Jackel, how do you make your living? In other
- 25 words, is this a hobby for you?

1 A. No, sir.

2 Q. It's a living? In other words, this how you earn your
3 livelihood; is that correct?

4 A. Yes, but it's not the bulk of my practice.

5 Q. And in fact when you get referrals from the Sheriff's
6 department or whatnot, are you paid to do that as well?

7 A. Yes, sir.

8 Q. Okay. Now, you were asked about the tapes. Let's go
9 through the names. The State named them, did you have a
10 chance to review the tapes of *victim #1 & #2*

11 A. Yes.

12 Q. The videotapes?

13 A. Yes, sir.

14 Q. Did those tapes purport to be the entire interview?

15 A. Yes.

16 Q. So based on that, is it your opinion that you reviewed
17 the entire interview process as to the videotape; is that
18 correct?

19 A. Yes, sir.

20 Q. How about *team players 2 & 3*, did
21 you review those videotapes?

22 A. Yes, I did.

23 Q. Did those videotapes purport to be the entire
24 interview?

25 A. Yes, sir.

LISA JACKEL REDIRECT EXAMINATION BY MR. REDMOND
JIMMY MEGGS JR. DIRECT EXAMINATION BY MR. COX

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1 Q. And again you have in your opinion -- your opinion is
2 based on being able to view the interview; is that correct?

3 A. Yes, sir.

4 MR. REDMOND: Beg the Court's indulgence. That's
5 all I have, Your Honor.

6 THE COURT: Thank you, doctor, you may step down.

7 (The witness left the witness stand.)

8 MR. COX: We call the defendant, Jimmy Meggs, to the
9 stand.

10 THE COURT: Come around and place your left hand on
11 the Bible and raise your right hand, sir.

12 CLERK OF COURT: Do you swear the testimony you give
13 in this case will be the truth, the whole truth, and
14 nothing but the truth so help you God?

15 DEFENDANT MEGGS: Yes, ma'am, I do.

16 CLERK OF COURT: Be seated and state your full name
17 for the record?

18 DEFENDANT MEGGS: Jimmy Donald Meggs Jr.

19 JIMMY DONALD MEGGS, JR., being first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. COX:

22 Q. Mr. Meggs, where do you live?

23 A.

24 Q. And who lives there with you?

25 A. My father, my mother, and my sister.

- 1 Q. What is your occupation?
- 2 A. Local motive engineer.
- 3 Q. And what's your father's occupation?
- 4 A. Railroad conductor.
- 5 Q. What is the difference in -- I believed your father
- 6 used expression foreman. What is the difference between a
- 7 foreman and a conductor?
- 8 A. A foreman works on the yard and a conductor works on
- 9 the road.
- 10 Q. And what is the responsibility of a railroad engineer?
- 11 A. A railroad engineer actually operates and drive the
- 12 local motive train wherever they need to go.
- 13 Q. And what does a conductor do?
- 14 A. A conductor does ground work as far as pulls rearrange
- 15 the train and like that.
- 16 Q. What does a foreman?
- 17 A. The foreman works on the yard same as a conductor
- 18 except that's not three freight train. A work train where
- 19 they actually build trains for the three freight.
- 20 Q. And you say build a train, is that the train that is
- 21 pulled from town to town?
- 22 A. Yes, sir, it is.
- 23 Q. And when did you first become a railroad engineer?
- 24 A. I first become a railroad engineer in April of '99.
- 25 Q. April of '99?

1 A. Yes, sir.

2 Q. And before April of '99, what type of work had you
3 done?

4 A. Prior to that I was a conductor with the railroad.

5 Q. Okay. All right. For how long were you a conductor?

6 A. About a year, year and a half.

7 Q. Before you were a conductor at the railroad, what did
8 you do?

9 A. I worked at Tara Hall.

10 Q. How long you work there?

11 A. I work there for about four months just prior to the
12 railroad.

13 Q. What reason did you leave Tara Hall?

14 A. Because the money with the railroad paid a lot more.

15 Q. Before Tara Hall what did you do?

16 A. I ran an irrigation and lawn scaping company were I
17 installed sprinkler systems, laid sod and basic lawn care
18 work.

19 Q. And before that?

20 A. I worked in high school at Hardee's in Florence on
21 Irby Street.

22 Q. And so high school, Hardee's, then landscaping
23 business?

24 A. Yes, sir.

25 Q. Where did you finish high school?

1 A. I finished at South Florence High School.

2 Q. At any time did you ever represent yourself as being a
3 college graduate?

4 A. Yes, sir, I did.

5 Q. And who did you represent yourself as being a college
6 graduate?

7 A. To a lot of people, yes, sir.

8 Q. What reason would you do that?

9 A. I thought it would make me look big.

10 Q. And what reason did you need or have a desire to look
11 big?

12 A. I guess I just wanted to.

13 Q. At any time were you in the National Guard?

14 A. Yes, sir, I was.

15 Q. And how did you enter the National Guard?

16 A. I entered the National Guard under the delay entry
17 program in high school.

18 Q. And why were you not able to complete your National
19 Guard?

20 A. I had an injury where I hurt my knee and I was not
21 able to follow through with that.

22 Q. Now, you did recover from the National Guard testified
23 here?

24 A. Yes, sir, I did.

25 Q. From the document's State's Exhibit 2, was that in

1 fact your discharge papers from the Army?

2 A. Yes, sir, it was.

3 Q. And what type of discharge did you get?

4 A. An honorable discharge.

5 Q. An honorable discharge. Okay. At what point in time
6 did you first become involved in paint ball?

7 A. I first become involved in paint ball over at those --
8 in Lamar with some of my friends that decided to go to and
9 I wanted to go there.

10 Q. Now, before getting involved in paint ball, were you
11 involved in any other type sports?

12 A. Baseball -- I did high school baseball as an official,
13 yes, sir.

14 Q. So you were a high school baseball official?

15 A. Yes, sir.

16 Q. And what does that entail?

17 A. That entails going from town to town Hartsville, West
18 Florence to different schools umpiring different baseball
19 games.

20 Q. So you were a baseball umpire?

21 A. Yes, sir.

22 Q. Okay. And how long did you do that?

23 A. At the high school level for three years.

24 Q. Okay. And when you went to paint ball, did you
25 continue to do umpire?

1 A. Yes, sir.

2 Q. For how long?

3 A. Probably a year.

4 Q. Now, what was the first that introduced you to paint
5 ball?

6 A. First introduced me to paint ball?

7 Q. Uh-huh.

8 A. My brother, , wanted to go play paint ball and I
9 decided to buy guns and go out and just play.

10 Q. And when you first started, where did you go to take
11 part in paint ball?

12 A. Over at the field in Lamar.

13 Q. What type field was there?

14 A. It was a speed ball field, which had crates nailed
15 together and there was a bumper in the middle as well as
16 Woods Ball Field adjacent to that.

17 Q. And how long did you participate there?

18 A. Three or four months maybe.

19 Q. Whenever you go, would you go just you and your
20 brother or sometimes you take people with you?

21 A. I would take other people with me.

22 Q. Now, when did you first have the idea of developing
23 your own paint ball field?

24 A. Over in Lamar I wanted to develop a paint ball field
25 as a business.

1 Q. And what steps did you take to set up that business?

2 A. Well, first I was looking for the land and find
3 something that I could afford. And then I, you know, I
4 purchased the land and then I went through the process of
5 actually having to build and go out get crates from local
6 businesses with excess crates and build a field.

7 Q. Now, when you say you purchased the land, what land
8 are you talking about?

9 A. The land in Pamplico.

10 Q. And how much land was it?

11 A. It was 15.45 acres somewhere like that.

12 Q. When you say purchased, did you enter into an
13 agreement to buy the land or did you actually pay for the
14 land?

15 A. I entered into an agreement to -- it was owner
16 financing.

17 Q. Okay. And who was it that you entered that agreement
18 with?

19 A. J. W. Keeth.

20 Q. How do you spell his last name?

21 A. K-e-e-t-h, I believe.

22 Q. And what was the purchase price?

23 A. The purchase price was \$40,000.

24 Q. And how much did you pay down on it?

25 A. I paid \$600.

- 1 Q. What month or year did you do that?
- 2 A. October of '99.
- 3 Q. October of '99. And when you entered that agreement,
- 4 you were allowed to go ahead and start participating on the
- 5 field?
- 6 A. Yes, sir.
- 7 Q. Okay. What was your next step setting up the field?
- 8 A. My next step was I need to find people to help me, you
- 9 know, to start with the construction of it. It was a lot
- 10 of work involved.
- 11 Q. And what did you do to get your construction started?
- 12 A. Well, I talked with Chris Gough and also with his son.
- 13 It just went from there as far as kids come out and wanted
- 14 to play paint ball and also help out to build the field.
- 15 Q. Okay. And at any time did you set up what you
- 16 considered a paint ball organization?
- 17 A. Yes, sir, I did.
- 18 Q. And what was the name of that organization?
- 19 A. It was called the Vanguard Knights.
- 20 Q. And where did you get that name from?
- 21 A. I just made that name up.
- 22 Q. At any time did you ever take part in the National
- 23 Guard Unit or association called the Vanguards?
- 24 A. No, sir.
- 25 Q. At any time did you ever represent your Vanguard

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1 Knights as being an R. O. T. C. unit?

2 A. No, sir.

3 Q. Okay. At any time did you actually ever have a bank
4 or anything in the name of Vanguard Knights?

5 A. Yes, sir, I did.

6 Q. And what bank was that?

7 A. It was -- the bank?

8 Q. Yes?

9 A. BB&T.

10 Q. Okay. And what steps did you do, if you did any, to
11 raise money for it?

12 A. Well, first we printed up checks and *mom of team player 2 & 3*
13 came in. And we had car washes at McDonald's on Irby
14 Street as well -- I can't think of the name over in
15 Darlington. You go in on what is that 151.

16 Q. Okay. And how did you get to know

17

18 A. Through the other boys and she had -- I met her
19 through the other boys.

20 Q. Okay. And whenever the day you were arrested, do you
21 remember the date that you were arrested?

22 A. Yes, sir, I remember.

23 Q. And where were you when you were arrested?

24 A. I had just got off the train, the coal train out of
25 Columbia and transport back to FC and I was walking out

*mother of
team player
2 & 3*

1 towards my truck.

2 Q. And before that time, had anyone with the Sheriff's
3 department talk to you about any allegations about what was
4 going on at the paint ball field?

5 A. No, sir.

6 Q. No one had contacted you?

7 A. No, sir.

8 Q. No one had interviewed you?

9 A. No, sir.

10 Q. Okay. And the day you were arrested, where were you
11 living?

12 A. I was living at

13 Q. And who's place was that?

14 A. That was *mon of team player 2+3*

15 Q. And on what do you base the statement that you were
16 living there?

17 A. Well, I had my clothes hang up so.

18 Q. Your clothes were there?

19 A. Yes, sir.

20 Q. And did you consider that your residence?

21 A. Yes, sir.

22 Q. And if someone needed to get in touch with you your
23 family or the railroad, where would they call you?

24 A. They would call me at this number.

25 Q. During this time, did you have a mobile phone?

1 A. Yes, sir, I had a mobile phone.

2 Q. They would contact your mobile phone?

3 A. Yes, sir, they could.

4 Q. And in the year 1999 in particular after August 1999
5 up until the time of your arrest, did you always have a
6 mobile phone?

7 A. Yes, sir.

8 Q. Okay. Now, how did you learn that there was some
9 concerns about what was going on at the paint ball field?

10 A. One of the boys had called me -- Chris Gough and
11 ~~team player #9~~ said that ---

12 MR. STEINBERG: Objection, Your Honor, hearsay.

13 THE COURT: I sustain that.

14 Q. And so you were contacted by one of the participants?

15 A. Yes, sir.

16 Q. And what, if anything, did you do after being
17 contacted?

18 A. Well, actually I didn't know anything about it and I
19 was wanting to talk with some of the others and try to find
20 out, you know, what was going on.

21 Q. And did you ever learn who was making the allegations?

22 A. Yes, sir, ~~team player #9~~ told me.

23 Q. And did you try to talk to -- and who did you learn
24 was making the allegations?

25 A. I was told that ---

1 MR. STEINBERG: Objection, Your Honor, that's
2 hearsay.

3 THE COURT: Well, there's already evidence of that.
4 I'm going to allow him to answer that question.

5 Q. Who did you learn was making allegations?

6 A. I was told that it was the

Victims 1 and 2

7 Q. And who was the parents of the

Victims 1 & 2

8 A.

*mom of victim 1 & 2
mom of victim 1 & 2*

9 Q. Did you know Ms.

10 A. Yes, sir, I did.

11 Q. And how did you know her?

12 A. I had a relationship with her.

13 Q. Okay. What type relationship?

14 A. Sexual relations.

15 Q. And at any time did you stay in her home?

16 A. Once or twice.

17 Q. Okay. At any time did you ever have a conversation
18 with her about the allegations?

19 A. Well, I went to knock on her door to try to find out.

20 Q. I mean, did she ever discuss with you?

21 A. The only thing she wanted to talk about was money.

22 Q. And what was it about the money?

23 A. She said she needed money.

24 MR. STEINBERG: Your Honor, I'm going to have to
25 object. They gotten pass before mentioned in the record.

1 Objection to hearsay.

2 THE COURT: I'll sustain that, sir.

3 Q. And any time did you provide her financial support?

4 A. Yes, I did.

5 Q. In what form?

6 A. In cash.

7 Q. For what reason?

8 A. To pay bills, groceries. I really don't know what she
9 spend the money on.

10 Q. Over what period of time?

11 A. Three or four months.

12 Q. And approximately how much money do you think you may
13 have given her?

14 A. Two or \$3,000.

15 Q. Did you -- the money that you provided was it a loan?
16 Was she going to pay you back?

17 A. No, sir.

18 Q. It was a gift?

19 A. Yes, sir.

20 Q. At any time did you ever have a discussion with her
21 about the way the boys were being raised?

22 A. No, sir. I never discussed with her about the way
23 they were being raised.

24 Q. Anything about the boys conduct out at the paint ball
25 field?

1 A. I did discuss with her about the stealing incident.

2 Q. Tell me about that incident?

3 A. Well, the boys had went into the store with some other
4 individuals. They had stole some items and I had to go
5 back and paid for it.

6 Q. And was that a recurring problem or a one time
7 problem?

8 A. It was just one time.

9 Q. Okay. Now, if you will describe for us how you
10 organized the Vanguard Knights?

11 A. How I organized?

12 Q. Uh-huh?

13 A. Well, originally I bought and purchased the land. We
14 setup a board and we had a treasure. Someone who basically
15 help with construction and one person that the treasure and
16 the one for uniforms. And I help as far as with laying
17 safety codes because it was in my name.

18 Q. Now, how about the actual paint ball games. How were
19 they organized?

20 A. They were organized into two company's.

21 Q. Who was overall in charge?

22 A. Over Bravo or Alpha company was Johnny Booker and over
23 the Bravo Company was James ---

24 Q. Approximately how many boys were in each company?

25 A. Eight or nine.

- 1 Q. And it was any one above those two company commanders?
- 2 A. Yes, sir, there was.
- 3 Q. Who was that?
- 4 A. ~~team player #9~~
- 5 Q. And what was his position?
- 6 A. The manager.
- 7 Q. The manager?
- 8 A. Yes.
- 9 Q. Now, at any time did you tell the boys involved in
- 10 paint ball that you had National Guard experience?
- 11 A. Yes, sir, I did.
- 12 Q. Tell us what you told them?
- 13 A. I told them that I was a captain in the National
- 14 Guard.
- 15 Q. Was that true?
- 16 A. No, sir, it was not true.
- 17 Q. And was that something that you wanted to teach the
- 18 boys to do?
- 19 A. No, sir, I didn't want to teach them to lie.
- 20 Q. For what reason would you want tell the children that
- 21 you were captain in the National Guard?
- 22 A. I thought it would help, you know, get my business
- 23 started.
- 24 Q. And in fact did you have any combat strategy
- 25 experience?

1 A. No, sir, not at all.

2 Q. Did you have any formal engineering training other
3 than the railroad?

4 A. No, sir.

5 Q. Approximately how many children do you think total,
6 total children took part in paint ball?

7 A. Total?

8 Q. Yes.

9 A. Thirty to 40.

10 Q. Thirty to 40?

11 A. Yes, sir.

12 Q. Approximately how many children are young people would
13 you say would be the one's that would come back again and
14 again and again?

15 A. Fifteen or 16 somewhere like that.

16 Q. Now, at times did you spend the night?

17 A. Yes, sir.

18 Q. And how would you organize?

19 A. They were organized in tents -- by the company
20 basically.

21 Q. And who was supervising the part being done?

22 A. What was being done? The company commanders.

23 Q. And at any time, did you encourage or allow any
24 conduct that you thought was unsafe?

25 A. No, sir, I did not.

1 Q. At any time did you allow or encourage conduct where
2 anybody will be exposed to paint ball gun at a close range?

3 A. No, sir.

4 Q. At any time during the time the paint ball games were
5 being played, was anyone ever injured and needed medical
6 assistance?

7 A. No, sir.

8 Q. Okay. And what would prevent the participants from
9 being medically injured?

10 A. Well, the protective mask. The uniforms which were
11 had winter jackets, which protected them from hits of paint
12 balls.

13 Q. And anyone ever complain to you or come to you and
14 complain to you referenced being injured?

15 A. No, sir.

16 Q. At any time did you ever see any conduct that you
17 thought was inappropriate for young people?

18 A. No, sir.

19 Q. Okay. Did you hear the description given about
20 placing the paint ball on a person private and another
21 person picking it up with their mouth?

22 A. No, sir.

23 Q. At any time did anyone ever tell you that was going
24 on?

25 A. No, sir.

- 1 Q. Okay. Have you -- basically your experience with
2 paint ball, was there anything that was done that would
3 resemble that?
- 4 A. No, sir, not that I can remember.
- 5 Q. Were the participants told to do push-ups?
- 6 A. Yes, sir, the participants did have to do push-ups.
- 7 Q. For what reasons would they have to push-ups?
- 8 A. Punishment.
- 9 Q. Why would they be punished?
- 10 A. For not getting firewood, for various things.
- 11 Q. Give us an example of that?
- 12 A. Okay. Not getting firewood, not marching in line.
- 13 Q. Was the discipline anything of a nature that would
14 cause physical harm, emotional harm?
- 15 A. No, sir. No.
- 16 Q. Okay. At any time did you take any of the children to
17 a motel?
- 18 A. Yes, sir, I did.
- 19 Q. Tell us how many times?
- 20 A. Once.
- 21 Q. Tell us the occasion?
- 22 A. Well, *mamfurnham 142* was drunk and I had to take the
23 kids home and I had to quickly make a decision about what I
24 was going to do with them because I had to go to work.
- 25 Q. And what kept you from letting them in the house?

JIMMY MEGGS DIRECT EXAMINATION BY MR. COX

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- 1 A. It was locked.
- 2 Q. And what happened to the children that evening?
- 3 A. They were at the hotel.
- 4 Q. And how long did they stay there?
- 5 A. Stayed about 30 minutes.
- 6 Q. Okay. And who got them from the hotel?
- 7 A. I did.
- 8 Q. And where did you take them?
- 9 A. I took them home.
- 10 Q. And when you got home, who was there?
- 11 A. She was there.
- 12 Q. Okay. Did you leave the children with her?
- 13 A. Yes, sir, I did.
- 14 Q. Whenever you were arrested, who was present whenever
- 15 you were arrested?
- 16 A. Detective Byran Kennedy and I believe there was three
- 17 railroad person's was with him.
- 18 Q. Okay. And did you cooperate in his arrest?
- 19 A. Yes, sir.
- 20 Q. Did you try to prevent yourself from being arrested?
- 21 A. No, sir, I didn't.
- 22 Q. Did you -- when did you learn the charges being made
- 23 against you?
- 24 A. When did I learn the charges being made against me?
- 25 Q. Yeah.

team player #9

- 1 A. When *team player #9* told me that.
- 2 Q. But what I mean the charges, did Mr. Kennedy, Officer
- 3 Kennedy, did he have a warrant or any paper to show you?
- 4 A. No, sir, he didn't have a warrant with him.
- 5 Q. When did he advise you of the nature of the
- 6 allegations or charges he was making against you?
- 7 A. When he got me down at Effingham.
- 8 Q. In Effingham?
- 9 A. Yes, sir.
- 10 Q. That is the Florence County Detention Center; is it
- 11 not?
- 12 A. Yes, sir.
- 13 Q. Okay. And were you locked up?
- 14 A. Yes, sir, I was.
- 15 Q. Did you provide him any information that you thought
- 16 would assist in his investigation?
- 17 A. Yes, sir, I did.
- 18 Q. What did you provide?
- 19 A. I give him the telephone number of Jackie McKnight and
- 20 the address. Draw him a map of how to get to the house.
- 21 Q. Okay. Now, whenever you were being processed in, were
- 22 you asked what your address was?
- 23 A. Yes, sir, I was.
- 24 Q. What address did you give?
- 25 A.

1 Q. What, if anything, Mr. Kennedy say about that? Did he
2 say anything?

3 A. No, sir, not really.

4 Q. Did any time was it pointed out that was not your
5 address?

6 A. They told me later that it wasn't my address.

7 Q. Who told you that?

8 A. Bryah Kennedy.

9 Q. Okay. After you were arrested, did you return to the
10 Knotty Pine address?

11 A. No, sir, I didn't.

12 Q. How did you get your clothes?

13 A. Well, my clothes were already hanging up in my truck.

14 Q. Where was your truck?

15 A. My truck was at the railroad station.

16 Q. But I thought you said the reason you considered that
17 your address, you stayed there and your clothes were there?

18 A. They were there, sir.

19 Q. Well, how did you retrieve your clothes that had been
20 there?

21 A. I had part of my clothes in my truck and part of it
22 over at the house.

23 Q. How did you get the clothes that were at the house?
24 Did you get those back?

25 A. No, sir, I never got those back.

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JIMMY MEGGS JR. CROSS EXAMINATION BY MR. STEINBERG 582

1 Q. You never retrieved those?

2 A. No, sir, I didn't.

3 MR. COX: Beg the Court's indulgence one moment.

4 Q. At any time did you ever take the children to an
5 environment where you would not want the parents or anyone
6 else to see them?

7 A. No, sir.

8 Q. Okay. At any time did you ever perpetrate or cause or
9 allow to happen an act that would be indecent or be immoral
10 for the children?

11 A. No, sir.

12 MR. COX: Answer any Mr. Steinberg may have.

13 CROSS EXAMINATION BY MR. STEINBERG:

14 Q. Good afternoon, Mr. Meggs, how are you today?

15 A. Fine, sir.

16 Q. Mr. Meggs, do you know that law enforcement has looked
17 into your background are you aware of that?

18 A. No, sir, I wasn't aware of that.

19 Q. Okay. But would that surprise you if I told you they
20 had?

21 A. No, you just told me.

22 Q. You know you have to answer every question today
23 truthfully?

24 A. Yes, sir.

25 Q. And does truth mean?

- 1 A. Truth means that it's -- it's a fact.
- 2 Q. Okay. If you say something that's not a truth what's
- 3 that?
- 4 A. That's a lie.
- 5 Q. Is that right or wrong to tell a lie?
- 6 A. It's wrong to tell a lie.
- 7 Q. You remember when you placed you hand on the Bible?
- 8 A. Yes, sir, I placed my hand on the Bible.
- 9 Q. Remember taking an oath to tell the truth?
- 10 A. Yes.
- 11 Q. The full truth?
- 12 A. Yes.
- 13 Q. Nothing but the truth?
- 14 A. Yes.
- 15 Q. Is everything you said today the truth?
- 16 A. Yes.
- 17 Q. Okay. Beginning of direct examination your attorney
- 18 asked you what jobs you've had, remember that?
- 19 A. Yes.
- 20 Q. Let's talk about what jobs you had. Were you ever an
- 21 umpire?
- 22 A. Yes.
- 23 Q. What ages?
- 24 A. What do you mean?
- 25 Q. What ages were you umpiring? What grades in school?

- 1 A. I was 16 years old.
- 2 Q. Okay. Did you ever hold that job any time after that?
- 3 A. Yes, sir, I did.
- 4 Q. When?
- 5 A. For about ten years.
- 6 Q. Are you a good baseball player?
- 7 A. Well, I don't think I'm a good baseball, no, sir.
- 8 Q. Okay. Your attorney brought out something called the
- 9 Tara Hall. What is Tara Hall?
- 10 A. Tara Hall is a boy's facility.
- 11 Q. Where is this boy's facility?
- 12 A. It's in Georgetown.
- 13 Q. How did you get that job?
- 14 A. I got the job because I had used my father's social
- 15 security number.
- 16 Q. Could you tell the, ladies and gentlemen of the jury,
- 17 why you decided to use your father's social security
- 18 number?
- 19 A. I had written a few bad checks, which I didn't have
- 20 the money in the bank to cover them and I thought that it
- 21 may effect my ability to get the job.
- 22 Q. And did you want the job?
- 23 A. Yes, sir.
- 24 Q. Did you consider the job to be a benefit?
- 25 A. Financially, yes, sir.

- 1 Q. Did you lie about the report to get that benefit?
- 2 A. Yes, sir.
- 3 Q. Do you typically lie in order to get a benefit?
- 4 A. No, sir.
- 5 Q. Okay. The Vanguard Knights you came up with that on
- 6 your own?
- 7 A. Yes, sir.
- 8 Q. Had you ever heard the term before?
- 9 A. No, sir.
- 10 Q. Never heard it pardon me -- where are you a resident
- 11 of?
- 12 A. Florence County.
- 13 Q. You go to school here in Florence County?
- 14 A. Yes, sir.
- 15 Q. Have jobs here in Florence County?
- 16 A. Yes, sir.
- 17 Q. You never heard that term?
- 18 A. Yes, sir.
- 19 Q. Did you ever tell anybody that your unit involved
- 20 connections to a R. O. T. C. Unit?
- 21 A. No, sir.
- 22 Q. Did you mention R. O. T. C. in any light in any
- 23 contact with anybody involved in your paint ball league?
- 24 A. No, sir.
- 25 Q. Okay. Tell us about your educational background?

1 A. I went to South Florence High School where I graduated
2 in 1991. I went -- I attended Florence Darlington Tech.
3 where I majored in civil engineering technology. I also a
4 attended Clayston State College. It was a conductor
5 program to get in with the railroad and also after hired
6 with the railroad, I went to Cumberland, Maryland an
7 engineering program to become a certified engineer.

8 Q. What degree did you get from Florence Darlington
9 Tech.?

10 A. I didn't get a degree, sir.

11 Q. Well, what courses did you take?

12 A. Well, I -- civil engineering technology is what I was
13 going to try to obtain.

14 Q. Do you understand the State's looked into your
15 background?

16 A. Yes, sir.

17 Q. Did you ever say you got a degree in early childhood
18 education?

19 A. Yes, sir, I did say that.

20 Q. Was that true?

21 A. No, sir, that was not true.

22 Q. Who did you say that to?

23 A. Misrepresented that on a form.

24 Q. Why?

25 A. So that it would help me get the job.

- 1 Q. Why did you want that job?
- 2 A. Because I needed to make money.
- 3 Q. Did you need that particular job?
- 4 A. No, sir.
- 5 Q. Why did you want that particular job?
- 6 A. For the financial benefit.
- 7 Q. Who did you tell that you were a captain in the
- 8 National Guard?
- 9 A. Couldn't understand what you said.
- 10 Q. Who did you tell -- just let me state it again. To
- 11 the paint ball league, who did you tell that you were a
- 12 captain in the National Guard?
- 13 A. I told everybody that, sir.
- 14 Q. Why did you tell everybody that?
- 15 A. Because I thought it would help me build the league.
- 16 Q. Why did you want to build the league?
- 17 A. So that we could invite people out to play and pay.
- 18 Q. You wanted people to pay to play?
- 19 A. Yes, sir.
- 20 Q. Isn't it true you wound up buying things for people
- 21 there?
- 22 A. Initial cost, yes, sir.
- 23 Q. You're saying the real reason you wanted to have a
- 24 paint ball league so that people come to pay?
- 25 A. Yes, sir.

1 Q. You wanted to do a commercial exercise for commercial
2 opportunity?

3 A. Yes, sir.

4 Q. Are you sure the reason you didn't want it is because
5 actually you wanted young boys to be out in the woods with
6 you?

7 A. No, sir. No, sir.

8 Q. That's a truthful statement, sir?

9 A. Yes, sir, that is the truth.

10 Q. Did you ever hand out a profile?

11 A. Yes, sir, I handed out a profile.

12 MR. STEINBERG: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 Q. I'm handing you a copy of a profile, State's Exhibit
16 Number 1. Does that look familiar?

17 A. Yes, sir, it does.

18 Q. Who did you hand that to?

19 A. This flyer was handed to individuals that were in the
20 Vanguard Knights.

21 Q. Why did you hand it to them?

22 A. So that it would help build our league -- I mean our
23 team.

24 Q. Are there any untruths on that statement?

25 A. Yes, sir, there are.

1 Q. You tell us what those untruths are?

2 A. Yes, there are some.

3 Q. Well, how many are there?

4 A. I'm not a civil engineer. I never attended Chapel
5 Hill. I have not been a captain in the National Guard in
6 the headquarters of combat battle strategy. These were
7 untruths.

8 Q. Where did you come up with that name combat battle
9 strategy?

10 A. I just thought of it.

11 Q. Isn't it true that's just a couple of military terms
12 you threw together?

13 A. Yes, sir.

14 Q. Okay. Will you be surprised if I told you that UNC
15 Chapel Hill doesn't have an engineering program?

16 A. No, sir.

17 Q. Talked about you being an umpire. Talked about you
18 working for Tara Hall homes for boys. Talked about the
19 paint ball the league. Talked about your training
20 experience. You have any other jobs involving children?

21 A. Not that I can recall.

22 Q. How about volunteer jobs involving children?

23 A. Besides being an umpire, I can't recall any jobs.

24 Q. Were you ever a youth minister?

25 A. (Inaudible), United Methodist, and Free Will Baptist

1 Church.

2 Q. Were you officially a youth minister there or did you
3 just assume that responsibility?

4 A. The pastor there which is deceased now, I was
5 assisting him.

6 Q. You were assisting him?

7 A. Yes, sir.

8 Q. He's deceased now?

9 A. Yes, sir.

10 Q. Okay. You ever work as a tutor?

11 A. No, sir.

12 Q. Never tried to help anybody as a tutor?

13 A. I can't recall that, no, sir.

14 Q. You said that you had a sexual relationship with *nothing of*
15 *team*
player 203

16 A. That's correct.

17 Q. Point to the person you had a sexual relationship
18 with?

19 A. Right there in the green.

20 Q. You had a sexual relationship with her?

21 A. Yes, sir.

22 Q. Did you live with her?

23 A. For a short time, yes, sir.

24 Q. When did you live with her?

25 A. Sometime in mid November, December.

JIMMY MEGGS CROSS EXAMINATION BY MR. STEINBERG

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- 1 Q. You weren't living with *grandmother of team player 2 or 3* then?
- 2 A. That was after *mom of team player 2 or 3*
- 3 Q. Okay. You positive you had a sexual relationship with
- 4 her?
- 5 A. Yes, sir, that's the truth.
- 6 Q. Do you know if *mom of team player 2 or 3* knew if you had a sexual
- 7 relationship with her?
- 8 A. Yes, sir, she does.
- 9 Q. Did you ever bang on her door?
- 10 A. Yes, sir, I did.
- 11 Q. Well, demonstrate for the court what kind of banging
- 12 it was? Was it a louder banging or louder banging than
- 13 normal?
- 14 A. No, sir.
- 15 Q. You ever tried to scare her or anybody inside the
- 16 Watford home?
- 17 A. No, sir, I did not.
- 18 Q. You ever holded a paint ball gun to *victim 1 or 2*?
- 19 A. No, sir, I did not.
- 20 Q. How about to *team players 2 or 3*?
- 21 A. No, sir.
- 22 Q. How about to any boy out there at the paint ball
- 23 field?
- 24 A. No, sir.
- 25 Q. Did you ever told anybody to lie?

1 A. No, sir, I never told anybody to lie.

2 Q. Why not?

3 A. Because I hadn't.

4 Q. I know you say you haven't, but why haven't you?

5 A. Because it's wrong.

6 Q. And you still do that even though you know it's wrong?

7 A. I don't understand.

8 Q. Do you still tell -- obviously, you can't understand
9 the term untruth. You still say untruths even though you
10 know it's wrong?

11 A. No, sir, I don't.

12 Q. Have you not testified to a number of untruths today?

13 A. Yes, sir.

14 Q. Was that the past?

15 A. In the past, yes, sir.

16 Q. Tell us what date did you stop giving untruths?

17 A. The day I got in trouble for this.

18 Q. Have you told any untruths since that date?

19 A. No, sir, I haven't.

20 Q. Do you ever tell anybody that they should write out a
21 letter or statement on your behalf?

22 A. Yes, sir, I did.

23 Q. Who did you tell?

24 A. The boy that I was trying to find out what was going
25 on or whether they knew anything.

- 1 Q. Well, what did you tell them?
- 2 A. I told them to tell the truth.
- 3 Q. Did you tell them what to write?
- 4 A. No, sir, I did not.
- 5 Q. Did you ever tell them not to write down that there
- 6 was no sexual impropriety?
- 7 A. No, sir.
- 8 Q. How many boys went to this paint ball camp on the
- 9 average in any given week not total number, but any given
- 10 week what's the average?
- 11 A. Between 15 to 16.
- 12 Q. It wasn't 13?
- 13 A. I mean I couldn't say. I would say between 15 and 16.
- 14 Q. Was it ever just five?
- 15 A. I don't believe I could recall when we play paint ball
- 16 with just five.
- 17 Q. Okay. How would the boys get to the paint ball field?
- 18 A. I transported them in my truck as well as others.
- 19 Q. The boys being in the back of the truck?
- 20 A. Yes, sir, they would.
- 21 Q. Bed of the truck?
- 22 A. Yes, sir.
- 23 Q. You had them out there on a trailer sometimes?
- 24 A. The equipment, yes, sir.
- 25 Q. The equipment was on the trailer, but the boys weren't

1 on the trailer?

2 A. Yes, sir.

3 Q. You talk about different duties. What duties did the
4 boys have?

5 A. Some of the duties were fire duty, cooks, various
6 duties.

7 Q. Was getting wood one of the duties?

8 A. Yes, sir.

9 Q. Were all the boys always around at all times. Let me
10 explain that to you. Lets say you were standing in the
11 middle of the paint ball field with every boy whether
12 there's 15 or 16 or five or 100. Would they all be around
13 you at all times?

14 A. No, sir.

15 Q. Would there be some boys were out in the woods at the
16 time and you might be on the field?

17 A. Yes, sir, that's true.

18 Q. Did you ever do anything improper with the boys in
19 this case?

20 A. No, sir.

21 Q. I want to try to get your military record straight.
22 Did you ever go on active duty then couldn't pass the
23 physical or how far in the National Guard did you go?

24 A. I was on the delay entry program, which means I could
25 join in high school.

1 Q. Okay. And so was I. After the entry program, how far
2 did you go?

3 A. About a year and a half..

4 Q. And did you get an Army uniform?

5 A. Yes, sir, I was issued an uniform.

6 Q. Did you go out and start doing military training?

7 A. Weekend drills, yes, sir.

8 Q. Okay. And did any of these weekend drills involve
9 push-ups?

10 A. No, sir.

11 Q. Did any of the weekend drills involve paint ball?

12 A. No, sir.

13 Q. Did you ever tell any boy under any circumstance to
14 remove clothing during your paint ball league?

15 A. No, sir, I did not.

16 Q. Did you ever tell anybody to do it at the bowling
17 alley?

18 A. No, sir, I did not.

19 Q. Did you ever tell anybody to do it at the paint ball
20 field?

21 A. No, sir.

22 Q. Did you ever attempt to move anybody's clothing?

23 A. No, sir.

24 Q. At the paint ball field?

25 A. No, sir.

1 Q. Not in the tent?

2 A. No, sir.

3 Q. Did you see any boys doing push-ups involving paint
4 balls?

5 A. Did I see it?

6 Q. Yeah.

7 A. No, sir.

8 Q. Did you give any orders telling people to do push-ups
9 like that?

10 A. I'm sorry I ---

11 Q. Did you give any orders telling people to do push-ups
12 like that?

13 A. Absolutely not, no, sir.

14 Q. You say absolutely not. Tell me why you absolutely
15 did not do that?

16 A. Because I didn't.

17 Q. Okay. Would it be wrong if you had done that?

18 A. Yes, sir, it would be.

19 Q. Why would it be wrong?

20 A. Because you shouldn't do that.

21 Q. Okay. Why shouldn't you do that?

22 A. Because it's wrong.

23 Q. Okay. If a paint ball is placed on a person's boxer
24 shorts and another person has to -- another child has to
25 pick up that paint ball with their mouth; is that right or

1 wrong?

2 A. That's wrong.

3 Q. Why would that be wrong?

4 A. Because it's indecent.

5 Q. Okay. Did you ever tell any boys to suck another
6 boy's penis?

7 A. No, sir, I did not.

8 Q. Are you sure?

9 A. I'm sure.

10 Q. Did you ever see any boys do this?

11 A. No, sir.

12 Q. You know the victims #1 & #2?

13 A. Yes, sir, I know the victims #1 & #2.

14 Q. How do you know the victims #1 & #2?

15 A. Through paint ball.

16 Q. I thought you dated their mom?

17 A. I did.

18 Q. Okay. If somebody didn't follow an order out at the
19 paint ball field, what would happen?

20 A. I don't know.

21 Q. You don't know what would happen if somebody didn't
22 follow an order?

23 A. I don't think I understand you.

24 Q. Lets say a child did not follow one of your orders,
25 what would happen to him?

- 1 A. He wouldn't be following my orders.
- 2 Q. The boys never followed your orders?
- 3 A. No, sir, I'm not a commander.
- 4 Q. How old are you right now?
- 5 A. Twenty-six.
- 6 Q. Twenty-six year olds right now?
- 7 A. I mean ---
- 8 Q. I don't mean to rattle you.
- 9 A. I'm 29 right now.
- 10 Q. Twenty-nine. How old were you around Thanksgiving of
- 11 1999?
- 12 A. Twenty-seven.
- 13 Q. Okay. Were you the oldest person out there?
- 14 A. Yes, sir, I was.
- 15 Q. Were you the adult out there?
- 16 A. Yes, I was.
- 17 Q. Were there any other adults out there?
- 18 A. Yes, there were.
- 19 Q. How many adults were out there?
- 20 A. Four.
- 21 Q. Were there always four adults out there?
- 22 A. No, sir, there wasn't.
- 23 Q. Were you ever the only adult out there?
- 24 A. No, sir, I was not.
- 25 Q. So let me ask you maybe I didn't ask the question

1 right. Was there anytime when there were no other adults
2 besides you out there?

3 A. No, sir.

4 Q. Okay. What other adults was always out there?

5 A. It varies I mean.

6 Q. Give me some examples?

7 A. Well, Chris Gough was helping with the construction of
8 the field. Reggie Summer was down there with the uniforms.
9 Mrs. Gough came out with Chris Gough.

10 Q. And were there any times when you would spend the
11 night there?

12 A. Yes, sir, there were.

13 Q. And how many adults typically spent the night there?

14 A. At least two.

15 Q. Every single weekend?

16 A. Yes, sir.

17 Q. Both Friday and Saturday?

18 A. Yes, sir.

19 Q. Did you go each and every single Friday and Saturday?

20 A. Yes, sir, I was there every Friday and Saturday.

21 Q. Okay. Didn't leave a lot of time for your social life
22 with ^{in line of 142} d, did it?

23 A. Well, no not really, no, sir.

24 Q. Are you sure you never witnessed ^{or times 192} have
25 to suck each others penis?

1 A. No, sir, I did not.

2 Q. If you had seen it, what would you have done?

3 A. I would have stopped it.

4 Q. You would have stopped it?

5 A. Yes, sir, I would have.

6 Q. Do you think there might have been a time when you
7 might have been inside a truck or something while they were
8 doing this? Would that have been possible?

9 A. It may have been possible. I was in the truck I
10 mean...

11 Q. Okay. What would you be doing in that truck?

12 A. Either going to the store or either be in the back.

13 Q. The truck was parked not moving. Was it any reason
14 for you to be in it?

15 A. Using my cell phone.

16 Q. You ever have an opportunity to be alone with
17 in a tent?

18 A. No, sir, I did not.

19 Q. Did you ever try to have ^{jump layer #2} engage in any
20 sexual improper acts?

21 A. No, sir, I did not.

22 Q. Did you ever unzip his pants?

23 A. No, sir, I did not.

24 Q. Did you ever place your head very close to his private
25 areas?

JIMMY MEGGS CROSS EXAMINATION BY MR. STEINBERG

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1 A. No, sir.

2 Q. Is everything you said today the truth?

3 A. Yes, sir, it is.

4 Q. Is telling the truth important?

5 A. Yes, sir.

6 Q. Somebody doesn't tell the truth, would you hold that
7 against them?

8 A. No, sir.

9 Q. Why not?

10 A. Because that's the right thing to do.

11 Q. What's the right thing to do?

12 A. The truth.

13 Q. The truth is the right thing to do?

14 A. Yes, sir.

15 Q. Is it wrong when an adult tells a lie?

16 A. Yes, sir, it's wrong.

17 MR. STEINBERG: Beg the Court's indulgence.

18 THE COURT: Certainly.

19 Q. What date -- I asked you before you gave me a general
20 time. I like a specific date, if you remember, when you
21 started telling the truth?

22 A. Since, I got in trouble with this.

23 Q. Okay. Is everything you said to this jury the truth?

24 A. Yes, sir, it is the truth.

25 Q. You never told two little

not sure 1 and 2

... to

1 suck each others penis'?

2 A. No, sir, I did not.

3 MR. STEINBERG: All right, sir. Thank you.

4 MR. COX: Just a couple.

5 REDIRECT EXAMINATION BY MR. COX:

6 Q. You said you maybe in your truck using your mobile
7 phone?

8 A. Yes, sir.

9 Q. Is your mobile phone mounted in your truck?

10 A. Yes, sir, mounted.

11 Q. I'm going to show you this document and ask you if you
12 can identify what is that document?

13 A. Yes, sir.

14 Q. Is that your document?

15 A. Yes, sir.

16 Q. Show you a second time and ask you to identify?

17 A. Yes, sir.

18 MR. COX: You have any objection to these two.

19 MR. STEINBERG: No, sir.

20 THE COURT: Without objection. These are Defense 1
21 and 2 to be marked.

22 (BB&T bank statement marked as evidence Defendant's
23 Exhibit Number 1.)

24 (Plat marked as evidence Defendant's Exhibit Number
25 2.)

- 1 Q. Jimmy, I'm placing in front of you two documents. The
2 is first marked Defendant's Exhibit 1. What is that?
- 3 A. Exhibit one is a bank account statement.
- 4 Q. And who's name is it in?
- 5 A. Vanguards.
- 6 Q. And who's name under Vanguards?
- 7 A. Mine, Jimmy Meggs, Jr.
- 8 Q. What's the address on there?
- 9 A.
- 10 Q. Okay. Where was that bank account opened?
- 11 A. That bank account was opened in December.
- 12 Q. In December. And that statement covers the statement
13 for the end of December?
- 14 A. Yes, sir.
- 15 Q. Now, this bank account has a different address than
16 the address you gave police stations; is it not?
- 17 A. Yes.
- 18 Q. What was that address at the police station?
- 19 A.
- 20 Q. Now, Defense Exhibit 2 what is that?
- 21 A. This is a plat of the land that I bought.
- 22 Q. Okay. Was it actually paid for or were you purchasing
23 it?
- 24 A. I was purchasing it.
- 25 Q. Now, this plat is about property and it shows several

JIMMY MEGGS REDIRECT EXAMINATION BY MR. COX
JIMMY MEGGS JR. RECROSS EXAMINATION BY MR. STEINBERG 604

1 tracks. Which track was one that you were buying?

2 A. It was this far left one right here, track number 35.

3 Q. Track number 35. All right, sir. And is this area
4 track number 35 on this plat, is that the area where you
5 conducted the paint ball games in Pamplico?

6 A. Yes, sir, it was.

7 MR. COX: Answer any questions Mr. Steinberg has.

8 MR. STEINBERG: I just want to take a look at this
9 plat real quick.

10 RECROSS EXAMINATION BY MR. STEINBERG:

11 Q. What was the plat you're talking about?

12 A. This plat number 35 right here.

13 Q. What was over there on plat 39?

14 A. Both were just plats weren't sold.

15 Q. Nothing there?

16 A. No, sir.

17 Q. How about over here this general area?

18 A. Where you talking about?

19 Q. Right here in between 35 and 36?

20 A. Nothing.

21 Q. Nothing there?

22 A. Well, it's land I mean...

23 Q. Any houses there?

24 A. No, sir, not that I could see.

25 Q. That out in the middle of nowhere?

JIMMY MEGGS REDIRECT EXAMINATION BY MR. COX

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1 A. Yes, sir, it's down River Road.

2 MR. STEINBERG: Thank you I have no further
3 questions.

4 MR. COX: Nothing further.

5 THE COURT: Thank you, sir, you may step down.

6 (The witness left the witness stand.)

7 MR. REDMOND: Your Honor, may we approach.

8 (A bench conference was held in the presence of the
9 jury, but out of the hearing of the jury.)

10 THE COURT: Folks, we're going to stop for the
11 afternoon. I ask if you would be back in the jury room
12 tomorrow morning at nine o'clock. Be back at nine o'clock.
13 Please remember what I've told you about discussing this
14 case. Please remember what I've told you about any
15 television reports, news paper articles that you may see or
16 hear about and stay away from those things. Folks,
17 certainly, you should remember that you can base your
18 decision only upon what you hear in this courtroom and do
19 you remember that. I hope you all have a nice evening. I
20 will see you tomorrow morning at nine.

21 Everyone else remain where you are until these folks
22 leave.

23 (Jury was excused for the day.)

24 THE COURT: All right. Unless there's something
25 else, we will start nine o'clock tomorrow morning. If

1 anyone has any requests for charge that you want me look at
2 this afternoon or over in the evening, if not, we will talk
3 about that in the morning. All right.

4 MR. COX: Thank you, Your Honor.

5 MR. STEINBERG: Thank you, Your Honor.

6 (Court recessed for the day.)

7 (Court has now reconvened.)

8 THE COURT: All right. I have a note from Juror
9 Sibande ---

10 CLERK OF COURT: 166.

11 THE COURT: 166. It really doesn't indicate exactly
12 what it is she has concern about, but that she needs to
13 bring something to the Court's attention. I'm going to
14 have her come out and find out what that is and then make
15 further inquire from that point. If you will bring out Ms.
16 Sibande.

17 Goods morning, how are you today?

18 MS. SIBANDE: Fine. Thank you.

19 THE COURT: I have your note and I need to find out
20 what it is that you want to discuss with the Court. Of
21 course, your discussion with the court needs to be
22 discussed here so that other folks can hear that as well.

23 MS. SIBANDE: You ask the question if have a
24 driver's license.

25 THE COURT: Yes, ma'am.

1 MS. SIBANDE: I do possess one and have been a
2 county resident. I am -- It's just that when I was asked
3 to be partitioning or not permanent residence.

4 THE COURT: You are what, ma'am.

5 MS. SIBANDE: Not permanent resident.

6 THE COURT: Permanent resident. Are you a citizen
7 of the United States? Do you know?

8 MS. SIBANDE: I don't know the difference that's the
9 part I thought maybe that's something I should bring to
10 you.

11 THE COURT: Thank you. You should and I appreciate
12 you realizing that was something we needed know.

13 THE COURT: How long have you lived in the United
14 States?

15 MS. SIBANDE: Eleven years.

16 THE COURT: And I suppose you came over or came to
17 the United States from your home?

18 MS. SIBANDE: That's right.

19 THE COURT: You have a visa; is that correct?

20 MS. SIBANDE: That's right.

21 THE COURT: And since then, have you applied for
22 United States citizenship?

23 MS. SIBANDE: I have my visa.

24 THE COURT: Do you have that with you?

25 MS. SIBANDE: Yes.

1 THE COURT: Could I see that please, ma'am.

2 MS. SIBANDE: It's just that well yesterday when I
3 was home, my husband mentioned that and I didn't know the
4 answer to that. So I thought I should bring it to your
5 attention.

6 THE COURT: Thank you. You did exactly the right
7 thing. All right the attorneys like to look at the card
8 that -- is Sibande?

9 MS. SIBANDE: That's right.

10 THE COURT: Would you gentlemen like to join the
11 court. She's a resident with authority -- on the back it
12 says she's authorized to reside and work in the United
13 States. I doesn't say U.S. citizenship.

14 Ms. Sibande, thank you so much for bringing that to
15 the Court's attention. One of the questions that I asked
16 Monday morning when I was qualifying the entire panel for
17 jury service is whether or not you were a citizen of the
18 United States. And I can understand how with that card and
19 with your being here 11 years and having a driver's license
20 and that sort of thing, you would believe that you are a
21 citizen. But there's an extra step that needs to be taken
22 beyond that to become a United States citizen and that
23 would be applying for citizenship.

24 Of course, I only know what I have read and heard
25 about that. Taking a test where the actual status of

1 citizenship would be conferred upon that person. And I
2 don't think that's what you have based on what you've shown
3 the Court. That is a requirement in order to serve as one
4 being a United States citizen. And I don't believe I have
5 any discretion in allowing you to serve, even though the
6 parties might agree. I think it's absolutely a requirement
7 that you be a citizen. And obviously, you are very well
8 qualified and otherwise qualified to serve except for that
9 one legal requirement. And so I'm going to excuse you at
10 this point. I apologize that you had participated and then
11 not going to be able to see it through to it's conclusion,
12 but I think that's the best thing for the Court. I am
13 excusing you and thank you for your service. You may leave
14 at this point. The Clerk's office will send you a check
15 for your service this week. You have anything in the jury
16 room that you need to get?

17 MS. SIBANDE: No, sir, I appreciate that.

18 (Note from Juror Sipwe Sibande as Court's Exhibit
19 Number 2.)

20 THE COURT: Juror number 166 dismissed because not a
21 United States citizen. I believe it will be appropriate at
22 this point to bring out the balance of the panel to let
23 them know I have excused this juror and to let the last
24 alternate know that she is now seated as a juror in this
25 case. And at that point, we can conclude the trial and I

1 I'll let them know we will take few minutes to get ready
2 for closing arguments and the charge. Mr. Propps, if you
3 will bring them out.

4 (The jury returned to the courtroom.)

5 THE COURT: Good morning, folks. Mr. Foreman, you
6 doing an excellent job and I understand you provided
7 doughnuts for your group this morning; that's mighty kind
8 of you to do that. I learned that discussing with Ms.
9 Sibande -- she was concerned about one of the questions
10 that I asked Monday in overall qualifications of the panel
11 and turned out that if she and I had that discussion
12 Monday, Tuesday she wouldn't have been qualified to serve
13 as a juror during this term of court because of one of the
14 legal requirements not anything else. And so I had to
15 excuse her and so, Ms. Streett, you are now a member of
16 this panel. And you'll discuss the case at the appropriate
17 time and deliberate and participate in the decision making
18 process.

19 Is there any other evidence by the defense in this
20 matter?

21 MR. REDMOND: Your Honor, the defense would
22 respectfully rest that this time.

23 THE COURT: Thank you. Anything in reply from the
24 State.

25 MR. STEINBERG: No, sir, Your Honor.

1 THE COURT: Folks, that is all the evidence and
2 testimony that will be presented for your consideration.
3 In just a few minutes, you will have the closing arguments
4 and I'll give you the charge on the law, but there is some
5 preparation that the Court needs to do for that. So I am
6 going to send you back to the jury room for just a few
7 minutes. I think about 15 to 20 minutes will be
8 sufficient. When I bring you out, we will conclude this
9 matter. Although you've heard all the evidence and
10 testimony, it's still not time for you to discuss it. So
11 please don't think that simply because there's nothing
12 else, you can begin your discussions. That can only happen
13 when I give you the charge on the law. If you would please
14 go back to the jury room, I will call you back in just a
15 few minutes.

16 (The jury was excused to the jury room.)

17 THE COURT: Motions from the defense at this time?

18 MR. REDMOND: Your Honor, the State would ---

19 THE COURT: The defense?

20 MR. REDMOND: I'm sorry.

21 MR. STEINBERG: I would like to make a motion for a
22 directed verdict of guilty.

23 MR. REDMOND: Of course, the defense would move for
24 a directed verdict. I think whatever Mr. Cox had yesterday
25 is contagious to me. But we would respectfully move for a

1 directed verdict for the same grounds set out before in our
2 earlier motion. And also, Your Honor, additional motion
3 for the mistrial based on evidence that was attempted that
4 -- the defense attempted to introduce regarding testimony
5 from Mr. Jimmy Meggs Sr. on the issue of *manufacturing*
6 and, of course, we did present a proffer at that time. So
7 we make motions on those grounds.

8 THE COURT: And I'll deny those motions. Anything
9 else before we break for just a moment so I can prepare the
10 charge? Have you all talked about the statute and what
11 portion of the definition to be charged? Is there any
12 dispute about the definition that should be included within
13 that charge or do you just a few minutes to look at that.

14 MR. REDMOND: Beg the Court's indulgence.

15 THE COURT: Sure.

16 MR. COX: Just one moment.

17 THE COURT: Sure. We will recess and back in just a
18 few minutes.

19 (Court in recess.)

20 (Court has reconvened.)

21 THE COURT: All right. Let me mention although I
22 think I brought it up in regards with Mr. Redmond and Mr.
23 Cox and I have not with the attorney general. I normally
24 come down to give the charge, but I like to make sure
25 nobody objects to that. Would there be any objection to

1 that from the State?

2 MR. STEINBERG: No, sir.

3 THE COURT: From the defense?

4 MR. REDMOND: No, Your Honor.

5 THE COURT: Anything else before I bring out the
6 jury?

7 MR. COX: I'll be glad to pull my chair around and
8 sit it here for you to sit down, Your Honor.

9 THE COURT: Thank you I like to stand. Let's review
10 what is include in the charge. We had discussed in
11 chambers the charge. Of course, it's what I would call a
12 standard charge as it relates to the normal criminal case
13 that be the presumption of innocence charge, a reasonable
14 doubt charge, which is more than just a sentence or two
15 which you all have reviewed. I understand the State may
16 have objected to the hesitation of acts a part of that
17 language. The credibility of witnesses, a charge of expert
18 witnesses and then charge of the statute 16-17-490
19 contributing to the delinquency of a minor and from that
20 statute subsection 10, which is language contained within
21 the indictment et cetra. 16-3-810 engaging a child in
22 sexual performance subsection A. It is unlawful for any
23 person to employ, authorize, or induce a child under the
24 age of 18 years of age to engage in sexual performance.
25 And then from the definition section 16-3-800 Subsection 1

1 meaning of sexual performance. In Subsection 2, the
2 meaning of sexual conduct. The parties have agreed as I
3 understand that is not necessary and would be not
4 appropriate to charge the definition three and four would
5 include definitions of performance and promote.

6 The defense has request a charge about multiple
7 indictments and I'll include that. And then just normal
8 closing charge about fair and impartial and unanimous
9 verdict and the like. You all have likewise reviewed the
10 verdict form. If I am not correct in what we talked about
11 or if there's any further objection to the charges, I have
12 reviewed that. And I'll be glad to hear from you.

13 Anything further from the State?

14 MR. STEINBERG: No, sir, Your Honor.

15 MR. REDMOND: No, sir.

16 THE COURT: All right. How long are we anticipating
17 all this may take. The State?

18 MR. STEINBERG: Your Honor, the State's close on the
19 law will take not more than two to three minutes. The
20 State's closing on the facts would be maybe 15.

21 THE COURT: All right. Mr. Cox or Mr. Redmond,
22 whoever close. Mr. Redmond.

23 MR. REDMOND: I'll close, Your Honor. I'd like to
24 say 15 to 20. I been known to be long winded and try to do
25 my best not to.

1 THE COURT: As long as you don't go over 30 we're
2 okay.

3 MR. REDMOND: It want be over 30, judge.

4 THE COURT: If you will have them come out please.
5 Mr. Propps, wait just a minute. Also in reviewing the
6 indictments, it appears that some places Mr. Meggs is
7 properly referred to as Jimmy Donald Meggs Jr., and other
8 places he is referred to as Jimmy Donald Meggs.
9 Indictments 2001-665 and 666 on the face of the indictment,
10 he's listed as Jimmy Donald Meggs that will be on the back
11 of it, I guess. Any objection to amending that to adding
12 junior to that?

13 MR. COX: No, Your Honor.

14 MR. STEINBERG: No, sir.

15 THE COURT: Then the other two indictments 663 and
16 664 in both places he's preferred to as Jimmy D. Meggs. It
17 leaves off junior. Any objection to adding that?

18 MR. COX: No, Your Honor.

19 THE COURT: Now, Mr. Propps, you can bring them out.

20 (The jury returned to the courtroom.)

21 THE COURT: All right. Folks, we're now ready for
22 closing arguments of the attorneys. Then I'll give you the
23 charge on the law. At this point, I will remind you the
24 two things I told you when we began. First, what lawyers
25 say is not evidence and is not testimony. And if they

1 recall evidence and testimony one way and then you all
2 collectively recall it a different way, it's your
3 recollection that controls. As I indicated to you when we
4 began, because the State has the burden of proof, the State
5 goes first in making the closing arguments. And under our
6 rules, the State is required to open on the law in it's
7 closing argument. Then the defense will go. And then the
8 State will argue after the defense.

9 Mr. Steinberg, you ready to proceed, sir?

10 MR. STEINBERG: Yes, sir, thank you, Your Honor.
11 Good morning, ladies and gentlemen. We're winding up the
12 trial. I'm going to discuss with you the applicable law.
13 The defendant, through his attorneys, may give you a
14 closing argument. I'll then give you a closing argument.

15 The judge will then instruct you on the appropriate
16 laws to apply. If either myself or opposing counsel gives
17 you a definition of the law that's different from what the
18 judge gives you, accept the judge's definition.

19 Additionally, if you have any preconceived notions of the
20 law or if you have a definition of the law that's not the
21 same as the judge gives, you need to apply the judge's
22 definition of the law.

23 In all cases, the State has the burden of proof
24 beyond a reasonable doubt. What is reasonable doubt? You
25 all heard the term before. A reasonable doubt is exactly

1 what it says it is. It's a reasonable doubt. It is not a
2 frivolous doubt, minor doubt, unreasonable doubt.

3 Likewise, it is not simply mere suspicion of guilt. It is
4 a reasonable doubt and you will determine reasonableness.

5 The judge is going to instruct you as to witness
6 credibility. Credibility can be determined by consistency,
7 believability, and pass truthfulness. You may also
8 consider a motive to lie. Credibility also be determined
9 by corroboration. Corroboration is not properly required.

10 The first pair of indictments is for engaging a
11 child for sexual performance. The law is fairly simple.
12 It's unlawful for any person to employ or authorize or
13 induce a child younger than 18 years of age to engage in
14 sexual performance. Sexual performance means any
15 performance or part thereof that includes sexual conduct by
16 a child under the age of 18. Sexual conduct means actual
17 or simulated sexual intercourse, deviant sexual
18 intercourse, and the rest the judge will define. There is
19 no requirement that the defendant by himself engaged in
20 activities.

21 The second set of indictments is for contributing to
22 the delinquency of a minor. Again, two counts. These
23 counts are in addition to engaging himself for performance.
24 Go for all four. You can go for one, two, three, and four.
25 It is your decision.

1 Contributing to the delinquency of a minor is when a
2 person who is over 18 knowingly and willfully encourages,
3 aides or causes to do any act that shall cause or influence
4 a minor so deport himself; that is to act in a way that
5 will injure his morals or the morals for the health of
6 others. This means did the defendant cause or influence
7 the boys to commit immoral acts. You will determine what
8 that means following the judge's charge. Again, this is in
9 addition and not instead of the prior charge.

10 Following closing arguments from both parties and
11 instructions from the judge, you will be asked to apply the
12 law as is given from the judge to the facts as you heard
13 them in this case. Thank you for your consideration.

14 THE COURT: Mr. Redmond.

15 MR. REDMOND: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 MR. REDMOND: Mr. Steinberg, ladies and gentlemen,
19 as I indicated to you in my opening argument. I'm, of
20 course, here to present the closing, but before I do that,
21 I just think that it was a strange irony. As the defense
22 rested, there was a train whistle in the background. Of
23 course, remember Jimmy is a railroad engineer. A strange
24 irony. I think it's a good opening.

25 I'm Kernard Redmond as I indicated earlier. And

1 it's gone be brief as possible, but as detailed as
2 necessary because obviously these are very serious charges.
3 This is a very serious case. We first thank you for your
4 services here. Thank you for your willingness to serve.
5 Thank you for your attention to this case.

6 It has been a few days we been here together and
7 you've heard evidence. You've watched. You've been very
8 attentive as a jury. But there's some things that I must
9 point out to you because, again, His Honor is going to
10 charge you on the law as Mr. Steinberg indicated. If I
11 misstate anything, I'm not trying to trick you. If I
12 misstate anything, your recollection controls as His Honor
13 has told you, but it is important that you listen very
14 closely to His Honor's instructions because that is gone be
15 the bases of how you apply the facts to the law that he
16 instructs you.

17 Reasonable doubt. Why discuss that? Let me just
18 talk to you about presumption of innocence. Jimmy here is
19 presumed to be innocent until proven guilty, but he walks
20 into this courtroom he is presumed innocent. Obviously,
21 these are very serious charges and very disturbing charges,
22 but there's a presumption of innocence until they prove it.
23 The issue is has the State proved it. I submit, no. They
24 have not proved that Jimmy is guilty of any of these
25 charges.

1 Reasonable doubt, that doubt which will cause you to
2 hesitate to act. There's a possibility that what you heard
3 from the evidence presented to you by the State, is not
4 enough for you to say I believe that Jimmy did it. I know
5 Jimmy did it beyond a reasonable doubt, beyond any
6 reasonable doubt. If there's a hesitation, then you must
7 find him not guilty. You must find him not guilty.

8 There's a real possibility that the testimony you've
9 heard from the children and I'm going to point out
10 inconsistencies. There's a possibility that that was not
11 true and you must find him not guilty. His Honor will
12 instruct you on that.

13 Jimmy never denied the fact that he told lies. Told
14 lies about the National Guard. He was in it, but he was
15 not in it at the time. He has not hedged from that. We
16 addressed that in our opening statement. We readily
17 acknowledge that. He lied about certain issues on his job
18 as it relates to his education as it relates to employment,
19 but that in and of itself is not enough to convict anyone.
20 And that's what the State is asking you to do and you know
21 why, because the rest of their case falls short. And I
22 believe you heard -- and I want to point somethings out to
23 you.

24 What didn't Jimmy lie about. Well, he didn't lie
25 about the fact that he had a paint ball league. And as a

1 matter of fact, he had a bank account the Vanguards. This
2 a very serious endeavour for Mr. Meggs. He's also
3 presented to you where the land was that he was attempting
4 to buy for the paint ball. And, of course, you got the
5 National Guard documents which show he was in the guard.
6 He was discharged unfortunately due to injury, but he was
7 in the National Guard.

8 Jimmy while he was testifying and you've heard talk
9 about credibility of the witnesses, demeanor of witnesses.
10 Their demeanor. How do they come across on the stand. And
11 if you noticed yesterday, Jimmy never hedged in telling
12 you, looking at you and telling you and telling
13 Mr. Steinberg, no, I did not do this. I did not do this.
14 He never hedged on that. Absolutely not, absolutely not.

15 I don't know -- this is the only chance I'll get to
16 talk with you. I want have a chance to respond to the
17 State. In the past I've heard it, said well, who's got the
18 most to loose. The defendant got the most to loose. Well,
19 only to say this and his testimony -- and about his
20 testimony. Jimmy told you that he was not guilty. Just
21 because he's the defendant and he testifies, does not mean
22 he's not telling you the truth about it. They will say
23 well because he's got the most to loose, well does that
24 mean if I'm going to tell you something that I didn't do
25 and I tell you that just because I'm a defendant, that's

1 not true, of course, not.

2 Jimmy was very up front with his shortcomings with
3 you, but he was adamant about what counts and that's
4 something again to take with you. Especially, when we
5 talked about it in context with respect to the State's
6 case. Now, this the type of case that we refer to
7 sometimes as a swearing contest. In other words, basically
8 what you have to go on is what you heard. In a swearing
9 contest, that's why it becomes so important to break down
10 what you've heard. Inconsistencies mean a lot. We don't
11 have forensic evidence or anything that could answer some
12 of these questions that inconsistency may call. And I
13 would submit this to you, you go back there with more
14 questions based on the State's case about what the
15 testimony and where the inconsistencies are, I would submit
16 to you that you must find Mr. Meggs not guilty.

17 Now, in addressing some of those inconsistencies,
18 first starting with ~~victim~~ ^{defendant}. Let me just say this.
19 You saw the kids having to testify and these are very
20 serious allegations, but remember it is Jimmy Meggs who
21 sits in judgment. It was Jimmy Meggs against whom or for
22 whom you are going to be rendering a verdict. And so
23 sometimes we tend to get emotional. Sometimes we get -- we
24 think about things that shy away from the facts. As I've
25 heard say, keep your eyes on the prize. Keep your eyes on

1 the ball. What matters here is the testimony and the
 2 inconsistencies that bring out the fact that you must look
 3 at and believe that you will.

4 ^{victim #2} -- actually, I said Joshua, but I'll
 5 start with ^{victim #2} ^{section #2} in his testimony admitted
 6 that not only did he talk with other boys in reference to
 7 this. He talked with other parents about that; that was
 8 the testimony. Well, that's important because it impacts
 9 upon the credibility of what it is you're being told. How
 10 did all of this evolve. He also says that Johnny Booker is
 11 the only one that was mean. I mind you they made heinous
 12 charges against Jimmy Meggs, but ^{victim #2} ^{team player #5} said
 13 is the only one that was mean; that makes since, ladies and
 14 gentlemen. He also says that these acts always took place
 15 outside, but if you recall the testimony of ^{team player #3}

16 ^{victim #2} claims he heard -- he heard when
 17 he was outside heard commotion inside of a tent
 18 inconsistencies. These are things you, ladies and
 19 gentlemen, that you must take into consideration.

20 ^{victim #2} says all the boys saw it. All the
 21 boys saw it. Well, who have you heard it from. Remember,
 22 we don't have the burden of proving anything. The State
 23 has the burden of proof and that burden stays with him
 24 throughout the entirety of this trial.

25 Let me get to Jimmy taking them places, taking him

1 and ^{victim #1} to the hotel. I think the motel is testimony
2 about that, taking them other places. And this is common
3 sense and, of course, you bring your common sense with you.
4 Nothing happened in the hotel. Nothing happened these
5 other places when he was there with them alone, but yet
6 when they get to paint ball, that's when this occurred.
7 Does that make since? I submit to you, no, it does not.
8 When ^{victim #2} testified, Mr. Cox asked ^{victim #2} to
9 demonstrate a push-up. And when we talk about the demeanor
10 of witnesses, part of that factors into giving the nature
11 of these charges, how did they appear. How did they come
12 across. Did they appear traumatized? I submit, no, and
13 I'll explain. Of course, ^{victim #2} got down without
14 hesitation. Did the push-up demonstrate that to you with
15 no hesitation whatsoever. I think that is important as it
16 relates to the issues of how heinous and how horrible these
17 alleged acts really were. I would submit to you that they
18 not been easy if this would have occurred.
19 And then admits being kicked out of paint ball. He
20 admits being kicked out of paint ball, but his mother says,
21 well, no they stopped going once these allegations came
22 out. Inconsistencies and I submit a very important
23 inconsistencies. And then ^{victim #2} says, well, he told half
24 the story -- he told half the story and the other brother
25 told the other half of the story ^{victim #1} but that's

1 important. One told half. The other told half, which yet
2 you being asked to believe this testimony. You have to
3 look at how this whole thing evolved and interestingly,
4 there's a stopping point. And I'll just tell you. Isn't
5 it kind of strange that you haven't heard anything about
6 any further counseling from the time that Jimmy Meggs was
7 arrested almost two years ago, but yet they're asking you
8 to believe that this was such a traumatic event Jimmy Meggs
9 should be convicted of. But once they had enough
10 information to bring a warrant, that's it no further
11 counseling. Ladies and gentlemen, that strikes me as odd.

12 Of course, there was also testimony by the
13 regarding, again, things happening outside of the tent both
14 of them testified to that. They both admitted being kicked
15 out of paint ball. And then ^{victim #2} also says he told Josh
16 what he and Sandra Sturkie talked about. I wondered what
17 they talked about. I mean, ladies and gentlemen, again,
18 you're being asked to believe these allegations, but you
19 have to look at how they came to be and how they came
20 about. And I submit to you again that is a very important
21 consideration.

22 And then you get to the ^{team plays 203} They only
23 went to the Durant Center once and both of them acknowledge
24 that the testimony they were giving to you. They didn't
25 tell everything then, but now, oh, a year and a half later

1 in court for the first time, they're telling you about
 2 certain private parts being sucked for the first time and
 3 they both admitted to that.

4 Ladies and gentlemen, again, those are things that
 5 you must take into consideration because this is a swearing
 6 contest. He also admitted too ^{team player #5} had them doing
 7 things. Had them in a congo line and whatnot, push-ups
 8 things like that, ^{team player #5} And then he says --
 9 ^{team player #2} says that ^{team player #6} had to perform. And
 10 again, I know this content is sickening, but it must be --
 11 the inconsistencies must be brought out, but he suck one.
 12 He said ^{team player #6} had to suck his genitals. Well, that
 13 just begs a question. Where is ^{team player #6} ? Where is
 14 ^{team player #6} Their names are mentioned prominent, but the
 15 State has not presented them. They have the burden of proof
 16 in this case.

17 And they also -- ^{team player #2} did describe the humping as
 18 regular push-ups. Well, again, then it gets in the issues
 19 of context that things are being used and what is being
 20 said. Humping but it's regular push-up and he acknowledges
 21 telling Sandra Sturkie that. He found out about the
 22 allegations after Jimmy was arrested. And, of course, then
 23 that's when this thing started taking a life of it's own.

24 He went to the Durant Center one time and guess who
 25 he rode with ^{team player #5} r. Guess who he came back with

1 Bryan Kennedy. Guess who was there during the interview,
 2 most of them that's from the testimony Bryan Kennedy.
 3 Sandra Sturkie stepped out to talk to him in the middle of
 4 interviews, Bryan Kennedy. They only went to the Durant
 5 Center that one time. *team player #3* he
 6 admitted he quit playing paint ball because Jimmy was
 7 arrested; that's why he quit because Jimmy was arrested.
 8 He admits that he only -- yesterday or at the time he
 9 testified actually Tuesday, mentioned anything about
 10 push-ups. For the first time, he hadn't mentioned that a
 11 year and a half ago, but, oh, today in court now that comes
 12 out. Those are things that must give us pause, ladies and
 13 gentlemen.

14 And he also admits that the testimony about Jimmy
 15 with the boys in the tent that came out for the first time.
 16 Of course, that contradicted what *with #1 & 2* said; that
 17 came out for the first time here in court. And then he
 18 also indicated that the families, I believe, the *team players 2 & 3*
 19 and the *team players 2 & 3* got together, I think, was the term he
 20 used at some point before going to the Durant Center.
 21 Again, those are things that must be taken take into
 22 consideration. *man of v. 21 m #1 & #2*

23 The State puts up . In
 24 testifying, what did she tell you. Well, she denys having
 25 an affair with Jimmy, but, of course, Jimmy told you that

1 he did and told you the nature of it. She said, well,
 2 Jimmy would not knock on the door and whatnot, but, you
 3 know, if he was knocking on the door to the point that they
 4 had to retreat in the house, why was the police never
 5 called. Again, she contradicted why the kids left paint
 6 ball. Doesn't even mention anything about any further
 7 counseling of the kids after January 5th of 2000. Never
 8 went back. Those are things to consider, ladies and
 9 gentlemen.

grandson on rt team player 2+3

10 she admits that Jimmy stayed there
 11 at least ten times even left his clothes there. And, of
 12 course, Jimmy -- there was talk about Jimmy saying where
 13 his residence was. Well, he left clothes there. He been
 14 called to work from there. Of course, he admits Reggie
 15 Summer stayed over there. That's gonna be important
 16 because, of course, Reggie Summer tells you that Jimmy was
 17 interacting with the boys sometimes around New Years with
 18 no problems for several hours until he got called to work.
 19 And, of course, Jimmy also told you that with the time he
 20 was staying there, *grandson on rt team player 2+3* was concerned about money.
 21 And I think that has a lot to do with why this all has come
 22 to be.

23 Of course, she was involved with the paint ball.
 24 She was the treasure, thought it was a good thing.
 25 Something her kids needed to be apart of. And how did she

1 find about these allegations. Jimmy asked Kennedy to call
quadrant of team plays 203
 2 ... Okay. Jimmy asked Kennedy to call *quadrant of*
team plays 203
 3 and next thing you know because of those issues I
 4 just discussed, now there being allegations being alleged
 5 against him. Of course, Summer -- again, I mentioned
 6 Mr. Sumner. He testified and he said he didn't notice
 7 anything wrong, but again, he did tell you about the
 8 interaction. He remembered it vividly and remembered where
 9 they were. They were in the living room playing and
 10 watching T. V., horse play, but yet these are boys that the
 11 State would have you believe are traumatized. I think not.

12 Lets talk about Investigator Kennedy for a minute.
 13 Of course, he's the one that made the arrest of Jimmy
 14 Meggs, but interestingly, he never talked with Jimmy Meggs
 15 until, remember when. Until the day he came with warrants
 16 and served those warrants on Jimmy. The first time he had
 17 discussed this matter with Jimmy. Mind you by then, they
 18 already been on four trips by the *v. 21m. #152* to the Durant
 19 Center, four trips by the way, four trips to the Durant
 20 Center. And then he made an interesting statement about
 21 finding out that Jimmy had lied about being in the National
 22 Guard and that's when he felt he had enough evidence,
 23 hello.

24 He was present during the interviews. Again,
 25 Ms. Sturkie at some point in the interview go out and talk

1 with Investigator Kennedy. This is the evidence gathering
2 phase, ladies and gentlemen, because again Jimmy Meggs
3 nobody ever talked to him. They made four trips trying to
4 build a case against Jimmy Meggs; that's what this was all
5 about.

6 Didn't even talk with the other witnesses. Let me
7 explain that until after the warrants had been signed,
8 well, that's called being in too deep. Trying to get
9 yourself out of it because these are very serious
10 allegations that have been made against Jimmy Meggs. So we
11 had to build a case. Kind of stuck ourselves out on that
12 limb, too late to go back.

13 Then, of course, we heard from several defense
14 witnesses who testified. And interestingly when Jimmy
15 Meggs Sr. testified, he told you that he got a call from
16 *mom of victim 1 & 2* She called the house. And Jimmy Meggs, of
17 course, told you that he had a relationship with her.
18 Those are things to keep in mind when you talk about how a
19 case evolves and whether or not there's reasonable doubt.

20 We also had testimony from *team player #9*
21 He testified, of course, that he never noticed anything
22 wrong going on improper there. He was there. He was the
23 company commander. And remember the *victim #1 & 2* even
24 referred to him as a friend, remember that. Of course, his
25 father who is also involved with paint ball to a lessor

1 degree obviously, but he was involved in the paint ball,
 2 testified that he even confronted Jimmy about it. So I
 3 mean, he had his concerns and confronted Jimmy about it .
 4 after the allegations come out, of course. And, of course,
 5 Officer Kennedy did testify that he had talked with both
 6 *team player #9* and with Chris Gough and remember Chris Gough -- I
 7 mean *team player #9* was talked to as recently as last Wednesday, a
 8 week before the trial. Like I said trying to make a case,
 9 trying keep the thing a flow.

10 Then we hear, of course, from the other boys who
 11 testified. I believe *team player #8* and *team player #7* who,
 12 of course, told you that they both knew the *victim #1 & 2* and
 13 the *team players 2 & 3*. They saw them. Didn't notice any
 14 hesitation as it relates to them interacting with Jimmy,
 15 but that's important because again these are acts they are
 16 claiming -- the kids are claiming happened all the time,
 17 but, yet, there's no problem with interactions. I submit
 18 to you that makes absolutely no sense, if the allegations
 19 were true. It makes no sense because these allegations are
 20 not true.

21 And why is that the case? Well, lets look at the
 22 experts. What did the experts tell you? Even Ms. Sturkie
 23 when she testified, remember I was asking her about the
 24 kids looking down. She brought up looking down during
 25 their interviews and whatnot and then tried to explain,

1 well, it could be this that and the other thing. Finally,
2 I got her to admit well, if they aren't making direct eye
3 contact with you, then couldn't that mean that they not
4 telling you the truth. And, of course, she had to admit
5 that, yes, could be; that's from their witness. She talked
6 about piecemeal disclosure. Got her to admit that if there
7 are contradictions during the course of this disclosure as
8 they call it, whether or not that lessons the credibility.
9 And if you remember her response to my question, it was,
10 yes, it does lesson the credibility of what you're being
11 told. And then when she would leave the room
12 interestingly, she wouldn't go talk with the parent or a
13 grandparent who brought the kids there. Who would she go
14 talk to, Mr. Kennedy. This is before the warrants are
15 issued remember. Like I said, gathering that information
16 trying to build a case against Jimmy Meggs.

17 Of course, you also heard from Dr. Jackel who
18 indicated, of course, that she been retained by both law
19 enforcement and by defense counsels; that, of course, adds
20 objectivity to her testimony. Of course, because the
21 Durant Center mostly their referrals are from law
22 enforcement. Obviously, that's not contradicted. And she
23 told you that she a had chance to review the interviews and
24 she talked about interview bias. Well, you know what makes
25 that consistent because who did Sandra Sturkie talk to

1 again, Mr. Kennedy and that was obvious in the course of
2 questions. Not one question about who they might have
3 talked to as a third-party and what their parents might
4 have said to them or anything, not one question during
5 those interviews regarding any of that.

6 It calls maintaining the integrity of the
7 investigation. And if you wanted to make sure that what
8 you're being told is the truth, then Dr. Jackel told you
9 there's certain things that you want to be able to
10 establish to make sure the accuracy of what you're being
11 told. Not one question about possible parental influence
12 in this case, while they're being interviewed at the Durant
13 Center; that is very important again building a case that's
14 what it's called. And, of course, she also indicated that
15 piecemeal disclosure lessens the credibility of what you're
16 being told each time and especially when there are things
17 being added on and that's not something that's hard to
18 figure out. Ladies and gentlemen, I submit that's common
19 sense. The more you told something and the more it's added
20 on. The more you have to look back especially when it's
21 being contradicted when you put it all together.

22 Now, ladies and gentlemen, I'm near the end. It's a
23 very important case obviously as I indicated. We cannot
24 ignore those inconsistencies, but yet you're being asked to
25 jumble through all that and put it together and say my

1 client, Jimmy Meggs, is guilty. I submit to you that that
2 is not the case. Jimmy told you that. Jimmy told you that
3 over and over. I think he might have been asked nine or
4 ten times. Never filched, never wavered. Jimmy didn't
5 have the opportunity to respond to any of these allegations
6 until when, oh, after he was arrested, after they had
7 already been to the Durant Center several times. No, but
8 the integrity of the investigation was something that was
9 critical, especially when the State is asking you to
10 convict my client. And I'll leave you with this and I
11 talked for a while.

12 I was sitting up last night something occurred to me
13 as probably one of the most common things in this whole
14 situation. Paint ball is not something that anybody has
15 testified as a necessity. It's not something handed to
16 you. It's something you want to do. These kids wanted to
17 participate in paint ball. The kids never mentioned being
18 forced -- never mentioned being forced to go back to paint
19 ball. Nobody forced them to go to paint ball. They next
20 testified they wanted to. They enjoyed it. Well, that
21 begs the question. If all of this was happening, all of
22 this was so traumatic, then, you know, why go back. It's
23 kind of like when, you know, I was a child I didn't want to
24 go to school. I had to go to school, but that's different.
25 And if I didn't want to go to the barbershop, I told my

1 parents I didn't want to go to the barbershop. I had to go
2 anyway, but I wish I could go to the barbershop now not
3 exactly an option of mine at this point in time. But they
4 did not have to go paint ball. Nobody forced them to go to
5 paint ball, but yet all these allegations that they are
6 saying -- remember they say this was happening all the
7 time. They went back. It makes no sense, ladies and
8 gentlemen. It makes no sense.

9 I thank you for your consideration. Thank you for
10 your time and I think that you heard everything. And I am
11 confident that you will agree with me that the State has
12 far from proved -- proving this case and it has come far
13 from carrying this burden of proof. Thank you and God
14 speed in your deliberations.

15 THE COURT: Mr. Steinberg.

16 MR. STEINBERG: Thank you, Your Honor. Paint ball
17 is that what this is all about. Paint ball league is that
18 what all this is. This is a game this paint ball. When I
19 was growing up we use to play Army. Running through the
20 woods and shoot somebody say bang you're it. We say nope
21 you didn't get me. Paint ball solve that problem. You're
22 it. You got evidence. You see that evidence and it's
23 there. You can't wish it away. You can't hope it away.
24 You can't talk it away. It's there. Paint ball solves
25 that. And the paint was evidence that Jimmy Donald Meggs

1 Jr. is covered head to toe, ladies and gentlemen.

2 The evidence in this case is overwhelming despite
3 the defense attempt to poke holes here and there. Poke
4 holes in issues that have nothing to do with the charges.
5 Focus on that please. Focus on the defense's poking holes
6 in nonexistent places. There's only one conclusion that
7 can be drawn from the evidence that we heard from the
8 stand.

9 Jimmy Donald Meggs created a phony paint ball league
10 and he used it to engage children in improper sexual
11 activities. Jimmy started this fancy, fancy paint ball
12 league in order to lure young males to the field in
13 Pamplico. He may have tried to buy this field. We have
14 his testimony, but his testimony has a lot of problems
15 with, if we're going to talk about the facts. It just goes
16 on forever his problems in his testimony. He had a field
17 in Pamplico he use to bring boys to. Young males from nine
18 through 15 or 16 some cases. One boy said he was around 18
19 or so. And he forced ^{victim #1} and ^{victim #2} to engage in sexual
20 activities. Oral sex certainly fit the definition of a
21 sexual performance.

22 I'm going to recount the evidence. ^{victim #1} and ^{victim #2}
23 two ~~year~~-year-old brothers. They are scared
24 of Jimmy, the captain of the league. They had to refer to
25 as a Five Star General, use to threaten them with being

1 shot with a paint ball gun at close range. If you ever
 2 been shot with a paint ball gun, you might say, hey, I
 3 don't want that that's gonna hurt. Those are nine-year-old
 4 boys have to feel about that, particularly when they are
 5 being -- was being faced with an adult, the adult. After
 6 he threatened to do this and he had the boys commit these
 7 acts he said, don't tell anyone. Tell anyone what? What
 8 did he not want anybody to know? That Jimmy Meggs and not
 9 someone else, not these other names get thrown out here and
 10 there. That Jimmy Meggs told him to suck each others
 11 penis'.

12 He also told them to pick up paint balls off of the
 13 other person's boxer shorts, where their privates were with
 14 their mouths. I do not need to explain to this jury what
 15 that means. You know, why? Because Jimmy Donald Meggs did
 16 it. He himself said it was improper and that it would be
 17 wrong. You heard both ^{John #1} and ^{Victim #2} Judge their reason
 18 for testifying. Their ability and their inability to come
 19 up with these stories. You looked in their eyes and you
 20 saw their movements. You heard the sound of their voice.
 21 You will determine if those boys told the truth. If they
 22 did tell the truth, Jimmy Meggs is guilty as charged.

23 However, if they did not tell the truth, then Josh
 24 and ^{John #2} are the two most diabolical -year-old
 25 on the planet, one or the other. You determine which

1 it is. The law states that you can believe their testimony
2 alone. Without any further evidence, you can convict Jimmy
3 Donald Meggs of the crimes he's charged with. Those boys
4 gave you each and every bit of information in evidence that
5 you need to convict, but there is additional evidence.

6 Merline Buntin she's the cafeteria worker and church
7 driver. ^{James} told her that he was sexually abused. You
8 heard the question I asked. I had very poignant questions.
9 I asked her where was it. She said paint ball camp. I
10 said when on the weekends. You determine whether Ms.
11 Buntin is credible. You determine whether she told ^{mother of victim}
12 this and the whole ball started rolling.

13 She part of the conspiracy. She help make something up
14 here. Does she have reason to lie. You heard about
15 delayed reporting from other witnesses. Ms. Buntin told us
16 about how this came out. Then she told ^{mother of victim}
17 told you when the -- when the boys incident
18 occurred, occurred when they were in camp. She said they
19 were in camp from the middle of October to no later than
20 December 10th. And she took the boys to Sandra Sturkie.
21 That's when Jimmy saw the paint ball camp being crumpled.

22 At the outset of this case, you heard opposing ^{mother of victim}
23 parties say to watch how this case assembled.
24 Didn't invent these thoughts. They were trust upon
25 her by Jimmy Donald Meggs.

1 Sandra Sturkie was qualified as an expert witness on
2 child sexual abuse. She meet with the boys and discussed
3 the facts. She told you that ^{vntm+1} and ^{vntm+2} informed her
4 that they were sexual abused. Where? Paint ball camp.
5 When? On the weekends. Ms. Sturkie also told you that
6 after interviewing the boys and examining the videotape and
7 her notes, she found to a reasonable degree of professional
8 certainty that the boys were suffering from child sexual
9 assault. I think the term was child sexual assault trauma.
10 You may have heard different words.

11 Finally, Ms. Sturkie talked to you about delayed
12 reporting or hesitant reporting. Counsel tried to hammer
13 home on this when we talked about the words consistent,
14 inconsistent a little bit. Remember one thing. When you
15 hear all this testimony, did you actually hear
16 inconsistencies or see the inconsistencies or you just asked
17 about inconsistencies. Remember a question once asked is
18 never evidence. If I asked a witness, isn't it true that
19 you're King of England and he doesn't answer or you get the
20 -- does that mean that the person is the King of England.
21 No, the question asked is never evidence. Even the
22 questions I asked, but what the answers were.

23 It may seem common sense to you. When you're a
24 juror, you have to be an adult you can't be a child. But
25 Ms. Sturkie talked about something that is common sense.

1 She discuss how children sometimes do not report things
 2 immediately and totally. As an expert, she also talks
 3 about sexual abuse immediately or fully for the first time.
 4 It might be a gradual telling of the abuse. She used the
 5 term piecemeal reporting. You also heard the boys
 6 themselves talk about how they felt more comfortable with
 7 Ms. Sturkie, two -year-old boys. And then later on as
 8 means progressed they told more.

9 Ms. Sturkie informed you about the reasons for
 10 delayed in reporting when the abuser is in a position of
 11 authority. Say, Captain, Five Star General. Ms. Sturkie
 12 also told you about the fear little boys have when they
 13 have been threatened. I believe it was ^{victim #2} who told you
 14 about fear because Jimmy was in the Army and the Army has
 15 guns, 1 -year-old boys. There were a number of other
 16 threats from them as witnesses. You heard the threats.
 17 Ms. Sturkie also talked about grooming techniques, giving
 18 gifts. Making the boys look up to you. The gifts that
 19 were given, I believe, one of their own witnesses called it
 20 an odd gift. He gave odd gifts out there. Why? Why?

21 ^{team player #2} is probably more
 22 talkative of the two of the ^{team player #2 & #3} Ask
 23 yourself why would ^{team player #2} lie for ^{victim #1} and ^{victim #2}

24 They don't go to school with each other and not
 25 necessarily friends. I guess they know each other from

1 paint ball, but how do they know each other there's age
2 differences. Did ^{team player #2} also lie to ^{victim #1 mother} ?

3 How did he get involved into this conspiracy.

4 Why would you come into this courtroom and discuss someone
5 getting on their knees and spitting water on his boxers.

6 Why would he do that. Why would he come in here and say
7 that he witnessed, saw Jimmy Meggs order the ^{victim #1 & #2}

8 to suck each others penis' or otherwise get shot
9 with a paint ball gun. Did he support his story fully.
^{team player #2}

10 Remember clearly said it was Jimmy Meggs, the
11 defendant, and no one else who did this.

12 Well, lets go ahead -- you heard the names. All
13 four of the juvenile witnesses say Jimmy Meggs. Jimmy
14 Meggs. Jimmy Meggs. Jimmy Meggs. Johnny also remembered
15 what he thinks occurred the second weekend before
16 Thanksgiving. Why would Johnny McKnight tell a bunch of 12
17 strangers that Jimmy Meggs in attempt at this very same
18 same paint ball camp unzip little ^{team player #2} put his
19 head a few inches from little ^{team player #2} groin and made a
20 motion like he was moving closer. And later on said let me
21 give you a blow job. Who did all this. Anybody but Jimmy
22 Meggs. You heard the testimony.
^{team player #3} ^{team player #3}

23 the older. testified
24 about paint ball push-ups, which is nothing more than a
^{team player #3}
25 simulated oral sex. was old enough to know

1 something wasn't quite right. He was a bit older. I think
 2 he testified he is now ^{currently} 15. He's not one of these
 3 boys. He's not one of the ¹⁰⁻² ^{team player # 3} was old
 4 enough to know something wasn't quite right about the whole
 5 deal. So he said he walked away, but did he have any doubt
 6 who's voice it was who said you better suck these penis'.
 7 No, he said it was Jimmy Meggs. He also testified one
 8 thing that he heard, but he didn't see because he was
 9 walking away. Why was he walking away because that's
 10 wrong. 7-year-old boys know it's wrong. ¹⁰⁻²
 11 year-old boys know it's wrong. 10-year-old boys they
 12 might not know it's wrong, particularly when the adult
 13 tells them to do it. That's tells -- orders them to do it.
 14 What did ^{team player # 3} say, he heard the boys
 15 pouting, pouting. Both ^{team player 2 & 3}
 16 testified, they were told to write some statements for the
 17 defendant saying that Jimmy was a good guy and nothing
 18 sexual happened at the camp. They testified they couldn't.
 19 Ask them why couldn't they do it. Well, the reason is
 20 because that would have been a lie. Just like so much of
 21 Jimmy's camp was a lie. One of the brothers I wish I
 22 remember which one said, why would somebody have asked me
 23 to write this if they weren't trying to hide what they were
 24 doing. ^{team player # 2} I don't know which one, but you
 25 will decide. The term out of the mouths of babes comes

1 wisdom; that's true. What did he have them to do this.
 2 *grandmother of team player #2* you heard -- okay. Next talk about two witnesses
 3 and Colonel Bruce Bennett. You might say
 4 why did I call them to testify. They were not there at the
 5 paint ball camp. I'm talking to you about the amount of
 6 lies, the types of lies are very importantly here. The
 7 reasons for the lies. *the grandmother of team player #2*
 8 testified about the lie. The disguises of Jimmy's true
 9 identity and the true identity and reasons of Jimmy's
 10 fantasy paint ball camp.

11 Colonel Bruce Bennett of the South Carolina National
 12 Guard testified that Jimmy really wasn't a captain of the
 13 National Guard and in fact had not been in the National
 14 Guard for many years. Colonel Bennett also stated the
 15 guard did not support a paint ball league for juveniles or
 16 give out uniforms. He also told you something that's
 17 pretty obvious. The National Guard has guns and that was
 18 obvious to *him #2* too. When asked by opposing
 19 counsel, well, what scared you about the Army that be the
 20 Army National Guard. The boy said they have guns.. Well,
 21 that's pretty obvious they have guns. That's why he didn't
 22 tell anybody about it right away. He been threatened with
 23 guns before, threaten with guns.. Who did they tell you
 24 later on the same person who held that gun. The same
 25 adult. The named one adult said don't tell anyone about

1 this.

2 Also Byran Kennedy, the defendant brought up the
3 fact that one one never spoke to Jimmy. Well, Jimmy spoke
4 yesterday. We'll talk about what Jimmy said. Lets talk
5 about what Jimmy said. Jimmy had a chance to speak. He
6 had took his opportunity to speak. Didn't have to. Has
7 the right to remain silent and everybody has that right.
8 He exercised it. You get to judge him on that. We're gone
9 get talk about that.

10 Investigator Bryan Kennedy informed you of his
11 investigation. The length and depth of his investigation
12 and some more lies Jimmy told to cover up the real goings
13 on. For example, he testified that there's a real Vanguard
14 Knights and that he knows about them. From general --
15 being a resident here in the county. Yet, Jimmy never
16 heard of it. Didn't know the Vanguard Knights. He just
17 came up with the name own his own. Investigator Kennedy
18 also said that Jimmy Meggs has no connection with this
19 Vanguard Knight. Also established a couple of legal facts
20 that Jimmy was 26, 27 at the time over the age of 18. Also
21 established where Pamplico is here in Florence County.

22 With the information that you gotten from all the
23 witnesses the State put up, not only did the State meet
24 it's burden of proof beyond a reasonable doubt, it exceeded
25 it. It met it's burden of proof when those boys testified.

1 The information you have you can conclude that Jimmy Meggs
2 started this fantasy league with a bunch of other boys --
3 with a bunch of boys and uses this league as an opportunity
4 to have them perform actually acts on each other and while
5 Jimmy watched. And in the words Jimmy pardon me -- *team player #2*
6 the defendant got off on. I asked him to explain
7 what that meant. He said grinning; that was the reason.

8 Now, the defendant has no duty to present a defense,
9 but if he does present the defense, you have a right to
10 examine this defense. You can determine if it's a real
11 defense. You can determine if it's a made up after the
12 fact defense. You can make up to see if they grabbing
13 straws because the guilt is just overwhelming defense. *team player #9*
14 That's a way to figure their witnesses Chris Gough,

15 , Reggie Sumner, and the rest did not spend the night
16 at the paint ball camp more than one or two times. Jimmy
17 was the only adult. He liked it that way. He liked to be
18 in charge. He liked to have little boys out there with him
19 in the field.

20 Ronnie Carson testified and his testimony was he
21 didn't even go to the same paint ball camp. Now, not only
22 was he not there when these events happened, he didn't go
23 to the same paint ball camp. And a number of their other
24 witnesses wound up supporting the State's case about who
25 went and who spent night and all that. With these

1 witnesses that he called up, he tried to establish a couple
 2 of defenses. I guess attempt to be defenses. We're gone
 3 look at them. There main defense is ^{mother of victim #2} ~~mother of victim #1~~
 4 defense. ^{mother of victim #1} is the mother of the 10-year-old
 5 boys. ^{mother of victim #2} made all this up and got Merline
 6 Buntin, the cafeteria worker. ^{victim #1} and ^{victim #2} and the
 7 ^{from pluses 2+3} and their grandmother,
 8 all on board for grand conspiracy. Oh, and she really was
 9 dating Jimmy Donald Meggs Jr., and he really is a Five Star
 10 General. You had the opportunity to see Ms. Watford and
 11 hear her testimony, see her anguish as she was on the stand
 12 and decide whether she was really dating Jimmy Meggs.

13 You have the ability to look at the two of them and
 14 see that that is not the case. You can decide whether a
 15 mother would put her children through such torment just to
 16 get back at Jimmy Meggs. The only place Jimmy Donald Meggs
 17 and ^{mother of victim #1 & #2} ever dated was in his fancy camp.

18 Well, the other defenses was the improper interview
 19 defense. Dr. Jackel a paid expert came in here and said
 20 the interviews were done badly and that they may or may not
 21 have caused the boys not to tell the truth not and not to
 22 tell what they told. This is my recollection, but she said
 23 a study saying that the piecemeal and delayed reporting
 24 wasn't accurate. And I think her studying didn't even
 25 mention child sexual abuse to support her position. You

1 will remember the facts that are -- is she so much a
2 credible witness or did Sandra Sturkie seem like she was ^{untruthful}
3 more credible witness. She also raised the issue that ^{Vol 42}
4 and spoke to each other. Well, they are year
5 old boys. Not only are they year-old boys, but
6 they're year-old. Do you expect them to
7 talk with themselves about this. They may not want to talk
8 to their mom about this. They may not have wanted to speak
9 with Ms. Buntin until it got dragged out through other
10 means. They speak to each other
11 brothers.

12 Lets see some of their other defenses are they had
13 something, I guess, would call the inconsistency, the
14 swearing contest. I disagree that there were
15 inconsistencies. They were assertions of inconsistencies.
16 There were allegations of inconsistencies. I have not seen
17 those inconsistencies. You'll be the judge not me. I want
18 be the judge you will.

19 Opposing counsel uses the term contradiction.
20 Contradiction actually has a certain meaning. Means when
21 one speaks or both speaks or the opposite. You heard the
22 testimony was there contradiction, no, but what we heard
23 from both the boys when they went to Sandra Sturkie was
24 that they told more the first time -- or the second time
25 they told more than the first time. The third time more

1 was told than the second time. The forth time they told
2 more than the third time. Let me tell you the
3 contradiction that it was more open. The boys talked about
4 being more open. The inability to remember specific facts
5 is not an inconsistency. The inability or the
6 unwillingness of a juvenile boy to talk about adult male on
7 juvenile boy sexual abuse is not inconsistency. It's not
8 opposed it's just slowly coming sometimes. Even the adult,
9 Chris Gough, took the stand for the defense and said I
10 can't remember everything that happened a year and a half
11 ago.

12 Lets talk about not inconsistencies but the
13 inconsistencies. Everybody who was there said Jimmy Meggs
14 did this. Jimmy Meggs told these boys to suck each others
15 penis', ^{+ some players #20 #3} and ^{and John #1 + 2} and ^{and} and ^{and}. Jimmy made
16 them do it no one else. Jimmy made them do it. And
17 talking about inconsistencies, the defendant contradicted
18 his own witnesses over and over again about how many boys
19 were out there. How many adults were out there. Well, you
20 heard the testimony. Every once in a while on some
21 weekends, one adult might spend one weekend night. It
22 wasn't three or four adults that was out there. There was
23 one adult, that adult always out there.

24 Another defense where are the rest of the boys. Did
25 we bring in every boy that Jimmy Meggs came in contact to.

1 Did we bring in every boy that ever went to his fantasy
2 camp that may have gone one week, but not this different
3 week, no. We not gone be here until February. You even
4 heard from his own witnesses. The other witnesses saying
5 that there were few as five boys were out there and as many
6 as 16. Said they didn't all spend the night. In fact, his
7 witnesses also said they didn't even spend the night. They
8 go one day not the other. Further some boys would be out
9 there getting firewood. We heard that from, I guess, every
10 witness. They wouldn't all be out there in the field.
11 They be out there not around Jimmy Meggs. What's
12 important. His own witnesses saying they would not sit
13 idly by while Jimmy did these acts. Jimmy knew this.
14 Jimmy chose his victims well. He chose the type of victim
15 he wanted. He chose the younger boys. Boys who didn't
16 have fathers in their homes. You heard that testimony. He
17 chose his victims well and he chose his times well. He
18 didn't commit any crimes around Chris Gough and there's a
19 reason for that.

20 There were some similar other defenses. There were
21 short defenses. I mention them very briefly. They raised
22 what I call force to play paint ball arguments. The boys
23 liked to play paint ball. They liked to run around in the
24 woods and do stuff like that. They don't necessarily like
25 to be ordered at paint ball gun point to suck each other's

1 privates, but they do like to play paint ball. One of the
2 ~~team player 2 & 3~~ testified why did you go out. I had
3 nothing else to do. Well, Jimmy knows that. Jimmy drives
4 by in his pick-up full of kids going out to the paint ball
5 camp. He knows that. He knows that.

6 Lets see another defense. The Watford's counseling.
7 You will determine this has any relevance. Whether they
8 did or did not have any counseling after this. This trial
9 we're not gone bring witnesses up on this because that's
10 not what we're about. We're not here about treatment
11 plans. We're here about what Jimmy Donald Meggs did. You
12 all heard about what he did. There's also a ^{grandman of team}
13 ^{player} conspiracy. I think some kind of conspiracy ^{1 & 2}
14 perhaps. I'll let you be the judge of that.

15 Jimmy took the stand and he testified to lie after,
16 after lie, after lie. And he testified that he told people
17 he was a captain in the National Guard. At the time of
18 this incident, you think they'd agree early childhood
19 education in order to get a job. He lied about his social
20 security number in order to get a job at a home for boys.
21 He lied about a degree from the University of North
22 Carolina Chapel Hill. There are numerous lies. I will not
23 go over each and every one of them. You will have State's
24 Exhibit Number 1. This profile of what you and I may refer
25 to as a resume. It's got this Captain HQ National Guard

1 U.S. Army Combat Battle Strategy. Then, of course, you
2 have the reality. Stick with reality.

3 I'm not gone talk about any more of his lies. I
4 don't want to take up all the day here. But now, he says
5 he tells the truth. He has told the truth ever since the
6 day he was arrested on these charges. Consider his lies
7 and his reasons for lying. And again, he reasons for
8 lying. Were they told to make him look cool in front of
9 his friend Chris Gough. Is that the reason he told all
10 these are lies to all these different people. Do you tell
11 the Tara Home for boys a phony social security number
12 because just wanted to make money. Or how about lying
13 about a degree in engineering and early childhood
14 education. Did he just want one of those great pay checks
15 South Carolina pays teachers, is that what he really
16 wanted. Is that his real reason. He talked about money
17 being a reason that he wanted to start a paint ball camp.
18 Well, is that his real reason he wanted to do a money
19 making scheme, a paint ball camp. Why did he tell those
20 lies. ^{✓ 12th #1 ✓ 12th #2} and told you why he told those lies. So
21 he could get them out there.

22 After you considered all the evidence in this
23 counting the hog pog defenses, apply the evidence to the
24 law. The judge is gone charge you the law. When he does,
25 you ask yourself this. For engaging a child for sexual

1 performance, two counts. Did Jimmy Meggs employ,
 2 authorize, or induce Josh and Tyler to engage in oral sex.
 3 You heard ^{volume 1 volume 2 same players 3} and you also heard Jimmy.
 4 You know the answer that to that question.

5 Contributing to the delinquency of a minor, the boys
 6 are ~~the~~ years old. The defendant I believe was 26 or 27
 7 at the time. He ordered them to suck each others penis'
 8 and they did. Do you believe that forcing ~~year-old~~
 9 ^{volume 1 volume 2 same players 3} to place their other brothers penis in their
 10 mouth contributes toward the delinquency; that is it is an
 11 immoral act. Ladies and gentlemen, you can conclude that
 12 ^{volume 1 volume 2 same players 3} and ~~and~~ and ~~and~~ and ~~and~~ and all the lies told
 13 by or relayed. I shouldn't say told. The lies relayed by
 14 all the witnesses. The State's witnesses and the
 15 defendant's witnesses that Jimmy Meggs order the Watford's
 16 to engage in oral sex. That information is backed up by
 17 the surrounding fact addressed by the other witnesses.

18 You can go through this witness by witness or you
 19 can just ask yourself why is this guy, this guy lying about
 20 his education. A couple times lied about his education.
 21 About the degrees he received and particular areas he was
 22 involved in. He lied about his residence. His military
 23 service when he was in. He lied about his rank. He lie
 24 about who supplied the paint ball league's equipment. And
 25 he stole the name of an existing R. O. T. C. unit. For a

1 fellow who didn't commit these crimes, he does it grandly.

2 The answer to who commit these acts is Jimmy Meggs.

3 The next question is why. Because in the real Army
4 and the real National Guard, you're not allowed to take
5 12-year-old boys out in a field and have them suck each
6 others penis'. But you can in Jimmy's fantasy paint ball
7 camp. The real Army doesn't have you to take a paint ball
8 off of another soldier's groin when you're doing push-ups,
9 but it happened in Jimmy's paint ball camp where is the
10 adult. In the real Army, the captain doesn't say to a
11 12-year-old boy are you scared. Then unzip his pants and
12 places his head near the 12-year-old's groin and say later
13 on can I give you a blow job. However that can and does
14 happen in Jimmy's, Captain Jimmy's fantasy paint ball camp.

15 Ladies and gentlemen, are you left with a reasonable
16 doubt in this case or are you left with a wholly
17 unreasonable doubt. Are you left with the whole bunch of
18 none sense defenses, crazy conspiracies more fitting than
19 Jimmy's fantasy camp then in a court of law. When you
20 arrive at a verdict, it will have to be one or two things.
21 There will be one of two truths. You shall walk out of
22 here, walk out of your jury room back into the jury box and
23 salute Captain Jimmy Meggs for the good job he's doing
24 taking care of these boys who don't have father's in the
25 homes and making them better persons at his legitimate

1 R. O. T. C. slash Army slash National Guard paint ball camp.
2 Or you should say this defendant is guilty. Clearly,
3 guilty of all four counts; that is two counts to
4 contributing to the delinquency of a minor, as well as two
5 counts of engaging a child for sexual performance.

6 I urge you to choose the one verdict that is not
7 built on a mounting of lies. The verdict of guilty to all
8 four charges is warranted. The State has proved this case.
9 I thank you for your time and your consideration in this
10 case. This is a -- it is a hard decision to be such
11 serious charges as counsel has correctly pointed out. It's
12 hard, but it's not difficult because you heard the
13 evidence. You know what you have to do. Thank you.

14 THE COURT: Folks, we are going to take a short
15 recess before I give you the charge. I'll call you out in
16 about ten minutes. Remember, my instructions about not
17 discussing this case.

18 (The jury was excused to the jury room.)

19 (Court in recess.)

20 (Court has reconvened.)

21 THE COURT: Anything before I bring the jury out?

22 MR. STEINBERG: No, sir.

23 THE COURT: Go ahead and have them come out, Mr.
24 Propps, please, sir.

25 (The returned to the courtroom.)

1 THE COURT: Thank you, folks. Maybe, some of you
2 are surprised to see that I can actually move from that
3 spot where I been seated the last several days, but I can
4 and I do. I come down here at this point of the trial to
5 give the charge for a couple of reasons. First, I think I
6 can do it better by standing and looking you eye to eye.
7 And I believe that you can understand it better if I come
8 down here.

9 The charge, if you imagine, it's like a set of
10 house plans when you're building a house. You have those
11 plans and you follow them. And when you got through, your
12 house looks like it was supposed to look like. It would be
13 properly constructed. That's what exactly what these
14 instructions on the law are for you, a set of blue prints.
15 As you follow these blue prints and arrive at verdict based
16 upon the law as I give it to you, then your verdict will be
17 properly constructed no matter what it is. So please give
18 me your best attention over the course of the next few
19 minutes as I give you the law in this case.

20 I reiterate two things I told you when we began.
21 First, that you all are judges of the facts in this case.
22 Not myself and not these lawyers have the authority to
23 determine what the facts are. That's your job and your job
24 alone. And I will tell you that if something has occurred
25 that I have done or said or just some expression you seen

1 on my face and that lead you to believe that I have any
2 feeling about the case or the evidence or the testimony in
3 this case, I want you to disregard that. It would be
4 improper for you to allow that to influence your job as the
5 judges of the facts.

6 The other thing is that I'm the judge of the law and
7 what I will tell you is the law, you must accept. You
8 cannot be concerned with what someone else may have said it
9 was. What you think it is or even what you think it ought
10 to be. You got to take the law as I give it to you and
11 apply it to the facts as you find them.

12 Now, with that said let me turn your attention to
13 this case. When we began this trial or actually when we
14 began the process of selecting you as jurors in this case,
15 the Solicitor, the attorney general, called the
16 indictments. I read the allegations contained in those
17 indictments to you. I will not read those to you again,
18 but it is those allegations that the State has the burden
19 of proving beyond a reasonable doubt to your satisfaction
20 before the defendant can be found guilty of these charges.

21 As I told you at the outset, in any criminal trial
22 when one is charged and that person pleads not guilty to
23 those charges, then under our constitution and our laws
24 that person is presumed innocent and that is true of Mr.
25 Meggs in this case. There's about him a presumption of

1 innocence that's afforded to any defendant in a criminal
2 case by our constitution and our law. He has no burden to
3 prove himself innocent. He has no burden to prove himself
4 not guilty. The burden of proof rests squarely with the
5 State of South Carolina and the State must prove him guilty
6 beyond a reasonable doubt. It is a jury's duty if not
7 clearly convinced of his doubt beyond a reasonable doubt
8 excuse me -- convinced of his guilt beyond a reasonable
9 doubt, then find him nothing.

10 We when began I used that term reasonable doubt
11 several times. I used it several times already. The
12 attorneys have used it. I told you when we began that I
13 would define that for you as best one can define, as it has
14 been defined by our court over the years.

15 A reasonable doubt is a kind doubt that would cause
16 a reasonable person to hesitate to act. Proof beyond a
17 reasonable doubt is proof that leaves you firmly convinced
18 of a defendant's guilty. There are very few things in the
19 world that we know with absolute certainty. And in
20 criminal cases, the law does not require proof that
21 overcomes every possible doubt. They based on your
22 consideration of the evidence. If you are firmly convinced
23 that the defendant's guilty of the crimes charged, you must
24 find him guilty. If on the other hand you think there's a
25 real possibility that he's not guilty, you must give him

1 the benefit of the doubt and find him not guilty.

2 In determining whether or not reasonable doubt
3 exist, you should remember the burden of proof always rest
4 with the State. The defendant has no burden of proof and
5 your evaluation to prove of the case you include all
6 evidence, which has been presented.

7 Reasonable doubt may arise from evidence which is in
8 the case or the lack of evidence in the case. Only the
9 jury has the authority to determine whether or not the
10 State has met that burden of proof beyond a reasonable
11 doubt.

12 Back to your jobs as the judges of the facts in this
13 case. I told you when we began and I remind you at this
14 point that one very important thing that you be called upon
15 to do and are call upon to do, is to evaluate the
16 credibility or the believability of those witnesses who
17 have appeared and that's when I said that when we began,
18 you didn't understand or fully appreciate the importance of
19 doing just that. I suspect now you understand that that is
20 a very important part of your job. It's not just true of
21 this case, it's true of many cases. The jury is called
22 upon to evaluate the credibility, the believability of
23 those folks who have testified.

24 I told you when we began that you do that every day
25 outside of this place. Through years of experiences, you

1 have become better at doing that. When you hear something,
2 you decide whether or not it's something that you can
3 believe or how well you can believe it and doing outside of
4 this place is absolutely no different from doing it here.

5 I'm going to suggest somethings in just a moment
6 that you might consider as you all collectively reviewed
7 the credibility or the believability of the witnesses.
8 These may be some of the very same things that you would
9 use outside of this place. They may be different from
10 things that you used. I do not mean to imply that these
11 are the only things that you should use in going through
12 that process and evaluating the testimony of the various
13 witnesses who have appeared in this trial, but you may
14 consider the demeanor or the appearance of a witness as
15 that witness testified.

16 You may consider whether or not the reason -- the
17 witness had any reason to help or hurt one side or the
18 other. In other words, was the witness biased or
19 prejudiced. You can consider whether or not the witness'
20 testimony was supported or contradicted by other evidence
21 or testimony that was presented. You can consider what the
22 witness' ability was to know the things about which or she
23 testified. You can consider whether or not the witness
24 testimony was consistent or inconsistent. And by that, I
25 mean was it consistent throughout or were there

1 inconsistencies within the witnesses testimony. By that;
2 you might also consider whether or not it was consistent or
3 inconsistent with other evidence or testimony that
4 presented to your consideration.

5 As the judges of the facts in this case, you have
6 the authority to believe one witness against many or many
7 witnesses against one. You may believe a portion of a
8 witness' testimony or all of that witness' testimony or
9 none of that witness' testimony. In fact, you might
10 believe a smaller portion of the witness' testimony and
11 disregard the balance. Your responsibility in this case is
12 to determine whether or not the State has established the
13 guilt of the defendant beyond a reasonable doubt.

14 During the course of the trial, there were witnesses
15 who were presented for your consideration that were called
16 expert witnesses. I gave you a brief instruction at that
17 time about those kind of witnesses. I'm going to instruct
18 you again about those sort of witnesses. As I told you,
19 the rules of evidence do not ordinarily permit witnesses or
20 lay witnesses to express opinion or conclusions. Other
21 witnesses who are called expert witnesses, may express
22 opinions or conclusions. A witness who by education and
23 experience has become an expert in some art, science, or
24 profession or calling, may state an opinion as to relevant
25 and material matter in which the witness claims to be an

1 expert. They may also say the reason for those opinions.

2 You should consider any expert opinion received in
3 evidence in this case and like any other evidence give it
4 the weight you think it deserves to receive. If you decide
5 the opinion of an expert witness is not based on sufficient
6 education or experience or if you conclude the reasons
7 given in support of the opinion are not sound or that the
8 opinion is outweighed by other evidence, you may disregard
9 the opinion entirely. An expert witness' testimony is to
10 be given no greater weight than that of other witnesses,
11 simply because the witness is an expert. You are not
12 required to accept an expert's opinion even though it might
13 not be contradicted.

14 I now turn your attention to the specific statutes
15 with which the defendant is charged of violating. Section
16 16-17-490, contributing to the delinquency of a minor says,
17 it shall be unlawful for any person over 18 years of age to
18 knowingly and willfully encourage, aid or cause to do any
19 act which shall cause or influence a minor. One subsection
20 within that is to so deport himself or herself as to
21 willfully injure or endanger his or her morals or health or
22 the morals or health of others.

23 Section 16-3-810 describes the law relating to
24 engage a child for sexual performance. Subsection A says
25 it is unlawful for any person to employ, authorize, or

1 induce a child younger than 18 years of age to engage in
2 sexual performance.

3 Section 16-3-800 provides for certain definitions.
4 Subsection 1 says sexual performance means any performance
5 or part thereof that includes sexual conduct by a child
6 younger than 18 years of age.

7 Subsection 2 defines sexual conduct as meaning
8 actual or simulated sexual intercourse, deviate sexual
9 intercourse, sexual bestiality, masturbation,
10 sado-masochistic abuse, or lewd exhibition of the genital.
11 Supposedly the laws related to the charges against
12 Mr. Meggs.

13 I instruct you that you are to take into account the
14 fact that the defendant has been charged with more than one
15 indictment. The accused is entitled to a fair and
16 impartial determination on each indictment based upon your
17 determination of the evidence on each side of the
18 indictment. You should consider each indictment separately
19 in determining your verdict. I remind you at this point
20 that you have been selected as fair and impartial jurors
21 and taken an oath fairly and impartially tried to determine
22 the facts of this case. When you comply with that oath,
23 then no one will have the right to criticize you for your
24 decision and you will have fully discharged your
25 responsibility as jurors in this case.

1 As you know, you can only decide this case based
2 upon the evidence and the testimony which has been
3 presented during the course of this trial, not something
4 you may heard outside or seen outside this place. Your
5 verdict must be based solely upon that evidence and cannot
6 be based upon passion prejudice or sympathy.

7 Both the State and the defendant have the right to
8 expect that each of you will carefully and impartially
9 consider all the evidence in the case and as you follow the
10 law as I have given it to you. Your verdicts no matter
11 what they are Mr. Foreman must be unanimous. All 12 must
12 agree before the jury can reach a verdict on any
13 indictment. You will have with you in addition to the
14 exhibits which have been introduced during the course of
15 this trial in the jury room a verdict form for each of
16 those indictments and it sets forth the charge on each
17 indictment.

18 And as to each charge there are two possible
19 verdicts, I need not say them, but I will. They are with
20 jury by unanimous consent find the defendant not guilty or
21 we the jury by unanimous consent find the defendant guilty
22 and that is true of each charge. Now, the order which I
23 have said them and the order which they might be listed on
24 this verdict form, have absolutely no significance.
25 Obviously, they got to be said or listed in some order or

1 they couldn't be set at all.

2 I'm going to send you back to your room, but do not
3 begin your deliberations just yet. At this point, I need
4 to discuss with the attorneys the charge that I have given
5 you to make sure there's nothing that I have not told you
6 that you need to know whether I told you something
7 incorrect. When I'm ready for you to begin, the bailiff
8 will hand in to you the exhibits that have been introduced
9 and the verdict forms. Then at that point you may begin
10 your discussions. You may only discuss this case when all
11 12 of you are in the room. So if someone needs to use the
12 restroom, obviously the rest of you need stop your
13 discussions while that person is out of the room. If you
14 have a question that arises during the course of your
15 discussions, if you will write it down and hand it out to
16 the bailiff. He will hand it to me and I will answer it
17 best I can.

18 I will tell you that many times juries ask judges or
19 me questions about the facts in the case. You ask such a
20 question, I'm going to remind you that I can't comment on
21 the facts; that's your job and yours alone. Sometimes
22 juries wonder about things they have not heard or wish were
23 presented or would like to have seen. Folks, all of the
24 evidence is in. There is so no further opportunity for
25 these attorneys to bring you more evidence about this case.

1 You can decide the case based upon the evidence which has
2 been presented and nothing else. If you have a question,
3 write it down. If I can answer it, I will. If I can't,
4 I'll tell you that. If you would please go to the jury
5 room and I will have the bailiff hand these in in just a
6 moment. Before you -- one other thing it's a quater to 12.
7 I do not know how long your deliberations may take and I
8 don't mean to intimate that they should be long or short,
9 but we obviously approaching the lunch hour. If over the
10 course of the next few minutes the jury wishes to have us
11 order lunch for you, if you will let us know that and we
12 can do that. If you would please go to the jury room.

13 (The jury was excused to the jury room at 11:46
14 a.m.)

15 THE COURT: Any objections or exceptions or other
16 request from the State?

17 MR. STEINBERG: No, sir, Your Honor.

18 THE COURT: From the defense?

19 MR. REDMOND: None from the defense.

20 THE COURT: Folks, if will review the exhibits it's
21 only four. It shouldn't take long the exhibits. And I
22 think you already looked at the verdict form. You may want
23 look at those again. We'll be at ease until we hear from
24 them.

25 (The jury began deliberations at 11:48 a.m.)

1 (Note from jury marked as Court's Exhibit Number 3.)

2 THE COURT: Earlier I asked the jury if they wanted
3 me to give them that charge after they finished eating,
4 they said they did not need that any longer.

5 Let me say something to those folks who are
6 interested in the outcome of this, both sides. This jury
7 has been told to them during the course of my instruction
8 that if they complied with the terms of their oath, that no
9 one can criticize them for their decision and I mean that.
10 The Court will not and cannot tolerate any kind of outburst
11 one way or the other. Either expressions of disappointment
12 or pleasure with the outcome. These folks are entitled to
13 have their verdict received in a dignified proper and
14 fashion. Anyone who believes that you can't do that, no
15 matter what the verdict may be has this opportunity to
16 leave. If you don't leave and you have that kind of
17 reaction, then law enforcement folks in the courtroom will
18 take you into custody and I will deal with you later. So
19 this is the only caution you get. If you don't believe --
20 receive that verdict no matter what it is without any kind
21 of outburst, then now would be time for you to wait
22 outside. Okay, good. Mr. Propps.

23 (The jury returned to the courtroom with a verdict
24 at 1:45 p.m.)

25 THE COURT: Madam clerk.

1 CLERK OF COURT: Mr. Foreman and members of the jury
2 have you agreed upon a verdict?

3 MR. FOREMAN: Yes, ma'am, we have.

4 THE COURT: All right. If you will please publish
5 the verdict.

6 CLERK OF COURT: The State of South Carolina County
7 of Florence in the Court of General Sessions case number
8 01-GS-21-663, the State of South Carolina vs. Jimmy Donald
9 Meggs, Jr., defendant, engaging a child for sexual
10 performance as to ^{John #1} ~~the~~ defendant. We the jury by unanimous
11 consent find the defendant, Jimmy Donald Meggs Jr., guilty,
12 August 9th 2001, Steve Hale.

13 Case number 01-GS-21-665, verdict, contributing to
14 the delinquency of a minor as to ^{John #1} ~~the~~ defendant. We the
15 jury find by unanimous consent find the defendant, Jimmy
16 Donald Meggs Jr., guilty, August 9th 2001, Steve Hale.

17 Case number 01-GS-21-664, verdict, engaging a child
18 sexual for performance as to ^{John #2} ~~the~~ defendant. We the jury by
19 unanimous consent find the defendant, Jimmy Donald Meggs
20 Jr., guilty, August 9th 2001, Steve Hale.

21 Case number 01-GS-21-666, verdict, contributing to
22 the delinquency of a minor as to ^{John #2} ~~the~~ defendant. We the
23 jury by unanimous consent find the defendant, Jimmy Donald
24 Meggs guilty, August 9th 2001, Steve Hale.

25 CLERK OF COURT: Mr. Foreman and members of the

1 jury, if these are your verdicts so you say now?

2 MR. FOREMAN: Yes, it is.

3 THE COURT: Is there any request for polling from
4 the State?

5 MR. STEINBERG: No, sir, Your Honor.

6 THE COURT: From the defense?

7 MR. REDMOND: Beg the Court's indulgence. No, Your
8 Honor.

9 THE COURT: Thank you, folks. As I told you during
10 the course of my instruction when you comply with the terms
11 of your oaths and fairly and impartially arrive at a
12 verdict based upon your finding of facts in the law as I
13 gave it to you, then you have fully discharged your
14 responsibility as jurors in this case. I thank you for
15 your service in this case. This is the only trial to be
16 held this week. So this will end your service. When you
17 leave, you will not have to come back to the courthouse.

18 Just as an additional matter, in case anyone would
19 want to talk with you about your service in this particular
20 case, you should know that you may do that if you wish and
21 you may do it only as long as you wish, but you don't have
22 to. So if someone comes up and wants to discuss with you
23 your services in this case, you may talk to them or not.
24 And you don't have to talk to them any longer than you want
25 to. If someone bothers you about that and insist on trying

1 to talk with you when you've told them either that you
2 don't want to talk any more or that you don't want to talk
3 at all, if you will contact me and you can do that through
4 the clerk's officer here in Florence County. Then I assure
5 you that I will take care of that matter. So please do not
6 feel like that you have to discuss it or that you have to
7 be annoyed by anyone about your service in this particular
8 case.

9 Thank you for your service in this case. I've
10 enjoyed working with you. I hope that your experience in
11 this court in terms of just learning more about how court
12 works. I hope it has been a good experience. Again, thank
13 you and you may leave at this time. If you need to take
14 something back to your employer, they will give that to you
15 downstairs or -- they will mail to you along with your
16 check.

17 (The jury was discharged.)

18 THE COURT: Motions from the defense at that this
19 time?

20 MR. REDMOND: May it please the Court, we would
21 renew the motion that we made during the trial for directed
22 verdict and for mistrial for the same grounds.

23 MR. STEINBERG: Your Honor, the State obviously
24 opposes.

25 THE COURT: And I will respectfully deny those

1 motions. It was a jury issue. There was sufficient
2 evidence to submit to the jury. There's sufficient
3 evidence to support the jury's verdict in this case.
4 Motions are respectfully denied. You all ready for
5 sentencing at this point?

6 MR. REDMOND: Yes, sir, Your Honor.

7 THE COURT: All right. Do you have the sentencing
8 sheets. Are they completed.

9 Mr. Redmond, I'll hear from you.

10 MR. REDMOND: Your Honor, May it please the Court,
11 obviously, Your Honor, has heard the trial and
12 circumstances in mitigation excuse me -- with Mr. Meggs.
13 He has no prior criminal record. Of course, he testified
14 and there is no prior criminal record that he has. Your
15 Honor, we would ask that you be lenient. Of course, these
16 are considered to be 85 percent offenses sentences. And
17 we'd ask that you take that into consideration. This is a
18 young man who had done and adhere to the laws and he has
19 done a lot of good. And we heard a lot of that out here.
20 He's done a lot of good.

21 I ask the Court to take that into consideration.
22 He's got his family here his mother, father, sister, and
23 brother. I think they felt that it would be best if they
24 left the courtroom. I don't see them here. And he's got
25 his grandmother and other friends and family here in the

1 courtroom to support him and they have been here through
2 the entirety of the trial.

3 Your Honor, at this point without having to belabor
4 the point, I can just say that from knowing Mr. Meggs from
5 a personal standpoint he has been the most cooperative
6 client. I'm obviously sadden to see the outcome and
7 especially for him and his family who I have come to know
8 and I can say love. And it hurts and I hurt for them at
9 this time. Obviously, Your Honor, it's tough and it's
10 tough for all. I'm sure it's tough for the witnesses for
11 the State who have had to sit through the trial as well and
12 we acknowledge that. And don't make light of that in any
13 regard.

14 We ask for mercy. We ask that he not be punished
15 for exercising his rights to a trial by jury and his
16 constitutional rights by a trial by jury. I think that
17 circumstances would hopefully mitigate and dictate a
18 sentence that would be concurrent. And so that, Your
19 Honor, justice can be served. I think that's the issue
20 that everybody will talk about here. And again, Mr. Meggs
21 has done a lot of good in his life and I just hope that,
22 Your Honor, will take those things into consideration.

23 THE COURT: Thank you, sir.

24 Mr. Cox.

25 MR. COX: No, Your Honor, Mr. Redmond spoke for us.

1 THE COURT: Anything you wish to say, sir?

2 DEFENDANT MEGGS: No, sir. I just ask the Court to
3 have mercy on me.

4 THE COURT: Thank you, sir.

5 Anything from the State?

6 MR. STEINBERG: Yes, sir, Your Honor. I know these
7 are serious charges. The boys are up here with their
8 mother. Their mother has a statement. ^{mother of victim} ~~She~~ ^{Victim 1} ~~by~~ ^{Victim 2} ~~the~~
9 mother of ~~the~~ and ~~the~~ ^{Victim 1} ^{Victim 2} ~~will~~ read a statement. I
10 will have a very brief comment after that.

11 THE COURT: All right.

12 Ms. ^{mother of victim 1 & 2}

13 MS. ^{mother of victim 1 & 2} Jimmy Meggs should receive the maximum
14 penalty as the law allows for his part. It has obviously
15 changed my children. My boy's life. This man did a
16 reversible action that can never be erased or forgotten by
17 these boys or anyone else involved in their lives. He, as
18 an individual, has no place in our society. He took
19 advantage of my innocent boys that had no idea what he was
20 doing was wrong and why he was doing it to them.

21 ^{Victim 1} himself has already been through a near death
22 experience overcoming a cancerous tumor in which there was
23 no medical hope. And now faces with another difficult
24 situation that makes it even an adult ready to quite in
25 life. He was prevailed through it. Parents never want to

1 see their children hurt, especially like this. And we can
2 protect them from most harm, but there are some things you
3 just don't see coming. But now, my boys should be getting
4 back to a new school year coming up and they shouldn't be
5 faced with dealing with what they have had to deal with
6 now.

7 I also believe that these charges should be given on
8 an individual bases because although my boys are twins and
9 have been referred to as twins throughout this trial, they
10 are not a collective person. They are two separate persons
11 who experienced two separate things, violated upon them by
12 Mr. Meggs and the sentence should reflect this.

13 It took everything they had to get on the witness
14 stand and tell their personal experiences in front of
15 complete strangers in an unfamiliar environment and
16 especially in front of Jimmy himself. They hope their
17 testimony will be a deterrent and that Jimmy Meggs never
18 hurt another child ever again. And I thank you for giving
19 me the opportunity to speak.

20 THE COURT: Thank you, ma'am.

21 MR. STEINBERG: You heard all the testimony. You
22 heard the predatory nature. You heard about the lies.
23 It's mind boggling. You heard about the threats. You
24 heard about harm he's caused these children. Consider the
25 harm he continue possibly if he's released. This man can

1 do nothing but harm to little children. I join Ms. ^{mother of victim}
2 in asking for maximum consecutive sentences. He is too
3 dangerous to ever allow on the streets of Florence in a
4 field ever again.

5 THE COURT: Thank you, sir.

6 MR. REDMOND: Your Honor, if I may and I apologize.
7 I also ask in consideration since I think for the last year
8 since he was arrested year and a half. He's been in
9 Effingham on or house arrest during that time. I think,
10 Your Honor, may recall that and I'd ask the Court to take
11 that into consideration as it relates to sentencing.
12 Record time that he was in jail.

13 THE COURT: Record time that he was in jail? Did I
14 impose that bond?

15 MR. REDMOND: I think Judge Thomas imposed the bond
16 and he was released on that bond. And I think, Your Honor,
17 heard a motion regarding him returning to work since he had
18 been on house arrest for so long. I think that might have
19 been back in November if I'm not mistaken.

20 CLERK OF COURT: January 10th 2000?

21 MR. REDMOND: That's correct.

22 THE COURT: Was anything in Judge Thomas' order
23 about house arrest or whether or not credit was
24 appropriate?

25 MR. REDMOND: I don't recall that, Your Honor, I

1 would have to look. I got the documents in my briefcase.
2 I don't recall whether or not that was indicated at that
3 time to give him credit.

4 MR. STEINBERG: Your Honor, from my recollection in
5 the clerk's file says -- I don't think it was even raised.

6 MR. REDMOND: I'm not sure I don't recall.

7 CLERK OF COURT: Eighty-four days.

8 THE COURT: All right. Well, the most difficult
9 thing any judge has to do is determine what sentence is
10 appropriate. If it were as simple as agreeing with one
11 side or the other, then there be no difficulty at all in
12 determining what sentence is appropriate, but that's not
13 what the court is about. I have to determine what is
14 appropriate under the circumstances and take into
15 consideration of the crime, the acts, the harm done, the
16 seriousness of the crimes and circumstances of the
17 defendant and whether that will include a record or lack of
18 a record. But I think all that is required to be
19 considered and I'm not permitted -- I don't simply like to
20 react in away that would indicate that my sentence is
21 imposed by virtue of any passion or prejudice or sympathy
22 one way or the other. I hope folks will receive it in that
23 fashion.

24 Indictment 2001-663 engaging a child for sexual
25 performance, the sentence is the defendant be confined to

1 the South Carolina Department of Corrections for a period
2 of 20 years. Require that he receive sexual offender
3 treatment while there and has credit for the 84 days that
4 he was incarcerated before he made bond.

5 On indictment 2001-664, the other engaging a child
6 in sexual performance, the sentence on that indictment is
7 the defendant be committed to the South Carolina Department
8 of Corrections for a period of 20 years. I'm going to
9 suspend that with no active time and place him on probation
10 for five years. That sentence will be consecutive to the
11 first 20 year sentence. I know on the first sentence he
12 will serve, I suspect, almost 20 years. So he will be 40
13 or so when he gets out hopefully. If it's possible to
14 rehabilitate at that time or have the opportunity to prove
15 that he can live in society.

16 If he can't, then he'll have another 20 years to do.
17 And as I'm sure he's aware and we all are. He's also
18 subject to the sexual predator statute, which means the
19 State that upon completion of -- I'm not sure whether it
20 will be the first sentence or the five years probation. To
21 move have him not incarcerated, but confined for treatment
22 for that condition.

23 As to the other two indictments 2001-666, let me
24 make sure these are correct. Both of these are marked 666
25 on the sentence sheet. Would it make any difference which

1 one would it be?

2 MR. STEINBERG: No, sir.

3 THE COURT: I changed it to 665. On both of these
4 666 and 665, sentence of the Court is that you, Jimmy
5 Meggs, three years on each of those two charges concurrent
6 with the first sentence and likewise credit for time that
7 he served. Mr. Meggs, it's really nothing else I can say.
8 I think everything that needs to be said has been said.
9 Good luck to you, sir.

10 MR. STEINBERG: Your Honor, may I ask one question?

11 THE COURT: Sure.

12 MR. STEINBERG: Make sure I have the sentence
13 correct. You said suspended upon probation. How many
14 years probation?

15 THE COURT: Five years probation.

16 MR. STEINBERG: The State would respectfully ask
17 that the condition of probation that he have no contact
18 with children in any form of education or otherwise and
19 that will be on the probation sheet.

20 THE COURT: You wouldn't have any objection to that
21 would you, Mr. Redmond?

22 MR. REDMOND: No objection.

23 THE COURT: I'll add that as a condition.

24 MR. STEINBERG: We thank you very much, sir.

25 END OF REQUESTED TRANSCRIPT

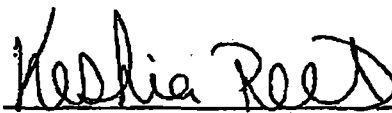
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed pages, numbered 1 through 678, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing.

In witness whereof, I have hereunto affixed my signature this 19th day of February 2003.



Keshia Reed, Court Reporter

My Commission Expires: 6-5-2010



Law Offices of Desa Ballard

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Desa Ballard
 Certified Mediator
 also admitted in D.C.

P. Christopher Smith, Jr.

803.796.9299 telephone
 803.796.1066 facsimile

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226 State Street
 West Columbia, SC 29169

October 22, 2008

Via U.S. Mail Only
 Wanda H. Carter, Esquire
 South Carolina Office of Appellate Defense
 1205 Pendleton Street, Suite 306
 Columbia, South Carolina 29201

Re: *Jimmy D. Meggs, Jr.*

Dear Ms. Carter:

Per our phone conversation earlier this week, enclosed are the following documents and Exhibit Nos. 1-4 from the PCR Hearing that you requested for inclusion in the Appendix that you are submitting on Mr. Meggs' behalf in the appeal:

- Exhibit 1 (PCR Hearing) – CV of Thomas V. Martin, M.D.
- CD containing Exhibit 2 (PCR Hearing) – Mr. Meggs' Medical Records from SCDC
- Exhibit 3 (PCR Hearing) – Brief Forensic Psychiatric Summary (Dr. Martin)
- Exhibit 4 (PCR Hearing) – Report on Polygraph Examination (April 10, 2000)
- Copies of Indictments 663-666

You also requested a copy of pages 12 through 14 of the Transcript of Record from Mr. Meggs' criminal proceedings on August 6-9, 2001. Unfortunately we do not have those particular pages. They are missing from our copy of the transcript. The court reporter was Keshia Reed if that helps, but I don't know how long transcripts are kept on file, especially since this one is over 7 years old.

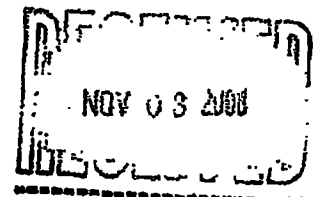
As you and I discussed, in order for your office to send us copies of all correspondence and pleadings in the appeal you require written authorization from Mr. Meggs. As soon as I receive his signed authorization I will forward it to you.

With warm personal regards, I am,

Sincerely yours,

Stacy Houdeshell
 Paralegal
stacy@desaballard.com

c: Jimmy D. Meggs, Jr.



680

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

JIMMY D. MEGGS, JR.,
Inmate # 277400,)

v.)

STATE OF SOUTH CAROLINA.)

IN THE COURT OF COMMON PLEAS
Case No.: 2006-CP-21-553APPLICATION FOR
POST-CONVICTION RELIEF

1. Place of Detention: Kirkland Correctional Facility, R&E.
2. The sentence was imposed upon Mr. Meggs by the Court of General Sessions for the County of Florence in the State of South Carolina on August 9, 2001.
3. There were no co-defendants.
4. The indictment numbers upon which and for which sentence was imposed are:
 - a. 2001-GS-21-663;
 - b. 2001-GS-21-664;
 - c. 2001-GS-21-665;
 - d. 2001-GS-21-666.
5. Sentencing was imposed upon Mr. Meggs on August 9, 2001 for all indictments; sentencing as follows:
 - a. Under indictment 2001-GS-21-663, Mr. Meggs was sentenced to twenty years;
 - b. Under indictment 2001-GS-21-664, Mr. Meggs was sentenced to twenty years, to be served consecutively;
 - c. Under indictment 2001-GS-21-665, Mr. Meggs was sentenced to three years, to be served concurrently; and
 - d. Under indictment 2001-GS-21-666, Mr. Meggs was sentenced to three years, to be served concurrently.
6. A finding of guilty was made after a plea of not guilty.
7. Mr. Meggs appealed from the judgment of conviction and the imposition of sentence.
8. a. Mr. Meggs appealed to the Court of Appeals for the State of South Carolina and the Court found that any error in the evidentiary rulings was either not properly preserved by Mr. Meggs' counsel or was harmless, and/or that the required foundation had not been laid. *See, State v. Meggs*, Op. No. 2002-UP-395 (S.C. Ct. App June 4, 2002).

CERTIFIED: A TRUE COPY

Connie R. Beel
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

b. Mr. Meggs filed a Writ of Certiorari to the Supreme Court for the State of South Carolina on November 22, 2004 and the Writ was denied in or near January 2006.

c. Mr. Meggs submitted a grievance to the Administrative Law Court on or near September 2005.

9. Item 9 on Form 5 is not applicable.

10. a. Upon information and belief, Mr. Meggs is being unlawfully detained because his trial counsels' failure to preserve for appeal several issues, including but not limited to, both the argument that evidentiary rulings as to the testimony of Mr. Meggs and his father on hearsay grounds were erroneous and that the rulings that portions of testimony of a State's witness pertaining to events/activities unrelated to the charges be admitted, are indicative of ineffective assistance of counsel, which ineffectiveness clearly prejudiced Mr. Meggs' case.

b. Trial counsel failed to lay the proper foundation for testimony of key defense witnesses, which failure is indicative of ineffective assistance of counsel and which ineffectiveness clearly prejudiced Mr. Meggs' case; and

c. Trial counsel failed to proffer witnesses for the defense that may have provided crucial and/or beneficial testimonial evidence to Mr. Meggs' case and such failure is indicative of ineffective assistance of counsel and which ineffectiveness clearly prejudiced Mr. Meggs' case.

d. Trial counsel failed to raise defense as to possible errors in warrants and/or indictments.

11. Upon information and belief, Mr. Meggs is being unlawfully detained because he was never deemed competent to stand trial pursuant to S.C. Code §44-23-410, et seq., per the Report of Findings signed by Pamela M. Crawford, M.D., Director WSHPI-Forensic Division. Rather, it was recommended by the hospital staff that Mr. Meggs be scheduled for inpatient admission at William S. Hall Psychiatric Institute prior to trial.

12. In respect to this conviction, and except as to the grievance referenced in Paragraph 8 herein, Mr. Meggs has not filed any petition in a State Court under South Carolina Law; any petition in State or Federal Courts for habeas corpus or post-convictions relief; any petition in the United States Supreme Court for certiorari; or any other petitions, motions, or applications in this or any other Court other than those otherwise identified herein.

13. Item 13 on Form 5 is not applicable.

14/15. Mr. Meggs' appeal presented the question whether the trial court committed reversible error by allowing testimony about unrelated, alleged bad acts and by not allowing certain testimony by key defense witnesses.

16. Ineffective assistance of counsel could not have been presented on direct appeal to the Court of Appeals or the Supreme Court because it was not clearly evident at the time

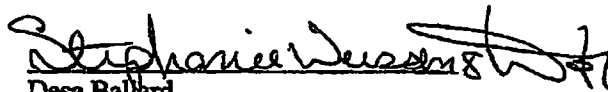
of appeal that Mr. Meggs' counsel had grievously erred; and, it is the Court's ruling that brings the errors to light.

17/18. Mr. Meggs was initially represented by both James McBratney of 300 Rainbow Drive in Florence, South Carolina and Kernard Redmond, of 730 Coventry Lane in Florence, South Carolina; however, Mr. McBratney was terminated before the preliminary hearing, during which Mr. Meggs was represented by Mr. Redmond. Mr. James Cox of 130 South Irby Street in Florence, South Carolina, and Mr. Redmond both represented Mr. Meggs during the course of trial and sentencing; and, Mr. Meggs was represented by Jack Swerling, located at 1720 Main Street in Columbia, South Carolina during his appeal.

19. Mr. Meggs requests the convictions be vacated and that he be granted a new trial on the merits as to all allegations for which he was sentenced.

20. Mr. Meggs is not under sentence from any other court.

Respectfully submitted,



Desa Ballard

Stephanie Weissenstein

Law Offices of Desa Ballard

226 State Street

West Columbia, South Carolina 29169

Telephone: 803-796-9299

Facsimile 803-796-1066

E-mail: desab@desaballard.com

ATTORNEYS FOR APPLICANT

April 3, 2006

50

2006 APR -4 A D 34

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)
FLORENCE COUNTY SCJIMMY D. MEGGS, JR.,
Inmate # 277400,

VERIFICATION

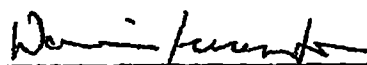
v.

STATE OF SOUTH CAROLINA.

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


Jimmy D. Meggs, Jr.

SWORN to and subscribed before me
this 23rd day of March, 2006.

 (L.S.)
Notary Public for South Carolina

My commission expires: My Commission Expires January 3, 2013

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Jimmy D. Meggs, Jr., SCDC No. 277400

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2006-CP-21-553

RETURN

The Respondent, making its Return to the application for Post-Conviction Relief filed April 4, 2006 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 Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three (3) years for each charge of contributing to the delinquency of a minor and twenty (20) years for one charge of engaging a child for sexual performance. On the remaining

charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty (20) year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meges, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

Attached and incorporated by reference are the records of the Florence County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the transcript of the Applicant's trial, and the final briefs from the Applicant's direct appeal. The opinion of the South Carolina Court of Appeals, the order denying the petition for rehearing, the order of the South Carolina Supreme Court denying the Applicant's petition for a writ of certiorari, and the remittitur from the Applicant's direct appeal are contained in the clerk of court's records.

II.

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

- I. Ineffective assistance of trial counsel in that counsel:
 - a. Failed to preserve several issues, including hearsay objections regarding the testimony of the Applicant and his father,
 - b. Failed to lay a proper foundation for the testimony of key defense witnesses,

- c. Failed to proffer witnesses for the defense, and
 - d. Failed to raise defenses related to errors in the warrants and indictments.
2. The Applicant was never deemed competent to stand trial.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688).

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 689). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits 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, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Respondent therefore requests this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003) on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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By: 
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March 28, 2007.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF COMMON PLEAS

JIMMY MEGGS)
277400)
PETITIONER,)

vs.)

STATE OF SOUTH CAROLINA)
RESPONDENT)

TRANSCRIPT OF RECORD
06-CP-21-553
December 11, 2007
Florence, South Carolina

BEFORE:

THOMAS A. RUSSO, JUDGE.

APPEARANCES:

DESSA BALLARD, ESQ.
Attorney for the Petitioner

JULIE M. THAMES, ESQ.
Attorney for the Respondent

FRANCES BAKIS-RAY, RPR
Official Court Reporter

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EXHIBITS

PETITIONER'S:

No.	Description	LD./EVD.
1	CV of Thomas Martin	27/27
2	Records from SCDC	31/31
3	Psychiatric summary	40/40
4	Polygraph report	51/51

1 MS. THAMES: Your Honor, this is in the
2 matter of Jimmy Meggs versus the State. He is
3 docketed at 2006-CP-21-553. Mr. Meggs was indicted
4 sexual performance and two counts of contributing to
5 the delinquency of a minor. He was represented by
6 Kernard Redmond and Jim Cox. He did have a jury
7 trial August 6th through the 9th, 2001. He was
8 found guilty as indicted. Judge Brogdon sentenced
9 him to three years on each of the contributing to
10 delinquency charges, 20 years on each of the
11 engaging a child for sexual performance. One of
12 those was consecutive and on the consecutive there's
13 20 years and then a consecutive 20 which was
14 suspended with five years probation. And Ms. Dessa
15 Ballard is here today on Mr. Meggs' behalf and I'll
16 turn it over to her at this time.

17 THE COURT: If I may, if y'all will step
18 up here real quick.

19 (WHEREUPON, counsel approached the Bench for an
20 off-the-record discussion.)

21 (Ms. Ballard confers with her client.)

22 MS. BALLARD: Your Honor, the matter we
23 discussed at the Bench, we have no objection to Your
24 Honor presiding over this matter.

25 THE COURT: Well, Ms. Ballard, I'll be

1 happy to hear from you then, ma'am.

2 MS. BALLARD: Thank you very much, Your
3 Honor. We are proceeding today on our amended
4 application for post-conviction relief which was
5 filed November 28th, 2007. We have handed up a copy
6 of the trial transcript from Mr. Meggs' trial in
7 2001. I believe you have a copy of that before you.

8 THE COURT: Yes, ma'am.

9 MS. BALLARD: We are proceeding
10 essentially on two issues: One, that Mr. Meggs'
11 trial counsel were ineffective in failing to
12 investigate and look into the issue of mental
13 illness at the time of the crime. We will be
14 presenting expert testimony that Mr. Meggs lacked
15 capacity to conform his conduct at the time of the
16 offenses and that he should have been evaluated
17 prior to trial. Additionally, that the verdict of
18 guilty but mentally ill should have been requested
19 at the trial. Lastly, Your Honor, the -- I'm sorry,
20 thirdly, Your Honor, we are requesting a new trial
21 on the basis of ineffectiveness of counsel based on
22 trial counsels' failure to establish -- to move for
23 directed verdict on the failure by the State to
24 prove an essential element of the crime, that being
25 a sexual performance as defined by statute. The

1 last point, Your Honor, is failure to request a
2 charge on a lesser included offense. Before I call
3 my first witness if I could, Your Honor, I wanted to
4 hand up a few statutes so you could be aware of what
5 I'm referring to, Your Honor. Mr. Meggs was
6 convicted of contributing to the delinquency of a
7 minor which we are not challenging other than under
8 the mental illness issue.

9 THE COURT: Yes, ma'am.

10 MS. BALLARD: He was convicted of engaging
11 a child through sexual performance, two counts. And
12 if you look at subsection A, Your Honor, it is
13 unlawful for any person to employ, authorize, or
14 induce a child younger than 18 years of age to
15 engage in a sexual performance. If you turn to the
16 definition section of that statute which is
17 beginning at the third page, sexual performance
18 means any performance that includes sexual conduct
19 by a child younger than 18 years of age. But a
20 performance, I'm specifically referring to 16-3-800
21 Subsection C, says that a performance means any
22 play, motion picture, photograph, dance, or other
23 visual representation that is exhibited before an
24 audience. It is our contention, Your Honor, the
25 review of the transcript will reflect that there was

1 no even attempt to prove that the conduct that
2 occurred in the presence of an audience, and
3 therefore, the charge for which Mr. Meggs was
4 convicted under 16-3-810 should have been subjected
5 to a directed verdict of not guilty for failure of
6 the State to prove that case.

7 The second allegation, Your Honor, related
8 to that is that counsel should have requested a
9 charge on a lesser included offense, that being
10 16-3-820, which is Subsection A, which makes it a
11 crime to produce, direct, or promote a performance
12 that includes sexual conduct by a child younger than
13 18 years of age. That still of course has the
14 requirement of a performance in it, but it's a less
15 direct involvement. If you look at the language,
16 produce, direct, or promote is different than
17 employ, authorize, or induce. And there's a
18 significant difference in the sentences, Your Honor.
19 Under 16-3-810, the maximum sentence is that for CSC
20 second, which is 20 years. The maximum sentence
21 under 16-3-820 is for CSC third, which is ten years.
22 And we believe it was ineffective of counsel not to
23 either move for a directed verdict on the 810 charge
24 or request a jury instruction and a verdict form
25 that would have permitted the jury to return a

PW - E. MEGGS - DIRECT

1 verdict under 16-3-820 for the lesser charge.

2 The last point, Your Honor, I've already
3 mentioned, relates to the fact that Mr. Meggs was
4 suffering from a mental illness at the time of the
5 alleged offenses. I have a number of witnesses,
6 some of which we probably will not call, but if I
7 would -- if I could I'd like to proceed with calling
8 my first witness.

9 THE COURT: Yes, ma'am.

10 MS. BALLARD: I call Emily Meggs, please.

11 THE COURT: Ms. Meggs, if you would please
12 come around to be sworn.

13 THE DEPUTY CLERK OF COURT: Please place
14 your left hand on the Bible, raise your right hand.

15 WHEREUPON,

16 EMILY MEGGS,
17 having been duly sworn by the Deputy Clerk of Court,
18 testified as follows:

19 THE DEPUTY CLERK OF COURT: Please be
20 seated. Then state your name for the record.

21 THE WITNESS: Emily Meggs.

22 DIRECT EXAMINATION

23 BY MS. BALLARD:

24 Q Ms. Meggs, are you the mother of Jimmy
25 Meggs, Jr., seated at counsel table with me?

PW - E. MEGGS - DIRECT

- 1 A Yes, ma'am.
- 2 Q Was Jimmy living with you at the time of
- 3 his arrest?
- 4 A Yes, ma'am.
- 5 Q Were you -- did you undertake to retain
- 6 counsel for him?
- 7 A Could you repeat that?
- 8 Q Did you hire a lawyer to represent him?
- 9 A Yes, ma'am.
- 10 Q Who did you first hire?
- 11 A John Jepertinger.
- 12 Q And approximately how long did
- 13 Mr. Jepertinger remain employed as Jimmy's lawyer?
- 14 Was it a few months?
- 15 A Yes, ma'am.
- 16 Q Okay. And why did he not remain Jimmy's
- 17 lawyer, do you remember?
- 18 A He was -- I think he was to take a job
- 19 with the prosec—
- 20 Q The Solicitor's Office?
- 21 A Solicitor's Office.
- 22 Q Okay. So who did you hire after
- 23 Mr. Jepertinger was Jimmy's lawyer?
- 24 A Mr. McBratney.
- 25 Q And how long did Mr. McBratney remain as

PW - E. MEGGS - DIRECT

1 Jimmy's lawyer? Was it longer?
 2 A It was a little longer.
 3 Q Okay. Did Mr. McBratney continue as
 4 Jimmy's lawyer throughout the trial?
 5 A No, ma'am.
 6 Q Did you hire a third and other lawyers for
 7 Jimmy?
 8 A Yes, ma'am.
 9 Q Who did you end up hiring?
 10 A Kernard Redmond.
 11 Q All right. And after you hired
 12 Mr. Redmond and Mr. McBratney got out, did you hire
 13 yet a fourth lawyer?
 14 A Yes, ma'am.
 15 Q And who was that?
 16 A Jim Cox.
 17 Q Did Mr. Redmond and Mr. Cox represent
 18 Jimmy at the trial of the case?
 19 A Yes, ma'am.
 20 Q All right. Did you and other members of
 21 your family have occasion to meet with Mr. Redmond
 22 and Mr. Cox in preparation for the trial?
 23 A Yes, ma'am.
 24 Q Approximately how many times did you meet
 25 with them?

PW - E. MEGGS - DIRECT

1 A I'm not sure.

2 Q Was it more than twice?

3 A It was more than twice.

4 Q Okay. In the course of those meetings
5 that you had with Mr. Redmond and Mr. Cox, did you
6 raise any concerns about Jimmy's mental health?

7 A Yes, ma'am.

8 Q What did you tell Mr. Redmond and Mr. Cox?

9 A We told them, or I told them, that I was
10 concerned about Jimmy because I felt like he had
11 problems.

12 Q Did you tell him what you meant by
13 problems?

14 A Yes, mental problems. And I told them
15 about his granddaddy had been in State Hospital most
16 of his adult life and that I, you know, I thought
17 that he needed to be evaluated before, you know,
18 before he went to court.

19 Q All right. And when you say Jimmy's
20 grandfather, what was Jimmy's grandfather's name?

21 A BK (ph) Meggs.

22 Q And --

23 A Senior.

24 Q Do you know what Mr. Meggs, Sr.'s
25 diagnosis was that resulted in him being in the

PW - E. MEGGS - DIRECT

1 State Hospital for his adult life?

2 A I'm not really sure.

3 Q Okay. So if the records reflect it was
4 schizophrenia, would you agree with that?

5 A Right. Well, I can tell you what he did.

6 Q Okay.

7 A To -- he shot himself.

8 Q Okay. And he -- did he stay there until
9 he died?

10 A No, ma'am.

11 Q He got out -- how long before he died did
12 he get out?

13 A I can only guess, probably about five
14 years. Something like that.

15 Q What did Mr. Redmond and Mr. Cox say in
16 response to your request to have Jimmy evaluated?

17 A They did -- you know, they did not take it
18 serious. They did not think it was anything that we
19 needed to pursue.

20 Q Okay. To your knowledge was Jimmy
21 evaluated prior to trial for mental health?

22 A No, ma'am.

23 Q All right. After Jimmy was convicted and
24 went to jail do you understand that he's had some
25 psychiatric diagnoses found?

PW - E. MEGGS - DIRECT

1 A Yes, ma'am.

2 Q And what do you understand Jimmy has
3 suffered from?

4 A He -- schizophrenic.

5 Q And from what do you -- what is the source
6 of your information?

7 A It was like you said. When he was in the
8 institution and they evaluated him, you know, they
9 have to evaluate you before they move you on into
10 the system and he stayed a few years in that
11 particular part of the prison.

12 Q Was that Gilliam?

13 A Yes.

14 Q That's the psychiatric facility as far as
15 you know?

16 A Yes, ma'am. Yes, ma'am.

17 Q Okay. How is Jimmy doing now?

18 A (There was no response.)

19 Q Have you seen him recently?

20 A Yes, ma'am.

21 Q How does he seem to you?

22 A He seems to be better. He seems to be
23 doing better with the medication they have him on
24 there.

25 Q Do you know what medication they have him

PW - E. MEGGS - CROSS

1 on?

2 A I can't think of the name of it.

3 Q That's fine. Please answer any questions
4 that Ms. Thames may have, okay?

5 A Thank you.

6 CROSS - EXAMINATION

7 BY MS. THAMES:

8 Q Ms. Meggs, did your son complete high
9 school?

10 A Yes, ma'am.

11 Q Did he have a driver's license at the time
12 that these offenses occurred?

13 A Yes, ma'am.

14 Q Did he have a job?

15 A Yes, ma'am.

16 Q Do you know how long he had that job?

17 A I'm not really sure.

18 Q Do you remember where it was that he
19 worked?

20 A With CSX Railroad.

21 Q Do you know what his position was there?

22 A Well, he was a -- I'm sorry -- I'm
23 trying -- I'm nervous.

24 Q That's okay, no problem. You said that
25 you understood him to be diagnosed with

PW - E. MEGGS - CROSS

1 schizophrenia but you didn't know the source of
2 that. Did you ever see any documentation that said
3 he was diagnosed with that?

4 A Yes, ma'am.

5 Q Do you know where -- what that
6 documentation was?

7 A It was when they -- I seen the documents
8 when they evaluated him. I'm trying to think of
9 name of the place because this was -- they finally
10 diagnosed him. They finally took him from Kirkland
11 and they -- it's a place connected with the prison.
12 They evaluate you there and I seen the paperwork.

13 Q Do you know when that evaluation was done?
14 You said Kirkland so it was after he
15 was incarcerated; is that correct?

16 A Yes, ma'am.

17 Q Okay. Then just back to his schooling,
18 did he also go to college at all after high school?

19 A Yes, ma'am. He went -- well, I say
20 Florence-Darlington Tech.

21 Q Okay, thank you. That's all I have,
22 ma'am.

23 MS. BALLARD: I don't have any redirect,
24 Your Honor.

25 THE COURT: Thank you, Ms. Meggs. You may

PW - J. MEGGS - DIRECT

1 step down.

2 MS. BALLARD: You Honor, we call Jimmy
3 Meggs, Senior.

4 THE COURT: Mr. Meggs, if you will please
5 come around to be sworn, sir.

6 WHEREUPON,

7 JIMMY MEGGS, SR.,
8 having been duly sworn by the Deputy Clerk of Court,
9 testified as follows:

10 THE DEPUTY CLERK OF COURT: Put your left
11 hand on the Bible and raise your right.

12 WHEREUPON,

13 JIMMY D. MEGGS, SR.,
14 having been duly sworn by the Deputy Clerk of Court,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BALLARD:

18 Q Would you state your name, Mr. Meggs?
19 What is your name?

20 A Jimmy D. Meggs, Senior.

21 Q Are you the father of the applicant Jimmy
22 Meggs, Jr.?

23 A Yes, ma'am.

24 Q After Jimmy was arrested did you have
25 occasion to speak with the lawyers who were

PW - J. MEGGS - DIRECT

1 representing him?

2 A Yes, ma'am.

3 Q What, if anything, did you tell those
4 lawyers about Jimmy's mental health?

5 A I don't remember which one it was but I
6 told them that he was a compulsive liar, that you
7 couldn't believe nothing that he said because he
8 made up stuff that he's a doctor, he was a lawyer.
9 People come to the house and I got kind of upset and
10 run the Jehovah witness off because he was coming
11 over there to see Jimmy and said that he had told
12 him that he was, I believe, a lawyer at that time.
13 And it was something all the time like that. We
14 both worked at the same place and he told all kind
15 of stuff that wasn't true to have to tell some of
16 the people if you want to know anything just come
17 ask me and don't ask him because I thought the boy
18 was lying, you know. I mean, it was after he got up
19 out of high school and you just -- you couldn't
20 believe nothing he said. He would fantasize this
21 and that and from one thing to the other.

22 Q When Ms. Thames asked your wife about
23 where Jimmy was working, where was he working right
24 before he was arrested?

25 A He was working -- I got him a job out

PW - J. MEGGS - DIRECT

1 there at the railroad with me, CSX.

2 Q And what was -- what did you do for the
3 railroad?

4 A I was a foreman or conductor.

5 Q And what job did you get for Jimmy?

6 A I got him the -- hired on the same place.

7 I believe if I remember right I was in Georgetown at
8 Andrews and got the road foreman -- excuse me, I'm
9 sorry. I got the trainman to hire him.

10 Q How did Jimmy do as an employee at the
11 railroad?

12 A He done okay, but you just couldn't
13 believe nothing he would tell you. I hate to, you
14 know, say that.

15 Q I understand. And do you remember telling
16 any of his lawyers about your concern?

17 A We were over -- we were over at Mr. Cox's
18 office and he had the book that Marion Brown that
19 done all the investigation, and he had a marker in
20 it and said he's already went all the way about
21 through it. And I asked Mr. Cox something about was
22 he in trouble about the way Jimmy all the time
23 telling lies, and he said he's not on -- he's not on
24 trial for lying. He said you got to know how to
25 handle, like somebody hollering fire and you go

PW - J. MEGGS - DIRECT

1 there and it's a fire or something in an ash tray.
2 He said all we got to do is dot all our I's and
3 cross all our T's, and if anybody fails it will be
4 Jimmy to fail because he wouldn't fail but for Jimmy
5 to keep his eye on the ball.

6 Q You mentioned Marion Brown. Who was
7 Marion Brown?

8 A Marion Brown was a private investigator
9 that the first lawyer that I hired he got.

10 Q Mr. Jupertinger?

11 A Yes, ma'am.

12 Q All right. Did Mr. Marion Brown and his
13 son Gerald Brown assist in the investigation?

14 A I think they done it all. I'm not for
15 sure. I think so.

16 Q Okay. Do you recognize this box as
17 Mr. Marion Brown's file from his investigation?

18 A Yes, ma'am.

19 Q Okay. Do you remember providing a copy of
20 Mr. Brown's file to Mr. Cox and/or Mr. Redmond?

21 A Yes, ma'am. What happened there I had to
22 get rid of Tam because he wouldn't show up, and I
23 went and got Tam's book that Marion give to him and
24 carried it to Mr. Cox and that put Kernard having
25 one and ---

PW - J. MEGGS - DIRECT

1 Q Jim?

2 A Yeah, Jim, the other lawyer. Yeah.

3 Q Okay, all right. Have you had occasion to
4 see Jimmy recently?

5 A Oh, yes, ma'am.

6 Q How is he doing now?

7 A He's doing real good. He don't come up
8 with all these -- well, it's been in the last, I
9 don't know, I say six months. He don't come up with
10 all this kind of stuff, you know, now like he did.
11 When we was in Gilton (ph) people would come up to
12 us and tell us he had said this and that and you
13 just had to drop your head and back off.

14 Q Okay. Thank you, Mr. Meggs. Answer any
15 questions Ms. Thames may have.

16 MS. THAMES: I have no questions for
17 Mr. Meggs.

18 THE COURT: All right. Thank you,
19 Mr. Meggs. You may step down now, sir.

20 THE WITNESS: Thank you.

21 THE COURT: You're welcome.

22 MS. BALLARD: Your Honor, we call Marion
23 Brown.

24 THE DEPUTY CLERK OF COURT: Please place
25 your left hand on the Bible, raise your right hand.

PW - M. BROWN - DIRECT

1 WHEREUPON,

2 MARION BROWN,

3 having been duly sworn by the Deputy Clerk of Court,

4 testified as follows:

5 THE DEPUTY CLERK OF COURT: Thank you.

6 Please be seated and state your name for the record.

7 THE WITNESS: Marion Brown.

8 DIRECT EXAMINATION

9 BY MS. BALLARD:

10 Q Mr. Brown, what is your profession?

11 A I'm owner/operator of a private

12 investigation firm here in Florence.

13 Q How long have you been a private

14 investigator?

15 A 37 years.

16 Q Were you retained in the Jimmy Meggs case

17 to assist the lawyers in his defense?

18 A I was.

19 Q And what were you asked to do?

20 A Do the background on the work of what they

21 accused Jimmy of.

22 Q What kind of investigation did you

23 undertake?

24 A We went out and started interviewing

25 people that the kids that went to the paintball with

PW - M. BROWN - DIRECT

1 him and started talking to the parents and stuff.

2 Didn't want to talk to the kids because they was

3 under age. Talked with the families.

4 Q Okay. How many hours approximately did
5 you — did you spend in your investigation?

6 A I put it like this here. You got a docket
7 sheet in there from January of 2000 to March of
8 2001. I think it was the last entry you found on
9 the docket sheet.

10 Q Is this your file, Mr. Brown?

11 A Yes, ma'am.

12 Q Is this a file that you compiled while you
13 were working assisting the defense attorneys?

14 A Yes, ma'am.

15 Q In Mr. Meggs's case?

16 A Yes, ma'am.

17 Q Do you know whether Mr. Redmond and
18 Mr. Cox were provided a copy of these materials?

19 A All I can say is that I give Mr. Meggs
20 stuff like he testified a while ago. He come to my
21 office and signed off on a list or to, you know,
22 give to carry to Jim.

23 Q Okay. Were you involved in the polygraph
24 that Jimmy took?

25 A No, ma'am.

PW - M. BROWN - DIRECT

1 Q Okay. After Mr. Redmond and Mr. Cox were
2 hired, what if anything, did they ask you to do to
3 assist in preparing for trial?

4 A Well, going to have to go back a little
5 bit. Jeperfinger had it first. When John started
6 to go to the Solicitor's Office, he then got with
7 Kernard and we carried everything over to Kernard
8 and that's when Kernard got involved in it because
9 John had to transfer some of the money that
10 Mr. Meggs would give him on a payment to Kernard.
11 We dealt with Kernard off and on because him and my
12 son did some of the investigation. They went out
13 and talked to some people. And my docket sheet
14 shows I've talked to Jim Cox one time.

15 Q Okay.

16 A And that was at Kernard's office.

17 Q All right. Did you assist in preparing
18 for trial at all?

19 A Didn't hear nothing about trial, nothing
20 after March first, until Jimmy had done tried and
21 convicted.

22 Q Okay. Please answer any questions
23 Ms. Thames might have.

24 A Okay.

25 MS. THAMES: I have no questions for

PW - M. STRICKLAND - DIRECT

1 Mr. Brown.

2 THE COURT: All right. Thank you,

3 Mr. Brown.

4 THE WITNESS: Yes, sir.

5 THE COURT: Good to see you, sir.

6 MS. BALLARD: I take it you all know each
7 other.

8 THE WITNESS: We go way back.

9 THE COURT: You don't live in Florence
10 terribly long without knowing Marion. He makes the
11 best barbecue you'll ever want to eat.

12 MS. BALLARD: Your Honor, we call Mary
13 Strickland to the stand.

14 THE COURT: Ms. Strickland, if you'll
15 please come around.

16 THE DEPUTY CLERK OF COURT: Please step up
17 there to the stand. Please place your left hand on
18 the Bible, raise your right hand.

19 WHEREUPON,

20 MARY STRICKLAND,
21 having been duly sworn by the Deputy Clerk of Court,
22 testified as follows:

23 THE DEPUTY CLERK OF COURT: Please be
24 seated, then state your name for the record.

25 DIRECT EXAMINATION

PW - M. STRICKLAND - DIRECT

1 BY MS. BALLARD:

2 Q What is your name?

3 A Mary Strickland.

4 Q Ms. Strickland, are you related to Jimmy
5 Meggs, Jr.?

6 A Yes, ma'am, I am.

7 Q How are you related to him?

8 A I'm his aunt.

9 Q His aunt through which side of his family?

10 A His daddy.

11 Q Okay. Have you known him since childhood?

12 A Yes, ma'am.

13 Q Once Jimmy got arrested did you work with
14 the family to assist in preparing his defense for
15 trial?

16 A I went about every time that they went.

17 Q To where?

18 A To the lawyer's office.

19 Q To the lawyer's office?

20 A Uh-huh.

21 Q Do you remember meeting with Mr. Redmond
22 and Mr. Cox?

23 A Yes, ma'am.

24 Q Did you have any conversations with them?

25 A Yes, ma'am.

PW - M. STRICKLAND - CROSS

1 Q What, if anything, did you tell them about
2 your concerns about Jimmy's mental health?

3 A Well -- I'm -- every time I went I went
4 with my mother and we both told them since my daddy
5 was there we -- my mother noticed that Jimmy wasn't
6 right. So she begged Mr. Kernard and Mr. Cox to
7 have him checked. We even told them what doctors
8 that my daddy seen at Pee Dee Mental Health.

9 Q And what did they tell you?

10 A From what I understood they were going to
11 check it.

12 Q Do you know whether Jimmy was checked
13 before trial?

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

15 Q Okay. Thank you, Ms. Strickland. Answer
16 any questions Ms. Thames has.

17 CROSS - EXAMINATION

18 BY MS. THAMES:

19 Q Ms. Strickland, do you have any background
20 in evaluating people for competency and mental
21 health issues?

22 A No, ma'am, just that my father was there
23 for 15 years and we deal with him.

24 Q Thank you. That's all I have.

25 MS. BALLARD: I have no redirect, Your

PW - T. MARTIN - DIRECT

1 Honor.

2 THE COURT: Thank you, Ms. Strickland.

3 You may step down, ma'am.

4 MS. BALLARD: Your Honor, we call Thomas
5 Martin, MD.

6 THE COURT: All right. Doctor Martin, if
7 you'd come around, sir. It's good to see you again.

8 THE WITNESS: Same here, Your Honor.

9 MS. BALLARD: I understand y'all saw each
10 other a week ago.

11 THE DEPUTY CLERK OF COURT: Please place
12 your left hand on the Bible and raise your right
13 hand.

14 WHEREUPON,

15 THOMAS VICTOR MARTIN,
16 having been duly sworn by the Deputy Clerk of Court,
17 testified as follows:

18 THE DEPUTY CLERK OF COURT: Please be
19 seated, then state your name for the record.

20 THE WITNESS: My name is Thomas Victor
21 Martin.

22 **DIRECT EXAMINATION**

23 **BY MS. BALLARD:**

24 Q Doctor Martin, would you tell Judge Russo
25 what your profession is?

PW - T. MARTIN - DIRECT

1 A I'm a psychiatrist.

2 Q And what is your field of practice, Doctor
3 Martin?

4 A I deal with general and forensic
5 psychiatry.

6 Q Let me show you what I'm hoping to mark as
7 exhibit number 1 and ask if you can identify that.

8 A Yes ma'am. This is a copy of my
9 curriculum vitae.

10 MS. BALLARD: Your Honor, could I have
11 this marked as Exhibit number 1. I understand
12 there's no objection.

13 MS. THAMES: There's no objection, Your
14 Honor.

15 (WHEREUPON, Petitioner Exhibit No. 1 was marked for
16 identification and entered into evidence.)

17 BY MS. BALLARD:

18 Q Doctor Martin, would you give the Court
19 your educational background please.

20 A Certainly. I received a Bachelor of
21 Science in Psychology, University of Maryland. I
22 graduated I guess 1979. I received a masters of
23 science in biomedicine from Hood College in Maryland
24 and that was in 1984. I then matriculated into
25 uniform services University of the School of

PW - T. MARTIN - DIRECT

1 Medicine in Bethesda where I teach four years of
2 medical school, graduated from there 1988. I went
3 into a psychiatric residency in San Antonio, Texas
4 and completed that. In four years in 1992 I
5 practiced psychiatry for a number of years until
6 1999 to the time I applied for a forensic fellowship
7 in psychiatry at the University of South Carolina.
8 I moved down here and completed the fellowship in
9 2000. Board Certified in both general and forensic
10 psychiatry and I enjoyed South Carolina so I stayed.

11 Q Can you give us your professional work
12 background in the field of psychiatry?

13 A Certainly. I spent 15 years in the United
14 States Air Force practicing medicine and completing
15 my psychiatric training and practice. I've run
16 inpatient units, substance abuse units. I have also
17 performed psychiatric evaluations and forensic
18 evaluations for the United States government. I --
19 when I came here I decided to set up eventually a
20 private practice, and from doing so I worked for the
21 Department of Mental Health first and the sexually
22 violent predator program. I also was the
23 psychiatric medical director of the South Purge
24 Center which is a residential treatment facility for
25 the disturbed teens who might commit sexual

PW - T. MARTIN - DIRECT

1 offenses. I also have been the medical and
2 psychiatric director of the New Hope Carolinas in
3 York County, South Carolina for about
4 four-and-a-half years. I've also been doing private
5 practice along the way during all of those times
6 I've just stated. And now because of my schedule
7 I'm going on private practice and my office is in
8 Columbia, South Carolina.

9 Q In your private practice, Doctor Martin,
10 this is the focus of your practice, what primarily
11 do you do?

12 A I'm a -- would believe say probably 60 to
13 70 percent of my private practice now is forensic
14 and psychiatric assessment and treatment.

15 Q Okay.

16 MS. BALLARD: Your Honor, we would tender
17 Doctor Martin as an expert witness in the field of
18 forensic psychiatry.

19 MS. THAMES: The State has no objection.

20 THE COURT: All right.

21 MS. BALLARD: Thank you.

22 BY MS. BALLARD:

23 Q Doctor Martin, have you been retained in
24 the case to assist in evaluating Jimmy Meggs, Jr.?

25 A Yes, ma'am, I have.

PW - T. MARTIN - DIRECT

1 Q And what were you asked to do?

2 A I was asked to evaluate Mr. Meggs, Jr.,
3 and provide a psychiatric, forensic and psychiatric
4 assessment, diagnosis and mental status examination
5 pertaining to Mr. Meggs to see whether or not there
6 was any primary psychiatric disorder while he was
7 being incarcerated at the Leesburg Correctional
8 Institution at the time when I first saw him. I've
9 seen him several times.

10 Q Were you asked to evaluate Mr. Meggs to
11 determine whether at the time of the alleged crime
12 in this matter he suffered from any mental illness?

13 A Yes, ma'am, I was.

14 Q And what have you undertaken to do in
15 order to provide that analysis?

16 A Well, first I've reviewed a number of
17 records, half of what you see on that table over
18 there. Those are comprised of a lot of South
19 Carolina Department of Corrections records
20 admissions to Gilliam Psychiatric Hospital of mental
21 health and medical records. I've also reviewed his
22 arrest warrants that pertain to his alleged
23 activities in late or sometime in 1999 where he went
24 to court in August of 2001. I've talked with his
25 family, and I've spoken to him for hours on end to

PW - T. MARTIN - DIRECT

1 both understand exactly the mental health makeup of
2 Mr. Meggs. And from that I derived several
3 conclusions.

4 Q Let me -- if you can I've got this
5 notebook that I placed in front of you.

6 A This is the front and back of the mental
7 health records from the South Carolina Department of
8 Corrections pertaining to Jimmy Meggs, Jr.

9 MS. BALLARD: Your Honor, I move these
10 into evidence as Exhibit Number 2.

11 MS. THAMES: I would object, Your Honor.
12 We don't know who these were prepared -- who
13 prepared them.

14 MS. BALLARD: Doctor Martin authenticated
15 them in his review, Your Honor. We think that would
16 be sufficient.

17 THE COURT: I'm going to allow it.

18 MS. THAMES: Thank you.

19 (WHEREUPON, Petitioner Exhibit No. 2 was marked for
20 identification and entered into evidence.)

21 BY MS. BALLARD:

22 Q Doctor Martin, have you diagnosed Jimmy
23 Meggs as suffering from mental illness?

24 A Yes, ma'am, I have.

25 Q What have you diagnosed?

PW - T. MARTIN - DIRECT

1 A I've diagnosed Jimmy Meggs with psychosis,
2 psychotic disorder, not otherwise specified and I
3 have reviewed the kind of treatment he has had at
4 SCDC and I found that to be consistent with some,
5 much of what they diagnosed. I've also diagnosed
6 him with major depressive disorder, and likewise, I
7 compared that to the notes that were prepared by
8 SCDC records regarding his treatment there which
9 appeared also. That's now consistent with what they
10 were coincidentally to be consistent.

11 Q What according to your review of the SCDC
12 records is Mr. Meggs being treated for now by the
13 Department of Corrections?

14 A Mr. Meggs is being treated for
15 schizophrenia paranoid type chronic I believe and as
16 well as a mood disorder Dysthymic disorder, or which
17 is a depressive disorder.

18 Q What medications, if any, is he receiving
19 now?

20 A He's receiving the antipsychotic Seroquel,
21 12 hundred milligrams a day. He's also receiving
22 Prozac 20 milligrams a day and Vestal, which is also
23 a sedative.

24 Q And the Seroquel, what is that, sir?

25 A Seroquel is a contemporary antipsychotic

PW - T. MARTIN - DIRECT

1 medication that is given to individuals who have
2 severe mental illness of a psychotic nature. He's
3 taking 12 hundred milligrams which is a dose higher
4 than I've ever prescribed, and I've treated a lot of
5 people with psychotic illness including
6 schizophrenia, and I must say, after as many times
7 as I've seen him at that dose he's tolerated it
8 well.

9 Q What does it tell you he's tolerated well?

10 A Well, he's not overly sedated. He's not
11 stiff and it seems to be controlling some of his --
12 or many of his paranoid delusions. I will be honest
13 with you, Your Honor, that since he's been
14 transported up here he has not been able to receive
15 his medication and I've already noted in my
16 assessment of him here that some of his paranoia is
17 coming back and that is not unusual in somebody
18 transported to the local detention centers waiting
19 for trial.

20 Q Doctor Martin, have you drawn any
21 conclusions as to whether or not in your
22 professional opinion Mr. Meggs suffered from a
23 mental health illness at the time these alleged
24 offenses?

25 A Yes, ma'am, I have.

PW - T. MARTIN - DIRECT

1 Q What conclusions have you drawn?

2 A I believe that Jimmy Meggs began suffering
3 from earlier subtle signs of mental illness back in
4 his early teens. He had somewhat of a difficult
5 life. Early in his life he had been sexually abused
6 at the age of seven. However, he was -- began to
7 hear voices and becoming more and more depressed,
8 withdrawn, sad, and dysphoric into his early teens.
9 He had some trouble in school. He did fail one
10 grade, the second grade, and that I believe
11 surrounded his time of being sexually abused. He
12 was very quiet about many of these symptoms although
13 he seemed to live quite the fantasy world. What he
14 would tell the people with this, you heard in
15 testimony earlier to Your Honor, is that they
16 believed him to be a compulsive liar. I actually do
17 know what the nice folk and his family have seen and
18 he would tell stories about issues that gave him no
19 gain really except for maybe feeling better about
20 himself. I remember him telling me he thought he
21 was a pilot, and I knew he was not a pilot. But I
22 also learned from talking with his family that he'd
23 make up stories like this all his life and for
24 reasons that didn't make to me any sense versus to
25 get out of trouble and so forth and so on. So it

PW - T. MARTIN - DIRECT

1 served no purpose. It alienated him from
2 friendships, the development of friendship as a
3 youth or through his teen years. He did manage to
4 essentially focus hence in his study, and he did
5 manage to graduate high school and did try some
6 college classes but as he grew older his
7 relationship abilities with his own age and peer
8 group were deteriorating. And I believe that the --
9 because of his certainly already worsening
10 depressive condition and psychotic illness that he
11 was describing to me, the family had also described
12 to me, and has also described at the Department of
13 Corrections.

14 Q Doctor Martin, what if anything, would lay
15 people like me observe if we had been interacting
16 with Jimmy shortly after those offenses? What kind
17 of personality traits would we have seen?

18 A Well, the personality traits you see after
19 any action perhaps where Jimmy would be quite whole
20 like in his demeanor, rather than immature socially.
21 And I think I'm underestimating that. He would not
22 be easy to warm up to because he had a very
23 difficult time trusting and developing relationships
24 with others. That's why he essentially surrounded
25 himself with a younger group of kids. Seems he was

PW - T. MARTIN - DIRECT

1 their same age and he never quite grew out of that.
2 He was essentially socially inept as he became an
3 adult. I think he would also note that he would
4 perhaps try to impress if you talk to him. Now he
5 would probably sense there's almost paranoia I think
6 you even seen me interact with Jimmy, and if you
7 step on certain areas of his lifestyle or
8 friendships or what he does he becomes unnecessarily
9 paranoid. And he's actually quite dysfunctional in
10 that. And that's a pattern that I actually found
11 more as I got into the SCDC records too; that they
12 saw that child-like behavior. You would almost
13 think if he's in the treatment he wanted to be --
14 put you on an act, putting on a show, so that's how
15 he drew people close to him because I do believe he
16 did want friendships; he just didn't know how to
17 make them. But then who spent enough time with him
18 would know that there's something peculiar about his
19 abilities. And even by Jimmy's -- he said people
20 even actually once he got to know him shied away
21 from him.

22 Q Doctor Martin, what about these factors
23 and these traits that you've described to us support
24 your conclusion that he lacked capacity to conform
25 his behavior at the time of the crime?

PW - T. MARTIN - DIRECT

1 A Well, first of all, Jimmy and I went over
2 the very elements of the crime which he was charged.
3 And he considered the individuals more than just the
4 victims, you know, his friends, his peers, even
5 though he was quite a few years older than all of
6 them. These were nine year old kids. I found that
7 to talk to him about it he was just goofing around
8 with them. I don't believe there's a mean bone to
9 his body. I never got the impression from his
10 family that he ever caused problems with peers and
11 that would create a violent episode. But that he
12 pretty much was acting socially about the same and
13 as they were. And I'm not sure that he actually
14 recognized anything was truly out of sorts when he
15 was charged with the crimes originally.

16 Q Doctor Martin, are you familiar with the
17 process that would have been followed in evaluating
18 Mr. Meggs prior to trial?

19 A Yes, ma'am.

20 Q What would have occurred had an evaluation
21 been sought prior to trial?

22 A Actually, around the time this crime
23 allegedly took place I was working for the
24 Department of Mental Health in Columbia and he
25 probably would have been sent to our facility there

PW - T. MARTIN - DIRECT

1 which is a forensic facility and ---

2 MS. THAMES: Your Honor, I object. I
3 believe that's speculation, what didn't happen. How
4 can he testify what would have happened back then?

5 MS. BALLARD: Your Honor, I'm asking if
6 he's familiar with the process that would be
7 followed if someone was evaluated prior to trial,
8 and I think he's in a more position to testify to
9 that since he still -- he works in the field.

10 THE COURT: I'm going to overrule. I
11 mean, technically I think you're correct, but he's
12 indicating with based on his experience in his
13 system where people would have gone. Now whether or
14 not Mr. Meggs actually went to the facility that
15 Doctor Martin manages ---

16 MS. THAMES: Right. I was objecting not
17 just where someone would have gone but where
18 specifically Mr. Meggs would have gone.

19 MS. BALLARD: Let me rephrase the
20 question, Your Honor.

21 THE COURT: All right.

22 BY MS. BALLARD:

23 Q If someone in Florence County, for
24 example, had been evaluated prior to trial through
25 the criminal justice system which procedures would

PW - T. MARTIN - DIRECT

1 normally have been followed in the 1999, 2000 time
2 period?

3 A They'd be asked forensic psycho test in
4 Columbia, would be asked to provide a psychiatric
5 evaluation competency to stand trial, and sometimes
6 a criminal responsibility and capacity to conform
7 evaluation as well.

8 Q Do you have an opinion to a reasonable
9 degree of medical certainty that if Mr. Meggs had
10 undergone that evaluation prior to trial what
11 conclusion would have been drawn?

12 A Yes, ma'am, I do.

13 Q And what is your opinion?

14 A I believe that he would have found -- that
15 they would have found him to at least suffer from a
16 psychotic and depressive illness and would require
17 treatment.

18 Q All right. Let me show you what I hope to
19 mark as Exhibit Number 3. Mr. Martin or Doctor
20 Martin, I ask if you can identify that.

21 A Yes, ma'am, that is my brief forensic
22 psychiatric summary assessing Mr. Meggs based on my
23 August 24th, 2006 and November 16th, 2007 evaluation
24 report was submitted November 27th, 2007.

25 MS. BALLARD: Your Honor, I move the

PW - T. MARTIN - DIRECT

1 introduction of this as Exhibit Number 3. I
2 understand there's no objection.

3 MS. THAMES: That's right. No objection.

4 THE COURT: Without objection, 3.

5 (WHEREUPON, Petitioner Exhibit No. 3 was marked for
6 identification and admitted into evidence.)

7 BY MS. BALLARD:

8 Q Doctor Martin, what experience, if any, do
9 you have in the process that a convicted person in
10 South Carolina would follow if they were found to be
11 guilty but mentally ill?

12 A If they were found to be guilty but
13 mentally ill I believe I've seen two things happen.
14 One is, they placed on probation and ordered mental
15 ill treatment; or two, they're incarcerated at the
16 Department of Corrections at facilities that could
17 accommodate the mental health treatment that they
18 require.

19 Q Was Jimmy Meggs committed to those type of
20 facilities when he went into the SCDC system?

21 A Yes, ma'am, he was.

22 Q All right. How long did it take from your
23 review of those records for it take for them to
24 accurately diagnosis him and for him to be properly
25 treated?

PW - T. MARTIN - DIRECT

1 A Well, he destabilized as soon as he got
2 into SCDC and became a behavior, what appeared to be
3 a behavior problem. That's because it was
4 unrecognized that he suffered from mental illness.
5 But after approximately a year or so, if I remember
6 correctly from all those records, he was diagnosed
7 by the Department of Corrections psychiatry staff
8 and treated subsequently since that time with
9 schizophrenia paranoid type antidepressive disorder.

10 Q If it had been diagnosed prior to his
11 conviction what would have been done about his
12 course of incarceration, if anything?

13 A Well, in terms of being incarcerated I
14 would say there would be a greater likelihood he be
15 placed in treatment earlier. He wouldn't have been
16 destabilized and creating a problem for not only
17 himself but also the people at the Department of
18 Corrections. He probably would have acclimated much
19 better to the SCDC system and, well, from a party
20 point of view I would say probably would have
21 suffered less.

22 Q Okay. Now I just want to make sure we're
23 clear. Referring to your report and your testimony
24 to not -- your testimony that Mr. Meggs was not
25 competent to stand trial -- am I correct -- it is

PW - T. MARTIN - CROSS

1 not your position that he lacked competency at the
2 time of trial?

3 A No, I'm not testifying to competency to
4 stand trial at the time of his trial.

5 Q Okay. Please answer any questions
6 Ms. Thames might have.

7 A Yes, ma'am.

8 CROSS - EXAMINATION

9 BY MS. THAMES:

10 Q Doctor Martin, all the records that you
11 reviewed, that big binder full of records, that was
12 from the Department of Corrections, correct? Is
13 that what you said?

14 A Yes, ma'am. Yes ma'am.

15 Q Those were all after those offenses, after
16 his trial, all that kind of thing; is that right?

17 A That is correct.

18 Q Your evaluation that I believe was just
19 offered, you have a list on page 2 of the things
20 that you reviewed in your evaluation; is that right?
21 There's about eight things there.

22 A Yes, ma'am.

23 Q On page 2 -- and one of those things is
24 the evaluation that was done by Doctor -- and I
25 apologize, Doctor Narayan; is that right?

PW - T. MARTIN - CROSS

1 A Yes. Actually, that is the way you
2 pronounce his name.

3 Q And that was from May, June of 2002?

4 A Yes, ma'am.

5 Q So you did review this evaluation as well?

6 A Yes, ma'am, I did.

7 Q You said that he was diagnosed after which
8 he'd been incarcerated with schizophrenia. Is that
9 in this evaluation that was done? Do you know where
10 that documentation is?

11 A By Doctor Narayan?

12 Q Or -- well, by anyone.

13 A Do I know where the documentation is?

14 Q Where schizophrenia was diagnosed.

15 A Yes, by Doctor Kirby in the SCDC records.

16 Q That's in the file or in the binder that
17 was just given up?

18 A Yes, ma'am.

19 Q Okay. This one that was done by Doctor
20 Narayan, you're aware that he -- they found not only
21 that he was capable of understanding in that --
22 competent for trial, they also did say that he -- he
23 believed he could conform his conduct; is that
24 right?

25 A Yes, I do remember that.

PW - T. MARTIN - CROSS

1 Q And he also found one of the diagnoses
2 that Doctor Narayan was told was that Mr. Meggs is a
3 malingerer; is that right?

4 A That is correct.

5 Q Okay. Doctor Narayan's evaluation, he has
6 a page-and-a-half of documents and other things that
7 he reviewed. Do you think that it was beneficial to
8 him that he had more things to look at than you did?

9 A I have to admit off the top of my head
10 that I don't remember everything that he evaluated.

11 Q Okay.

12 A I'm not sure which trial he was preparing
13 for either because this was a 2002 evaluation.

14 Q Right.

15 A But I do recognize the diagnoses that you
16 stated and I do recognize that he works now -- he
17 worked then at the facility that would be typical of
18 one where one would go if they were going pretrial
19 to a forensic unit for this kind of evaluation.

20 Q And back to the question, do you think it
21 would be beneficial for you to have more
22 information?

23 A I'm not sure that these extra pieces of
24 information are off the top of my head.

25 Q Well, the things that you relied on other

PW - T. MARTIN - CROSS

1 than talking with Mr. Meggs himself and his family,
2 everything that you looked at post-date of these
3 offenses. So can I ask what you base your opinion
4 on that he was suffering from the mental illness in
5 his teen years and prior to these offenses you
6 talked about the insidiously worsening mental issue?

7 A Yes.

8 Q Is there anything other than talking to
9 Mr. Meggs himself and his family that you base that
10 on?

11 A Yes. Actually, I have treated dozen or
12 more than of people who have the very psychotic
13 illness who are actually locked up sometime for 20
14 and 30 years back in the ole days who have suffered
15 the same kind of mental illness. My clinical and
16 mental assessments in these evaluations and
17 Mr. Meggs presentation the way he described it
18 following ordained by God, etc., etc. was quite
19 consistent with that kind of pattern that I don't
20 believe is easy to make up.

21 Q But the information you got about his
22 teenage years, that came from him; is that correct?

23 A And his family.

24 Q And his family, okay. Doctor Narayan did?

25 A You're right. It was after this trial,

PW - T. MARTIN - CROSS

1 I'm sorry.

2 Q Just one moment. There was a lot of talk
3 about perhaps Mr. Meggs should have been evaluated
4 for guilty but mentally ill. Were you aware when
5 you were evaluating Mr. Meggs that his testimony was
6 that he did not do it.

7 A I was aware that -- you mean that's what
8 he claimed originally.

9 Q And that was what he testified at trial.
10 He --

11 A Yes.

12 Q And he testified that he did not commit
13 these offenses?

14 A Well, he told me that right at the time
15 when I first met with him.

16 Q Okay. And then later on he changed that
17 and said he did, but he was mentally ill and that's
18 why he did it.

19 A No, he didn't tell me anything quite like
20 that.

21 Q Okay.

22 A He was very defensive when I first met
23 him. When I meet with folks like Mr. Meggs I spend
24 three and four to six hours with them at a time.

25 But over the course of those time periods I learn a

PW - T. MARTIN - CROSS

1 little bit more about them. In Mr. Meggs's case I
2 believe that he may have been over familiar socially
3 with the kids, but I'm not saying that he told he
4 deliberately had intent to sexually abuse anybody.
5 I'm just saying that the fact that he did not know
6 anything about it did not pan out, and I agree with
7 that.

8 Q Okay. And you did say going to -- you
9 just mentioned that you say before that he was
10 child-like, immature, and perhaps he thought at the
11 time that he was acting like any other nine year old
12 boy?

13 A Yes, quite a bit like that now.

14 Q Do you know if it's acceptable for nine
15 year old boys to perform oral sex with each other?

16 MS. BALLARD: Object to the question, Your
17 Honor. There's no foundation for that.

18 MS. THAMES: I'll move on.

19 THE COURT: Sustained.

20 MS. THAMES: Just one moment, Your Honor.

21 THE COURT: Yes, ma'am.

22 BY MS. THAMES:

23 Q Doctor Martin, just a couple more things.
24 Is it difficult to perform a retrospective
25 evaluation on someone in order to to go back and try

PW - T. MARTIN - CROSS

1 to determine what he was like at the time of the
2 offenses or the trial?

3 A At times it can be challenging, yes,
4 ma'am.

5 Q Do you think that aspect, that the
6 evaluation that was done in 2002, because it was --
7 even though it was still after the trial it
8 approximately that that may be a little more
9 indicative of what was going on with him at the time
10 since it was closer in time?

11 A It'd probably be better if I was talking
12 to Doctor Narayan to find out exactly his technique
13 style. From what I have seen of his style his is
14 quite a bit different from mine, and so I really
15 couldn't give an opinion on that.

16 Q Okay. But Doctor Narayan, I think we said
17 this before, he did find that Mr. Meggs did have
18 capacity to conform, is that correct, from your
19 recollection?

20 A I believe that's what his document said.

21 Q Thank you, Doctor Martin.

22 A You're welcome.

23 MS. BALLARD: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 REDIRECT EXAMINATION

PW - T. MARTIN - REDIRECT

1 BY MS. BALLARD:

2 Q Doctor Martin, making reference to Doctor
3 Narayan's report that Ms. Thames asked you about, do
4 you in any way think that that opinion can be -- can
5 be coordinated with yours, would you say, been
6 inconsistent?

7 A If you're asking me is there some
8 potential certainty versus just contrast with mine?

9 Q Yes.

10 A Yes, I believe that when Jimmy Meggs was
11 first incarcerated that was a horrible adjustment
12 for him and he's an individual who fantasizes a
13 great deal. Like I've already testified and that I
14 believe that they got the impression from him trying
15 to say himself that he may have overembellished some
16 of his presentation to them, that I believe, and
17 I've seen elements of which this myself that I
18 believe that any mature adult could see right
19 through it but I don't believe he can. And so he
20 was at a disadvantage and didn't know that it'd be
21 very easy to just leave that and say, well, I think
22 you're faking, you're making this up. I've worked
23 with a number of people who have committed felonies
24 who are mentally challenged, mentally ill, mentally
25 retarded, and it's not unusual for them, all of them

PW - T. MARTIN - REDIRECT

1 to actually suffer from those significant mental
2 illnesses and also embellish at times. And they
3 don't even really know better. In fact, they
4 probably didn't even recognize it. I won't be
5 surprised if that's what Doctor Narayan saw.

6 Q Doctor Martin, one of the things that you
7 mentioned in your report which we've used as Exhibit
8 Number 13, a report on polygraph examination conduct
9 on Mr. Meggs on April 10th, 2000, did you in fact
10 review the results of at that polygraph examination?

11 A Yes, ma'am, I did.

12 Q Let me show you this document and ask if
13 you can identify that.

14 MS. THAMES: Your Honor, I object. I
15 believe this is outside the scope.

16 MS. BALLARD: No, Your Honor. The reason
17 it's not outside the scope is because she asked him
18 if Mr. Meggs had changed his position that he
19 originally at trial said he didn't do it and I
20 believe -- and now was saying that he was guilty but
21 mentally. So I believe by virtue of those questions
22 I believe this is appropriate.

23 THE COURT: I'll allow it. Overruled.

24 BY MS. BALLARD:

25 Q Can you identify that, Doctor Martin?

PW - T. MARTIN - REDIRECT

1 A Yes, ma'am. This is the report polygraph
2 examination performed by the former Fulmar Group.
3 It was on April 10th, 2000.

4 MS. BALLARD: Your Honor, I would move the
5 introduction of this polygraph report as Exhibit
6 Number 4 I believe.

7 MS. THAMES: Can I see it?

8 MS. BALLARD: I'll give you one.

9 MS. THAMES: No objection, Your Honor.

10 THE COURT: All right, without objection,
11 4.

12 (WHEREUPON, Petitioner Exhibit No. 4 was marked for
13 identification and admitted into evidence.)

14 BY MS. BALLARD:

15 Q Doctor Martin, your review of the
16 polygraph examination, what conclusions if any, did
17 you draw as a result of reviewing this report as to
18 the results of Jimmy's polygraph?

19 A Well, the polygraph was examining Jimmy's
20 responses to his actions at the paintball farm where
21 he was charged with participating in some fashion
22 sexual misconduct with children. And several
23 questions were asked of Jimmy by the polygrapher,
24 specifically relation of the paintball farm did you
25 ever cause any child to have oral sex with them.

PW - T. MARTIN - REDIRECT

1 Jimmy's response was no. Did you ever brush the
2 legs and groin of any child while driving your
3 vehicle. The response was no. Did you ever cause a
4 child to remove a paintball using his mouth from
5 another child's genitals. Jimmy's response was no.
6 The polygrapher determined from this assessment that
7 there was no deception indicated and that Jimmy
8 Donald Meggs was truthful.

9 Q If, in fact, there had been some conduct
10 contributing to the delinquency of a minor or some
11 other inappropriate conduct at the paint field, how
12 is that consistent with Mr. Meggs' indicating
13 truthfulness on the polygraph?

14 A He didn't see -- I don't think that Jimmy
15 saw what he did was wrong. He didn't. He -- and
16 honestly that he did not participate in that in that
17 fashion as the question was asked.

18 Q That's all I've got.

19 MS. BALLARD: Thank you, Your Honor. I
20 have just a couple, Your Honor.

21 **RECROSS - EXAMINATION**

22 **BY MS. THAMES:**

23 Q Doctor Martin, you said that you've dealt
24 with other people that are incarcerated?

25 A Yes, ma'am.

PW - T. MARTIN - RE-CROSS

1 Q And have you found that when people are
2 incarcerated they tend to suffer a little more or
3 have psychological issues based on becoming
4 incarcerated?

5 A Yes, ma'am, that's correct.

6 Q And one of your diagnoses you did say you
7 did indicate his psychosocial stressor; is that
8 correct?

9 A Yes, ma'am, oh, yes.

10 Q On page 4?

11 A Yes.

12 Q And is that -- you indicate there that his
13 incarceration is legal issues and separation from
14 his family help to cause maybe some issues for him
15 after he was incarcerated.

16 A Actually those with the ones he's
17 suffering from now.

18 Q Okay. And but now is after he's been
19 tried and convicted?

20 A Yes.

21 Q Okay. Thank you. That's all.

22 MS. BALLARD: I have no redirect for
23 Doctor Martin.

24 THE COURT: Thank you, Doctor Martin.

25 THE WITNESS: Thank you.

PW - J. COX - DIRECT

1 THE COURT: You're excused. Good to see
2 you again, sir.

3 MS. BALLARD: Your Honor, we would call
4 Jim Cox please.

5 THE COURT: Mr. Cox, if you will please
6 come around to be sworn, sir.

7 WHEREUPON,

8 JAMES CAPTAIN COX, JR.,
9 having been duly sworn by the Deputy Clerk of Court,
10 testified as follows:

11 THE DEPUTY CLERK OF COURT: Place your
12 left hand on the Bible and raise your right.

13 DIRECT EXAMINATION

14 BY MS. BALLARD:

15 Q You're Jim Cox?

16 A I'm James Captain Cox, Jr.

17 Q Mr. Cox, were you one of the defense
18 attorneys for Jimmy Meggs at the trial of his case
19 in August of 2001?

20 A I was. I was. I was hired to assist
21 Kernard in the actual trial of the case.

22 Q Kernard being Kernard Redmond?

23 A At the time Kernard Redmond and I
24 practiced law together and Kernard ran our Florence
25 office.

PW - J. COX - DIRECT

1 Q Okay. Did you have occasion to meet with
2 members of Mr. Meggs's family prior to trial?

3 A I did, and they were very supportive of
4 him, of Jimmy.

5 Q Did -- do you recall any of the members of
6 the family expressing any concern about Mr. Meggs'
7 mental health?

8 A Yes. Answer to the question yes. I don't
9 remember it as clearly as the way the family tells
10 it today, but I do think that there was concerns
11 about Jimmy exaggerating his accomplishments in
12 life. I remember that. And I remember telling
13 Mr. Meggs, like he said, keep your eye on the ball.
14 I have had the benefit of hearing Marion Brown's
15 report. He was very thorough and what I would
16 expect from Marion, what a pleasure to work with
17 him. And he's been on both sides all the time, very
18 thorough, and before me has interviewed numerous
19 families or events and they did. But his competency
20 to stand trial or a mental illness that's described
21 here today never came to my attention. Quite
22 frankly, I would not have the expertise to recognize
23 what Doctor Martin testified to.

24 Q All right. What, if anything, did you do
25 in response to the family's asking that he be

PW - J. COX - DIRECT

1 evaluated?

2 A I don't remember. Undoubtedly I did not,
3 but I don't remember being asked to have him
4 evaluated. But if they had I would have -- I would
5 have said that in my opinion it would have been a
6 waste of time because Jimmy Meggs was very
7 intelligent. He never -- never exaggerated to me.
8 He never exaggerated what his accomplishments was
9 like. In fact, he told me about saying he had some
10 type of degree when he applied for a job, when he
11 didn't. A lot of people have done that. But he was
12 a railroad engineer. He had worked, finished high
13 school, had worked in landscaping business, umpire
14 in high school baseball, was well thought of in
15 that. I thought in everything we learned from the
16 railroad he was well respected at the railroad, as
17 was his father. He was second generation railroad.
18 So there was nothing at that time for me as his
19 lawyer to be concerned about his mental capacity.
20 He even said that he did not do it. He passed a
21 polygraph that I'm told that he passed at any -- I
22 don't think I was involved in that.

23 Q That's before your time?

24 A Yeah, and we came for a what I thought was
25 a vigorous defense for him to be found not guilty

PW - J. COX - DIRECT

1 plea. Unfortunately it didn't turn out at that way.

2 Q Do you in retrospect believe that's
3 approximately that Jimmy may have not lacked
4 capacity at the time of the trial?

5 A Well, if you believe what Doctor Martin
6 says and he's an expert, yes.

7 Q And I assume you get a evaluation prior to
8 trial; is that correct?

9 A It's my understanding I think that I did
10 not and I did not see one.

11 Q Okay. Mr. Cox, did you -- have you seen
12 the trial transcript? Haven't you?

13 A Yes, I have. I have not read it but I
14 have seen it and our file was picked up I believe by
15 Jack Swerling who may have handled the appeal
16 afterwards. I've not seen the trial transcript; but
17 I looked at it, just flipped through to see, try to
18 remember, it being a long time. And I looked and I
19 thought it went five days. It stated we went four
20 days. It was a long trial.

21 Q If I represent to you that you did not
22 move for directed verdict on the 16-3-810 trial,
23 16 -- excuse me, on the charge of sexual
24 performance, would you agree with me that you did
25 not make a motion for directed verdict on that?

PW - J. COX - DIRECT

1 A If you tell me I didn't I didn't, and I
2 don't remember doing it.

3 Q All right. And if I told you that I have
4 found no evidence in the record that there was any
5 audience that observed any of these activities that
6 were testified to would you disagree with me?

7 A I -- sometimes I'm not saying it's in the
8 record and I have not read it, but there were
9 allegations that some of this occurred through, as I
10 recall it, an initiation type for the thing they
11 would call vanguard nights. But I can't -- I don't
12 know what's in that transcript or not. If you tell
13 me it's not there it's not there.

14 Q Did you move for -- did you request a
15 verdict of guilty but mentally ill?

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

17 Q Did you request a charge on lesser
18 included offense of 16-3-820?

19 A No, ma'am, I did not and sometimes I have
20 been criticized for that in the past. I'm of the
21 old school. Don't give the jury a compromise. In
22 my belief, your client is not guilty, your client is
23 saying only not guilty of anything. I am negligent,
24 sometimes careless, in not asking for lesser
25 included offenses.

PW - J. COX - DIRECT

1 MS. BALLARD: Your Honor, I'm not going to
2 mark this. I understand the trial transcript is
3 part of the record. Am I correct?

4 THE COURT: That's in the file, yes,
5 ma'am.

6 MS. BALLARD: Yes, sir. That's all I
7 have, Mr. Cox. Thank you.

8 CROSS-EXAMINATION

9 BY MS. THAMES:

10 Q Mr. Cox, Ms. Ballard just asked you about
11 whether there was audience. Could Mr. Meggs himself
12 be considered an audience?

13 A I'm not sure you -- y'all focus on some --
14 y'all have focused on the law that I did not focus
15 on in doing the trial and because of Mr. Brown's
16 very thorough investigation I thought that two of
17 the brothers had made the story up but if you
18 believed they were present and when the conduct was
19 going on, and so in essence there would have been an
20 audience. But I learn every day that in the
21 practice of law, and I learned something today, to
22 look a little closer in this area, but no, I did
23 not.

24 Q Okay. But going back to the original
25 question, could you think Mr. Meggs was an audience

PW - J. COX - DIRECT

1 member if he was doing this?"

2 A If he was, in fact, guilty he was.

3 Q Okay. And you said there were two boys
4 that you questioned, but they were actually more.
5 There were a few that testified to the events; is
6 that correct?

7 A My -- yes, my best recollection there were
8 two brothers and the mother had -- was -- had a
9 jealous relationship with Jimmy, and it appeared to
10 me that there was an attempt to extort money from
11 Jimmy with those allegations and then the boys
12 supported each other to what they said happened. So
13 it wasn't like it was one on one, and any given
14 time. There was two other boys that were brought
15 into the trial, which there was actually four boys.
16 I believe they were in trial, but at the trial they
17 brought in the other boy for like conduct and I
18 assume that when the appeal was on the Lyle, respect
19 of that Lyle, State versus Lyle, I assume.

20 Q Okay. What was Mr. Meggs's defense at
21 trial? I think we have established this, but ---

22 A He -- that he was not guilty?

23 Q Yes, sir.

24 A That it was a -- it was a vindictive
25 conduct toward him because he quit paying the lady's

PW - J. COX - DIRECT

1 bills where he went his clothes which is -- was
2 actually his home. That's what my best recollection
3 or knowledge of what we did. Again, and Mr. Brown
4 would know more about that than I do because he's
5 the one that did the investigation.

6 Q And there was some cross-examine on that
7 issue of whether or not there was a relationship
8 there; was there not?

9 A Yes, there was.

10 Q Okay. And she did testify there was no
11 relationship?

12 A Yes, she did. Yes.

13 Q And Mr. Meggs, did he assist in his
14 defense?

15 A I -- yes. And Jimmy Meggs and his whole
16 family were very cooperative in anything you wanted
17 to do, met with me day or night. Could not ask for
18 a better family or better client to assist to his
19 defense.

20 Q And where you said he appeared very
21 intelligent, he appeared to reappear to understand
22 charges, the defenses?

23 A Yes.

24 Q And he supplied some of the names for the
25 witnesses because y'all put up a defense; is that

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1 right?

2 A Yes, yes.

3 Q And he —

4 A He was able to provide information to
5 Mr. Brown which enabled him to get what I thought
6 was a very strong case for Jimmy Meggs?

7 Q Did, I mean, would it have occurred to you
8 to try to pursue a guilty but mentally ill plea or
9 when he was denying everything from the beginning?

10 A No.

11 Q Thank you, that's all I have, Mr. Cox.

12 MS. BALLARD: I don't have any redirect,
13 Your Honor.

14 THE COURT: Thank you. Mr. Cox, you may
15 step down.

16 THE WITNESS: I'm not riding with her.
17 Can I go?

18 THE COURT: Any objection to Mr. Cox being
19 excused?

20 MS. BALLARD: No objection, Your Honor.
21 Your Honor, that's the applicant's case.

22 THE COURT: Thank you, Ms. Ballard.

23 MS. THAMES: Your Honor, the State will
24 call Kernard Redmond to the stand.

25 THE COURT: Mr. Redmond, if you will come

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1 around to be sworn please, sir.

2 THE DEPUTY CLERK OF COURT: Please place
3 your left hand on the Bible, raise your right hand.

4 MS. THAMES: May it please the Court.

5 WHEREUPON,

6 KERNARD REDMOND,
7 having been duly sworn by the Deputy Clerk of Court,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. THAMES:

11 Q Mr. Redmond, do you remember representing
12 Mr. Meggs?

13 A Yes, I do.

14 Q How long have you been practicing law?

15 A Nineteen -- I got out of law school in
16 '93, since '93.

17 Q Has most of your work been in criminal
18 law?

19 A It has. I started out at the solicitor's
20 office and pretty much worked in criminal law since
21 that time.

22 Q And you overheard the allegations today?

23 A Yes.

24 Q Did -- the first question I'm going to ask
25 you is kind of a broad question. Did you ever see

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1 any indication from Mr. Meggs that would have caused
2 you concern as to his mental health?

3 A In the context of requesting an
4 evaluation, no, but let me, if I can be allowed to
5 explain. I think -- and I forget which witness it
6 was, mentioned the lying, whatnot. I think if it's
7 -- I recall the transcript and I've got -- I
8 apologize, I took the transcript home last night and
9 promptly fell asleep with it on my chest. I have
10 not had the chance to review the transcript. But I
11 believe we addressed that at the trial when
12 Mr. Meggs was testifying concerning some lies that
13 he told. And in fact, the family had mentioned, as
14 they have testified, they had mentioned the fact we
15 were aware that he did have issues with telling the
16 truth. So we were aware of that.

17 Q And that was brought out before the jury?

18 A That was. And best I can recall, without
19 having reviewed the transcript, but I feel pretty
20 confident it was discussed.

21 Q And do you remember meeting with the
22 family?

23 A Oh, yes, absolutely. And let me just say,
24 you know, I saw Mr. Meggs and I'm struggling up
25 here, that broke my heart. I'd gotten to know the

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1 family real well during this time and sometimes
2 proceedings like this kind of makes everybody
3 uneasy. I have nothing but high regard for that
4 family. I mean, I want to make it clear.

5 Q Did any of them ever ask you to have a
6 competency exam performed on Mr. Meggs?

7 A You know, I can't honestly -- I cannot
8 recall. I cannot sit here and say no because I
9 don't recall that. I don't know them to be liars so
10 I'm not implying that they're liars at all. Talking
11 about the family, I think we have discussed some
12 issues that Jimmy had; but talking about the rest of
13 the family, I don't recall that specifically. But
14 in the context of what's required as far as a mental
15 evaluation as to relates to competency and ability
16 to conform your behavior, even with everything that
17 was discussed at the time that I was involved in the
18 case because he was able to provide so much
19 information for his defense, and you know, Jimmy and
20 I talked off and on, and you know, because of the
21 issues that were hashed out at treatment as part of
22 our defense that we were able to lean upon him for
23 assistance. At that point I did not see any red
24 flags that said for the purposes of court that he
25 needed to be evaluated.

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1 Q And just taking that a little further, if
2 he had ever admitted these allegations would that
3 have -- would that have given rise to make a
4 difference, you know, you'd gone down a different
5 road in terms of capacity to conform?

6 A Absolutely, because obviously if there was
7 a admission in that this had occurred, then as just
8 with the nature of the incident that would have been
9 a totally different ball game. But from the
10 beginning, and it's been talked about, polygraph,
11 the position when he was adamant that he did not
12 commit this crime, and in fact testified -- one of
13 the ladies that came up in the trial that was
14 basically, as Mr. Cox said, mad because he quit
15 paying the bills and whatnot. So that was pretty
16 much the strategy that we took.

17 Q And y'all did have her as a witness,
18 cross-examined her?

19 A Yes.

20 Q Okay.

21 A As to the extent I'm not used to the
22 witness chair, which is sad to say.

23 Q Mr. Meggs was able to assist to his
24 defense. How did he assist?

25 A Yeah. Like I said, Marion Brown, who is

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1 probably laughing at me right now for telling it,
2 but Marion had the chance to spend more time than we
3 did. And you know, talking with Jimmy and able to
4 develop witnesses and potential witnesses and
5 following up on the information that Jimmy had
6 provided.

7 Q And did he provide all that to Mr. Redmond
8 and Mr. Cox?

9 A Yes, he did.

10 Q Okay. And does he appear to -- does he
11 appear to understand the charge he was facing?

12 A Oh, yeah. I didn't have a doubt that he
13 understood what was going on and what he was facing
14 and what was at stake. I mean, he understood that
15 in my opinion.

16 Q And did he understand what y'all were
17 doing in terms of witnesses and the
18 cross-examination? Did you talk to him about how
19 that was going to go?

20 A Yes. I mean, I didn't have any reason to
21 believe he didn't understand as far as what that
22 process is, was going, what was going on.

23 Q And y'all did put up a defense; is that
24 correct?

25 A Yes, we did.

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1 Q What was the nature of that? What kind of
2 witnesses did you have for that?

3 A Again, to establish the fact that these
4 charges were -- I'm basically just summarizing
5 because, again, I don't have the benefit of the
6 transcript. But in essence our defense was these
7 were -- these charges were created in essence with
8 the help and assistance of mad -- some mad former
9 friend of his. But that girlfriend, whatever the
10 relationship, the nature of the relationship was,
11 but that there were people who were upset with him,
12 and through their children, using those children as
13 vehicles to try to get revenge on him. That was the
14 nature of the defense at that time best as I can
15 recall.

16 Q And going back, again, a little bit more
17 into competency.

18 A Yes, sir.

19 Q You've already said there were no red
20 flags that in terms of whatever behavior. What
21 about the way he dressed his home? Did you have to
22 go to his home?

23 A Yes, I did, lovely home. I mean, they
24 like I said, the family is supportive of family and
25 the home was as comfortable a setting as you can

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1 imagine. And so from that standpoint, you know,
2 there were -- any red flags, like I say, the only
3 issue that really came up resolved around him
4 telling lies.

5 Q Okay. But again, that --

6 A As best I can recall.

7 Q But again, that all would have been
8 testimony had he admitted anything in terms of the
9 capacity to conform; is that right?

10 A Oh, yeah, oh absolutely. If he was,
11 had admitted these -- to be honest with you, by way
12 in our discussions with Jimmy, he didn't go to me, I
13 mean, for the purpose of trial or even in general
14 that he was guilty of these charges. We took the --
15 we took the stance that these were contrived charges
16 and that's what it was that we presented because we
17 were -- it was made clear to us that he did not do
18 this and that's the line that we took.

19 Q The evaluation that Doctor Narayan did
20 which was after the trial.

21 A Yes.

22 Q Do you recall, did you ask for that
23 evaluation?

24 A Best I recall because I remember we went
25 up and I think after the trial -- can't remember if

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1 it was Kirkland. Seems like it might have been the
2 one in Kirkland, but specifically I think Columbia.
3 I think that's that (inaudible). It's the same --
4 that building off of Farrell Road. I remember going
5 out there to see Jimmy. Exactly -- can't remember
6 when this was but it was after the trial. So Your
7 Honor, there were charges that were still pending.
8 I do not know what the outcome of those charges were
9 but there were others still pending. So when I got
10 a call that there are possible issues with him at
11 the Department of Corrections at that time, you
12 know, I went to see him. And at the time I went to
13 see him he was presented unresponsive to me. So I
14 came back, ended up doing a motion to have him
15 evaluated. That evaluation -- now mind you, this
16 was after the trial. But that evaluation, Doctor
17 Narayan's, evaluation, is there. I was not there
18 long when I went up to see him, but I did see him.
19 After seeing him, because of facts which we had
20 those pending charges, that obviously was something
21 that I needed to followup on. And based on that I
22 did file the motion and proceed with the evaluation.

23 Q And did you ever think about asking for a
24 lesser included offense?

25 A I think Mr. Cox mentioned it. It is a --

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1 I'm not make not quote as ole school for lack of
2 better term, as Mr. Cox is, but when I was in
3 private practice that was a tactic that would be
4 used because a lot of times we don't want to give a
5 jury a compromise situation. And this was a highly
6 contested case, as you can imagine, as you can see.
7 And again, Mr. Meggs made it clear in no uncertain
8 terms he did not do this.

9 Q And in terms of the 16-3-810 that's
10 brought after the -- brought out today and whether
11 or not there was an audience, do you think it's
12 possible that Mr. Meggs himself or the other boys
13 could have been seen as audience members in this
14 case?

15 A From my reading of the statute -- and
16 that's one of the things I wanted to refresh my
17 memory because I have not dealt with that statute
18 since the trial, quite frankly -- but in looking at
19 the statute, in looking at the different things, if,
20 and I think again, I have to harken into the
21 transcript as well as far as what was testified to,
22 whether or not there were any other people around.
23 But when you said audience, an audience can be one
24 unless there's some different thing I'm not aware
25 of. But so long as it's from -- if you've got two

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1 people doing something and then you're there, then
2 you would be this audience even though audience of
3 one. Again, that's pretty much the best that I can
4 explain on that particular situation.

5 Q Okay. Beg the Court's indulgence for a
6 moment.

7 THE COURT: Yes, ma'am.

8 BY MS. THAMES:

9 Q Just briefly. I think I may have asked
10 you this already but I'm not sure. Did you see any
11 reason to pursue a guilty but mentally ill plea?

12 A No, because again, that would be: One,
13 acknowledging guilt; and two, would be guilty but
14 mentally ill. At that particular time we didn't
15 have anything that would have led us in that realm.
16 And one of the things about guilty but mentally ill
17 as well is that -- and I think it was asked before
18 -- but with guilty but mentally ill, as I'm aware of
19 it, they would be evaluated for whatever, for a
20 certain number of days, but if they're convicted and
21 get prison time they could actually end up in the
22 general population. That is not a coverall as it
23 relates to their status with the Department of
24 Corrections. They could be determined to be okay
25 enough to return to general population. So my point

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1 to all of that being is that's not something we
2 really ever considered.

3 Q And he is -- as -- from what we've heard
4 today, he is receiving some help.

5 A Based on what I've heard. I hadn't been
6 aware of anything up to this time, but from what
7 I've heard it appears that he is receiving some
8 help, yes.

9 Q Okay. Thank you, Mr. Redmond. That's all
10 I have.

CROSS EXAMINATION

11 **BY MS. BALLARD:**

12 Q Mr. Redmond, you testified that you were
13 aware that Jimmy was -- had a problem with telling
14 the truth?
15

16 A Oh, absolutely, I was aware of that.

17 Q It was a fairly major deal. I mean, it
18 wasn't just a little white lie here or there, was
19 it?

20 A I think it was a situation he might
21 have -- he might have told untruths concerning his
22 status militarily. I can't remember specifics but
23 seems like there was an issue about a rank that he
24 had. Sometimes it was a question of what job he
25 had, as I think Mr. Meggs testified to. So yeah, I

RW - K. REDMOND - CROSS

1 mean, there were issues. Now did he ever do that to
2 me? Not that I'm aware of. But I was aware that
3 these were things that had happened.

4 Q If you were aware, Mr. Redmond, that he
5 had this problem with telling the truth, why didn't
6 it occur to you that perhaps he wasn't telling the
7 truth when he told you he hadn't done anything?

8 A Well -- and one of the things here is we
9 did have -- now mind you, polygraphs especially at
10 that time were not, and even now there's an issue
11 about admissibility; but beyond that, once it came
12 back that he had -- and again, I was not directly
13 involved in the polygraph examination. But once we
14 got it, I was aware of it and got a copy of the
15 report. I think that was why Mr. McBratney was
16 still in there, but I cannot, I cannot completely
17 remember. But again, that was something that, you
18 know, led us to believe, yeah, Jimmy is telling us
19 the truth. And so that's the stance that we took.

20 Q Isn't it conceivable that with knowledge
21 that he lied a whole lot, with knowledge that his
22 family was concerned about his mental illness, --

23 A Uh-huh.

24 Q --with knowledge that he apparently had
25 passed the polygraph, did it not occur to you that

RW - K. REDMOND - CROSS

1 perhaps he didn't understand that what he did was
2 wrong?

3 A Well, considering the conversations with
4 him, and I guess when a person tells you they didn't
5 do something, it's not that I didn't do something or
6 it's not that, well I might have done something but
7 I didn't know that it was wrong. I mean, it was, I
8 did not do it. And inherent in that is that
9 obviously somebody has to have an understanding that
10 something is right or wrong in order to be that
11 adamant about denying, and saying, look, I did not
12 do that. And again, in the discussions that we had
13 and the fact that he denied these particular
14 charges, I mean, that was the one hundred percent
15 basis of our defense, is that he did not do this.
16 And that was based on what he had told us. And
17 again, with the witnesses that we were able to find,
18 and again, in account taking into consideration the
19 polygraph, but specifically the witnesses, yeah,
20 that is the route that we took. To directly answer
21 your question, if he was that adamant in saying, no,
22 I did not do this, it was clear to me that he
23 understood right and wrong. You know, whether or
24 not -- I mean, he understood the fact that these
25 charges were bad and were wrong and that if he did

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1 these acts that would be wrong. That is why he was
2 so adamant in his denials. I hope I pretty much
3 summed it up.

4 Q In retrospect, in light of the hindsight
5 that we have the benefit of —

6 A Yes, yes.

7 Q —has it occurred to you that perhaps
8 Jimmy did lack capacity at the time that these
9 events had occurred?

10 A I'm — I would not necessarily be, I don't
11 think, qualified to answer that totally but I'm
12 going to give it a shot. In 2002 I think it was, we
13 had the evaluation done by Doctor Narayan ---

14 Q Correct.

15 A —who is much more qualified than I am
16 to, to answer that particular question. And at that
17 time his report came back on all, on the three major
18 prongs that we look at: That being capacity to
19 stand trial, the ability to conform, and knowing the
20 difference between right and wrong. He felt that he
21 was competent in each of those areas. So, with that
22 it's hard for me to say, well yeah, I should have
23 known that when I've got Dr. Narayan who is an
24 expert saying in 2002 the same thing that I guess we
25 were thinking.

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1 Q I appreciate that, Mr. Redmond, but that
2 wasn't my question.

3 A Yes, ma'am.

4 Q My question was, has it occurred to you
5 now that you've heard all of this in retrospect that
6 it's possible that he was lacking capacity at the
7 time these offenses occurred?

8 A I mean, possible, I guess -- obviously
9 anything's possible, but I can't say for sure
10 whether or not he was. I can only go by, one, what
11 I see and what I get as it relates to the
12 evaluation. But, you know, and I'm not disputing
13 Doctor Martin -- don't get me wrong -- it's just it
14 seems that I'm hearing one thing from Doctor Martin
15 and I got something from Doctor Narayan at the time
16 so I can't answer definitively one way or the other
17 other than to say anything's possible I guess.

18 Q Do you agree with Mr. Cox that -- that the
19 Meggs family was a family that would have done
20 anything that you all asked them to do to prepare
21 for trial?

22 A Oh, yeah, without a doubt.

23 Q So what would have been the harm in
24 getting a psychiatric evaluation of Mr. Meggs?

25 A Well, one of the things is that -- and

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1 again, I'm going by memory. But one of the things
2 that would come into play would be whether or not
3 there was a basis to get the evaluation. Now it's
4 not as much -- now as you probably know I'm with the
5 Solicitor's Office in the Fourth Circuit now. Now
6 you have to go through a lot more of a stringent
7 procedure to get an evaluation than you did back
8 then but you still had to have a basis. And at that
9 time we didn't see any red flags in the context of
10 what we were talking about. I'm not talking about
11 the lies and everything, but in the context of
12 whether or not: One, he did these things; two,
13 whether or not he knew that what he was doing was
14 wrong, and even as it relates to his ability to
15 conform his behavior. When we dealt with Jimmy at
16 that time he did not strike me as somebody that
17 compulsively could not control himself with young
18 boys. Because again, in talking with him and
19 preparing his defense that's why we presented the
20 defense that we did.

21 But again, it's -- it's just -- it's one of
22 those situations where that's a hard question for me
23 to answer directly; but you know, the only thing I
24 can say is that I did not see any red flags on the
25 issue of competency to stand trial. Were there

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1 possibly issues, I tell you, I'm chairman of the Pee
2 Dee Mental Health board so I have to deal now -- I
3 wasn't at the time; I wasn't on the board at the
4 time. But one of the things I can tell you is most
5 of us who don't realize it have mental health
6 issues, but that's not the standard because if that
7 was the standard then we'd have people being not
8 competent all the time. The standard is whether or
9 not that would have affected him in the context of
10 our world here in the criminal justice system. And
11 quite frankly, at that point I didn't think it did.

12 Q I appreciate that, but my question was
13 what would it have hurt? Since you had a family
14 that obviously was willing to do anything ---

15 A Oh --

16 Q Let me finish the question. Who obviously
17 was willing to do anything in the world to help
18 prepare for trial and in Jimmy's defense, and you
19 knew that his paternal grandfather was
20 institutionalized at the State Hospital for
21 schizophrenia, correct?

22 A Yeah, I do remember hearing talk about. I
23 think Ms. Meggs mentioned that and I do remember
24 some talk about that.

25 Q In fact, after the trial you got

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1 Mr. Meggs', Mr. BK Meggs' medical records from the
2 Department of Corrections.

3 A Exactly, uh-huh, I remember. That's
4 right; I did that. I do remember that; I recall
5 that.

6 Q Right. So faced with that, faced with the
7 fact that he had this history of mental illness,
8 faced with the fact that he apparently couldn't tell
9 the truth, do you in retrospect believe that it
10 would have been within the standard of care for you
11 to have gotten a psychiatric evaluation of Mr.
12 Meggs?

13 A Would it have hurt anything, no. Would it
14 have changed anything, I don't know. But it
15 wouldn't have hurt, to answer your question.

16 Q Let me show you the definitions in
17 16-3-800. I know you looked at them.

18 A I was looking over them earlier. While we
19 were over there I was trying to refresh my memory.

20 MS. BALLARD: Your Honor, could I be here
21 with the witness?

22 THE COURT: Sure.

23 BY MS. BALLARD:

24 Q Would you agree with me, Mr. Redmond, that
25 if the charge is, it's unlawful for any person to

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1 employ, authorize or induce a child younger, etc.,
2 etc., to engage in a sexual performance and the
3 definition of sexual performance includes an
4 audience, that the person inducing couldn't be the
5 audience. It's got to be somebody different;
6 doesn't it?

7 A Let me -- if I can take this.

8 Q Please.

9 A Okay. Could you repeat your question one
10 more time?

11 Q My question is, in looking at the elements
12 of this statute --

13 A Yes, ma'am.

14 Q --isn't it clear to you that the person
15 who employs, authorizes, or induces the child has
16 got to be somebody different than the audience for
17 whom the performance is provided; isn't that true?

18 A Now, and I may be reading it wrong but, I
19 don't exactly read it that way. And let me explain
20 how I read it. Maybe I -- maybe that will help.
21 The way I read that is that the person, if I induce
22 somebody, a child under the age of 18, to engage in
23 a sexual performance, it doesn't specify who that
24 audience is. The only way I think that might be
25 different, if I am an actual participant in that

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1 act, I don't think it applies. But that statute to
2 me, the way I read it, seems to say that if I induce
3 someone to, you know, two kids to do something and
4 I'm watching it, then I think that's -- that -- I
5 think that's the statute that applies and I think
6 that's the way I read that statute.

7 Q So the person who induces is also the
8 audience?

9 A Because they're not a participant that
10 statute does not call for any participation in the
11 sexual performance. It just says for them to induce
12 a sexual performance, doesn't say with whom. That's
13 the way I read it. I might be wrong, but that's the
14 way I read that statute.

15 Q It would have been nice, wouldn't it, Mr.
16 Redmond, to bring that up at trial and let the trial
17 judge wrangle with these issues; wouldn't it?

18 A You know, that's one of those things that
19 may be, that might be correct.

20 Q Would you agree with me we don't have any
21 case law out there that decides the issue I'm
22 raising?

23 A Without having had the benefit of doing
24 any recent research I could only take you at your
25 word, which I have no problem doing.

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1 Q Thank you. That's all I've got,
2 Mr. Redmond.

3 MS. THAMES: Just one thing, Your Honor.

4 THE COURT: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MS. THAMES:

7 Q Mr. Redmond, there -- when the boys
8 testified there were other boys present; were there
9 not?

10 A To my recollection, and again, this is
11 stuff that would be in the transcript. And again, I
12 have to apologize for not having read the transcript
13 before today but my recollection is that, yes, there
14 were things that happened in front of other boys.

15 Q Okay.

16 A But again, the transcript would -- I would
17 hearten to the transcript on that.

18 Q Okay, thank you.

19 A You're welcome.

20 MS. BALLARD: I don't have any redirect --
21 re-cross, Your Honor.

22 THE COURT: Thank you, Mr. Redmond. You
23 may step down. Be careful.

24 THE WITNESS: And may I please -- in light
25 of the difficulties I'm having may I please be

1 excused?

2 THE COURT: Just be very careful.

3 THE WITNESS: If the Court would allow,
4 and I hope the family wouldn't have a problem with
5 it, could I just at least shake Mr. Meggs's hand.
6 I haven't seen him in years.

7 THE COURT: I have no objection.
8 Anything further, Ms. Thames?

9 MS. THAMES: No further witnesses, Your
10 Honor.

11 MS. BALLARD: Your Honor, could I have a
12 moment?

13 THE COURT: I was going to suggest if you,
14 if it's all right, we're at the close of at least
15 the evidence, why don't we just take about ten
16 minutes.

17 MS. BALLARD: That would be great.

18 THE COURT: And then we'll reconvene in
19 about ten minutes.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: If we're ready to proceed I'd
23 be happy to entertain any closing or summations.

24 MS. BALLARD: Thank you, Your Honor. We
25 do not have any reply testimony.

1 THE COURT: All right.

2 MS. BALLARD: I would hand up to Your
3 Honor kind of a summary sheet that I've done on the
4 issues that we are presenting to the Court.

5 THE COURT: Thank you, Ma'am.

6 MS. BALLARD: Your Honor, I think -- I
7 don't mean to belabor the fact that we have a mental
8 illness issue that obviously should have been looked
9 into, and I think the testimony is essentially
10 undisputed that the family asked for Mr. Meggs to be
11 evaluated. And we didn't really get a good answer
12 as to why that didn't happen, but we also know from
13 Doctor Martin that had he been evaluated it would
14 have been determined that he lacked capacity at the
15 time of the crime and therefore the verdict form
16 under 17-24-20 and 17-24-30 should have been
17 requested by the trial judge -- to the trial judge,
18 Your Honor. Failure to move for directed verdict on
19 the State's failure to establish a necessary element
20 of the offense, I've talked to the Court about the
21 issue regarding 16-3-810 and the presence of a --
22 the occurrence of a sexual performance and the
23 definitions under 16-3-800 Subsection 3 which talks
24 about a performance before an audience.

25 And I understand the attorney general's

1 argument that under these set of facts Mr. Meggs
2 himself would have been an audience, but that's a
3 legal issue that should have been raised at the
4 trial. A motion for directed verdict should have
5 been made so when an appeal went up that issue could
6 have been addressed. I think the statute itself is
7 clear that the alleged perpetrator himself cannot be
8 the audience; otherwise, there's no -- there'd be no
9 reason to require as an element of the crime that an
10 audience be there because the alleged perpetrator
11 would always be there so there would always under
12 that definition be an audience.

13 There is some testimony in the record,
14 Your Honor, that's vague, that should have been
15 objected to that I think is relevant to this
16 particular issue, Your Honor. But specifically on
17 Page 267 of the transcript, the victim Tyler W.
18 testified that some of the boys on the paintball
19 team could have seen this. But there was no
20 objection, no request to lay the foundation of
21 whether he could or could not see, whether other
22 boys were looking. In fact, he went on to say
23 sometimes they were in the tent sleeping or
24 sometimes they were out getting firewood. So he
25 really didn't know whether there were other people

1 watching. Specifically, the witness Michael M. on
2 Page 360, said that he heard a conversation between
3 Jimmy Meggs and the Watford boys but he specifically
4 on Page 361 said he turned and walked away and
5 didn't see anything. He said he turned and walked
6 away because he thought it was wrong. Did you hear
7 anything after that? I heard them pallic (ph). And
8 on page 383 the witness Johnny M. testified that he
9 could not see. He could not see what was happening
10 because he pulled the T-shirt over his head or the
11 perpetrator allegedly pulled — anyway, somebody
12 pulled a T-shirt over somebody's head and therefore
13 he did not see anything. And I think those
14 examples, Your Honor, of testimony about whether
15 there was or was not an audience, even assuming one
16 person could be an audience. Clearly it's testimony
17 that should have been objected to as not having a
18 foundation and clearly the motion for directed
19 verdict on that should have been made. We believe
20 that Mr. Meggs' motion for a new trial, his
21 post-conviction relief application should be granted
22 and the case should be remanded for further
23 proceedings, Your Honor. Thank you.

24 THE COURT: Thank you, Ms. Ballard.
25 Ms. Thames.

1 MS. BALLARD: Thank you, Your Honor.

2 MS. THAMES: Thank you, Your Honor. The

3 State will submit that Mr. Meggs has not met his
4 burden of proof here today. In regard to the
5 failure to investigate his mental history, as you
6 have heard today both the doctors that evaluated
7 Mr. Meggs in 2002 and then again this year testified
8 that he did have the capacity to stand trial and
9 that he did understand right from wrong. The only
10 difference in the evaluations was the capacity to
11 conform. And I would like -- the State would like
12 for Your Honor to take note of the fact that the one
13 that found that he could not conform his conduct was
14 dated 2007, which is six, seven, however many years
15 after the offenses were committed. That Doctor had
16 much less information at his disposal than did the
17 doctor in 2002 so we would ask you to look at that.

18 The testimony -- the testimony was that
19 they never had any indication that he was suffering
20 under any kind of mental health issues. And even if
21 he did have mental health issues that doesn't mean
22 that he was unable to conform his conduct. Just the
23 fact that he was a liar does not indicate that he
24 couldn't conform his conduct. The fact that his
25 granddaddy had mental health issues does not mean

1 that he has mental health issues. We have to look
2 at him and not his fam -- not, you know, not his
3 granddaddy in terms of these offenses and we'd ask
4 Your Honor to look at that. As far as the directed
5 verdict that to the audience, the State's position
6 is just that Mr. Meggs could have been an audience.
7 I think -- I would ask Your Honor to read the
8 testimony, the testimony of the boys. There were
9 several boys involved. There were four boys that
10 testified. Certainly, you know, he didn't -- may
11 not have seen the actual act but he saw one little
12 boy on his knees in front of the other little boy
13 with his pants down. That's an audience in my view.
14 And I do think that Mr. Meggs -- I mean, I think
15 that's part of why this all happened was so that he
16 could watch and watch these little boys doing these
17 things to each other. So I would ask Your Honor to
18 look at the transcript and look at the testimony.

19 And as far as asking for a lesser included
20 offense, Your Honor, we would just submit that that
21 was trial strategy. Both Mr. Cox and Mr. Redmond
22 indicated that they just didn't want to give the
23 jury a compromise, you know, that they could go
24 with. They were looking for an acquittal and they
25 did the best job they could. They put up a very,

1 very strenuous defense. They had witnesses
2 cross-examined very thoroughly, and we would ask the
3 application be dismissed.

4 THE COURT: All right. Thank you. All
5 right, I am going to take the opportunity to view
6 most of these records, this trial's transcript, and
7 so I'm going to take the matter under advisement.
8 As I told you on some earlier ones I'm going to have
9 those to you this week. I probably will not have
10 this one to you this week because there's a lot
11 here.

12 MS. BALLARD: Yes, sir.

13 THE COURT: There's a lot more here than I
14 can do to finish this week and still get this to you
15 so it will probably be next week. Now I will tell
16 you this, I am scheduled, if you look on the court
17 schedule, I'm on vacation next week but I'm not
18 going anywhere. It's just if you don't take your
19 vacation you lose it. I'm taking a week next week,
20 quote "vacation week", but I'm not going anywhere.
21 So I'll work on this and I will have you an answer
22 next week or a decision next week. Okay.

23 MS. THAMES: Thank you very much, Your
24 Honor. We appreciate you hearing us.

25 THE COURT: Okay. Thank you very much. I

1 appreciate everyone's patience and I know this has
2 been a long day, but thank you again for your
3 patience.

4

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 **CERTIFICATE OF REPORTER**

2
3 **STATE OF SOUTH CAROLINA }**
4 **COUNTY OF FLORENCE }**
5

6
7 **I, FRANCES BAKIS-RAY, Registered**
8 **Professional Reporter (RPR), court reporter for the**
9 **State of South Carolina, Twelfth Judicial Circuit,**
10 **do hereby certify that the foregoing proceeding is a**
11 **stenographic report and was transcribed through**
12 **computer-aided transcription; that the foregoing**
13 **transcript contains a true record of the**
14 **proceedings.**

15 **I further certify that I am neither**
16 **counsel for, nor related to nor employed by any of**
17 **the parties connected to the action, nor am I**
18 **financially interested in the action.**

19 **Witness my hand at Florence, South**
20 **Carolina, this 1st day of April, 2008.**

21
22
23
24 _____
25 **FRANCES BAKIS-RAY, RPR**
 My Commission Expires: 9-13-2014

THOMAS V. MARTIN, M.D.
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Curriculum Vitae

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- American Board of Psychiatry and Neurology, Diplomate, Forensic Psychiatry, Board Certified.
- Clinical Examiner, Association for the Treatment of Sexual Abusers (ATSA).
- National Board of Addiction Examiners, Doctoral Addictions Counselor.
- American Board of Forensic Medicine, Diplomate, Board Certified.
- American Board of Forensic Examiners, Diplomate, Psychiatry, Board Certified, Fellow of the College.
- American Board of Psychiatry and Neurology, Diplomate, General Psychiatry, Board Certified.
- Medical Licensure: South Carolina, Georgia, Texas, and Maryland.

EDUCATION

- Fellowship: Forensic Psychiatry, Palmetto Health Alliance, and the University of South Carolina School of Medicine, Columbia, SC, 1999-2000.
- Residency: Psychiatry, Wilford Hall USAF Medical Center, Lackland AFB, TX, 1988-92.
- Medical School: Uniformed Services University of the Health Sciences School of Medicine, Bethesda, MD; 1984-88; Doctor of Medicine.
- Graduate: Hood College, Frederick, MD; 1980-84; Masters of Science, Biomedicine.
- Undergraduate: University of Maryland, College Park, MD; 1974-79; Bachelor of Science, Clinical Psychology.

PROFESSIONAL EXPERIENCE

- Martin Psychiatric Services, PC, Columbia, SC, private practice, individual and group psychotherapy, medication management, independent medical evaluations in the General and Forensic Psychiatric assessment and treatment of juveniles and adults, sex offenders, and child custody evaluations, 2000-present.
- New Hope Carolinas Treatment Centers, Rock Hill, SC, Medical Director and Psychiatric Consultant, Clinical Nursing Supervisor, and Professional Staff Instructor, for a total of 135 beds in a multidisciplinary treatment High Maintenance Residential Treatment Facility for adolescent males and females with serious mental illnesses, developmental delays, sex offending and other violent behaviors, 2001-present.
- Adjunct Clinical Assistant Professor, Department of Neuropsychiatry, University of South Carolina School of Medicine, Columbia, SC, 2000-present.
- Forensic Psychiatrist, SC Department of Juvenile Justice, Columbia, SC, psychiatric assessment, medication management and Court Ordered evaluations, University of South Carolina School of Medicine, 2000-2001.
- Medical Director, Southbridge Center, Columbia, SC, assessment, diagnosis, and treatment of forensic and sexually violent juvenile patients in a residential facility, 2000-2001.
- Senior Psychiatrist, Behavioral Disorders Treatment Program, SC Department of Mental Health, Columbia, SC, Clinician and Case Manager Supervisor in charge of assessment, diagnosis, and treatment of Sexually Violent Predators, forensic evaluations and consultations, 1999-2001.

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- Senior Psychiatrist, Columbia Area Mental Health Center, Columbia, SC, outpatient diagnostic and medication practice for indigent psychiatric patients, supervised a multi-disciplinary treatment team, 2000-2001.
- Clinical Instructor, Department of Neuropsychiatry, University of South Carolina School of Medicine, Columbia, SC, 1999-2000.
- Psychiatric Consultant, The Ethos Foundation, College Park, MD, providing initial psychiatric evaluation, medication assessment and maintenance and therapeutic treatment recommendations to federal offenders, 1998-1999.
- Clinical Director, Tri-Service Addiction Recovery Center, Inpatient, Partial hospitalization and Outpatient Services, Malcolm Grow Medical Center, Andrews AFB, MD, fifteen-twenty five patient capacity, supervising psychiatric consultation, treatment team management, intense outpatient group facilitation and medication management and professional staff, psychiatric resident, physician assistant and medical student instruction, 1996-1999.
- Chief, Tri-SARC Consultation-Liaison Service, Malcolm Grow Medical Center, Andrews AFB, MD, 200-inpatient medical, surgical, and intensive care service, supervising psychiatric/family practice residents, physician-assistant and medical students, 1996-98.
- Director of Base Medical Services Security Clearance Officer, Malcolm Grow Medical Center, Andrews AFB, MD, 1996-1999.
- Forensic Psychiatrist, Malcolm Grow Medical Center, Andrews AFB, MD, Consultant to the Air Force Legal Services Agency, 1992-1999.
- Staff Attending Psychiatrist, Malcolm Grow Medical Center, Andrews AFB, MD, responsible for the evaluation, treatment, and management of psychiatric inpatients on a 25-bed ward; in addition to psychiatric resident, medical student and psychology intern teaching and supervision, 1992-96.
- U.S. Air Force Medical Corps Recruiter, University of Maryland, ROTC Program, College Park, MD, 1995.
- Chief Resident in Psychiatry, Wilford Hall USAF Medical Center, Lackland AFB, TX, 1992.
- Psychiatric Technician with administrative, teaching and research responsibilities, Research Assistant, Chestnut Lodge Hospital, Rockville, MD, 1977-80.
- Health Lodge Director, Boy Scouts of America, National Capital Area Council, 1976-79.

SPECIALIZED TRAINING EXPERIENCES

- "A Terrain of Landmines: Child Best Interest Evaluations," Annie G. Steinberg, M.D. et al, American Academy of Psychiatry and the Law Meeting, Montreal, Canada, October 2005.
- "Sexually Violent Predators and Dangerous Offenders," J. Paul Fedorff, M.D. et al, American Academy of Psychiatry and the Law Meeting, Montreal, Canada, October 2005.
- "Asperger's Disorder and Paraphilic Crimes," J. Arturo Silva, M.D. et al, American Academy of Psychiatry and the Law Meeting, Montreal, Canada, October 2005.
- "Using Forensic Assessment Instruments," Gina M. Vincent, Ph.D. et al, American Academy of Psychiatry and the Law Meeting, Montreal, Canada, October 2005.
- "Juvenile Sex Offenders and Comprehensive Multimodal Therapy," Kevin E. Robinson, M.D. et al, American Academy of Psychiatry and the Law Meeting, Montreal, Canada, October 2005.
- "Psychopathy and Deviant Sexual Arousal Among Sex Offenders: A Meta-Analysis," Joel T. Andrade, LICSW et al, American Academy of Psychiatry and the Law Meeting, Montreal, Canada, October 2005.
- "Neuropsychiatric Analysis of Sexual Murder," J. Arturo Silva, M.D., American Academy of Psychiatry and the Law Meeting, San Antonio, TX, October, 2003.
- "Childhood Sexual Abuse of Male Offenders by Females," "Differentiating Sexual Offenders: Dangerous or Not?," John M. W. Bradford, M. B., American Academy of Psychiatry and the Law Meeting, San Antonio, TX, October, 2003.
- "Evaluating and Treating Juvenile Sexual Offenders," Roy J. O'Shaughnessy, M.D., "Differentiating Sexual Offenders: Dangerous or Not?"
- "The Assessment and Management of Paraphilias," John M. Bradford, M.D., William S. Hall Psychiatric Institute, Columbia, SC, June, 2003.

- "Understanding Risk Assessment," "Expert Predictions of Dangerousness," Sex Predator Evaluations," "The Andrea Yates Insanity Trial," American Academy of Psychiatry and the Law Meeting, Newport Beach, CA, October, 2002.
- "The Evaluation of Internet Use and Sexual Offending Behavior, and the Assessment of Child Molestation," Gene Abel, M.D., Georgia Psychiatric Physicians Association Conference, Atlanta, GA, 2002.
- "Protection from High-Risk Malpractice Liability," APA-Professional Risk Management Services, Inc., Columbia, SC, 2002.
- "Sex Offender-Specific Psychiatric Assessment, Treatment, and Risk Evaluation," American Academy of Psychiatry and the Law, Boston, MA, 2001.
- Sex Offender Re-Offense Risk Assessment, Sinclair Seminars, R. Karl Hanson, Ph.D., Thomas Grisso, Ph.D., Douglas Epperson, Ph.D., Robert Prentky, Ph.D., David Thornton, Ph.D., Dennis M. Doren, Ph.D., Robert Hare, Ph.D., and Vernon L. Quinsey, Ph.D., 2001.
- Peasle Plethysmograph training and certification, Behavioral Technology Institute, Peter Byrne, Ph.D., Columbia, SC, 2001.
- Juvenile Sexual Offender Assessment and Treatment Program Development, Barbara K. Schwartz, Ph.D., Clinical Director for Sex Offender Programs, Justice Resource Institute, Boston, MA, 2001.
- "Risk Assessment of Sexual Offenders," "The Ethics of Treatment and Research Involving Anti-androgen Medications," "Using Research to Improve Risk Assessments for Sex Offenders," "Voluntary Orchiectomy for Treatment of Pedophilia," "Assessing the Stalker," American Academy of Psychiatry and the Law Meeting, Vancouver, BC, Canada, 2000.
- Royal Ottawa Hospital, Ottawa, Canada, Sexual Offender Unit, 2000.
- "Abel Screen for Sexual Interest" training course, Atlanta, GA, 2000.
- "Sex Offenders: New Methods of Evaluation and Treatment," Baltimore, MD, 2000.
- "Forensic Psychiatry Boards Review Course," American Academy of Psychiatry and the Law, Baltimore, MD, 1999.
- "Sexual Child Abuse and the Exploitation of Children on the Internet," Federal Bureau of Investigation and the Air Force Office of Special Investigation, Henderson Hall U.S. Marine Corps Headquarters, Washington, D.C., 1998.
- "The Sexual Victimization of Children; Assessment, Profiling and Investigation Practices, Federal Bureau of Investigation, Quantico U.S. Marine Corps Base, VA, 1998.
- "Proteumias (Pathologies of Love) and Stalking," Directions in Psychiatry Seminar, 1997.
- "Forensic Psychiatry for Clinicians," Directions in Psychiatry Seminar, 1997.
- "Management and Treatment of Violent Patients," Directions in Psychiatry Seminar, 1997.
- "Competency to Stand Trial," Directions in Psychiatry Seminar, 1997.
- "Assessing Appropriate Levels of Treatment Care in Substance Dependent Patients," American Society of Addiction Medicine, Anacostia, VA, 1997.
- "Professional Ethics and Boundaries in Psychiatric Practice," Uniformed Services University of the Health Sciences School of Medicine, 1997.
- "Spouse Abuser: Guidelines for Health Care Providers," Uniformed Services University of the Health Sciences School of Medicine, 1997.
- "Expert Testimony: Principles and Practice," Walter Reed Army Medical Center, 1996.
- "Quality Air Force Leadership Course," Andrews AFB, MD, 1996.
- "Liability Prevention for Mental Health Clinicians," Harvard Medical School, 1996.
- "Psychiatry's Response to Violence and Disaster," American College of Psychiatrists, 1996.
- "Psychiatric Malpractice Risk Management," Directions in Psychiatry Seminar, 1995.
- "Clinical and Investigative Perspectives on Terrorism and Espionage," Walter Reed Army Medical Center, 1995.
- "Violence in the Workplace," Andrews AFB, MD, 1995.
- "Psychiatric-Legal Decision-Making by the Mental Health Practitioner," American College of Psychiatrists Seminar, 1995.
- "Professional Boundaries in Psychiatric Practice," American College of Psychiatrists Seminar, 1995.
- "Violence in the Family," American College of Psychiatrists Seminar, 1995.
- "Domestic Violence," Malcolm Grow Medical Center, 1995.

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- "Legal and Ethical Issues in Mental Issues," Malcolm Grow Medical Center, 1995.
- "Air Mobility Command Critical Incident Stress Debriefing," San Antonio, TX, 1993.
- "Assessing and Treating the Violent Patient," Psychiatric Times Presentation, 1993.
- "Leaders Empower Staff Course," Andrews AFB, MD, 1993.
- "Administration of the Structured Clinical Interview for DSM-III-R (SCID)," Washington, D.C., 1989.
- "Psychiatric Technician Training/Clinical Psychiatric Research Training, Chestnut Lodge Hospital, Rockville, MD, 1977-1980.

COMMITTEE ACTIVITIES

- Medical Services Team Chairman, New Hope Treatment Centers, Rock Hill, SC, 2005-present.
- Performance Improvement Committee, New Hope Treatment Centers, Rock Hill, SC, 2005-present.
- Physician's Advisory Committee, New Hope Treatment Centers, Charleston, SC, 2002.
- Program Implementation Team, Justice Resource Institute, Southbridge Center, Columbia, SC, 2001.
- Senior Staff Committee, Behavioral Disorders Treatment Program, South Carolina Department of Mental Health, Columbia, SC, 2000-2001.
- Environment of Care Committee, Behavioral Disorders Treatment Program, South Carolina Department of Mental Health, Columbia, SC, 2000-2001.
- Executive Committee of the Medical Staff, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1997-1999.
- Credentials Committee, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1997-1999.
- Medical Ethics Committee, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1995-1999.
- Drug Usage Evaluation Committee, Chairman, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1993-1999.
- Pharmacy and Therapeutics Committee, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1993-1999.
- Health Records Review Committee, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1993-1999.
- Pharmaceutical Representative Coordinator, Malcolm Grow Medical Center, Andrews AFB, MD, 1993-1999.
- Test Utilization Committee, Psychiatry Representative, Malcolm Grow Medical Center, Andrews AFB, MD, 1998.
- TRI-SARC Partial Hospitalization Service Integration Task Force, Malcolm Grow Medical Center, Andrews AFB, MD, 1996-1997.
- Psychiatry Grand Rounds/Continuing Medical Education Coordinator, Department of Psychiatry, Malcolm Grow Medical Center, Andrews AFB, MD, 1993-1997.
- Multi-Disciplinary Psychiatric Treatment Team Working Group, Chairman, Department of Psychiatry, Malcolm Grow Medical Center, Andrews AFB, MD, 1995.
- American Medical Association, Medical Student Branch, District of Columbia, 1984-1987.

PROFESSIONAL ORGANIZATIONS

- Association for the Treatment of Sexual Abusers, Clinical Member, 2000-present.
- American Academy of Psychiatry and the Law, 1995-present.
- American College of Forensic Psychiatry, 1995-present.
- American Board of Forensic Examiners, 1995-present.
- American Psychiatric Association, 1988-present.
- American Medical Association, 1984-present.
- Society of Uniformed Services Psychiatrists, American Psychiatric Association, 1994-1999.
- National Board of Addiction Examiners, 1997-1999.
- American Academy of Psychoanalysis, 1992-1998.
- Washington Psychiatric Society, American Psychiatric Association, 1992-1994.
- Texas Society for Psychiatric Physicians, 1988-1992.

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- Bexar County, Texas Psychiatric Society, 1988-1992.

AWARDS AND SPECIAL RECOGNITION

- U.S. Air Force, Major, Medical Corps, Honorable Discharge, 1984-99.
- U.S. Air Force Commendation Medal, Malcolm Grow Medical Center, Andrews AFB, MD, 1995.
- Certificates of Appreciation: The Interpersonal Theory of Psychiatry Seminars and in Psychopharmacology Instruction, Malcolm Grow Medical Center, Andrews AFB, MD, 1992.
- Military Service Longevity Ribbon, Andrews AFB, MD, 1992.
- U.S. Air Force Outstanding Unit Award, Medical Support for Desert Storm, Wilford Hall Medical Center, Lackland AFB, TX, 1991.
- National Defense Ribbon, Desert Storm, Lackland AFB, TX, 1991.
- Unit Commissioner of the Year, Boy Scouts of America, Alamo Area Council, San Antonio, TX, 1990.
- Military Firearms Expert, Washington, D.C., 1987.
- U.S. Air Force Training Award, Maxwell AFB, AL, 1984.
- Psi Chi Honor Society, President, University of Maryland, College Park, MD, 1978.
- Eagle Scout Award with Bronze Palm, Boy Scouts of America, 1971.

PUBLICATIONS/PRESENTATIONS

- Martin, Thomas V., McKee, Geoffrey, and Holland, Lori A., Juvenile Sex Offenses: Predicting Multiple Victims, American Academy of Psychiatry and the Law meeting (2001), Boston presentation.
- Martin, Thomas V. and Terris, James, Methods for long-term metabolism studies, chronic blood collection, and blood pressure measurements in conscious swine. Swine in Biomedical Research; June 1985, p. 52.
- Terris, James and Martin, Thomas V., Plasma and aortic renin activity in the DOCA hypertensive pig. Presented at the American Physiological Society fall meeting, 1985.
- Martin, Thomas V., The development of a vascular renin extraction procedure and method of radioimmunoassay to measure changes in vascular renin-like activity following DOCA administration in the pig. Masters' Thesis, 1984.

RESEARCH COLLABORATION

- Chestnut Lodge Follow-Up Study, Clinical Research Assistant, Thomas H. McGlashan, Clinical Director, Chestnut Lodge Hospital, Rockville, MD, 1997-1980.
- McGlashan, Thomas H., Schizotypal personality disorder, Chestnut Lodge Follow-Up Study: VII, Long-term follow-up perspectives; Archives of General Psychiatry, 43: 329-34, 1986.
- McGlashan, Thomas H., The prediction of outcome in borderline personality disorder, Part V; The Borderline: Current Empirical Research, APA Press, p.63.
- McGlashan, Thomas H., The prediction of outcome in chronic schizophrenia: Part IV, The Chestnut Lodge Follow-Up Study, Archives of General Psychiatry, 43: 167-76, 1986.
- McGlashan, Thomas H., The Chestnut Lodge Follow-Up Study, III: Long-term outcome of borderline personalities, Archives of General Psychiatry, 43: 20-30, 1986.
- McGlashan, Thomas H., The Chestnut Lodge Follow-Up Study, II: Long-term outcome of schizophrenia and affective disorders, Archives of General Psychiatry, 41: 586-601, 1984.
- McGlashan, Thomas H., The Chestnut Lodge Follow-Up Study, I: Follow-up methodology and study sample, Archives of General Psychiatry, 41: 573-85, 1984.
- McGlashan, Thomas H., The borderline syndrome, I: testing three diagnostic systems, Archives of General Psychiatry, 40: 1311, 1983.

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Brief Forensic
Psychiatric Summary

NAME: MEGGS, Jr., Jimmy Donald
SSN: 248-71-1367
DOB: March 21, 1973
REFERRAL: Ms. Desa Ballard, Esq.
226 State Street
West Columbia, SC 29169
EVALUATION: August 24, 2006 and November 16, 2007
REPORT: November 27, 2007
EXAMINER: Thomas V. Martin, M.D.

COMPETENT TO STAND TRIAL: YES.

CRIMINALLY RESPONSIBLE: YES.

CAPACITY TO CONFORM: NO.

INTRODUCTION:

Jimmy D. Meggs, Jr. is a 34 year old Caucasian male, former Locomotive engineer, who was convicted in the Florence County Court of General Sessions of *Engaging a Child for Sexual Performance (2 cts.)* and *Contributing to the Delinquency of a Minor (2 cts.)* in August 2001. He was sentenced to 20 years in the SC Department of Corrections (SCDC) and is currently incarcerated at the Lieber Correctional Institution. Mr. Meggs carries the diagnoses of "*Schizophrenia, Paranoid Type and Dysthymic Disorder*" and is being treated with antipsychotic and antidepressant medications. Mr. Meggs is petitioning the Florence County Court of General Session for Post-Conviction Relief due to ineffective assistance of counsel during his 2001 trial.

REASON FOR REFERRAL:

This Forensic Psychiatric Evaluation was requested by Mr. Meggs's attorney, Ms. Desa Ballard, Esq. in order to determine whether Mr. Meggs suffered from a psychiatric

MEGGS, Jr. Jimmy D.
SSN: 248-71-1367

SENSITIVE MEDICAL MATERIAL

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condition that should have been formerly evaluated as a part of his criminal trial in August 2001. The current evaluation includes an assessment of Mr. Meggs's competency to stand trial, his past criminal responsibility, and whether he had the capacity to conform his behavior to the requirements of the law on or about the time of his alleged offense.

STATEMENT OF CONFIDENTIALITY:

Mr. Meggs vocalized an understanding of the purpose for this consultation; and that its contents, findings, and recommendations would be submitted to his attorney, Ms. Desa Ballard, Esq. No part of the content, opinions or conclusions derived would be discussed with unauthorized parties.

SOURCES OF INFORMATION:

- 1) Request by Ms. Ballard, Esq. for a forensic psychiatric evaluation of Mr. Meggs, June 15, 2006.
- 2) Arrest Warrants.
- 3) SCDC Records, including Mental Health and Medical Clinic.
- 4) Report on Polygraph Examination by L. Stan Fulmer, April 10, 2000.
- 5) Forensic Psychiatric Evaluation by Pratap Narayan, M.D., May 3, 2002.
- 6) Letter from Pee Dee Mental Health Center by Jim Bost, M.Ed., March 23, 2000.
- 7) Consultation with Mr. and Ms. Jimmy D. Meggs, Sr., parents of the Defendant, September 11, 2006.
- 8) 4½ hour clinical psychiatric interviews with Mr. Meggs at the Lieber Correctional Institution, August 24, 2006 and November 16, 2007.

PERTINENT DATA:

Mr. Meggs has suffered from significant mental illness dating back before his teenage years. He reported his own victimization of sexual abuse at age seven years. This initiated Mr. Meggs's early difficulty establishing trust in relationships. He had ongoing difficulty making friends, rarely dated and felt himself to be an outcast. Although having no outward trouble in school, Mr. Meggs failed 2nd grade shortly after enduring sexual abuse. In his late teens, Mr. Meggs reported "hearing voices" outside of his head believing he felt "inner demons" and that he was "ordained by God." Although not commanding in nature, these psychotic manifestations thwarted Mr. Meggs's ability to mature within his family and in the community. He developed low self-esteem, social reclusiveness, and always felt inadequate. Mr. Meggs and his family reported neurovegetative symptoms of depression that included suicidal ideations with the plan to shoot himself.

Mr. Meggs struggled emotionally throughout his youth, but managed to study hard, graduate high school and later attempt courses in college. His mental illness adversely affected Mr. Meggs's social and relationship development. Establishing peer-aged friends became increasingly difficult and threatening as socially, Mr. Meggs remained an immature juvenile. He gravitated toward the younger kids in the neighborhood as they appeared to be more accepting and validating of him and thereby less socially threatening. Although Mr. Meggs's psychotic condition had not yet become more

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prominent or florid, his mood symptoms meet the diagnostic criteria for *Major Depressive Disorder*.

Despite the encouragement given by his parents for him to seek mental health treatment, Mr. Meggs lacked the insight to the seriousness of his problem. Instead, he left the home for Atlanta, GA to become a locomotive engineer. He managed to accomplish his training as a train operator, but by his late-20's, Mr. Meggs's psychotic symptoms began to escalate. He developed increasing paranoia, grandiosity, and delusional thinking. "Everybody is against me." "I was issued by God, but the voices are against me." "They're out to kill me." Mr. Meggs felt the "voices" were self-deprecating and worsened his depressive condition. He eventually left the position with the railroad to less stressful lines of work. He started a paintball camp that appeared more like a playground for Mr. Meggs than a workplace. His social and employment abilities deteriorated in a downward drift. Mr. Meggs desired to make social relationships, but was clearly inadequate, inexperienced, and immature in this area. He suffered increasing thoughts of paranoia and auditory hallucinations which further compromised his social abilities. Mr. Meggs meets the diagnostic criteria for *Psychotic Disorder Not Otherwise Specified*.

Due to his lack of insight and reluctance to follow his family's advice towards seeking mental health assessment, Mr. Meggs's psychiatric illnesses persisted. He suffered from both a mood and psychotic disorder on or about the date of his crime in 1999. No formal psychiatric evaluation was performed for Mr. Meggs prior to his trial in 2001. Following his conviction, Mr. Meggs was sentenced to more than twenty years in prison. While incarcerated, Mr. Meggs's mental health drew psychiatric attention and multiple hospitalizations at the Gilliam psychiatric facility at the Kirkland Correctional Institution. During his initial incarceration, Mr. Meggs was felt to be "malingering" his mental health symptoms. This was in the throes of his resistance to mental health treatment and his reported difficulties adjusting to prison life. He was re-diagnosed with "schizophrenia" by the SCDC psychiatrists prior to his transfer from the Kirkland Correctional Institution and has been fairly well managed with medication and therapy groups since that time. Mr. Meggs has been followed regularly in the Mental Health Clinic while incarcerated at SCDC. Currently at the Lieber facility, Mr. Meggs receives the antipsychotic medication, Seroquel® 1200 mg daily, and the antidepressant medication, Prozac® 20 mg daily with a resulting stability of his more serious psychiatric symptoms. He has also been attending therapy group sessions and feels proud of his progress.

MENTAL STATUS EXAMINATION:

On the date of these consultations, Mr. Meggs was alert and oriented to person, place, time, and situation. He was pleasant, polite, genuine, and interactive. He established an appropriate interpersonal rapport with the examiner, but appeared child-like and immature for his age. Mr. Meggs's speech was of normal rate, soft tone, and normal rhythm. He described his mood as "depressed," and he displayed animated emotional expression. His thoughts were concrete, focused, and obsessive on doing the right thing for himself. There was no active evidence of hallucinations, but his paranoia about the treatment staff, his previous attorney, and fellow inmates in prison persisted. He

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continually kept checking the room as he sensed our conversation was being monitored or recorded. Mr. Meggs appeared to have an average level of intellectual functioning. A basic cognitive examination revealed intact memory surrounding the history examined with no apparent general impairments. Mr. Meggs gave no evidence of active suicidal or homicidal ideations, plans, or intent.

DIAGNOSTIC IMPRESSIONS:

DSM-IV

AXIS I: Psychotic Disorder Not Otherwise Specified.
Major Depressive Disorder.

AXIS II: No Diagnosis.

AXIS III: No Major Medical Illness.

AXIS IV: Psychosocial Stressors: Incarceration, legal issues, and separation from his family.

AXIS V: 55

COMPETENCY TO STAND TRIAL:

It is with a reasonable level of medical and psychiatric certainty that Mr. Meggs suffers from a major mood and psychotic disorder. This is affirmed by individual consultation with Mr. Meggs, from his SCDC mental health records, and from collaboration with Mr. Meggs's family. At the present time, Mr. Meggs is medically treated with a high dose of antipsychotic medication and an antidepressant. He appears to have mentally stabilized allowing him to effectively consult with his attorney in this legal matter. Mr. Meggs is aware of the original charges levied against him and the possible sentence he may receive. He understands the meaning of a PCR action and feels capable of assisting his attorney in this matter. Mr. Meggs has developed a trust for his present attorney, Ms. Ballard, and understands her role in his case. He also appropriately cited the roles of the Prosecutor and the Judge as it applies to his current situation. Mr. Meggs demonstrated both a factual and rational understanding of the legal matters that involve him. Mr. Meggs is therefore considered competent to stand trial.

CRIMINAL RESPONSIBILITY:

Mr. Meggs has suffered from an insidiously worsening mental illness with disturbances of mood and thought since an early age. He has a history of *Psychotic Disorder Not Otherwise Specified* and *Major Depressive Disorder* during the period he allegedly committed the offenses charged in 1999. Although laboring under the influence of mental disturbance, it is this examiner's opinion with a reasonable degree of medical and psychiatric certainty that Mr. Meggs still recognized the difference between moral and legal right from moral and legal wrong. Mr. Meggs was therefore considered criminally responsible under the M'Naughten Standard for his actions on or about November 1999.

CAPACITY TO CONFORM TO THE REQUIREMENTS OF THE LAW:

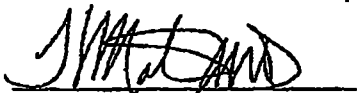
Although Mr. Meggs suffers from a long history of depressive and psychotic illness to include the period of November 1999, his ability and capacity to execute sound judgment and regulate his behaviors were significantly impaired. His mental illness has chronically compromised Mr. Meggs's otherwise normal social and relationship development. His

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overly involved relationships with the victims cited in the November 1999 case were a product of Mr. Meggs's mental illness and his inability to conform his behavior to the requirements of the law.

CONCLUSIONS AND RECOMMENDATIONS:

Mr. Meggs is currently being treated with the appropriate psychotropic medications for his depressive and psychotic illnesses. He appears to be tolerating the medication well and suffers from no untoward side effects. It is strongly recommended that Mr. Meggs continue on this psychotropic treatment regimen complimented by supportive group therapy while he remains incarcerated.



Thomas V. Martin, M.D.

Psychiatrist

Diplomate, Psychiatry, American Board of Psychiatry and Neurology

Diplomate, Forensic Psychiatry, American Board of Psychiatry and Neurology

L.S.
FULMER
INC.



REPORT ON POLYGRAPH EXAMINATION
Privileged - Confidential

Jimmy Donald Meggs
April 10, 2000

P.O. BOX 688 • DAVIDSON, NORTH CAROLINA 28036 • CHARLOTTE (704) 527-1504 • CONCORD (704) 788-4762

FROM : TRINITY IRRIGATION
FRX NO. : 6676270
JUL 23 2002 11:45AM P10

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L.S.
FULMER,
INC.



REPORT ON POLYGRAPH EXAMINATION
Privileged - Confidential

On April 10, 2000, Mr. Jimmy Donald Meggs voluntarily agreed to take a polygraph examination. Prior to the test Mr. Meggs signed a form stating he was taking the test voluntarily. This document has been retained in the examiner's file.

The main issue under consideration was to determine whether or not Mr. Meggs while at the paintball field, ever caused any child to have oral sex with anyone. Further, whether or not Mr. Meggs had ever rubbed the legs and groin of any child while driving his vehicle or ever caused a child to remove a paintball using his mouth from another child's genitals.

During the pretest interview Mr. Megg denied while at the paintball field, ever causing any child to have oral sex with anyone. Further, Mr. Meggs denied ever rubbing the legs and groin of any child while driving his vehicle or ever causing a child to remove a paintball using his mouth from another child's genitals.

The following relevant test questions were used during the examination:

While at the paintball field, did you ever cause any child to have oral sex with anyone?
Response: No.

Did you ever rub the legs and groin of any child while driving your vehicle?
Response: No.

Did you ever cause a child to remove a paintball using his mouth from another child's genitals?
Response: No.

At this time a polygraph examination was administered to determine Mr. Meggs' truthfulness to the relevant test questions.

Examiner's Opinion: Mr. Jimmy Donald Meggs was truthful to the relevant test questions. No deception was indicated.

L. Stan Fulmer
L.S. Fulmer, Inc.

P.O. BOX 588 • DAVIDSON, NORTH CAROLINA 28036 • CHARLOTTE (704) 527-1604 • CONCORD (704) 783-1762

Jul. 23 2002 11:45PM

FAX NO. : 6676270

FROM : TRINITY IRRIGATION

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT
) 2006-CP-21-553
Jimmy D. Meggs, Jr., SCDC No. 277400,)
) Applicant;)
))
v.) ORDER OF DISMISSAL
) WITH PREJUDICE
) CERTIFIED: A TRUE COPY
State of South Carolina,)
))
Respondent.) CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2008 MAR -4 PM 4:28
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

Desa Ballard, Esquire, appearing for the Applicant.

Julie M. Thames, Assistant Attorney General, appearing for the Respondent.

This is a post conviction relief (PCR) matter. The Applicant filed an application for PCR on April 4, 2006. The Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel. An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007.

L PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. The Applicant was indicted at the April 2001 term of the Florence County Grand Jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire, and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr., to concurrent terms of three (3) years for each charge of contributing to the delinquency of a

minor, and to twenty (20) years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to twenty (20) years, consecutive, suspended to five (5) years probation.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. Jack B. Swerling, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the Court denied the petition by Order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

II. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, supra.

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, supra. 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.

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Butler v. State, supra. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Id.

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III. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the PCR evidentiary hearing, the Applicant first specified the allegations of ineffective assistance of counsel:

1. failure to investigate with regard to Applicant's mental capacity;
2. failure to request guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included charge.

Emily Meggs, Applicant's mother, testified at the PCR hearing. She testified that the family first hired John Jupertinger, Esquire, to represent the Applicant, but several months later, Jupertinger went to work for the solicitor's office and could no longer represent the Applicant. Ms. Meggs testified that she then hired James T. McBratney, Jr., Esquire, and then finally she hired Kernard Redmond and James Cox (referred to hereinafter individually as "Redmond" or "Cox," or together as "trial counsel"). She testified that she and the Applicant and other members of the family met with trial counsel several times before the trial. Ms. Meggs testified that she raised concerns to trial counsel with regard to Applicant's mental health and told them she felt the Applicant "had problems." She testified that Applicant's grandfather had a history of mental health problems and that she told trial counsel that she wanted Applicant evaluated. Ms. Meggs testified that trial counsel did not take her seriously. She testified that Applicant has been receiving mental health treatment from SCDC and that he is on medication.

Ms. Meggs testified that her son completed high school, had a driver's license, had a job with CSX railroad, and had taken some courses at Florence/Darlington

Technical College. She testified that after he was incarcerated, he was evaluated and diagnosed with schizophrenia.

Jimmy D. Meggs, Sr., Applicant's father, also testified at the PCR hearing. He testified that he spoke with trial counsel before the trial and told them that his son was a compulsive liar and that Cox's response was, "he's not on trial for lying." He testified that the Applicant had been working at CSX railroad and that he had helped get the job for his son. Mr. Meggs testified that Marion Brown was the private investigator for Jepertinger and that Marion Brown and his son Gordon investigated the case. Mr. Meggs testified that he gave Brown's investigative file to trial counsel. Lastly, Mr. Meggs testified that his son has been doing better in the last six months.

Marion Brown also testified at the PCR hearing. He testified that he investigated Applicant's case. He testified that he did background work such as interviewing the kids and/or parents of those involved in the paintball league with Applicant. Brown testified that he worked on the case for a year between January 2000 and January 2001. He testified that he spoke to Cox once and that Redmond did some of his own investigation in that he spoke with witnesses.

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The Applicant's aunt, Mary Strickland, also testified at the PCR hearing. She testified that she was Applicant's aunt on his father's side. She testified that she attended meetings with Applicant, his parents, and trial counsel. Ms. Strickland testified that she spoke to trial counsel with regard to Applicant's mental health and asked trial counsel to have Applicant checked. She testified that she thought they would get him checked but that she did not know if he ever was.

Dr. Thomas Martin testified at the PCR hearing. He testified that he is a forensic psychiatrist and that he evaluated Applicant and provided a forensic assessment and diagnosis. Dr. Martin's curriculum vitae was entered and Dr. Martin was qualified as an expert in forensic psychiatry. He testified that he reviewed numerous records and interviewed Applicant and Applicant's family. Dr. Martin testified that he diagnosed Applicant with psychotic disorder, not otherwise specified, and that that diagnosis was consistent with the SCDC evaluation. He also testified that Applicant suffered from depressive disorder and that that diagnosis was also consistent with SCDC's diagnosis. Dr. Martin testified that Applicant has been on a high dosage of medication while he has been incarcerated and that he is tolerating the medication well.

Dr. Martin testified that Applicant had early signs of mental illness in his teens and that his mental illness has been insidiously worsening since then. He testified that a lay person would notice that Applicant was childlike and immature socially and that he became socially inept as he became an adult. Dr. Martin testified that he could sense elements of paranoia with Applicant and that if you spent time with Applicant, you would see that he was peculiar. Dr. Martin testified that Applicant lacked the capacity to conform his conduct to the requirements of the law at the time the offenses occurred.

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Dr. Martin testified that after a year in SCDC, Applicant was diagnosed with schizophrenia and depressive disorder and that before that, his problems were likely chalked up to behavioral problems. He testified that he was not testifying with regard to Applicant's competency to stand trial or his criminal responsibility. Dr. Martin's report and a polygraph examination report were entered as exhibits. Dr. Martin testified that he reviewed the polygraph report and noted that the polygraph examiner questioned

Applicant about what happened at the paintball field and that Applicant said he was not involved with what was alleged to have happened and that he did not observe anything wrong at the paintball field. Dr. Martin testified that the polygraph report found no deception in Applicant's answers.

Dr. Martin testified that he reviewed an evaluation report done by Dr. Narayan at SCDC approximately nine months after Applicant's trial. He agreed that Dr. Narayan's report found that Applicant did have the capacity to conform his conduct to the requirements of the law and that Applicant was malingering. Dr. Martin testified that all of the records he reviewed postdated the offenses and that he based his diagnosis on interviews with Applicant and his family and prior cases that he had worked on. Dr. Martin also testified that Applicant told him that he had testified at trial that he did not commit the offenses. He testified that there were similarities between his and Dr. Narayan's report.

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Dr. Martin testified that he evaluated Applicant in August 2006 and November 2007, and acknowledged that he first saw Applicant at least five years after the trial. He further testified that retroactive evaluations can be challenging. Dr. Martin testified that he could not give an opinion as to whether the evaluation done in 2002, one year after the trial, was more accurate because it was performed closer in time to the offenses than the evaluation he performed. He testified that in general some defendants suffer and have mental health issues after being incarcerated due to being incarcerated. Dr. Martin testified that one of the psychosocial stressors he indicated in his report that contributed to his diagnosis was incarceration.

Jim Cox also testified at the PCR hearing. He testified that he was hired to assist Redmond at Applicant's trial. He testified that he met with Applicant's family and that they were very supportive. Cox testified that the family had concerns about Applicant's propensity to exaggerate, but that nothing came to his attention with regard to Applicant's ability to understand and assist in his defense. He testified that he did not remember the family requesting an evaluation for Applicant and that if they had asked for an evaluation, he would have said it would be a waste of time because of the Applicant's behavior. Cox testified that Applicant did not exaggerate with him, that Applicant graduated high school, and had a job with the railroad. He testified that nothing arose to concern him as to Applicant's capacity. Cox testified that Applicant told him and Redmond that he was not guilty and that Applicant passed a polygraph examination.

Cox also testified that based on Dr. Martin's testimony, it was possible that Applicant lacked capacity to conform at the time of the offenses, but that nothing ever triggered any concern to him. He testified that Applicant appeared to understand what was going on, that he assisted in his defense and that he provided names of witnesses for the defense. Cox also testified that Applicant denied committing the offenses and that he and Redmond did not consider a guilty but mentally ill (GBMI) defense because Applicant consistently maintained his innocence. He testified that the defense theory was that Applicant was not guilty and that the allegations were made against him by one of the victims' mother out of anger over an alleged relationship between Applicant and the mother.

Cox testified that he did not remember making a directed verdict motion with regard to the charges of engaging a child for sexual performance on the grounds that

there was no "audience" present. He testified that he remembered that the allegations were that the offenses occurred as an initiation and that if the other boys were present, there would have been an audience. Cox testified he did not request a charge on producing, directing or promoting sexual performance by a child as a lesser-included offense because he did not want to give the jury an opportunity to compromise. He also testified that GBMI was not requested or pursued because Applicant consistently stated he was innocent and because Applicant communicated with trial counsel and participated in discussions about trial strategy.

Redmond also testified at the PCR hearing. He testified that he saw nothing with regard to Applicant's demeanor or behavior to encourage him to request an evaluation. He testified that Applicant's propensity to lie came out at trial. He also testified that Applicant's family had told him about Applicant's lying so that he knew about it. Redmond testified that he recalled meeting with the family but that he did not recall that they asked for Applicant to be evaluated. He testified that he knew Applicant's grandfather had been hospitalized for schizophrenia. He testified that Applicant provided so much information in preparation for trial and was so actively involved that no concerns about Applicant's mental capacity arose. He testified that he did not see any red flags that would have caused him to request an evaluation.

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Redmond further testified that from the very beginning, Applicant was adamant that he was innocent and that position demonstrated to Redmond that Applicant clearly knew right from wrong. He testified that Applicant took a polygraph and that the report found no deception indicated. Redmond testified the polygraph results led him and Cox to believe Applicant was telling the truth. He testified that Marion Brown spent a lot of

time with Applicant and that potential witnesses were developed based on talking with Applicant. Redmond testified that he believed Applicant understood what he was facing and that the defense they pursued was that the charges were created with the help of former friends of the Applicant who were mad at him and used their kids to get revenge on Applicant.

Redmond testified that he requested an evaluation in 2002 after the trial because when he went to go visit Applicant to discuss other pending charges, Applicant was unresponsive. He then requested an evaluation. That evaluation, performed by Dr. Narayan found that Applicant was capable of understanding the nature of his charges and was capable of assisting counsel in his defense, that he understood the difference between right and wrong at the time of the offenses, and that he did have the capacity to conform his conduct to the requirements of the law. In response to a question as to whether it was possible that Applicant did not have the capacity to conform, Redmond responded that anything was possible but that he was not qualified to say Applicant lacked the capacity to conform when Applicant always communicated effectively, assisted in his defense, and never exhibited any behavior to cause him concern. Redmond testified that he would have had to have a basis for requesting an evaluation and that he had none. He testified that it would not have hurt to have requested one, but that could not say whether it would have helped.

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With regard to lesser-included offenses, Redmond testified he does not like to give juries a compromise option. He also testified that Applicant's consistent denial of any wrongdoing contributed to the decision.

With regard to the allegation that trial counsel should have moved for a directed verdict on engaging a child for sexual performance based on no "audience" being present, trial counsel testified that he believed the way the statute is written would allow for Applicant himself to be considered an audience and that the statute does not specify that there has to be more than one person. He further testified that while he did not recall precisely the trial testimony, he thought some of the other boys were present and were thus an "audience" for purposes of the statute.

Redmond testified that he never really considered a GBMI defense or plea for two reasons. First, he testified that a GBMI defense requires an admission of wrongdoing and Applicant never admitted to the actions that led to the charges. Second, Redmond testified that there was nothing to support such an approach at the time because Applicant never did or said anything to raise any concerns as far as mental health issues.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records of the Florence County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the PCR application, the Respondent's Return thereto, the exhibits entered at the PCR hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented:

A. Failure to investigate with regard to Applicant's mental health history.

This Court finds that the allegation that trial counsels' representation fell below reasonable professional norms is without merit. This Court finds trial counsels' testimony to be highly credible. Both trial counsel testified that Applicant never demonstrated any behavior that raised any concerns about Applicant's mental health. They both testified that they were aware that Applicant was known to lie and to exaggerate but that they never saw signs of mental illness. Redmond testified that he is not a psychiatrist, but that no "red flags" were ever raised with regard to Applicant's mental health. Redmond and Cox both testified that Applicant consistently denied the allegations and that he actively participated in his defense.

This Court finds Applicant assisted in his defense, that he provided names of witnesses, and that trial counsel was not ineffective in this regard. Applicant communicated effectively with trial counsel throughout the case. Redmond testified that Applicant appeared to be intelligent, that he was neatly groomed, that he had completed high school and had taken some college level courses. Applicant had a driver's license and held a job. This Court finds that trial counsel were not alerted to any mental health issues when Applicant participated in his defense and communicated with trial counsel in an intelligent manner. This Court also finds credible Redmond's testimony that if any concerns with regard to Applicant's mental capacity had arisen, he would have requested an evaluation.

This Court further finds no ineffective assistance of counsel in this regard when even Dr. Martin testified, consistent with his report, that Applicant was competent to stand trial and was criminally responsible. Dr. Martin's report did find that Applicant did

not have the capacity to conform his conduct to the requirements of the law. However, this Court concludes this finding is not credible. The evaluation by Dr. Narayan, while also performed after Applicant's trial, was performed within a year of Applicant's incarceration. Dr. Narayan found Applicant was competent to stand trial, was criminally responsible, and could conform his conduct to the requirements of the law. This Court finds Dr. Narayan's report credible. Dr. Martin admitted that he did not have as much information when he performed his evaluation as Dr. Narayan did when he performed his evaluation and that any information regarding Applicant's behavior prior to incarceration came from Applicant's family. Dr. Martin also conceded that it can be difficult to perform a retrospective evaluation on someone. Dr. Martin also testified that he often sees patients in prison and that he has seen several prisoners decompensate after being incarcerated.

Thus, this Court finds no ineffective assistance of counsel in failing to investigate Applicant's mental health when Applicant assisted in his defense, communicated effectively with trial counsel, and never exhibited any behavior to alert trial counsel that mental health issues might be present.

B. Failure to pursue a Guilty But Mentally Ill defense.

This Court finds no ineffective assistance of counsel with regard to trial counsels' failure to pursue a defense of GBMI. As trial counsel eloquently stated, Applicant consistently denied the allegations, therefore, no basis for such a defense existed. Applicant never once admitted to trial counsel that he committed the offenses; therefore the possibility of GBMI never entered the consideration of trial counsel. In addition, as discussed above, there was never any indication that Applicant was suffering from some

mental illness; therefore, such a defense was not pursued. Applicant participated fully and interacted with trial counsel at all stages of the trial, thus, trial counsel was not ineffective in failing to pursue such a defense. This Court further finds that Applicant is simply unhappy with the verdict and is now seeking a new trial in the hopes that a new defense might bring a different result.

C. Failure to move for a directed verdict based on no proof of one element of engaging a child for sexual performance.

This Court finds no ineffective assistance in this regard. Applicant alleged at PCR that no proof of the element of "performance" existed and trial counsel should have moved for a directed verdict for this reason. S.C. Code Ann. § 16-3-810 (1984), provides in part: "It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance." Section 16-3-800 provides definitions: "Performance" means any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience. S.C. Code Ann. § 16-3-800(3).

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This Court finds that trial counsel was not ineffective in failing to request a directed verdict on this ground. The statute does not specify how many persons are required to be an "audience" and Redmond testified that he believed Applicant himself qualified under the statute as an audience because he was directing the boys' activities for his own gratification. In addition, trial counsel testified they believed some of the other boys may have witnessed the activities and would thus also be considered an audience. Redmond testified that he did not believe the statute was intended to be read as narrowly

as suggested by Applicant. This Court agrees. Further, this Court finds a request for a directed verdict on this ground would not likely have been granted.

D. Failure to request a jury charge on a lesser-included offense to engaging a child for sexual performance.

Lastly, this Court finds no ineffective assistance of counsel for failure to request a jury charge on a lesser-included offense. "The trial court should refuse to charge a lesser included offense where there is no evidence to show the defendant committed the lesser rather than the greater offense." State v. Tucker, 324 S.C. 155, 170, 478 S.E.2d 260, 268 (1996).

This Court finds that the evidence does not show that Applicant committed the lesser, rather than the greater offense. The trial testimony indicated that Applicant developed a trust relationship with the victims and other boys in the paintball league by befriending them, and by providing the space and equipment to play paintball. In addition, Applicant distributed a flyer with false information about himself to bolster his image in the eyes of the parents and guardians of the children. Applicant met with parents to discuss the league and to gain their trust. Applicant arranged the paintball campouts and he induced the boys to participate in the improper activities. The transcript reflects that Applicant did "direct" the sexual activity, but he also induced the children to so perform by threatening to shoot them at close range with paintballs if they refused. Thus, the Court finds trial counsel was not ineffective for failing to request the lesser-included offense when the evidence does not demonstrate that Applicant committed the lesser rather than the greater offense.

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This Court finds trial counsel were not ineffective in any respect. They represented Applicant with zeal and vehemence. Trial counsel attempted to discredit witnesses in cross-examination by pointing out possible motivations for the children to fabricate the allegations. They were able to demonstrate inconsistencies in testimony as to Applicant's relationship with one of the victim's mother. They presented the testimony of several other boys who attended the paint ball campouts but did not see any improper behavior. The record reflects that trial counsels' performance was well within norms expected of criminal attorneys in this State.

V. CONCLUSION

This Court concludes that the Applicant failed to carry his burden of proof to show that trial counsels' representation fell below reasonable professional norms or that he was prejudiced by the alleged deficient representation. The Applicant's former trial counsel rendered reasonably effective assistance under prevailing professional norms and demonstrated a normal degree of skill, knowledge, and professional judgment that is expected of an attorney in a criminal case. Strickland v. Washington, supra; Cherry v. State, supra. Additionally, the Applicant did not carry his burden to show a reasonable probability that the result at trial would have been different had trial counsel done what the Applicant alleges should or should not have done. Johnson v. State, supra.

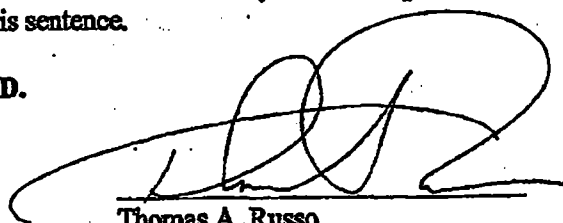
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TAA
As to any and all allegations, which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. These allegations are not supported by any law and were not addressed at the hearing. Accordingly, this Court finds that the Applicant waived the

allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**;
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED.



Thomas A. Russo
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina
3/2, 2008.

2008 MAR -4 PM 4:28
CORRECTIONAL INSTITUTE
COURT & CLERK
FLORENCE COUNTY, SC

FILED

17
TRZ

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

JIMMY D. MEGGS, JR.,
Inmate # 277400,)

VS.)

STATE OF SOUTH CAROLINA.)

IN THE COURT OF COMMON PLEAS
Case No.: 2006-CP-21-553

MOTION FOR RECONSIDERATION

Pursuant to Rule 59(e), SCRCF, Petitioner Jimmy D. Meggs moves this Honorable Court for an order amending its Order for Denying Post Conviction Relief in the referenced case dated March 7, 2008, a copy of which was received by counsel for Petitioner on March 8, 2008. In support of the motion, Petitioner would respectfully show that the judgment of the court should be amended as follows:

1. The court erred in failing to determine that Petitioner's trial counsel¹ were ineffective in the following particulars:

a. The Court erred in determining trial counsels' failure to seek directed verdict, failure to challenge the indictment under §16-3-810 and failure to require the State to establish and prove the necessary elements of the crime alleged was not ineffective. In so doing, the Court erred in its interpretation of the "audience" requirement of §16-3-810;;

b. The Court erred in determining trial counsels' failure to offer evidence in support of a Guilty But Mentally Ill verdict when counsel knew or should have known that Mr.

¹ Mr. Meggs was represented by John C. Jupertinger, who is currently with the 12th Circuit Solicitor's Office in Florence, South Carolina, James McBratney in Florence, South Carolina and Kernard Redmond, of Florence, South Carolina; however, Mr. McBratney was terminated before the preliminary hearing, during which Mr. Meggs was represented by Mr. Redmond. Mr. James Cox of Florence and Mr. Redmond both represented Mr. Meggs during the course of trial and sentencing and it is against Mr. Cox and Mr. Redmond that Petitioner's assertions were made.

Meggs is and was mentally ill and/or lacked capacity at the time of the alleged crime did not constitute ineffective assistance of counsel;

c. The Court erred in determining trial counsels' failure to investigate or proffer evidence that Mr. Meggs lacked the necessary capacity and/or intent to commit the crimes set forth in §16-3-810 was not ineffective assistance of counsel; and

d. The Court erred in determining trial counsels' failure to ensure that Mr. Meggs was deemed competent to stand trial pursuant to S.C. Code §44-23-410, et seq. before trial was not ineffective assistance of counsel.

2. The Court erred by failing to give the testimony of Petitioner's expert, Dr. Thomas Martin, proper weight and in determining that Dr. Martin's testimony was not as credible as the findings set forth in the report of Pamela M. Crawford, M.D., Director WSHPI-Forensic Division.

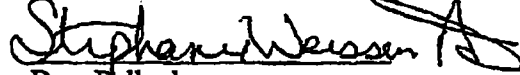
3. The court erred in failing to determine that trial counsel either failed to adequately counsel Mr. Meggs, who is mentally ill, or to otherwise ensure Mr. Meggs was competent to assist in his defense and decide on his plea.

4. The court erred in failing to attribute equal weight to the testimony of Petitioner's family as it did to Respondents Cox and Redmond.

5. The court erred in failing to vacate Mr. Megg's conviction and in failing to order a new trial.

For the reasons set forth above, Petitioner moves for an order reconsidering the subject order and granting Petitioner Application for Post Conviction Relief. This motion is supported by the record in this case, including the briefs and arguments of counsel, the applicable law, and such further oral argument and/or briefing as may be permitted.

Respectfully submitted,

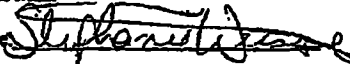


Desa Ballard
Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina
29169
Telephone: 803-796-9299
Facsimile: 803-796-1066
E-mail: desab@desaballard.com
ATTORNEYS FOR PETITIONER

March 18, 2008

I, Stephanie Weissenstein, an employee of the Law Offices of Desa Ballard, do certify that I have, this date, served a copy of: Motion for Reconsideration on all opposing counsel by depositing a copy properly addressed, with sufficient First Class Postage affixed to each, in the United States Mail.

Date: 03/18/08 Signature



STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Jimmy Meggs, Jr., SCDC No. 277400,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PEAS
TWELFTH JUDICIAL CIRCUIT
2006-CP-21-553

ORDER

FILED
2008 MAY -5 PM 4:46
CLERK OF COURT
FLORENCE COUNTY, SC

Desa Ballard, Esquire, for the Applicant

Julie M. Thames, Assistant Attorney General, for the Respondent

This matter comes before the Court by way of a Rule 59(e) Motion for Reconsideration of the Order denying post-conviction relief (PCR). The Applicant filed a PCR application on April 4, 2006. An evidentiary hearing was convened on December 11, 2007, at the Florence County Courthouse. This Court denied and dismissed the application with prejudice by Order signed March 2, 2008, and served on the parties on March 7, 2008.

The Applicant's Rule 59(e) Motion for Reconsideration was dated and served on March 18, 2008, and was filed with the Florence County Clerk of Court on March 19, 2008.

The Applicant alleges that this Court erred in finding that trial counsel were not ineffective in their representation of the Applicant. He also alleges this Court did not give the proper weight to the testimony of Dr. Martin or to the testimony of the Applicant's family. Lastly, he alleges this Court erred in failing to grant the Applicant a new trial.

This Court has reviewed the allegations in the Applicant's Motion for Reconsideration and has reviewed the records from the PCR file. This Court finds that a hearing on this motion is not necessary and further finds that the Order of Dismissal in this matter properly denied

CERTIFIED: A TRUE COPY

Cornie Reel Sherrin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

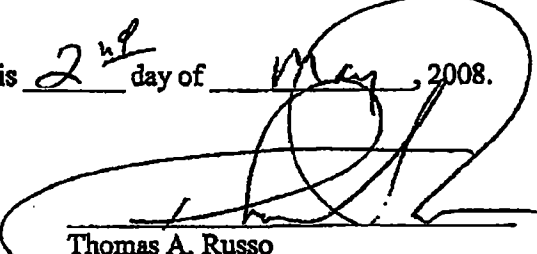
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relief to the Applicant. Therefore, this Court hereby denies the Applicant's Rule 59(e),
SCRCP, Motion for Reconsideration.

IT IS THEREFORE ORDERED THAT:

The Respondent's Rule 59(e) Motion for Reconsideration is hereby denied.

AND IT IS SO ORDERED this 2nd day of May, 2008.


Thomas A. Russo
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina.

#5
3/11

FILED
2008 MAY -5 PM 4:46
CLERK OF COURT
FLORENCE COUNTY, SC

01/19/2007 14:35 FAX

FLORENCE CNTY SOLICITOR

008/018

WITNESSES

Inv. Brian Kennedy, FCCSO

Docket Number 2001-GS-21-6663The State of South Carolina
County of FlorenceCOURT OF GENERAL SESSIONSApril 2001 TermARREST WARRANT NUMBERG-355086THE STATEACTION OF GRAND JURYvs.TRUE BILLJERRY DONALD MEGGSForeperson of Grand JuryDate:Indictment forVERDICTForeperson of Petit Jury
Date:ENGAGING A CHILD FOR SEXUAL
PERFORMANCE
SC Code: § 16-03-610
CDR Code: 399

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 _____

DefendantWitness:C.C.C. Pis. And G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT

At a Court of General Sessions, convened on April 12, 2001 the Grand Jurors of
Florence County present upon their oath:

Engaging a child for sexual performance

That Jimmy D. Meggs, did between October 1, 1999 to December 15, 1999, in
Florence County:

Commit the crime of engaging a child for sexual performance by employing,
authorizing or inducing a child younger than eighteen, () who was
years of age at the time, to engage in a sexual performance, specifically oral
sex. To wit, Meggs forced or induced () to engage in oral sex with
(). All in violation of Section SC Code: § 16-3-810, Code of Laws of
South Carolina, (1976), as amended.

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

Charles M. Condon
CHARLES M. CONDON, ²⁰⁰¹
SOUTH CAROLINA ATTORNEY GENERAL
(his)

01/19/2007, 14:35 FAX

FLORENCE CNTY SOLICITOR

DEPENDANT <u>Jimmy Donald Meggs</u>	DATES OF OFFENSES <u>11-19-99</u>	CHARGES <u>Engaging Child for Sexual Performance W/ G-355091</u>
CO-DEPENDANTS / RELATED CASES	DATE OF ARREST <u>1-10-00</u>	DEFENSE COUNSEL <u>H. Richmond</u>
	DATE P.M. HELD	
	MAGISTRATE <u>Wause</u>	
OTHER PENDING INDICTMENTS / WARRANTS	APPEAL	POLICE OFFICER <u>FC50-B. Kennedy</u>
	DATE NOTICE OF INTENTION SERVED	COMPLAINING WITNESS
	DATE REFERRED TO ATTORNEY GENERAL	
	ASST. ATTORNEY GENERAL ASSIGNED	
	DATE CASE AND EXCEPTIONS DUE	
BONDSMAN	EXTENSIONS	
	DATE APPEAL DOCKETED	DISPOSITION
	DECISION <u>C/L</u>	

WITNESSES

Inv. Brian Kennedy, FCSO

Docket Number 2001-GS-23-6641

The State of South Carolina
County of Florence**COURT OF GENERAL SESSIONS**

April 2001 Term

ARREST WARRANT NUMBER

G-355091

THE STATE

vs.

JIMMY DONALD MIEGGS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

ENGAGING A CHILD FOR SEXUAL

PERFORMANCE

SC Code: § 18-03-810

CDR Code: 389

Foreperson of Petit Jury

Date:

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. PIs. And G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT

At a Court of General Sessions, convened on April 12, 2001, the Grand Jurors of
Florence County present upon their oath:

Engaging a child for sexual performance

That Jimmy D. Meggs, did between October 1, 1999 to December 15, 1999, in
Florence County:

Commit the crime of engaging a child for sexual performance by employing,
authorizing or inducing a child younger than eighteen, _____, who was
years of age at the time, to engage in a sexual performance. To wit, Meggs
forced or induced _____ to engage in oral sex with _____. All in
violation of Section SC Code: § 16-3-810, Code of Laws of South Carolina,
(1975), as amended.

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

Charles M. Condon
CHARLES M. CONDON, *by the*
SOUTH CAROLINA ATTORNEY GENERAL
(his)

820.

012/019

NOTES

[illegible]

PRINTED NAME Jimmy Donald
LAST [redacted] **FIRST** [redacted] **MIDDLE** [redacted]

CASE NO.

01-665

SOLICITOR / ASSISTANT **ALD**
P.D.#. _____ D.O.B. _____ / _____ / _____
Mo. _____ Day _____ Year _____
F.B.I. - ID _____

At

FLORENCE CNTY SOLICITOR

01/18/2007, 14:35.FAX

DEFENDANT

Jimmy Donald MeggsDATES OF OFFENSES 10-1-99Issd: 4-12-01Recd: 4-12-01

CHARGES

Contributing to the Delinq.
of a Minor CAJ001D009

CO-DEFENDANTS / RELATED CASES

DATE OF ARREST 4-12-01

DATE P.M. HELD

MAGISTRATE

DEFENSE COUNSEL

H. Redmond

OTHER PENDING INDICTMENTS / WARRANTS

APPEAL

POLICE OFFICER

ECSD - B. Kennedy

DATE NOTICE OF INTENTION SERVED

COMPLAINING WITNESS

DATE REFERRED TO ATTORNEY GENERAL

ASST. ATTORNEY GENERAL ASSIGNED

DATE CASE AND EXCEPTIONS DUE

EXTENSIONS

DATE APPEAL DOCKETED

DECISION

Cvl

BONDSMAN

DISPOSITION

WITNESSES

Inv. Brian Kennedy, FCSO

Docket Number 2001-GS-21-665

The State of South Carolina
County of Florence

COURT OF GENERAL SESSIONS

April 2001 Term

ARREST WARRANT NUMBER

Direct Indictment CR001D01D

THE STATE

vs.

**ACTION OF GRAND JURY
TRUE BILL**

JIMMY DONALD MEGGS

For person of Grand Jury

Date:

Indictment for

VERDICT

**CONTRIBUTING TO THE
DELINQUENCY OF A MINOR**
SC Code: § 16-17-490
CDR Code: 48

For person of Petit Jury
Date:

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. PIs. And G.S.

01/19/2007 14:35 FAX

FLORENCE CNTY SOLICITOR

015/0

823

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT

At a Court of General Sessions, convened on April 12, 2001, the Grand Jurors of
Florence County present upon their oath:

CONTRIBUTING TO DELINQUENCY OF A MINOR

Between October 1, 1999 and December 15, 1999, the Defendant, Jimmy Donald Meggs, Jr., did commit the crime of Contributing to the Delinquency of a Minor, in that the Defendant, who was over the age of eighteen (18) years at the time of the incident, did knowingly and wilfully encourage, aid or cause or did an act or acts which caused or influenced

a minor who was . . . years of age at the time of the incident, to so deport himself as to wilfully injure or endanger his morals or health or the morals or health of others. Said incident having occurred in Florence County, South Carolina. All in violation of §16-17-490 of the Code of Laws of South Carolina (1976, as amended).

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

Charles M. Condon
CHARLES M. CONDON,
SOUTH CAROLINA ATTORNEY GENERAL (his)

824

FLORENCE CNTY SOLICITOR

016/019

NOTES

NAME James, Jimmy Donald
Last First Middle

CASE NO.

01-1066

SOLICITOR / ASSISTANT _____
 P.O. # _____
 F.B.I. ID _____
 D.O.B. _____
 Mo. _____ Day _____ Year _____

5

DEFENDANT

Jimmy Donald Meggs

DATES OF OFFENSES

10-1-99

CHARGES

Contributing to the Delinquency of a Minor C9101D010

CO-DEFENDANTS / RELATED CASES

DATE OF ARREST

4-12-01

DEFENSE COUNSEL

H. Redmond

DATE P.M. HELD

MAGISTRATE

OTHER PENDING INDICEMENTS / WARRANTS

APPEAL

POLICE OFFICER

ECSD-B. Kennedy

DATE NOTICE OF INTENTION SERVED

COMPLAINING WITNESS

DATE REFERRED TO ATTORNEY GENERAL

ASST. ATTORNEY GENERAL ASSIGNED

DATE CASE AND EXCEPTIONS DUE

EXTENSIONS

DATE APPEAL DOCKETED

DECISION

CAL

BONDSMAN

DISPOSITION

WITNESSES
Inv. Brian Kennedy, FCSO

Docket Number 2001-GS-21 - *Wile*

The State of South Carolina
County of Florence

COURT OF GENERAL SESSIONS

April 2007 Term

ARREST WARRANT NUMBER

Direct Indictment *CHADDID*

THE STATE

vs.

ACTION OF GRAND JURY
TRUE BILL

JIMMY DONALD BEGGS

David W. Wood
Foreperson of Grand Jury
Date:

Indictment for

VERDICT

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. Pils. And G.S.

Foreperson of Petit Jury
Date:

CONTRIBUTING TO THE
DELINQUENCY OF A MINOR
SC Code: § 16-17-490
CDR Code: 48

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT

At a Court of General Sessions, convened on April 12, 2001, the Grand Jurors
of Florence County present upon their oath:

CONTRIBUTING TO DELINQUENCY OF A MINOR

Between October 1, 1999 and December 15, 1999, the Defendant, Jimmy Donald Meggs, Jr., did commit the crime of Contributing to the Delinquency of a Minor, in that the Defendant, who was over the age of eighteen (18) years at the time of the incident, did knowingly and willfully encourage, aid or cause or did an act or acts which caused or influenced
a minor who was years of age at the time of the incident, to so deport himself as to willfully injure or endanger his morals or health or the morals or health of others. Said incident having occurred in Florence County, South Carolina. All in violation of §16-17-490 of the Code of Laws of South Carolina (1976, as amended).

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

Charles M. Condon
CHARLES M. CONDON,
SOUTH CAROLINA ATTORNEY GENERAL (his)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Thomas A. Russo, Circuit Court Judge

JIMMY D. MEGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

DESA BALLARD
Attorney at Law
226 State Street
West Columbia, SC 29169

ATTORNEYS FOR PETITIONER.

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ISSUES PRESENTED

1. Trial counsel erred in failing to investigate into and develop a mental illness defense on behalf of petitioner in the case.
2. Trial counsel erred in failing to request a charge on the lesser offense under S.C. Code Ann. § 16-3-820.
3. Trial counsel erred in failing to move for directed verdicts of acquittal on the two charges of engaging a child for sexual performance because the state failed to prove all elements of the offense, specifically the requirement that the performance be exhibited before an audience.

STATEMENT

Petitioner Jimmy D. Meggs was convicted per jury trial of two counts of contributing to the delinquency of a minor and two counts of engaging a child for sexual performance at the August 2001 term of the Florence County General Sessions Court before the Honorable James E. Brogdon, Jr., Judge. App. pp. 1 – 677. Petitioner was convicted of imprisonment for an aggregate period of forty years. Petitioner appealed, but his conviction and sentence were affirmed. See State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004).

On April 4, 2006, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. pp. 680 – 683. The respondent filed a return dated March 28, 2007, requesting that a hearing be held in the case. App. pp. 684 – 688.

A hearing was convened on December 11, 2007, at the Florence County Courthouse before the Honorable Thomas A. Russo, Judge. App. pp. 689 – 779. On March 2, 2008, Judge Russo issued an order of dismissal in the case. App. pp. 793 – 809. On May 2, 2008, Judge Russo denied petitioner's Rule 59(e) motion for reconsideration that was filed in the case. App. pp. 813 – 814.

Petitioner appealed. This petition follows.

QUESTION I

Trial counsel erred in failing to investigate into and develop a mental illness defense on behalf of petitioner in the case.

The state alleged that petitioner induced two minor boys to perform oral sex on each other during paint ball camp activities from October 1999 and December 1999. Petitioner would pick up the boys in his truck (13 to 15 boys) and transport them to a field where they would play paint ball. The boys would wear army camouflage fatigues and had to answer to petitioner was the commander/general in charge. The boys had to follow petitioner's orders or else they would be sprayed with petitioner's paint ball gun.

At trial, victim #1 testified that petitioner gave an order involving "suck[ing] each other's (twin brother's) private parts" and "do[ing] push ups over the other wherein they have to use their mouth to remove a paint ball from another boy's genitals. Victim #1 testified that he had to suck his brothers penis and his brother had to such his penis. App. p. 196, line 10 – p. 222, line 19. Twin #2 testified that petitioner made them suck each other's (brother) penis and take the balls off other boys' private parts as they did push-ups. App. p. 256, line 3 – p. 278, line 23.

A few months after petitioner was convicted and housed at SCDC, he was diagnosed as having a mood disorder (dysthymic disorder), chronic schizophrenia, and paranoia. App. p. 720, lines 11 – 17. During the PCR hearing, petitioner's counsel advanced the position that trial counsels were ineffective in failing to investigate into and develop a mental illness defense because there was evidence tending to suggest that a mental evaluation would have yielded results in support of a successful guilty but mentally ill defense in the case.

During the PCR hearing, petitioner's mother, Emily Meggs, testified that she informed trial counsels that petitioner had mental problems and that petitioner's grandfather, who ultimately shot himself, was housed at the state hospital for schizophrenia (which was the same diagnosis SCDC doctors gave petitioner). App. p. 695, line 16 – p. 700, line 24. Petitioner's father also testified during the PCR hearing and explained that he informed trial counsels also that petitioner was a compulsive liar. App. p. 703, line 13 – p. 707, line 13. Also, petitioner's aunt, Mary Strickland, stated that she and the family informed counsels that "[petitioner] wasn't right" and requested that petitioner be "checked" out. App. p. 711, line 20 – p. 713, line 14.

Forensic psychiatrist Thomas Victor Martin interviewed petitioner on August 24, 2006, and November 16, 2007, and diagnosed petitioner as suffering from a mental illness: specifically psychotic disorder (psychosis) and major depressive disorder. Dr. Martin testified during the PCR hearing. Dr. Martin acknowledged that SCDC gave a consistent mental diagnosis of petitioner as well and began medicating him with seroquel, which is an antipsychotic medicine for people who have "sever mental illness of a psychotic nature." Dr. Martin opined that petitioner suffered from mental illness at the time of the alleged offense. Dr. Martin stated that he learned that petitioner was sexually abused at the age of seven and that when he began hearing voices during his teenage years, he became depressed and withdrawn and did not develop friendships with others. Petitioner lived in a fantasy world and became a compulsive liar (including fabrications that he was a pilot, a five star general and a college graduate). Petitioner was socially inept, exhibited child-like behavior and was very dysfunctional. In summary, Dr. Martin testified that had petitioner undergone a mental evaluation prior to trial, then the test results would have yielded evidence establishing that he was suffering from a "psychotic and depressive illness" requiring treatment. App. p. 714, line 15 – p.

730, line 7. Note also that petitioner denied these allegations per a polygraph exam, which according to Dr. Martin was proof of mental illness in that petitioner did not see anything that he had done wrong. App. p. 739, line 15 – p. 740, line 17.

Trial counsels testified at the hearing as well. Counsel Cox testified in effect that it did not appear to him that petitioner had mental issues, but admitted that he “would not have the expertise to recognize what Dr. Martin testified to” in this matter. App. p. 742, line 1 – p. 745, line 6; App. p. 750, lines 7 – 10. Counsel Redmond testified that he never saw anything about petitioner that gave him pause about his mental health. App. p. 751, line 11 – p. 752, line 4; App. p. 753, lines 5 – 25. Counsel admitted that after the trial he visited petitioner and noted that petitioner seemed unresponsive and as a result, ordered a mental evaluation for him. App. p. 757, line 24 – p. 758, line 22. Finally, counsel admitted that looking now in hind-sight and after learning of a potential hereditary family mental illness and petitioner’s issue with compulsive lying, then it “would not have hurt anything” to have obtained a psychiatric evaluation of petitioner. App. 768, lines 6 – 15. Note that petitioner’s family members asked for an evaluation of petitioner prior to trial. Nonetheless, the PCR judge found there was no ineffective assistance of counsel with regard to counsel’s failure to pursue a mental illness defense.

A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong, but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. S.C. Code Ann. § 17-24-20. An insanity defense is accomplished if at the time of the commission of the act of constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular

act charged as morally or legally wrong S.C. Code Ann. § 17-24-10(A). As a rule, counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). Also, with respect to cases where mental issues abound, counsel has a duty to investigate, prepare, and present evidence of mental illness on behalf of the defense. See Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), where the Court found that counsel was ineffective in failing to provide the psychiatrist who testified at trial with all the defendant's extensive medical records and information, so that the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis could have been presented during the penalty phase and a death sentence avoided. Also, compare Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand their investigate into the defendant's background with sufficiency in order to learn of the defendant's diminished mental capacity and childhood abuse, rape, and molestation in order to show his impaired mental and psychological state. Compare further, Davenport v. State, 301 S.C. 39, 389 S.E.2d 649 (1990), where the Court held that counsel was ineffective in failing to develop an insanity defense when the state's psychiatrist diagnosed the defendant as legal insane. In the federal court cases of People v. Coroma, 80 Cal. App. 3d 684, 145 Cal. Rptr. 899 (1st Dist. 1978); Ramseyer v. Glodgett, 853 F. Supp. 1239(WD.Wash. 1994), and Hull v. Hyler, 190 F.3d 88 (C.A. 3PA, 1999), the courts found counsel ineffective in failing to investigate into evidence establishing client's mental incompetence.

Clearly, in the case at bar, counsels' failure to investigate into and develop a mental illness defense constituted deficient legal representation that was below the range of competence demanded of criminal attorneys and so undermined the adversarial process that a just result could not have been produced. Strickland v. Washington, 466 U.S. 668 (1984). But for counsel's error in this

regard, there is a reasonable likelihood that petitioner's trial would have ended differently. In the case at bar, appellant was denied effective assistance of counsel in violation of his rights under the Sixth and Fourteenth Amendments to the United States Constitution and article 1 §14 of the South Carolina State Constitution.

QUESTION II

Trial counsel erred in failing to request a charge on the lesser offense in the case.

During the hearing, petitioner complained that counsel erred in failing to request a charge on the lesser offense. Petitioner was charged under S.C. Code Ann. § 16-3-810, which mandates that:

- a. It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance. It is unlawful for a parent or legal guardian or custodian of a child younger than eighteen years of age to consent to the participation by the child in a sexual performance.
- b. Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree and upon conviction shall be punished as provided in § 16-3-653.

S.C. Code Ann. § 16-3-820 mandates that:

- a. It is unlawful for any person to produce, direct, or promote a performance that includes a sexual conduct by a child younger than eighteen years of age.
- b. Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in § 16-3-654.

The law to be charged is determined from the evidence presented at trial. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). The lesser offense was applicable in this case. Trial counsel erred in failing to request a charge on the lesser offense per S.C. Code Ann. § 16-3-820. The error violated petitioner's right to effective assistance of counsel guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution and article 1, §14 of the South Carolina State Constitution.

QUESTION III

Trial counsel erred in failing to move for directed verdicts of acquittal on the two charges of engaging a child for sexual performance because the state failed to prove all elements of the offense, specifically the requirement that the performance be exhibited before an audience.

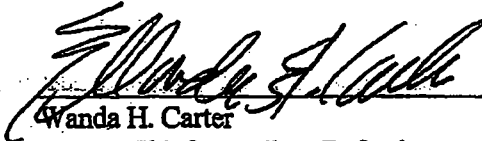
Due process requires that the prosecution prove beyond a reasonable doubt every element of the offense charged against the defendant. Jackson v. Virginia, 443 U.S. 307 (1979). Here, the state charged that petitioner did "employ, authorize, or induce a child younger than eighteen years of age to engage in sexual performance." See S.C. Code Ann. § 16-3-810. Under S.C. Code Ann. § 16-3-800 "to perform" is defined as any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience. In the case at bar, the record is devoid of any evidence or proof establishing that the acts in question occurred before an audience. Victim #1 testified that the other boys were "around us" during the time oral sex was in progress, which means that the other boys were in the area, but not watching them perform and thus no audience present. App. p. 210, lines 11 – 15. Victim #2 testified that their shirts were pulled up over their heads when oral sex was being performed, which again gives rise to the inference that there was no eyewitness or audience watching the acts. App. p. 266, lines 17 – 20.

Trial counsel erred in failing to move for directed verdicts of acquittal on the two charges of engaging a child for sexual performance because the state failed to prove all elements of the offense, specifically the requirement that the performance be exhibited before and audience.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the issues.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

Desa Ballard
Attorney at Law

ATTORNEYS FOR PETITIONER

March 11, 2009

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
Thomas A. Russo, Circuit Court Judge

JIMMY D. MEGGS,

PETITIONER,

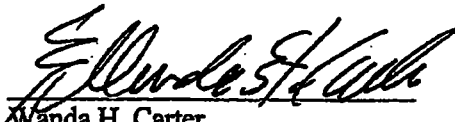
v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

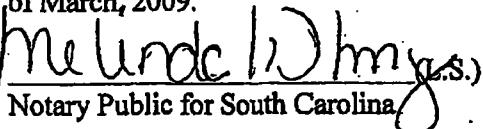
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Julie M. Thames, Esquire this 11th day of March, 2009.


Wanda H. Carter
Deputy Chief Appellate Defender

Desa Ballard
Attorney at Law

ATTORNEYS FOR PETITIONER

SWORN TO BEFORE ME this 11th day
of March, 2009.


Notary Public for South Carolina

My Commission Expires: October 30, 2018.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1337

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

March 11, 2009

Julie M. Thames, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Jimmy D. Meggs v. State of South Carolina

Dear Julie:

Enclosed are two copies of the petition for writ of certiorari and the appendix in the above case that I filed today with the S.C. Supreme Court.

If you have any questions concerning this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/mwl

Enclosures

cc: Desa Ballard, Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of FLORENCE

FILED

IN THE COURT OF COMMON PLEAS

2009 APR 23 AM 11:32

Jimmy D. Meggs Jr., # 277400
Full name and prison number (if any) of ApplicantCONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC2009 CP 21-780

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
P.O. Box 205, Ridgeville SC 29472.
2. Name and location of Court which imposed sentence Florence County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2001-GS-21-663
2001-GS-21-664

CERTIFIED: A TRUE COPY

Connie Reel-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

(b) 2001-GS--665

2009 CP 21-180

(c) 2001-GS-21-666

FILED

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

2009 APR 23 AM 11:32

(a) August 9 2001, 20 years(b) August 9, 2001; 20 years consecutive(c) August 9, 2001; 3 years concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty(b) after a plea of not guilty *****(c) after a plea of nolo contendere7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.

8. If you answered Ayes@ to (7), list:

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

i. South Carolina Court of Appealsii. South Carolina Supreme Court

iii. _____

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

i. Affirmedii. Dismissed

iii. _____

(c) the date of each such result:

i. August 31, 2004 2004-UP-460ii. Don't know.

iii. _____

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

i. 2004-UP-460

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____

(b) FILED

(c) _____

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

2009 APR 23 AM 11:32

DONNIE REEL-SHEARIN

CCCP & GS

FLORENCE COUNTY, SC

(a) PCR Transcripts were not verified. New PCR Hearing(b) Statute does not ^{Apply} apply to the alleged crime.(c) Petitioner held by Unconstitutional conviction and

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

(a) (see Attachment)(b) (see Attachment)(c) (see Attachment)

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

(a) any petition in a State Court under South Carolina Law? No(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Writ of Certiorari of PCR denial(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. Writ of Certiorari of First PCR Denial

ii. _____

iii. _____

iv. _____

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

i. South Carolina Supreme Court

ii. _____

iii. _____

2009 CP 21 180

iv. _____
 (c) the disposition thereof: **FILED**

i. N/A 2009 APR 23 AM 11:32

ii. _____

iii. _____
 DONNIE DWEL-SHEARIN
 CCCP & GS
 FLORENCE COUNTY, SC

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. No

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

2009 APR 23 AM 11:32

- (a) I was dependent on my Lawyer. I was on 1200 mg Seroquil
CONNIE REEL SHEARIN
 (b) CCCP & GS
FLORENCE COUNTY, SC
 (c) _____

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

- (a) your arraignment and plea? Arraignment Yes
 (b) your trial, if any? yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. James T. McBratney, 300 Rainbow Drive in Florence
Kernard Redmond of 730 Coventry Lane in Florence
 ii. John Jeppartanger of Florence
Jim Cox of 130 South Irby Street in Florence
 iii. Jack Swerling, located at 1720 Main Street in Columbia
Desa Ballard of 226 State St. West Columbia .
 (b) the proceedings at which each such attorney represented you:
 i. Jack Swerling, on Appeal
Desa Ballard, on PCR
 ii. Kernard Redmond, Trial and sentencing
Jim Cox, Trial and sentencing
 iii. Johnjeppartanger, Preliminary hearing, Bond hearing
James Mcbratney, Bond hearing and Preliminary hearing

19. State clearly the relief you seek in filing this application: FILE
 reverse my Conviction and Sentence and Remand for a
New trial. 2009 APR 23 AM 11:32
 CONNIE REEL-SHEARIN
 CCCP & GS
 FLORENCE COUNTY, SC
20. Are you now under sentence from any other court that you have not challenged?
No.

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
 County of FLORENCE) VERIFICATION

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

Jimmy D. Meggs Jr.
 SWORN to and subscribed before me this 22
 day of April, 09.
Myrtle Bles (L.S.)
 Notary Public
 My Commission Expires: 8/20/2016

FILED

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

2007 APR 23 AM 11:23
JAMES SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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

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

J. Meggs
Applicant

SWORN or affirmed to and subscribed before me this 22 day of April, 09.

Myrtle Blom
Notary Public

My Commission Expires: 8/20/2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2009-CP-21-780
	)	
Jimmy D. Meggs, Jr., SCDC No. 277400,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application (PCR) filed April 23, 2009,
the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three (3) years for each charge of contributing to the delinquency of a minor and twenty (20) years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty (20) year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

The Applicant subsequently filed his first PCR application on April 4, 2006. (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007. The Applicant raised the following allegations in his first PCR application:

1. failure to investigate with regard to Petitioner's mental capacity;
2. failure to request defense of guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. The Honorable Thomas A. Russo denied and dismissed the PCR application with prejudice by written Order filed March 4, 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written Order filed on May 5, 2008.

A timely Notice of Appeal was filed and the PCR appeal is currently pending at the South Carolina Supreme Court.

II.

In his current application for post conviction relief, the Applicant alleges:

"PCR transcripts were not verified. New PCR hearing. Statute does not apply to the alleged crime. Petitioner held by unconstitutional conviction."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records; the South Carolina Department of Corrections' records; the prior PCR application, return, order of dismissal, petition for writ of certiorari, return to petition; and the trial transcript by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent first submits that the current PCR application should be summarily because it is successive to the previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305

S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, supra.

Other than the allegation that the PCR transcript has not been verified, the Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, the Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent further submits that this PCR application should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on August 9, 2001. The Applicant was therefore required to file his application before August 9, 2002. This application was filed on April 23, 2009, more than six years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the current PCR application for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the current PCR application because it is successive to the applicant's prior PCR application and because it is untimely.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

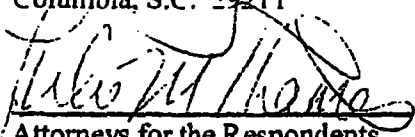
JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

July 7, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2009-CP-21-780

Jimmy D. Meggs, Jr.,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

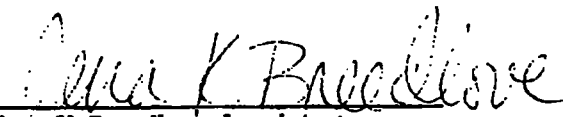
State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss of the Respondent, PCR application, Rule 59(e) Motion for Reconsideration of the Order (from prior case# 2006-CP-21-553) and the Order of Dismissal (from prior case# 2006-CP-21-553) in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Jimmy Meggs, Jr., #277400
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC 29472

DATED this 7th day of July, 2009.


Jena K. Breedlove, Legal Assistant
For Respondent

State of South Carolina

Form 4

Judgment in a Civil Case

County of Florence County

2009-CP-21-780

CERTIFIED A TRUE COPY

Jimmy D. Mcggs, Jr. Connie Reel-Shearin State of South Carolina
SCDC No. 277480 CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Plaintiff(s)

Defendant(s)

Check one:

- () **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- () **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and decision rendered.
- () **ACTION DISMISSED (CHECK REASON):** () Rule 12(b), SCRPC; () Rule 41 (a), SCRPC (Vol. Nonsuit); () Rule 43(k), SCRPC (Settled); () Other _____
- () **ACTION STRICKEN (CHECK REASON):** () Rule 40(j) SCRPC; () Bankruptcy; () Binding arbitration, subject to right to restore to confirm, vacate modify arbitration award; () Other _____
- () **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 () Affirmed; () Reversed; () Remanded; () Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: () See attached order. (Formal order to follow) () Statement of Judgment by the court:

Dated at Florence, South Carolina, this _____ day of _____

2009 JUL -9 PM 2:50
 CONNIE REEL-SHEARIN
 C.C. & G.S.
 FLORENCE COUNTY, SC
FILED

PRESIDING JUDGE

This judgment was entered on the 9 day of July 2009, and a copy mailed first class this 10 day of July 2009, to attorneys of record or to parties (when appearing pro-se) as follows.

Pro-se
P.O. Box 205
Ridgerville, SC 29472
 Attorney(s) for Plaintiff(s)

S.M. Thames
P.O. Box 11549
Columbia, SC 29211
 Attorney(s) for Defendant(s)

Connie Reel-Shearin
 Florence County Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Jimmy D. Meggs, Jr., SCDC No. 277400,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
2009-CP-21-780

CONDITIONAL ORDER OF DISMISSAL

2009 JUL-9 PM 1:01
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 23, 2009. The Respondent made its Return and Motion to Dismiss in which it requested summary dismissal of this application due to it being successive and untimely.

I. Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three (3) years for each charge of contributing to the delinquency of a minor and twenty (20) years for one charge of engaging a child for sexual performance. On the

CERTIFIED A TRUE COPY

Connie Red-Sparin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty (20) year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

The Applicant subsequently filed his first PCR application on April 4, 2006. (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007. The Applicant raised the following allegations in his first PCR application:

1. failure to investigate with regard to Petitioner's mental capacity;
2. failure to request defense of guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. The Honorable Thomas A. Russo denied and dismissed the PCR application with prejudice by written Order filed March 4, 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written Order filed on May 5, 2008.

A timely Notice of Appeal was filed and the PCR appeal is currently pending at the South Carolina Supreme Court.

In his current application for post conviction relief, the Applicant alleges: "PCR transcripts were not verified. New PCR hearing. Statute does not apply to the alleged crime. Petitioner held by unconstitutional conviction."

II. Findings of Fact and Conclusions of Law

A. Successive

This Court finds that the current PCR application should be summarily because it is successive to the previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive

applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land v. State, supra.

Other than the allegation that the PCR transcript has not been verified, the Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application; therefore, he has failed to meet the burden imposed upon him. Land v. State, supra; Aice v. State, supra.

B. Statute of Limitations

This Court finds, further, that this PCR application should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on August 9, 2001. The Applicant was therefore required to file his application before August 9, 2002. This application was filed on April 23, 2009, more than six years after the statutory filing period had expired.

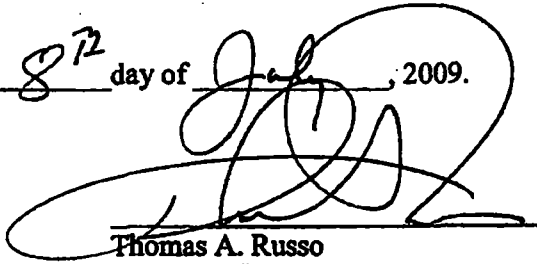
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C.

487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the current PCR application must be summarily dismissed for failure to file within the time mandated by the Post Conviction Procedure Act.

III. Conclusion

Based upon its review of the pleadings in this matter, this Court expresses its intent to dismiss the matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Florence County Clerk of Court, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Julie M. Thames, Post Office Box 11549, Columbia, South Carolina 29211.

AND IT IS SO ORDERED this 8th day of July, 2009.


Thomas A. Russo
Administrative Judge
Twelfth Judicial Circuit

Florence, South Carolina.

2009 JUL -9 PM 1:01
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	
	)	
Jimmy D. Meggs, Jr., #277400	)	Case No. 2009-CP-21-780
Applicant,	)	
	)	
-vs-	)	APPLICANT'S OBJECTION TO RESPONDENT'S
	)	CONDITIONAL ORDER OF DISMISSAL AND
State of South Carolina,	)	Applicant's 59 (e).
Respondent.	)	
	)	

The Applicant would respectfully move this Court to consider that this particular Statute is not clarified by the Court of this State and has not declared either it's Constitutionality or Application. The Applicant tried to raise this issue at his last FCR Hearing, However, his counsel after being told his wishes prior to the hearing did not address this issue.

It is Applicant's position that Trial Counsel was Constitutionally Ineffective for not raising the issue of the Application of this Statute as it relates to the allegations in the Applicant's case at trial. However it is the Applicant's position that the issue is Application may be preserved through the usual Motions after the State rests it's case, and again after the verdict asking for a direct verdict. The Applicant would submit the following:

I

The Applicant would contend that Trial Counsel and Appellant Counsel was Constitutionally Ineffective for not raising the proper Objections and not specifying the Objection as it relates to the co-mingling of this Statute (§ 16-3-810) and the Statute that the Statute clearly says "IS GUILTY" of criminal sexual conduct (§ 16-3-653), which the Applicant would Respectfully point out is not in the Indictment, warrant, not was it referred to the jury. It is Applicant's position that the trial jury has

a right to know what they were convicting Applicant of. 2) It is co-mingling of a Serious offense (16-3-810) and a Most serious (16-3-653). It disguised the offense from the jury and had they known the crime that they actually convicting the Applicant of, they would have returned a verdict of Not-Guilty.

In Short the trial jury would have had the right to know the exact charge so that they could have determined the elements as they applied. In the Light most favorable to the State. The State never alleged the necessary elements that would constitute (16-3-653). Upon looking at (16-3-653) it plainly says that it is required "some degree of penetration" by the actor. The record is crystal clear that there was not even all allegation of sexual battery by the actor. The Applicant believes that because this Statute has a connection as set out in subsection (b) any person violating the provision of subsection (a) IS GUILTY of criminal sexual conduct of the second degree and will be punished as provided by § 16-3-653. Trial and Appellant counsel was Constitutionally Ineffective for not raising this claim at trial or Direct Appeal. I would Remind the Court that this is a Novel issue of Law, as there is not case Law determining it's Constitutionality or Application.

II

Trail and Appellant counsel was Constitutionally Ineffective for not raising the Application issue of this Statute. This Statute clearly ties to several Statutes a) it ties in subsection (b) to § 16-3-653 Criminal Sexual Conduct. It says plainly "IS GUILTY" of criminal sexual conduct of the second degree. Because it says "IS GUILTY" it plainly ties to the elements of 16-3-653. As the Court knows criminal sexual conduct of the second degree requires sexual conduct by the actor himself. Case Law clearly mandates penetration however slight is all is required to accomplish CSC second. This Statute does not apply to Applicant's case as set out by the facts and testimony of the State's case.

Conclusion

Based on the foregoing, the Applicant's PCR is Granted based on the merits that the Allegations that the State set out at trial does not meet the elements of the said crime.

A handwritten signature in black ink, appearing to read "J. D. N.", is located in the middle right portion of the page.

State of South Carolina

Form 4

Judgment in a Civil Case

County of Florence County

2009 - CP-21-780

Jimmy D. Meggs, JR.
#277400

State of South Carolina

Plaintiff(s)

Defendant(s)

Check one:

- () **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- () **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and decision rendered.
- () **ACTION DISMISSED (CHECK REASON):** () Rule 12(b), SCRPC; () Rule 41 (a), SCRPC (Vol. Nonsuit); () Rule 43(k), SCRPC (Settled); () Other _____
- () **ACTION STRICKEN (CHECK REASON):** () Rule 40(j) SCRPC; () Bankruptcy; () Binding arbitration, subject to right to restore to confirm, vacate modify arbitration award; () Other _____
- () **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 () Affirmed; () Reversed; () Remanded; () Other _____
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: () See attached order. (Formal order to follow) () Statement of Judgment by the court:

Dated at Florence, South Carolina, this _____ day of _____ 2010.

2010 MAY 19 PM 2:42
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

PRESIDING JUDGE

This judgment was entered on the 17 day of May 2010, and a copy mailed first class this 20 day of May 2010, to attorneys of record or to parties (when appearing pro-se) as follows.

Pro Se - Jimmy D. Meggs JR.

P.O. Box 1151

Fairfax, S.C. 29827

Attorney(s) for Plaintiff(s)

Julie M. Thomas

P.O. Box 11549

Columbia, S.C. 29211

Attorney(s) for Defendant(s)

Connie Reel-Shearin
 Florence County Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
Case No.: 2009-CP-21-0780

Jimmy D. Meggs, Jr., #277400,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FILED COPY

FINAL ORDER

CLERK OF COURT, P & G.S.,
FLORENCE COUNTY, S.C.

FILED
2010 MAY 17 PM 1:14
CLERK OF COURT, P & G.S.,
FLORENCE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief filed April 23, 2009. Respondent made its Return and Motion to Dismiss on or about July 7, 2009, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed July 9, 2009, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated March 29, 2010, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Objection to Respondent's Conditional Order of Dismissal and Applicant's 59(e)," dated April 7, 2010, Applicant argues that his application should not be summarily dismissed based on Statute of Limitations and Doctrine of Successiveness because trial and appellate counsel were ineffective for failing to argue that the statute does not apply to the alleged crime.

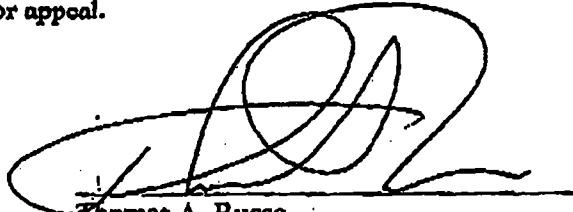
This Court has reviewed Applicant's response to the Conditional Order of Dismissal in its

entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds that Applicant's claims are barred by the statute of limitations and for being successive.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED.



Thomas A. Russo
Chief Administrative Judge
12th Judicial Circuit

5/7, 2010

Florence, South Carolina.

FILED
2010 MAY 17 PM 1:14
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

2009 DEC 18 AM 11:54

County of FLORENCE

CLERK OF COURT
CCCP & GS
FLORENCE COUNTY

In the Court of Common Pleas

2009 - CP 213147

Jimmy D. Meggs Jr., # 277400

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

vs.

The State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFCERTIFIED: A TRUE
CLERK OF COURT
FLORENCE COUNTYINSTRUCTIONS — 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 Allendale C.I., Fairfax SC 29827
2. Name and location of Court which imposed sentence Florence County Court of General Sessions.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2001-GS-21-663, engaging a child for sexual performance
 - (b) 2001-GS-21-664, engaging a child for sexual performance
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 9th, 2001, twenty years
 - (b) August 9th, 2001, twenty years, consecutive suspen. to five years probation.
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty Yes _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, Direct Appeal and Writ of certiorari result AFFIRMED _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals, "Direct Appeal"
 - ii. South Carolina Supreme Court, Writ of Certiorari
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. AFFIRMED conviction and sentence.
 - ii. DENIED Writ of Certiorari to S.C. Supreme Court.
 - iii. _____
 - (c) the date of each such result:
 - i. 2004
 - ii. 2006
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2004-UP-460
 - ii. Not Known
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) The Statute is not applicable to the facts of the Petitioners case.
 - (b) Counsel failed to Object to the application of this Statute. Appellant
 - (c) Counsel failed to raise this "Novel" issue of Law. (see Attached)
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Statute refers to § 16-3-740, § 16-3-653 and the Legislative Intent of
 - (b) of the South Carolina Legislature.
 - (c) (see Attached)

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes.
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (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? YES.

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. Writ of Habeas Corpus to South Carolina Supreme Court. The Court
- ii. Court said I did not show that I could have raised this issue in another Court.
- iii. _____
- iv. _____

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

- i. South Carolina Supreme Court.
- ii. Florence County Court of Common Pleas (PCR)
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied.
- ii. Dismissed.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. March 2008.
- iii. _____
- iv. _____

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

- i. N/A
- ii. Order of Dismissal.
- 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.

(a) which grounds have been presented:

i. NO.

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) Newly Discovered evidence under § 17-27-45 (c). I just received the letter

(b) dated December 2, 2009 from the "State of South Carolina Legislative

(c) Printing, Information & Technology Systems."

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

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES, PCR.

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. Jim Cox, of Hartsville, at Trial

Kenard Redmond, of Florence, at Trial

ii. Jack B. Swerling, of Columbia, on Direct Appeal and Writ of Certiorari.

DeSa Ballard, of Columbia, on PCR and Writ of Certiorari.

iii.

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

i. see above.

ii.

iii.

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

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

NO.

STATE OF SOUTH CAROLINA

County of FLORENCE

VERIFICATION

I, Jimmy D. Meggs Jr., # 277400, 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.

Jimmy D. Meggs Jr.

SWORN to and subscribed before me this 16

day of December, 2009

Helen P. Freeman (L.S.)
Notary Public

My Commission Expires: 5/18/14

2009 DEC 18 AM 11:54
FLORENCE COUNTY, S.C.
CLERK OF COURT & CLERK OF DISTRICT COURT

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

I, Jimmy D. Meggs Jr., # 277400, 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.

Jimmy D. Meggs Jr.
Applicant

SWORN or affirmed to and subscribed before me this

16 day of December, 2009

Helen P. Freeman
Notary Public

My Commission Expires 5/18/14

CERTIFIED: A TRUE & CORRECT COPY
CLERK OF COURT & CLERK OF DISTRICT COURT
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

County of Florence

Jimmy D. Meggs Jr., # 277400,
Applicant,

vs.

The State of South Carolina
Respondent.

) IN THE COURT OF COMMON PLEAS

) Case # _____

) APPLICATION FOR
) POST-CONVICTION RELIEF

) § 17-27-45 (c).

STATE OF THE CASE

Applicant was indicted before the Florence grand jury in April 2001, term of court. The "Attorney General" indicted and ultimately obtained a conviction for two counts of engaging a child for sexual performance, and, two counts of contributing to the delinquency of a minor. The applicant was sentenced to two consecutive twenty year sentences, with the second one suspended to five years probation.

The Applicant received as of "December 2, 2009, a letter from the "Legislative Printing Information & Technology Systems." The Legislative intent for this Statute (§ 16-3-810) is what is in question. The Applicant believes that because he just received this "letter" which "clearly" states in the "SUBJECT: Relating to child pornography." It is crystal clear that Legislative intent for this statute is in conflict with the application in this case. This Statute does not fit with the allegations set forth in both the Indictment and the testimony at trial. see [ROA]

DISCUSSION

The state never alleged the necessary elements to constitute what the Legislative intent of § 16-3-810. First, upon looking at the Statute it refers to § 16-3-810 (b), it says anyone violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct in the second degree and will be punished as provided by § 16-3-653. Also, upon looking at § 16-3-800 "Definitions" it refers to § 16-3-740, which specifically refers to "testing of certain offenders." What would be the rationale of testing an "actor" to a criminal offense where he is accused of being a VIEWER of an act, also, what of the reference to § 16-3-653 or criminal sexual conduct, which as the court plainly knows that the only way an individual can be guilty of Criminal sexual conduct in any degree, he must be at least an allegation of sexual battery by the actor Marshall Supra. It is crystal clear that a sexual as defined by statute must be alleged in order for a criminal defendant to stand trial for this particular criminal offense.

Secondly, after receiving the Legislative intent by copy of the letter dated (December 2, 2009), The Bill that the Legislature passed into Law specifically states " Subject: Relating to child pornography".

As the Court knows, The Legislative intent of "Child Pornography" as set out in the Legislative intended, clearly states: Child Pornography: Material depicting a person under the age of

Engaging in sexual activity Child pornography is not protected by the First Amendment—even if it falls short of the legal standard for obscenity—and those directly involved in it's distribution can be criminally punished [Cases Infant 13; Obscenity 5 C.J.S. Infant §§ 5-13.] BLACK'S LAW DICTIONARY Eighth Edition.

The Applicant discovered this information as of December 2, 2009. There is no other way that I could have obtained this Information other than through the Legislature. The Law Library at the prison institution, The South Carolina code does not specify the Legislative intent. The Applicant is not educated in the field of Law.

In Short, There is no other way I could have obtained this Information other than the Legislature itself. Considering the fact that this Statute has not been defined by case Law, Nor has the Court addressed this "Novel" issue of Law. The Applicant believes that because the Indictment stated, and the evidence came out at trial, that the applicant directed the two minors to engage in the sexual performance, while the actor was only a VIEWER of the said act. The state failed to met it's burden of proof as it relates to the intent for this specific statute. The Applicant Respectfully submits the above to the Court for it's consideration.

CONCLUSION

Based on the foregoing, The Applicant prays that this Court grant his Application appoint counsel, and grant a hearing. The applicant Respectfully submits the above to the Court for their Consideration.

Sincerely, Yours,

Jimmy D. Meggs Jr., # 277400

2009 DEC 18 AM 11:54
CLERK OF COURT
FLORENCE COUNTY, SC

FILED: A TRUE
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2009-CP-21-3147
	)	
Jimmy D. Meggs, Jr., SCDC No. 277400,	)	
	)	
Applicant,	)	
	)	
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter is before this Court by way of a post-conviction relief application (PCR) filed December 18, 2009 and received by the State on or about October 15, 2012.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three years for each charge of contributing to the delinquency of a minor and twenty years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

2006-CP-21-553

The Applicant subsequently filed his first PCR application on April 4, 2006. (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007. The Applicant raised the following allegations in his first PCR application:

1. failure to investigate with regard to Petitioner's mental capacity;
- ~~2. failure to request defense of guilty but mentally ill (GBMI);~~
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. The Honorable Thomas A. Russo denied and dismissed the PCR application with prejudice by written Order filed March 4, 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written Order filed on May 5, 2008.

A timely Notice of Appeal was filed. However, the South Carolina Supreme Court denied the petition for writ of certiorari and issued a remittitur on April 5, 2010.

2009-CP-21-780

Petitioner filed his second PCR application on April 23, 2009. The State made its return and motion to dismiss on July 7, 2009. The honorable Thomas A. Russo issued a Conditional Order of Dismissal on July 9, 2009. Applicant responded to the Conditional Order of Dismissal. However, Judge Russo dismissed the application by Final Order dated May 7, 2010.

2012-CP-21-273

Applicant subsequently filed a PCR application on January 30, 2012. Respondent will file a return to that application in a separate pleading.

III.

The Respondent first submits that the current PCR application should be summarily because it is successive to the previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262

~~S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:~~

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to

those grounds that "could not have been raised . . . in the previous application." *Id.*, 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. *Id.* The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, supra.

Applicant alleges that the trial court never adjudicated all the issues he wished to have adjudicated in his first PCR. On its face, Applicant alleges claims that could have been raised and ruled upon by the PCR court in the first application. Accordingly, this application should be dismissed.

IV.

The Respondent further submits that this PCR application should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on August 9, 2001. The Applicant was therefore required to file his application before August 9, 2002. This application was filed more than seven years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the current PCR application for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the current PCR application because it is successive to the applicant's prior PCR application and because it is untimely.

Respectfully submitted,

ALAN WILSON
Attorney General

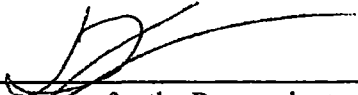
JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

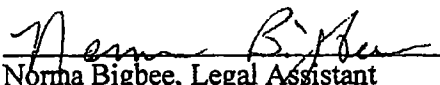
January 17, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2009-CP-21-3147
JIMMY D. MEGGS, #277400	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Jimmy D. Meggs, #277400
 Evans Corr. Inst.
 P.O. Box 2951202
 Bennettsville, SC 29512

DATED this 17TH day of January, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
Jimmy D. Meggs, Jr., SCDC No. 277400,
Applicant,
v.
State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
2009-CP-21-3147

**CONDITIONAL ORDER
OF DISMISSAL**

FILED
2013 JAN 29 PM 12:38
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY
Chris Redmon
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed December 18, 2009. The State indicates it received the application on or about October 15, 2012. The State now moves to dismiss the application as successive and beyond the statute of limitations. This Court finds that dismissal of the action is appropriate.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three years for each charge of contributing to the delinquency of a minor and twenty

years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

2006-CP-21-553

The Applicant subsequently filed his first PCR application on April 4, 2006. (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007. The Applicant raised the following allegations in his first PCR application:

1. failure to investigate with regard to Petitioner's mental capacity;
2. failure to request defense of guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. The Honorable Thomas A. Russo denied and dismissed the PCR application with prejudice by written Order filed

March 4, 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written Order filed on May 5, 2008.

A timely Notice of Appeal was filed. However, the South Carolina Supreme Court denied the petition for writ of certiorari and issued a remittitur on April 5, 2010.

2009-CP-21-780

Petitioner filed his second PCR application on April 23, 2009. The State made its return and motion to dismiss on July 7, 2009. The honorable Thomas A. Russo issued a Conditional Order of Dismissal on July 9, 2009. Applicant responded to the Conditional Order of Dismissal. However, Judge Russo dismissed the application by Final Order dated May 7, 2010.

DISCUSSION

This Court finds that dismissal of this application is appropriate as it is successive and filed beyond the statute of limitations.

Successive Application

The current PCR application should be summarily because it is successive to the previous PCR application. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief

asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, supra.

Applicant alleges that the trial court never adjudicated all the issues he wished to have adjudicated in his first PCR. On its face, Applicant alleges claims that could have been raised and ruled upon by the PCR court in the first application. Accordingly, this application should be dismissed.

Statute of Limitations

Further, this PCR application should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the

remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on August 9, 2001. The Applicant was therefore required to file his application before August 9, 2002. This application was filed more than seven years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds it should summarily dismiss the current PCR application for failure to file within the time mandated by the Post Conviction Procedure Act.

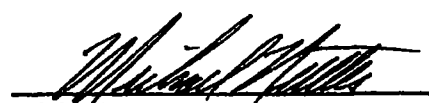
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have

with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

David Spencer, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED!


Michael G. Nettles
Chief Administrative Judge
12th Judicial Circuit

 South Carolina
1-28, 2013

890

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25

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCP, the Director of the South Carolina Department of Corrections has designated J. Bathea (Server) as his duly authorized agent for the purpose of making service of the signed Conditional Order of Dismissal on the below named individual.

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF)

On this 12 day of February, 2013, I served the signed **Conditional Order of Dismissal** on *Inmate Jimmy D. Meggs No. 277400*, by delivering personally and leaving a copy of the same at *Evans Correctional Institution, Bennettsville, South Carolina*. Deponent is not a party to this action.

s/ J. Bathea
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 12 day of February, 2013
Wory Thomas (L.S.)
Notary Public for South Carolina

My Commission Expires: Sept 19, 2019

ADMISSION OF SERVICE

Service of a copy of the signed Conditional Order of Dismissal is admitted at the S.C. Department of Corrections, *Evans Correctional Institution, Bennettsville*, Marlboro County, South Carolina, this 12 day of Februan, 2013.

s/ J. Dmytro
Inmate Signature
SCDC No. 277400

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

FILED CASE NO. 2019 CP-21-3147

2019 JAN 31 AM 10:03
Jimmy D. Meggs #277400
 PLAINTIFF(S)
 CONNIE REED
 DEFENDANT(S)
 FLORENCE COUNTY, SC

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant
 or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

FD-5

20. 3642

AS

STATE OF SOUTH CAROLINA 2013 APR - 1 11 59:23

COUNTY OF FLORENCE

CONNIE REED
CCCP
FLORENCE C.

IN THE COURT OF COMMON PLEAS

JIMMY D. MEGGS JR., # 277400.

2013-CP-21-874

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

V.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention EVANS C.I., BENNETTSVILLE, SC 29512.
2. Name and location of Court which imposed sentence FLORENCE COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) 2001-GS-21-663, ENGAGING CHILD FOR SEXUAL PERFORMANCE
- (b) 2001-GS-21-664, ENGAGING CHILD FOR SEXUAL PERFORMANCE
- (c)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-6-01, 20 YEARS
- (b) 9-6-01, 20 YEARS, CONSECUTIVE, SUSPENDING TO 5 YEARS PROBATION

VERIFIED A TRUE COPY

CLERK OF COURT, C. P. & C. C. J.
SPRINGFIELD COUNTY, S. C.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty *** _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. S.C. SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED AUGUST, 31 2004
- ii. WRIT DENIED JANUARY, 6 2006.
- iii. _____
- (c) the date of each such result:
- i. 2004-UP-460
- ii. DISMISSAL OF CERTIORARI
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. DIRECT APPEAL AFFIRMED
- ii. WRIT OF CERTIORARI DENIED.
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: S.C. CODE ANN. § 17-27-45 (c): NEWLY DISCOVERED EVIDENCE CLAIM (SEE ATTACHED MEMORANDUM OF LAW IN SUPPORT OF APPLICATION

Revised 3/2003

- (a) THE UPDATE OF THE EVANS LAW LIBRARY BROUGHT TO LIGHT
NEWLY DISCOVERED CLAIMS THAT COULD NOT HAVE BEEN
(b) DISCOVERED BUT BY THIS UPDATE.
(c) 1) TRIAL COUNSEL'S FAILURE TO OBJECT TO THE STATES
FAILURE TO MEET THE ELEMENTS OF § 16-3-810, 2) THE
2) THE STATES FAILURE TO PROVIDE DUE PROCESS OF LAW IN
11. State concisely and in the same order the facts which support each of the grounds set out
in (10): (SEE ATTACHED MEMORANDUM). THE UPDATE IN THE EVANS
LAW LIBRARY PROVIDED THE FACTUAL PREDICATE FOR THE
(a) CLAIM OF THE OFFENSE OF § 16-3-810, SEE: 1991 S.C. OP.
ATT GEN, 118, 1991 SC OPP ATT GEN' NO. 91-46, 1991 WL
(b) 474776 (SCAG)
(c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO.
(b) any petition in State or Federal Courts for habeas corpus or post-convictions
relief? YES
(c) any petition in the United States Supreme Court for certiorari other than petitions,
YES, WRIT OF CERTIORARI TO US
if any, already specified in (8)? SUPREME COURT
(d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or
application:
- (a) the specific nature thereof:
i. PCR 2006-CP-21-553
ii. WRIT OF HABEAS CORPUS
iii. _____
iv. _____
- (b) the name and location of the Court in which each was filed:
i. FLORENCE COUNTY COURT OF COMMON PLEAS
ii. SOUTH CAROLINA DISTRICT, 4TH CIRCUIT, U.S. SUPREME
iii. COURT
iv. _____
- (c) the disposition thereof:
i. DISMISSED
ii. DISMISSED
iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. MAY, 5 2008
- ii. DON'T KNOW
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. ORDER OF DISMISSAL
- ii. DENIAL
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- THE APPLICANT HAS JUST RECENTLY DISCOVERED THIS NEWLY
~~DISCOVERED~~ EVIDENCE (SEE EXHIBIT A) AND BECAUSE OF SUCH
 UPDATE. THE APPLICANT HAS PRODUCED "SUFFICIENT REASON" WHY
 THE NEW GROUND COULD NOT HAVE BEEN PRESENTED AICE SUPRA.
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

- (a) the name and address of each attorney who represented you:
 - i. KENARD REDMOND & JIM COX
 - ii. JACK SWERLING
 - iii. DESA BALLARD
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL & SENTENCING
 - ii. DIRECT APPEAL
 - iii. PCR HEARING & PCR APPEAL (WRIT OF CERTIORARI)

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

TO VACATE THE TWO COUNTS OF § 16-3-810 (2001-GS-21-663, 664)
 BECAUSE THE STATE'S FAILURE TO ALLEGE THE NECESSARY ELEMENTS
 OF THIS OFFENSE AND PUT THE APPLICANT OF NOTICE, AS REQUIRED

20. Are you now under sentence from any other court that you have not challenged?
NO.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of FLORENCE)

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

Jimmy D. Meggs Jr.
 EVANS C.I. F-3-A-283 (CHERAW)
 610 HWY 9 WEST
 BENNETTSVILLE, SC 29512
 PRO-SE APPLICANT.

SWORN to and subscribed before me this 13th
 day of March, 2013

Denise E.

(L.S.)

Notary Public

My Commission Expires: 2-7-23

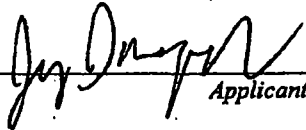
FILED
 2013 APR - 1 AM 9:23
 CONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY
Connie Reel-Shear
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

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

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

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



Applicant

SWORN or affirmed to and subscribed before me this
13th day of March, 20__.



Notary Public

My Commission Expires: 2-1-23

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 _____) AFFIDAVIT OF JIMMY D. MEGGS JR.

01. I AM AN INMATE IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.
02. I HAVE BEEN IN CONTINUAL INCARCERATION FROM AUGUST, 9 2001 UNTIL TODAYS DATE.
03. I AM TOTALLY RELIANT UPON THE PRISON LAW LIBRARY SERVICES FOR MY SOLE SOURCE OF MY LEGAL RESEARCH.
04. I RECEIVED A 20 YEAR SENTENCE, TO SERVE AT 85% AND RECEIVED SUCH SENTENCE ON AUGUST, 9 2001 AND WILL REMAIN IN CONTINUAL INCARCERATION UNTIL MAY, 18 2018.
05. THE PRISON LAW LIBRARY INSTALLED AND THEREAFTER GAVE ACCESS TO COMPUTER WEST LAW INFORMATION TO INCLUDE COUNCIL V. STATE 597 S.E.2d. 782, GRAHAM V. STATE 661 S.E.2d. 337, FERGUSON V. STATE 677 S.E.2d. 600, AND 1991 SC OP. ATT. GEN. 118, 1991 SC OP. ATT GEN NO. 91-46, 1991 WL 474776 (SCAG)
06. THAT THE INFORMATION WAS NOT DISCOVERED UNTIL MARCH, 4th 2013 BY THE EXERCISE OF REASONABLE DILIGENCE.
07. THE INFORMATION DESCRIBED IN #5 WAS DISCOVERED ON MARCH, 7 2013, DUE TO THE LAW LIBRARY BEING UPDATED WITH UP TO THE DATE COMPUTER SYSTEM.
08. I WROTE A REQUEST TO STAFF MEMBER CONCERNING THE DATE THAT THIS INFORMATION WAS RECEIVED AND AVAILABLE TO THE GENERAL POPULATION OF THE EVANS CORRECTIONAL INSTITUTION.
09. THAT THE PRISON STAFF, RESPONSIBLE FOR THE LAW LIBRARY SERVICES RESPONDED THAT IT BECAME AVAILABLE ON MARCH 4th 2013.
10. THAT THERE EXIST EVIDENCE OF MATERIAL FACT THAT BECAME AVAILABLE ONLY AFTER SUCH UPDATE. THAT IS MATERIAL AND GAVE ME NOTICE OF A NEWLY DISCOVERABLE CLAIM THAT WOULD CAHNGE THE OUTCOME OF BOTH MY DIRECT APPEAL AND POST-CONVICTION ACTION.
11. THE EVANS LAW LIBRARY PREVIOUSLY DID NOT CONTAIN THE ABOVE MENTIONED MATERIALS UNTIL MARCH, 4th 2013.

THE PETITIONER WOULD SUBMIT THAT THERE EXIST EVIDENCE OF MATERIAL FACT NOT PREVIOUSLY DISCOVERED BY THE EVANS LAW LIBRARY AND EVIDENCE THAT WOULD CHANGE THE OUTCOME OF THE SUBJECT CONVICTION

OR SENTENCE THAT WOULD REQUIRE VACATION OR CORRECTION. THAT I
SIGN UNDER THE PAINS AND PENALTY OF PERJURY, THE FOREGOING IS
TRUE AND OF MY OWN PERSONAL KNOWLEDGE.


JIMMIE D. MEGGS JR., 277400
EVANS C.I. F-3-A-283
610 HWY 9 WEST
BENNETTSVILLE, SC 29512
APPLICANT PRO-SE

SWORN TO BEFORE THIS

13th DAY OF March, 2013.

Deanie S
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 2-7-23

JIMMY D. MEGGS JR., # 277400
EVANS C.I. F-3-A-283 (CHERAW)
610 HWY 9 WEST
BENNETTSVILLE, SC 29512

MARCH, 13 2013

RE: PCR APPLICATION FILED UNDER § 17-27-45 (C)

FLORENCE COUNTY CLERK OF COURT
HON. CONNIE REEL-SHEARIN, CLERK OF COURT
CITY-COUNTY COMPLEX
180 N. IRBY ST. MSC E
FLORENCE, SC 29501

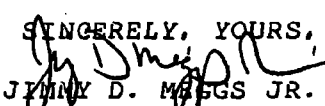
DEAR MRS: REEL-SHEARIN:

MA'AM, I HAVE SERVED A COPY OF THIS APPLICATION FOR PCR, AFFIDAVIT OF JIMMY D. MEGGS JR., EXHIBIT (A), MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR PCR. ON THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE.

THIS CLAIM IS PREMISED ON THE FACT OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS UPGRADING IT'S LAW LIBRARY TO INCLUDE WEST LAW COMPUTER ACCESS THAT INCLUDES UP-TO-DATE CASES. PRIOR TO THIS DATE, THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ONLY CONTAINED CASES UP TO ABOUT 2003 IN THE SOUTH EASTERN SECOND EDITION AND SHEPPARDS CITATIONS AMONG THE LIMITED FEDERAL CASES.

I WANT TO THANK YOU FOR YOUR THOUGHTFUL CONSIDERATION IN THIS MATTER.

WITH KIND REGARDS...I AM.

SINCERELY, YOURS,

JIMMY D. MEGGS JR.

ENCLOSURES:
PCR APPLICATION (§ 17-27-45 (C))
MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
EXHIBIT (A)
AFFIDAVIT OF JIMMY D. MEGGS JR.
WITH CERTIFICATE OF SERVICE

CC: C/R/S
A/W
FILE

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

JIMMY D. MEGGS JR., 277400,
APPLICANT,

-VS-

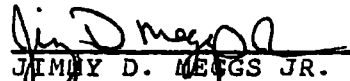
STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I JIMMY D. MEGGS JR., # 277400, DO CERTIFY THAT I HAVE SERVED A COPY OF MY (PCR APPLICATION, MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR PCR, EXHIBIT (A), AFFIDAVIT OF JIMMY D. MEGGS JR.) ON RESPONDENT'S COUNSEL OF RECORD, SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE, ALAN WILSON, ATTORNEY GENERAL, POST OFFICE BOX 11549, COLUMBIA, SC 29211, BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID.

RESPONDENT'S COUNSEL OF RECORD:
S.C. ATTORNEY GENERAL'S OFFICE
HON. ALAN WILSON, ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SC 29211


JIMMY D. MEGGS JR.
EVANS C.I. F-3-A-283
610 HWY 9 WEST
BENNETTSVILLE, SC 29512
APPLICANT PRO-SE

THIS 13th DAY OF MARCH, 2013.

Exhibit A

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

903

TO: NAME: MRS. MILLER, LAW LIBRARY SUPERVISOR	TITLE: 	DATE: MARCH, 7 2013
INMATE'S NAME: JIMMY D. MEGGS JR.	SCDC #: 277400	
INSTITUTION: EVANS C.I.	LIVING QUARTERS: F-3-A-283 (CHERAW)	

I AM REQUESTING WHEN THE FOLLOWING CASES, ATTORNEY GENERAL
OPINION BECAME AVAILABLE TO THE GENERAL POPULATION OF THE EVANS
LAW LIBRARY.

COUNCIL V. CATOE 597 S.E.2d. 782
FERGUSON V. STATE 677 S.E.2d. 600
GRAHAM V. STATE 661 S.E.2d. 337
1991 S.C. OP. ATT. GEN. 118, 1991 SC OPP. ATT. GEN. NO. 91-46,
1991 WL 474776 (SCAG)

SPECIFICALLY, WHAT DAY/MONTH/YEAR WAS THIS INFORMATION MADE
AVAILABLE TO THE EVANS GENERAL POPULATION.

RESPECTFULLY SUBMITTING,

JIMMY D. MEGGS JR.

DISPOSITION BY STAFF MEMBER:

3/4/13 Westlaw Computer Systems was
made available for General population
and smu

DATE: 3/7/13	SIGNATURE: C. Miller

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
JIMMY D. MEGGS JR., 277400,	)	
APPLICANT,	)	
-vs-	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	MEMORANDUM OF LAW IN SUPPORT
	)	OF APPLICATION FOR POST-
	)	CONVICTION RELIEF.

AVENUE FOR RELIEF

SOUTH CAROLINA LAW ALLOWS AN INDIVIDUAL TO FILE AS PROVIDED IN S.C. CODE ANN. § 17-27-45 (c). [(c). IF THE APPLICANT CONTENTS THAT THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE-YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE. FUTHER, AS OUTLINED IN AICE V. STATE 409 S.E. 2d. 392, THE APPLICANT CAN FILE A SUBSEQUENT APPLICATION WHERE THE EVIDENCE COULD NOT HAVE BEEN ASCERTAINED BY THE EXERCISE OF DUE DILIGENCE. SPECIFICALLY, THIS APPLICATION IS FILED DUE IN PART BECAUSE THE PRISON LAW LIBRARY'S UPDATE TO INCLUDE THE HEREIN MENTIONED CASES AND ATTORNEY GENERAL'S OPINION. COMPARE EASTERWOOD V. CHAMPION 213 F. 3d. 1321.

NEWLY DISCOVERED EVIDENCE

AS OUTLINED IN THE AFFIDAVIT, THE APPLICANT IS INCARCERATED WITHIN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AND HAS BEEN INCARCERATED SINCE AUGUST, 9th 2001. I WORKED AT THE EVANS LAW

LIBRARY AND ON MARCH 4th 2013, THE EVANS LAW LIBRARY UPDATED IT'S LAW LIBRARY TO INCLUDE COUNCIL V. CATOE 597 S.E.2d 782, GRAHAM V. STATE 661 S.E.2d. 337, FERGUSON V. STATE 677 S.E.2d. 600 AND THE ATTORNEY GENERAL'S OPINION (1991 SC OPP ATT GEN 118, 1991 SC OPP ATT GEN NO. 91-46, 1991 WL 474776 (SCAG)), WHICH PROVIDE THE FACTUAL PREDICATE FOR THE SUBJECT CLAIMS. SPECIFICALLY THE FOLLOWING.

1. APPLICANT WAS INCAPABLE OF TAKING THE STAND, PRESENTING THE ISSUE OF THE STATES FAILURE TO MEET THE NECESSARY ELEMENT AND/OR FAILED TO PUT THE APPLICANT ON "NOTICE" OF THE OFFENSE OF WHICH HE WAS REALLY CONVICTED OF.
2. DUE TO SUCH MENTAL INCAPACITY APPLICANT COULD NOT OBJECT TO THE PCR JUDGE'S CONFLICT AND REQUEST FOR A RECUSAL

APPLICABILITY

1. APPLICANT WAS INCAPABLE OF TAKING THE STAND PRESENTED THE ISSUE OF THE STATES FAILURE TO MEET THE NECESSARY ELEMENT AND/OR FAILED TO PUT APPLICANT ON NOTICE OF THE OFFENSE OF WHICH HE WAS REALLY PREPARING TO FACE AT TRIAL.

AT THE PETITIONER'S FIRST (2006) PCR HEARING. THE PETITIONER PRESENTED THE TESTIMONY OF DR. THOMAS MARTIN. DR MARTIN TESTIFIED AS TO THE MENTAL DISORDER SUFFERED BY PETITIONER, WHICH WAS CONSISTENT WITH THAT OF (SCDC) THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS MEDICAL STAFF (DR. KIRBY), THE OPINION WAS THAT PETITIONER WAS SUFFERING FROM PARANOID SCHIZOPHINIA. FUTHER, AT THE TIME TIME OF THE HEARING THE PETITIONER HAD BEEN PRESCRIBED AND TAKING 1200 mg OF SEROQUEL DAILY, "THAT WAS A HIGHER DOSE THAT HE HAD EVER PRESCRIBED" (ROA PG. 721 LNS. 2-4) AND DR. MARTIN FUTHER TESTIFIED THAT PETITIONER WAS CURRENTLY SUFFERING

AND EXHIBITING SIGNS OF THE SAME. (ROA PG. 721 LNS. 12-19)
COUNCIL V. CATOE 597 S.E.2d. 782. I WAS UNABLE TO ASSIST MY
 COUNSEL IN PRESENTING ADEQUATELY THE FACTUAL ISSUE THAT THE STATE
 FAILED TO: 1) PUT ME ON NOTICE AS TO THE OFFENSE BEHIND THE
 FACADE OF S.C. CODE ANN. § 16-3-810.

A. THE PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN THE CHARGING
 INSTRUMENT (INDICTMENT) FAILED TO PUT THE PETITIONER ON NOTICE
 OF THE SEXUAL BATTERY ELEMENT THAT IS REQUIRED UNDER SOUTH
 CAROLINA LAW AS IT RELATES TO S.C. CODE ANN. § 16-3-653. WHEN
 THERE IS ABSOLUTELY NO CASE LAW TO DETERMINE THE APPLICABILITY
 OF THIS UNTESTED STATUTE AND THE ATTORNEY GENERAL'S OPINION
 CLEARLY STATES THAT THIS (§ 16-3-810) IS ANOTHER EXAMPLE OF
 CRIMINAL SEXUAL CONDUCT OF THE SECOND DEGREE. TRIAL COUNSEL,
 APPELLANT COUNSEL FAILED TO RAISE SUCH NOVEL ISSUE OF LAW.
 WHERE AT THE CLOSE OF THE TRIAL, THE TRIAL JURY SENT A NOTE OUT
 ASKING THE JUDGE "WHAT WAS THE LAW AS IT APPLIES TO THIS CASE,
 AND THE TRIAL JUDGE DID NOT FUTHER CHARGE AS TO CLARIFY THE
 ELEMENTS THAT THE STATE WOULD HAVE TO MEET IN ORDER TO OBTAIN A
 CONVICTION FOR § 16-3-810.

B. THE FAILURE OF THE STATE TO MEET THIS ELEMENT AND THE FACADE
 OFFENSE HAS CREATED A SANDSTROM V. MONTANA VIOLATION AS IT HAS
 SHIFTED THE BURDEN FROM THE STATE TO THE PETITIONER. FUTHER, IT
 CLEARLY HAS RELIEVED THE ESSENTIAL ELEMENT OF SEXUAL BATTERY AS
 REQUIRED BY § 16-3-653. UNDER S.C. CODE ANN. § 16-3-653, AN
 INDIVIDUAL CAN BE CONVICTED WITHOUT THE PARTICIPATION IN THE
 SEXUAL BATTERY. THEREBY OBTAINING A CONVICTION WITHOUT HAVING
 TO ALLEGE A SEXUAL BATTERY AS DEFINED BY S.C. CODE ANN. §
 16-3-651. FUTHER, ELLIOTT² AND MARSHALL³ MANDATES WHAT A SEXUAL

BATTERY IS DEFINED BY. SEXUAL BATTERY REQUIRES ANY PENETRATION HOWEVER SLIGHT, FUTHHER THE DEFENDANT MUST BE THE ACTOR. IN SHORT, THE CURRENT STATUTE OF § 16-3-810 RELIEVES THE BURDEN OF PROOF OF AN ESSENTIAL ELEMENT OF THE STATUTORY OFFENSE OF § 16-3-653. § 16-3-810, STATES IN SUBSECTION (A) IT IS UNLAWFUL FOR A PERSON TO EMPLOY, AUTHORIZE, OR INDUCE A CHILD YOUNGER THAN EIGHTEEN YEARS OF AGE TO ENGAGE IN A SEXUAL PERFORMANCE. IT IS UNLAWFUL FOR A PARENT OR LEGAL GUARDIAN OR CUSTODIAN OF A CHILD YOUNGER THAN EIGHTEEN YEARS OF AGE TO CONSENT TO THE PARTICIPATION BY THE CHILD IN A SEXUAL PERFORMANCE.

CONTRARY, S.C. CODE ANN. § 16-3-653 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. (1) A PERSON IS GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE IF THE ACTOR USES AGGRAVATED COERCION TO ACCOMPLISH SEXUAL BATTERY. COMPARE STATE V. NICHOLSON 623 S.E.2d. 100.

C. THE PETITIONER WOULD FUTHHER CONTEND THAT BASED ON THE NEWLY DISCOVERED EVIDENCE, THE ISSUE OF THE INTERTWINE OF TWO CRIMINAL STATUTES (§ 16-3-653 AND § 16-3-810) AS BOTH THE ATTORNEY GENERAL'S OPINION WOULD SHOW ALONG WITH FACT THAT IN § 16-3-810 SUBSECTION (B) CLEARLY SAYS "ANY PERSON VIOLATING THE PROVISION OF SUBSECTION A OF THIS SECTION IS GUILTY OF CRIMINAL SEXUAL CONDUCT OF THE SECOND DEGREE AND WILL BE PUNISHED AS PROVIDED BY § 16-3-653. THE SUBJECT CONVICTION RESULTS IN A DOUBLE JEOPARDY VIOLATION. BLOCKBURGER V. U.S. 52 S.Ct 180.

I.

I WAS UNABLE TO TAKE THE STAND AND ADEQUATELY PRESENT THE ISSUE OF TRIAL COUNSEL'S FAILURE TO RAISE A DIRECTED VERDICT ISSUE AS

TO THE STATE'S FAILURE TO PRESENT ANY EVIDENCE THAT WOULD SET FORTH SUCH INEFFECTIVENESS OF BOTH TRIAL AND APPELLATE COUNSEL (TRIAL AND DIRECT APPEAL). HAD PETITIONER, AS DR. MARTIN SO TESTIFIED TO, THE PETITIONER DID AT THE TIME OF THE HEARING WAS SUFFERING FROM PARANOID SCHZOPHINIA DUE IN PART TO MEDICATION REASONS (ROA PG. 721 LNS. 12-19) COMPARE COUNCIL V. CATOE 597 S.E.2d. 782. AS THE RECORD PROVES, THE EVANS LAW LIBRARY DID NOT HAVE COUNCIL, AS THE PRISON LAW LIBRARY WENT UP TO 576 S.E.2d. (SOUTH EASTERN SECOND EDITION) COMPARE EASTERWOOD V. CHAMPION 213 F.3d. 1321.

AS EXHIBIT (A) WILL SHOW, THE PETITIONER WROTE A REQUEST TO STAFF TO THE EVANS LAW LIBRARY SUPERVISOR "MRS. MILLER" ON MARCH, 7 2013, WITH THE FOLLOWING QUESTION. ON WHAT DAY/MONTH/YEAR WAS 597, 661, 677, S.E.2d. AND 1991 S.C. OP ATT GEN 118, 1991 SC OPP. ATT GEN NO 91-46, 1991 WL 474776 (SCAG) BECOME ACCESSIBLE TO THE EVANS LAW LIBRARY GENERAL POPULATION. MRS MILLER RESPONDED WITH: "3/4/13 WESTLAW COMPUTER SYSTEMS WAS MADE AVAILABLE FOR GENERAL POPULATION AND SMU. SIGNED 3/7/13 CPL. B. MILLER."

SOUTH CAROLINA CODE § 17-27-45 (C) PROVIDES IN PART [IF THE APPLICANT CONTENDS THAT THERE IS EVIDENCE OF MATERIAL FACT NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE-YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE,] AS SUCH FERGUSON V. STATE 677 S.E.2d. 600, GRAHAM V. STATE 661 S.E.2d. 337 AND COUNCIL V. CATOE 597 S.E.2d. 782, AND THE

ATTORNEY GENERAL'S OPINION (1991 WL 474776, 1991 S.C. OP. ATT. GEN. 118, 1991 SC OPP ATT GEN No. 91-46, ALL WERE NOT APART OF EVANS LAW LIBRARY UNTIL MARCH, 4 2013. COMPARE EASTERWOOD V. CHAMPION 213 F.3d. 1321.

LIKEWISE, PETITIONER COULD NOT HAVE DISCOVERED THAT HE HAD A MERITORIOUS CLAIM IN HIS INABILITY TO TESTIFY AND PRESERVE HIS ISSUES AS SET FORTH ABOVE. 1) THE STATES FAILURE TO MET IT'S BURDEN OF PROOF AS TO WHAT WOULD CONSTITUTE § 16-3-810. 2) THE STATE'S FAILURE TO PUT THE PETITIONER ON NOTICE AS TO THE OFFENSE AS TO ALLOW THE PETITIONER AN OPPORTUNITY TO PREPARE TO DEFEND. 3) AS SUCH, A SANDTROM OR BURDEN SHIFTING OCCURRED BECAUSE IT RELIEVED THE STATE OF THE BURDEN OF PROOF AS IT PERTAINS TO THE STATUTORY ELEMENT OF SEXUAL BATTERY AS REQUIRED BY § 16-3-653. 3) RESULTED IN DOUBLE JEOPARDY BECAUSE THE INTERTWINING OF THE TWO CRIMINAL STATUTE'S AS IT RELATED TO BOTH PENALTIES AND ELEMENTS AS WELL. UNDER THE CURRENT PRACTICE A CRIMINAL DEFENDANT CAN BE CONVICTED UNDER THE FACADE OF § 16-3-810, WHICH IS IN EFFECT § 16-3-653 AND IT RELIEVES THE STATE OF THE CRIMINAL ELEMENT OF SEXUAL BATTERY AS REQUIRED IN § 16-3-653 (CSC 2ND, DEGREE).

TRIAL COUNSEL'S FAILURE AT TRIAL AND APPELLATE COUNSEL'S FAILURE ON DIRECT APPEAL FAILURE TO RAISE THIS NOVEL ISSUE OF LAW AS IT RELATES TO BOTH THE APPLICABILITY OR CONSTITUTIONALITY OF § 16-3-810. INFACIT, ALL THE ISSUES RAISED BY APPELLATE COUNSEL WAS EITHER "NOT PRESERVED" OR "MEGGS FAILED TO OBJECT". IN SHORT, THERE WAS NOT A MERITORIOUS ISSUE IN FRONT OF THE COURT FOR REVIEW GRAHAM V. STATE 661 S.E.2d. 337 AS DISCUSSED BEFORE WHERE THE PRISON LAW LIBRARY WAS UPDATED TO INCLUDE GRAHAM, COUNCIL,

FERGUSON, AND THE 1991 ATTORNEY GENERAL'S OPINION, AS SUCH THIS WOULD QUALIFY AS NEWLY DISCOVERED EVIDENCE THAT COULD NOT HAVE BEEN DISCOVERED UNTIL AFTER THE LAW LIBRARY WAS UPDATED SEE EASTERWOOD V. CHAMPION ID 1323. FURTHER SOUTH CAROLINA CODE PROVIDES IN § 17-27-45 (C) THAT A POTENTIAL PETITIONER WOULD HAVE AN AVENUE TO FILE A PCR EITHER SUCCESSIVELY OR BEYOND THE STATUTE OF LIMITATIONS WHERE MATERIAL EVIDENCE COMES TO LIGHT, AND THAT LIKE EXPLAINED IN EASTERWOOD ID 1323 THROUGH THE EXERCISE OF DUE DILIGENCE AFTER THE CASE WOULD BECOME AVAILABLE IN THE PRISON LAW LIBRARY (SEE EXHIBIT A)

2. DUE TO SUCH MENTAL INCAPACITY APPLICANT COULD NOT OBJECT TO THE PCR JUDGE'S CONFLICT AND REQUEST FOR A RECUSAL.

AS OUTLINED IN #1, THE WAS NOT ABLE TO INFORM HIS LAWYER THAT HE WANTED THE PCR JUDGE (THOMAS RUSSO) TO RECUSE HIMSELF. IT ONLY CAME TO LIGHT AFTER THE PCR HEARING. THAT JUDGE RUSSO, A NEWLY APPOINTED JUDGE, WAS A PARTY TO THE OFFICE THAT INSTITUTED AND PROSECUTED CASE AGAINST ME. IN LIGHT OF THE OVERWHELMING CASE PRESENTED BY THE PETITIONER AT PCR, THAT THE ATTORNEY GENERAL FAILED TO RESPOND TO, JUDGE'S RUSSO'S PREJUDICE SHOWED CLEARLY THROUGH.

WHERE THE PETITIONER PUT UP AN EXPERT WITNESS (DR. MARTIN), WHO THE COURT QUALIFIED AS AN EXPERT WITNESS, TESTIFIED AT THE PCR HEARING GAVE HIS TESTIMONY TO A MEDICAL DEGREE OF CERTAINTY, TESTIFIED THAT PETITIONER LACKED THE CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW, SPECIFICALLY THE MCNAUGTEN STANDARD. THE STATE PUT UP NO WITNESSES TO REBUT THIS

PRESUMPTION. HOWEVER, THE STATE ALLUDED TO A REPORT BY A DR. NARAYAN WHO CONDUCTED AN EVALUATION SOME 9 MONTHS AFTER TRIAL CONCERNING A PENDING CASE. TO THE CONTRARY, THE PETITIONER'S EXPERT CONDUCTED A "RETROSPECTIVE" EVALUATION, WHILE THE REPORT RELIED ON BY THE STATE AND ACCEPTED BY THE COURT WAS PROSPECTIVE ONLY TO THE TIME OF THE EVALUATION SOME 9 MONTHS AFTER TRIAL. THE PETITIONER FUTHER, SUBMITTED UNDISPUTED EVIDENCE THAT THIS RELATIVELY NEW STATUTE WAS UNTESTED. AS THE RECORD IS UNDISPUTED THAT THERE IS ABSOLUTELY NO CASE LAW OUT THERE TO DETERMINE BOTH THE APPLICABILITY OR UPHOLDING THE CONSTITUTIONALITY. THE PETITIONER WAS FUTHER PREJUDICED BY NOT BEING ABLE TO CROSS EXAMINE DR. NARAYAN'S REPORT COUPLED WITH THE TOTAL LACK OF ANY CASE LAW THAT WOULD GIVE THE COURT GUIDANCE TO DETERMINE THE APPLICABILITY, AND THE STATES FAILURE TO PRODUCE SUCH WITNESS. LASTLY, THE POLYGRAPH WAS ADMITTED OVER THE STATES OBJECTION THAT REVEALED THAT THE PETITIONER DENIED ANY INVOLVEMENT IN THE CRIME AT ISSUE AND THAT I PASSED SUCH POLYGRAPH THREE TIMES. (ROA PG. 738 LNS. 6-25, PG. 739 LNS. 1-11). AS STATED BEFORE DR. MARTIN GAVE TESTIMONY ABOUT PETITIONER'S MENTAL STATE AND FUTHER TOLD THE PCR JUDGE THAT PETITIONER WAS EXHIBITING PARANOIA AT THE HEARING DUE TO BEING TRANSFERD TO THE COUNTY JAIL FOR THE PCR HEARING SEE (ROA. PG. 721 LNS. 2-4, LNS.12-19). THE FOLLOWING EXCHANGE OCCURRED AT THE DECEMBER, 11 2007 PCR HEARING. TO HIGHLIGHT THE CROSS EXAMINATION IN WHICH REDMOND ADMITTED THAT "THAT'S THE WAY I READ THAT STATUTE I MIGHT BE WRONG" ABOUT THE MEANING OF THIS CRIMINAL STATUTE SEE (ROA PG. 770 LNS. 9-14), AND IN CLOSING THE ATTORNEY GENERAL HAD TO CONCEDE THAT "MEGGS COULD HAVE BEEN AN AUDIENCE OF ONE." SEE (ROA PG. 4-6) LASTLY, THE

STATE HAD TO CONCEDE THAT NOBODY ACTUALLY SEEN THIS ACT SEE (ROA PG. 777 LMS. 10-11) "CERTAINLY, YOU KNOW, HE DIDN'T-- MAY NOT HAVE SEEN THE ACTUAL ACT", THE LACK OF KNOWLEDGE OF THE APPLICATION OF THIS STATUTE, THE POLYGRAPH, THE EXPERT WITNESS AS IT RELATES TO THE LACK OF CAPACITY AND THE STATES FAILURE TO PUT FORTH ANY EVIDENCE THAT WOULD REBUT THIS PRESUMPTION AND JUDGE RUSSO STILL RULED AGAINST ME IN LIGHT OF THE OVERWHELMING UNDISPUTED EVIDENCE PRESENTED BY THE PETITIONER. THIS IS SIMPLY THE OVERWHELMING PROOF OF THE PREJUDICE BY THIS JUDGE AS HAVING BEEN A PARTY WITH THE PROSECUTING AGENCY THAT TRIED THIS CASE.

THE PETITIONER'S MENTAL STATE AS DESCRIBED BY DR. MARTIN AT THE TIME OF THE FIRST HEARING BECAME EVIDENCE AND WOULD SUBSTANTIATE THE CLAIM OF NOT BEING ABLE TO PROVIDE THE NECESSARY TESTIMONY SO AS TO PRESERVE THIS NOVEL ISSUE OF LAW AS IT PERTAINS TO THE STATES FAILURE FAILURE TO PROVIDE DUE PROCESS, FAILURE TO ALLEGE AND MEET ALL THE NECESSARY ELEMENTS OF THIS CRIMINAL OFFENSE, SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT AS IT RELIEVED THE STATES OF THE SEXUAL BATTERY ELEMENT AS REQUIRED BY § 16-3-653, VIOLATED THE DOUBLE JEOPARDY CLAUSE OF THE UNITED STATES CONSTITUTION AS IT TIES MANDATED THAT A PERSON WOULD BE GUILTY OF TWO CRIMINAL OFFENSE CONSECUTIVELY FOR THE CONVICTION OF ONE.

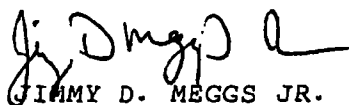
IT WAS NOT POSSIBLE TO RAISE THESE NOVEL ISSUES OF LAW WITHOUT THE INFORMATION OBTAINED IN THE RECENTLY UPGRADE IN THE EVANS LAW LIBRARY. (GRAHAM V. STATE 661 S.E. 2d. 337. FUTHER, AS THE SCDC EVANS LAW LIBRARY DID NOT HAVE GRAHAM UNTIL MARCH, 4 2013. THE PETITIONER DID NOT RECEIVE NOTICE THAT HE COULD HAVE RAISED SUCH

CLAIM UNTIL SUCH UPDATE OCCURRED SEE EASTERWOOD V. CHAMPION 213
F.3d. 1321.

CONCLUSION

BASED ON THE FOREGOING, THE PETITIONER PRAYS THAT THIS COURT
GRANT A HEARING TO DETERMINE THE MERITS OF THE NEWLY DISCOVERED
CLAIM THAT COULD NOT HAVE BEEN ASCERTAINED THROUGH THE EXERCISE
OF DUE DILIGENCE. REVERSE THE PCR COURT'S FINDING, REMAND FOR A
HEARING ON THE MERITS OF THE NEWLY DISCOVERED CLAIMS THAT COULD
NOT HAVE BEEN DISCOVERED BY THE EXERCISE OF REASONABLE DILIGENCE.

RESPECTFULLY SUBMITTING,


JIMMY D. MEGGS JR.

THIS 13th DAY OF march, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2013-CP-21-874
	)	
Jimmy D. Meggs, Jr., SCDC No. 277400,	)	
	)	
Applicant,	)	
	)	NOTICE OF MOTION AND
v.	)	MOTION TO DISMISS
	)	PURSUANT TO SCRCP,
	)	RULE 12(b)(8)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter is before this Court by way of a post-conviction relief application (PCR) filed April 1, 2013. The State now makes its motion to dismiss the PCR application pursuant to Rule 12(b)(8) as there is a pending PCR application filed in 2009 that was first received by Respondent in October 2012.

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the April 2001 term of the Florence County grand jury for two counts of engaging a child for sexual performance (2001-GS-21-663 and -664) and two counts of contributing to the delinquency of a minor (2001-GS-21-665). He was represented by Kernard E. Redmond, Esquire and James Cox, Esquire. On August 6-9, 2001, the Applicant underwent trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable James E. Brogdon, Jr. to concurrent terms of three years for each charge of contributing to the delinquency of a minor and twenty

years for one charge of engaging a child for sexual performance. On the remaining charge of engaging a child for sexual performance, Judge Brogdon sentenced the Applicant to a consecutive twenty year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented on appeal by Jack B. Swerling, Esquire. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Meggs, Op. No. 2004-UP-460 (S.C. Ct. App. filed August 31, 2004). After an unsuccessful petition for rehearing, the Applicant petitioned the South Carolina Supreme Court for a writ of certiorari, but the court denied the petition by order dated January 6, 2006. The case was remitted to the trial court on January 10, 2006.

2006-CP-21-553

The Applicant subsequently filed his first PCR application on April 4, 2006. (2006-CP-21-553). An evidentiary hearing was convened at the Florence County Courthouse on December 11, 2007. The Applicant raised the following allegations in his first PCR application:

1. failure to investigate with regard to Petitioner's mental capacity;
2. failure to request defense of guilty but mentally ill (GBMI);
3. failure to move for a directed verdict;
4. failure to request a lesser-included offense.

The Applicant was present at the PCR hearing and was represented by Desa Ballard, Esquire. Julie M. Thames, Esquire, represented the Respondent. The Honorable

Thomas A. Russo denied and dismissed the PCR application with prejudice by written Order filed March 4, 2008. The Applicant filed a Motion for Reconsideration, which was denied by Judge Russo by written Order filed on May 5, 2008.

A timely Notice of Appeal was filed. However, the South Carolina Supreme Court denied the petition for writ of certiorari and issued a remittitur on April 5, 2010.

2009-CP-21-780

Applicant filed his second PCR application on April 23, 2009. The State made its return and motion to dismiss on July 7, 2009. The Honorable Thomas A. Russo issued a Conditional Order of Dismissal on July 9, 2009. Applicant responded to the Conditional Order of Dismissal. However, Judge Russo dismissed the application by Final Order dated May 7, 2010.

2009-CP-21-3147

Applicant filed his third PCR application prior to the disposition of his second PCR application, on December 30, 2009. This application was not received by Respondent until on or around October 15, 2012. Respondent filed a return and motion to dismiss this action on January 17, 2013. This Court issued a Conditional Order of Dismissal on January 28, 2013. Applicant was served with the Conditional Order of Dismissal on February 12, 2013. Applicant has yet to respond to the Conditional Order and it remains pending, therefore it is the basis for the State's motion to dismiss pursuant to Rule 12(b)(8).

ALLEGATIONS

Applicant alleges after-discovered evidence that his trial counsel was ineffective based on his discovery of legal authority after his prison library was updated.

I.

Applicant's allegations are issues that could have been raised, if at all, in the initial PCR application. Accordingly, although Respondent seeks dismissal of this application on the grounds of Rule 12(b)(8), SCRCP, Respondent reserves the right to raise these grounds for summary dismissal in the event that this Court chooses to convert the Respondents Rule 12 motion to summary judgment.

II.

Presently, Applicant's December 2009 application is pending before this Court and is likewise a collateral challenge to his convictions. Accordingly, dismissal under Rule 12(b)(8) is appropriate. Under Rule 12(b)(8), dismissal is appropriate if there is: "another action is pending between the same parties for the same claim".

III.

The Respondent denies each allegation that is not expressly admitted, qualified or explained. Respondent reserves the right to make its return to the PCR application should Respondent's Rule 12 motion be denied.

CONCLUSION

This motion is made pursuant to applicable statutory and case law of the State of South Carolina, as well as applicable South Carolina Court Rules, including, but not

limited to, Rule 12 (b) of the South Carolina Rules of Civil Procedure; and upon such affidavits, information or matters outside the pleadings filed and/or to be filed with the Court should the Court convert this motion to one for Summary Judgment pursuant to Rule 56, SCRCF, FOR WHICH SPECIFIC NOTICE IS HEREBY GIVEN TO ALL PARTIES; and upon such additional evidence, information, and argument as the Court may receive.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

September 3, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2013-CP-21-874
	)	
JIMMY D. MEGGS, JR., #277400	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Motion and Motion To Dismiss, Pursuant To SCRCR, Rule 12(b)(8)** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jimmy D. Meggs, Jr, #27740
 Evans Corr. Inst.
 P.O. Box 2951202
 Bennettsville, SC 29512

DATED this 5th day of September, 2013


 Norma Bigbee, Legal Assistant
 For Respondent

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2013 SEP 13 PM 2:25) TWELFTH JUDICIAL CIRCUIT

COUNTY OF FLORENCE)
 CONNIE REEL-SHEARN) 2013-CP-21-874
 CCCP & GS)

Jimmy D. Meggs, Jr., SCDC No. 277400,)
 FLORENCE COUNTY, SC)

)
 Applicant,)

)
 v.)

) **ORDER OF DISMISSAL**
) **PURSUANT TO SCRCP,**
) **RULE 12(b)(8)**
)

)
 State of South Carolina,)

)
 Respondent.)
 _____)

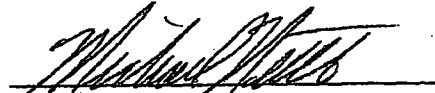
This matter is before this Court by way of a post-conviction relief application (PCR) filed April 1, 2013. The State now makes its motion to dismiss the PCR application pursuant to Rule 12(b)(8) as there is a pending PCR application filed in 2009. The State received the 2009 application in October 2012. The State then filed a motion to dismiss the PCR application. This Court then issued a Conditional Order of Dismissal on January 28, 2013. The State reports that the Condition Order was served on Applicant on February 12, 2013, but that Applicant has not yet responded to the Conditional Order. Both PCR applications represent an action between the State and Applicant and concern a collateral challenge to Applicant's PCR convictions. The allegation raised in this application could have been raised in the 2009 application. Accordingly, this Court finds dismissal pursuant to Rule 12, SCRCP appropriate.

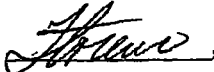
IT IS THEREFORE ORDERED that this PCR application is dismissed pursuant to Rule 12, SCRCP.

NOTIFIED: A TRUE COPY
Maria R. Spain
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

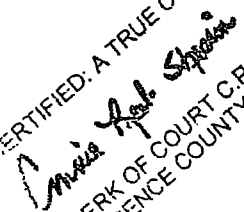
This Court notifies Applicant that he must file and serve a notice of appeal within thirty days after receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED!


 Michael G. Nettles
 Chief Administrative Judge
 12th Judicial Circuit

, South Carolina
9-13, 2013

FILED
 2013 SEP 13 PM 2:25
 CONNIE REEL-SHEARER
 CCLP & GS
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

Connie Ref. Shearin

CLERK OF COURT C.P. & G.S.
 STATE OF SOUTH CAROLINA FLORENCE COUNTY, SC THE COURT OF COMMON PLEAS
 COUNTY OF FLORENCE TWELFTH JUDICIAL CIRCUIT

Jimmy D. Meggs Jr.,
 SCDC #: 277400,

Applicant,

vs.

State of South Carolina,

Respondent.

CASE NO(s): 2013-CP-21-89

RULE 59 (e)

2013 OCT -3 PM 4:18
 CONNIE REF. SHEARIN
 CLERK OF COURT
 C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

Procedurally, The applicant concurs that He filed a PCR in 2009. However, The State did not respond until October of 2012. The state filed a Motion to dismiss. The Court thereafter filed it's Conditional Order of Dismissal. The Applicant believes that he did respond to that Conditional Order. However, this action should have become final. Contrary, at the time of the filing of this 2009 Application the Applicant did not have access to the West Law Correctional System. As a point of clarity on March, 4 2013, the Evans Law Library was updated to included the cases mentioned in the 2013 action. The Applicant would humbly request the following.

1. That this court amend the 2009, with the issues discovered during the pendancy of the 2009 action under South Carolina Rules of Civil Procedural 13 (e). As the In Re Redmond 678 S.E.2d. 409 was not decided until June, 1 2009. Unless the Applicant had a crystal ball to know about a decision before it was decided. , the Applicant could not have known about this decision. Futher, When the Evans Law Library did not have until March, 4 2013, the cases cited in the 2013 action, the issues could not have been discovered. The Applicant would Humbly ask this Court to Merge the issues newly discovered to the 2009 and 2012 actions pending in the Florence County Court.

or

2. The Applicant would Respectfully move this Court to Dismiss

the 2009 and 2012 Applications with prejudice. To allow the
• 2013 action to proceed due to the newly Discovered nature of
the issues presented.

3. Merge the three applications (2009, 2012 and 2013) and allow
the action to proceed.

gong

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Jimmy D. Meggs, Jr., SCDC No. 277400,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
2013-CP-21-874

ORDER DENYING RULE
59(E) MOTION

FILED
2014 JAN 31 PM 1:03
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

This concerns Applicant's Rule 59(e) SCRCF motion following this Court's order dated September 13, 2013. This Court dismissed the action pursuant to Rule 12(b)(8) due to another action being pending between parties. Applicant does not challenge the efficacy of application of the rule to this case, but instead seeks to merge this case with the 2009 case that is still pending. Applicant has now responded to the Conditional Order of Dismissal from the 2009 action (see attached). This Court denies the request to merge cases and denies the Rule 59(e) motion. The final ruling on the Conditional Order of Dismissal on the 2009 case will be left to the current Administrative Judge for the Twelfth Circuit.

IT IS THEREFORE ORDERED that the motion pursuant to Rule 59(e),
SCRCF is denied.

[Signature] South Carolina
1-31-2013

[Signature]
Michael G. Nettles
Chief Administrative Judge
12th Judicial Circuit

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

2013-CP-21-874

HON. MICHAEL G. NETTLES, CIRCUIT COURT JUDGE.

Jimmy D. Meggs Jr., ...Appellant,
 SCDC-# 277400, ...

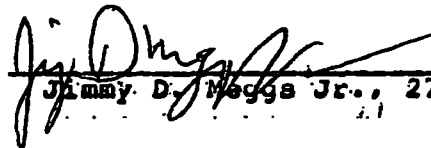
v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

I Jimmy D. Meggs Jr. do hereby appeal the Courts decision to dismiss the subject PCR action and final order of denial of Appellant SCRCF 59 (e) Motion. Dated 1-31-14 and received from the Evans Correctional Institution Mailroom 2-7-14. I have served a copy of the same on the Respondent's Counsel of record South Carolina Attorney General's Office, Alan Wilson, Attorney General, Post office, Box 11549, Columbia, SC 29211-1549 by depositing the same in the United States Mail, Postage Prepaid and addressed as follows:

South Carolina Attorney General's Office
 Alan Wilson, Attorney General
 Post Office Box 11549
 Columbia, SC 29211-1549


 Jimmy D. Meggs Jr., 277400

THIS 14th DAY OF FEBRUARY, 2014.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

2013-CP-21-874

HON. MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

Jimmy D. Meggs Jr., ...Appellant,
 SCDC # 277400, ...

v.

State of South Carolina, ...Respondent.

RECEIVED

FEB 24 2014

S.C. SUPREME COURT

PROOF OF SERVICE

I have hereby served a copy of the Notice of Appeal on the Respondent's Counsel of record: South Carolina Attorney General's Office, Alan Wilson, Attorney General, P.O. Box 11549, Columbia, SC 29211-1549 by depositing the same in the United States Mail, Postage prepaid and addressed as follows:

South Carolina Attorney General's Office
 Alan Wilson, Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549

Jimmy D. Meggs Jr.
 Jimmy D. Meggs Jr. 277400

THIS 14th DAY OF FEBRUARY, 2014.

Jimmy D. Meggs Jr., 877450
 Evans C.E. Feb 234
 610 Hwy 9 west
 Bennettsville, SC 29512

REGAT MAIL USE ONLY

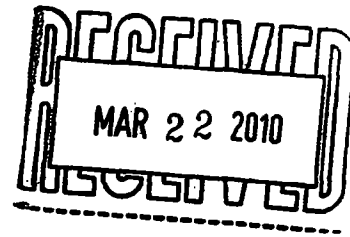
The Supreme Court of South
 Post Office Box 11330
 Columbia SC 29211

FEB 21 2014



29211133030





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 18, 2010

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Desa Ballard, Esquire
Law Offices of Desa Ballard
226 State St.
West Columbia, SC 29169

REHEARING? _____

(date due _____)

CLOSE? YES

CERT? _____

Re: Meggs, Jimmy D. Jr. v. The State

Dear Counsels:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

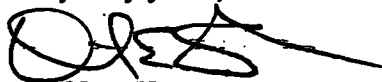
"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

March 18, 2010."

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

DES/jj

cc: Assistant Attorney General Julie M. Thames