

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Steven H. John, Circuit Court Judge

SHANNON MCGEE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE # 2014-000297

A P P E N D I X

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4) (06-GS-22-0582)
5 STATE)
6)
7)
8)
9 VERSUS) TRANSCRIPT OF RECORD
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B E F O R E:

HONORABLE ROGER L. COUCH, Judge; AND A JURY.

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

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 18, 2006, AFTER
2 QUALIFICATION OF THE JURY VENIRE, AFTER VOIR DIRE, AFTER
3 SELECTION OF THE JURY PANEL FOR THE TRIAL OF THIS CASE, AND
4 WITHIN THE PRESENCE OF THE JURY PANEL FOR THE TRIAL OF THIS
5 CASE.)

6 (A JURY SELECTION FORM WAS PREPARED AND IS ATTACHED
7 HERETO.)

8 (NO BATSON MOTION OR J.E.B. MOTION WAS MADE AS TO THE
9 JURY PANEL FOR THE TRIAL OF THIS CASE.)

10 THE COURT: For those of you who have been selected for
11 the trial of this case, we are going to be doing some
12 preliminary matters in the case this afternoon. We will be
13 starting the actual trial of the case in the morning.

14 I am going to ask that you return to the jury room. The
15 bailiffs will show you the location that you are to report to.
16 Be there by ten o'clock in the morning. We should be in a
17 position to begin the trial at that point in time.

18 The best estimate I have had from the attorneys, that
19 this case will take about a day and a half to two days to try,
20 but that depends, of course, on the proof in the case, and how
21 it goes. I can't guarantee that, but that's my best estimate
22 at this point in time.

23 You have been selected as jurors on this case, and when
24 you return to the courtroom you will be taking an oath
25 concerning your service as jurors. At that time your oath

JURY IN/COURT TO JURY/JURY OUT

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1 will consist of an oath to decide this case solely upon the
2 evidence that's presented from the witness stand, therefore
3 I'm going to ask you not to attempt to gather any information
4 from any source outside of this courtroom. You have been
5 selected as fair and impartial, and open-minded jurors. I
6 want you to stay that way. Do not tell anyone the name of the
7 case, or the parties involved, or the issues involved should
8 anyone ask you concerning your service on this jury, because
9 that will lead to a discussion, and invariably those
10 discussions could begin to color your opinion concerning the
11 ultimate outcome of this case, without ever having heard any
12 of the evidence or the testimony to be presented, so again,
13 please do not discuss this case with anyone outside of the
14 courtroom. Please do not attempt to gather any information
15 from any other source. Should you happen to hear, or see, or
16 read a news report concerning the trial of this case, I'm
17 going to ask you to please disregard that, turn it off, don't
18 listen to it, whatever you have to do, because those reports,
19 again, could contain information which is not admissible
20 evidence, and should not be considered by you in reaching a
21 decision in this case. It is your solemn responsibility, at
22 the close of this trial, to determine the guilt or the
23 innocence of the individual who is before this Court for
24 trial. That decision should be based only upon properly
25 admissible evidence which has been brought forth in this

1 courtroom, testified to by witnesses sworn to tell the truth,
2 who testify from this witness stand.

3 Should anyone attempt to contact you concerning your
4 participation in the trial of this case, it's highly improper.
5 It's called jury tampering. It's a crime. Please report that
6 upon your return to this courthouse, and I can assure you,
7 I'll take the appropriate action should someone attempt to do
8 that.

9 Again, please return to the courthouse, ten o'clock in
10 the morning. We should be in a position to begin the trial of
11 the case.

12 Mr. Bailiff, if you would, please, show the jury out and
13 show where they should report.

14 Thank you very much.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JURY.)

17 THE COURT: All right, gentlemen, I understand that
18 there are some matters that you would like to either put on
19 the record or take up with the court. Anything from the State
20 at this time?

21 MR. BRYAN: I have a couple of motions, Your Honor,
22 that I would like to handle after we approach briefly.

23 THE COURT: All right. Ask the attorneys to approach.

24 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

25 THE COURT: While the attorneys confer I'll take a

JURY OUT/ON RECORD

9

1 plea, if one is ready.

2 (THE FOLLOWING TAKES PLACE AFTER SEVERAL PLEAS WERE
3 TAKEN.)

4 THE COURT: All right. We are back on the McGee case?
5 Mr. Axelrod, are you ready to go forward in this case?

6 MR. AXELROD: Yes sir, Your Honor.

7 MR. BRYAN: Your Honor, for the record -- I can put on
8 the record where we are at, if I might.

9 THE COURT: Yes sir.

10 MR. BRYAN: If it please the Court, Your Honor, we have
11 just made a belated offer -- a late offer ---

12 THE COURT: Mr. Axelrod, just go back to counsel table
13 over there. Thank you, sir.

14 MR. AXELROD: Yes sir, Your Honor.

15 MR. BRYAN: We made an offer of lewd act, to plead
16 guilty to a lewd act, fifteen years, suspended on seven years,
17 and he has rejected that offer through his lawyer, who asked
18 me if I would plead him straight up to ten years, which I told
19 him I would do, instead of fifteen on seven a straight-up ten,
20 and he has refused that offer.

21 Mr. Axelrod informed me that he believed that the
22 Defendant would plead to a straight-up ten if I would give him
23 an Alford plea, and I -- my position was that if he would
24 say -- I wouldn't do Alford, that he could either say he did
25 it and he gets ten years, or fifteen on seven, but I'm not

1 going to take an Alford plea, so we are ready to -- we've got
2 a jury, and we are ready to hear motions.

3 THE COURT: Does the State have any motions?

4 MR. BRYAN: Yes sir, Your Honor.

5 Your Honor, we have a motion for disclosure of the
6 statement made by the victim at Mr. Axelrod's office, and I
7 believe that ---

8 THE COURT: Well, during one of our sidebar conferences
9 it's my understanding Mr. Axelrod will provide that statement;
10 is that right?

11 MR. AXELROD: At 9 A.M., Your Honor.

12 THE COURT: Thank you.

13 MR. BRYAN: And I'm not sure what form it was made in,
14 and what kind of player we have available ---

15 THE COURT: He indicated it was on some kind of an
16 eight millimeter tape; is that right, sir?

17 MR. AXELROD: Your Honor, it's on my wife's Sony
18 camcorder ---

19 THE COURT: Okay.

20 MR. AXELROD: ---And I will bring the camcorder with
21 the ---

22 THE COURT: He will have the ability for him to play it
23 and see it; is that right? You will bring that with you?

24 MR. AXELROD: Absolutely.

25 THE COURT: All right.

JURY OUT/ON RECORD

11

1 **MR. AXELROD:** Your Honor, what I am bringing -- I'm
2 going to probably have some deputies pull that T.V. off that
3 stand, if they can, hopefully. I'm going to bring the T.V..
4 I'm going to bring everything I need to show that video.

5 **THE COURT:** Okay. Have it here at nine o'clock so the
6 Solicitor can view it.

7 Anything else?

8 **MR. BRYAN:** Just briefly, Your Honor. I would like to
9 make a motion that Mr. Axelrod not mention the potential
10 penalty in front of the jury, for any purpose, whether asking
11 a witness of mine about it ---

12 **THE COURT:** It's my understanding you have put the
13 Defendant on notice that this would constitute a second
14 strike; is that right?

15 **MR. BRYAN:** Second, most serious, yes sir, Your Honor.

16 **THE COURT:** Yes sir. Which could result in a sentence
17 of life without parole; is that correct?

18 **MR. BRYAN:** Right. And my motion is to ask that the
19 Court direct Mr. Axelrod, in no uncertain terms, that he is
20 not to give that information to the jury in any way.

21 **THE COURT:** Mr. Axelrod, do you have any disagreement
22 with that position?

23 **MR. AXELROD:** No sir, Your Honor. I just would like to
24 say that if my client is given life without parole I believe
25 that's -- that's mandatory.

1 THE COURT: Yes sir, that's right.

2 MR. AXELROD: Yes sir, Your Honor.

3 And Your Honor, my client is aware of that. I would ask
4 the Court, to protect my record at this point, if the Court
5 could inquire of Shannon that I have explained to him the
6 pleas that were on the table, fifteen suspended on seven, ten
7 straight up if he said he did it, and knowing that if we were
8 to lose he would get life without parole. I would like the
9 Court to protect the record at this point, and I will go
10 further on some other matters.

11 THE COURT: All right. Mr. McGee, raise your right
12 hand.

13 (DEFENDANT RAISES HIS RIGHT HAND.)

14 THE COURT: Do you solemnly swear or affirm the
15 testimony you are about to give will be the truth, the whole
16 truth, and nothing but the truth, so help you God.

17 A. I do.

18 THE COURT: All right. Your name is Shannon D. McGee;
19 is that right?

20 A. Yes sir.

21 THE COURT: Mr. McGee, you have been present in the
22 courtroom, and also been involved in discussions outside of
23 the courtroom concerning the offers of the plea agreement
24 offered by the State; is that right?

25 A. Yes sir.

JURY OUT/DEFENDANT SWORN/ON RECORD

13

1 THE COURT: Do you understand those offers?

2 A. Yes sir.

3 THE COURT: Anything about them that you do not
4 understand?

5 A. No sir.

6 THE COURT: Okay, sir. Now, do you wish to have more
7 time to discuss those with your attorney?

8 Answer the question, sir.

9 MR. AXELROD: Answer the question.

10 A. No sir.

11 THE COURT: All right. I am going to put you on
12 notice, or inform you, which I think you probably already have
13 been informed of, that in the event that the State proceeds
14 with the indictments that are before this Court, and should
15 the jury find you guilty on those indictments, that the State
16 law mandates that you be given a sentence of life without
17 parole for those offenses. Do you understand that, sir?

18 A. Yes sir.

19 THE COURT: Do you have any question about that
20 process?

21 A. No, I don't.

22 THE COURT: All right, sir. It's my understanding that
23 you have communicated through your attorney that you wish to
24 reject the plea offers offered by the State; is that correct?

25 A. Yes sir.

JURY OUT/DEFENDANT SWORN/ON RECORD

14

1 THE COURT: So you are offering then a plea of not
2 guilty to the indictments; is that also correct?

3 A. Yes sir.

4 THE COURT: Do you wish to proceed with a jury trial in
5 this matter?

6 A. Yes sir.

7 THE COURT: Now, is there anything else that you have a
8 question about, or any confusion about anything that I just
9 asked you about?

10 A. No sir.

11 THE COURT: Okay. Thank you very much. You can be
12 seated.

13 All right, Mr. Axelrod, anything else you want to take
14 up with the Court?

15 MR. AXELROD: Yes sir, Your Honor. I would make a
16 motion at this time for a continuance, and I would like to
17 tell the Court why, if I may.

18 THE COURT: Yes sir.

19 MR. AXELROD: Your Honor, and I want to preface it that
20 it's -- there is no -- no disrespect to this Court today.

21 THE COURT: Oh, absolutely. I understand. Go ahead.

22 MR. AXELROD: I make a motion for a continuance because
23 I do not -- I believe my client will not get a fair trial. He
24 is unable to get a fair trial based on the State giving me
25 notice on Friday at noon that my case would be tried this

JURY OUT/DEFENDANT SWORN/ON RECORD

15

1 week, first or second trial this week.

2 Your Honor, the stakes are high in this case. It's life
3 without parole. I'm aware that I have had the case for -- I'm
4 not sure, but I'll say better part of the year. I've met with
5 my client. I've met with some witnesses. Your Honor, in
6 preparing a case like this, as the Court is aware, they had
7 the Children's Recovery Center come down today to bring the
8 tape for me to watch. I'll probably watch it at approximately
9 five o'clock this afternoon, for an hour or so, go back to my
10 office and prepare all night for this trial.

11 Your Honor, I just think that -- and no disrespect to
12 the Solicitor, but in a way I call it trial by ambush. In
13 Horry County, part of the same Circuit, the Fifteenth Circuit,
14 I have trials lined up all the way to December. The Solicitor
15 will call me and say we are going to try this case. I have
16 seven hundred criminal clients at this point, in three
17 different counties. I cannot be prepared with each case as if
18 it's going to trial any given week. I just can't do that.

19 I have been unable to -- my subpoenas have been typed.
20 They are at my office right now. They have not been served.
21 I have been unable to reach my client's wife. She is a
22 witness. These are matters that, with subpoenas, are done --
23 I usually do them three weeks in advance. I have a trial with
24 the Solicitor that's possibly going to go in October. I have
25 issued forty subpoenas, thirty days in advance, for the next

1 three months. To protect myself, to protect the record, I say
2 I want to do this. What I consider to be absurd, Your Honor,
3 is the State's position that I should be ready for any trial
4 on any given week. If that was the case, then what I'm
5 learning here today, Your Honor, is that I need to issue
6 subpoenas on every case I have that's on the trial roster all
7 the time, a standing subpoena that on every term of court they
8 have to be there because they might try the case. I believe
9 that's absurd. I believe that puts the community not at a
10 disadvantage, but at an inconvenience, to say the least, that
11 any police officer, or any person, or any witness is -- I'm
12 going to issue subpoenas on every case I ever have on a trial
13 roster.

14 Sometimes, Your Honor, a client will say, you know, I
15 don't want the offer; I want a trial. We put it on the trial
16 roster. And as the Court is aware many times they will plead
17 out. Sometimes it has to get to the trial roster to work out
18 a plea, as we attempted to work out a plea here today. I say
19 that it is trial by ambush. I say it's incorrect.

20 I also want to put on the record what occurred with me
21 last week in Magistrate Court. Solicitor Smith is here from
22 the same Circuit, and I want to put it on the record because
23 I'm going to protect myself on this record, and I will be more
24 than happy, Your Honor, to go forward with trial.

25 **THE COURT:** Well, does this have anything to do with

JURY OUT/DEFENDANT SWORN/ON RECORD

17

1 the trial of this case?

2 MR. AXELROD: Well, I would like to put on the record
3 what -- if the Court would just give me a minute right now.

4 THE COURT: I want it to be germane to this case. Does
5 it have anything to do with the trial of this case?

6 MR. AXELROD: It does, Your Honor. It does to the
7 extent -- if I could just have a briefness here that Solicitor
8 Smith was going to try cases in Horry County, and told me for
9 the past eight weeks that he had gotten me protection from
10 court this week, for two days, Tuesday and Wednesday, and I
11 issued subpoenas on three trials in Horry County -- in a
12 different County -- based on what Solicitor Smith told me.
13 Then I find out on Friday I have no protection; I have this
14 case. They are in the same office.

15 I could just say to this Court that, when people tell me
16 something I do it. I issued those subpoenas. I thought I was
17 going to have a trial Tuesday and Wednesday in Horry County.
18 I'm not having them. They are going to continue those.

19 I understand that this Court takes precedent over that
20 Court. I would just say, Your Honor, that the Solicitor knew
21 when he was going to try this case. I had several on it, and
22 my only recourse is to put on the record I feel that it's not
23 fair to my client; he won't get a fair trial, and I could be
24 ineffective if I can't reach the witnesses and get them here.

25 If the Court orders me to go forward, does not grant the

1 continuance, I would ask the Court to assist me -- I have the
2 subpoenas -- they are in my office typed -- I had my secretary
3 type them -- that I could have them faxed down to here, and
4 ask the Court to have the Sheriff help me serve these people
5 tonight and tomorrow morning, and that would be all, Your
6 Honor.

7 **THE COURT:** Anything from the State?

8 **MR. BRYAN:** I'll just be real brief, Your Honor, just
9 to clarify for the record, since this is a life without parole
10 offense. The notice was faxed on September the 7th from my
11 office to his office, giving him notice that this trial was on
12 the trial roster, and the case that he spoke of that he
13 thought he would be trying on Tuesday and Wednesday in
14 Magistrate's Court, and it would strike me that the obvious
15 thing to do, for somebody that concerned about it, would be to
16 pick up the phone and call me, if you knew that you were
17 trying a case in Horry County and were protected, maybe call
18 the Solicitor in Georgetown and say, why do you have me down
19 on your trial roster; you know I'm protected over here, which
20 never happened. We found out about that maybe Thursday or
21 Friday, and so we were -- I think Thursday -- and also just to
22 clarify, it was Thursday and not Friday at which point our
23 office told him exactly when he would be up, which was third
24 for trial. The record should reflect that he is not called
25 first for trial. Mr. McGee is actually third, and to get to

JURY OUT/DEFENDANT SWORN/ON RECORD

19

1 this point King Conyers, Robert Pusha, Roger Jenkins, Karon
2 Blake, have all pled guilty, in addition to the fact that Mr.
3 Axelrod has represented that Antonio Wright, whom he
4 represents, is going to plead guilty, although this seems to
5 be new news to Mr. Wright, who has told someone in our office
6 that he has never spoken to his lawyer, even though his lawyer
7 has represented to us that he's a plea.

8 MR. AXELROD: Well, that's true, Your Honor, and after
9 looking -- and I hadn't talked to my client that day, but
10 after looking at the facts I felt that that would be a plea.
11 I mean, I was giving him my best guess on that. I'm not going
12 to mislead the State and say that it's going to be a trial if
13 I think it's not.

14 MR. BRYAN: And just for clarification I think he's
15 done a good job of keeping it on track as far as -- but he did
16 say that he might be ineffective if certain things were unable
17 to be done, and I would just ask the Court to make sure that
18 we are clear about what things need to be done prior to use
19 commencing this case, so that he can be effective.

20 THE COURT: Mr. Axelrod, can you specifically tell me
21 the things that you need to do to be prepared for trial?

22 MR. AXELROD: I need the witnesses that I have
23 subpoenaed to be here for the trial, and the subpoenas are at
24 my office. If the Court allows me, I have them -- they are
25 two-sided. I'll have them fax the one side, and have the

1 second side faxed too. If we could staple them together, I
2 would ask the Court to have the Sheriff's Office -- because
3 they are going to have to be served tonight, and if not
4 tonight, first thing -- tonight, probably, so I can contact
5 these people, and they are germane to the case. It's ---

6 THE COURT: The State's position in regard to that
7 request.

8 MR. BRYAN: I've got no objection to it. I would have
9 been probably a good idea to bring those, knowing that he was
10 up for trial this morning. It might have been a good idea to
11 have brought those subpoenas.

12 THE COURT: Well, at any rate, I'll direct that the
13 Sheriff's Office assist you in the service of those.

14 MR. AXELROD: Thank you.

15 Your Honor, I think that ---

16 THE COURT: I think that the tape has been made -- is
17 being made available to you, and I think in chambers when you
18 discussed this with me earlier I explained -- and it would be
19 my ruling that should you, after viewing the tape, discover
20 information that's new to the case, that you had -- were
21 unaware of, or was a surprise to you, I will give you an
22 opportunity to take that up with me in the morning before we
23 begin trial. At this time, however, I'm going to deny the
24 motion. Again, the information, my understanding, has been
25 made available. You are exchanging with the State a tape that

JURY OUT/DEFENDANT SWORN/ON RECORD

21

1 you have in your possession, after this hearing, and I will
2 give the State the same right, once they have reviewed that
3 tape, if they wish to, to bring that up with me in the
4 morning.

5 MR. AXELROD: And Your Honor, as the Children's
6 Recovery Center does allow me to see it, and on my tape I have
7 no way to copy it, but I did tell the Solicitor, and I think I
8 told the Court in chambers, that the victim then made a phone
9 call to my office, and I had -- today I had a computer guy
10 come over here to my office and we made a C.D. of that. We
11 will give the Solicitor that copy in the morning.

12 THE COURT: All right. Thank you very much.
13 Anything else we need to take up?

14 MR. BRYAN: No, Your Honor.

15 THE COURT: All right. Then we will convene in this
16 case at ten o'clock in the morning. I will be present at the
17 courthouse starting at 9:30 if there's any matters that need
18 to be taken up with me.

19 MR. AXELROD: Thank you, sir.

20 MR. BRYAN: And the tape is to be a ---

21 THE COURT: Thank you very much.

22 MR. BRYAN: ---The tape will be made available to me at
23 nine; is that correct, Your Honor?

24 THE COURT: Yes sir.

25 MR. BRYAN: Thank you, Your Honor.

1 THE COURT: All right. Court is adjourned till 9:30 in
2 the morning. Thank you very much.

3 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, SEPTEMBER
4 19, 2006.)

5 THE COURT: All right, gentlemen, is the State ready at
6 this point in time?

7 MR. BRYAN: Yes sir, Your Honor. I have one thing. I
8 was just trying to get back in chambers with Stuart right
9 before you came out.

10 THE COURT: Oh, okay. Do you want to approach? Be
11 glad to talk with you.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 THE COURT: Is the defense ready?

14 MR. AXELROD: Your Honor, one second.

15 THE COURT: Yes sir.

16 MR. AXELROD: Your Honor, if I could have one second to
17 go over the N.C.I.C..

18 THE COURT: I'll give you a minute, or two.

19 MR. AXELROD: Your Honor, after I highlight this, will
20 I have the opportunity to go over with Mr. Bryan what I think
21 is admissible? If we can agree that may ---

22 THE COURT: Well, maybe you can work that out before we
23 get started, save us some time.

24 (THE FOLLOWING TAKES PLACE AFTER A SHORT TIME.)

25 THE COURT: All right, gentlemen, are we ready now?

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1 MR. BRYAN: I think so, Your Honor. We need to go on
2 the record. I think we have a -- need to have a ruling.

3 THE COURT: Sure. I'll be happy to hear from you.

4 MR. BRYAN: Your Honor, I -- go ahead, Stuart.

5 MR. AXELROD: Your Honor, I would like to go over the
6 N.C.I.C., and what I believe is admissible, and I'll start
7 back ---

8 THE COURT: Is this for your client, or for ---

9 MR. AXELROD: No sir, Your Honor. It's for a State's
10 witness.

11 MR. BRYAN: Aaron Kinloch, Your Honor. Aaron ---

12 THE COURT: The name is Kinloch?

13 MR. BRYAN: Aaron Kinloch.

14 THE COURT: Thank you.

15 MR. AXELROD: K.i.n.l.o.c.k., for the Court Reporter.

16 Your Honor, back in 1987 he was arrested for
17 shoplifting. I believe he was convicted, and I believe a
18 crime of moral turpitude comes in no matter what -- what time
19 frame.

20 Your Honor, in 1992, he was convicted of burglary in the
21 third degree, and received a five year sentence. I believe
22 that would come in.

23 Your Honor, in 1994, my client was charged with client,
24 was convicted. I believe that would come in as a crime of
25 moral turpitude.

1 Your Honor, in 1995, my client was convicted of burglary
2 in the second degree, two counts, twelve year sentence, and I
3 believe that comes in.

4 Your Honor, in 1995, my client was convicted of grand
5 larceny also.

6 Your Honor, in 2003, my client was convicted of petty
7 larceny. I believe that would come in as a crime of moral
8 turpitude.

9 And Your Honor, in 2006, my client was charged with a
10 property offense, third or subsequent, three year conviction,
11 so I believe that comes in automatically. Now -- and that's
12 all I'm asking to come in.

13 Your Honor, I would like to inquire of the Solicitor's
14 Office if Mr. Bryan was ever the Solicitor to Mr. Kinloch,
15 because I have not made a motion to reveal the deal, but I
16 would ask the Court to inquire of Mr. Bryan if he was the
17 Solicitor, you know, even though he's in the office, was he
18 actually the Solicitor that participated. I don't know when
19 Mr. Bryan became a Solicitor here, but we'll say in the past
20 then years did he ever prosecute Mr. Kinloch.

21 **THE COURT:** Yes sir.

22 **MR. BRYAN:** If it please the Court, Your Honor, just
23 with respect to the last issue, as far as I know I met Mr.
24 Kinloch yesterday. I have never, ever spoken to him that I'm
25 aware of. If I prosecuted him five years ago I don't know of

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1 it, and I certainly didn't make a deal with him five years ago
2 before the allegations.

3 And recently, on his most recent charge, that was
4 prosecuted by Matthew Modica. I never spoke to him about it
5 prior to him pleading guilty, being sentenced. I was unaware
6 of his involvement potentially in this case, and we had no
7 discussions about any deal. When I spoke to him yesterday my
8 discussion was that I'm not giving him anything. I asked him
9 why he was saying what he was saying, and told him I'm not in
10 a position to offer him any -- or I'm not offering him
11 anything.

12 MR. AXELROD: Your Honor, so if I hear the Solicitor
13 correct, he's saying that yesterday was the first day he met
14 Mr. Kinloch, or spoke to him. And also the Solicitor just
15 stated that it appears that Mr. Kinloch has pending charges,
16 and I think I should be able to know what they are, and go
17 into that for -- to go against the veracity, because there
18 might be a deal. I was unaware that Mr. Kinloch had any
19 current charges until the Solicitor just stated so.

20 THE COURT: Does he have current charges?

21 MR. BRYAN: Can I see the R.A.P. sheet again?

22 Your Honor, yes, he does. It's on our docket. As I
23 said, Your Honor, I did not speak to him about his charges. I
24 don't know because I didn't want to know, because I didn't
25 discuss it with him nor wish to. He has a pending receiving

1 stolen goods, over a Thousand Dollars, with Matthew Modica.

2 THE COURT: Is that the only charge pending that you
3 are aware of?

4 MR. BRYAN: That I'm aware of, yes sir.

5 THE COURT: All right. Thank you.

6 MR. AXELROD: Your Honor, if Mr. Modica is the
7 Solicitor on that case -- and he's in the courtroom -- could
8 the Court inquire if that, in fact, is the only pending
9 charges?

10 THE COURT: Mr. Modica.

11 MR. MODICA: Yes, Your Honor. That's the only charge
12 I'm aware of.

13 THE COURT: All right.

14 MR. AXELROD: Your Honor, will I be able to go into
15 that, for impeachment purposes here, that he might have a
16 reason ---

17 THE COURT: I'll hear the State on that point.

18 MR. BRYAN: I think he can ask any -- I think he can
19 ask that question, Your Honor, yes sir.

20 THE COURT: Sure. I'll let you ask it.

21 MR. AXELROD: Thank you, Your Honor. And ---

22 MR. BRYAN: And I haven't addressed the priors yet.

23 MR. AXELROD: And Your Honor, one other point I would
24 like to bring up is, my client did, in 19 -- February the
25 10th, 1988, Your Honor, my client pled to an armed robbery and

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1 received fifteen years.

2 I would just ask the Court to caution the State to
3 caution their witnesses -- I have cautioned my witnesses -- I
4 will again -- that at this point that there be no mention of
5 my client coming out of the penitentiary at all, or even being
6 in the penitentiary, because it's just going to -- it would be
7 improper.

8 THE COURT: All right. Do you agree, Mr. Bryan?

9 MR. BRYAN: I believe, Your Honor, I can ask him what
10 he was convicted of, and what sentence he received.

11 THE COURT: Ask him. But he's talking about your other
12 witnesses. He's asking ---

13 MR. BRYAN: Oh, oh, oh. Certainly, Your Honor. Yes
14 sir, I agree.

15 THE COURT: ---Me for a limited instruction ---

16 MR. BRYAN: Yes sir. I'll instruct them now. I
17 hadn't, because that never occurred to me.

18 Yes sir, Your Honor.

19 THE COURT: All right. So you agree that they should
20 not mention that conviction in their direct testimony?

21 MR. BRYAN: Correct. Yes. I just informed them not
22 to.

23 THE COURT: All right. We have an agreement on that
24 point.

25 MR. AXELROD: Because, Your Honor, if they were to I

1 would -- I would probably stand up and ask for a mistrial at
2 that point.

3 THE COURT: Of course that will -- the Court will
4 retain it's discretion on that point until such time as that
5 occurs. I don't know the context in which it might occur, or
6 the egregiousness of the error, so we will wait and see.

7 MR. AXELROD: Absolutely, Your Honor.

8 Your Honor, from the defense's point ---

9 MR. BRYAN: Can I answer the ---

10 THE COURT: Yes sir, I'll be glad to hear from you on
11 the prior convictions on your witness; is that right, Mr.
12 Kinloch?

13 MR. BRYAN: Yes sir, Your Honor. On Aaron Kinloch -- I
14 won't go through his whole record, but my understanding under
15 the Rule which governs, which is 609 (A) and (B), and (A) says
16 what's admissible, and (B) says when it's admissible, or what
17 the time limit is, which, as I read it, clearly states,
18 "Evidence under this Rule is not admissible if a period of
19 more than ten years has elapsed since the date of conviction
20 of the release of the witness from confinement.

21 THE COURT: I would agree with that.

22 MR. BRYAN: So I would say that his admissible charges
23 or convictions are an '03 petty larceny, which, regardless of
24 moral turpitude, which hasn't been the law in about fifteen
25 years, does involve dishonesty, and so that would be

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1 admissible. His '03 C.D.V. is a thirty day conviction, I
2 believe, which does not involve dishonesty, and therefore is
3 not admissible, and the '06 receiving stolen goods does
4 involve dishonesty, so I would say that is a petty larceny,
5 '03, a receiving stolen goods, '06, admissible against Mr.
6 Kinloch.

7 MR. AXELROD: Your Honor, may I reply?

8 THE COURT: Yes sir.

9 MR. AXELROD: Based on rule 609(A)(2), evidence that
10 any witness has been convicted of a crime shall be admitted if
11 it involved dishonesty or false statement. Dishonesty, back
12 in 1987, the shoplifting. Any trial I have done to this date
13 they have always come against me a crime of moral turpitude.

14 Your Honor, 1992, a burglary would be dishonesty, and I
15 would say that that -- that burglary second is admissible,
16 Your Honor.

17 In 1994, larceny, Your Honor, would be dishonesty. That
18 would be admissible under Rule 609(A)(2).

19 Your Honor, the 1995 burglary, two counts, conviction of
20 ten years, would be dishonesty, would be admissible under Rule
21 609(A)(2).

22 Your Honor, a 1992 -- 1995 grand larceny ---

23 THE COURT: You have already gone through that, Mr.
24 Axelrod. You don't need to go through them individually
25 again. I understand which ones you are talking about.

1 But now what I see is, I think that, first of all, if
2 the conviction is -- it's not admissible if a period of more
3 than ten years has elapsed, and unless I find that the
4 probative value of those convictions outweighs their
5 prejudicial effect. Is that a correct statement? It's the
6 time limit, under sub-section (B). Do you want to address the
7 time limit?

8 **MR. AXELROD:** One second, Your Honor, if I might.

9 **THE COURT:** Yes sir.

10 **MR. BRYAN:** Your Honor, there's notes with respect to
11 the ten-year Rule that state that this is a change in the law,
12 the ten-year time limit, so it doesn't make any distinction
13 between moral turpitude, dishonesty or over a year.

14 **MR. AXELROD:** Your Honor, it appears, in reading Rule
15 609(A) (1) with (A) (2), because there is a conjunction there,
16 that they are admissible. I think the Court ultimately has to
17 determine the probative value, and I would argue to the Court
18 that -- I'm not sure what the witness is going to testify to.
19 I was told yesterday there was going to be the witness. I
20 imagine it's going to be some conversation that's going to
21 come from my Defendant, my client, to the witness, that
22 occurred in jail, and I think that, on a case that we have
23 here today, that I think it's imperative that I be allowed to
24 go into a full impeachment of the character witness, because
25 it might ---

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1 **THE COURT:** All right. Well, I'm going to deny the
2 motion. I'll grant the State's position, any conviction more
3 than ten years won't come in.

4 Anything within ten years, yes sir. I will allow that
5 in, that is, if it involved dishonesty or moral turpitude ---

6 **MR. AXELROD:** And Your Honor ---

7 **THE COURT:** ---And is punishable by imprisonment for
8 more than one year.

9 **MR. AXELROD:** And Your Honor, so the 1995 conviction
10 that was a twelve-year conviction, that would still come in,
11 correct, Your Honor, because he would be under the auspices of
12 the State?

13 **THE COURT:** Depends on when he finished serving his
14 time.

15 **MR. AXELROD:** Well, we are in 2006, and this is 1995,
16 and he got a twelve-year sentence, so I would think that he
17 did at least one year.

18 **THE COURT:** I don't -- you think so, but I don't know
19 what he did.

20 **MR. AXELROD:** All right, Your Honor, how -- how should
21 we approach that, because my position is the 1995 would be a -
22 --

23 **THE COURT:** When we put the witness up you certainly
24 could -- we could do a proffer, allow you to ask him before --
25 take the jury out of the courtroom, allow you to ask him when

1 he was released on that charge. I'll put it in that way, or
2 there may be a record the State has.

3 MR. AXELROD: Or, Your Honor, if the State is able to
4 ask him ahead of time, or put him on the stand, it might save
5 moving the jury.

6 THE COURT: It might. We will see how that works out,
7 but again, unless you can show that he was incarcerated during
8 that ten-year period, I've rule that it won't come in. You
9 would think that he was in jail, but I don't know. You know,
10 people get out for various reasons.

11 MR. AXELROD: So what the Court is saying is that
12 possibly a 1995 conviction for burglary?

13 THE COURT: Possibly. It depends on the circumstances.

14 MR. AXELROD: Possibly. Possibly grand larceny, 2003,
15 a petty larceny?

16 THE COURT: Again, if there is no evidence from the
17 State as to -- documentary evidence as to when he was
18 released, then I would allow you, out of the presence of the
19 jury, to inquire into those circumstances.

20 MR. AXELROD: Well, what I'm asking about, on the 2003
21 petty larceny, is that the Court's position that a crime of
22 dishonesty or moral turpitude cannot come in if it does not
23 reach a year.

24 THE COURT: No sir. I'll allow that in.

25 MR. AXELROD: Okay. And then, Your Honor, I also have

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1 the property offense in 2006.

2 And Your Honor, I respect the decision of the Court. I
3 would just like to note my ---

4 THE COURT: Certainly. It's on record.

5 MR. AXELROD: Thank you, sir.

6 MR. BRYAN: So just real clearly, we've got a 2003
7 petty larceny, a 2006 receiving stolen goods that are ruled
8 in, and a '95 burglary second, grand larceny that will be
9 ruled on pending a proffer ---

10 THE COURT: Depending on what we learn.

11 MR. BRYAN: Thank you, Your Honor.

12 MR. AXELROD: Your Honor, at the end of the trial I
13 would just like to put my -- the witness's N.C.I.C. ---

14 THE COURT: You can do it right now if you would like.

15 MR. AXELROD: Well, I only have one copy of it.

16 THE COURT: Okay. I'll reserve -- I'll give you the
17 opportunity to put that into the record.

18 MR. AXELROD: Okay.

19 MR. BRYAN: Your Honor, I can go ahead and clarify --
20 I'll try to be brief with respect to the Defendant. I don't
21 believe his armed robbery is admissible. He was released in
22 1993, outside of ten years.

23 He does though, have a probation revocation for unlawful
24 possession of a firearm, under the five year statute, which we
25 have checked with probation, that that was what he was, in

1 fact, violated on, to make sure that it's the five year, not
2 the one-year statute, because one is admissible, one is not,
3 and we believe that he would be subject to impeachment based
4 on his conviction for unlawful possession of a firearm.

5 MR. AXELROD: Your Honor, I would say that any -- any
6 prior record, or current record of my client would be
7 prejudicial, and should be excluded under, I guess it's 403.

8 THE COURT: Well, I understand that, but I'm going to
9 allow it in.

10 MR. AXELROD: Yes sir, Your Honor.

11 THE COURT: All right. Anything else, gentlemen, we
12 need to address before we bring the jury in?

13 MR. BRYAN: No, Your Honor.

14 THE COURT: From the defense?

15 MR. AXELROD: No sir, Your Honor.

16 THE COURT: Thank you.

17 We can bring the jury in. Thank you very much.

18 MR. AXELROD: Your Honor, just one more ---

19 THE COURT: Just one second.

20 MR. AXELROD: Your Honor, my client tells me that --
21 and I'm just saying what he's telling me now, that Mr. Kinloch
22 was given a warrant for burglary two months ago from the
23 State, and I would just like to state ---

24 THE COURT: Well, again, Mr. Axelrod, I have already
25 explained, when that witness is presented, unless you and the

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1 Solicitor can agree on these matters, I will give you an
2 opportunity to, out of the presence of the jury, make a
3 proffer of evidence, ask him about it. Let's put him on the
4 stand and find out.

5 MR. AXELROD: Thank you, Your Honor.

6 THE COURT: I'm going to give you that opportunity.

7 MR. AXELROD: Thank you, sir.

8 THE COURT: Bring the jury back.

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
10 JURY.)

11 THE COURT: All right, record should reflect that all
12 jurors have returned to the courtroom.

13 I trust everyone had a good evening. We have been
14 taking care of some pretrial matters this morning, and I
15 regret the delay, but we are ready to begin the case at this
16 time.

17 As I told you yesterday, it will be necessary that you
18 take an oath at this point in time concerning your duties and
19 responsibilities as jurors in this case.

20 Madame Clerk, you may swear the jury.

21 (AT THIS TIME THE JURY WAS SWORN.)

22 THE COURT: Now, if any member of the jury panel failed
23 or refused to take the oath just administered by the Clerk, I
24 would ask that you now please stand. And the record should
25 reflect that all jurors have now been sworn concerning their

1 duties in this case.

2 Before we begin this trial there are some matters that I
3 would like to discuss with you. This is not a charge
4 concerning the law in the case. I will charge you concerning
5 the law of the case at the close of the trial.

6 What I'm going to say to you now is intended to give you
7 some idea of the procedure that we are going to follow in the
8 trial of this case, as well as the roles and responsibilities
9 that each of us has in the trial of this matter at this point
10 in time. I don't know personally whether any of you have ever
11 served on a jury of any kind or type in the past, but I
12 suspect that for most of you this is your first experience in
13 actually serving on a jury in a live trial in a courtroom.
14 Perhaps up to this point in time most of your experience with
15 the jury process or the jury system in our country for you has
16 probably come from books that you have read, T.V. shows that
17 you have seen, movies that you have watched, things of that
18 nature, and I'm sure that, from those sources you have learned
19 that trials can have very riveting facts and interesting
20 circumstances because those stories are written by writers to
21 be that way. They are intended for your entertainment. They
22 start at a specific time and end at a specific time. They
23 even take breaks for commercials on television, so those are
24 designed for your entertainment. I can assure you that this
25 trial is designed for anything but your entertainment. This

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1 trial is an important part of our democracy. It's a
2 fundamental part of our democracy. The jury system in our
3 country allows citizens, such as yourselves, to come into this
4 courtroom and perform an important function on behalf of the
5 judicial system.

6 I want to thank you personally for your willingness to
7 come forward and serve. It's because of good citizens, such
8 as yourselves, that our system is able to go forward and
9 function on a daily basis, so I want to thank you very much
10 for your attendance and your attention to your just -- to the
11 justice that is to be dispensed in this courtroom.

12 This trial, while it's not about your entertainment, is
13 about a search for the truth. It's designed to see that
14 justice is done between the State of South Carolina and one of
15 it's citizens who has been brought into this court and charged
16 with a crime. Searching for the truth is sometimes a slow and
17 repetitive process, as you have probably already learned, but
18 it should be. It should be that way, because a search for the
19 truth should be slow, deliberate, and sometimes repetitive in
20 reaching that determination.

21 This courtroom is a place of honor. It's dedicated to
22 the protection of citizen's rights through what many people
23 call the greatest justice system ever devised on the face of
24 the earth. I didn't say a perfect justice system, but a
25 system which is designed to allow citizens to come into this

1 court and become the finders of facts, to determine important
2 questions, again, between the State and a citizen brought into
3 this courtroom. Most justice systems in the world do not
4 allow direct participation by it's citizens in the dispensing
5 of justice in the governmental system.

6 I want you now to understand that each of us has an
7 important role in this search for the truth. The attorneys
8 that will appear in this courtroom are here to represent their
9 clients, and I'm sure that they will do an admirable job in
10 doing so, but first and foremost, they are also officers of
11 this Court. They have taken an oath, just as you have, before
12 this Court, to assist you in your search for the truth. You
13 can expect from them to act in a professional, reasonable and
14 ethical manner in the presentation of their case before you in
15 this courtroom. And I remind you too now that you have come
16 into this courtroom, you have also taken an oath to decide
17 this case based on the evidence presented, and the law given
18 to you by me, the Judge, in this case. You are expected to
19 act in a professional, reasonable, and ethical manner in the
20 discharge of your duties before this court today.

21 As I have indicated to you, there are three indictments
22 in this case, and I went over those indictments with you at
23 the beginning of the jury selection process. The indictments
24 are the documents that bring this case before this Court.
25 They do not -- they are not evidence in the case, and cannot

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1 be used by you in determining the guilt or the innocence of
2 the Defendant in this trial. They simply state the alleged
3 facts and the charges that are brought before this Court for
4 trial today, and to inform the Defendant of the charges that
5 he faces in this courtroom.

6 To these indictments the Defendant has pled not guilty,
7 and by the plea our laws and our Constitution place the burden
8 upon the State to prove the allegations contained in the
9 indictments by proof which satisfies you of it's truth and
10 veracity beyond a reasonable doubt. Your purpose as jurors in
11 this case is to find and determine the facts. You are the
12 sole judges of the facts in this case.

13 I am the presiding officer of this Court. It is my
14 responsibility, from time to time, to rule on the questions of
15 evidence that may arise, on the appropriateness of questions
16 that have been asked. If, in the discharge of my duties I say
17 anything that leads you to believe that I have any opinion
18 whatsoever as to how you determine the facts in this case, you
19 should disregard that notion altogether. The law does not
20 allow me to have an opinion as to how you determine the facts
21 in this case, and I can assure you, I have no opinion on that
22 subject. It's especially important that you perform your
23 duties as the factfinders in this trial diligently and
24 conscientiously, because under our system of justice
25 ordinarily there is no means by which an erroneous

1 determination of facts by a jury can be changed or altered.

2 Now, on the other hand, and with equal emphasis, the
3 same law that makes you the sole judges of the facts in this
4 case makes me the sole judge of the law in this case. The
5 law, as I give it to you, is the only law that you can use in
6 deciding the verdict in this trial. If you came into this
7 courtroom this morning with any idea or notion as to what the
8 law is, or what the law ought to be, you should leave that
9 notion outside of this courtroom and outside of the jury room.
10 It is, under your oath, your responsibility to take the law as
11 I give it to you at the close of the trial, apply it to the
12 facts as you find them to be, and thereby reach a just and a
13 true verdict in the trial of this case. It is your solemn
14 responsibility at the close of this trial to determine the
15 guilt or the innocence of the Defendant on the charges which
16 are before this Court.

17 Now, until I advise you to begin your deliberations in
18 this case, as I instructed you yesterday afternoon, you should
19 not discuss this case with anyone, even among yourselves,
20 because again, in doing so you may begin to formulate opinions
21 which would ultimately color your decision in this case. It
22 is your job, as fair and impartial jurors, to keep an open
23 mind until you have heard all of the evidence from both sides
24 in this case, and I have instructed you concerning the law
25 that's to be applied to that evidence. So during the trial do

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1 not read, listen to, or watch any reports. Do not gather any
2 information from any other source, such as the internet or any
3 other way, because in doing so you may consider evidence which
4 is not admissible under our rules in this courtroom, and
5 should not be considered by you in determining the ultimate
6 outcome of this case.

7 In just a minute I'm going to allow the attorneys to
8 make what is called an opening statement. That's how we will
9 start the trial. Statements made by attorneys in this case
10 are not evidence. The only evidence you are going to hear is
11 the testimony given by witnesses sworn to tell the truth, who
12 testify from this witness stand, and any documents or other
13 evidence that comes in through their testimony. The
14 statements made by the attorneys at the beginning of the trial
15 will give you some idea as to what the case is about, and what
16 they expect to prove. At the close of the trial, once all the
17 evidence has been presented I will allow the attorneys to make
18 what's called a closing statement. Again, closing statements
19 by attorneys are not evidence in the case. At the close of
20 the trial they will sum up the evidence that you have heard
21 from their client's perspective. So, statements made by
22 attorneys cannot be used by you directly in any fashion in
23 determining the ultimate guilt or the innocence of the
24 Defendant in the case.

25 Now, during the trial I have told you it will be my

1 responsibility, from time to time, to rule on questions of the
2 admissibility of evidence. If I believe that, during those
3 discussions some matter which may not be admissible might be
4 discussed in front of you I will ask you to leave the
5 courtroom at that point in time while those discussions take
6 place. It's my job and responsibility to see to it that you
7 decide this case solely upon properly admissible evidence, and
8 that evidence alone. Don't take from the fact that I have
9 asked you to leave the courtroom while those discussions take
10 place, again, that I have any opinion whatsoever as to how you
11 determine the ultimate facts in this case. It's simply my
12 responsibility, again, to see to it that only properly
13 admissible evidence is considered by you, and sometimes that
14 means you may have to leave the courtroom while those
15 discussions take place.

16 Now, as the sole judges of the facts in this case it
17 will be your responsibility and duty -- and it's a necessary
18 part of your function -- to determine the credibility or the
19 believability of the witnesses who might testify before you in
20 this trial. In determining the credibility of any witness I
21 will tell you to use your own good common sense that you
22 brought into this courtroom. You might consider such factors
23 as whether or not the witness has some stake in the outcome,
24 whether or not the witness has some prejudice or bias in favor
25 or against one side or the other, whether or not the witness

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1 actually had the ability to know, or see, or experience things
2 about which that witness testifies, and perhaps most
3 importantly of all, the witness stand is always directly
4 across from the jury box so that you can observe the witnesses
5 as they testify, the way they speak, the manner in which they
6 deliver their testimony, how they act during their testimony.
7 Take all of those factors into consideration, and again, use
8 your own good common sense in reaching a determination as to
9 whether or not you find a witness's statement to be credible
10 or believable. Again, as the sole judges of the facts in this
11 case you have the right to believe all of what a witness tells
12 you, none of what a witness tells you, or part of what a
13 witness tells you. You have the right to believe one witness
14 against every other witness that testifies in the trial, or
15 believe all other witnesses against one. You are the sole
16 judges of the facts. You are the sole judges of the
17 credibility of the witnesses, and you are the sole judges of
18 the weight you choose to assign to each witness's testimony in
19 the case.

20 Now, don't think from the fact that I have not appointed
21 a foreperson of your jury that I have forgotten that point. I
22 realize there has to be a foreperson to the jury. I like to
23 make that appointment when I make the final charge on the law
24 at the close of the case. I like to observe you as you go
25 through the trial. In fact, I want all of you to think you

1 have a possibility of being the foreperson so that you will
2 pay close attention to what goes on, and not leave that to
3 someone else. When I appoint that foreperson they have no
4 greater say in the outcome of the case than any other juror on
5 the jury. Your verdict must be unanimous. That means each
6 and every one of you, at the close of the trial, must agree
7 upon a verdict before it becomes the verdict of this jury.
8 The foreperson's function is simply to preside over the
9 deliberations, submit questions for the Court during
10 deliberations, if that's necessary, and to record the verdict
11 once the verdict has been reached by the jury, but I will make
12 that appointment at the close of the trial, during my charge
13 on the law.

14 Now, I have told you, in this case the Defendant has
15 pled not guilty to the indictments, and that places the burden
16 of proof upon the State to prove it's case to you by evidence
17 which you believe, beyond a reasonable doubt. For that reason
18 we allow the State to go first in making the opening argument.
19 Defense will follow, then the State will go first in the
20 presentation of it's evidence in the trial, with the defense,
21 again, following, presenting it's evidence. Once all the
22 evidence has been presented, at that point in time we will
23 make the closing statements. Once the closing statements are
24 made I will charge you concerning the law, and then charge you
25 to begin your deliberations. That's the procedure that we

STATE'S OPENING (BRYAN)

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1 will follow in the trial of this case.

2 Now, in order to be sure that I haven't violated
3 anyone's rights by my opening statement, is there any
4 objection to my opening statement from the State?

5 MR. BRYAN: No, Your Honor.

6 THE COURT: Any from the defense?

7 MR. AXELROD: Absolutely not, Your Honor.

8 THE COURT: Since the State has the burden of proof, as
9 I told you, the State will make the first opening statement.
10 Mr. Bryan, you may proceed for the State at this time.

11 MR. BRYAN: Thank you, Your Honor. If it please the
12 Court.

13 THE COURT: Yes sir.

14 MR. BRYAN: Well, I'm sure y'all are sitting there with
15 a little bit of uneasiness, and at least apprehension about
16 what your responsibility today, or at least I hope you are,
17 because you all have an awesome responsibility today. And you
18 twelve people, thirteen, ultimately twelve, are going to
19 decide what's the truth, and you hold two people's lives in
20 your hands. As the Judge said, this isn't T.V., and I
21 (unintelligible) you are not on T.V., and this isn't make
22 believe. This is real life. The decision you make,
23 regardless of whether you come back guilty or not guilty, is
24 going to affect two people for the rest of their lives in a
25 profound way. That Defendant, Shannon McGee, certainly

1 doesn't want to be responsible for what he's accused of doing,
2 and it's going to have an impact on his life if you do what we
3 think is the right thing. Likewise, regardless of how you
4 decide, that girl sitting there in the blue dress, Ms. Minor Child
5 Hicks, she's going to tell you what happened to her, and your
6 decision is certainly going to have a profound impact on the
7 rest of her life as well. So, I know that you are going to
8 take your duties and responsibility seriously, but I just
9 wanted to tell you that regardless of what your decision is,
10 it's a big decision, and I know you realize the responsibility
11 and the power you have because you, the twelve of you, are the
12 only people who can determine what truth is in this case, and
13 that's going to be your awesome responsibility, today or maybe
14 into tomorrow.

15 And again, this isn't C.S.I.. It's not going to be over
16 in a hour, and you aren't going to have any fancy gadgets or
17 cutting edge scientific technology to show you that may or may
18 not exist in the first place. This is just going to be an old
19 garden variety Georgetown County C.S.C. case. Happens every
20 day. Nothing too exciting or titillating about it. It's just
21 (unintelligible). And the evidence you have is going to be
22 what it is, because I didn't make it happen. I didn't create
23 the evidence. The police didn't create the evidence. They
24 didn't make it happen. The facts are what they are, and the
25 facts are what commonly is. The facts are that this man,

STATE'S OPENING (BRYAN)

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1 Shannon McGee, married Minor Child mother. She lived --
2 the victim lived with Mr. McGee, and Mr. McGee went on a
3 course of molestation of her for a course of over two years.
4 He started off -- the evidence will show that he started off
5 kind of slow. The first time he just called her in and had
6 her lie on top of him, because these things don't usually just
7 happen right away. It's a technique called grooming, and over
8 a course of time you go a little further. You take a step,
9 then you take another step, and ultimately over the course of
10 about two years he had her masturbating him, putting his mouth
11 on her bare breasts, and I also believe he had digital
12 penetration of her, which means that he used his finger to go
13 inside her vagina.

14 Now, there is not going to be -- like I said, who you
15 are going to hear from is four witnesses. And you can always
16 ask yourself why didn't the family report it, or why didn't
17 they do this, or why didn't they do that, and I'm sure Mr.
18 Axelrod will have a couple of thoughts that -- what should
19 have been done. Well, it turns out we are here in Georgetown
20 County, and that's where Minor Child lives, and she lives, like
21 most twelve year olds, she was at the mercy of the adults
22 around her, and so when she's talking and you think, well
23 maybe I wouldn't have known that, or why did she do that.
24 Well, ask yourself what you would have done if you were twelve
25 year old Minor Child living with your mother and your step-

1 dad, who you may have some fear of if you are twelve year old
2 Minor Child So try to ask yourself, is it reasonable for
3 her to do what she did, given who she is. It's called
4 empathy. Not what you would have done, because if he had done
5 it to me I probably would have -- well, I would have done
6 something different, I'm sure. But I'm not Minor Child and
7 I don't have a roof over my head only at the mercy of Shannon
8 McGee (unintelligible).

9 Now, the evidence is going to show -- you are also going
10 to hear that Ms. Hicks, Minor Child at some point, goes to
11 Stuart Axelrod, the defense lawyer's office, and gives a
12 statement saying that it wasn't true what she said; she had
13 made it up. I'm not going to tell you right now why that is.
14 I want Minor Child to tell you that. Just suffice it to say that
15 the position that Minor Child is just a sad and tragic one,
16 because I think she's going to tell you that she didn't tell
17 because she didn't think her mom would believe her, and you
18 may find now, tragically, that she was right, and as a result
19 of the consequence of that, she was taken by her mother --
20 after telling her mother what happened to her her mother
21 stands by her man and takes her twelve, fourteen year old
22 daughter now, to the defense lawyer's office, and has her say
23 it's not true. So you'll have a chance to hear about that.

24 And what, ultimately, your difficult responsibility is
25 going to be, is to make a decision that you are convicted of

DEFENDANT'S OPENING (AXELROD)

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1 in your conscience, that it's the right thing, and that's all
2 we are asking for you to do. So today you will have an
3 opportunity to observe Ms. Hicks, observe her demeanor, not
4 only what she says, but how she says it, and you judge,
5 because nobody but y'all are going to decide what -- who is
6 telling the truth. And she's going home. You know, this
7 ain't -- this is not television. She isn't going to a high-
8 rise apartment in Manhattan, or some house on the hills in
9 Beverly Hills when this is over with. She's not an actor.
10 She's going home (unintelligible) when this is over. You are
11 the only people who can do justice for her today, and so I ask
12 of you, don't just (unintelligible) but watch her. Judge her
13 credibility, and then if you believe what she says, do what
14 you should do, which is come back guilty for Shannon McGee.

15 THE COURT: Mr. Axelrod, for the defense.

16 MR. AXELROD: Thank you, Your Honor. May it please
17 this Court.

18 THE COURT: Yes sir.

19 MR. AXELROD: Shannon is not guilty. The Solicitor
20 told you today that this is your average garden variety
21 Georgetown C.S.C. case. I say that it's not. I promise you
22 that, for the rest of your life, you will remember this case,
23 because you are going to have to go to your sole to render the
24 proper verdict.

25 The Court told you to find the truth, according to the

1 law and the evidence, to search for the truth. And the Court
2 also told you, if you have any notion or idea what you think
3 the law is, you can put that outside your mind. The Court
4 will instruct you on the law. You are forced -- you have to
5 apply the law, whether you like it or not, otherwise we have
6 anarchy. We have rules. We follow the rules. The Court will
7 tell you that you have to be firmly convinced that Shannon did
8 what he is accused of doing. You have to be firmly convinced.

9 You cannot form an opinion until the case is over, and
10 the Court told you, don't even talk about it, think about it,
11 nothing. When the case is all over, and you hear all the
12 testimony, receive the evidence, then you deliberate. An
13 example would be, the Solicitor told you Shannon is going to
14 testify to this and testify to that, and if you formed an
15 opinion at that point you are wrong. You have to put it
16 aside. And then the Solicitor told you ---

17 MR. BRYAN: Objection, Your Honor. I never said the
18 Defendant would testify. Of course he doesn't have to
19 testify.

20 THE COURT: Sustained.

21 MR. AXELROD: I apologize, Your Honor.

22 THE COURT: That comment is stricken.

23 You may proceed, Mr. Axelrod.

24 MR. AXELROD: What I meant to say was, the Solicitor
25 stated Minor Child made a statement that certain things

DEFENDANT'S OPENING (AXELROD)

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1 occurred. Then the Solicitor told you that Minor Child came
2 to my office and made statements that those things didn't
3 occur. If you had formed an opinion before you heard that
4 second part, like the Solicitor said, you have to put it
5 aside. This is not going to be easy today, and it might go
6 into tomorrow. It's not going to be easy, absolutely not. If
7 you -- after you hear all the testimony, you get the evidence,
8 if you go back into that jury room and you say, well, you
9 know, I'm not sure, that's that. If you say, I don't know.
10 If you say, probably, that's not beyond a reasonable doubt.
11 That is our law. Shannon comes in with a cloak of innocence.
12 The State -- he doesn't even have to testify. The Court said,
13 the burden is on the State. The State has got to come forward
14 and present evidence to convince you beyond a reasonable
15 doubt. All we want, and all the Court wants, and everyone in
16 this courtroom wants justice today, and this will go to
17 (unintelligible) today, because there might be a part of you
18 that says, I want to do this, or I want to do that. We all
19 have -- we all have -- we have opinions, we all have them,
20 (unintelligible) prejudices. We all have them. We are human.
21 We are human. And today -- this courtroom has been here a
22 long time. Today -- and there have been hundreds of jurors,
23 thousands probably, used these chairs. You've got to put it
24 aside, and you've got to sit here and (unintelligible), and
25 you are not going to like it. You are not going to like it,

1 but you've got to do the right thing, and the right thing is,
2 after this trial is over, you will have -- and the Court is
3 going to order you, you have no choice but to come not guilty.

4 Thank you.

5 **THE COURT:** All right, Mr. Solicitor, the State may
6 call it's first witness.

7 **MR. BRYAN:** Thank you, Your Honor. If it please the
8 Court, the State calls Minor Child

9 **THE COURT:** Come forward to be sworn, Ma'am.

10 Minor Child being first duly
11 sworn, testifies as follows:

12 **DIRECT-EXAMINATION BY MR. BRYAN:**

13 Q. How old are you, Minor Child

14 A. I'm fifteen.

15 Q. And when -- what's your date of birth?

16 A. [REDACTED].

17 Q. Are you a little nervous today?

18 A. Yes sir.

19 Q. Do you go to school?

20 A. Yes sir.

21 Q. Where do you go to school?

22 A. I go to Pleasant Hill High School.

23 Q. And what grade are you in?

24 A. Tenth.

25 Q. And how you do in school?

Minor Child

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- 1 A. I do excellent in school.
- 2 Q. What kind of grades do you have?
- 3 A. Right now I have three (B)s and one (A).
- 4 Q. Do you know the difference between right and wrong?
- 5 A. Yes sir.
- 6 Q. And do you know the difference between the truth and a
- 7 lie?
- 8 A. Yes sir.
- 9 Q. And is it good to tell the truth?
- 10 A. Yes sir.
- 11 Q. Is it good to tell a lie?
- 12 A. No sir.
- 13 Q. And what happens -- let me ask you this. This suit
- 14 I've got on, this is -- if I said this is a red suit, would
- 15 that be the truth or a lie?
- 16 A. That would be a lie.
- 17 Q. Okay. Who is your mother?
- 18 A. Tonya Hicks McGee.
- 19 Q. And who is your biological father?
- 20 A. Fitzgerald Sumter.
- 21 Q. And are they still married?
- 22 A. No.
- 23 Q. Are they -- were they married?
- 24 A. No sir.
- 25 Q. And did your mother remarry, or did she get married?

1 I'm sorry.

2 A. Yes sir.

3 Q. And who did she marry?

4 A. Shannon McGee.

5 Q. All right. Is Mr. McGee in the courtroom?

6 A. Yes sir.

7 Q. Where is he?

8 A. Sitting beside Mr. Axelrod.

9 Q. When did they get married?

10 A. Around -- maybe the end of 1997. I'm not sure.

11 THE COURT: Solicitor, let me just -- can you hear her

12 okay at the back of the jury?

13 Thank you. I just wanted to be sure.

14 Go ahead, Mr. Solicitor.

15 Q. Who did you live with prior to your mother marrying

16 Shannon McGee? Before they got married, where did you live?

17 A. I was living with my grandmother.

18 Q. What's her name?

19 A. Annette Hicks.

20 Q. Is she in the courtroom today?

21 A. Yes sir.

22 Q. Where is she at?

23 A. She's sitting beside my father in the first row, in the

24 purple suit.

25 Q. And after your mother and Mr. McGee got married, did

Minor Child

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1 you -- did y'all move out?

2 A. Yes sir.

3 Q. Okay. And where did you live then?

4 A. Andrews, South Carolina.

5 Q. Is that in Georgetown County?

6 A. Yes sir.

7 Q. Okay. What -- do you know the address there?

8 A. To our house that we used to ---

9 Q. Yes Ma'am.

10 A. We lived in three houses around there, but I can only
11 remember one address.

12 Q. What's that?

13 A. [REDACTED].

14 Q. Okay. Were all three addresses in Georgetown County?

15 A. Yes sir.

16 Q. Where did you move right then, when you first -- y'all
17 were living -- you were living with Ms. Hicks, your
18 grandmother, and your mother and Mr. McGee got married. Where
19 did y'all move to then?

20 A. We moved -- we lived in Andrews, but I really can't
21 remember the address.

22 Q. And how old -- is Mr. McGee over eighteen years of age?

23 A. Yes sir.

24 Q. Has anybody ever touched you in an inappropriate way?

25 A. Yes sir.

- 1 Q. Okay. Can you tell the jury who did that?
- 2 A. Shannon McGee.
- 3 Q. All right. And tell the jury the first time that you
- 4 felt that he touched you inappropriately. Where was that?
- 5 A. It was at our house on [REDACTED].
- 6 Q. Okay. And where in the house were you?
- 7 A. In his room.
- 8 Q. And tell the jury what happened.
- 9 A. I was in the living room, and he called me to the room,
- 10 and he told me to lay on top of him.
- 11 Q. Did you have clothes on?
- 12 A. Yes sir.
- 13 Q. Did he have his clothes on?
- 14 A. He had on pants, with no shirt.
- 15 MR. AXELROD: Your Honor, I'm unable to hear the
- 16 witness.
- 17 THE COURT: The question was, did he have clothes on.
- 18 The answer was: He had pants with no shirt.
- 19 Try to speak up, Ma'am, or get real close to the
- 20 microphone.
- 21 You may proceed, Mr. Bryan.
- 22 Q. All right. Is that the last time he touched you
- 23 inappropriately?
- 24 A. No sir.
- 25 Q. When was the next time after that?

Minor Child

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1 A. The next time, it was about two days later. He called
2 me in his room, and he touched my butt.

3 Q. And tell the jury exactly what happened. Were you
4 wearing clothes?

5 A. Yes sir. He called me into his room to sit beside him
6 on the bed, and he touched my vagina area and my butt.

7 Q. That was about two days after the first time?

8 A. Yes sir.

9 Q. And let me just be clear. The first time did he
10 penetrate you -- your ---

11 A. No sir.

12 Q. Okay. And did he ever take your clothes off, or take
13 your ---

14 MR. AXELROD: Your Honor, the State is leading this
15 witness at this point.

16 THE COURT: Overruled.

17 You may proceed.

18 Q. Did he make you take your clothes off, or take his
19 clothes off?

20 A. No sir.

21 Q. Okay. And so the second time you said he touched your
22 butt and your vagina; is that right?

23 A. Yes sir.

24 Q. Tell the jury exactly what happened.

25 A. I was in the living room once again, and he called me

1 into his room, and then he was laying on the bed, and he told
2 me to sit beside him, lay beside him, really, and he touched
3 my butt and my vagina area, while I had pants on.

4 Q. You had pants on?

5 A. Yes sir.

6 Q. Okay. So he never reached inside your pants at that
7 time?

8 A. No sir.

9 Q. And did he have clothes on?

10 A. Yes sir.

11 Q. Did he take his clothes off that time?

12 A. No sir.

13 Q. Where was your mother? Was she living in the house at
14 that point?

15 A. Yes. She was living in the house, but she was at work
16 at the time.

17 Q. Did Mr. McGee have a job?

18 A. No sir.

19 Q. So when did these things happen? You said when she was
20 at work?

21 A. Yes sir.

22 Q. All right. What's the next thing that happened to you
23 by Mr. McGee?

24 A. My mother got a new schedule, where she worked five
25 A.M. in the morning till one P.M., and that was the next time

Minor Child - DIRECT BY BRYAN

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1 that I got molested by him.

2 Q. Where did your mom work?

3 A. Waccamaw Medical Park.

4 Q. Okay. And they switched her hours from -- to five A.M.
5 to one P.M.?

6 A. Yes sir.

7 Q. And what happened?

8 A. It was around five A.M.. It was still dark outside,
9 and he was laying in his room, and he yelled my name, because
10 I sleep on the chair in the living room sometimes, and he told
11 me to come in his room, and I stood at the door, and he said,
12 come here. I didn't really want to come to the bed, but he
13 told me to come here. And he -- it was dark, and I -- he told
14 me to lay on the bed, and he lay on top of me, and he started
15 touching me again.

16 Q. And where did he touch you?

17 A. He touched me in my vagina area.

18 Q. Okay. And did you have clothes on?

19 A. Yes sir.

20 Q. Did he have clothes on?

21 A. Yes sir.

22 Q. Is there -- what happened? Anything else at that time?

23 A. He reached inside my pants, and started touching me.

24 Q. Okay. At that time did he put his finger inside of
25 your vagina?

1 A. No sir.

2 Q. Did he ever touch you again in an inappropriate way?

3 A. Yes sir.

4 Q. And what happened the next time?

5 A. It was not too long from that time, but it was
6 daylight. It was around morning, and my sister and brothers
7 were asleep, and he called me to his room once again, and he
8 told me to lay down, and he was about to have sex with me.

9 Q. Was this all taking place in that same residence?

10 A. Yes sir.

11 Q. Okay. And where -- he called you to his room, did you
12 say?

13 A. Yes sir.

14 Q. And he told you -- of course we all know that you are
15 fifteen, and we are in court, and that you probably may not
16 want to use certain words, and I'm not telling you to use any
17 particular words, only, to the best of your recollection, the
18 best you can remember, exactly what words he said, okay, when
19 he said he was about to have sex with you. Is that what he
20 said?

21 A. No sir.

22 Q. What did he say?

23 A. Well, when I came into his room and lay down on the
24 bed, he didn't have any underwear on, and he asked me to
25 masturbate him.

Minor Child

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1 Q. Okay. What -- did you do that?

2 A. Yes sir.

3 Q. Do you know if he ejaculated or not? Do you know what
4 that means?

5 A. Yes sir.

6 Q. Did he?

7 A. Yes sir.

8 Q. All right. And you had mentioned something about
9 touching you under your pants as well. What was the next
10 thing that happened after that?

11 A. Well, after -- he never had sex with me, even though he
12 was very close, but I pushed him off me before he could into
13 me. But the next time that happened -- it was a long time
14 from that. I started school, and when I would be asleep at
15 night -- because that happened over the summer, so I was home
16 all day when my mother was at work. That's why he was able to
17 do that. But when I started school he would mess with me at
18 night when I was asleep.

19 Q. Okay. And where would that occur?

20 A. I always fall asleep on -- I was asleep in the chair in
21 the living room.

22 Q. And tell the jury what happened when you would fall
23 asleep.

24 A. Well, when I would go asleep, while my mother was
25 asleep in the room he would come in the living room and he

1 would take his finger, and he would finger me inside my
2 vagina.

3 Q. Okay. And would you be wearing -- what would you --
4 what would you be wearing -- what were you wearing?

5 A. What I wore to bed was a t-shirt and pajama pants,
6 sometimes shorts.

7 Q. All right. And did he take those off, or did -- how
8 did he ---

9 A. No sir. He just reached into my pants.

10 Q. And just to be very clear, did he touch you outside of
11 your vagina, or on the inside of your vagina?

12 A. On the inside.

13 Q. Do you know what penetrate means?

14 A. Yes sir.

15 Q. Did he penetrate your vagina with his finger?

16 A. Yes sir.

17 Q. Okay. How many times did that happen?

18 A. Numerous.

19 Q. Did you ever have sex with him?

20 A. No sir.

21 Q. Did he ever try to have sex with you?

22 A. Yes sir.

23 Q. Tell the jury about that.

24 A. I have said that before, but ---

25 Q. Let me stop -- let me stop you. That thing that you

1 said, that he put his finger inside your vagina, that happened
2 about when, do you know?

3 A. Around August, 2004, September, 2004, around those
4 times.

5 Q. And how do you know that was the time?

6 A. Because that's when I started -- first started school.

7 Q. What grade were you starting?

8 A. Eighth grade.

9 Q. Where did you go to eighth grade?

10 A. Rosemary Middle School, in Andrews.

11 Q. You had maybe told us briefly about not having sex.
12 You said you didn't have sex with him, but did you ever -- did
13 he ever try to have sex with you?

14 A. Yes sir.

15 Q. Tell the jury what happened.

16 A. Well, I was in the living room, and he called me into
17 his room, and it was daylight, and he told me to lay beside
18 him, and I masturbated him. He asked me to. And then he had
19 a condom in the drawer, and he put it -- he put it on, and he
20 was about to -- he was about to have sex with me, but then I
21 pushed him off of me, and I ran in the living room.

22 Q. Okay. And I know it's not something you want to talk
23 about specifically, but can you tell the jury -- you said you
24 pushed him off of you, but you didn't say how he got there.
25 Tell the jury exactly where you were, and where he was, and

1 exactly what happened.

2 A. I was laying beside him, after he told me to masturbate
3 him, and when I was beside him he eventually -- he just got on
4 top of me. Well, he got his condom and he got on top of me.

5 Q. Was he touching you?

6 A. Yes sir.

7 Q. Okay. Did he threaten you, or say anything ---

8 A. After he did ---

9 Q. At that time, when he was -- got on top of you, or
10 before, did he say anything to you other than -- told you to
11 masturbate him. Did he say anything about what he was going
12 to do, or wanted to do?

13 A. No sir.

14 Q. And did he threaten you in any way at that time?

15 A. No sir.

16 Q. Okay. And tell the jury exactly how he got on top of
17 you.

18 A. Well, I was laying beside him in the bed, and after he
19 asked me to masturbate him he just -- he put his condom on,
20 and he eventually just got -- crawled on top of me.

21 Q. And did he have sex with you?

22 A. No sir.

23 Q. Why not?

24 A. Because I pushed him off of me before he could.

25 Q. All right. And did he fight you, or try to beat you up

Minor Child

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1 or anything like that?

2 A. No sir.

3 Q. No sir?

4 A. No sir.

5 Q. Did he ever say anything to you about having sex, or
6 wanting to have sex?

7 A. Yes sir.

8 Q. What did he say?

9 A. While I was asleep he would whisper things in my ear,
10 but I was half asleep. He would just say -- he would just say
11 things like, I want to have sex with you, or something like --
12 just things. I wasn't really awake, but I could still
13 understand what he was saying.

14 Q. Do you remember anything in particular that he said,
15 his words?

16 A. No sir, not anything in particular, but it was about --
17 just, I want to have sex with you. It was just nothing in
18 particular.

19 Q. Did he ever put his mouth on any part of your body?

20 A. Yes sir.

21 Q. Where?

22 A. On my breasts.

23 Q. Anywhere else?

24 A. That's it.

25 Q. Did he ever try to perform oral sex on you?

1 A. Yes sir.

2 Q. Okay. Tell the jury about that.

3 A. When I was asleep, after he was penetrating me with his
4 finger, he put his mouth down there, but I was awake, and I
5 told him, move, get off of me, leave me alone, and he stopped.

6 Q. Was anybody home when you told him to move, get off of
7 you?

8 A. Yes sir.

9 Q. Who was home?

10 A. My mother, my two sisters and my brother, but they were
11 all asleep.

12 Q. Okay. Did he stop?

13 A. Yes sir.

14 Q. You said he didn't -- he didn't threaten you when he
15 was about to have sex with you, or necessarily make you do
16 these things. Did he ever threaten you at all, or say
17 anything to you that you took as a threat?

18 A. He just said, whatever happens happens; don't tell
19 anyone about this. That's all he ever told me.

20 Q. Did you ever -- well, obviously you told somebody. Did
21 you -- who did you tell?

22 A. I told my little brother.

23 Q. Let me ask you this. Who is the first person you told?

24 A. My brother, Minor Child 2

25 Q. And how old was Minor Child 2 when you told him?

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- 1 A. Seven, I think.
- 2 Q. Did you ever think about telling your mother?
- 3 A. Yes sir.
- 4 Q. Did you, at that time?
- 5 A. No sir.
- 6 Q. Why not?
- 7 A. Because I know she wouldn't believe me if I told her.
- 8 Q. And did you think about what would happen if you told
- 9 your mother?
- 10 A. Yes sir.
- 11 Q. And what did you think would happen?
- 12 A. I know if I told her what I said she would mention it
- 13 to Shannon, and I know he would -- it would be a big
- 14 confrontation about it, and sometimes, you know, they -- it --
- 15 I know -- he would lose his temper in the house, and I don't
- 16 know what would happen. I just kept it to myself. I was
- 17 scared of what was going to happen if I said anything.
- 18 Q. Where are you living now?
- 19 A. With my grandmother, in Hemingway, South Carolina.
- 20 Q. And where is your mom?
- 21 A. Where is my mother?
- 22 A. I think she's sitting over there.
- 23 Q. And is she still having a relationship with Shannon
- 24 McGee?
- 25 A. That I know of, yes sir.

1 Q. Did you ever tell anybody that this was a lie, you
2 weren't molested by Shannon McGee?

3 A. Yes sir.

4 Q. Who did you tell?

5 A. I told Mr. Axelrod.

6 Q. Okay. And where did that take place?

7 A. At his office in Myrtle Beach.

8 Q. Did you -- where is his office?

9 A. In Myrtle Beach, I think.

10 Q. How far is that from your house?

11 A. A good forty-five minutes.

12 Q. How did you get there? Did you ride your bike?

13 A. No sir.

14 Q. Did you take the bus?

15 A. No sir.

16 Q. How did you get there?

17 A. My mother drove me.

18 Q. And did your mother tell you where you were going that
19 day? When was that?

20 A. It was July the 3rd.

21 Q. And where did your mother say you were going?

22 A. Excuse me.

23 Q. Where did your mom say she was taking you?

24 A. She told me that -- well, that day was my sister's
25 birthday, and I thought she was going to go get a cake, maybe

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1 a present. I didn't know where I was going. She just said
2 she was going to pick me up.

3 Q. Did she say anything about your sister's birthday?

4 A. Yes sir.

5 Q. What did she say?

6 A. She said over the phone that tomorrow is my sister's
7 birthday, and I'm thinking she was maybe getting a cake or
8 something. I didn't know.

9 Q. Okay. And once she picked you up did y'all go get a
10 cake?

11 A. No sir.

12 Q. Did you buy your sister a present?

13 A. No sir.

14 Q. Did you ever buy your sister a present later that day,
15 or at any time?

16 A. No sir.

17 Q. And where did you go?

18 A. Went to Mr. Axelrod's office.

19 Q. What did your mom say, if anything, on the way there?

20 A. She told me that she needed me to go to his office and
21 tell him that that didn't hap -- that Shannon McGee did not
22 molest me. She told me if I did not do that somehow she would
23 go to jail, my sisters will be in foster care, and that just
24 broke my heart. I didn't know what to do. So I felt
25 pressured to do the tape, even though I didn't want to, but I

1 didn't want anything bad to happen to them.

2 Q. Did you want to tell what happened to you in the first
3 place? Did you ever tell your teacher, or tell anybody else
4 besides your seven year old brother?

5 A. No sir.

6 Q. And why not?

7 A. Because I didn't -- I knew this would happen.

8 Q. You knew what would happen?

9 A. The court thing, the, you know, police reports, and I
10 tried to avoid it.

11 Q. Okay. And your mom told you that she would be in
12 trouble, and that your family, or your sisters and brothers
13 would end up in foster care unless you gave that statement?

14 A. Yes sir.

15 Q. And did you ask her why, or anything about that?

16 A. I didn't understand why she told me, why she told me
17 that, but I wasn't really -- I didn't really think about to --
18 I didn't really think to ask her about why she said that.

19 Q. Did you do what she asked you to do?

20 A. Yes sir.

21 Q. And was that the truth when you gave that statement?

22 A. No sir.

23 Q. What did you tell Mr. Axelrod?

24 A. I told Mr. Axelrod that Shannon really didn't molest
25 me. I told him that I did it out of revenge and spite. I

1 didn't tell him why I came up there, and that my mother told
2 me to do that. I didn't tell him that.

3 Q. Did you say anything about your grandmother, your
4 father, your biological father, and that side of the family
5 not liking Mr. Hicks -- I mean Mr. McGee -- I'm sorry.

6 A. Yes sir.

7 Q. You said that. And ---

8 MR. BRYAN: Court's indulgence.

9 Q. Do you remember your exact words, what you said?

10 A. No sir.

11 Q. It was like a -- did you say it was like a push-up?

12 A. Yes sir.

13 Q. What does that mean?

14 A. I lied and said that it was really a push-up for my
15 family to report this, report that he molested me, and that it
16 wasn't really me, I didn't really want to do it, it was just a
17 push-up for my family. That's what I said on the tape.

18 Q. Are you telling the truth today?

19 A. Yes sir.

20 Q. Has anybody ever told you -- has anybody told you to
21 come to court and say something other than the truth?

22 A. No sir.

23 Q. Do you know that this is really important ---

24 A. Yes sir.

25 Q. ---Thing to tell the truth today?

1 A. Yes sir.

2 Q. Has everything you said today been the truth?

3 A. Yes sir.

4 Q. When was the last time Shannon McGee touched you in a
5 sexual way?

6 A. I say maybe November, 2004.

7 Q. And why do you say November, 2004?

8 A. Because around January, 2005, my grandfather died, and
9 we weren't -- we were back and forth to my grandmother's
10 house, and he -- he just wasn't doing anything to me, and then
11 we were in the process of moving during that time, to another
12 house.

13 MR. BRYAN: Court's indulgence, please.

14 THE COURT: Yes sir.

15 MR. BRYAN: Please answer any questions that Mr.
16 Axelrod has.

17 THE COURT: Mr. Axelrod, it's your witness.

18 CROSS-EXAMINATION BY MR. AXELROD:

19 MR. AXELROD: Thank you, Your Honor.

20 MR. AXELROD: Good morning.

21 A. Good morning.

22 Q. Minor Child when you came to my office and made a
23 statement that you had lied about Shannon doing anything to
24 you, was Shannon living with you at that time?

25 A. No sir.

1 Q. And were you living with your grandmother at that time?

2 A. Yes sir.

3 Q. And when you came to my office you stated that your
4 original statement to the police, and everybody else, was like
5 a push-up, correct?

6 A. Yes sir.

7 Q. And you stated that the push-up was because your family
8 wanted you to do that?

9 A. Excuse me.

10 Q. Did your family like Shannon?

11 A. No.

12 Q. And when you said that you came in and you did a push-
13 up, was that because your family wanted you to say those
14 things?

15 A. Are you talking about what I had lied about on the
16 tape, or are you talking about the real police report that I
17 did?

18 Q. Well -- and I'm not trying to confuse you, believe me.
19 You came to my office, and I asked you -- or you were asked
20 was it true, and isn't it true you told us that it was more
21 like a push-up?

22 A. Yes sir.

23 Q. And when you were asked what a push-up was, isn't it
24 true that you say that your family wanted you to say bad
25 things about Shannon?

1 A. Yes sir, I did say that.

2 Q. Okay. And isn't it true that you stated, at my office,
3 that there was never any sexual conduct between you and
4 Shannon?

5 A. Yes sir, but I must say, the only reason why I did that
6 tape was because my mother told me to, and I lied about
7 everything that I said on the tape because of what she told
8 me.

9 Q. And didn't you make a statement that your family had
10 said you were acting funny, and therefore they wanted you to
11 say that there was sexual conduct between you and Shannon?

12 A. Yes sir.

13 Q. And isn't it true that you stated that your family made
14 you say things that really weren't true ---

15 A. No.

16 Q. ---In my office?

17 A. No.

18 MR. BRYAN: Objection, Your Honor, to the form of the
19 question, and ask that he repeat the question.

20 THE COURT: What's the objection to the form of the
21 question?

22 MR. BRYAN: Well, (A), I couldn't it or understand it,
23 and so I'm wondering if the witness could.

24 THE COURT: Mr. Axelrod -- I think the witness
25 responded appropriately to the question. I'll overrule the

1 objection.

2 You may proceed.

3 MR. AXELROD: Your Honor, may we approach at this
4 point?

5 THE COURT: Yes, you may.

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 THE COURT: All right, Mr. Axelrod, you may proceed.

8 MR. AXELROD: Thank you, Your Honor.

9 Q. Shannon, isn't it true that when you were at my
10 office ---

11 A. You just now called me Shannon.

12 MR. AXELROD: I'm sorry. Minor Child I'm sorry, Minor Child

13 Q. Isn't it true, Minor Child that when you were at my office
14 you made a statement that your family made you say things that
15 weren't true because they didn't like Shannon being with your
16 mom?

17 A. Yes sir.

18 Q. Minor Child isn't it true that, when you made the
19 statement at my office, that you told -- you stated that
20 Shannon never touched you?

21 A. Yes, I did say that.

22 Q. Minor Child when you were in my office isn't it true you
23 made a statement that you wanted to get revenge because
24 Shannon was mean and yelled a lot?

25 A. Yes sir.

1 Q. Minor Child isn't it true that when you were at my office
2 you made a statement that this was the way you got your
3 revenge?

4 A. Excuse me.

5 Q. Minor Child isn't it true that when you were at my office
6 that you made a statement -- you acknowledged that this was
7 the way you got your revenge?

8 A. I didn't directly say that.

9 Q. Did you agreed with the statement in my office that you
10 got revenge this way, by making the statement against Shannon?

11 A. I didn't directly say that.

12 Q. Is it not true that, in my office you agreed with the
13 statement, that this was the way you got your revenge against
14 Shannon?

15 A. Can you explain your question again?

16 Q. Yes, I may. I will. When you were in my office you
17 were asked if this was the way you got your revenge with
18 Shannon, and you stated yes; isn't that true?

19 A. Yes, that's true, but I didn't say that I wanted to --
20 I got revenge on him by putting out a police report that he
21 molested me. I didn't say that.

22 Q. But you agree that this was the way you got your
23 revenge?

24 A. Yes.

25 MR. BRYAN: Would -- I would ask that he restate the

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1 question. I'm not sure if he said agreed or ---

2 THE COURT: I think that question has been asked and
3 answered. She said that she didn't directly say that. She
4 said she did say yes when you made that statement, or whoever
5 was interviewing her at the time, so I think the question has
6 been asked and answered.

7 You may move on.

8 Q. And isn't it true that in my office you stated that you
9 really didn't want to come to my office?

10 A. Sir?

11 Q. Minor Child isn't it true that, when you were at my office
12 you made a statement that was, you didn't really want to be at
13 my office?

14 A. Yes sir.

15 Q. And isn't it also true that, after you made that
16 statement that you stated in my office that you felt that you
17 should finally tell the truth?

18 A. Yes, I did say that.

19 MR. AXELROD: Nothing further.

20 THE COURT: Redirect.

21 MR. BRYAN: Briefly, Your Honor.

22 THE COURT: Yes sir.

23 REDIRECT-EXAMINATION BY MR. BRYAN:

24 Q. Whose idea was it to go to Mr. Axelrod's office?

25 A. My mother's.

1 Q. Did -- when did you find out you were going to Mr.
2 Axelrod's office?

3 A. She told me while we were dri -- on the way there.

4 Q. And is it true, when you said you didn't want to be
5 there -- is that statement you made in his office true, that
6 you didn't want to be there?

7 A. Yes sir, I did say I didn't want to be there.

8 Q. Is there anything else true in that statement that you
9 can recall?

10 A. No sir.

11 Q. And the form of the conversation -- was it just you
12 went in there and you started talking?

13 MR. AXELROD: Your Honor, the State is leading the
14 witness. It's a redirect.

15 MR. BRYAN: I'm asking what the form of the
16 conversation was.

17 THE COURT: I'll overrule the objection. He hasn't
18 completed the question, but it did not appear that it was
19 suggesting an answer one way or the other.

20 You may proceed.

21 Q. What was the form of the conversation? Did you made a
22 statement, by yourself, with no interruption, or were you
23 asked questions?

24 A. I was questioned.

25 Q. And who were you questioned by?

1 A. Mr. Axelrod and a woman that was in his office.

2 Q. And did you use the word revenge, or did somebody like
3 Mr. Axelrod, or his associate, use the word revenge?

4 A. I can't remember who brung it up first.

5 Q. Were they asking you questions, and you were responding
6 to them?

7 A. Yes sir.

8 Q. And you happy you made that statement at Stuart
9 Axelrod's office?

10 A. No sir.

11 Q. Did you ever try to contact Mr. Axelrod about that
12 statement?

13 A. Yes sir.

14 Q. When did you do that?

15 A. After I told my daddy and my grandma what I was forced
16 to do, I -- my grandma said, you call him now and tell him
17 what really happened, and why you really said that, and who
18 told you to -- who drove you up there and who told you to do
19 that.

20 Q. Did they tell you to say anything that wasn't true?

21 A. Sir?

22 Q. Did your grandmother and your daddy tell you to say
23 something that wasn't true?

24 A. No sir.

25 Q. Did you call him and tell him the truth?

1 A. Yes sir.

2 Q. Did you talk to him?

3 A. No. No sir. It was an answering machine.

4 Q. Did you tell him what the truth was?

5 A. Yes sir.

6 Q. That it did actually happen?

7 A. Yes sir.

8 Q. And you left him your number so he could call you back,

9 didn't you?

10 A. Yes sir.

11 MR. BRYAN: I don't have any other questions.

12 THE COURT: Re-cross.

13 MR. AXELROD: Thank you, Your Honor.

14 RECROSS-EXAMINATION BY MR. AXELROD:

15 Q. Minor Child did you ever tell your mother you wanted to

16 come to my office ---

17 A. No sir.

18 Q. ---To make a statement?

19 A. No sir.

20 Q. Are you sure?

21 A. I'm sure.

22 Q. Now, when you made that phone call to my answering

23 machine ---

24 A. Yes sir.

25 Q. ---Did anybody tell you what to say?

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- RE-RECROSS BY AXELROD

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1 A. No sir.

2 Q. Was anybody in the room when you made the statement?

3 A. No sir.

4 MR. AXELROD: Can we approach, Your Honor?

5 THE COURT: Yes, you may.

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 THE COURT: All right, Mr. Axelrod, it's still your
8 witness.

9 MR. AXELROD: Nothing further at this time, Your Honor.

10 THE COURT: All right. I'll allow the State to proceed
11 on re-redirect.

12 RE-REDIRECT EXAMINATION BY MR. BRYAN:

13 Q. Listen carefully to my question, okay. When you called
14 Stuart Axelrod's office -- after you gave the statement at his
15 office you then called him up on his -- right. During that
16 time was there, or was there not somebody in the background,
17 in the room when you made that call?

18 A. Oh, yes sir. My grandmother.

19 MR. BRYAN: I don't have any other questions.

20 THE COURT: Mr. Axelrod, I'll allow you to ask
21 questions on that point only.

22 RE-RECROSS EXAMINATION BY MR. AXELROD:

23 Q. Isn't it true that your grandmother told you what to
24 say?

25 A. No, she did not tell me what to say.

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- RE-REDIRECT BY BRYAN
- RE-RECROSS BY AXELROD

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1 Q. Did she not tell you to put on the answering machine
2 that your mother made you come and make that statement?

3 A. She told me to say that because that's the truth.

4 Q. But you said it after she told you that, didn't you?

5 A. Yes sir.

6 MR. AXELROD: Thank you.

7 THE COURT: Ma'am, you may step down. Thank you very
8 much.

9 All right, ladies and gentlemen of the jury, at this
10 point in time we have been going a little over an hour, almost
11 an hour and a half, and I'm -- it a good time to take a break
12 and allow you to walk around and refresh yourself.

13 I'm going to allow you to retire to the jury room. I
14 will instruct you, as I will every time that you leave this
15 courtroom, do not begin any discussions concerning this case,
16 until I have instructed you to begin your deliberations in
17 this matter.

18 At this time we will take about a ten to fifteen minute
19 break. You can retire to the jury room.

20 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
21 JURY.)

22 THE COURT: All right. One thing, gentlemen, this is
23 my first time trying a case in Georgetown County, and I don't
24 know what the local practice is, but in my courtrooms,
25 generally I will ask that everyone remain seated while the

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Minor Child

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- RE-RECROSS BY AXELROD

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1 jury comes and goes.

2 Anything we need to take up before I begin the break?

3 MR. BRYAN: No sir.

4 THE COURT: All right. We are in recess for about ten
5 minutes.

6 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
7 THE PRESENCE OF THE JURY.)

8 THE COURT: All right. Is the State ready?

9 MR. BRYAN: Yes, Your Honor.

10 THE COURT: Is the defense ready?

11 MR. AXELROD: Yes sir, Your Honor.

12 THE COURT: All right. Bring the jury back.

13 Remain seated as the jury comes and goes, please.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right. The record should reflect that
17 all jurors have now returned to the courtroom, and when we
18 broke earlier the State was in the process of presenting it's
19 witnesses.

20 Mr. Solicitor, you may call your next witness.

21 MR. BRYAN: State calls Minor Child 2

22 THE COURT: Come forward to be sworn.

23 The witness did not speak that he agreed to take the
24 oath.

25 Madame Clerk, administer it one more time.

1 Young man, you are going to need to answer a yes or no.
2 A nod won't do, okay, so when she asks the question, or gives
3 the statement, you either have to agree with it or disagree
4 with it, verbally. You have to say something. You
5 understand?

6 All right. Put your left hand on the Bible again and
7 raise your right hand, please.

8 Minor Child 2 being first duly
9 sworn, testifies as follows:

10 DIRECT-EXAMINATION BY MR. BRYAN:

11 THE COURT: All right, Mr. Solicitor, your witness.

12 Q. Minor Child 2 how old are you?

13 A. I'm nine years old, sir.

14 Q. And do you go to school?

15 A. Yes sir.

16 Q. Where do you go?

17 A. Pleasant Hill Elementary.

18 Q. I'm sorry,

19 A. Pleasant Hill Elementary.

20 Q. Thank you. What grade are you in?

21 A. The fourth.

22 Q. And do you know the difference between right and wrong?

23 A. Yes sir.

24 Q. And do you know the difference between the truth and a
25 lie?

1 A. Yes sir.

2 Q. And is it good to tell the truth?

3 A. Yes sir.

4 Q. Is it good to tell a lie?

5 A. No sir.

6 Q. Okay. And do you think it's important to tell the
7 truth to this jury today, right now?

8 A. Yes sir.

9 Q. Okay. And if I said that we are outside, is that the
10 truth or a lie? Are we out -- if I said I'm standing on the
11 football field right now, is that the truth?

12 A. No, it's a lie.

13 Q. Okay. Has anyone told you to say anything other than
14 the truth today?

15 A. No. Say it again.

16 Q. Has anyone told you to say a lie today, to tell a lie
17 today?

18 A. No sir.

19 Q. All right. And do you intend to tell the truth -- are
20 you going to tell the truth?

21 A. Yes sir.

22 Q. Who is your mother?

23 A. Tonya Hicks.

24 Q. And do you live with her right now?

25 A. No sir.

- 1 Q. Who do you live with?
- 2 A. My Aunt Nell.
- 3 Q. Your who?
- 4 A. My Aunt Nell.
- 5 Q. Okay. And so are you living with your sister? Do you
- 6 have any brothers and sisters?
- 7 A. I don't have no brother, but I have sisters.
- 8 Q. Who is your sisters?
- 9 A. Minor Child Kelsey Collins, and Ronnie McGee.
- 10 Q. Okay. And is Minor Child -- do you and Minor Child have the
- 11 same mom and dad?
- 12 A. Yes sir.
- 13 Q. Okay. And what about your other two sisters? Do y'all
- 14 have the same mother?
- 15 A. Yes sir.
- 16 Q. Do y'all have the same father?
- 17 A. No sir.
- 18 Q. Who is there father?
- 19 A. Shannon McGee.
- 20 Q. And did you use to live with Shannon McGee and your
- 21 mom?
- 22 A. Yes sir.
- 23 Q. And where was that?
- 24 A. I don't know the address, but I know where it is.
- 25 Q. Where is it?

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1 A. It's in Andrews. We used to live in a trailer, in
2 number nine.

3 Q. Trailer number nine?

4 A. (NODS HEAD AFFIRMATIVE)

5 Q. Okay. And did your sister, Minor Child ever tell you that
6 somebody did something nasty to her?

7 A. Say again.

8 Q. Did your sister, Minor Child tell you that somebody did
9 something nasty to her?

10 A. Yes sir.

11 Q. And where did she say that happened? Where were you
12 when y'all had the conversation, when y'all talked about it?

13 A. It was in our other house. We moved to Jones Avenue.

14 Q. Okay, so -- and where is -- and who were you living
15 with?

16 A. I was playing my game.

17 Q. Did she tell you where somebody did something nasty to
18 her? Did she say where that happened?

19 A. Yes sir.

20 Q. What did she say?

21 A. She said it happened in our old trailer.

22 Q. How long did y'all live in that old trailer? Do you
23 know how old you were when you moved there?

24 A. I was seven and eight.

25 Q. Okay. So y'all lived there about two years?

Minor Child 2 - CROSS BY AXELROD
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1 A. I was seven, because when we moved to the house I
2 just -- I just turned eight.

3 Q. Okay. So when you were -- how old were you when she
4 told you that somebody did something nasty to her at the old
5 trailer?

6 A. I was eight years old.

7 Q. Did you tell anybody about that?

8 A. Yes sir.

9 Q. Who did you tell?

10 A. My grandma.

11 Q. Who is she? What's her name?

12 A. Annette Hicks.

13 Q. Is she here today?

14 A. Yes Ma'am -- I mean, yes sir,

15 MR. BRYAN: I don't have any other questions. Please
16 answer any questions Stuart Axelrod has, Mr. Axelrod.

17 THE COURT: Mr. Axelrod, your witness.

18 MR. AXELROD: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. AXELROD:

20 Q. Minor Child 2 have you ever lied about anything in your life?

21 A. Yes sir.

22 MR. AXELROD: Nothing further.

23 THE COURT: Anything on redirect?

24 REDIRECT-EXAMINATION BY MR. BRYAN:

25 Q. Did you lie to me sitting there in that seat?

JURY OUT/ON RECORD

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1 A. No sir.

2 MR. BRYAN: Thank you. Nothing, Your Honor.

3 THE COURT: Recross.

4 MR. AXELROD: No sir, Your Honor.

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

6 Ladies and gentlemen of the jury, at this point in time
7 I'm going to break the trial for lunch. I will give you the
8 same caution that I gave earlier. You should not discuss this
9 case with anyone. You should not gather information outside
10 of this courtroom, from any source. Don't listen to, watch or
11 read any news or media report concerning this ongoing trial,
12 or any of the incidents that are -- this trial is about.

13 Should anyone attempt to contact you concerning your
14 service on this jury, again, report that upon your return to
15 the courthouse. I can assure you I will take the appropriate
16 action for that.

17 At this point in time we are going to break. I'm going
18 to ask that you be back in your jury room by 1:30. We should
19 be in a position at that point -- excuse me -- by two o'clock.
20 We should be in a position at that point in time to again
21 begin the trial of this case.

22 This is a small town, obviously, and thank goodness
23 that's so. If at lunch you should happen to see any of the
24 participants in this trial, don't place yourself in such a
25 position as to overhear their conversations. Obviously they

1 may be discussing matters to come before this Court and you
2 should not, again, be influenced by any of those discussions
3 as well.

4 So we are going to excuse you for lunch. Be back in
5 your jury room at 2 o'clock this afternoon.

6 Thank you very much. You are free to go at this time.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, gentlemen, it's my understanding
10 that the next witness in the gentleman who is the -- is Mr.
11 Kinloch, and there is some question concerning his record. I
12 will be available at 1:30, if you would like to reconvene for
13 that -- for a hearing on that subject, just let me know.

14 Mr. Axelrod, after you have had a chance to look over
15 what information -- I don't know if they have gathered any
16 information at this point in time to confirm his situation as
17 far as incarceration, but if you wish for me to conduct a
18 proffer on that question, I'll be happy to do so, so everyone
19 should be prepared to begin again at 1:30.

20 We will break for lunch. Thank you.

21 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK, AND
22 OUTSIDE THE PRESENCE OF THE JURY.)

23 THE COURT: All right, is Mr. Kinloch available?

24 MR. BRYAN: He's right here, Your Honor.

25 THE COURT: Okay. All right. There was some

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1 indication that you wanted to make a proffer concerning his
2 prior record, and other issues. Do you wish to go forward, or
3 have we settled that issue, gentlemen?

4 **MR. BRYAN:** I think we have settled it, Your Honor. My
5 belief is that that '95 burglary would be admissible, as well
6 an '03 petty larceny, an '06 receiving stolen goods.

7 The issue that was -- has since been raised is, the
8 State is objecting -- I would like to make a motion in limine
9 to exclude any reference to the fact that he was charged with
10 burglary on his most recent conviction of receiving stolen
11 goods, based on the fact that it was prior to any discussion
12 that we ever had with him -- that I ever had, in reference to
13 this case, and as well as, it was never contemplated any deal,
14 simply the facts are, he was charged with burglary second,
15 which includes no evidence of burglary. He pled to what the
16 State could prove. Dori Beaugiani of our office prosecuted
17 him. He was offered and accepted a deal. I never spoke to
18 Dori. As an officer of the Court I was never aware Mr.
19 Kinloch would be involved in this case, never heard from him,
20 talked to him, nor Ms. Beaugiani, and so we would say that it
21 would be unfairly prejudicial to raise the implication that
22 this was some kind of deal which he received for his
23 testimony. It would be misleading to the jury, as well as
24 unfairly prejudicial.

25 **THE COURT:** Mr. Axelrod.

1 **MR. AXELROD:** Thank you, sir.

2 Your Honor, what concerns me -- on the last issue that
3 Mr. Bryan raised was that Mr. Kinloch was -- Kinloch was
4 arrested on a burglary charge, but on the N.C.I.C. that's not
5 even there, and that concerns me. If the State can help me,
6 that all the other charges of burglary it says burglary, but
7 on this -- on this N.C.I.C. it's void, and that, in itself, if
8 he was arrested for burglary, should be there, and I have
9 concerns why it's not on his permanent record.

10 **THE COURT:** What I've decided to do is allow the State
11 to put him up and offer a proffer concerning the circumstances
12 of his prior plea. I'll give you an opportunity, obviously,
13 to cross-examine on that point, if you wish to.

14 So, Mr. Kinloch, come forward and be sworn.

15 **MR. AXELROD:** And Your Honor, one other point, if I
16 may. I would ask the Court to protect my record. I know we
17 had a ruling earlier, but I would ask that we rule once again
18 at this point, because Mr. Kinloch is going to be here, that -
19 - I still maintain -- I would ask the Court to rule on that --
20 under Rule 609(A)(2), the prior record should be admissible,
21 and I'm just trying to protect this record.

22 **THE COURT:** Well, anything older than ten years I have
23 ruled inadmissible, both because of it's age, and because it's
24 my belief that the probative value would not outweigh it's
25 prejudicial effect.

1 MR. AXELROD: Thank you, Your Honor.

2 THE COURT: All right. You can bring him forward --
3 sir, come forward and be sworn.

4 AARON PEREZ KINLOCH, being first
5 duly sworn, testifies as follows:

6 DIRECT-EXAMINATION BY MR. BRYAN:

7 THE COURT: All right. Your witness, Mr. Bryan.

8 Q. Mr. Kinloch can you -- what's the most recent thing you
9 have been convicted of?

10 A. Receiving stolen property.

11 Q. And that was here in Georgetown County?

12 A. Yes sir.

13 Q. And you were prosecuted by who? Do you know?

14 A. Ms. Beaugiani.

15 Q. Ms. Beaugiani, Dori?

16 A. Yes sir.

17 Q. Okay. And is she present in the courtroom? Do you see
18 her?

19 A. Yes.

20 MR. BRYAN: Let the record reflect he has identified
21 Dori Beaugiani, Assistant Solicitor in our office.

22 THE COURT: The record shall so reflect.
23 You may proceed.

24 Q. And you pled guilty to what?

25 A. Receiving stolen property.

1 Q. And what were you originally charged with?

2 A. Burglary first, and then the burglary second.

3 Q. Okay. And at any time -- when is the first time you
4 ever talked to me?

5 A. Yesterday when I first came by here.

6 Q. And how is it that -- did I contact you first, or you
7 contacted me first?

8 A. No. I contacted you.

9 Q. Okay. And when did you do that?

10 A. July -- the end part of July, after I came out of
11 court.

12 Q. Okay. Did you plead guilty to receiving stolen goods,
13 or did you contact me first? Which happened first/

14 A. No. I pled guilty first.

15 Q. And did we have any discussion -- do you ever remember
16 your having a conversation with me about this case ---

17 A. No, uh uh.

18 Q. ---Prior to pleading guilty?

19 A. No.

20 Q. Did you receive any benefit, to your knowledge?

21 A. No.

22 Q. Did anyone ever negotiate with you and say if you would
23 come forward and testify you would get a better deal or ---

24 A. No, uh uh.

25 MR. BRYAN: I don't have any other questions.

AARON PEREZ KINLOCH - CROSS BY AXELROD

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1 THE COURT: All right.

2 Mr. Axelrod, your opportunity to cross-examine the
3 witness on this point.

4 MR. AXELROD: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. AXELROD:

6 Q. Mr. Kinloch, are you in prison currently?

7 A. Yes, I am.

8 Q. Which prison?

9 A. Broad River Correctional Institution.

10 Q. Broad View?

11 A. Broad River.

12 Q. Broad River. When you were arrested on the burglary
13 charges, you said burglary first ---

14 A. Yes.

15 Q. ---And then burglary second. Were you given warrants
16 for the burglary first and the burglary second?

17 A. I was given warrants for burglary first.

18 Q. When were you arrested?

19 A. I got arrested March the 31st, of '06.

20 Q. And how many burglaries in the past have you been
21 convicted of?

22 A. I wasn't convicted. I pled to it.

23 Q. Pled. How many have you pled to, sir ---

24 A. Twice, two times.

25 Q. Twice?

1 A. Uh huh (indicating positive)

2 Q. So it's safe to say that another burglary conviction
3 could have been -- could have possibly spent the rest of your
4 life in prison with another burglary conviction?

5 A. Yes, that's if I committed the burglary.

6 Q. Yes.

7 MR. AXELROD: Your Honor, I have nothing further. I
8 have an argument though -- for the Court though.

9 THE COURT: Anything further from the State from this
10 witness on this point?

11 MR. BRYAN: No. I can clarify just something briefly
12 for Mr. Axelrod ---

13 THE COURT: Yes sir, you might.

14 MR. BRYAN: ---Because I think there is a little
15 confusion.

16 There is only one incident. The reason why it was a
17 burg first and a burg second is, the arrest warrant was burg
18 first, and he was indicted for burg second, the same incident,
19 not two incidents.

20 MR. AXELROD: Sir -- but Your Honor, my argument is, if
21 I may, it's not on his N.C.I.C..

22 THE COURT: What does that indicate to you?

23 MR. AXELROD: Well, it indicates to me that -- my
24 belief is, every time somebody gets arrested for something on
25 the N.C.I.C. they put the arrest and the warrant number.

1 **THE COURT:** Again though, what does that indicate as
2 far as implications for this trial? There may be a mistake,
3 could be an error. I don't know. What does it implicate?
4 Tell me some solid evidence or proof that you have that there
5 is anything other than it's not on the report.

6 **MR. AXELROD:** Nothing, Your Honor. It just seems that
7 it's improper that it's not listed, and it might go to his
8 benefit in the future.

9 **THE COURT:** Well, again, if there is any evidence that
10 there was any wrongdoing, a deal, or this witness has
11 improperly testified, I'll be glad to let you put that up. As
12 of this time I've heard nothing other than the charge is not
13 listed on the N.C.I.C.. Again, I'm going to ask you if there
14 is anything you have that would indicate that this witness has
15 misled the Court, if there was a deal made that we are not
16 aware of, anything of that nature, this is your opportunity to
17 put that up.

18 **MR. AXELROD:** Yes sir, Your Honor.

19 **CROSS-EXAMINATION BY MR. AXELROD CONTINUED:**

20 Q. Mr. Kinloch, was a deal made with you at all?

21 A. No sir.

22 Q. Did the Solicitor, Ms. Beaugiani, did she -- did she
23 talk to you about the burglaries you had had in the past?

24 A. No. It was already on my record, and I already had
25 done my time for it too. There wasn't no need to talk about

1 that.

2 Q. And how much time are you serving now in the
3 penitentiary?

4 A. A year, for receiving stolen property.

5 Q. Were you sentenced to three years ---

6 A. No, I wasn't.

7 Q. ---Suspended on one year?

8 A. No, I wasn't.

9 Q. What was your sentence you received?

10 A. A year.

11 MR. AXELROD: Nothing further, Your Honor.

12 THE COURT: Anything further, Mr. Solicitor?

13 MR. BRYAN: No, Your Honor. I do have a motion,
14 actually, to exclude any question about whether -- where he's
15 incarcerated, or whether he's incarcerated right now. I don't
16 think it's relevant, and I don't think it's ever admissible.
17 We are never allowed to ask it, and I don't know why it would
18 be admissible in this instance, where he is currently
19 residing. He can ask -- he can impeach him by what he was
20 convicted of, and also whether it's three years suspended on
21 one year.

22 THE COURT: Mr. Axelrod, what's your position on that?

23 MR. AXELROD: Your Honor, I think I should be allowed
24 to -- for the veracity of the witness, to ask him if he's
25 incarcerated at this point. I don't think that's improper.

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1 **THE COURT:** Can you tell me why it would be improper to
2 ask him if he's incarcerated or not? He's going to -- I
3 assume ---

4 **MR. BRYAN:** I think it's prejudicial. I think it's ---

5 **THE COURT:** It's going to be on the record that he was
6 convicted, or pled guilty or whatever he -- I guess he pled
7 guilty, a month ago.

8 **MR. BRYAN:** Well, I guess my objection is that it's not
9 relevant, and I object on the basis of lack of relevance, that
10 it would provide any information to the jury that's useful for
11 them to decide this case, and therefore -- there's a rule that
12 states only relevant evidence is admissible, and I don't think
13 it's relevant.

14 **MR. AXELROD:** Your Honor, for impeachment purposes I
15 believe it is relevant.

16 **THE COURT:** Well, I'm going to let you get the
17 conviction in. I'm not sure the fact that he's in jail
18 impeaches him. Tell me how that impeaches him.

19 **MR. AXELROD:** It goes to his veracity that, you know --
20 -

21 **THE COURT:** Well, if he deny -- if he says something
22 that's not true, then you could get into that, but ---

23 **MR. AXELROD:** But I believe I should be allowed the
24 latitude, Your Honor, to go into that he's actually a felon
25 serving prison time, and the jury can take it for what it's --

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1 it can look at -- normally -- most times when they come back
2 from prison they are dressed in prison clothes. You know, I
3 thought Mr. Kinloch was on probation, and that's not the case.
4 I think that -- if a witness is going to testify to some
5 statement that was made in jail ---

6 THE COURT: I'll allow you to ask that question, but
7 don't go any further.

8 MR. AXELROD: Okay. And the question being, Your
9 Honor?

10 THE COURT: Are you incarcerated at the present time.

11 MR. AXELROD: Thank you, Your Honor.

12 THE COURT: You may step down.

13 All right. My ruling on the question of the -- whether
14 or not there is some kind of a deal or something like that,
15 unless there is other foundation laid, my ruling is in favor
16 of the State. You can't go into that line of questioning.

17 MR. AXELROD: Your Honor, I'm not going to go there.

18 THE COURT: Okay. Solves that problem then.

19 MR. BRYAN: Thank you, Your Honor.

20 THE COURT: Anything else, gentlemen?

21 MR. BRYAN: Nothing from the State, Your Honor.

22 THE COURT: Bring the jury back.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right, the record should reflect that

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1 all jurors have returned to the courtroom.

2 I trust everyone had a good lunch, and you are ready
3 this afternoon now to continue with the trial of the case.

4 When we broke earlier the State was still presenting
5 it's evidence in the trial.

6 You may call your next witness.

7 MR. BRYAN: Thank you, Your Honor. If it please the
8 Court.

9 Excuse me. The State calls Aaron Kinloch.

10 THE COURT: Come forward and be sworn, sir.

11 AARON PEREZ KINLOCH, being first
12 duly sworn, testifies as follows:

13 DIRECT-EXAMINATION BY MR. BRYAN:

14 THE COURT: Mr. Kinloch, state your name, please, and
15 be sure you speak up, and into the microphone.

16 A. Aaron Perez Kinloch.

17 Q. Mr. Kinloch, ---

18 A. Yes sir.

19 Q. ---Do you know Shannon McGee?

20 A. Yes sir.

21 Q. How do you know him?

22 A. From the County Jail.

23 Q. And were you working at the jail, or were you in the
24 jail?

25 A. No. I was incarcerated at the jail.

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1 Q. What were you incarcerated for?

2 A. At the time, burglary first.

3 Q. Okay. And what was he incarcerated for? I'm sorry. I
4 take that back. What -- at what period of time ---

5 MR. AXELROD: Your Honor, can we approach?

6 THE COURT: Yes, you may.

7 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

8 THE COURT: All right, Mr. Solicitor, you may proceed.

9 Q. You and Mr. McGee were at the County Jail ---

10 A. Yes sir.

11 Q. ---Together?

12 A. Yes sir.

13 Q. When was that?

14 A. When I met him in March 31st ---

15 THE COURT: Lean forward and speak right in the
16 microphone, please.

17 A. I -- when I met him, March 31st, when I got arrested.

18 Q. And you were in the Georgetown County Detention Center
19 until when?

20 A. August the 9th, when I got transported to S.C.D.C..

21 Q. And in the meantime, did you plead guilty to something?

22 A. Yes, I did.

23 Q. What did you plead guilty to?

24 A. Receiving stolen property.

25 Q. Did you do that? Were you guilty of it?

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- 1 A. Yes sir.
- 2 Q. And that's not your only record, is it?
- 3 A. No sir.
- 4 Q. You were convicted in 1995 of burglary second degree?
- 5 A. Yes sir.
- 6 Q. And you were convicted in 2003 for petty larceny?
- 7 A. Yes sir.
- 8 Q. And did you do those things?
- 9 A. Yes sir.
- 10 Q. Did you have a trial, or did you plead guilty?
- 11 A. No, I pled guilty.
- 12 Q. To all of them?
- 13 A. Uh huh (indicating positive)
- 14 Q. At what point did you meet me?
- 15 A. Well, yesterday, when I came back from S.C.D.C..
- 16 Q. Did I ever -- you ever talk to me before yesterday?
- 17 A. No.
- 18 Q. How did -- who contacted who? Did I contact you, or
- 19 did you contact me?
- 20 A. I contacted you.
- 21 Q. And when did that happen?
- 22 A. The end part of July, after I came from court.
- 23 Q. Okay. And how did you contact me?
- 24 A. Through letter.
- 25 Q. So you wrote me a letter?

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- 1 A. Yes sir.
- 2 Q. And then shortly thereafter you got shipped off to
- 3 S.C.D.C. ---
- 4 A. Yes sir.
- 5 Q. ---Where -- are you still at S.C.D.C.?
- 6 A. Yes sir.
- 7 Q. South Carolina Department of Corrections. And that's
- 8 where you are obviously -- what you just pled to for receiving
- 9 stolen goods?
- 10 A. Yes sir.
- 11 Q. During your stay at the Georgetown County Detention
- 12 Center, did you ever see -- did you know Shannon McGee prior
- 13 to that?
- 14 A. No, not really, because when I got in County Jail he
- 15 asked me did I used to stay on Emanuel Street, which I did,
- 16 and he say he knows me from back then, but I didn't really
- 17 know him at that point in time.
- 18 Q. Did he say anything about whether you recognized him,
- 19 or knew him or anything?
- 20 A. No, not really. He just asked me -- he just asked me
- 21 if I stayed on Emanuel Street before. He said if I remembered
- 22 him. I told him no, which I didn't, you know, and that was
- 23 it, you know.
- 24 Q. He knew you but you didn't know him?
- 25 A. Yes.

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1 Q. Did he look the same as before, or did he say anything
2 about that?

3 A. No. I mean, he just told me, you know, he told me he
4 had -- when he had dreads. Like I say, I didn't remember him,
5 but he remembered me.

6 Q. He said he used to have dreads when you had saw him
7 before?

8 A. Yes. That's what he told me. You know, he was trying
9 to get me to remember him.

10 Q. All right. And did y'all have any conversation about
11 his charges, while he was in the jail?

12 A. Yes, then we went on down the line.

13 Q. Just tell -- okay, where did that conversation take
14 place?

15 A. In my cell.

16 Q. And how was it that he was in your cell?

17 A. I mean, all of us ---

18 Q. Did he share a cell with you?

19 A. No, uh uh.

20 Q. Explain to the jury how the jail is configured so that
21 you would be ---

22 A. After each count everybody would stand up within their
23 own pod, and you know, you get to watch T.V. together, play
24 cards, and so forth with each other in cells, you know, and
25 just to talk and use the phone, things like that.

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1 Q. And so did you ask him to come in your cell, or did he
2 just come in your cell?

3 A. No. He just came up there.

4 Q. And did anybody on the police's behalf, or my behalf,
5 or the State, approach you and ask you to get him to talk to
6 you?

7 A. No.

8 Q. Okay. Did you invite him into your cell?

9 A. No, uh uh.

10 Q. All right. So he came into your cell, and what did he
11 say?

12 A. No, he just wanted -- he wanted to talk with me about
13 his case, you know, and he was just explaining to me that, you
14 know, he was on serious charges, so forth, like that, and ---

15 MR. BRYAN: Court's indulgence, Your Honor.

16 Can I stop him right there and approach?

17 THE COURT: Yes, you may.

18 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

19 THE COURT: Ladies and gentlemen of the jury, there is
20 a matter concerning evidence that I do have to take up with
21 the attorneys outside of your hearing at this point in time.
22 I cautioned you that that might become necessary at some point
23 in the trial.

24 I'm going to excuse you to the jury room. It shouldn't
25 take but just a few minutes. Again, I'm going to instruct

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1 you, don't begin any discussions until I tell you to begin
2 your deliberations.

3 Thank you very much. You may retire to the jury room.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right. To put on the record the
7 content of our sidebars concerning this witness, first of all
8 that we had a sidebar concerning the question that was
9 withdrawn by the Solicitor as to the -- it was approaching
10 getting into the nature, or what the charge was that the
11 Defendant was in jail on. I offered to strike that from the
12 record. Defense attorney said that would not be necessary
13 since the question had been withdrawn.

14 Secondly, the Solicitor has indicated to me that, in
15 talking with this witness he does not recall having instructed
16 this witness not to discuss the severity of the penalty that
17 might result from a conviction in this case. At the beginning
18 of the trial I did put the Defendant on notice that, were you
19 convicted of the charge that he stands before this Court on,
20 that the sentence would be a mandatory life without parole.

21 So I'm going to instruct the witness at this point in
22 time, if you are aware of that fact, or if you are aware of
23 what I just discussed concerning the prior convictions of the
24 Defendant, and the mandatory nature of the sentence should he
25 be convicted, I am instructing you at this point in time not

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1 to make that statement, or even refer to that in your
2 testimony to the jury. I have already excluded that evidence
3 from the case, and it cannot be discussed.

4 Do you understand that, sir?

5 A. Yes sir.

6 THE COURT: So, in responding to any of the Solicitor's
7 questions, you should not refer to the type of penalty that
8 the Defendant might suffer should he be convicted, or the
9 length of time that he might have to serve. You understand
10 that, sir?

11 A. Yes sir.

12 THE COURT: All right, Mr. Solicitor, is that
13 sufficient for us to go forward?

14 MR. BRYAN: Yes sir, Your Honor, and my request would
15 be that, basically that -- I think he said it perfectly, and I
16 was just afraid he would say more, so if he can just pick up
17 that he had -- he said he had serious charges, and then they
18 had a conversation.

19 THE COURT: I think -- I don't find any fault with
20 that. Obviously he does have serious charges. That's what
21 he's here on, so I have no problem with that response, but I
22 did want the witness to be aware of the fact that, if he did
23 discuss the possible penalty that he could suffer, that should
24 not be mentioned to the jury because it's not a factor to be
25 considered concerning his guilt or innocence of the charges.

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1 Any objection to my statement from the defense?

2 MR. AXELROD: No sir.

3 THE COURT: All right. Bring the jury back.

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right. The record should reflect that
7 all jurors have now returned to the courtroom.

8 I have resolved the question with the attorneys.

9 You may proceed with your examination, Mr. Solicitor.

10 MR. BRYAN: Thank you, Your Honor.

11 THE COURT: Yes sir.

12 DIRECT BY BRYAN CONTINUED:

13 Q. Mr. Kinloch, I apologize for interrupting you at that
14 point. I had neglected to -- and you were saying that Mr.
15 McGee had approached you and said that he had some serious
16 charges.

17 A. Yes sir.

18 Q. And then what was the nature of your discussion with
19 him after that?

20 A. All he was explaining to me is, you know, what he
21 didn't do, and what he did do, you know, but as far as saying
22 well, he didn't use his penis sexually toward -- I guess it's
23 his stepdaughter -- I don't know -- but he said he did use his
24 finger, you know, and I -- you know, the conversation just
25 went on, you know, just basically what had happened, what had

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1 took place, and that -- you know, that was mainly what it was,
2 you know.

3 Q. Did you ask him about this, or did he ---

4 A. No. No. Because I'm the type person I don't like to
5 get involved who is -- what they are locked up for because,
6 you know, that's the way of the jail, you know. If they don't
7 approach you about what you are locked up for, you know, you
8 don't volunteer to ask, you know, unless you and that person
9 are real close on the street, or whatever, like that.

10 Q. So it's very important that the jury understands what
11 he said he did. What did he tell you he did?

12 A. He said he didn't sexually, you know, advance on her
13 with his penis, you know, he said he used his fingers, you
14 know, and that was it, you know, he said, but that's why the
15 D.N.A. test came back inconclusive, you know, so you know,
16 that's what made -- you know, that's what he told me, and that
17 was it.

18 Q. And you said you thought it was his step-daughter. How
19 did you get that information?

20 A. Through the guys that knew him off the street, you
21 know. That was it.

22 Q. What -- when -- I think we have covered this, but you
23 met me yesterday; is that correct?

24 A. Yes sir.

25 Q. And have I ever corresponded with you, written you a

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1 letter?

2 A. No, uh uh.

3 Q. And has any representative of my office, or law
4 enforcement, ever talked to you about this issue prior to me
5 bringing you yesterday and speaking to you about it?

6 A. No sir. I didn't even know I was coming.

7 Q. And why did you -- why did you -- so somebody just came
8 and got you and brought you to Georgetown without you knowing
9 what was going on?

10 A. Yes sir.

11 Q. Okay. And then I came and spoke to you yesterday?

12 A. Yes sir.

13 Q. Why -- why did you send me a letter?

14 A. Because the simple fact is, if that had ever -- if
15 whatever he did took place, that's nasty to me, me myself.
16 I've got kids of my own.

17 Q. You got any daughters?

18 A. I've got four.

19 Q. Did you put that in your letter ---

20 A. Yes.

21 Q. ---That you wrote to me?

22 A. Uh huh (indicating positive)

23 Q. Okay. You got any grudge against Mr. McGee?

24 A. No.

25 Q. You got any reason to make some -- this up on him?

1 A. No.

2 Q. And have I promised you anything, or even implied, in
3 any way, given you any kind of deal? Is there any expectation
4 on your part that you are going to get something out of what
5 you just said?

6 A. No.

7 Q. And why did you say it?

8 A. Why did I say it?

9 Q. Yes sir.

10 A. Because it's nasty. I mean, you know, everybody --
11 everybody here got kids, you know. If something would happen
12 to that -- to my child, no telling what I'm going to do, you
13 know. I would think about the consequences later on. My
14 actions come first on that behalf. That's just me. And I'm
15 the -- I'm the type of person I'm not afraid to take -- handle
16 my consequences, because I meet my problems head on.

17 MR. BRYAN: Thank you very much.

18 THE COURT: Mr. Axelrod, your witness.

19 CROSS-EXAMINATION BY MR. AXELROD:

20 Q. But burglary is okay, correct?

21 A. Say again.

22 Q. Burglary is okay.

23 A. No, they are not.

24 Q. Excuse me.

25 A. No, they are not.

- 1 Q. You said Shannon came into your cell and talked to you?
- 2 A. Yes, he did.
- 3 Q. When was that?
- 4 A. Probably about May or June.
- 5 Q. Okay. May or June?
- 6 A. Uh huh (indicating positive)
- 7 Q. Okay. Tell me what he said to you. Tell me
- 8 everything. Take your time.
- 9 A. The only thing he said, he came to me, asked me if I
- 10 had a moment. I told him, I said, yeah. So ---
- 11 Q. Did you have a T.V. in your room?
- 12 A. No. We don't allow T.V.s. They have the T.V.s. on the
- 13 rock.
- 14 Q. Playing cards?
- 15 A. Yes.
- 16 Q. Were you playing cards when he came over?
- 17 A. No.
- 18 Q. What were you doing when he came over?
- 19 A. I was coming out my room, and he was coming up the
- 20 steps.
- 21 Q. He said, hey, let's go into your room.
- 22 A. He said he needed to talk to me.
- 23 Q. And you went in your room?
- 24 A. Yes, I did.
- 25 Q. And you sat down. You both sit on the bed?

1 A. No. We sat on the table, on the stool right there at
2 the table, and I sat on my bed.

3 Q. Okay. Then what happened?

4 A. And we just started talking, and he was telling me
5 about his charge, the severity of the charge, and what took
6 place and what didn't took place.

7 Q. Well, tell me what he told you took place.

8 A. He told me on that particular night he was on cocaine,
9 and he said that he entered his step-daughter's room, and he
10 said that he didn't sexually assaulted her with his penis, but
11 with his finger, and he said that's why the D.N.A. test came
12 back inconclusive. And he said -- also he said that he had --
13 -

14 Q. Wait, wait, wait, wait. He said the D.N.A. test came
15 back inconclusive?

16 A. He said, that's why it came back inconclusive.

17 Q. He said the D.N.A. test came back ---

18 A. Exactly.

19 Q. ---Inconclusive because he was doing cocaine?

20 A. No, because of the sexual charge that was against him.

21 Q. Well, explain the D.N.A. test. I'm confused now.

22 A. I don't know. You'll have to ask him that.

23 Q. I'm asking you. You said that he told you the D.N.A.
24 test came back inconclusive.

25 THE COURT: Mr. Axelrod, you are going to have to allow

1 the witness an opportunity to respond, so don't cut him off
2 until he's finished his statement.

3 MR. AXELROD: Yes sir, Your Honor.

4 A. He said that that's why the D.N.A. test came back
5 inconclusive.

6 Q. Because?

7 A. Because he did not sexually been with her with his
8 penis wise ---

9 Q. Okay.

10 A. ---But with his fingers.

11 Q. Okay. And what else did he tell you?

12 A. That was it, on that -- as far as saying what he did,
13 that was it. Then we got into a conversation about him having
14 obtained medical records and so forth on.

15 Q. Let me ask you this.

16 A. Uh huh (indicating positive)

17 Q. Would it surprise you that there never was a D.N.A.
18 test?

19 A. Well, I don't know. I have to go by -- I went by what
20 he said. If he ---

21 Q. I'm going by what you said he said.

22 A. And I went by what he told me.

23 Q. Why would Shannon tell you something that wasn't true?

24 A. Why would he tell anybody in the County Jail anything?

25 Q. Are you making this up today?

1 A. If I was I wouldn't have been sitting here. I ain't
2 the only person he talked to.

3 Q. Excuse me.

4 A. I'm not the only person he had talked to.

5 Q. Who else did he talk to?

6 A. Oh, they gone home now. Let's see. He talked to Joe
7 Nathan Lewis, which he got him involved with it.

8 Q. Who else?

9 A. Ah, what's his name, from Sampit? I forgot his name.
10 He got -- as a matter of fact, he had him involved. Daryl
11 Knowlin.

12 Q. Who else?

13 A. He talked to Mike Jones, Michael Jones.

14 Q. Who else?

15 A. That's about it, far as I know of.

16 Q. Talked to everybody in his pod about his case?

17 A. I wouldn't say everybody ---

18 Q. Told you the D.N.A. ---

19 A. ---But certain people.

20 Q. I'm sorry. Go ahead.

21 A. I said, certain people, as far as I know of.

22 Q. About a half dozen, or a dozen people?

23 A. I wouldn't say that much.

24 Q. But he told you that the D.N.A. test came back
25 inconclusive?

1 A. Yeah, we talked. Yes.

2 Q. And what did you tell him when he said that to you?

3 A. I said, well, if that's the case you are good then.

4 Q. But there never was one, was there?

5 A. I don't know. I'm not a doctor. I been going by what
6 he told me.

7 MR. AXELROD: Nothing further from this witness.

8 THE COURT: Redirect.

9 REDIRECT-EXAMINATION BY MR. BRYAN:

10 Q. Are you absolutely positive that he said the word
11 inconclusive?

12 A. Yeah. Cause we was trying to look it up in the
13 dictionary.

14 Q. Okay. Who was trying to look it up in the dictionary?

15 A. All of us. Me, him, Cory Rutledge. We was trying to
16 figure out exactly what it meant, on the legal term.

17 Q. Inconclusive?

18 A. Inconclusive.

19 Q. Did you -- what did you take that -- did you take that
20 to mean that there was no semen to test, no -- no -- no
21 D.N.A.?

22 A. There was no evidence, period, of saying he was with
23 her sexually, you know what I'm saying, as far as any penis
24 wise, you know.

25 Q. So there was no evidence?

1 A. Yeah.

2 THE COURT: I'll ask the attorneys to approach.
3 Gentlemen.

4 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

5 THE COURT: You may resume.

6 MR. BRYAN: Thank you, Your Honor.

7 REDIRECT-EXAMINATION BY MR. BRYAN:

8 Q. On cross-examination you mentioned several people -- I
9 don't know how many -- and I can't call their names now. Did
10 you mention all those people to me?

11 A. No.

12 Q. Okay. So, to your knowledge, is there any way that me,
13 or another representative of the State would know that he had
14 said that to all those people?

15 A. No.

16 Q. So you told what you know, but you didn't tell me that
17 he told other people?

18 A. No, uh uh. I just told just what I knew.

19 Q. Is there any reason you didn't tell me, or you just
20 didn't think about it?

21 A. No, I just didn't thought about it at the moment, you
22 know, till Mr. Axelrod got out of hand.

23 MR. BRYAN: Thank you, Your Honor.

24 THE COURT: Anything on recross?

25 MR. AXELROD: Court's indulgence for one moment, Your

CAROL ANN RAHTER, M.D. - DIRECT BY BRYAN

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1 Honor.

2 THE COURT: Yes sir.

3 MR. AXELROD: Nothing further, Your Honor.

4 THE COURT: You may step down. Thank you very much.

5 The State may call it's next witness.

6 MR. BRYAN: Thank you, Your Honor. If it please the
7 Court, the State calls Dr. Carol Rahter.

8 THE COURT: Come forward and be sworn, Ma'am.

9 CAROL ANN RAHTER, M.D., being first
10 duly sworn, testifies as follows:

11 DIRECT-EXAMINATION BY MR. BRYAN:

12 THE COURT: All right, Mr. Bryan, your witness.

13 MR. BRYAN: Thank you, Your Honor.

14 THE COURT: Yes sir.

15 Q. Dr. Rahter, where do you work?

16 A. I work at Georgetown Hospital and Waccamaw Hospital.

17 Q. Okay. And are you also affiliated with the Children's
18 Recovery Center?

19 A. Yes. I'm the Medical Director of the Children's
20 Recovery Center.

21 Q. And how long have you been the Medical Director there?

22 A. Thirteen years.

23 Q. And what is the Children's Recovery Center, first of
24 all?

25 A. The Children's Recovery Center is a multi-disciplinary

1 child sexual abuse clinic, where children are referred that
2 have allegedly been victims of sexual abuse, and they are
3 referred by either D.S.S. or law enforcement, and we perform
4 forensic interviews of the children there, and I perform the
5 forensic medical exam. I used to do all the forensic
6 interviews, but now I do some of them, and I have someone else
7 who does some. And I perform all the forensic medical exams,
8 and then they receive counseling there, and the non-offending
9 parent receives counseling there.

10 Q. What's your educational background and training?

11 A. Do you want me to start with college?

12 Q. Sure.

13 A. Okay.

14 MR. AXELROD: Your Honor, we would stipulate to her
15 credentials. We are fine with that.

16 THE COURT: She has been offered as an expert in what
17 field, sir?

18 MR. BRYAN: This would be in a field of forensic
19 interviewing, and sexual assault assessment.

20 THE COURT: Do you stipulate that she ---

21 MR. AXELROD: Your Honor, I believe Dr. Rahter has been
22 -- may be -- unfortunately, hundreds of times.

23 THE COURT: Okay. Ladies and gentlemen of the jury,
24 at this point in time the attorneys have stipulated to the
25 fact, and a stipulation is simply an agreement between the

1 parties. The facts do not have to be proven that certain
2 facts exist. They have stipulated to the fact that this
3 particular witness is qualified as an expert within the area
4 of her training and education. What that means is that,
5 normally a witness who testifies in a trial, such as this one,
6 is not allowed to give their opinions on subject. They are to
7 testify concerning facts, or matters that they have directly
8 within their knowledge. We make an exception to that rule
9 when -- case of witnesses who are qualified because of their
10 education, training or expertise in some field, and we allow
11 those witnesses to give opinions within their area of
12 expertise, and also to state the reasons for their opinions.

13 At the close of the case, and during my charge on the
14 law I will give you further instructions as to how you should
15 treat the testimony given by an expert, but suffice it to say,
16 at this point in time this witness has now been qualified as
17 an expert within the field for which she has been offered,
18 therefore we will allow her to state her opinions within that
19 field, and state the reasons for those opinions.

20 You may proceed.

21 MR. BRYAN: Thank you, Your Honor. If it please the
22 Court, later in her testimony she is also going to testify, as
23 an expert in child sexual assault examination and evaluation,
24 so there's two ---

25 THE COURT: Any objection on that certification, Mr.

1 Axelrod?

2 MR. AXELROD: No sir, Your Honor. May we approach at
3 this time?

4 THE COURT: Yes, you may.

5 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

6 THE COURT: You may proceed, Mr. Solicitor.

7 Q. So you have already been stipulated as an expert, and
8 I'm not going to go through the entire voir dire but, for the
9 jury's edification, how long -- did you -- at some point did
10 you conduct the forensic interviews?

11 A. Yes.

12 Q. How long did you do that?

13 A. About eleven years.

14 Q. And how many kids, or children did you see in reference
15 to sexual -- alleged sexual assaults during that period of
16 time?

17 A. I have performed over a thousand forensic interviews,
18 and over fifteen hundred medical exams, forensic medical
19 exams.

20 Q. Okay. And so the distinction there is that, forensic
21 interviews you talk to the child, but the medical exam is
22 obviously when you ---

23 A. Examine.

24 Q. ---That's when the doctor examines?

25 A. Correct.

1 Q. Okay. So you did both of those things ---

2 A. Correct.

3 Q. ---At one time, but did you -- did someone at the
4 Children's Recovery Center see Minor Child

5 A. Yes. Kathy Koons interviewed Minor Child

6 Q. She did the interview, right?

7 A. Correct.

8 Q. Okay. Let me ask you about some -- just some general
9 concepts regarding child sexual assault victims. What is --
10 what is delayed recording?

11 A. Delayed recording means that the majority of children
12 that are victims of sexual abuse do not disclose immediately
13 when it occurs. There's a variety of reasons for that, but it
14 can be anywhere from a day later to years later when children
15 disclose what occurs to them. The majority of the time that
16 children don't disclose is when it's somebody that they know,
17 in other words, it's not a stranger perpetrator. There is a
18 higher incidence of rapid disclosure with stranger
19 perpetrators than there is with those who are perpetrated by
20 somebody they know and oftentimes care about. There is a
21 variety of reasons for that. During the relationship with
22 that person there is oftentimes threats that occur that is
23 going to affect other family members if they tell, that other
24 family members aren't going to believe them if they tell what
25 happened, that they are going to go to jail if that hap -- if

1 they tell, that there won't be any money in the family, and
2 actually I've interviewed children who were told that they --
3 you know, people would be killed, or their animals would be
4 killed if they disclosed what was happening to them. So the
5 majority of our children do not disclose immediately. Out of
6 a hundred and eighty children that we saw last year, only two
7 disclosed at the moment that it occurred, and both of those
8 were stranger perpetrators. So it's -- the norm is not to
9 disclose when it happens.

10 Q. And what is -- what is recantation?

11 A. There is a process of disclosure, actually there's four
12 steps. The first step is denial - a child will deny if asked.
13 The second is, they will disclose what happened. The third is
14 that they will recant what they disclosed happened, and the
15 fourth is reaffirmation.

16 Q. Does that happen in every single ---

17 A. It does not happen in every case, and there's a lot of
18 different things that play into whether or not that happens,
19 the age of the child, the outside support they have, whether
20 or not somebody believes them, whether or not family members
21 are upset with them for disclosing, and what happens. I mean,
22 frequently, unfortunately, children are removed from homes
23 when they disclose, and they get put in maybe a foster home
24 that's not as nice as the home they were in. So there's
25 reasons for children to recant.

1 And then the final step is reaffirmation, and oftentimes
2 after a child has recanted they will come back to the original
3 disclosure, and then explain why they recanted.

4 Q. Is recanting a rare thing for a twelve year old victim
5 of C.S.C.?

6 A. No. Actually the statistics and the research show
7 anywhere between twenty-five and seventy-five percent of
8 adolescent children recant, depending on which research study
9 you are looking at.

10 Q. What is grooming?

11 A. Grooming is a process that perpetrators use with
12 children, to make them comfortable with what they are going to
13 eventually do to them. It can be as simple as just rubbing
14 non-genital parts, and making them comfortable with them
15 rubbing those parts. It can involve showing them pornography
16 to just desensitize them to adults, or adults and children's
17 sexual activities, and then -- and part of the grooming is
18 that -- it's very rare that I hear a child disclose that
19 immediately there was penile penetration. The grooming
20 process is, we start touching this, and then we start touching
21 maybe the breasts, and then we start touching the genitals on
22 the outside of the clothing, and then advance to the inside of
23 the clothing.

24 Oftentimes the things that are done in the beginning of
25 the grooming process are non-painful. They don't hurt at all.

1 They actually feel good to children, and so there is more
2 trust that comes with that, as the grooming process goes on,
3 and there is more -- more of a chance the child is not going
4 to disclose to anybody. So then when it advances to something
5 that is painful, like penile penetration, or a digital
6 penetration, or a foreign body penetration of a child's vagina
7 or anus, by then there is such trust between the perpetrator
8 and the child that it reduces the chance of the child telling.
9 So that's a grooming process.

10 Also, frequently what we hear in the grooming process is
11 that there is rewards for keeping the silence, toys are
12 bought, Barbie dolls are bought. They are taken out for
13 McDonalds. They get extra privileges on the phone. They are
14 rewarded for their silence, and that's also part of the
15 grooming process.

16 Q. Now you -- again, you didn't perform the forensic
17 interview on Minor Child but did you perform a medical exam
18 on her?

19 A. Yes, and I reviewed her tape of the forensic interview.

20 Q. Okay. And so did you rely upon that -- who conducted
21 the forensic interview?

22 A. Kathy Koons.

23 Q. Okay. And does she work in that same office?

24 A. She is my program coordinator of the office.

25 Q. And did you rely upon that interview in the form of a

1 video tape of it?

2 A. You mean when I was ---

3 Q. Did you rely upon -- in making your findings, and
4 conducting your medical exam, did you -- did you rely upon her
5 interview, and the things that were related by the victim in
6 that as medical history?

7 A. I read her -- the report prior to doing the medical
8 exam on this child, but there's -- I have to clarify this by
9 saying, there's three ways to make a diagnosis as a physician,
10 of child sexual abuse. One is physical exam, one is forensic
11 interview, and actually the third is, we have had children who
12 have had negative interviews, negative exams, and we have had
13 video tape evidence of the crime. So those -- those are the
14 three ways you can make a diagnosis.

15 If I interview a child and their exam is normal, but
16 their forensic interview is positive, I will make a diagnosis
17 of child sexual abuse. If I examine a child, and the exam is
18 abnormal, I will make a diagnosis of child sexual abuse.

19 In this case I did not review her tape until after I had
20 already examined this child. I actually didn't review it till
21 today. But the report, which was completed by Kathy Koons, I
22 reviewed prior to her physical exam.

23 Q. What was the history given in that report?

24 A. That there was viewing of pornography, digital
25 penetration of her vagina, oral copulation of her genitalia,

1 masturbation of the perpetrator, fondling and sucking of her
2 breasts.

3 Q. And when did you -- what was the date of the exam that
4 you performed?

5 A. 9/1/05.

6 Q. And what type of exam was performed, like chronic
7 versus rape kit, or what kind of exam do you call that you
8 did?

9 A. When children make a disclosure right after it occurs,
10 if it's less than seventy-two hours they are taken to the
11 emergency department, and we do what is called an acute child
12 sexual assault exam, where we try to collect D.N.A.. It's
13 very similar to the adult female, or male, sexual assault
14 exam. After seventy-two hours that's not done. The majority
15 of any injury to both adults and children's genitalia is
16 completely healed within seventy-two hours. The chance of
17 collecting any D.N.A. is minuscule. So if it's greater than
18 seventy-two hours from the time the child has been touched
19 they have what we call a chronic sexual assault exam, where we
20 examine their whole body, and I use a colposcope, which is
21 kind of like a microscope, that magnifies the genitalia,
22 magnifies any scars anywhere on their body, because we
23 frequently see children that are also physically abused, so we
24 are -- I am assessing for that too. And it's attached to a
25 T.V., with a big T.V. screen, so I actually look at the T.V.

1 screen while I'm examining the child, and then it's placed
2 onto D.V.D., so it's forever recorded. If there is any injury
3 that occurs later in a child we can go back and see if it was
4 there before.

5 And we look at their whole body. We weigh them, see how
6 tall they are, look at their, you know, H.E.N.T., head, eyes,
7 ears, nose and throat, palpate her abdomen, look for any scars
8 on the arms and legs. I kind of start with the exam with
9 looking at their toes, and showing them sand on their toes,
10 and looking at their fingerprints, and their fingernail
11 polish, and -- to make them comfortable, so the last part of
12 the exam is actually the genital exam, which we did all that
13 with this child.

14 Q. And what were your findings during the exam?

15 A. That she was tanner stage three breasts and genitalia,
16 which means that she was a developing child, that she had
17 pubic hair and so forth -- that's just different staging of
18 development -- that her labia, majora labia and majora, which
19 are the outsides of genital area, were normal, that her hymen
20 was annular in shape, and what that means is, it goes --
21 there's different shapes of hymens in children -- annular is
22 the shape that goes all the way around the vaginal opening --
23 that it was estrogenized, which means that it's -- that she is
24 to the point of having her period, and so it's really stretchy
25 and soft, versus a child that's five years old doesn't have

1 that -- it's real thin and easy to tear -- and that she had a
2 partial transection at five o'clock of the hymen, which
3 means -- a complete transection means that the tissue is
4 completely torn all the way through the hymen, down to where
5 the hymen ends -- a partial transection means it goes
6 partially through the hymen -- that she didn't have any
7 scarring outside the vagina and the rectum, and she had no
8 abnormalities of the rectum, so he physical exam was
9 diagnostic with penetration with a five o'clock partial
10 transection.

11 There is -- do you want me to just keep going? Sorry.
12 I'm kind of ---

13 Q. Well, I can ask you, how does that -- how does it
14 differ from -- how does your findings in this case differ from
15 a normal exam?

16 A. Okay. A child this age, not necessarily age, but
17 tanner stage three, and tanner stage four, means that they
18 have an estrogenized hymen, and so a normal exam in this child
19 would have been if she had an annular hymen that was
20 estrogenized, that did not have any transections in it.

21 There's different categories that you put your findings
22 in. For instance, if a child just has a redness that could be
23 suspicious, but it's not diagnostic of a penetrating injury.
24 If a child is pregnant that's diagnostic of a penetrating
25 injury. If a child has a tear of her hymen, a transection of

1 her hymen, that is diagnostic of a penetrating injury to the
2 vagina, through the hymen.

3 Q. When you say that's diagnostic of, what does that mean
4 in layman's terms?

5 A. That means that there had to be a penetrating injury to
6 get this finding.

7 Q. Okay. And let me stop you there. Can you say -- so
8 with a reasonable degree of medical certainty, can you say
9 there was a penetrating injury?

10 A. Yes, there was a penetrating injury.

11 Q. And with a reasonable degree of medical certainty, can
12 you say what caused that?

13 A. I cannot.

14 Q. Why is that?

15 A. Because fingers can cause penetrating injuries, foreign
16 bodies can, penises can, anything that enters the vagina and
17 tears the hymen is a penetrating injury, but by looking at the
18 hymen you don't know what caused that injury.

19 Q. Okay. And is your medical exam -- findings of -- are
20 your medical findings consistent with what her history was?

21 A. Yes, they are.

22 Q. In other words, the story that she told you -- to Kathy
23 Koons?

24 A. Yes. Her forensic interview revealed digital
25 penetration of her vagina, which would be consistent with a

1 partial transection.

2 MR. BRYAN: I believe that is all the questions I have.
3 Please answer any questions Mr. Axelrod has.

4 THE COURT: Mr. Axelrod.

5 MR. AXELROD: Your Honor, may we approach?

6 THE COURT: Yes, you may.

7 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

8 THE COURT: Mr. Axelrod, your witness.

9 MR. AXELROD: Thank you, Judge.

10 THE COURT: Yes sir.

11 CROSS-EXAMINATION BY MR. AXELROD:

12 Q. Good afternoon, Doctor.

13 A. Mr. Axelrod.

14 Q. How old was Minor Child when you saw her?

15 A. Fourteen.

16 Q. Okay. And based on your -- based on your complete and
17 thorough investigation, are you able to tell the jury today
18 when that partial transection occurred?

19 A. No, you cannot. Every -- as I said earlier, that
20 tissue heals within seventy-two hours, so all you can say is
21 it's greater than seventy-two hours.

22 Q. And I think also, in your colloquy with the Solicitor
23 you stated that you have done many interviews.

24 A. Yes.

25 Q. Over a thousand?

1 A. Yes.

2 Q. Less than two thousand?

3 A. I was trying to figure that out on the way down -- I'm
4 being conservative by saying over a thousand and over fifteen
5 hundred. It's probably closer to like fifteen hundred
6 interviews and eighteen hundred exams, but we'll just stick
7 with a thousand to fifteen hundred.

8 Q. Have you ever interviewed a child and then found out
9 later she had lied to you?

10 A. I have interviewed children that I have known were
11 lying to me. I have interviewed children that later disclosed
12 that some of the things they told were not completely
13 accurate, yes.

14 Q. Have you ever interviewed a child that you thought --
15 in all the thousands of interviews you did, have you ever
16 interviewed a child whom you thought was telling the truth,
17 and it turned out was actually lying?

18 A. I -- well, like I just said, I have interviewed
19 children that have disclosed one thing and later changed some
20 of that, not completely ---

21 Q. But not ---

22 A. Like, I have never interviewed a child who said
23 something happened and I believed them completely and then
24 later found out that it was completely falsified. I've found
25 out that some things were exaggerated, some things might have

1 been attributed to somebody else, those kind of things, but
2 not -- so I guess that's the answer.

3 Q. So what you are saying is, you have never been -- you
4 have never been bamboozled?

5 A. No. I'm not saying that.

6 Q. But you said that every child you interviewed you knew
7 whether they were telling you the truth?

8 A. No. I didn't say that either. I said I have
9 interviewed children that I knew were not telling the truth.
10 I have also interviewed children that seemed very truthful,
11 and later we found out that some of the things that they
12 disclosed in the interview were not completely truthful.

13 MR. AXELROD: Thank you.

14 THE COURT: Redirect.

15 MR. BRYAN: Nothing, Your Honor.

16 THE COURT: You may step down, Ma'am. Thank you very
17 much.

18 A. Thank you.

19 THE COURT: Do you wish to have this witness excused?

20 MR. BRYAN: Yes sir, Your Honor.

21 THE COURT: Any objection?

22 MR. AXELROD: No sir, Your Honor.

23 THE COURT: You are free to go if you would like,
24 Ma'am.

25 A. Thank you.

JURY OUT/MOTIONS

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1 THE COURT: The State may call it's next witness.

2 MR. BRYAN: Thank you, Your Honor. Court's indulgence.

3 THE COURT: Yes sir.

4 MR. BRYAN: Thank you, Your Honor. That's the State's
5 case.

6 THE COURT: Ladies and gentlemen of the jury, the State
7 has now rested. That means that we will proceed with the
8 remainder of the trial shortly. At this point in time there
9 are matters that I have to take up with the attorneys, outside
10 of your hearing, so I'm going to ask you to step back to the
11 jury room.

12 This will be about a fifteen, twenty minute break. I
13 will allow you to go out and have a smoke. Just be sure you
14 are accompanied by a bailiff as you go.

15 And again, as always, I will instruct you, don't begin
16 any discussions concerning this case, until you have heard all
17 of the evidence and I have charged you concerning the law to
18 be applied to the case.

19 At this point in time you may retire to the jury room.

20 Thank you very much.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, Mr. Axelrod, any motions you
24 would like to make at this point in time?

25 MR. AXELROD: Yes sir, Your Honor. I would like to

1 make a directed verdict motion, that there is -- that there is
2 nothing that can be sent to the jury on a criminal sexual
3 conduct with a minor in the second degree.

4 Also, nothing to send to the jury on a lewd act on a
5 minor. There has been no evidence that anything was done to
6 the victim with the intent of arousing, gratifying, or lust or
7 passions.

8 And the assault with intent to commit criminal sexual
9 conduct with a minor second degree, I would say that there is
10 nothing that can be sent to the jury on that issue, Your
11 Honor.

12 I would ask the Court to rule on each one of those.

13 **THE COURT:** All right. The motions are all denied.

14 **MR. AXELROD:** Your Honor, furthermore, I would like to
15 re -- put on to protect the record. The -- Mr. Kinloch's --
16 the Court limiting me into the extent that I could go, just in
17 the past ten years ---

18 **THE COURT:** Well, that motion has -- that's been ruled
19 on twice. I would consistently rule on that again at this
20 time.

21 **MR. AXELROD:** And your, that's -- that's to protect my
22 record.

23 **THE COURT:** I understand.

24 **MR. AXELROD:** Thank you, sir.

25 Your Honor, I believe that the motions I have -- I

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1 would like a few minutes to talk to my client, whether he
2 wants to testify, and whether we put up a defense.

3 THE COURT: All right. While we are doing -- while you
4 are doing that I will mention that we had a couple of sidebars
5 during the last witness's testimony. At that time we
6 discussed whether or not a report done by -- what was the name
7 of the other doctor ---

8 MR. BRYAN: Kathy Koon, Your Honor.

9 THE COURT: ---Kathy Koon could be used by the witness.
10 It was my ruling at that time that the -- anything that was
11 used by the expert as a basis for her opinion could be
12 testified to, and so that was my instruction at that time.

13 Also counsel for the defense inquired as to whether or
14 not he could inquire concerning the victim's potential sexual
15 history or activity, and it was my ruling that, if those
16 questions were asked, of course, depending on the nature of
17 the question, that most likely it would result in my excluding
18 those questions because of the Rape Shield Law.

19 Does that correctly state our discussions, Mr.
20 Solicitor?

21 MR. BRYAN: Yes sir, Your Honor.

22 THE COURT: And Mr. Axelrod?

23 MR. AXELROD: Yes sir, Your Honor.

24 THE COURT: All right. Anything further, Mr. Axelrod,
25 you want to take up, or would you like to talk to your client

1 at this point in time?

2 MR. AXELROD: I would appreciate talking to my client.

3 THE COURT: All right. We'll take about a five minute
4 break, allow you to do so.

5 Court is in recess.

6 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
7 THE PRESENCE OF THE JURY.)

8 THE COURT: Is the State ready?

9 MR. BRYAN: Yes sir, Your Honor.

10 THE COURT: And is the defense ready, Mr. Axelrod?

11 MR. AXELROD: Yes sir, Your Honor. Excuse me, Your
12 Honor.

13 THE COURT: Are you ready?

14 MR. AXELROD: Yes sir, Your Honor.

15 THE COURT: Mr. Axelrod, at this point in time I intend
16 to inquire of your client concerning his right to testify.
17 Are you ready to go forward on that point?

18 MR. AXELROD: Yes sir, Your Honor.

19 THE COURT: All right. I would ask the Defendant to
20 please stand.

21 Mr. McGee, raise your right hand. Do you solemnly swear
22 or affirm the testimony that you are about to give will be the
23 truth, the whole truth, and nothing but the truth, so help you
24 God.

25 A. I do.

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1 **THE COURT:** You can be seated. Thank you very much.

2 Mr. McGee, at this point in time I'm going to explain to
3 you certain of your rights. If you do not understand my
4 explanation, please let me know when I finish. I'll be glad
5 to go back over this with you and be sure that you do
6 understand.

7 Do you understand what we are doing now, sir?

8 A. Yes sir.

9 **THE COURT:** All right. We have reached the stage of
10 this trial where you have the right to present your defense.
11 You have the right also to claim the protections which are
12 given, or afforded to you, under the Fifth Amendment to the
13 United States Constitution. That particular amendment reads,
14 in part, that no person shall be compelled in any criminal
15 case to be a witness against himself. That phrase means that
16 you cannot be required to testify in this case. You have the
17 right to testify on your own behalf, however, no one can make
18 you testify. The right to remain silent is a personal right.
19 No one can waive or give up this right except you.

20 If you decide to testify I will inform you that you will
21 be governed, and subject to the same rules that govern any
22 other witness's testimony in this case. That means you can be
23 examined by your attorney. You will be cross-examined by the
24 State's attorney on any relevant issue in the case.

25 In addition to that examination, should you have

1 convictions involving dishonesty, false statement, or for
2 crimes punishable by more than one year, and this Court makes
3 a determination that the probative value of admitting this
4 evidence outweighs it's prejudicial effect to you, the
5 Solicitor would be able to attack your credibility, and I
6 believe we have already reached a determination in this case
7 that such convictions do exist.

8 If you decide to testify the decision on your part must
9 be freely, voluntarily, and knowingly and intelligently made,
10 that is, with knowledge of the protections afforded to you by
11 the Fifth Amendment to the Constitution, and the consequences
12 of your decision to testify. I will advise you that, if you
13 decide not to testify that I will instruct the jury that the
14 jury cannot give the fact that you did not testify any
15 consideration whatsoever in reaching a determination in your
16 case, and there should be absolutely no prejudice to you
17 because you did not testify. The decision as to whether or
18 not to testify is left entirely up to you. You have the right
19 to consult with your attorney, your family, your friends, or
20 anyone else you wish to discuss this decision with, but --
21 however, in the ultimate analysis the decision is yours.

22 Now, do you understand the rights that I have explained
23 to you at this time?

24 A. Yes sir.

25 THE COURT: Do you have any questions about the

1 explanation that I just gave you?

2 A. No sir.

3 THE COURT: Have you had an opportunity to discuss with
4 your lawyer, and anyone you wish to discuss this decision
5 with, whether or not you should testify?

6 MR. AXELROD: Your Honor, my client has asked if he
7 could speak with his wife for a second.

8 THE COURT: Yes sir. I will allow him to do so.

9 MR. AXELROD: Your Honor, my client has chosen not to
10 testify.

11 THE COURT: Well, I'm going to have to get that from
12 him. I appreciate that, Mr. Axelrod.

13 Now, sir, have you had sufficient time to discuss this
14 matter with your wife?

15 A. Yes sir.

16 THE COURT: All right. Do you wish to testify in this
17 case?

18 A. Plead the Fifth, sir.

19 THE COURT: Okay. So you are not going to testify?

20 A. No sir.

21 THE COURT: Thank you very much. You can be seated.

22 A. All right.

23 THE COURT: All right, gentlemen, I -- Mr. Axelrod, do
24 you intend to call other witnesses?

25 MR. AXELROD: No sir, Your Honor. At this point the

1 defense would rest.

2 I would renew my motions, Your Honor, that were the same
3 on the directed verdict, plus, to protect the record on the
4 Rule 609, the admissibility of Mr. Kinloch's ---

5 THE COURT: Yes sir. And all those -- all those
6 motions are noted, and are ruled on consistently as before.

7 All right, gentlemen, that means we will be ready to go
8 into the closing arguments when we go back. Is the State
9 ready for that?

10 MR. BRYAN: Yes sir, Your Honor.

11 THE COURT: Is the defense ready?

12 MR. AXELROD: Yes sir, we are ready.

13 THE COURT: All right. Gentlemen, are there any
14 specific requests for charge?

15 MR. BRYAN: Your Honor, the State's -- would request
16 that you charge -- I believe the statute speaks that the
17 victim's testimony need not be corroborated in a criminal
18 sexual conduct.

19 THE COURT: Say that again, one more time now.

20 MR. BRYAN: The victim's statement need not be
21 corroborated in a criminal sexual conduct trial. I can -- I
22 don't have it. I will try to get somebody to get it.

23 THE COURT: You need to get that for me.

24 MR. AXELROD: Your Honor, I would ask for your normal,
25 regular charges, and I think in a sidebar we spoke that -- I

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1 believe it was Victor v. Nebraska, which is a firmly convinced
2 language for reasonable doubt.

3 THE COURT: Yes sir. I think that's part of the
4 standard charge that I use.

5 MR. AXELROD: Thank you, sir. And whatever the Court
6 feels appropriate.

7 MR. BRYAN: Do you use -- Your Honor, do you use, a
8 reasonable doubt is a doubt that would cause a reasonable
9 person to hesitate to act?

10 THE COURT: Just one second and I'll get that up and go
11 over it with you, since reasonable doubt seems to be an
12 important issue.

13 MR. BRYAN: Thank you, Your Honor.

14 THE COURT: All right, gentlemen, reasonable doubt. I
15 intend to charge reasonable doubt as that kind of doubt that
16 would cause a reasonable person to hesitate to act; that the
17 State has the burden of proving the Defendant guilty beyond a
18 reasonable doubt. I will go through the difference between
19 criminal court and civil standards, and it says, proof beyond
20 a reasonable doubt is that proof that leaves you firmly
21 convinced of the Defendant's guilt. I will go through the
22 fact that there are very few things in this world known to an
23 absolute certainty, and the law does not require proof that
24 overcomes every possible doubt; if, based upon your
25 consideration of the evidence you are firmly convinced the

1 Defendant is guilty of the crime charged you must find the
2 Defendant guilty; if, on the other hand, you think there is a
3 real possibility the Defendant is not guilty, you must give
4 the Defendant the benefit of the doubt and find him not
5 guilty.

6 MR. AXELROD: Yes sir, Your Honor. Thank you.

7 THE COURT: Does that clear up the question?

8 MR. BRYAN: Yes sir, Your Honor.

9 THE COURT: Any other specific requests to charge?

10 MR. AXELROD: No sir, Your Honor.

11 THE COURT: You may get your book back.

12 MR. BRYAN: Thank you, Your Honor.

13 THE COURT: We will -- I'll put that in.

14 MR. BRYAN: I have one quick motion in limine as well,
15 in regard to the motion.

16 THE COURT: Just one second and let me -- let us get on
17 the same page.

18 MR. AXELROD: Your Honor ---

19 THE COURT: Yes sir.

20 MR. AXELROD: My client would like to apologize to the
21 Court. I told him what the Court had said, and he would like
22 to apologize to the Court.

23 THE COURT: Well, I was going to put on the record that
24 during the sidebar I instructed the Defendant to stop using
25 facial gestures and other responses to testimony going on in

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1 the courtroom, asked Mr. Axelrod to instruct the Defendant of
2 that, and I understand sometimes people get carried away, but
3 I don't allow people to testify without testifying, so if you
4 are not going to take the stand we don't allow you to testify
5 through gestures or otherwise.

6 MR. AXELROD: Yes sir, Your Honor.

7 THE COURT: And thank you for instructing your client,
8 and I appreciate his statement.

9 All right, that means -- no testimony offered by the
10 defense, that means the State will be going first; defense
11 will have the final argument.

12 Anything else, gentlemen, before we start again?

13 MR. AXELROD: Rock and roll.

14 THE COURT: All right.

15 MR. BRYAN: Briefly, Your Honor.

16 THE COURT: Yes sir. You said you had one other thing
17 you wanted to bring up.

18 MR. BRYAN: We had already clarified -- I want to put
19 on the record your instruction that there won't be any
20 assertion or suggestion of an improper deal, that there is no
21 basis for it, evidence.

22 THE COURT: Well, my ruling would be consistent. I
23 think it's generally the rule that it's improper to comment on
24 any matters that are not in the record.

25 MR. BRYAN: And so ---

1 MR. AXELROD: Your Honor, I won't even go in there. I
2 don't want the State to be able to worry about that.

3 MR. BRYAN: I'm embarrassed to have to make this one,
4 but I want to object to any reference to slavery by the
5 defense in their closing. The only reason I make it is
6 because I have heard it done before by Mr. Axelrod. He
7 counted off the Constitutional amendments till he got to, I
8 guess it was number Fourteen, and miraculously just stopped
9 there after speaking about how old the courthouse was, and
10 some allusion to slavery. I would object to the mention of
11 slavery as irrelevant.

12 THE COURT: Mr. Axelrod, I don't -- I can't imagine how
13 that could be worked into your argument, but ---

14 MR. AXELROD: Not in this case, Your Honor, but in the
15 last case it did, Your Honor.

16 THE COURT: I will caution you in that regard, but of
17 course, if it's on a relevant issue before the Court, I would
18 allow you to say something, but ---

19 MR. BRYAN: (unintelligible) in 1886.

20 THE COURT: ---Since ---

21 MR. BRYAN: When was it ---

22 THE COURT: ---I don't know the context in which that
23 might come up, then I will reserve any ruling till the
24 occurrence occurs.

25 MR. AXELROD: Thank you, Your Honor. Thank you.

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1 THE COURT: All right. Anything else, gentlemen?

2 MR. BRYAN: No, Your Honor. Nothing from the State.

3 THE COURT: Bring the jury back, please.

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JURY.)

6 THE COURT: The record should reflect that all jurors
7 have returned to the courtroom.

8 When we broke earlier the State had rested it's case.
9 At this point the defense may call any witnesses it cares to
10 call.

11 Mr. Axelrod.

12 MR. AXELROD: Your Honor, the defense rests.

13 THE COURT: Ladies and gentlemen of the jury, the
14 defense has rested at this point in time, so that constitutes
15 all of the evidence that will be presented in this case, so at
16 this point in time I told you that we would go forward with
17 statements, or closing statements by counsel.

18 At this point in time the State may proceed with it's
19 closing argument. Mr. Bryan.

20 MR. BRYAN: Thank you, Your Honor.

21 (unintelligible) simply my opinion, doing your best to
22 collect the evidence and the information necessary to make a
23 really definite decision, and that is what is going to happen
24 fairly shortly. I'm going to talk to you for a few minutes,
25 and then Mr. Axelrod will address you on behalf of the

1 Defendant, and then the Judge will instruct you on the law.
2 All of that will take somewhere around an hour, and then this
3 case is going to be yours to decide what the truth is, and
4 ultimately decide on the fate of that Defendant, and the fate
5 of that victim, and his family, and her family, and there's a
6 lot of people that testified, what y'all decide.

7 And at the outset of the trial I may have alluded to the
8 fact that this was just a regular old garden variety criminal
9 sexual conduct, and I hope that no one took that the wrong
10 way, and I think Mr. Axelrod may have, but it's my intention
11 to convey to you that we are not a television show, and that
12 there is not anything too exciting, or fun, nor entertaining
13 about all this; it is just a tragedy, and it's not any
14 different than what happens every day in your community. And
15 this is your opportunity to do the right thing, and not allow
16 this to go on in your community in this particular case.

17 And what I also meant by garden variety is, there isn't
18 any D.N.A., there was a delayed reporting, which happens,
19 according to Dr. Rahter, in a hundred and seventy-eight out of
20 a hundred and eighty cases, two times where the victim comes
21 forward and says what happened when it happened. And so when
22 I was talking about empathy what I was talking about it, if
23 some of this stuff happened probably any of y'all -- well, the
24 first thing you would do is, well, hopefully report it to the
25 law enforce -- to the law, as opposed to, you know, doing

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1 something yourself. Certainly ---

2 MR. AXELROD: Your Honor, I have to object. He's
3 putting the jury in this position. He said to the jury that,
4 if this happened to you what you would do.

5 THE COURT: I'll sustain the objection. Strike those
6 comments.

7 Ladies and gentlemen of the jur -- from the jury, or any
8 matters that I have stricken from the record you should not
9 consider in reaching your verdict.

10 You may proceed, Mr. Solicitor.

11 MR. BRYAN: Thank you, Your Honor.

12 And I apologize. That was improper. It wasn't my
13 intention -- what I was trying to say is, it's not you that it
14 happened to. It's her. And when you are judging the reaction
15 of somebody you have to -- you have to judge their
16 circumstances. This is a twelve year old girl, who was at the
17 mercy of that monster over there, sitting next to his lawyer,
18 Mr. Axelrod, and so you can imagine when she says, I didn't
19 report because I didn't think my mom would believe me, and
20 there sits mom over there behind the Defendant. She is the
21 one who drove her to Mr. Axelrod, told her that it was her
22 sister's birthday, right, we are going to go get a present, or
23 a cake or something for your birthday, gets her in the car,
24 now goes to Myrtle Beach, where she tells her that, unless you
25 tell this lie your sisters are going to be in foster care, so

1 you can understand, now, looking back, why Ms. Minor Child
2 didn't want to be here today, because she's sitting over here,
3 and her mom is sitting over there, and so she was maybe a
4 little more wise than I gave her credit for when saying you
5 should put yourself in her position, because maybe she doesn't
6 want to have this dividing line, the center of this courtroom,
7 her life, and everything forever tragically changed, not
8 because of what she did, because she had the misfortune to be
9 born into this world the mother (s.i.c.) Tonya McGee, who
10 married Shannon McGee, and so these things all happened to
11 her. Not only did he have her lie on top of her -- of him, he
12 touched her on her private parts, her vagina, on her rear; he
13 puts his mouth -- sucks on her breasts; he had her masturbate
14 him, and ultimately digitally penetrated her, and she didn't
15 want to tell, so she didn't tell. She told her brother, who
16 was eight years old, and you heard from him.

17 And I don't know what Mr. Axelrod is going to say, and
18 of course, you are the judges of the facts, and so anything he
19 says that is true, or if it doesn't make sense from what you
20 have heard, in this regard -- the same goes for me -- I don't
21 know exactly what he's going to say, but if they are going to
22 blame the grandmother and the father for this, they've got a
23 real problem, and it just doesn't make sense, and I hope some
24 of y'all will think it through and realize that, if she wanted
25 to be out of her house, if this is get back at Shannon, if

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1 this is revenge -- not her word, their word, when they took
2 her the -- to make that statement -- but if it was, in fact,
3 revenge, why in the world does she tell an eight year old? Is
4 the eight year old going to arrest him? Is this little fellow
5 right here going to bring a whipping to Mr. McGee over there?
6 What was her expectation of revenge by telling little ^{Minor Child 2}
7 Moultrie there? Was she -- so obviously what I'm saying is,
8 it wasn't her attempt at revenge, it was her poor little
9 feeble attempt to tell somebody who, sadly, she expected not
10 to tell, but she did tell. He said he told his grandmother,
11 and then we end up in court today because she is up at the
12 Children's Recovery Center, tells a believable story, the
13 medical exam corroborates, or is diagnostic of exactly what
14 she said, which is digital penetration, and so we are here
15 today, but I just submit to you that, under no circumstances,
16 or for no reason that I can imagine, is this a revenge
17 situation, based on the fact that she never told law
18 enforcement. If her mommy -- I'm sorry -- her dad and Ms.
19 Hicks there hated this Defendant so much that they wanted him
20 under the jail, wouldn't she go to them and tell them?
21 Wouldn't that be the way to get her in trouble? It just
22 strikes me as obvious that it was her intention to live with
23 this forever and ever, probably, or until she was thirty or
24 forty, and you know, watched a television show and said that
25 happened to me when I was a kid, but for the time being, she

1 was just going to stomach it, and that was her -- her choice,
2 and when she told her little brother he told, and so we find
3 ourselves here, and ^{Minor Child 2} Moultrie came in. There's rules
4 which allow certain things in, so basically he was just
5 allowed to talk about time and place, based on the rules, so
6 that's why he said that she said somebody did something nasty
7 her in that trailer, and that's what, basically, he is allowed
8 to say.

9 Going through the witnesses that the State presented, I
10 submit to you that they were credible and believable today,
11 and that they told the truth, and they told you in a way that
12 was believable because it was true, and everybody was -- it's
13 a little easier to keep your story straight on the truth than
14 a lie, and I would submit to you that -- well, I'm going to
15 come back to ^{Minor Child} last.

16 So let's -- let's -- I'll just go in order and talk
17 about -- I talked a little about ^{Minor Child 2} and -- she told her
18 brother and he told somebody, and then Aaron Kinloch. He was
19 a really interesting witness for everybody because normally
20 you will hear a defendant -- a defense lawyer get up here and
21 scream about a deal, what he got out of it, or, you know, some
22 kind of expectation of reward for this lie, but again, the
23 defense is really going to have to search for a really, sort
24 of hidden agenda of this Aaron Kinloch, because the testimony
25 is, and the truth is, that I had never met the man till

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1 yesterday, and had no deal with him. He didn't get any deal;
2 he didn't get any benefit; he didn't do a day less than he
3 would have done. He didn't know Mr. McGee. I don't know what
4 motive he would have to come in here and fabricate this awful
5 story. He didn't seem to be telling a lie. He seemed to be
6 just telling the truth, which is, this guy, Shannon McGee --
7 he recognized him from living in the same neighborhood
8 previously. He wanted to discuss his serious charges. You
9 know, you are in there and you are locked up, and you are not
10 really sure what's going to happen to you, want to talk to
11 somebody about it, so you see somebody familiar and you
12 figure, well, you know, he's a criminal too, right; he's been
13 around the block, he knows the rules of the yard, as he said,
14 and you know, he isn't approaching anybody, you can tell that
15 guy, he's a criminal. The interesting thing about him is, you
16 know, you can say how bad he is, or what a crook he is, and he
17 admitted, you know, he's -- he's a criminal, right; he's
18 committed some criminal offenses, but he's a man just like the
19 rest of us. But as bad a criminal as he may be -- and you can
20 -- you can call them whatever they want -- he came forward
21 because this offended him. That's the bottom line. He's got
22 four kids. He's got daughters. He said, that's nasty.

23 And I'll tell you what, when the Judge talks to you
24 about general demeanor, credibility, and (unintelligible) they
25 say, but how they say it, I submit to you that's true. It

1 rings true, sounds true because it is true. The guy wrote a
2 letter to somebody he had never met, me. He ends up in court
3 today just because it offended him, which is somewhat ironic,
4 given the fact that the Defendant's, you know, lawyer is
5 probably going to get up here and say how terrible a guy he
6 is, but he was offended by it, so he came to court and he told
7 you what Mr. McGee said, which is that he digitally -- I don't
8 know exactly what his words were. He said he used his finger.
9 Well, that's what she said. And as far as no D.N.A.,
10 inconclusive, I don't have my dictionary. I think I know what
11 it means, but I think Mr. Kinloch meant -- well, he didn't
12 know what it meant. He was just -- he was just told by Mr.
13 McGee that there wasn't an D.N.A. -- that's basically what
14 that was -- I didn't do it to her with my penis, therefore
15 there is no semen, therefore there is no D.N.A., so I think my
16 chances are, because I just used my finger, being the
17 implication, so they don't really have me.

18 But they -- we did have a medical exam done by Dr.
19 Rahter, which said that it was diagnostic of penetration. And
20 Dr. Rahter didn't come in here and say a bunch of things that
21 were outside of her ability to say. She didn't try to have
22 every answer, and never has been wrong, as maybe was implied,
23 but she did say that there had been penetration, and that that
24 was consistent with the physical evidence, the state of that
25 girl for -- she was not in here for that testimony, but

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1 anyway, the state of her hymen, it is consistent with her
2 medical report, under her interview when she said it happened.
3 She didn't say it's a hundred percent sure that -- you know,
4 it's not like we can lift fingerprints off of it, so it is
5 what it is. It's consistent. And that's what she testified
6 to.

7 I thought what she also testified to, as an expert, was
8 even maybe as interesting, or more informative for you, which
9 is delayed reporting. I think, what, ninety-nine percent of
10 the time why it's -- at least in Georgetown and Horry Counties
11 -- that's consistent with what happened here, recantation is
12 part of the known cycle that goes on; it happens in a
13 substantial number of cases. I would submit to you that,
14 given the fact that her mom says her four brothers and sisters
15 were going to end up in foster care, unless she said what she
16 said, I'd say that that might -- well, obviously that did do
17 the trick for her, to do the recantation, and after which she
18 called them back and said, look, I was lying -- you can call
19 me back, but I was lying when I said it didn't happen. And
20 she came into court and she told the truth.

21 And finally, the grooming which Dr. Rahter -- was
22 interesting, because we kind of wonder how this goes on and on
23 and on, and nobody ever says anything, because -- but it makes
24 sense, that it's just a step at a time, and if felt the way
25 she put it was good, that the first time it doesn't hurt, in

1 fact, it might feel good. A twelve year old girl -- and I'm
2 not suggesting that this is necessarily the case with this
3 (unintelligible). It's possible that, you know, it made her
4 feel like she was getting some attention, or she may have been
5 utterly disgusted by it, but in any event, it was, you know,
6 better than a punch in the mouth, or some other alternatives
7 that might be out there, so it starts slow, and it doesn't
8 hurt, it's not so bad, but don't -- if I tell mom mom is going
9 to tell Shannon, and you know that mom is going to take
10 Shannon's side, so now it's going to be Shannon, you know, mad
11 at me, and we can maybe understand why Minor Child didn't want
12 Shannon mad at her, probably a reasonable thing.

13 So as far as Minor Child is -- so he did it one step at a
14 time. He had her just lay on top of him, and then it was, you
15 know, a little touch here, on the outside of the pants on her
16 rear, and then it's inside the pants, and it's -- it's just
17 ongoing, and fortunately she got out of it before he actually
18 did have sex with her, which I want to talk briefly about the
19 law. He is charged with lewd act, which is an unwanted
20 touch -- which is a touching by somebody of age by somebody
21 under the age of nine, for the sexual gratification of either
22 party, in this case the Defendant, and clearly there was any -
23 - it was just a touch outside of the clothes, or the touch
24 inside the clothes, or sucking on her nipples, or having her
25 masturbate him, all of those things are lewd acts.

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1 The assault with intent to commit C.S.C.: That an
2 assault is an unwanted touching, so if I -- don't want to hit
3 Margie, but if I just do, and that's an unwanted touching to
4 you, that's an assault, so it's not necessary that he actually
5 entered her with his penis on the assault with intent to
6 commit C.S.C., it's that he laid on top of her and she said he
7 touched her. He was laying on top of her and he had a condom
8 on, which I would submit is clear inferential, or suggestive
9 evidence that he intended to have sex. That's why he would
10 have a condom on. So I don't mean to insult your
11 intelligence, but that's actually important to tell you that
12 there was intent to commit C.S.C., and I don't know what
13 better evidence of intent to commit C.S.C. other than you put
14 a condom on, lay on top of somebody, you are touching them.
15 She didn't want her to be touching him -- sorry -- him to be
16 touching her, so that's an assault with intent to commit
17 C.S.C., I don't want him touching me, lying on top of her.
18 He's got a condom on, and he starts to try to enter her, at
19 which point she pushes him off.

20 Now I'm going to get into Minor Child testimony in a
21 minute. I'll just touch on the criminal sexual conduct with a
22 minor. That's -- that requires penetration, and it does not
23 require that it be your penis. Digital penetration is
24 criminal sexual conduct with a minor, and so if you find that
25 the factual is that she was telling the truth when she said

1 that on numerous occasions he put his finger inside of her
2 vagina -- that was very clear -- on the outside of your
3 vagina, or actually inside of your vagina. She said inside,
4 and I said, do you know what penetration means. She said yes.
5 I said, did he penetrate you and she said yes. That is
6 criminal sexual conduct with a minor.

7 And the only other thing of the law that I will touch on
8 is a reasonable doubt. So it's a very difficult decision that
9 y'all have got to make. Obviously this is not a -- you know,
10 anything that you want to have to do. It's not a pleasurable
11 place that you are sitting at, because we -- we might not be
12 talking -- talking about people a little bit, but you don't
13 want to really judge them in this way, and it's a heavy burden
14 to carry, and it's sometimes easier to do the easy thing, and
15 not (unintelligible). (unintelligible) reasonable doubt;
16 There is always a reasonable doubt. Well, a reasonable --
17 there is not always a reasonable doubt. Reasonable doubt is a
18 doubt which causes a reasonable person to hesitate to act.
19 It's not any doubt; it's not beyond any doubt. It's
20 impossible to prove anything for absolute certainty
21 (unintelligible) not possible to do, so beyond a reasonable
22 doubt. And if the defense comes up here and says, yeah, if
23 you deliberate and you have to talk about it, or if you have a
24 question then he's automatically not guilty, then that's just
25 not -- that's just misleading, because otherwise you won't

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1 deliberate. You would just stand out here and take a vote
2 afterwards, and unless somebody raises their hands and said
3 guilty you would all go home. You have to go deliberate.
4 There's hard questions to be answered you said go through the
5 evidence and talk about it, and then you make your decision as
6 a whole. You are twelve people who are going to be one when
7 you have reached a verdict that speaks the truth, and so you
8 are suppose to deliberate about it, you are going to
9 deliberate about it. The question is, after deliberation, if
10 you have a reasonable doubt this is -- that this is what
11 happened, that she was truthful when she said that he did
12 those things to you -- to her, and I would submit to you that
13 there is no reasonable doubt based on the evidence that was
14 presented to you, particularly by Minor Child

15 And I'm not going to take too much longer. I want to go
16 through a couple of things she said, and I just think that
17 it's so important for y'all to think about the details, and --
18 so there's two possibilities here, she's telling the truth or
19 she's lying, and you'll decide. It's that simple. If she's
20 telling the truth, he's guilty; if she's not, he isn't. So,
21 how you know she's telling the truth, I think, is largely in
22 the details of her story. She didn't get up there and yeah,
23 he did -- you know, he did it to me, and she didn't look like
24 the lying child. There was just a lot of very specific
25 details, on and on and on about what happened the first time,

1 where it happened the first time, what happened the second
2 time, two days later, what happened the third time, where it
3 was, what room she was in. It's touching. You not only get
4 it from all the facts, but it's -- you know, it's touching the
5 outside (unintelligible). How do you -- I guess what I'm
6 driving at is, how does she make that up. If she's making
7 this story up, how do you come up with what you heard today?
8 How do you, as a twelve year old, recite this progression that
9 goes along with what you've heard about grooming, that at
10 first it wasn't so much, that she -- he's making me lie on top
11 of him. It's an odd thing to make up. That he's touching me
12 outside of my clothes, then he's touching me inside of my
13 clothes. Then, mom got a new job. She was really -- I'm just
14 saying, if she made this up what just an incredibly good job
15 she did, to come up with the detail of -- yeah, my mom got a
16 new job so then he started doing it to me, you know, in the
17 room when mom was at work, and then, you know, it stopped.
18 And I'll tell you something else about the details. She could
19 have come in here -- and you would think if she were trying to
20 bury the guy, if you wanted revenge, you would come in -- the
21 prosecutor asked, well did he hold you down, didn't -- no, he
22 didn't hold me down -- she pushed him off -- and clearly, you
23 know, she can't push that guy off it he doesn't let her, and
24 she could have said, you know, he smacked me around; he
25 threatened me; he said he was going to beat me, he was going

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1 to do all this terrible -- she didn't say all that. If she
2 wanted to bury him wouldn't it have been worse -- wouldn't
3 there have been some -- the threatening. No. What did he say
4 when he threatened you. She said he whispered to her,
5 whatever happened happened. Did she make that up? I mean, if
6 she's making it up why doesn't she say yeah, he said he would
7 kill my little brother. He said whatever happened happened.
8 Does that sound something she made up, or does that sound like
9 the sad, cold, tragic truth of what happened, out of her
10 mouth, and -- into her ear, and out of her mouth to you.

11 Some other details -- or just with respect to the
12 specific nature of the allegations, and -- for instance, like,
13 if she was making it up, she said her mom -- she recanted,
14 right, so she says -- I said, well, how did that come about,
15 did you -- (unintelligible) so she didn't ride her bike to
16 North Myrtle Beach. She didn't catch the Greyhound bus. Her
17 mama came and got her, and she said her mom had just called
18 her and said it was her sister's birthday, and she thought
19 they were going to go buy a present, or get a cake, and I
20 don't -- and I just ask you again -- I know I'm trying to
21 repeat myself, but the point is, she's telling the truth. You
22 don't make that up. You don't make -- how does she make up
23 the fact that it was her sister's birthday and she thought
24 they were going to get a cake and they didn't? Where would
25 that come from from a twelve year old, thirteen year old? The

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1 answer is, you don't make it up; it's true, and it's hard to
2 know what's more tragic for her, you know, the fact that she's
3 sitting here because of what he did to her, and the fact that
4 she's got to deal with that, or her mom telling her to lie,
5 cover up for the guy who was molesting her as a twelve year
6 old.

7 So, it's not an easy thing that you have got to do, but
8 I ask you to do the right thing, and I just hope you will have
9 the conviction, no matter how many people may be on the other
10 side, or want to take the easy way out (unintelligible). Stay
11 together as a group and do the right thing.

12 Thank you.

13 **THE COURT:** Mr. Axelrod, for the defense.

14 **MR. AXELROD:** Thank you, Your Honor.

15 I told you you were not going to enjoy this. I told you
16 it was going to go to your sole, only get a verdict
17 (unintelligible).

18 The Judge said that when you search for the truth you
19 have to be firmly convinced. The Solicitor said, why would
20 she lie? Children lie. People lie. Lies are told every day
21 of our lives. The Solicitor mentioned reasonable doubt, that
22 you ought to find Shannon guilty beyond a reasonable doubt, if
23 you are going to convict him. What is reasonable doubt? We
24 are in the summer time. We are in baseball. There's
25 different courts in our State. We have civil court, called

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1 Common Pleas, there's Family Court, there's General Sessions,
2 criminal court. In a civil proceeding, in Civil Court, such
3 as an auto accident, stuff like that, you have to find one
4 step past fifty percent, more likely than not. If you equate
5 it to baseball, you've got to get a single. You've got to
6 make a hit. If you go to Family Court the standard is clear
7 and convincing as in (unintelligible). Maybe you got a
8 double. In criminal court today you have to hit a home run.
9 You don't have to hit it out in the ball park; you don't have
10 to hit it into McCovey Cove in San Francisco; you don't have
11 to hit it into I-85 in Atlanta, but you've got to hit a home
12 run. The stakes are high. My client's liberty is at stake,
13 and that's what they have to prove.

14 The Solicitor told you there is absolutely no reasonable
15 doubt. It's his job to convict people. I think there is
16 reasonable doubt. I saw reasonable doubt throughout this
17 trial. It was a short trial, but this is a huge trial.

18 The Solicitor told you that Minor Child did a good job with
19 the details. He said, how could a twelve year old make up
20 this story. Well, when she talked to the police she was
21 fourteen, and I don't think her story makes sense. She says
22 that Shannon is on top of her, and she pushes him off.
23 Shannon is about -- I don't know -- two twenty-five -- but he
24 was on top of her, she pushes him off; don't do that. Shannon
25 is wearing a condom, but there was absolutely no sex. In all

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1 the different stories Minor Child said she said there was no sex.
2 He was wearing a condom; he could have his way with her if he
3 chose to. But each time that she stated that Shannon was
4 kissing her breasts she never once said she pushed away. Each
5 time that she said that Shannon touched her she never pushed
6 away. There was no trauma from her statements. There was no
7 hysteria. There was no fear. There was no tears. She told
8 (unintelligible). Your job is whether you believe it or not.

9 She testified, when I asked her, if she came to my
10 office, and she said it was a push-up and her family members
11 made her do it. She testified to that. She testified that
12 her whole family did not like Shannon. She testified that the
13 statement she gave to the police was not true. She testified
14 that she said that Shannon never touched her inappropriately.
15 She testified -- she said that she was mad at Shannon for him
16 being mean to her. And there was a lot of questioning about
17 the word revenge, but the Court Reporter takes down this
18 trial, and I would submit to you, that what Minor Child testified
19 to today, what she said, that Shannon was mean, and she wanted
20 revenge. We then had a further question about revenge, and it
21 got muddier, but it was her words, and she testified she
22 wanted revenge. Do we believe her first statement, or do we
23 believe her second statement? Which statement is she lying?
24 I asked her, I said, when you called my office was there
25 somebody in the room telling you what to say. Minor Child said

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1 no. The Solicitor then was allowed to ask, was there someone
2 in that room when you made that phone conversation. Minor Child
3 said yes. Minor Child said this and then Minor Child says that. She
4 says both sides. That, whether you liked it or not, is that.
5 You have to be firmly convinced, and if you go back to that
6 jury room, and each one of you has a difference of opinion,
7 you go back into that jury room and you say, I don't know;
8 might have, or why did she do that, why is that, you are not
9 going to like me, but the Judge is going to tell you, you have
10 no choice; you are forced to come back with not guilty.

11 Kinloch says that Shannon said no D.N.A., the D.N.A. was
12 inconclusive. Kinloch goes, oh that's good if it's
13 inconclusive. Kinloch didn't know what inconclusive meant,
14 and there was no D.N.A. test taken. For whatever reason Mr.
15 Kinloch was making up something that doesn't exist, and what I
16 consider strange is that -- I think that when people go to
17 prison, or they are in jail for crimes against children they
18 try not to let anybody help them out. My thought with that
19 is, keep to themselves. But if you believe Mr. Kinloch,
20 Shannon was telling the whole pod, half a dozen persons here.

21 I told you you weren't going to like this. The Doctor,
22 Dr. Rahter, said that Minor Child medical exam was consistent
23 with the report, consistent. She has no idea how the
24 transaction occurred. It's not beyond a reasonable doubt.
25 She has no idea if it was self-inflicted. It could have

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1 occurred at some other time. Doctor cannot testify -- she
2 says she really didn't know what caused it, but that it was
3 (unintelligible).

4 The Judge is going to give you the law. You have to
5 apply that law, and you might not like it. You take the facts
6 you have heard. You can only deliberate on what you have
7 heard. You can't go into that jury room and say, but you know
8 what, I saw on television last week -- (unintelligible) you
9 are bound to take what you heard from there, and render a
10 verdict.

11 Now, I tell you that people do lie. You still have that
12 choice today, and the buck stops here, and it's not going to
13 be easy.

14 Now, in sixteen hundred and ninety-two nineteen people
15 were hung in Salem, Massachusetts, because children said they
16 saw people flying on broomsticks.

17 Thank you.

18 THE COURT: Ladies and gentlemen of the jury, that
19 completes the closing statements by the attorneys. Now, as I
20 told you at the beginning of the trial, what remains to be
21 presented to you in the law in this case. My charge will take
22 approximately thirty minutes to deliver, and I've looked at
23 the clock. It's not my practice to send out juries at five
24 o'clock in the evening. Obviously you have to have time to
25 deliberate, and I realize you have a life outside of this

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1 courtroom, and so at this point in time we are going to break
2 the trial for the evening. I'm going to ask that you be back
3 in the jury room at nine o'clock in the morning. At that
4 point in time I will deliver the charge on the law to you, and
5 will then turn the case over to you for your deliberations.

6 I will tell you, however, that you have -- even though
7 you have heard all of the evidence, and you have heard the
8 arguments from counsel, I'm going to continue to instruct you,
9 as I did yesterday, and at the lunchbreak, until you have
10 heard all of the evidence in the case, the arguments of
11 counsel, and my charge on the law, you should not discuss the
12 case with anyone. Maintain an open mind until you have heard
13 all of the factors that you must consider in reaching a
14 verdict in this case.

15 Again, if anyone attempts to contact you about this
16 case, report that upon your return. Again, do not attempt to
17 gather any information outside of this courtroom concerning
18 this case. Your oath is to decide the case solely upon the
19 evidence presented during this trial, and upon the law as I
20 give it to you, before you begin your deliberations.

21 So I am going to excuse you at this point in time.
22 Again, be back in the jury room at nine o'clock in the
23 morning. At that point in time I will instruct you on the
24 law, and deliver the case to you for your deliberation.

25 Thank you very much. You are free to go for the

1 evening.

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
3 JURY.)

4 THE COURT: All right. Court will be in recess until
5 nine o'clock in the morning.

6 Defendant remains in custody.

7 Thank you very much.

8 MR. BRYAN: Thank you, Your Honor.

9 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, SEPTEMBER
10 20, 2006, OUTSIDE THE PRESENCE OF THE JURY.)

11 MR. AXELROD: Your Honor, may we approach?

12 THE COURT: Certainly.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 THE COURT: All right. Is the State ready?

15 MR. BRYAN: Yes sir, Your Honor.

16 THE COURT: Is the defense ready?

17 MR. AXELROD: Yes sir, Your Honor. I would like to put
18 a matter on the record.

19 THE COURT: Yes sir.

20 MR. AXELROD: Your Honor, to protect the record for my
21 client -- to protect the record, my client informed me today
22 that he was told by, I believe, Lieutenant Wineglass, at the
23 jail last night, that Mr. Kinloch had pending burglary
24 charges. Now, in the proffer I asked Mr. Kinloch, do you have
25 any -- do you have any pending charges, and he replied no to

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1 the Court, and as the Court is instructing me today, if there
2 is a warrant outstanding, and it has yet to be served, then
3 really he would be able -- he would be in the position to say
4 no, there were no pending charges, but my argument to the
5 Court in the proffer was that there was a deal.

6 Now, normally in our system here, at least in Georgetown
7 County, I think in South Carolina, if you know where somebody
8 is, and you have a pending warrant, you serve it on them, so
9 one could have argued in the trial that there was a deal for
10 Mr. Kinloch's testimony, in that, if this burglary charge is
11 to be dismissed, then you could argue -- if it had been
12 dismissed last week you could argue that there had been a
13 deal, and if it's dismissed after his testimony, then I would
14 say -- after discovered evidence would say that it was a deal,
15 that I was unable to go into in this trial, and I would say
16 that would be an issue that is an appealable issue. I believe
17 that the State can orchestrate a position that, to the Court,
18 on it's face, would say, no deal, but in reality, deal. I
19 would like to just put that on the record to protect this
20 point, and just move forward today, Your Honor, and thank you
21 very much.

22 THE COURT: All right.

23 Does the State wish to make any comments?

24 MR. BRYAN: I'm sorry, Your Honor.

25 THE COURT: Do you wish to respond to the statements

1 made by the defense?

2 MR. BRYAN: No, Your Honor, other than to say that, I
3 represent to the Court, as an officer of the Court, that
4 everything I have said previously is true, that I don't have a
5 deal with him; I don't intend to consummate some deal in the
6 future, or -- I don't have a deal with him. I don't know how
7 else to say it. It was clear in our discussions that he did
8 not expect anything from me.

9 THE COURT: All right. Anything further, Mr. Axelrod?

10 MR. AXELROD: No sir, Your Honor. Thank you.

11 THE COURT: All right. Well, I -- at this point in
12 time the information that you have given me, if it were true,
13 still does not establish, or indicate a deal has been made for
14 his testimony. The fact that there -- even if it is true --
15 and I have no evidence right now that it's true, based --
16 other than hearsay, presented to you by your client, which is
17 not admissible in this Court -- that there is a warrant
18 outstanding, and has not been served, so I would be
19 considering hearsay evidence, that has not been verified, and
20 of course, the witness testified there was no deal, and the
21 State has represented to this Court that there is no deal for
22 his testimony.

23 Obviously if, at some later date, after -- after-
24 discovered evidence indicates that was not a true
25 representation to this Court, your client would, at that point

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1 in time, be in a position to present that to the Court through
2 various means, and of course, that would be up to his
3 attorneys at that time as to how to present that to the Court.
4 But at this point in time a hearsay representation -- if there
5 is a warrant that hasn't been served -- from what I recall
6 about the testimony of that witness, he indicated that there
7 were no charges pending. If he had not been served with that
8 warrant that would be a correct statement of the facts, and so
9 if that's a correct statement of the facts, I can't look
10 behind it. I cannot open the record again for evidence in the
11 case, and therefore, at this point in time I will proceed with
12 the charge.

13 MR. AXELROD: Thank you, Your Honor.

14 THE COURT: Anything further from the defense?

15 MR. AXELROD: No sir, Your Honor.

16 THE COURT: Bring the jury back.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right, the record should reflect that
20 all jurors have returned to the courtroom.

21 I trust all of you have had a good evening, and you are
22 ready to begin the trial of this case.

23 Yesterday afternoon we completed the arguments by
24 counsel in this matter, and I told you this morning that I
25 would give you my charge concerning the law in this case.

1 In this case there are three indictments, and they
2 charge the Defendant with three separate offenses. The first
3 offense is lewd act on a minor child; the second offense is
4 second degree criminal sexual conduct with a minor, and
5 assault with intent to commit second degree criminal sexual
6 conduct.

7 I remind you that the fact that a defendant has been
8 arrested, charged and indicted in a case is not evidence in
9 the case, and cannot be considered by you as evidence of guilt
10 in this case, nor does it create any presumption of guilt in
11 this case. The indictments are simply the documents which
12 bring this case before this Court. They inform the Court of
13 the charges that have been lodged against the Defendant. They
14 inform the Defendant of the charges that have been lodged
15 against him.

16 I am going to go over these indictments with you again,
17 because it's been a couple of -- it's been a while since we
18 went over these with you, and I want to be sure that you
19 recall the charges that the Defendant is faced with.

20 The first indictment is in case number (06-GS-22-0581).
21 The indictment is for lewd act on a minor child. The
22 indictment states that Shannon D. McGee, whose date of birth
23 is June 12th, 1967, did, in Georgetown County, on or between
24 June the 1st of 2003, and March the 31st of 2005, willfully,
25 and lewdly, commit a lewd or lascivious act upon, or with the

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1 body of a child less than sixteen years of age, Minor Child
2 whose date of birth is [REDACTED] [REDACTED] with the intent of
3 arousing, appealing to, or gratifying the lust or passions, or
4 sexual desires of the said Defendant or of the victim, to
5 witness, the Defendant did put his mouth on the victim's
6 breasts, and forced her to touch his penis and masturbate him.
7 This is in violation of Section 16-15-140 of the South
8 Carolina Code of Laws, 1976 as amended.

9 The second indictment is for criminal sexual conduct
10 with a minor in the second degree. This is in case number (06-
11 GS-11-0580) (s.i.c.). The indictment states that Shannon D.
12 McGee, in Georgetown County, on or between June the 1st of
13 2003, and March the 31st of 2005, engage in a sexual battery
14 with the victim, at least eleven years of age but less than
15 fourteen, Minor Child to wit: The Defendant did digitally
16 penetrate the minor victim's vagina, the victim's date of
17 birth being [REDACTED] [REDACTED] this in violation of Section 16-
18 3-655(2) of the South Carolina Code of Laws, 1976 as amended.

19 The final indictment in this case is for assault with
20 intent to commit criminal sexual conduct with a minor, in the
21 second degree. That indictment states that Shannon D. McGee,
22 whose date of birth is June 12, of 1967, did, in Georgetown
23 County, on or between June the 1st of 2003, and March 31st of
24 2005, commit the offense of assault with intent to commit
25 criminal sexual conduct, second degree, with a minor, in that

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1 he did assault the victim, Minor Child whose date of birth
2 is [REDACTED] [REDACTED] with the intent to accomplish a sexual
3 battery, to wit: The Defendant did lie on top of the
4 Defendant (s.i.c.) and attempted to have sexual intercourse
5 with her. This is in violation of Section 16-3-656, and 16-3-
6 655 of the South Carolina Code of Laws, 1976 -- of 1976 as
7 amended.

8 Each indictment charges a separate and distinct defense.
9 At the close of my charge you will retire to the jury room,
10 and you must decide each indictment separately on the evidence
11 and the law applicable to that indictment, uninfluenced by
12 your decision as to any other indictment. The Defendant may
13 be acquitted or convicted on any of the charges, or all of the
14 charges charged. You will be asked to write a separate
15 verdict of guilty or not guilty as to each indictment before
16 this Court.

17 Again I remind you, the indictments are not evidence in
18 the case, cannot be used by you in determining the guilt or
19 the innocent of the Defendant of any of the charges which he
20 faces.

21 The Defendant, I have told you, has pled not guilty to
22 each indictment in this case. That plea has placed the burden
23 upon the State to prove the Defendant guilty. A person
24 charged with committing a crime, no matter how serious the
25 offense might be, is never required to prove himself innocent

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1 of those charges. I charge you that it's an important rule of
2 law in our system of justice that no matter what the
3 seriousness of the charge might be the defendant is always
4 presumed to be innocent of the crime for which the indictment
5 was issued, unless guilt has been proven to you by evidence
6 satisfying you of that guilt beyond a reasonable doubt. The
7 presumption of innocence does not end when you begin your
8 deliberations, but it stays with the Defendant throughout
9 these proceedings. It accompanies him until such time as you
10 reach a verdict, based on the evidence, of guilt, and you have
11 been satisfied by evidence of that guilt beyond a reasonable
12 doubt.

13 The presumption of innocence has been described somewhat
14 like the robe that I wear into this courtroom. That
15 presumption of innocence is about the Defendant's shoulders
16 throughout the trial. It remains about his shoulders
17 throughout the trial, until it has been stripped from him by
18 evidence which satisfies you of that defendant's guilt, beyond
19 a reasonable doubt. The presumption of innocence is not a mere
20 legal theory. It's not just a legal phrase. It's a
21 substantial right that each and every defendant is entitled
22 to, until and unless you, the jury, have been satisfied from
23 the evidence of the Defendant's guilt, beyond a reasonable
24 doubt.

25 Now, from my charge thusfar you can probably tell that

1 the concept of reasonable doubt is a very important concept in
2 our criminal justice system. The State has the burden of
3 proving it's case to you by proof beyond a reasonable doubt.
4 You may ask yourself, what is a reasonable doubt under the
5 law. A reasonable doubt is that kind of doubt which would
6 cause a reasonable person to hesitate to act.

7 Some of you may have served as jurors in a civil case at
8 some point in time, and there is a different standard of proof
9 for different types of cases in our system. In a civil case
10 the standard of proof is proof by the greater weight or the
11 preponderance of the evidence. That's been described as the
12 scales of justice that you have all seen at some point in time
13 in your life. If those scales, when you weigh the evidence,
14 tip ever so slightly in favor of the plaintiff, or ever so
15 slightly in favor of the defendant. If it tilts ever so
16 slightly in favor of the plaintiff, that is by the greater
17 weight or the preponderance of the evidence, the plaintiff is
18 entitled to a verdict. If it tilts ever so slightly in favor
19 of the defendant, in that case a defendant would be entitled
20 to a verdict. The greater weight or the preponderance of the
21 evidence is not the standard of proof used in a criminal case
22 in this court. In criminal cases the State's proof must be
23 more powerful than that. It must be proof beyond a reasonable
24 doubt.

25 Proof beyond a reasonable doubt is that proof which

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1 leaves you firmly convinced of the defendant's guilt. Now,
2 there are very few things in this world that we can prove
3 beyond any doubt whatsoever, and that's not the standard that
4 the State is put to in a criminal case. If, based on your
5 consideration of the evidence, you are firmly convinced that
6 the Defendant is guilty of the crime charged, then you must
7 find the Defendant guilty. If, on the other hand, you think
8 there is a real possibility that the Defendant is not guilty,
9 you must give the Defendant the benefit of that doubt and find
10 the Defendant not guilty.

11 I remind you that, during the trial, as I explained to
12 you at the beginning of this case, you and I have had certain
13 duties to perform in this courtroom. As the Trial Judge it's
14 my responsibility to preside over the trial of the case, and I
15 have had the duty to rule on admissibility of evidence,
16 appropriateness of questions, and if, during that testimony,
17 any of my rulings, or comments that I made, gave you a belief,
18 or an indication, or an inference that I had any opinion,
19 whatsoever, as to how you should determine the facts in this
20 case, I will tell you again to disregard that motion. The law
21 allows me no opinion on the question of how you determine the
22 facts in this case, and I can assure you, I have no opinion as
23 to how you determine the facts in this case.

24 I have the additional duty now of charging you
25 concerning the law in the case. As the Presiding Judge I have

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1 told you, I am the sole judge of the law in this case. It is
2 your duty, as jurors, to accept the law as I now state it to
3 you. Again, if you have any idea as to what the law ought to
4 be, or what it should be, or what it was when you came into
5 the courtroom, leave that idea outside of the jury room. You
6 must take the law as I now give it to you, apply it to the
7 facts as you find them to be, and reach a just and true
8 verdict at the close of your deliberation.

9 Now, in every case I have told you, you are the sole
10 judges of the facts in this case. You are to decide the case
11 based upon all evidence that is in the record of this case.
12 If, during this trial I directed that any matter be stricken
13 from the record, you should disregard those matters. You
14 cannot use those matters in reaching a conclusion or a verdict
15 in this case. It is also your duty to determine the effect,
16 value, and weight and truth of the admitted evidence presented
17 during this trial.

18 Now, during this trial there -- as in all cases, there
19 are two types of evidence which the Court allows to come into
20 the record. The first type is evidence that we describe as
21 direct evidence. Direct evidence is testimony from an
22 individual, or a person who claims to have direct knowledge
23 concerning some material fact in the case. That means they
24 were actually present, or saw it, experienced it, felt it,
25 touched it, smelled it, whatever the testimony is, but they

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1 have direct testimony concerning the fact which is sought to
2 be proven. That's what we call direct evidence.

3 The other type of evidence that you may consider under
4 our system is what we call circumstantial evidence. Now,
5 circumstantial evidence is proof of a chain of facts or
6 circumstances which indicate the existence of some other fact.
7 I like to use as an example of what circumstantial evidence
8 is, would be as if, last night when you went to bed it had not
9 rained, the yard was dry, the driveway was dry, but this
10 morning when you woke up, even though the sun was up, you may
11 have seen water dripping off the trees, puddles in the
12 driveway, things of that nature. Now, during the night,
13 during your sleep you didn't hear it rain; you didn't see it
14 rain, but from all the facts and circumstances that you gather
15 in the morning, those facts and circumstances indicate the
16 existence of another fact, that is, that it rained during the
17 night. That's what circumstantial evidence is.

18 Circumstantial evidence is proof, again, of a chain of facts
19 or circumstances which indicate the existence of some other
20 fact. The law makes absolutely no distinction between the
21 weight or the value that you, as jurors, can assign to either
22 direct or circumstantial evidence, nor is there a greater
23 degree of certainty required of circumstantial evidence than
24 that of direct evidence. You should weigh all of the evidence
25 in the case, and if, after weighing all of the evidence in the

1 case you are not convinced of the guilt of the Defendant
2 beyond a reasonable doubt, you must find the Defendant not
3 guilty. But again, if you are firmly convinced of the
4 Defendant's guilt, from all the evidence that you have
5 considered, beyond a reasonable doubt, then you must find the
6 Defendant guilty.

7 Necessarily, as part of your job as jurors you must
8 determine the credibility, or the believability of the
9 witnesses who testified in the case. As I explained to you at
10 the beginning of the trial, credibility simply means that,
11 believability. It's your duty to analyze the testimony given,
12 evaluate the evidence, and determine which evidence convinces
13 you of it's truth.

14 In determining the believability of witnesses who have
15 testified in this case I have told you, you can believe all of
16 the witnesses against one, one against all; you have the right
17 to believe all of what a witness tells you, none of what a
18 witness tells you, or part of what a witness tells you. You
19 are the sole judges of the facts in this case. You are the
20 sole judges of the believability of the witnesses who have
21 testified before you in this trial.

22 You may consider whether any witness has exhibited any
23 bias, or prejudice toward one side or the other. You may
24 consider whether a witness has a stake in the outcome of the
25 case, whether or not the witness actually had the ability to

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1 know the things about which that witness testified, and you
2 have observed the witnesses as they testified, the manner and
3 the way in which they spoke, how they delivered their
4 testimony. All of those factors should be considered, along
5 with your own good common sense, in reaching a determination
6 as to whether or not you believe a witness, and what weight
7 you choose to assign to the testimony of each witness in this
8 case.

9 Now I will instruct you, and I emphasize to you the fact
10 that the Defendant did not testify in this case is not a
11 factor to be considered by you in any way in your
12 deliberations and your consideration of the question of the
13 guilt or innocence of the Defendant. It must not be
14 considered by you in any manner whatsoever. A Defendant has a
15 Constitutional Right to remain silent, and the assertion of
16 that right must not be considered by you in your deliberation.
17 I will repeat that, under your oath as jurors you are to draw
18 no conclusion whatsoever from the fact that the Defendant did
19 not testify in this case. The fact that the Defendant did not
20 testify should not even be discussed by you during your
21 deliberation. The Defendant is not required to prove himself
22 innocent of any charge. The burden of proof, as I have told
23 you throughout this trial, is upon the State to prove the
24 Defendant guilty beyond a reasonable doubt.

25 Now, in order to establish any crime in this State the

1 State must establish criminal intent, criminal liability. For
2 example, the mental state required to be proven by the State
3 for a particular crime might be purpose, intent, knowledge,
4 recklessness, or even criminal negligence. Criminal intent
5 must be proven, again, by the State beyond a reasonable doubt.
6 Criminal intent is always a matter which the jury must
7 consider, and it must be determination from the facts and
8 circumstances surrounding the case. That's because we have no
9 science at this point in time that can cut open a person's
10 skull, look into their brain, and see what they intended to do
11 in any particular instance. There is no mathematical
12 certainty, or way of calculating what someone intended to do
13 in any circumstance, therefore, criminal intent must be
14 established from circumstantial evidence. It must be inferred
15 from the facts and circumstances which are shown to have
16 existed at the time of the alleged incident. That's how you
17 make a determination as to whether or not the element
18 requiring intent is present. It's not necessary to establish
19 intent, again, by direct or positive evidence, but intent may
20 be established by inference in the same way as any other fact,
21 again, taking into consideration the facts and circumstances
22 of the case.

23 Criminal intent is a mental state. It's a conscious
24 wrongdoing. It's up to you to determine what the Defendant
25 intended to do, based on the circumstances which have been

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1 shown to you to have existed at the time of the alleged
2 incident. Criminal intent also can arise from a failure to
3 act. It can arise from negligence, recklessness, or an
4 indifference to duty, or the consequences of one's actions.
5 Those are considered by the law to be the equivalent of
6 criminal intent.

7 Now, a person who testified in this case was shown to
8 have a past criminal record. A person who has a past criminal
9 record is competent to testify during a trial. A past record
10 does not affect the ability of that witness to testify. A
11 past record of a witness may be considered by you, if at all,
12 in determining a witness's believability. Remember, you are
13 the sole judges of the facts of this case, and the
14 believability of any and all of the witnesses who have
15 testified.

16 I also charge you, the testimony of a victim in a
17 criminal sexual conduct case need not be corroborated.

18 Also, during this trial you have heard testimony from a
19 person that the law considers to be an child. Where a witness
20 is a child you must determine, as with any witness, whether or
21 not the testimony is believable. In deciding believability
22 you may consider, not only the matters that I have already
23 discussed with you, but you may consider also the age of the
24 child, the child's ability to observe and remember facts, the
25 child's ability to understand and answer questions posed to

1 that child. Because young children may not fully understand
2 what is happening in this courtroom it is up to you, as the
3 jury, to decide whether the child understood the seriousness
4 of appearing as a witness in a criminal trial, whether the
5 child understood the questions posed to that child, whether
6 the child had a good memory, whether the child -- excuse me --
7 understands the difference between lying and telling the
8 truth. In addition, young children may be influenced by the
9 way that questions are asked. It's up to you to decide
10 whether or not the child understood the questions asked in the
11 case.

12 Also, we had a witness testify in this case who was
13 designated as an expert witness within a field, and I told you
14 I would tell you a little more about that situation during my
15 trial (s.i.c.), and ordinarily the rules of our evidence do
16 not allow witnesses to testify concerning opinions or
17 conclusions. We make an exception to that rule for witnesses
18 who are designated as expert witnesses. That's a person, as I
19 explained, who, because of their education or experience, has
20 become an expert in some art, field or profession, or calling,
21 and those persons are allowed to state an opinion as to any
22 relevant and material matter before this Court in which -- in
23 the area in which the witness claims to be an expert, and may
24 also state the reasons, or the basis upon which that opinion
25 was rendered.

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1 You should consider the testimony of an expert like any
2 other evidence. Give it the weight you think it deserves. If
3 you decide that the opinion of an expert is not based on
4 sufficient education or experience, or if you conclude that
5 the reasons given by the expert for stating that opinion were
6 not sound, or not based on sound information, or that the
7 opinion has been outweighed by other evidence, you may
8 disregard the opinion of an expert entirely, if you so choose.
9 An expert witness's testimony is to be given no greater weight
10 than any other witness simply because that witness has been
11 designated as an expert. You are the sole judges of the facts
12 in this case. As in the case of all other witnesses you are
13 the sole judges of the credibility or the believability, and
14 the weight to be assigned to each witness, each witness's
15 testimony that was given during the trial. You are not
16 required to accept an expert's opinion, even though that
17 opinion may not be contradicted.

18 Now, I'm going to go through the law on the charges that
19 are before this Court. The first one is lewd act on a minor.
20 That refers -- and the law is given in a Code Section under
21 our South Carolina Code, number 16-15-140 of the Code.

22 The Defendant is charged with committing a lewd act on a
23 minor. A minor, under the law of this State, is a person
24 under the age of eighteen years.

25 The State must prove, first of all, beyond a reasonable

1 doubt, that the Defendant was also over the age of fourteen.
2 Next, the State must prove that the Defendant willfully,
3 lewdly committed, or attempted to commit a lewd or lascivious
4 act on, or with the body, or it's parts, of a child under the
5 age of sixteen years, with the intent of arousing, appealing
6 to, or gratifying the lust, passions or sexual desires of the
7 defendant or the child.

8 Willfully means voluntarily, and intentionally, with a
9 specific intent to do something the law forbids. Lewd means
10 obscene, lustful, indecent, or lecherous. Lascivious means
11 tending to incite lust, lewd, indecent, obscene, or tending to
12 deprave the morals in respect to sexual relations.

13 The next charge is second degree criminal sexual conduct
14 with a minor. The Defendant is charged with second degree
15 criminal sexual conduct with a minor, and the State must
16 prove, again, beyond a reasonable doubt, that the Defendant
17 engaged in a sexual battery with the victim.

18 A sexual battery is sexual intercourse, cunnilingus,
19 fellatio, anal intercourse, or any intrusion, however slight,
20 of any part of a person's body, or any object, into the
21 genital or anal openings of another person's body, except when
22 the intrusion is accomplished for medically recognized
23 treatment or diagnostic purpose.

24 The State then must prove, beyond a reasonable doubt,
25 that the victim was at least eleven years old, but not more

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1 than fourteen years old at the time of the sexual battery.
2 Consent, willingness, indifference or ignorance on the part of
3 the minor, if any, as to what was taking place, does not, in
4 any way, affect the charge of criminal sexual conduct with a
5 minor, because an unmarried woman, under the age of fourteen,
6 cannot legally consent to sexual intercourse.

7 Assault with intent to commit a second degree criminal
8 sexual conduct is the final charge. In order to prove assault
9 with the intent to commit second degree criminal sexual
10 conduct, the State, again, must prove beyond a reasonable
11 doubt that the Defendant assaulted the victim in an attempt to
12 engage in a sexual battery with the victim.

13 An assault occurs when a person violently, or forcefully
14 attempts to hurt, or injure another person, and has the
15 present ability to complete the attempted injury, an assault
16 with the intent -- with the intentional creation of the fear
17 of immediate bodily harm.

18 Sexual battery is sexual intercourse, again,
19 cunnilingus, fellatio, anal intercourse, or any intrusion,
20 every how slight, of any part of a person's body, or object,
21 into the genital or anal openings of another person's body,
22 except, again, when that intrusion is done for a medically
23 recognized treatment or diagnostic purpose.

24 The State must also prove, beyond a reasonable doubt,
25 that the Defendant intended to use aggravated coercion to

1 accomplish the sexual battery. Intent, again, may be shown by
2 the actual conduct of the Defendant, and other circumstances
3 from which you might naturally and reasonably infer intent.

4 Aggravated coercion means that the Defendant threatened
5 to use force or violence of a high and aggravated nature to
6 overcome the victim or another person, if the victim
7 reasonably believed the Defendant has the present ability to
8 carry out the threat. Aggravated coercion may also exist if
9 the Defendant threatened to retaliate in the future by the
10 infliction of physical harm, kidnapping, or extortion, or
11 other circumstances of aggravation against the victim or any
12 other purpose.

13 Mr. Able, I'm appointing you as the foreperson of this
14 jury. That means that you will preside over the deliberations
15 of this jury. It gives you no greater say in the outcome of
16 this case than any other individual on the jury panel. It
17 simply means someone has to preside over the deliberations. I
18 have chosen you to do that, and I'm appointing you in that
19 capacity.

20 If, during the deliberations of the jury a question
21 arises that you think should be presented to the Court, I'll
22 ask that you get the jury panel to agree upon the form of the
23 question, place it in writing, knock on the door, inform the
24 bailiff that the jury has a question. You will pass the
25 question then to the bailiff, and it will be brought to me for

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1 my consideration, along with the attorneys.

2 I will tell you now that I can't each and every question
3 that you may have during your deliberations. I have explained
4 to you that we have separate functions in this trial. I can
5 answer questions concerning the law, or the evidence that has
6 been presented, concerning whether it's there or not, or allow
7 you to listen to some of the testimony, if you wish to,
8 however, I cannot intrude upon your province as the sole
9 judges of the facts in the case. So I'll consider the
10 question and give it the answer that I think is appropriate
11 under the law.

12 Also, it will be your responsibility, once the jury has
13 reached a verdict on the questions presented to the jury, to
14 record that verdict on the verdict form, sign it when all
15 verdicts have been reached, and again, inform the bailiff that
16 the final verdict has been reached, and you will be brought
17 back into the courtroom and I will, at that time, receive the
18 verdicts from you.

19 Now, I have told you that, in order for the jury to
20 reach a verdict on any of the questions presented before you
21 you must reach a unanimous agreement. In other words, the
22 verdict must be unanimous, by each and every one of you,
23 before it becomes the verdict of the jury.

24 Now, there may be some matters that the attorneys wish
25 to take up with me concerning the charge that I have given you

1 in this case, so at this point in time I'm going to ask you to
2 retire to the jury room. Do not begin your deliberations. I
3 will bring you back into the courtroom, explain the verdict
4 form to you, and give you your final instructions at that
5 point in time.

6 So again, retire to the jury room. Do not begin your
7 deliberations. Thank you very much.

8 (THE FOLLOWING TAKES PLACE AT 9:45 A.M., OUTSIDE THE
9 PRESENCE OF THE JURY.)

10 THE COURT: Any objection to the charge from the State?

11 MR. BRYAN: No, Your Honor.

12 THE COURT: Any objection from the defense?

13 MR. AXELROD: No sir, Your Honor.

14 THE COURT: Gentlemen, I do not believe there was any
15 evidence introduced into the record, other than the testimony
16 of the individuals who testified. Do we agree on that point?

17 MR. BRYAN: Yes, Your Honor.

18 MR. AXELROD: Yes sir, Your Honor.

19 THE COURT: All right. I have a verdict form,
20 gentlemen. I would ask you to step forward, take a look at
21 this, and see if you have any objection to the form I intend
22 to submit to the jury.

23 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

24 THE COURT: Any objection to the jury form from the
25 State?

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1 MR. BRYAN: No, Your Honor.

2 THE COURT: Any from the defense?

3 MR. AXELROD: No sir, Your Honor.

4 THE COURT: All right. Bring the jury back.

5 (THE FOLLOWING TAKES PLACE AT 9:50 A.M., WITHIN THE
6 PRESENCE OF THE JURY.)

7 THE COURT: Okay. The record should reflect that all
8 jurors have returned to the courtroom at this point in time.

9 Ladies and gentlemen of the jury, I am going to present
10 you with a verdict form. I'll hold it up to try to show you
11 what it's made up of, Mr. Foreman, so you will be aware of how
12 it works. The top is the caption of the case. It simply
13 states the names of the parties, and the indictments which are
14 before the Court, then it has in the center of the page,
15 verdict. The first question that's asked of you is, as to the
16 indictment number -- and it has the case number -- lewd act
17 upon a minor child: We, the jury, unanimously find the
18 Defendant, Shannon D. McGee -- the first choice is not guilty,
19 the second choice is guilty. Once a verdict has been reached
20 on that particular charge it will be recorded beside the
21 appropriate verdict, with either a check or an (X), however
22 you wish to mark it.

23 Then you will move on to the next question. There is a
24 separate question for each of the indictments, second degree
25 criminal sexual conduct with a minor, and assault with intent

1 to commit second degree criminal sexual conduct. You will
2 have to reach a verdict as to all three cases before the jury
3 has reached a final verdict in the case.

4 Do not take from the fact that I have placed these
5 choices in any particular order that I, again, have any
6 opinion as to how you determine the facts and resolve the
7 case. By verdict is simply -- there are two choices for each
8 indictment. I've got to put them in some order. This is the
9 order that we chose, so it indicates no preference on my part
10 as to the order of the verdict.

11 I -- there has been no documentary or physical evidence
12 entered into the trial of this case, so we are not submitting
13 that to you in the jury room.

14 The bailiff will bring you the verdict form. At this
15 point in time I'm going to ask the jury to retire to the jury
16 room. Begin your deliberations.

17 The alternate will be placed separately. Sir, if you
18 are needed in the trial of the case you will join the jury
19 should some juror not be able to complete deliberation.

20 So at this point in time the jury should retire to the
21 jury room, begin deliberation.

22 (THE JURY RETIRED TO BEGIN DELIBERATION AT 9:55 A.M.)

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
24 JURY.)

25 THE COURT: Any objection to my final comments to the

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1 jury from the State?

2 MR. BRYAN: No, Your Honor.

3 THE COURT: Any from the defense?

4 MR. AXELROD: No sir, Your Honor.

5 THE COURT: I will indicate on the record that our
6 final sidebar, during reviewing the verdict, the defense was
7 asked about the possibility of submitting any lesser included
8 charges, and the defense indicated that they did not request
9 that; they wanted it submitted as indicted.

10 All right, the case is in recess until such time as a
11 verdict has been reached.

12 Thank you very much.

13 MR. BRYAN: Thank you, Your Honor.

14 (THE JURY DELIBERATED, AND THE FOLLOWING TAKES PLACE
15 JUST PRIOR TO 10:20 A.M., OUTSIDE THE PRESENCE OF THE JURY.)

16 THE COURT: They are wanting to hear a transcript of
17 Minor Child testimony.

18 MR. BRYAN: Minor Child ---

19 THE COURT: It does not break it down. It simply says
20 her testimony.

21 MR. BRYAN: I wouldn't have an objection to your
22 inquiring if there is a particular portion ---

23 THE COURT: All right. I will do that. I always try
24 to narrow it, if we can.

25 MR. AXELROD: Did they want lunch?

1 THE COURT: No. They would like to ---

2 MR. AXELROD: I hate questions, Judge.

3 THE COURT: They want to see a transcript of Minor Child
4 testimony, and we don't have a written transcript. We would
5 have to play it for them. My intention is to get them in the
6 courtroom and ask them if they need a particular point, or
7 part of the transcript. If it's simply hear the entire
8 testimony ---

9 MR. AXELROD: I would like to ---

10 THE COURT: I do too, but I have no ---

11 MR. AXELROD: I always think they are in my -- they are
12 ---

13 THE COURT: They are entitled to do this.

14 MR. AXELROD: I know.

15 Your Honor, let me ask you this, if they hear the whole
16 testimony that would be direct and cross.

17 THE COURT: Oh yeah, absolutely. That's everything. I
18 mean, they are the ones asking the question, so if they want
19 to narrow it they can. If they simply want to hear
20 everything, they are welcome to hear it all. They run the
21 boat on the questions I have asked, other than -- other than
22 if it's ---

23 MR. AXELROD: Absolutely. I was just trying to see ---

24 THE COURT: ---Other than if it's ---

25 MR. BRYAN: I guess we need to figure out how, and

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1 where, and when we are going to -- where we are going to
2 accommodate them.

3 THE COURT: Well, that is a question as well. I think
4 for it to be done properly we've got to do it in front of the
5 Court Reporter, and be able to take down anything that is said
6 by them, and by you as we go along, so we are probably going
7 to have to do it right here. I don't know how you do it other
8 places.

9 MR. BRYAN: I guess -- I mean, I guess what I'm saying
10 is, we will be at ease, and not in deliberation -- unless it's
11 a very ---

12 (AFTER SOME COLLOQUY AMONG THE COURT, COUNSEL FOR THE
13 STATE AND COUNSEL FOR THE DEFENDANT, CONCERNING PLAYBACK OF
14 THE TESTIMONY REQUESTED BY THE JURY, THE FOLLOWING TAKES PLACE
15 OUTSIDE THE PRESENCE OF THE JURY.)

16 THE COURT: All right. Bring the jury in, please.

17 (THE JURY RETURNED TO THE COURTROOM AT 10:20 A.M.)

18 THE COURT: All right. The record should reflect that
19 the deliberating jurors have returned to the courtroom.

20 I have received a request, Mr. Foreman, that you would
21 like to see a transcript of Minor Child testimony, if that's
22 available. I will tell you that we do not have a printed copy
23 of that, and cannot print a copy at this point in time. We
24 have the tapes that were taken during the testimony, and of
25 course the Court Reporter has other means of recording the

1 testimony as it goes along, so the best available evidence of
2 that testimony would be the recorded statement that was made
3 during the trial.

4 Now, I do not know if your inquiry involves some
5 particular portion of her testimony, or if you would like to
6 hear everything that she said, so I am asking you, can you
7 make that statement for the jury, or do you need to step back
8 to the jury room and reformulate a question on that point?
9 I'm not asking you to tell me about your deliberations. Just
10 simply state to me whether or not there is a portion that you
11 would like to focus, or the jury would like to focus on, or
12 whether you would like to hear the entire statement.

13 FOREMAN: We don't need to hear the entire statement.
14 We had some specific questions that ---

15 THE COURT: All right. I'm going to ask you to step
16 back in the jury room and reformulate the question on the
17 specific issues, so that we can focus in on the things that
18 you would like to go over again.

19 All right. Step back to the jury room, please, and do
20 that for me.

21 (THE FOLLOWING TAKES PLACE AT 10:21 A.M., OUTSIDE THE
22 PRESENCE OF THE JURY.)

23 THE COURT: I'm going to have this question made a
24 Court's Exhibit, and placed into the record.

25 (NOTE FROM THE JURY MARKED COURT'S EXHIBIT NUMBER 1.)

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1 THE COURT: All right.

2 MR. AXELROD: Your Honor, I believe during the trial I
3 had asked that -- I believe Mr. Kinloch's N.C.I.C. be made
4 part of the court record, so I believe -- I think the Court
5 said it would take it as part of the court record.

6 MR. BRYAN: I don't have any objection to it. If we
7 could make it a Court's exhibit ---

8 THE COURT: I'll make it a Court's Exhibit, so it will
9 be part of the record.

10 MR. AXELROD: Thank you, Your Honor.

11 (CRIMINAL RECORD OF THE WITNESS, AARON PEREZ KINLOCH,
12 MARKED COURT'S EXHIBIT NUMBER 2.)

13 THE COURT: All right. If you will bring my jury in.

14 (THE FOLLOWING TAKES PLACE WITHIN THE JURY AT 10:40
15 A.M.)

16 THE COURT: All right. The record should reflect that
17 all deliberating jurors have returned to the courtroom, and I
18 have received a -- an additional request from the foreperson,
19 that is, after discussing the issue the jury requests that we
20 hear the complete recording of Minor Child testimony.

21 I apologize on the delay in getting back to you. It was
22 necessary that we use the courtroom to select a jury for a
23 civil trial that's starting downstairs, and we had a little
24 bit of time to get that done, but that's been taken care of,
25 and so now we are in a position to go forward.

PUBLISHED TESTIMONY OF WITNESS, Minor Child
JURY OUT/JURY IN/COURT TO JURY

TO JURY

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1 I have asked the Court Reporter to que that recording
2 up, and we will play that recording for you at this time.

3 (AT THIS TIME THE COMPLETE TESTIMONY OF THE VICTIM,
4 Minor Child WAS PLAYED FOR THE JURY.)

5 THE COURT: Ladies and gentlemen if the jury, that
6 completes the portion of the testimony you had requested to
7 hear. I will ask that you return to the jury room, continue
8 your deliberations.

9 Thank you very much.

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
11 JURY AT 11:45 A.M..)

12 THE COURT: Court is in recess in this case until such
13 time as the verdict has been reached.

14 I'll make the last communication from the jury a part of
15 the court record, as a Court exhibit.

16 Thank you very much.

17 (NOTE FROM THE JURY MARKED COURT'S EXHIBIT NUMBER 3.)

18 THE COURT: Are you ready, Mr. Axelrod?

19 MR. AXELROD: Yes sir, Your Honor.

20 THE COURT: Bring the jury back.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JURY AT 12:35 A.M..)

23 THE COURT: The record should reflect that all jurors
24 have returned to the courtroom.

25 Ladies and gentlemen of the jury, I have received

PUBLISHED TESTIMONY OF WITNESS, Minor Child
JURY OUT/JURY IN/COURT TO JURY

TO JURY

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1 another inquiry. It says, "Would you please provide us with a
2 written definition of the charges."

3 Now, Mr. Foreman, I assume that you would like then a
4 written definition of the -- definition of the crimes that the
5 Defendant has been charged with. Is that a correct
6 assumption?

7 FOREMAN: Correct, yes sir.

8 THE COURT: I have prepared a written copy of the
9 charge that I delivered to you, that deals just with the
10 charges that he's charged with. Is that what you are wanting?

11 FOREMAN: Yes sir.

12 THE COURT: Also, I am going to submit to you the
13 actual indictments in the case, so that you can look over
14 those documents as well. Again, I will caution you, the
15 indictments are not evidence, and cannot be used by you in
16 determining the guilt or the innocence of the Defendant, but
17 that will explain to you the actual charge that has been
18 levied, and this is the charge that I delivered to you, in a
19 written form. Obviously I don't deliver that charge word for
20 word. I don't read it to you; I tell it to you, but this is a
21 written copy, and is accurate as well.

22 So I will submit these two doc -- these several
23 documents to you for your consideration.

24 I have instructed the Clerk to obtain your lunch order,
25 so that you can eat in today, so if that occurs please do not

1 communicate with anyone concerning your deliberations, only
2 for the purposes of ordering your lunch.

3 You can retire to the jury room. I will submit these
4 documents to the bailiff.

5 There's two copies of the charge, Mr. Foreman, so that
6 you will have more than one to circulate.

7 And Mr. Foreman, one other thing, please return those
8 documents to the courtroom. I'll make them a part of the
9 record when the case is ended.

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
11 JURY AT 12:40 P.M.)

12 THE COURT: Any objection to my response from the
13 State?

14 MR. BRYAN: No, Your Honor.

15 THE COURT: Any from the defense?

16 MR. AXELROD: No sir, Your Honor.

17 THE COURT: All right. I'll make a copy of the -- or
18 the original of the inquiry a part of the court record.

19 Court will be in recess till the jury returns a verdict.
20 Thank you very much.

21 MR. BRYAN: Thank you, Your Honor.

22 (NOTE FROM THE JURY MARKED COURT'S EXHIBIT NUMBER 4.)

23 (NOTES FROM THE JURY MARKED COURT'S EXHIBIT NUMBERS 5
24 AND 6.)

25 (THE JURY CONTINUED TO DELIBERATE, AND THE FOLLOWING

JURY IN/COURT TO JURY

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1 TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY AT 1:45 P.M.)

2 THE COURT: Bring the jury in. Come on in. Thank you.

3 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
4 JURY.)

5 THE COURT: All right, the record should reflect that
6 all jurors have returned to the courtroom.

7 I have received an inquiry, and I will put that on the
8 record. The inquiry says, "Please clarify one point. In
9 indictment number three, must the State prove aggravated
10 coercion, yes or no." And you indicated that I could circle
11 one and that you wouldn't have to march back into the
12 courtroom. Well, in considering your question -- I learn
13 something every day, and juries sometimes teach me something.
14 I have come to the realization that the charges that I have
15 given you applied to the charge for the -- for an assault with
16 intent to commit criminal sexual conduct, which is -- applies
17 to an adult, not necessarily to a minor, so I've made an error
18 in the charge on that particular indictment.

19 Of course the attorneys did not raise that to me, and I
20 did not catch it myself, but apparently you caught that point,
21 and I appreciate you doing that, so I'm going to recharge you
22 as to that particular indictment.

23 So I will tell you at this point in time to disregard
24 any charge on that particular indictment that I may have given
25 prior to this time, and I'm going to charge you, and submit to

1 you a written copy of what I consider to be the proper charge
2 on that particular point. And again, I want to thank you for
3 raising that issue.

4 The charge -- the Defendant is charged with criminal
5 sexual conduct, or assault, with intent to commit second
6 degree criminal sexual conduct with a minor. Now, in order to
7 prove criminal sexual conduct with a minor the State must
8 prove, beyond a reasonable doubt, that the Defendant engaged
9 in a sexual battery with the victim.

10 Again, a sexual battery is sexual intercourse,
11 cunnilingus, fellatio, anal intercourse, or any intrusion,
12 however slight, of any part of a person's body, or any object,
13 into the genital or anal openings of another person's body,
14 except when the intrusion is accomplished for a medically
15 recognized treatment or diagnostic purpose.

16 The State must prove, beyond a reasonable doubt, that
17 the victim was at least eleven years old, but not more than
18 fourteen years old at the time of the sexual battery.

19 Consent, willingness, indifference or ignorance on the
20 part of the minor, if any, as to what was taking place does
21 not, in any way, affect the charge of criminal sexual conduct
22 with a minor, because an unmarried woman, under the age of
23 fourteen years, cannot consent to sexual intercourse.

24 That is a written charge that I am going to submit to
25 you at this point in time.

JURY IN/COURT TO JURY

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1 Before I complete this I'm going to ask the attorneys to
2 approach for just a second.

3 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

4 **THE COURT:** Now, in order to prove -- now the Defendant
5 -- that was -- I've just defined to you what criminal sexual
6 conduct in the second degree with a minor is. That's criminal
7 sexual conduct. The Defendant is charged with assault with
8 intent to commit a second degree criminal sexual conduct, and
9 the State must prove, beyond a reasonable doubt, that the
10 Defendant assaulted the -- just one second -- assaulted the
11 victim with -- in an attempt to engage in a sexual battery
12 with the victim.

13 An assault occurs when a person, either violently or
14 forcefully, attempts to hurt, or injure another person, and
15 has the present ability to complete the attempted injury. An
16 assault is the intentional creation of fear of immediate
17 bodily harm. So that is what an assault is.

18 Now, you have all heard the phrase assault and battery,
19 in legal jargon. An assault, again, has been sometimes
20 described as if I walked up to you in the hall, drew back my
21 fist as if to hit you, but then didn't carry out the hitting.
22 Since I was close enough to carry out the attempted injury,
23 and I gave you fear of immediate bodily harm by drawing back
24 my fist, then I would have completed an assault at that point
25 in time. If I had taken my hand forward and struck you, the

1 striking, or the uninvited touching of someone, with the
2 intent to commit an injury, is a battery. So assault is
3 placing someone in fear of injury, with the immediate ability
4 to carry out that particular injury; a battery is the actual
5 touching.

6 In this case the charge is assault with intent to commit
7 criminal sexual conduct with a minor in the second degree. So
8 the allegation is that, again, that is contained in the
9 indictment. I'll let you read that. That's before you.

10 I have defined for you now what an assault is, and I
11 have also defined to you what criminal sexual conduct in the
12 second degree with a minor is.

13 As to your question, the aggravated coercion, that is
14 not an element of the crime that was charged in this
15 particular case, and was improperly charged to you earlier, so
16 I'm asking you to strike that portion of the charge, or that
17 charge, put in it's place this charge.

18 I'm going to submit to you in writing the charge for
19 second degree criminal sexual conduct with a minor. You
20 should consider that only in reaching a verdict on this
21 particular indictment, and again, you must also determine
22 whether or not an assault was carried out with the intent to
23 commit that battery.

24 Does that answer the question, Mr. Foreman?

25 **FOREMAN:** Yes sir.

JURY OUT/ON RECORD

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1 THE COURT: I'll submit these documents to you.

2 You may return to the jury room. I understand lunch is
3 here, and it will served to you first.

4 Thank you very much.

5 (THE JURY RETIRED AT 1:50 TO HAVE LUNCH AND CONTINUE
6 DELIBERATION. THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE
7 OF THE JURY.)

8 THE COURT: All right. Mr. Solicitor, any objection to
9 my recharge on that point?

10 MR. BRYAN: None, Your Honor.

11 THE COURT: Defense.

12 MR. AXELROD: No sir, Your Honor.

13 THE COURT: Now, there was something about nolle-
14 prossing an indictment that you wanted to put on the record.

15 MR. BRYAN: If it please the Court, Your Honor, at this
16 time the State wishes to nolle pros indictment (06-GS-22-
17 0333), charging Shannon McGee with criminal sexual conduct
18 with a minor in the second degree. This was the original
19 indictment, with the same set of circumstances and facts that
20 was incorrectly worded, therefore, we re-indicted ---

21 THE COURT: So a new indictment was issued and re-
22 indicted?

23 MR. BRYAN: That's correct, and this would be a
24 duplicate, so this is ---

25 MR. AXELROD: Trying to keep track of it, Your Honor.

1 **THE COURT:** Do you want to object to him nolle prosequing
2 that indictment?

3 **MR. AXELROD:** No. I'm trying to keep track, so is it -
4 - my understanding that there was an older indictment.

5 **THE COURT:** I've never seen that until just now. He
6 mentioned that to me just now. I don't know anything ---

7 **MR. BRYAN:** That's correct.

8 **MR. AXELROD:** Yes, because when I heard the word nolle
9 pros, Your Honor, that's why I jumped up. It's like, well, if
10 I can get rid of one of these charges I just -- that was why I
11 came up, Your Honor.

12 **MR. BRYAN:** This is a duplicate to what we already
13 tried.

14 **MR. AXELROD:** So which one is he being tried on today,
15 the exact number for this one?

16 **THE COURT:** The one I have in front of me is (06-GS-22-
17 0582).

18 **MR. AXELROD:** And the one that's being dismissed is
19 (0333).

20 **THE COURT:** I suppose. I don't -- he's got it. I've
21 never seen it.

22 **MR. BRYAN:** The number I just called.

23 **MR. AXELROD:** I'm just trying to clarify for my record
24 here.

25 **MR. BRYAN:** (0333). That's correct.

COURT TO FOREPERSON ONLY

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1 MR. AXELROD: And was that an attempt -- was that one
2 of those attempted ones? I don't have the ---

3 MR. BRYAN: The charge on that, which is criminal
4 sexual conduct with a minor in the second degree.

5 MR. AXELROD: Okay. So it was a C.S.C. second. Thank
6 you.

7 MR. BRYAN: I was trying to just make this easier
8 record keeping, not more difficult.

9 THE COURT: He has the right to do so, and I don't have
10 to rule on that. He is just saying ---

11 MR. AXELROD: Yes. I was just trying to write down the
12 number, what it was for.

13 THE COURT: All right. Court will remain in recess
14 until a verdict is reached.

15 (THE JURY CONTINUED TO DELIBERATE AND THE FOLLOWING
16 TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY AT 2:25 P.M.)

17 THE COURT: All right, Mr. Axelrod, if you will take
18 counsel table. We will need to get your client in.

19 MR. AXELROD: Yes sir, Your Honor.

20 THE COURT: All right. Madame Bailiff, if you would
21 bring the foreperson of the jury in.

22 Thank you.

23 (THE FOLLOWING TAKES PLACE WHEN ONLY THE FOREPERSON WAS
24 PRESENT IN THE COURTROOM.)

25 THE COURT: Mr. Able, you can come to the center here.

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 I have received an inquiry concerning the indictment
2 that was submitted. Your question concerns the indictment,
3 the next to the last line that reads, "The Defendant did lie
4 on top of the Defendant ...", and I'll stop at that point in
5 time. That is a scrivener's error. It should be that the
6 Defendant lied (s.i.c.) upon the victim. I will correct that
7 scrivener's error once I receive the original, which is in
8 your possession, and I think that responds to your question;
9 is that correct?

10 FOREPERSON: Yes sir.

11 THE COURT: Thank you very much.

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, the last two inquiries are made
15 part of the record, Court Exhibits.

16 Any objection to my statement to the foreperson?

17 MR. BRYAN: No, Your Honor.

18 THE COURT: From the defense?

19 MR. AXELROD: No sir, Your Honor.

20 THE COURT: All right. We will remain in recess till a
21 verdict is reached.

22 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
23 JURY AT 2:30 P.M..)

24 THE COURT: Mr. Foreman, I've been informed you have
25 reached a verdict; is that correct?

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 FOREMAN: We have, Your Honor.

2 THE COURT: If you will pass it to the Bailiff, please.
3 You may publish the verdict.
4 Please stand.

5 DEPUTY CLERK OF COURT: State of South Carolina versus
6 Shannon D. McGee, as to indictment number (06-GS-22-0581),
7 lewd act upon a minor child, we, the jury, unanimously find
8 the Defendant, Shannon McGee, guilty.

9 As to indictment (06-0580), criminal sexual conduct with
10 a minor, we, the jury, unanimously find the Defendant, Shannon
11 D. McGee, guilty.

12 As to indictment (06-0582), assault with intent to
13 commit second degree criminal sexual conduct, we, the jury,
14 unanimously find the Defendant, Shannon D. McGee, guilty.

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, if that's your verdict, and still your verdict, let it
17 be known by raising your right hand.

18 Let it be known that all jurors have raised their right
19 hand.

20 Anything further from the State?

21 MR. BRYAN: No, Your Honor.

22 THE COURT: Anything ---

23 (AT THIS TIME THE DEFENDANT JUMPS UP, FLIPS COUNSEL
24 TABLE OVER, RUNS TO THE CENTER OF THE COURTROOM TOWARD THE
25 COURT REPORTER AND THE JURY, STOPS, TURNS TOWARD THE ASSISTANT

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 SOLICITOR, MR. BRYAN, JUMPS ONTO MR. BRYAN, THROWS HIM TO THE
2 FLOOR AND BEGINS TO CHOKE HIM. THE DEPUTY SHERIFF COMES FROM
3 BEHIND THE RAIL, PLACES THE TASER INTO THE DEFENDANT'S BACK
4 WHILE THE DEFENDANT IS STILL ON TOP OF MR. BRYAN CHOCKING HIM.
5 TWO OTHER SHERIFF'S DEPUTIES RUN OVER TO ASSIST THE FIRST
6 DEPUTY SHERIFF. THE DEFENDANT IS HANDCUFFED AND PLACED ON HIS
7 BACK. THE TASER IS THEN PLACED ON THE DEFENDANT'S CHEST AND HE
8 IS TOLD NOT TO MOVE. THE DEFENDANT IS THEN DRAGGED FROM THE
9 COURTROOM BY THE SHERIFF'S DEPUTIES.)

10 THE COURT: All right. I was in the process, Mr.
11 Bryan, of asking you if you had anything additionally from the
12 jury at this point in time.

13 MR. BRYAN: No, Your Honor.

14 THE COURT: Mr. Axelrod, do you have anything to take
15 up before I dismiss the jury in this case.

16 MR. AXELROD: I would like them polled, Your Honor.

17 THE COURT: All right. Madame Clerk, please poll the
18 jury.

19 (AT THIS TIME EACH AND EVERY JUROR WAS POLLED
20 INDIVIDUALLY, AND EACH AND EVERY JUROR AFFIRMED THE VERDICT AS
21 PUBLISHED.)

22 THE COURT: Anything further, Mr. Axelrod?

23 MR. AXELROD: No sir, Your Honor.

24 (AT THIS TIME THE JURY PANEL WAS DISMISSED FROM FURTHER
25 PARTICIPATION IN THE TRIAL OF THIS CASE.)

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 THE COURT: All right. Mr. Axelrod, it's my finding at
2 this point in time your client has forfeited his right to be
3 present at sentencing. I intend to go forward with sentencing
4 in his absence.

5 You understand, sir?

6 MR. AXELROD: Yes sir, Your Honor. I appreciate that.

7 THE COURT: All right.

8 Mr. Solicitor, if you will go forward preparing the
9 appropriate documents.

10 MR. BRYAN: Thank you, Your Honor. I just need just a
11 minute.

12 THE COURT: Thank you.

13 You may go ahead, if you have any motions you would like
14 to place on the record, Mr. Axelrod.

15 MR. AXELROD: May I approach the bar there, Your Honor?

16 THE COURT: Yes, you may. Please do. Yes sir.

17 MR. AXELROD: Your Honor, I would like to first ask for
18 a mistrial, that the facts weren't sufficient for the jury to
19 bring back the verdict they brought back.

20 Would the Court like me to go through all of them, or
21 would the Court ---

22 THE COURT: Go through all of them, please.

23 MR. AXELROD: Thank you, sir.

24 I also would make a mistrial (s.i.c.) that the Court
25 sent back -- the jury had requested a written set of the

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 criminal charges, I believe, against my client, and I had
2 asked the Court to read it, and I was instructed that, if it's
3 legal, and the jury wants it, the Court would send it back,
4 and they did. I feel that that was improper, that the only
5 material that should be sent back to a jury should be the
6 exhibits that were submitted from the witness stand.

7 THE COURT: Well, actually what was sent back was a
8 written copy of the charge that I had delivered.

9 MR. AXELROD: And -- that's what I mean, Your Honor,
10 the written copy of the charge I felt should have just been
11 given back to them orally, and not in written form, back to
12 their room.

13 Also, I would like to renew, and ask for a mistrial,
14 based on -- we had -- we had two or three witnesses in this
15 case. We had the victim; we had her brother; we had a Doctor,
16 and then we had somebody that was incarcerated with Mr. McGee
17 in the Georgetown Detention Center. His testimony was
18 basically that Shannon had confessed, or talked about certain
19 things that had occurred, and I -- we had extensive
20 conversation, that the Court instructed me that only crimes
21 that occurred from this date ten years back would be
22 admissible, depending on when they got out of jail, so I think
23 we had one from 1995 also. My position was that, on this
24 case, where you have limited -- you really just had a -- the
25 victim's statement. It was bolstered by this jailhouse

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 snitch, or jailhouse person, however we want to say it, Mr.
2 Kinloch. I feel that -- I had asked that any of his prior
3 crimes -- and there were several -- dealing with truthfulness
4 or moral turpitude, should have been admissible at this trial
5 to impeach the credibility, because I believe it was a
6 strong -- it was a strong basis for the witness -- the
7 witness's veracity should -- I should have been allowed full
8 latitude to impeach the truthfulness of this witness through
9 the prior record. And as the Court instructed the jury, it's
10 only there for what it is for what it is, and doesn't stop a
11 person from testifying, but I think that, if they had seen
12 that this witness had a life long level of crime, they might
13 have come back with a much different verdict.

14 I would also like to put back on the record again that I
15 was told on Friday afternoon that I would have this trial
16 today, and I believe that -- I wasn't misled. I believe that
17 I was told by other people that I would be doing other things,
18 and then Mr. Bryan told me that -- on Friday afternoon, you
19 are going to do this trial. And I had told the Court on
20 Monday that I didn't think I -- my client could get a fair
21 trial based on the time frame and my preparation.

22 The Court assisted me on having subpoenas issued. I
23 issued the subpoenas on Monday night at seven o'clock, and
24 they were all served. I'll grant that. I did not ask the
25 Court for another continuance at that point. The Court asked

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 me if I was ready to go. I said my subpoenas were served and,
2 you know, I'll go forward if the Court instructs, and we do.

3 Then, Your Honor, also, they sent back one of the
4 charges -- whatever paper we sent back one of them was
5 actually wrong to some degree, and that got corrected, and I
6 just say that I don't think that those papers should have ever
7 gone back. I think it added to confusion, and just might have
8 allowed the jury to come back and say, well, we are going to
9 do what we do.

10 So I thank the Court -- and just -- there is absolutely
11 no disrespect to this Court -- or a Court -- that I ask for
12 the mistrial based on those things.

13 THE COURT: All right. The motions are heard and
14 denied.

15 MR. AXELROD: Thank you, sir.

16 THE COURT: Anything further?

17 MR. AXELROD: No sir, Your Honor.

18 THE COURT: All right.

19 Do you want to go forward with sentencing, Mr.
20 Solicitor?

21 MR. BRYAN: Yes sir, Your Honor.

22 I'll pass up the sentence sheets. Obviously the
23 indictments (06-GS-22-0581) and (0582) carry fifteen years on
24 the lewd act, and twenty years on the assault with intent to
25 commit C.S.C., and we would ask -- I think it's appropriate,

JURY IN/VERDICT/JURY POLLED
JURY DISMISSED/MOTIONS/SENTENCING

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1 based on his prior conviction for arm robbery, that you
2 sentence him to the maximum on those, and the State's position
3 is, on indictment (06-GS-22-0580), for criminal sexual conduct
4 with a minor -- that's a second most serious offense, which
5 requires mandatory life without parole -- he was indicted,
6 tried and convicted, and had been served notice, as well as
7 his lawyer, had been served notice, in addition to the fact
8 that we had him placed on notice, in open court, on the
9 record, previously, so my position is that it's a mandatory
10 life without parole.

11 THE COURT: Would you like to be heard on any of that,
12 Mr. ---

13 MR. AXELROD: No sir, Your Honor. No sir.

14 THE COURT: Okay.

15 Mr. Axelrod, I will need for you to sign the sentencing
16 sheets as attorney for the Defendant ---

17 MR. AXELROD: Yes sir, Your Honor.

18 THE COURT: ---Once I have completed them.

19 Mr. Axelrod, do you want to step up to sign ---

20 ---Or you want to have Mr. Axelrod sign those for me?

21 Pass that back up, please sir.

22 It is the sentence of this Court, in case number (06-
23 0581), lewd act on a minor, the Defendant be confined to the
24 Department of Corrections for a period of fifteen years. I'll
25 run that concurrent with other sentences given on today's

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1 date.

2 For assault with intent to commit criminal sexual
3 conduct with a minor, the order of the Court, he be confined
4 in the State Department of Corrections for a period of twenty
5 years, and run it concurrent with other sentences given on
6 today's date.

7 And as to case number (06-0580), criminal sexual conduct
8 with a minor in the second degree, it is the sentence of the
9 Court the Defendant be confined in the State Department of
10 Corrections for a period of life without parole.

11 MR. BRYAN: Thank you, Your Honor.

12 MR. AXELROD: Thank you, sir.

13 THE COURT: Court is in recess.

14 (THE FOLLOWING TAKES PLACE AFTER A BREAK.)

15 THE COURT: At the close of the case I had indicated
16 that I was going to put into the record the documents that I
17 had submitted to the jury. The documents which we have
18 retrieved from the jury are the verdict form. That obviously
19 is a part of the record. Also, the original indictments were
20 sent to the jury room for their consideration. Those
21 indictments are already a part of the record, and will be
22 contained in the Clerk's file.

23 Also, I had sent to them a document which began --
24 there's two copies of which is -- it begins with the caption,
25 "Lewd Act on a Minor". That was the first document that I

JURY IN/VERDICT/JURY POLLED
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1 submitted to the jury, which was a copy of my charge on the
2 various indictments. I'll have that marked as a separate
3 Court Exhibit.

4 I don't know what number we are at right now, so I'll
5 let her do that.

6 COURT REPORTER: Number 7, Court's Number 7.

7 THE COURT: That's Court's Exhibit Number 7.

8 (TYPEWRITTEN COPIES (2) OF COURT'S CHARGE ON LEWD ACT
9 MARKED COURT'S EXHIBIT NUMBER 7.)

10 THE COURT: After the jury's question concerning the
11 elements of assault with intent to commit second degree
12 criminal sexual conduct with a minor arose; I charged them
13 concerning assault. That was not a written charge; that was
14 an oral charge, and again, charged them with a separate
15 written charge, second degree criminal sexual conduct with a
16 minor, and then I asked them to disregard my -- strike and
17 disregard my earlier charge on that particular offense. That
18 document is a two-page document, and it will be made Court's
19 Exhibit Number 8.

20 (TYPEWRITTEN COPY OF COURT'S CHARGE ON CRIMINAL SEXUAL
21 CONDUCT WITH A MINOR MARKED COURT'S EXHIBIT NUMBER 8.)

22 THE COURT: Now, from the State, Mr. Bryan, any
23 objection to those documents going into the record?

24 MR. BRYAN: No, Your Honor.

25 THE COURT: Any objection from the defense?

1 MR. AXELROD: No sir, Your Honor.

2 THE COURT: All right. That concludes the case. Thank
3 you very much.

4 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 22, 2006.)

5 THE COURT: I understand we have a motion in the case
6 that we tried earlier in the week, Mr. McGee's case.

7 MR. AXELROD: Yes sir, Your Honor.

8 THE COURT: I'll be happy to hear from you.

9 MR. AXELROD: Thank you, Your Honor.

10 At this point, Your Honor, I would ask for a motion for
11 a new trial, set aside the verdict, grant a mistrial on
12 several issues, Your Honor. First of all, I hand up to the
13 Court -- the Solicitor has got a copy --

14 Your Honor, I filed a motion yesterday for a new trial,
15 to set aside the verdict on Shannon McGee, life without
16 parole, and I'm asking this Court to grant a mistrial, Your
17 Honor, on several points. The first point -- I handed up a
18 case today to the Court, **Riddle versus Osment**, 369 S.C. 39,
19 2006, decided on May the 22nd, 2006, and it goes to two areas.
20 It goes to violation of Brady by the Solicitor's Office, and
21 failure for the Solicitor's Office to correct mis-statements
22 made during a trial. I believe both those issues applied to
23 us this week.

24 Your Honor, the Court is well aware, we had lengthy
25 discussions in chambers. We had sidebars put on the record.

1 We had a proffer by a State's witness, and I was specifically
2 instructed by the Court on certain matters concerning going
3 into whether there was a deal, any type of deal, any
4 formulation that could be considered a deal, concerning Aaron
5 Kinloch. Your Honor, I believe that I upheld the ruling of
6 this Court, which denied me the ability to go into speaking
7 about a deal, or even mentioning -- excuse me, Your Honor --
8 even mentioning the word deal, that if I couldn't show to the
9 Court that there was a ---

10 THE COURT: This Court ruled that you couldn't go into
11 that question?

12 MR. AXELROD: I believe in the proffer that I -- on the
13 testimony of my client ---

14 THE COURT: The purpose of the proffer, as I recall,
15 was to allow you to question the witness about a deal.

16 MR. AXELROD: Oh, exactly, on the proffer, and ---

17 THE COURT: And that was all put in the record.

18 MR. AXELROD: And after the proffer, if there was no --
19 the Court allowed me to go in on the proffer. I don't want to
20 -- I didn't want to say it that way.

21 THE COURT: Well, you weren't precluded in putting
22 anything in the record about the deal. The only problem was
23 that, at the end of that questioning I found that there was no
24 evidence of a deal. Proceed.

25 MR. AXELROD: Absolutely, Your Honor.

1 **THE COURT:** Okay. Go ahead.

2 **MR. AXELROD:** And because of that ruling by the Court,
3 I was precluded at the trial point ---

4 **THE COURT:** Well, because there was no evidence
5 presented of a deal, but go ahead.

6 **MR. AXELROD:** Absolutely. And Your Honor, in the
7 proffer I believe that Aaron Kinloch was asked did he have any
8 pending charges. It's quite apparent that the Solicitor's
9 Office knew that there was pending charges against Aaron, and
10 I believe that pending charges would have allowed me to go
11 into a deal, questioning him about a deal on the record, not
12 just on a proffer. The inaction by the Solicitor's Office, by
13 withholding that, by not giving that to me -- it's not on the
14 N.C.I.C., was absolutely nowhere to be found. My client told
15 me that he knew Aaron had pending charges. I tried to get
16 into that, and I was told there were none. The Solicitor's
17 Office knew there were. And I believe that, if they had come
18 forward and said yes, there are pending charges, this Court
19 would have allowed me, during the trial, to question Mr.
20 Kinloch about that. It would have gone to his veracity.

21 On this case what we had was, we had a victim saying one
22 thing, and then pure corroboration from a jailhouse snitch who
23 said he had no other reason to come forward but he don't like
24 kids messed with. The Solicitor never gave me the letter. I
25 didn't find out about that letter till we were in trial, that

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1 Aaron Kinloch wrote a letter to the Solicitor.

2 According to Riddle, that would be a violation of Brady.

3 THE COURT: I don't -- was that -- was the letter put
4 into the record, either by offer, or proffer ---

5 MR. AXELROD: No.

6 THE COURT: ---Or anything?

7 MR. AXELROD: No. But under Brady it was mandatory
8 that it be disclosed to me, at least prior to trial.

9 THE COURT: Did you get it prior to trial?

10 MR. AXELROD: No sir.

11 THE COURT: Okay.

12 MR. AXELROD: Don't have it to this point right now.

13 And Riddle -- Riddle addresses that, and Riddle also
14 addresses -- I asked the Court if we -- as the Court said, we
15 might listen to that proffer today. I believe that inaction -
16 - I believe the Solicitor's Office misled this Court. I
17 believe that this Court, at least myself, was under the
18 impression there were no pending charges.

19 I found out yesterday that Aaron Kinloch had a burglary
20 first dismissed in July. I believe it was dismissed in July.
21 That would have been pertinent to this case. Then there was a
22 pending charge that was given to my client, given to Mr.
23 Kinloch on August the 1st. He had a pending charge that I was
24 never told of, and I think in this case, that was -- it was
25 tantamount to have that, because the conviction could have

1 come through Mr. Kinloch's testimony. We know the victim made
2 a statement, recanted a statement. It was bolstered by Mr.
3 Kinloch's testimony, that I was unable to impeach, because
4 there was no deal; there was no pending charges; there was no
5 dis -- there was no dismissed burglary, which could have given
6 him, I believe, life without parole, based on his prior
7 record. And I think, in the interest of justice, that we need
8 to set ---

9 **THE COURT:** You mentioned a dismissed burglary. Tell
10 me about that. What evidence do you have that there was a
11 dismissed burglary?

12 **MR. AXELROD:** And I was told that by Mr. Colvin
13 yesterday. That's how I found out.

14 **MR. BRYAN:** He was told what by Mr. Colvin?

15 **THE COURT:** He was told that by Mr. Colvin.

16 **MR. BRYAN:** Told what, Your Honor, I'm sorry?

17 **THE COURT:** That there was a burglary charge against
18 Mr. Kinloch dismissed in July.

19 **MR. BRYAN:** Okay.

20 **THE COURT:** Okay. I mean, but you don't have any
21 documents that would indicate that at this point in time. I
22 assume it would be in the court records somewhere.

23 **MR. AXELROD:** Well, I would hope so, Your Honor. It's
24 not on the N.C.I.C. that he was ever arrested for the
25 burglary. I put the N.C.I.C. in. That ---

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1 **THE COURT:** Yes sir, that's in, but I -- you know, I'll
2 be happy to take judicial notice of whatever is in the court
3 records, and I will leave the record open on this hearing, and
4 give you an opportunity to submit that, and put it in the
5 record, but right now I don't have anything that would show
6 that that occurred.

7 **MR. AXELROD:** May I ask Mr. Colvin, who just came into
8 the courtroom?

9 **THE COURT:** Well, Mr. Colvin's statement would be
10 interesting, but I would like to see the records that would
11 show that did occur.

12 **MR. AXELROD:** Okay.

13 **THE COURT:** So I'm asking you -- I'm going to leave the
14 record open on this hearing, and give you an opportunity to
15 submit that information in some kind of written form,
16 certified record from the Clerk showing what occurred ---

17 **MR. AXELROD:** Yes sir, Your Honor.

18 **THE COURT:** ---Or whoever has those records ---

19 **MR. AXELROD:** Yes sir. Yes sir, Your Honor.

20 **THE COURT:** ---Whatever public official and public
21 records it's kept it, but if a warrant was issued, or an
22 indictment was issued on that charge, there should be a record
23 in this courthouse somewhere or other.

24 **MR. AXELROD:** Yes sir, Your Honor.

25 **THE COURT:** Okay. So I'm leaving the record open, let

1 you submit that, but I don't doubt Mr. Colvin may know exactly
2 what he's talking about, but you know, there's ways of proving
3 what has happened in the public record, and I would like for
4 you to go through that procedure.

5 MR. AXELROD: Yes sir, Your Honor.

6 MR. BRYAN: Your Honor, may I respond to being accused
7 of misleading the Court?

8 THE COURT: Once he's finished I'm going to give you
9 ample opportunity to respond, yes sir.

10 MR. AXELROD: Your Honor, in Riddle the Court held a
11 Brady violation, a defendant must demonstrate evidence
12 favorable to himself in the possession or known -- in
13 possession of, or known by the prosecution, was suppressed by
14 the State, was material to the accused's guilt or innocence,
15 or was impeaching, and they are citing Kyles versus Whitley,
16 514 United States Supreme Court, 419, 1995.

17 And I would say, Your Honor, at this point, that it is a
18 Brady violation, because Mr. Kinloch's information concerning
19 his entire record, pending charges, dismissed burglaries,
20 possibly, were -- it was impeachment. It was fodder for
21 impeachment to this jury, to say to them, you know, you have a
22 reason to be here today. And I believe, because of that, that
23 a mistrial should be granted, and I have nothing further, Your
24 Honor.

25 THE COURT: All right. Now is your opportunity to

1 respond.

2 MR. BRYAN: Thank you, Your Honor.

3 THE COURT: Yes sir.

4 MR. BRYAN: I'll -- I want to start by saying it's
5 tiresome being constantly accused of misconduct, misleading
6 the Court, Brady violations, which are due to the inability of
7 defense counsel to listen, understand, or know the rules, and
8 so I would like to request a copy of the case that he
9 misrepresented to the Court. I think that there is something
10 that ---

11 THE COURT: The case that he has given to the Court is
12 Riddle versus Osment.

13 MR. BRYAN: Well, I was thinking something under ---

14 MR. AXELROD: No. No. Your Honor, this case is right
15 here. I put it here. It wasn't here this morning.

16 MR. BRYAN: Your Honor, you can see my desk, and ---

17 THE COURT: That's all right. He's handed it to you.
18 Okay.

19 MR. BRYAN: Nobody told me it was here. I have had no
20 time to read it.

21 THE COURT: I understand.

22 MR. BRYAN: I won't attempt to aggravate the Court by
23 sitting here and spending ten minutes trying to read something
24 that I had no notice of prior to the motion.

25 But just from what counsel put on the record, his

1 statement was misleading to the Court. I assume he has no --
2 no exhibits to offer, which you would think would be
3 fundamental. If there is some warrant that was withheld it
4 would be in the Clerk's Office. When a warrant is filed, they
5 file it with the Clerk's Office. For Mr. Axelrod's
6 information, that's where you would find the record, unless --
7 and so, that might be a good place to start.

8 I'll make it a Court's Exhibit, this letter that he
9 referred to as exculpatory. I don't know what basis he uses
10 to say that it's exculpatory. I don't believe it is. The
11 case that he referred to required exculpatory evidence.
12 Fodder for impeachment, I don't believe is exculpatory. It
13 doesn't indicate that the Defendant didn't do what he did. It
14 just is fodder for impeachment.

15 I'm going to get that marked. This is a -- the letter,
16 and I'll try to get a copy for Mr. Axelrod. And let me start
17 from the beginning. My recollection of this
18 misrepresentation, this misleading that I did, is that I
19 stated on the record that the Defendant had pending charge for
20 receiving stolen goods, prosecuted by Mr. Modica, who was
21 present in the courtroom, who acknowledged and affirmed that
22 same thing prior to the jury coming out. So Mr. Axelrod was
23 not listening, or did not hear that there was a pending
24 charge, and not only did he have notice of it, because I said
25 it on the record while he was probably talking to somebody

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1 else in the courtroom, I also sent him a docket, which he
2 complains about getting the docket.

3 Do we have a copy of the docket?

4 Which I'm going to make a copy of the court record.

5 This is ---

6 Mr. Axelrod, we mailed this to you on September the 8th.
7 That was some time ago. You have a copy. You may want to
8 look at it yourself. It's your docket.

9 It has Aaron Kinloch, Defendant number 204, receiving
10 stolen goods, prosecuted by Matthew Modica. It's in his
11 possession. He can say he didn't get it if he wants to, but
12 he's got it. It indicates that the Defendant -- the witness
13 had a pending charge with our office.

14 THE COURT: All right. Just one second. You are
15 moving that as a State's Exhibit.

16 MR. BRYAN: I'd like to make that Court's Exhibit 2.

17 THE COURT: Court's Exhibit. All right. Any objection
18 to that being received as a Court's Exhibit?

19 MR. AXELROD: No sir.

20 THE COURT: All right. It will be marked ---

21 MR. BRYAN: Finally ---

22 THE COURT: Just one second. Let me get it marked.

23 MR. BRYAN: Thank you, Your Honor.

24 THE COURT: It will be marked as a Court's Exhibit, for
25 purposes of this hearing.

1 (TRIAL ROSTER MARKED COURT'S EXHIBIT NUMBER 10.)

2 THE COURT: Also, there is a letter that he has
3 submitted. Have you seen this letter?

4 MR. AXELROD: I have not, Your Honor.

5 THE COURT: Submit that to him, please, Mr. Bryan.

6 The letter has been marked, for identification purposes,
7 as Court's Exhibit Number 9.

8 (LETTER FROM KINLOCH TO SOLICITOR MARKED COURT'S EXHIBIT
9 NUMBER 9, FOR IDENTIFICATION ONLY.)

10 THE COURT: I'm going to give him an opportunity to
11 review that before we make it -- it's been marked for
12 I.D. purposes at this point in time.

13 MR. AXELROD: Thank you, Your Honor.

14 I have read it, Your Honor.

15 THE COURT: Okay. Any objection to it being made
16 Court's Exhibit for purposes of this hearing?

17 MR. AXELROD: No sir, Your Honor.

18 THE COURT: All right. It will be received as marked.

19 (COURT'S EXHIBIT NUMBER 9 FOR IDENTIFICATION NOW MARKED
20 COURT'S EXHIBIT NUMBER 9.)

21 THE COURT: The other -- docket is already received
22 as -- marked as a Court's Exhibit. The docket would be then
23 Court's Exhibit Number 10; is that correct?

24 COURT REPORTER: Yes sir.

25 THE COURT: Thank you.

1 You may proceed, Mr. Bryan.

2 **MR. BRYAN:** Thank you, Your Honor. And I believe the
3 nature of the motion here is a motion for a new trial based on
4 after-discovered evidence. I think after-discovered evidence,
5 Your Honor, relates to evidence that is not knowable at the
6 time of the trial. I think that there would be no better
7 definition of something that was not after-discovered evidence
8 than something that was on record at the Clerk of Court's
9 Office. Mr. Axelrod didn't have to have the ability to know
10 the unknowable, or to find something that was unfindable
11 buried at the bottom of a lake that somebody found a week
12 later; he just didn't know -- he had to be smart enough to
13 walk to the end of the hall, take a left, walk in the Clerk's
14 Office, and ask for any pending warrants on Aaron Kinloch.
15 His ignorance, or laziness in failing to do that does not
16 constitute any misconduct on my part, especially given the
17 fact that I verbally notified him of the fact that there are
18 pending charges.

19 Furthermore, our failure to repeatedly bring it to his
20 attention, perhaps tug on his coat, and suggest that he ask an
21 appropriate question during his proffer, I don't think
22 constitutes any unethical conduct on my part. I think what
23 happened with respect to the proffer was, the State made a
24 motion in limine to exclude inadmissible evidence, which the
25 Court found was inadmissible -- ruled with the State, and

1 ruled that the evidence was inadmissible. The burglary first
2 is the same burglary first that was mentioned on the record.
3 We probably said burglary first no less than ten or fifteen
4 times. I don't know how Mr. Axelrod could have believed
5 that's after-discovered evidence because he probably said
6 burglary first himself ten or fifteen times in referring to
7 the fact that Mr. Kinloch's charge, which he is currently
8 incarcerated from, was originally arrested for burglary first,
9 indicted for burglary second. We had Ms. Beaugiani in here.
10 I made reference to that, and she, I think, actually spoke up
11 and addressed the Court, and stated that there was the reason,
12 that there was no evidence for a burglary, and that it was, in
13 fact -- the nature of it was that it was a receiving stolen
14 goods -- that's what he pled guilty to, so I'm confused how
15 that would be after-discovered evidence, since we spent a lot
16 of time in addressing it on the record.

17 The failure here is that Mr. Axelrod simply failed to
18 ask a relevant pertinent question. I don't think the Court
19 ever instructed him not to ask about pending warrants. He was
20 so concerned about trying to get in inadmissible evidence,
21 like convictions that were over ten years, which are clearly
22 inadmissible under Rule -- under the Rule, have been ruled
23 repeatedly by the Court, and referred to a burglary charge
24 which was resolved prior to his conduct -- or contact between
25 the Solicitor's Office and the witness. I think he was maybe

1 blinded by his desire to get into inadmissible evidence, when
2 there was some obviously admissible questions he could have
3 asked about pending warrants.

4 There was no objection to it because I didn't make a
5 motion in limine to it -- about it, because I believed it to
6 be admissible, about the pending warrants. So if Mr. Axelrod
7 can find on the record anywhere where the Court said he was
8 not allowed to ask about pending charges, he may have some
9 issue. I think he will fail to do so, because I think he
10 failed to raise the issue that he could have raised.

11 And Your Honor, I would just like to say that this is a
12 constant difficulty with Mr. Axelrod accusing us of unethical
13 and inappropriate conduct ---

14 **THE COURT:** Mr. Solicitor, I just asked you to address
15 this occasion. I don't want to get into what's happened in
16 the past.

17 **MR. BRYAN:** I would like to put on the record the
18 reason for our policy requiring Mr. Axelrod to pick up all his
19 discovery, and sign for each page individually at our office,
20 because he complains constantly about being required to do
21 something that other Public Defenders are not required to do,
22 and the reason for it is that, I think we need documentation
23 when we provide things to Mr. Axelrod, that he has signed for
24 them personally.

25 **THE COURT:** Again, Mr. Bryan, let's address this issue.

1 You can address that in the appropriate forum if necessary.

2

3 MR. BRYAN: Thank you, Your Honor.

4 THE COURT: Yes sir.

5 MR. AXELROD: Your Honor, today was the first day I had
6 a chance to read that letter from Aaron Kinloch, and in this
7 letter it says at the end -- it says, if you wish to speak to
8 me I'm willing to help. If you are -- cause I do need your
9 help. And then he gives a P.S. and he says, I also know
10 information about another inmate.

11 Your Honor, forty-eight hours before trial I was told --
12 seventy-two hours before trial, Friday afternoon I was told
13 I'm going to have a trial Monday on Shannon McGee. The
14 Solicitor says to this Court that I should have been able to
15 look at the fifty page document ---

16 MR. BRYAN: I'm going to object to the
17 mischaracterization there, Your Honor. He obviously had a
18 trial roster ten days before.

19 MR. AXELROD: Your Honor, I understand I have a trial
20 roster, and I have several people on the trial roster, and I
21 have approximately seven hundred criminal clients as it is,
22 and I did tell the Court, and I put on the record that I
23 thought that I was going to be in another court this week
24 doing other trials, which I had issued subpoenas for, but has
25 no bearing, actually.

1 Your Honor, Friday afternoon I was told that I have a
2 trial with Shannon McGee. My client is facing life without
3 parole. That was when I was specifically told that I was
4 going to go to trial. Shannon has been on the roster for
5 several weeks, and as I told the Court, the way I prepare for
6 trial is, I have the case -- in Horry County, in the same
7 Circuit, I have trials already scheduled through December.
8 The Solicitor will say, we are going to try this murder case
9 in October, or we will try this C.S.C. case in December, and
10 they are lined up, and we have an orderly process to actually
11 try the cases. Here it's almost by ambush.

12 So, I scurried to get ready for trial. The Court helped
13 me get the subpoenas issued. I go to Children's Recovery ---

14 **THE COURT:** Yes sir. I understood that the main
15 problem was the subpoenas being issued at that time. You
16 explained to me in chambers, and I told you that we would
17 assist you, and we did assist you in that regard.

18 **MR. AXELROD:** I know it.

19 **THE COURT:** Let me finish. The other thing I
20 understood was viewing some tapes that had been made of
21 interviews, made arrangements for that to occur before trial,
22 and I assume it did. I was informed that it had been -- had
23 taken place.

24 **MR. AXELROD:** It did.

25 **THE COURT:** And I believe the witnesses you subpoenaed

1 were present.

2 **MR. AXELROD:** They were.

3 **THE COURT:** I do not recall anything that was not
4 accomplished before we actually began the trial of the case,
5 because we didn't begin it on Monday, other than select the
6 jury -- they were not sworn at that time -- and started the
7 case on Tuesday in an effort to allow you to be prepared.

8 **MR. AXELROD:** Absolutely, sir, yes sir.

9 **THE COURT:** All right.

10 **MR. AXELROD:** Your Honor, the Solicitor told the Court
11 today that I should have been able to know that Aaron Kinloch
12 had pending charges because I had the fifty page docket in my
13 possession. I didn't know Aaron Kinloch was a witness until
14 Monday when we chose the jury. I didn't know anything about
15 Aaron Kinloch, absolutely nothing. So, for the Solicitor to
16 say, well, all he had to do was read his docket and he could
17 have found the pending charges, I say to the Court, the
18 Solicitor has a duty to disclose. His job is to seek and
19 administer justice, that we go orderly through this. He knew
20 I was requesting pending charges. The Solicitor says, well, I
21 asked about an old burglary, but I didn't ask about a new
22 burglary. It's a **Brady** violation, on the letter ---

23 **MR. BRYAN:** Your Honor, this argument has already been
24 made, and he's just neglecting the important part, which we
25 stated on the record that he was aware of this fact, and I'm

1 just -- we've got limited court time ---

2 THE COURT: I know we do have limited court time, and I
3 would like for you to get to the conclusion of your argument
4 as soon as possible, but be sure you fully argue your case.

5 MR. AXELROD: Your Honor ---

6 MR. BRYAN: ---Nothing new.

7 THE COURT: Mr. Bryan, no comments to the other side,
8 please. If you want to address your comments, address them to
9 me.

10 Proceed.

11 MR. AXELROD: Your Honor, the ultimate standard of
12 review for this will eventually be the appearance of
13 impropriety. The Solicitor can say what he wants, but the
14 record will stand for itself.

15 I think, based on the totality, the **Brady** violation, I
16 believe with Mr. Kinloch's proffer that he had no pending
17 charges -- and I only say that from memory. I haven't had a
18 chance to hear ---

19 THE COURT: I intend to review the record on that
20 point. Go ahead.

21 MR. AXELROD: And I would just ask the Court to make a
22 ruling for a mistrial. If the Court deems it needs to go back
23 through that record I would ask the Court to keep this hearing
24 open to a future date, to be reheard.

25 THE COURT: I'm going to keep the hearing open. I've

1 told you what I would do. I will allow you to submit any
2 documentary evidence, if there was a charge dismissed in July,
3 and I'll do that.

4 MR. AXELROD: Yes sir.

5 THE COURT: As far as the record is concerned, the
6 record is the record. I'll get with the Court Reporter and
7 see what's necessary for me to review that, and I'll be happy
8 to review that before I make a ruling.

9 MR. AXELROD: Thank you, sir.

10 THE COURT: Anything else that you would like to submit
11 after the hearing?

12 MR. AXELROD: After the hearing?

13 THE COURT: After this hearing. Once I close this
14 hearing, is there anything else you want me to leave the
15 record open to receive before I make a ruling?

16 MR. AXELROD: Your Honor, I would ask the Court to
17 leave open any other information that I can present to the
18 Court concerning Aaron Kinloch.

19 THE COURT: That's awfully open -- I mean I -- is there
20 something that you would like to submit to the Court -- you
21 made a motion based on after-discovered information. I assume
22 you have discovered information at this point.

23 MR. AXELROD: Yes sir, Your Honor.

24 THE COURT: I'm asking you what you need to submit to
25 me to prove the information that you have discovered, anything

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1 that -- if you think that I need to leave it open to receive a
2 prison record, or -- well, I don't know what else -- but at
3 this point in time I'm just not going -- I don't know when to
4 close the hearing if I leave it open for you to submit
5 anything that you want to submit in the future. At some point
6 in time I've got to bring this to a close and make a decision.
7 That's what I'm saying from my prospective.

8 **MR. AXELROD:** Yes sir.

9 **THE COURT:** So my question to you is, what do you want
10 me to leave the record open to receive? I assume you have
11 discovered information. What do you need to give me to prove
12 what you have discovered?

13 **MR. AXELROD:** I would like to be able to go back six
14 months on Aaron Kinloch's -- or a year on Aaron Kinloch's
15 criminal record, and be able to submit that when I get it
16 altogether.

17 **THE COURT:** Well, again, I've told you I would leave
18 the record open for public records concerning Mr. Kinloch's
19 former arrest, or dismissal of charges, things of that
20 nature ---

21 **MR. AXELROD:** And I would just ask ---

22 **THE COURT:** ---And I'm going to put a -- you know, I'm
23 going to put a deadline on that. I haven't decided what that
24 is just yet, but there is not going to be -- I'm not going to
25 be sitting around waiting for months to get this.

1 Okay. Anything else, Mr. ---

2 Mr. Bryan, I'm going to give you a chance to talk in
3 just a minute. If you will remain seated I'll call on you at
4 the appropriate time.

5 **MR. BRYAN:** I'm going to be seated, Your Honor.

6 **THE COURT:** Go ahead.

7 **MR. AXELROD:** Your Honor, just the record, that the
8 Court review the record, and I know it's going to -- I have
9 nothing further, Your Honor.

10 **THE COURT:** I beg your pardon.

11 **MR. AXELROD:** I have nothing further, just the record
12 that -- like the Court to review.

13 **THE COURT:** Thank you. You can be seated.

14 Now, Mr. Bryan.

15 **MR. BRYAN:** Your Honor, I guess I -- just for
16 clarification of the record -- I might not understand the
17 nature of the motion, but after-discovered evidence -- I guess
18 I'm unclear what the after-discovered evidence is. We are
19 here for a motion for after-discovered evidence, and I'm not
20 clear what -- what was discovered, in the form of evidence.
21 Is there ---

22 **THE COURT:** Well, what I understand is that he was
23 not -- or he says he was not aware of the charge that was
24 pending against Mr. Kinloch, that he was not aware that there
25 was a case dismissed in July against Mr. -- I'm just telling

1 you from what I've heard. I've heard that.

2 Is that about it? And the letter -- he was not aware of
3 the letter being in your possession, and it had not been
4 turned over to him prior to the hearing, according to Rule 5.

5 MR. BRYAN: Thank you, Your Honor.

6 THE COURT: I think -- did I cover that correctly?

7 MR. AXELROD: Yes sir, Your Honor.

8 THE COURT: Okay. So those are the three items I think
9 he has asked me to consider in his motion.

10 And what I've asked him to do is to submit anything,
11 from the public records, that he has concerning those issues,
12 and the other information has already been put into the record
13 as Court's Exhibits.

14 Now, anything else, Mr. Bryan?

15 MR. BRYAN: No, Your Honor.

16 THE COURT: All right.

17 (THE COURT HAS A DISCUSSION WITH THE COURT REPORTER OFF
18 THE RECORD.)

19 THE COURT: All right. I have requested that the Court
20 Reporter send me a copy of the recordings of the -- I assume
21 what you want me to consider is the proffer, and Mr. Kinloch's
22 testimony.

23 MR. AXELROD: Yes sir, Your Honor. And I would ask
24 whatever -- on either side, whatever sidebars or stuff was put
25 on -- that the Court had put into the record.

1 Also, Your Honor -- and I'm not sure how, but I know the
2 following morning -- I guess -- whatever morning it was,
3 Thursday morning maybe -- I believe -- I'm not sure if I put
4 on the record, or if I just approached the sidebar,
5 concerning, once again, a pending charge against Mr. Kinloch,
6 because my client told me that morning, again, that he had it.
7 He wanted to talk to the Court. It came up on a sidebar. I
8 asked the Court -- the Court said it couldn't speak. I agreed
9 with that.

10 COURT REPORTER: Excuse me. You have to remember you
11 don't have a microphone.

12 MR. AXELROD: I'm sorry.

13 Your Honor, I would ask that the proffer be put up,
14 prior to the proffer be put up, after the proffer be put up,
15 the testimony, anything from the Court after that. And I
16 thought about it last night, that I thought that the next
17 morning, after the trial was over, my client had asked me that
18 he wanted to talk to the Court. I came up on a sidebar. I
19 don't know whether the Court put that sidebar on, but I've
20 learned from this Court that it puts all it's sidebars,
21 usually, on, and I would ask that if that is also on, I would
22 ask that the Court instruct Ms. Dixie to maybe type that.

23 THE COURT: Well, as I recall the morning -- and I
24 don't know if it was -- is necessarily put on the record. You
25 just indicated that -- and I'll put it on the record now, as I

1 recall, and both sides can tell me if I'm wrong or not. I
2 recall that you came up and said that your client had been
3 informed by a jailer, or a guard, that Mr. Kinloch had a
4 pending burglary charge against him, and again I said, well,
5 is there any additional evidence of a deal having been made, I
6 think was the question I asked, and I think you said no, that
7 he just heard that there was a charge pending.

8 MR. AXELROD: Yes sir.

9 THE COURT: And I said, well, unless there is evidence
10 of a deal I don't know that we should reopen the issue.
11 Because the question is not necessarily whether he had a
12 charge pending, or whether he didn't have a charge pending,
13 I -- my ruling was that, unless there was evidence of some
14 type of a deal between the prosecution and Mr. Kinloch for
15 leniency, recommendations, whatever, for his testimony, the
16 fact that he has charges pending I'm not sure would be
17 necessarily relevant to the case, although certainly you could
18 have put it in, but that doesn't mean a deal was cut, is what
19 I think I said.

20 MR. AXELROD: Yes sir.

21 THE COURT: And -- is that a correct statement of our
22 sidebar, or do you recall, sir?

23 MR. BRYAN: It's not exactly my recollection. My
24 recollection was that he said that there was an unserved -- an
25 outstanding warrant, and the Court said that, if it was

1 outstanding, it hadn't been served yet, and therefore it
2 really ---

3 THE COURT: I think you are right, Mr. Bryan. I think
4 you said it -- he said it was an outstanding warrant.

5 MR. BRYAN: And I want to be clear about the fact
6 that -- all I can tell you is that, I don't know that there is
7 one. If there is one I was unaware of it. I don't believe
8 there is one. I think there was only the pending receiving
9 stolen goods that shows up on the ---

10 THE COURT: It was on the docket.

11 MR. BRYAN: ---Docket. It was also at the Clerk of
12 Court, and the Court's statement to him about the pending
13 warrants -- I just want to be clear, that I don't believe the
14 Court ever, at any point, excluded Mr. Axelrod from asking
15 about pending warrants.

16 THE COURT: I agree with that statement. I think what
17 I said was, you know, there had to be some evidence of a deal
18 for us to reopen the side -- for us to reopen; is there any
19 evidence that there was some exchange going on.

20 And I -- you indicated you had no evidence at that
21 particular point, so we didn't go forward.

22 MR. BRYAN: And whether there was evidence, I don't
23 think is necessarily -- necessary. I think -- I would not
24 have objected to him asking about pending warrants, regardless
25 of whether there was evidence that there was a deal or not. I

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1 think that that -- I think the Court ---

2 THE COURT: I think the question was reopening the
3 proffer, is what it was, and I just said, you know, there
4 needs to be evidence of a deal for me to reopen the proffer.

5 But, at any rate, that was on the sidebar -- that was on
6 the sidebar, and what's on the record now is on the record, so
7 we'll go forward with what's on the record.

8 All right. At this point in time -- thank you very
9 much, gentlemen. I'll take the matter under advisement. I
10 would ask that Mr. Axelrod submit whatever documentary
11 evidence he wishes to submit within the next two weeks,
12 fourteen days.

13 Thank you very much.

14 MR. AXELROD: Thank you, Your Honor.

15 THE COURT: Certainly you have a right, once you have
16 received that information, Mr. Bryan, to send me a response.
17 I will allow you seven days thereafter to respond.

18 MR. BRYAN: Thank you, Your Honor.

19 THE COURT: Thank you.

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE OF COURT REPORTER

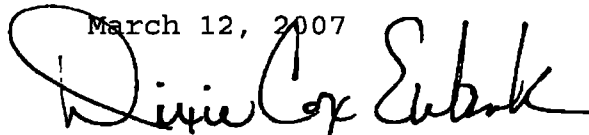
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA, on the 18th, 19th, 20th, and 22nd days of September, 2006.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

March 12, 2007



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANNON D. MCGEE,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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STATEMENT OF ISSUES ON APPEAL

Did the judge err in refusing to grant a new trial based on the assistant solicitor's failure to disclose a letter from a witness demonstrating a willingness to make a deal in exchange for testimony?

STATEMENT OF THE CASE

In June 2006, the Georgetown County Grand Jury indicted McGee for criminal sexual conduct with a minor second degree, lewd act upon a child and assault with intent to commit criminal sexual conduct with a minor second degree, indictments #06-GS-22-580, 81, 82. On September 18, 2006, McGee proceeded to jury trial before the Honorable Roger L. Couch. The jury returned verdicts of guilty as charged. Judge Couch sentenced McGee to life without parole for criminal sexual conduct second degree¹, 20 years concurrent for assault with intent to commit criminal sexual conduct with a minor second degree and 15 years concurrent for lewd act upon a child. On September 22, 2006, McGee moved for a new trial or, in the alternative grant a mistrial based on numerous grounds including the fact that the State failed to disclose a letter from a witness demonstrating a willingness to make a deal in exchange for testimony. In a written order dated November 9, 2006, Judge Couch denied the motion for a new trial. A timely notice of intent to appeal was filed on September 27, 2006. This appeal follows.

¹ Pursuant to the "two strikes law" S.C. Code §17-25-45.

ARGUMENT

The judge erred in refusing to grant a new trial based on the assistant solicitor's failure to disclose a letter from a witness demonstrating a willingness to make a deal in exchange for testimony

During the post trial motion for a new trial the assistant solicitor admitted that he received a letter written by Aaron Kinloch, a witness who testified against McGee at trial. (R. p. 119, lines 8-17). The letter was admitted as a court's exhibit during the post trial motion and defense counsel acknowledged that he had never seen the letter. (R. p. 121, lines 1-20). The letter from Kinloch to Assistant Solicitor Robert Bryan is dated August 4, 2006, and stamped as filed with the clerk on August 9, 2006. In the letter Kinloch explained that he knew what happened between McGee and the victim and stated, "[I]f you wish to speak to me, I'm willing to help, if you are cause I do need your help." (R. p. 155).

At trial, Kinloch testified that he and McGee were at the county jail at the same time. (R. pp. 64-65). Kinloch testified that McGee discussed his charges, denied using his penis but admitted using his finger. (R. pp. 69-73). Prior to the start of the trial, the State advised the judge and defense counsel that Kinloch had a pending charge for receiving stolen goods. (R. pp. 4-5). Counsel failed to cross examine Kinloch in regard to the pending charge². (R. pp. 75-82). The assistant solicitor advised the judge that he had not offered Kinloch a deal. (R. p. 3, lines 22 – p. 4, lines 1-11). The assistant solicitor, however, did not make the court or defense counsel aware that he had received a letter from Kinloch demonstrating a willingness to testify in exchange for a plea. The failure to disclose the letter constitutes a violation under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) as

² Counsel's failure to cross examine about the pending charge can be addressed in post conviction relief.

well as a violation of McGee's right to cross examine a witness concerning bias under the

Confrontation Clause, U.S. Const. VI.

In the written order denying a new trial the judge wrote:

The Solicitor's actions of failing to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting. A letter from a witness that demonstrates the willingness to make a deal in exchange for his testimony should be given to the defendant regardless of the actual existence of a deal. However, while this evidence could have been favorable to the defendant, it did not indicate that in fact a deal for the testimony had been reached. In light of all the evidence and testimony, and in particular, the lack of any facts indicating any deal struck between the witness and the Solicitor, it is this court's finding that the defendant received "a fair trial resulting in a verdict worthy of confidence." Riddle.

(R. p. 146). The judge erred in basing the denial of a new trial on the lack of any facts indicating any deal struck between the witness and the solicitor.

An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006); Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). First, as noted by the judge in his order, the evidence of the letter could have been favorable to the defendant. (Order p. 4). The letter is favorable to McGee because it demonstrates Kinloch's bias to provide testimony favorable to the State in exchange or in hopes for a deal, whether or not an actual deal was ever reached. A defendant has the right to cross examine a witness concerning bias under the Confrontation Clause. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991). Additionally, the letter was

known by the prosecution and suppressed. Lastly, evidence of the letter was both material and impeaching.

Evidence is material under Brady if there is a "reasonable probability" that the result of the proceeding would have been different had the information been disclosed. Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). The jury convicted McGee of abusing his step daughter. At trial, the step daughter admitted that she called defense counsel and told him that McGee never touched her and she simply wanted revenge because McGee was mean and yelled a lot. (R. p. 38, lines 18-25) She also admitted telling counsel that her family made her say things about McGee that were not true because the family did not like the fact that her mom had a relationship with McGee. (R. p. 38, lines 13-21). At trial, however, the stepdaughter testified that her mom forced her to recant the allegations against McGee. (R pp.32-34). The State called three additional witnesses, the younger brother, a doctor and Kinloch, the witness in question. Kinloch's testimony was particularly damaging because he testified that McGee confessed to the allegations. If the State had disclosed the letter, McGee could have cross examined Kinloch in order to reveal bias.

A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in an otherwise appropriate cross-examination designed to show bias on the part of a witness such that a jury could draw references to the reliability of that witness. Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674, 684 (1986); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). The State's suppression of the letter prohibited McGee from engaging in an otherwise appropriate cross examination in order to show bias on the part of Kinloch. Given the stepdaughter's recantation, there is a reasonable probability that the result of the proceeding

would have been different if McGee could have cross examined Kinloch in regard to the letter. Evidence of the letter was material and the suppression constituted a violation of the confrontation clause.

Additionally, the letter could have been used to impeach Kinloch. At trial, Kinloch testified that he did not expect anything in exchange for his testimony. (R. p. 75, lines 2-6). Kinloch's letter, however, clearly states, "if you wish to speak to me, I'm willing to help, if you are cause I do need your help." The question is not whether, with this evidence, the defendant would have likely been acquitted, but whether, without this impeachment evidence, the defendant received a fair trial "resulting in a verdict worthy of confidence." Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). McGee's inability to properly cross examine Kinloch, due to the prosecution's failure to disclose a letter demonstrating Kinloch's willingness to testify in exchange for a plea, rendered the trial fundamentally unfair.

If a defendant established that he was unfairly prejudiced by an improper limitation on cross examination, it is reversible error. State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991). McGee was prejudiced by the improper limitation on cross examination created by the prosecution's failure to disclose. The judge erred in refusing to grant a new trial based on the assistant solicitor's failure to disclose a letter from a witness demonstrating a willingness to make a deal in exchange for testimony

CONCLUSION

Based on the above argument, McGee is entitled to a new trial. McGee's sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

This 26th day of August, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 26, 2008


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

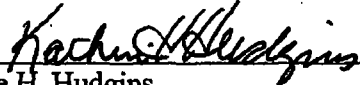
V.

SHANNON D. MCGEE,

APPELLANT

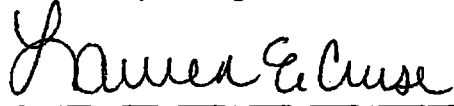
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoport, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 26th day of August, 2008.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 26th day of August, 2008.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANNON D. MCGEE,

APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in denying McGee's motion for a new trial?

STATEMENT OF THE CASE

Appellant Shannon D. McGee was tried and convicted before the Honorable Roger L. Couch, Special Circuit Court Judge, and a jury, on September 18, 2006, for second degree criminal sexual conduct with a minor, lewd act upon a child, and assault with intent to commit second degree criminal sexual conduct with a minor. McGee was sentenced to life imprisonment without the possibility of parole for second degree criminal sexual conduct with a minor, twenty years concurrent for assault with intent to commit second degree criminal sexual conduct with a minor, and fifteen years concurrent for a lewd act. McGee subsequently moved for a new trial, which was denied by Judge Couch in a written Order dated November 9, 2006. A Notice of Appeal was filed and served.

STATEMENT OF FACTS

Jane Doe¹ lived with her mother and siblings in Georgetown County. McGee was married to Jane's mother and lived with them. (R. 16-18). Jane, who was fifteen years old at the time of trial, testified about a pattern of sexual abuse committed by McGee against her in the house.

Jane testified about an incident when she was younger. McGee called her into his bedroom and told her to lie on top of him. McGee wore pants, but did not have a shirt on. (R. 19). Two days later, McGee again called Jane into his bedroom and instructed her to "sit beside him, lay beside him." He then "touched [Jane's] butt" and her "vagina area" through her clothes. (R. 20-21). Jane said her mother was working at the time the abuse occurred. (R. 21).

The next incident occurred around five o'clock in the morning while her mother worked an early shift. McGee called Jane into his bedroom and told her to lie down with him. McGee climbed on top of Jane and touched her "vagina area" through her clothes. Jane testified McGee then "reached inside my pants, and started touching me." McGee did not penetrate her vagina, however. (R. 22-23).

"Not too long from that time," in the morning while her siblings were asleep, McGee again called Jane into his bedroom. McGee did not have pants on. He instructed Jane to masturbate him. Jane complied and McGee then ejaculated. (R. 23-24).

Jane recalled other times after that when McGee tried to have sex with her, "but I pushed him off me before he could [sic] into me." (R. 24).

¹The State has decided to protect the identity of the young victim in this case.

Jane testified, "a long time from that," about when she started the eighth grade in August 2004, McGee "would mess with me at night when I was asleep" on the chair in the living room. She said that on "numerous" occasions, McGee reached into her pajamas and digitally-penetrated her vagina. (R. 24-26). Jane testified her mother and siblings were asleep at the time. (R. 29).

Jane recalled an incident when she masturbated McGee in his bed, and he then slipped on a condom and crawled on top of her. Jane recalled, "he was about to have sex with me, but then I pushed him off of me" and ran into the living room. (R. 26-27). On yet other occasions, McGee whispered in Jane's ear while she was "half asleep," and he told Jane that he wanted to have sex with her. (R. 28).

Jane testified about other incidents when McGee put his mouth on her breasts. Jane said he also tried to perform oral sex on her while she slept, but she woke up and told him to leave her alone. (R. 28-29).

She stated McGee last sexually abused her around November 2004, when they finally moved out of the house. (R. 35).

Jane first told her seven-year-old brother about the McGee's abuse. (R. 29, 50-51). Jane said she never told her mother at first, because "I know she wouldn't believe me if I told her" and "I was scared of what was going to happen if I said anything." (R. 29-30).

Jane admitted that after the abuse was disclosed, she met with defense counsel and told him that she lied about the sexual abuse. She explained, however, that her mother told her to lie, because she (her mother) would probably end up in jail and her siblings would go into foster care. Jane testified, "I didn't want anything bad to happen to them." (R. 31-33, 37,

41-42).

Dr. Carol Rahter examined Jane after the abuse was reported to the police. (R. 86). Rahter explained it is quite common for children to delay reporting sexual abuse when it occurs within a family. (R. 86-87). Additionally, Rahter said children often recant reports of sexual abuse, but then later reaffirm their earlier disclosure. (R. 87-88).

Rahter testified Jane's physical examination showed evidence of a torn hymen, which was consistent with penetration and the history reported by Jane. (R. 92-95).

Aaron Kinloch testified he was in jail with McGee after his arrest for these crimes. (R. 64). Kinloch claimed McGee talked with him about the charges. He said, McGee "explain[ed] to me, you know, what he didn't do, and what he did do, you know, but as far as saying well, he didn't use his penis sexually toward - - I guess it's his stepdaughter - - I don't know - - but he said he did use his finger, you know, just basically what had happened, what had took place . . . but that's why the D.N.A. test came back inconclusive . . ." (R. 72-73, 77-78, 80).

ARGUMENT

The trial judge did not err in denying McGee's motion for a new trial, because he was not prejudiced by the State's failure to disclose a letter showing the willingness of a State's witness to make a deal in exchange for his testimony. (McGee's Issue).

Jane testified that McGee sexually abused her on several occasions. In addition to the medical testimony, Aaron Kinloch testified about a conversation with McGee while they were in jail together. Kinloch said McGee admitted "he did use his finger" on Jane, but "he didn't use his penis sexually toward" her.

Prior to trial, defense counsel discussed Kinloch's criminal record for impeachment purposes. He said that Kinloch had a shoplifting conviction and a 1992 third degree burglary conviction, for which he received five years imprisonment. (R. 2).² Assistant Solicitor Bryan advised the trial judge that Kinloch also had a pending charge for receiving stolen goods valued at more than \$1,000, but McGee was not offered a deal. (R. 3-5). Bryan said that charge was being handled by another prosecutor in his office. (R. 4). Bryan stated, "when I spoke to [Kinloch] yesterday my discussion was that I'm not giving him anything. I asked him why he was saying what he was saying, and told him I'm not in a position to offer him any - - or I'm not offering him anything." (R. 4). Assistant Solicitor Matthew Modica also stated there was a pending charge against McGee. (Tr. 5).

Bryan then stated,

. . . I would like to make a motion *in limine* to exclude any reference to the fact that [Kinloch] was charged with burglary

²Before Kinloch testified at trial, the trial judge ruled that his prior burglary conviction was inadmissible for impeachment purposes, because it was more than ten years old. (R. 55).

on his most recent conviction of receiving stolen goods, based on the fact that it was prior to any discussion that we ever had with him - - that I ever had, in reference to this case, and as well as, it was never contemplated any deal, simply the facts are, he was charged with burglary second, which includes no evidence of burglary. He pled to what the State could prove. Dori Beaugiani of our office prosecuted him. He was offered and accepted a deal. I never spoke to Dori. As an officer of the Court I was never aware Mr. Kinloch would be involved in this case, never heard from him, talked to him, nor Ms. Beaugiani, and so we would say that it would be unfairly prejudicial to raise the implication that this was some kind of deal which he received for his testimony. It would be misleading to the jury, as well as unfairly prejudicial.

(R. 54).

Kinloch was next questioned *in camera* about the burglary charge. Kinloch testified he pled guilty to receiving stolen goods from a burglary indictment. (R. 56-57). He said he first contacted Bryan after he pled guilty. (R. 57). Kinloch stated he never spoke to Bryan prior to his plea and he received no deal from the State. (R. 57).

The trial judge concluded from the testimony that there was no evidence of a deal between Kinloch and the State, but "if there is anything you have that would indicate that this witness has misled the Court, if there was a deal made that we are not aware of, anything of that nature, this is your opportunity to put that up." (R. 60).

On cross-examination, Kinloch once again insisted there was no deal for his testimony. (R. 60-61). He testified he was sentenced to a year in prison for receiving stolen goods. (R. 61).

The trial judge finally ruled that defense counsel could question Kinloch about his recent guilty plea, but "whether or not there is some kind of deal or something like that, unless there is other foundation laid," defense counsel could not go into that line of

questioning. (R. 63).

Kinloch then testified before the jury. He admitted he was in jail for first degree burglary when he spoke to McGee. (R. 64-65). Kinloch said he pled guilty to receiving stolen goods about a month before McGee's trial. (R. 65). Kinloch also admitted he had convictions in 1995 for second degree burglary and in 2003 for petit larceny. (R. 66).

Kinloch explained that he contacted Bryan by letter after his conviction and talking with McGee in jail, "[b]ecause the simple fact is, if that had ever - - if whatever he did took place, that's nasty to me, me myself. I've got kids of my own." (R. 66-67, 74-75).

During cross-examination, however, defense counsel failed to question Kinloch about the pending charge that was revealed by Modica earlier during the *in camera* hearing, or regarding Kinloch's attempt to contact the Solicitor's Office.³

Prior to closing arguments, the trial judge warned defense counsel about referring to a deal between Kinloch and the State in exchange for his testimony, because there was no evidence in the record to support such an assertion. (R. 98).

Before the trial judge's charge to the jury, however, defense counsel claimed McGee told him that Kinloch had a pending burglary charge. Defense counsel argued this was inconsistent with Kinloch's *in camera* testimony about his pending charges. Defense counsel claimed this evidence supported his claim that Kinloch made a deal with the State in exchange for his testimony. (R. 105-06). Bryan again asserted there was no deal with Kinloch

³On appeal, McGee admits defense counsel's failure to cross-examine Kinloch about any pending charges "can be addressed in post conviction relief." (BOA at 5). Additionally, in his written Order denying the new trial motion, the trial judge noted defense counsel's failure to question Kinloch about the pending charge discussed earlier by the parties. (R. 145).

in the past or pending for the future. (R. 107). The trial judge found McGee's assertion of a pending charge, standing alone, was insufficient evidence of a deal to allow the matter to be further explored at trial. (R. 107-08).

The trial resumed, and McGee was convicted as charged. (R. 109). Immediately after publication of the verdicts, McGee violently assaulted Assistant Solicitor Bryan and was removed from the courtroom. (R. 109-10). He was then sentenced.

During the post-trial motion for a new trial, defense counsel alleged, *inter alia*, the State failed to disclose a letter written by Kinloch to Bryan in violation of Brady.⁴ Defense counsel argued the failure to disclose the letter prevented his cross-examination of Kinloch about his willingness to make a deal in exchange for his testimony. (R. 113-14). Defense counsel said he had not seen the letter. (R. 121, 125). The letter was then introduced into evidence as Court's Exhibit 9. (R. 121).⁵ In the letter, Kinloch said he knew what happened between McGee and the victim. He stated, "if you wish to speak to me, I'm willing to help, if you are cause I do need your help." (R. 155-56). At the hearing, Bryan argued the letter was not exculpatory and it "just is fodder for impeachment." (R. 119).

Following the hearing, the trial judge issued his written Order denying the motion for a new trial. The trial judge acknowledged, "[t]he Solicitor's actions of failing to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting." He determined, however, that while the letter "could have been favorable to the defendant, it did not indicate that in fact a deal for

⁴Brady v. Maryland, 373 U.S. 83 (1963).

⁵Court's Exhibit 9 appears in the Record at p. 155-56.

the testimony had been reached.” He noted the burglary charge was dismissed on July 28, 2006, and the letter from Kinloch was written on August 4, 2006, after the burglary charge was already dismissed. The trial judge found the dismissed burglary charge, therefore, had little probative value. He added that in light of the testimony already before the jury, “and in particular, the lack of any facts indicating any deal struck between [Kinloch] and the Solicitor, . . . [t]he defendant received ‘a fair trial resulting in a verdict worthy of confidence.’ [citing Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006)].” The trial judge concluded, “Solicitor Bryan’s actions do not rise to the level of bring [sic] the trustworthiness of the verdict into question and thereby requiring the granting of a new trial.” (R.143-47).

The trial judge did not err in denying McGee’s motion for a new trial, because he was not prejudiced by the State’s failure to disclose a letter showing the willingness of Kinloch to make a deal in exchange for his testimony.

“[A]bsent error of law or abuse of discretion, an appellate court will not disturb the trial judge’s denial of the motion [for a new trial based on after-discovered evidence].” State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 869 (1998). To prevail on a motion for a new trial based upon after discovered evidence, McGee must show the after discovered evidence: (1) is such that would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. Id.; Hayden v. State, 278 S.C. 610, 299 S.E.2d 854, 855 (1983).

It is a violation of a defendant’s due process rights for the prosecution to withhold evidence favorable to the defendant where the evidence is material either to guilt or to

punishment. Brady, 373 U.S. at 87; State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214, 220 (Ct. App. 1998). This rule applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667 (1985). "A fair analysis of the holding in Brady indicates that implicit in the requirement of materiality is a concern that the suppressed evidence might have affected the outcome of the trial." Id. at 674-75; Kennerly, 503 S.E.2d at 220.

The common theme in Brady and its progeny is that relief will be granted only if the information withheld is material. The United States Supreme Court delineated the standard for determining materiality in United States v. Agurs, 427 U.S. 97, 112-13 (1976):

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

McGee argues the trial judge erred in refusing to grant a new trial, because the State violated Brady by failing to disclose Kinloch's letter and this denied his right to confront Kinloch concerning bias. His claim evolves around the State's failure to disclose Kinloch's willingness to make a deal in exchange for testimony.

The State notes that Bryan stated he promised Kinloch nothing, and he denied making any promises to him. Kinloch, too, testified he received no deal from the State. While it was

fair to assume that Kinloch's letter showed he hoped his cooperation would result in more favorable treatment, this nebulous expectation of leniency did not require that disclosure be made, or that McGee was denied due process by the State's failure to disclose it. The evidence supports the trial judge's conclusion there was no evidence whatsoever the State gave or promised Kinloch anything in exchange for his testimony. State v. Kirkpatrick, 320 S.C. 38, 462 S.E.2d 884, 890-91 (Ct. App. 1995)[holding defendant was not entitled to new trial based on claim of undisclosed plea agreement with a prosecution witness; prosecutor never made direct promise to witness that he would reduce the charge, there were no written or oral plea agreements, and prosecutor never conveyed to witness or her attorney an expectation of a reduced charge, although the prosecutor did tell the witness that her cooperation would be taken into consideration if she testified truthfully].

Further, even assuming the State violated its duty by failing to disclose the letter requesting an agreement, deal, or understanding that, from all indications in the record, did not exist, its failure to disclose did not prejudice McGee, *i.e.*, the letter was not "material" to the defense. Defense counsel was not otherwise prevented from exploring Kinloch's pending charge, which he decided not to pursue at trial despite his awareness of its existence at trial.⁶ Defense counsel further failed to follow-up on Kinloch's testimony about a letter to Bryan after McGee talked to him in jail. Additionally, Kinloch's credibility was extensively challenged at trial. The jury was aware Kinloch had prior convictions for petit larceny and burglary, and that he was in jail at the time he spoke with McGee on yet another burglary charge, to which he was allowed to plead down to receiving stolen goods. Thus, although the

⁶See footnote 3, supra.

jurors were not informed Kinloch had offered his assistance in exchange for help from the State (after he had already pled guilty to receiving stolen goods), he was stiffly impeached on other grounds. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001)[holding where there is an abundance of evidence detailing a witness's unabashed disrespect for the law, the nondisclosure of other impeaching evidence did not deprive the defendant of a fair trial]; see State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002); State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993).

Moreover, the State's case against McGee was strong enough without testimony from Kinloch. Jane testified in detail regarding McGee's pattern of conduct, and the physical examination was consistent with penetration and the history of sexual abuse reported by her. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006)[holding evidence that witness to armed robbery failed to identify defendant at the scene of crime was not material exculpatory evidence and was not required to be disclosed to defendant, where the witness subsequently identified defendant in a photographic lineup and co-defendant indicated a willingness to identify defendant as one of the perpetrators]; State v. Cain, 297 S.C. 497, 377 S.E.2d 556 (1988)[noting that even if State entered into plea agreement with witness before witness testified against a capital murder defendant, failure to disclose agreement to defense was not reversible error where there was no probability the disclosure would have changed the result of guilt-phase of defendant's trial, because physical evidence supported testimony of witness who was the only eyewitness to crime]; see also State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002)[holding improper limitation of cross-examination of witness was harmless where the evidence against the defendant was otherwise strong]; State v. Proctor, 358 S.C. 424, 595

S.E.2d 476, 480 (2004)[finding that the nondisclosure of DNA proficiency test results was not material, considering the fact that the other evidence was “formidable”].

Although the letter might have provided additional impeachment value to Kinloch’s testimony, considering this alone there is not a reasonable probability that “had the evidence been disclosed to the defense, the result of the proceeding would have been different.” United States v. Bagley, 473 U.S. 667 (1985); see Sims, 558 S.E.2d at 523-24; State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985). Accordingly, McGee received a fair trial “resulting in a verdict worthy of confidence.” Kyles v. Whitley, 514 U.S. 419, 434 (1995).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Georgetown County
Roger L. Couch, Special Circuit Court Judge

THE STATE,

Respondent,

vs.

SHANNON D. MCGEE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

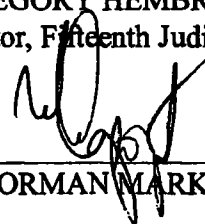
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

By: 
NORMAN MARK RAPOPORT

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

September 15, 2008

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Georgetown County
Roger L. Couch, Special Circuit Court Judge

THE STATE,

Respondent,

vs.

SHANNON D. MCGEE,

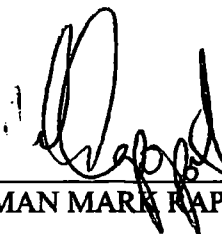
Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to Kathrine H. Hudgins, Assistant Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 15th day of September, 2008.



NORMAN MARK RAPOPORT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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

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

The State,

Respondent,

v.

Shannon D. McGee,

Appellant.

Appeal From Georgetown County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2009-UP-539
Submitted November 2, 2009 – Filed November 19, 2009

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; Solicitor J. Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Shannon D. McGee appeals his convictions and sentences for second-degree criminal sexual conduct, second-degree assault with the intent to commit criminal sexual conduct with a minor, and lewd act upon a minor child. On appeal, he argues the trial court erred in denying his motion for a new trial based on the State's Brady v. Maryland violation. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) ("A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion."); Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006) ("An individual asserting a Brady violation must demonstrate that evidence [is]: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching.").

AFFIRMED.¹

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

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



closed²⁷⁹
0072-11

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

February 7, 2011

REMITTITUR

The Honorable Alma Y. White
715 Prince Street Rm 221
PO Drawer 421270
Georgetown, SC 29442-1270

Re: The State v. McGee, Shannon D.
2006-GS-22-00580
2006-GS-22-00581
2006-GS-22-00582

Dear Ms. White:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

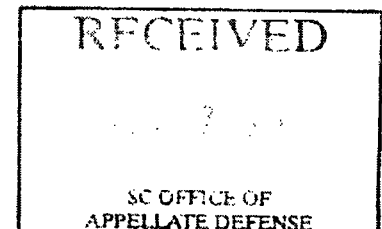
Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Appellate Defender Kathrine H. Hudgins
Senior Assistant Attorney General Norman Mark Rapoport
John Gregory Hembree, Esquire



STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of GEORGETOWN)

2011-CP-22-00195

Shannon D. McGee #147120

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina

Name of Respondent)

APPLICATION FOR
POST-CONVICTION RELIEFFILED
GEORGETOWN COUNTY, S.C.
2011 FEB 14 PM 3:22
ALMA Y. WHITE
CLERK OF COURTINSTRUCTIONS - 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. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 Lieber Corr. Inst. P.O. Box 205 Ridgville, S.C.
29472
2. Name and location of Court which imposed sentence Georgetown County Courthouse
Georgetown County S.C. 29442
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 06 - GS - 22 - 580
 - (b) 06 - GS - 22 - 581
 - (c) 06 - GS - 22 - 582
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 18, 2006
 - (b) September 18, 2006
 - (c) September 18, 2006

5. 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 _____

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

_____ yes _____

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

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

- i. S.C. Court of Appeals _____
- ii. _____
- iii. _____

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

- i. denied / Affirmed _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. November 19, 2009 _____
- ii. _____
- iii. _____

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

- i. Unpublished Opinion No. 2009-UP-539 _____
- ii. _____
- iii. _____

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

- (a) N/A _____
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of ^{Trial} Counsel / ^{see:} Strickland vs. Washington, Supr.
- (b) Prosecutorial Misconduct / ^{see:} Gideon v. Wainwright, 83 S.Ct 792 (1963)
- (c) Violation of 5th; 6th; 14th Amendment U.S. Constitution / ^{And} Due Process / ^{S.C.} Constitution
- (d) Ineffective Assistance Appellate Defender
Also see: Attached Sheet

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

(a) _____

see: Attached sheet

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) _____

No

(d) any other petitions, motions or applications in this or any other Court?

No

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

(a) the specific nature thereof:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

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

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- 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) N/A
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? ✓
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

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. Stewart Axelrode, Myrtle Beach, S.C.
- ii. Kathrine H. Hudgins, Appellate Defense P.O. Box 11589 Columbia, S.C.
29211-1589
- iii. _____

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

- i. (a);(b);(c)
- ii. (d)
- iii. _____

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

see: Attached sheet

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

yes

2011-CP-22-00195

STATE OF SOUTH CAROLINA)
) VERIFICATION
 COUNTY OF GEORGETOWN)

I, Shannon D. McGee, # 147120, 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.

x Shannon D. McGee

Sworn to and subscribed before me

This 4th day of Feb, 2011

Sylvia Jones L.S.
 Notary Public for South Carolina

My Commission Expires 1/24/2018

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

I, Shannon D. McGee, # 147120, 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 or 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 proceeding or give security therefor.

x Shannon D. McGee
 Applicant

Sworn to and subscribed before me

This 4th day of Feb, 2011

Sylvia Jones L.S.
 Notary Public for South Carolina

My Commission Expires: 1/24/2018

FILED
 GEORGETOWN COUNTY, S.C.
 2011 FEB 14 PM 3:22
 ALMA Y. WHITE
 CLERK OF COURT

FILED
GEORGETOWN COUNTY, S.C. Statement Of Truth

2011 MAR -7 PM 1:53

^{THE MAY WHITE}
^{CLERK OF COURT}
The representative of the Law is the "HOLY BIBLE" it's recognized by this 15th Judicial Circuit Court, Moreover, the only God respected by this modern day Babylon is the Great God I AM. So I come to you in the name of the Great I AM.

The out Cry has come from Horry and Georgetown County against you and your injustice, and We are, and have sent our Cries up to the Great I AM in Prayer, asking for His justice from Heaven.

EXODUS CHAPTER 3:13, Then Moses said to God, Indeed, when I come to the children of Israel and say to them, "The God of your fathers, has sent me to you, and they say to me, "What is His name? What shall I say to them? And God said to Moses, "I AM WHO I AM." And He said, "Thus you shall say to the children of Israel "I AM has sent me to you." The Courtroom was meant to be the LORD I AM's sanctuary of pure Justice, not in-Justice. This goes out to all the Judges and Prosecutors and Lawyers of the 15th Judicial Circuit Court's first and then to all of the State of S.C. !!! Now I Shannon D. McGee, Bless The Name OF The GREAT I AM in The Name OF My LORD JESUS... Peace To All Of You..

DANIEL CHAPTER 4:37, Now I, Nebuchadnezzar, praise and extol and honor the King of Heaven, all of whose works are truth, and His ways justice. And those who walk in pride He is able to put down. Don't make God Break You.

DETERONOMY CHAPTER 16:18, Also at that time I gave these instruction to your judges: Hear the cases that your people bring. Judge each case fairly, no matter whether it is a dispute between two Israelites or a dispute between an Israelite and a non-Israelite. Be impartial in your decisions: Listen to the least important people the same way you listen to the most important people. Never be afraid of anyone, since your decisions come from God. You may bring me any case that's too hard for you, and I will hear it."

So I told you how to handle these situations.

DEUTERONOMY CHAPTER 16:18, Appoint judges and officials for each of your tribes. Do it in every town the **LORD** your God is giving you. They must judge the people fairly.¹⁹ Don't take money from people who want special favors. It makes those who are wise close their eyes to the truth. It twists the words of those who do what is right.²⁰ Follow only what is right. If you do, you will live. You will take over the land the **LORD** your God is giving you.

PSALM 58 WICKED JUDGES WILL BE JUDGED Are you rulers really fair when you speak? Do you judge people honestly?² No, in your hearts you plan to be unfair. With your hands you do terrible things on the earth.³ Even from birth those who are evil go down the wrong path. From the day they are born they go the wrong way and speak lies.⁴ Their words are like the poison of a snake. They are like the poison of a cobra that has covered up its ears.⁵ It won't listen to any tune of a snake charmer, even if the charmer really plays well.⁶ God, break the teeth in the mouths of these sinners!

LUKE CHAPTER 11:37 SIX WARNINGS: Jesus finished speaking. Then a Pharisee invited him to eat with him. So Jesus went in and ^{took} his place at the table.³⁸ But the Pharisee noticed that Jesus did not wash before the meal. He was surprised.³⁹ Then the **LORD** spoke to him. "You Pharisees clean the outside of the cup and dish," he said. "But inside you are full of greed and evil."⁴⁰ You foolish people! Didn't the one who made the outside make the inside also?⁴¹ Give to poor people what is inside the dish. Then everything will be clean for you.⁴² How terrible it will be for you Pharisees! You give God a tenth of your garden plants, such as mint and rue. But you have forgotten to be fair and to love God. You should have practiced the last things without failing to do the first.⁴³ "How terrible for you Pharisees! You love the most important seats in the synagogues. You love having people greet you in the market places."⁴⁴ How terrible for you! You are like graves that are not marked. People walk over them without knowing it.⁴⁵ An authority on the Law spoke to Jesus. He said, "Teacher, when you say things like that, you say bad things about us to."

⁴⁶ Jesus replied, "How terrible for you authorities on the Law! You put such heavy loads on people that they can hardly carry them. But you yourselves will not lift one finger to help them. ⁴⁷" How terrible for you! You build tombs for the prophets, it was your people of long ago who killed them. ⁴⁸ So you give witness that you agree with what your people did long ago. They killed the prophets, and now you build the prophets' tombs. ⁴⁹ So God in his wisdom said, 'I will send prophets and apostles to them. They will kill some. And they will try to hurt others.' ⁵⁰ So the people of today will be punished. They will pay for all the prophets' blood spilled since the world began. ⁵¹ I mean from the blood of Abel to the blood of Zachariah, who was killed between the altar and the temple. Yes, I tell you, the people of today will be punished for all these things. ⁵² "How terrible for you authorities on the Law! You have taken away the Key to the door of Knowledge. You yourselves have not entered. And you have stood in the way of those who were entering."

⁵³ When Jesus left there the Pharisees and the teachers of the Law strongly opposed him. They threw a lot of questions at him. ⁵⁴ They set traps for him. They wanted to catch him in something he might say. "Jesus Gives Words of Warning and Hope" CHAPTER 12:1, During that time a crowd of many thousands had gathered. There were so many people that they were stepping on one another. Jesus spoke first to his disciples. "Be on your guard against the yeast of the Pharisees," he said. "They just pretend to be godly. ² Everything that is secret will be brought out into the open. Everything that is hidden will be uncovered. ³ What you have said in the dark will be heard in the daylight. What you have whispered to someone behind closed doors will be shouted from the rooftops."

2-CHRONICLES CHAPTER 1:7, On that night God appeared to Solomon, and said to him, "Ask! What shall I give you?" ⁸ And Solomon said to God, "You have shown great mercy to David my Father, and have made me King in his place. ⁹ "Now, O LORD God, let Your promise to David my Father be established, for You have made me King over a people like the dust of the earth in multitude. ¹⁰ "Now give me wisdom and Knowledge, that I may go out and come in before this people, for who can judge this great people of Yours?" ¹³

"Then God said to Solomon; "Because this was in your heart, and you have not asked riches or wealth or honor or the life of your enemies, nor have you asked long life but have asked wisdom and knowledge for yourself, that you may judge My people over whom I have made you King - ¹² "Wisdom and Knowledge are granted to you; and I will give you riches and wealth and honor, such as none of the Kings have had who were before you, nor shall any after you have the like."

PSALM 118 1, O H, give thanks to the LORD, for He is good! For His mercy endures Forever. ² Let Israel now say, "His mercy endures forever." ³ Let the house of Aaron now say, "His mercy endures forever." ⁴ Let those who fear the LORD now say, "His mercy endures forever." ⁵ I called on the LORD in distress; the LORD answered me and set me in a broad place. ⁶ The LORD is on my side; I will not fear. What can man do to me? ⁷ The LORD is for me among those who help me; therefore I shall see my desires on those who hate me. ⁸ It is better to trust in the LORD than to put confidence in men. ²³ This was the LORD's doing; it is marvelous in our eyes. ²⁴

This is the day the LORD has made; we will rejoice and be glad in it. ²⁵ Save now, I pray, send prosperity. ²⁶ Blessed is he who comes in the name of the LORD! We have blessed you from the house of the LORD. ²⁷ God is the LORD, and He has given us light, bind the sacrifice with cords to the horns of the altar. ²⁸ You are my God, and I will praise You; You are my God, I will exalt You. ²⁹ O H, give thanks to the LORD, for He is good! For His mercy endures forever.

LORD Jesus this is the PSALM, You put on my Spirit, to close this message, to Your Court Houses in Horry and Georgetown County's, may they understand that you are going to act on the Poor, Fatherless, Needy and Oppressed side and the Judge's and Prosecutor's and Lawyer's, want even see it coming. Jesus repays in so many ways, we are here one day and are gone the next one, it's up to You all!! God sees all the wrong You are doing to his people out of GREED, it's not about LAW anymore, it's about how much MONEY you have, or WHO a person knows, and that is ungodly altogether!!

PSALM 10: Why do You stand afar off, O LORD? Why do You hide in times of trouble? ² An evil person is proud and hunts down those who are weak. He catches weak people by making clever plans. ³ He brags about what his heart longs for. He speaks well of those who always want more. He attacks the LORD with his words. ⁴ Because he is proud, that evil person doesn't turn to the LORD. There is no room for God in any of his thoughts. ⁵ Everything always goes well for him. So he is proud. He doesn't want to have anything to do with God's Laws. He makes fun of all of his enemies. ⁶ He says to himself, "I will always be secure. I will always be happy. I'll never have any trouble." ⁷ His mouth is full of curses and lies and warnings. With his tongue he speaks evil and makes trouble. ⁸ Sinful people hide and wait near the villages. From their hiding places they murder those who aren't guilty of doing anything wrong. They watch in secret for those they want to attack.

⁹ They hide and wait like a lion in the bushes. From their hiding places they wait to catch those who are helpless. They catch them and drag them off in their nets. ¹⁰ Those they have attacked are beaten up. They fall to the ground. They fall because their attackers are too strong for them. Sinful people say to themselves, "God doesn't pay any attention. He covers his face. He never sees us." ¹¹ LORD, rise up! God, show your power! Don't forget those who are helpless. ¹² Why do sinful people attack you with their words? Why do they say to themselves, "He won't hold us accountable"? ¹³ God, you see trouble and sadness. You take note of it. You do something about it. So those who are attacked place themselves in your care. You help children whose fathers have died. ¹⁴ Take away the power of bad and sinful people. Hold them accountable for the evil things they do. Uncover all the evil they have done. ¹⁵ The LORD is King forever and ever. The nations will disappear from his land. ¹⁶ LORD, you hear the longings of those who are hurting. You cheer them up and give them hope. You listen to their cries. ¹⁷ You stand up for those whose fathers have died, and for those who have been beaten down. You do it so that no one made of dust may terrify others any more. Amen Amen, Amen!!

DANIEL CHAPTER 10:12, The Messenger of I.A.M came to Daniel, his name was Gabriel! He continued; "Do not be afraid, Daniel. You decided to get more understanding. You went without food as you worshiped your God. Since the first day you did those things, your words were heard. I have come to give you an answer." But the prince of Persia opposed me for 21 days. Then Michael came to help me. He is one of the leaders of the angels. He helped me with the battle over the King of Persia.

NUMBERS CHAPTER 23:19, The GREAT I.A.M, God isn't a mere man. He can't lie. He isn't a human being. He can't change his mind. He speaks, and then he acts. He makes a promise, and then he keeps it.

I trust you with the truth, from the truth of the GREAT I.A.M inspired, in me by the Holy Spirit, of His son, our LORD JESUS...

Your Truly,

Mr. Shannon R. McLean #147120

PSALM 58: Do you rulers really give fair verdicts? Do you judge Adam's descendants fairly? No you invent new crimes on earth, and your hands speed violence. Even inside the womb wicked people are strangers to God. From their birth liars go astray. They have poisonous venom like snakes. They are like a deaf cobra that shuts its ears so that it cannot hear the voice of a snake charmer or that of anyone trained to cast spells.

O God, knock the teeth out of their mouths. Break the young lions' teeth, O LORD. Let them disappear like water that drains away. When they aim their bows, let their arrows miss the target. Let them become like a snail that leaves behind a slimy trail or like a stillborn child who never sees the sun. Let God sweep them away faster than a cooking pot is heated by burning twigs. Righteous people will rejoice when they see God take revenge. They will wash their feet in the blood of wicked people. Then people will say, "Righteous people certainly have a reward. There is a God who judges on earth."

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)
) C/A No. 2011-CP-22-00195
Shannon D. McGee, #147120)
petitioner,) AMENDMENT TO ORIGINAL
v.) APPLICATION FOR P.C.R.
State of South Carolina) Pursuant to Rule 15, SCRCiv.P
Respondent.)
_____)

COMES NOW, Shannon D. McGee, pro se, who respectfully moves this Honorable Court to Amend the Original Application for Post-Conviction Relief in the above captioned pursuant to Rule 15, SCRCiv.P.

In support of his claim for Post-Conviction relief, the petitioner alleges that counsel rendered Ineffective Assistance in the following particulars, that petitioner was prejudiced to the extent that there exists a probability that Counsel's deficient performance affected the outcome of petitioner's trial, and that as a result petitioner is entitled to his sentences to be Vacated /and/or a new trial.

Respectfully Submitted,

151 Shannon D. McGee

Shannon D. McGee, #147120

1.

FILED
GEORGETOWN COUNTY, S.C.
2011 MAR -7 PM 1:53
ALMA Y. WHITE
CLERK OF COURT

ARGUMENT 1

1.) Was Counsel Ineffective for failing to Object to the Solicitor's improper closing Argument that impermissibly Bolstered and Vouched for credibility of victim and state's witness in a violation of Petitioner's Sixth Amendment to the United States Constitution for failing to properly Object and to preserve the issue for Appeal; and a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

The Solicitor repeatedly Bolstered and Vouched for the credibility of the victim and State's witness and placed their personal opinions before the jury, as will be seen in the following: Colloquy / Trial Transcript.

Going through the witnesses that the State presented, I submit to you that they were credible and believable today, and they told the truth, and they told you in a way that was believable because it was true, and everybody was -- it's a little easier to keep your story straight on the truth than a lie, and I would submit to you that -- well, I'm going to come back to Sharira last

see: TR page 152 lines 9-15

He didn't seem to be telling a lie. He seemed to be just telling the truth, which is, this guy, Shannon McGee

TR. page 153 lines 5-6

And I'll tell you what, when the Judge talks to you about general demeanor, credibility, and (unintelligible) they say, but how they say it, I submit to you that's true. It rings true, sounds true, because it is true...

TR. page 153 lines 23 - lines 1 page 154

Dr. Rakter didn't come in here and say a bunch of things that were outside of her ability to say, she didn't try to have every answer, and never has been wrong, as maybe was implied.

TR. page 154 lines 20 - 22

me back, but I was lying when I said it didn't happen. And she came into court and she told the truth.

TR. page 155 lines 19-20

... , and so if you find that
the factual is that she was telling the truth when she said.

T.R. page 157 lines 24 - 25

how you know she's telling the truth, I think, is largely in
the details of her story. She didn't get up there and yeah,
 he did -- you know, he did it to me, and she didn't look like
the lying child. There was just a lot of very specific
 details, on and on and on about what happened the first times,

T.R. page 159 lines 21 - 25

Does that sound something she made up, or does that sound like
the sad, cold, tragic truth of what happened, out of her
mouth, and -- into her ear, and out of her mouth to you.

T.R. page 161 lines 8 - 10

don't -- and I just ask you again -- I know I'm trying to
repeat myself, but the point is, she's telling the truth. You

T.R. page 161 lines 20 - 21

answer is, you dont make it up; it's true, and it's hard to
T.R. page 162 line 1

DISCUSSION

The South Carolina Supreme Court has previously held that because
 "a jury must make its own assessment on the credibility of
 witnesses, it is inappropriate for the State to assure the
 jury of a government witness's credibility. State v. Kelly, 343
 S.C. 350, 540 S.E.2d 851 (2001), reversed on other grounds, Kelly v.
South Carolina, 534 U.S. 246, 122 S.Ct. 726 (2002)

The record clearly supports Counsel was ineffective for failing to
 object to these statements because they improperly bolstered the credibility
 of the government's witnesses. Gilchrist v. State, 350 S.C. 221,
 565 S.E.2d 281 (2002) (petitioner was prejudiced by counsel's
 failure to object to state's vouching for witness's credibility);
Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002) (counsel
 rendered ineffective assistance by failing to object to solicitor's comments
 vouching for the credibility of state's witness).

The fact that the bolstering by the prosecution of the government's
 witnesses was pervasive and not limited to one occurrence or any one
 witness demonstrates that prejudice resulted, and there is a reasonable
 probability that the outcome at trial would have been different. Id.

There is good discussion on this issue in State v. Kelly, 343 S.C. 350, 540 S.E. 2d 851 (2001), reversed on other grounds, Kelly v. S.C., 534 U.S. 246, 122 S.Ct. 726 (2002) wherein Kelly relied on a third Circuits discussion on vouching. see: U.S. v. Walker, 155 F. 3d 180 (3rd Cir. 1998); see also: U.S. v. Lawn, 355 U.S. 339, 359 n. 15, 78 S.Ct. 311, 323 n. 15, 2 L.Ed. 2d 321 (1958).

The sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of counsel for his defense." U.S. Const. Amend. VI. The right to the effective Assistance of Counsel means the right to "effective assistance of Counsel".

It's clear that there's no Trial strategy for Counsel failing to object herein this argument. Strickland v. Washington 466 U.S. 668 (1984)

And it's also clear that these errors complained of is in a violation of Petitioners Due Process under the 14th Amendment to the U.S. Constitution.

Petitioner respectfully ask for the Grant of a New Trial.

ARGUMENT 2

2.) Was Counsel Ineffective for failing to Object to the Solicitor's improper closing Argument that impermissibly violated the "Golden Rule" in a violation of petitioner's sixth Amendment to the United States Constitution for failing to properly object and to preserve the issue for Appeal ? And a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

The Solicitor repeatedly violated the "Golden Rule" in his closing and opening Arguments to the jury, as will be seen in the following : Colloquy / Trial Transcript.

Well, ask yourself what you would have done if you were twelve year old Shakira Hicks, living with your mother and your stepdad, who you may have some fear of if you are twelve year old Shakira Hicks. So try to ask yourself, is it reasonable for her to do what she did, given who she is. It's called empathy...

TR. page 47 lines 24-25 And page 48 lines 1-4

... You are the only people who can do justice for her today, and so I ask of you, dont just (unintelligible) but watch her.

Tr. page 49 lines 10-12

... little more wise than I gave her credit for when saying you
should put yourself in her position...

Tr. page 150 lines 4-5

... You

Know, you are in there and you are locked up, and you are not really sure what's going to happen to you, want to talk to somebody about it, so you see somebody familiar and you figure, well, you know, he's a criminal too, right; he's been around the block, he knows the rules of the yard, as he said, and you know, he isn't approaching anybody, you can tell that guy, he's a criminal. The interesting thing about him is, you know, you can say how bad he is, or what a crook he is, and he admitted, you know, he's -- he's a criminal, right; he's committed some criminal offenses, but he's a man just like the rest of us.

Tr. T. page 153 lines 8-19

... It's possible that, you know, it made her feel like she was getting some attention, or she may have been utterly disgusted by it, but in any event, it was, you know

Tr. T. page 154 3-5

... to tell Shannon, and you know that mom is going to take Shannon's side, so now it's going to be Shannon, you know, mad at me, and we can maybe understand why ^{Minor Child} didn't want Shannon mad at her, probably a reasonable thing.

Tr. T. page 156 lines 9-12

... You

Know...

Tr. T. page 156 lines 14-15

... So I don't mean to insult your intelligence, but that's actually important to tell you that there was intent to commit C.S.C., and I don't know what better evidence of intent to commit C.S.C. other than you put a condom on, lay on top of somebody, you are touching them

Tr. T. page 157 lines 10-14

... If she's making this story up, how do you come up with what you heard today? How do you, as a twelve year old, recite this progression that goes along with what you've heard about grooming, that at...

Tr. T. page 160 lines 6-9

... you know, in the room when mom was at work, and then, you know, it stopped. And I'll tell you something else about the details. She could have come in here -- and you would think if she were trying to bury the guy, if you wanted revenge, you would come in -- the prosecutor asked, well did he hold you down, didn't -- no, he didn't hold me down -- she pushed him off -- and clearly, you know ...

Tr. T. page 160 lines 16-23

... What did he say when he threatened you.

Tr. T. page 161 lines 3-4

Does that sound something she made up, or does that sound like the sad, cold, tragic truth of what happened, out of her mouth, and -- into her ear, and out of her mouth to you.

Tr. T. page 161 lines 8-10

... You don't make that up. You don't make -- how does she make up

Tr. T. page 161 lines 21-22

... answer is, you don't make it up; it's true, and it's hard to know what's more tragic for her, you know, the fact that she's

Tr. T. page 162 lines 1-2

So, it's not an easy thing that you have got to do, but I ask you to do the right thing, and I just hope you will have the conviction, no matter how many people may be on the other side, or want to take the easy way out (unintelligible). stay

Tr. T. page 162 lines 7-10

DISCUSSION

It's clear by the record that the Solicitor's argument indisputably asked jurors to abandon their impartiality and view the evidence from ^{Minor Child} was a violation of the ["Golden Rule"], the South Carolina Supreme Court has ~~repeatedly~~ forbidden closing arguments of this sort. A solicitor's closing argument must be carefully tailored not to appeal to the personal biases of the jury. Von Dahlen v. State, 360 S.C. 598, 602 S.E. 2d 738 (2004), cert. denied, 544 U.S. 943, 125 S.Ct. 1645, 161 L.Ed. 2d 511 (2005).

The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.

Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially. Id. A [Golden Rule] argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice. Id.

As will be shown herein of all the [You]; [You know]; [Yourself]; and asking juror to place themselves in the victim's shoes / place; that the opening and closing argument so infected the trial with unfairness as to make the resulting convictions a Denial of Due Process, as the only evidence that was solely relied on was the victim who said petitioner did things to her; then went and gave a statement to petitioner's ^{Lawyer} in the presence of her mom that she lied on petitioner, but ultimately testified herein and the solicitor most defently caused the conviction by asking the jury in the form of [you]; [yourself]; [You know] a total of about 50 times in closing Argument that's 5 more times than the case of: State v. McDaniel 320 S.C. 33, 462 S.E. 2d 882 (Ct. App. 1995) (reversing conviction and remanding for new trial in sexual assault/robbery case where solicitor used "you" or a form of "you" some forty-five times asking the jury to put themselves

in place of the victim); State v. Reese, 370 S.C. 31 (2006).
 reversed on other grounds. State v. Reese, 359 S.C. 260 (App. 2004)
 see: Donnelly v. DeChristoforo, 416 U.S. 637, 94
 S.Ct. 1868, 40 L.Ed. 2d 431 (1974);
State v. White, 246 S.C. 502, 144 S.E. 2d 481 (1965)
Gilstrap, 205 S.C. 412, 32 S.E. 2d 163 (1944)
Darden v. Wainwright; 477 U.S. 168, 106 S.Ct. 2464,
 91 L.Ed. 2d 144 (1986)

Other Courts in other Circuits including our own
 S.C. Supreme Court & Court of Appeals, uniformly
 have condemned and prohibited golden Rule Arguments
 in criminal and civil settings. The Prejudicial impact
 in a case like this for Counsel's failure to object
 to the "Golden Rule" even though he did object once
 and the judge told the jury to strike the comment
 it was so severe after that coupled with a jury
 charge that the victims testimony not be corroborated
 deficiently caused the convictions in petitioner's case
 and Trial Counsel's has clearly fell below an Objective
 standard under Strickland v. Washington, 466 U.S. 668
 (1984) when his attorney failed to object in violation
 of petitioner's ~~rights~~; 6th; 14th Amendment to the U.S.
 Constitution. Petitioner respectfully ask for a New Trial.

ARGUMENT 3

3.) Was Counsel Ineffective for failing to conduct any pretrial investigation, both factual and Legal and as a result of Counsel's inactions, Petitioner was denied his Sixth Amendment right to the Effective Assistance of Counsel and his 14th Amendment right to a fair trial?

FACTS

Petitioner's Trial Counsel was Ineffective for failing to conduct any pretrial Investigation, both factual and Legal as will be seen through the following: Colloquy / Trial Transcript.
pages 14 lines 15 through page 21 lines 18

15. MR. AXELROD: Yes sir, Your Honor. I would make a ~~motion~~
16. motion at this time for a continuance, and I would like to
17. tell the Court why, if I may.

18. THE COURT: Yes sir

19. MR. AXELROD: Your Honor, and I want to preface it that
20. it's -- there is no -- no disrespect to this Court today.

21. THE COURT: Oh, absolutely. I understand. Go ahead.

22. MR. AXELROD: I make a motion for a continuance because
23. I do not -- I believe my client will not get a fair trial. He
24. is unable to get a fair trial based on the state giving me

25. notice on Friday at noon that my case would be tried this
1. week, first or second trial this week.

2. Your Honor, the stakes are high in this case. It's life
3. without parole, I'm aware that I have had the case for -- I'm
4. not sure, but I'll say better part of the year. I've met with
5. my client. I've met with some witnesses. Your Honor, in
6. preparing a case like this, as the Court is aware, they had
7. the Children's Recovery Center come down today to bring the
8. tape for me to watch. I'll probably watch it at approximately
9. five o'clock this afternoon, for an hour or so, go back to my
10. office and prepare all night for this trial.

11. Your Honor, I just think that -- and no disrespect to
12. the Solicitor, but in a way I call it trial by ambush. In
13. Henry County, part of the same Circuit, the Fifteenth Circuit,
14. I have trials lined up all the way to December. The Solicitor
15. will call me and say we are going to try this case. I have
16. seven hundred criminal clients at this point, in three
17. different counties. I cannot be prepared with each case as if
18. it's going to trial any given week. I just can't do that.

19. I have been unable to -- my subpoenas have been typed.
20. They are at my office right now. They have not been served.

21. I have been unable to reach my client's wife. She is a
22. witness. These are matters that, with subpoenas, are done --

23. I usually do them three weeks in advance. I have a trial with
24. the Solicitor that's possibly going to go in October. I have
25. issued forty subpoenas, thirty days in advance, for the next
1. three months. To protect myself, to protect the record, I say
2. I want to do this. What I consider to be absurd, Your Honor
3. is the State's position that I should be ready for any trial
4. on any given week. If that was the case, then what I'm
5. learning here today, Your Honor, is that I need to issue
6. subpoenas on every case I have that's on the trial roster all
7. the time, a standing subpoena that on every term of Court they
8. have to be there because they might try the case. I believe
9. that's absurd. I believe that puts the community not at a
10. disadvantage, but at an inconvenience, to say the least, that
11. any police officer, or any person, or any witness is -- I'm
12. going to issue subpoenas on every case I ever have on a trial
13. roster.

14. Sometimes, Your Honor, a client will say, you know, I
15. don't want the offer; I want a trial. We put it on the trial
16. roster. And as the Court is aware many times they will plead
17. out. Sometimes it has to get to the trial roster to work out
18. a plea, as we attempted to work out a plea here today. [I say
19. that it is trial by ambush. I say it's incorrect.]
20. I also want to put on the record what occurred with me

20 I also want to put on the record what occurred with me
21 last week in

22 the same Circuit

23 I'm going to protect myself on this record, and [I will be more
24 than happy, Your Honor, to go forward with trial.]

25 THE COURT: Well, does this have anything to do with
1. the trial of this case?

2. MR. AXELROD: Well, I would like to put on the record
3. what -- if the Court would just give me a minute right now.

4. THE COURT: I want it to be germane to this case. Does
5. it have anything to do with the trial of this case?

6. MR. AXELROD: It does, Your Honor. It does to the
7. extent -- if I could just have a briefness here that Solicitor
8. Smith was going to try cases in Horry County, and told me for
9. the past eight weeks that he had gotten me protection from
10. Court this week, for two days, Tuesday and Wednesday, and I
11. issued subpoenas on three trials in Horry County -- in a
12. different County -- based on what Solicitor Smith told me.
13. Then I find out on Friday I have no protection; I have this
14. case. They are in the same office.

15. I could just say to this Court that, when people tell me
16. something I do it. I issued those subpoenas. I thought I was
17. going to have a trial Tuesday and Wednesday in Horry County.

18. I'm not having them. They are going to continue those.
19. I understand that this Court takes precedent over that
20. Court. I would just say, Your Honor, that the Solicitor knew
21. when he was going to try this case. I had several on it, and
22. my only recourse is to put on the record I feel that it's not
23. fair to my client; he won't get a fair trial, and I could be
24. [ineffective] if I can't reach the witnesses and get them here.
25. If the Court orders me to go forward, does not grant the
1 continuance, I would ask the Court to assist me -- I have the
2 subpoenas -- they are in my office typed -- I had my secretary
3 type them -- that I could have them faxed down to here, and
4 ask the Court to have the Sheriff help me serve these people
5 tonight and tomorrow morning, and that would be all, Your
6. Honor.

7. THE COURT: Anything from the State?

8. MR. BRYAN: I'll just be real brief, Your Honor, just
9. to clarify for the record, since this is a life without parole
10. offense. The notice was faxed on September the 7th from my
11. office to his office, giving him notice that this trial was on
12. the trial roster, and the case that he spoke of that he
13. thought he would be trying on Tuesday and Wednesday in
14. Magistrate's Court, and it would strike me that the obvious
15. thing to do, for somebody that concerned about it, would be to

16. pick up the phone and call me, if you knew that you were
17. trying a case in Horry County and were protected, maybe call
18. the Solicitor in Georgetown and say, why do you have me down
19. on your trial roster; you know I'm protected over here, which
20. never happened. We found out about that maybe Thursday or
21. Friday, and so we were -- I think Thursday -- and also just to
22. clarify, it was Thursday and not Friday at which point our
23. office told him exactly when he would be up, which was third
24. for trial. The record should reflect that he is not called
25. first for trial. Mr. McGee is actually third, and to get to
1. this point King Conyers, Robert Pusha, Roger Jenkins, Karon
2. Blake, have all pled guilty, in addition to the fact that Mr.
3. Axelrod has represented that Antonio Wright, whom he
4. represents, is going to plead guilty, although this seems to
5. be new news to Mr. Wright, who has told someone in our office
6. that he has never spoken to his lawyer, even though his lawyer
7. has represented to us that he's a plea.

8. MR. AXELROD: Well, that's true, Your Honor, and after
9. looking -- and I hadn't talked to my client that day, but
10. after looking at the facts I felt that that would be a plea.
11. I mean, I was giving him my best guess on that. I'm not going
12. to mislead the state and say that it's going to be a trial if
13. I think it's not.

14. MR. BRYAN: And just for clarification I think he's
15. done a good job of keeping it on track as far as -- but he did
16. say that he might be ineffective if certain things were unable
17. to be done, and I would just ask the Court to make sure that
18. we are clear about what things need to be done prior to use
19. commencing this case, so that he can be effective.

20. THE COURT: Mr. Axelrod, can you specifically tell me
21. the things that you need to do to be prepared for trial?

22. MR. AXELROD: I need the witnesses that I have
23. subpoenaed to be here for the trial, and the subpoenas are at
24. my office. If the Court allows me, I have them -- they are
25. two-sided, I'll have them fax the one side, and have the
1. second side faxed too. If we could staple them together, I
2. would ask the Court to have the Sheriff's Office -- because
3. they are going to have to be served tonight, and if not
4. tonight, first thing -- tonight, probably, so I can contact
5. these people, and they are germane to the case. It's ---

6. THE COURT: The State's position in regard to that
7. request.

8. MR. BRYAN: I've got no objection to it. I would have
9. been probably a good idea to bring those, knowing that he was
10. up for trial this morning. It might have been a good idea to
11. have brought those subpoenas.

12. THE COURT: Well, at any rate, I'll direct that the

13. Sheriff's Office assist you in the service of those.

14. MR. AXELROD: Thank you.

15. Your Honor, I think that ---

16. THE COURT: I think that the tape has been made -- is

17. being made available to you, and I think in chambers when you

18. discussed this with me earlier I explained -- and it would be

19. my ruling that should you, after viewing the tape, discover

20. information that's new to the case, that you had -- were

21. unaware of, or was a surprise to you, I will give you an

22. opportunity to take that up with me in the morning before we

23. begin trial. At this time, however, I'm going to deny the

24. motion. Again, the information, my understanding, has been

25. made available. You are exchanging with the State a tape that

1. you have in your possession, after this hearing, and I will

2. give the State the same rights once they have reviewed that

3. tape, if they wish to, to bring that up with me in the

4. morning.

5. MR. AXELROD: And Your Honor, as the Children's

6. Recovery Center does allow me to see it, and on my tape I have

7. no way to copy it, but I did tell the Solicitor, and I think I

8. told the Court in chambers, that the victim then made a phone

9. call to my office, and I had -- today I had a computer guy

10. Come over here to my office and we made a C.D. of that. We

11. will give the Solicitor that copy in the morning.

12. THE COURT: All right. Thank you very much.

13. Anything else we need to take up?

14. MR. BRYAN: No, Your Honor.

15. THE COURT: All right. Then we will convene in this

16. case at ten o'clock in the morning. I will be present at the

17. courthouse starting at 9:30 if there's any matters that need

18. to be taken up with me.

19. MR. AXELROD: Thank you, sir.

Tr. T. pages 14 lines 15 - page 21 line 19

The petitioner herein submits that Trial Counsel was not ready for Trial; and readily admitted such. And further more admitted that he had the case for about 1 year prior to the trial date. He admitted that it was a "Trial by Ambush" because he had about 700 criminal clients and he had protection in Horry County for 15th Circuit; part of the same circuit he already had prepared and ready for other Trials. As will be proven in the evidentiary hearing of this post-Conviction relief, there will be evidence & testimony in support of this issue to be argued at the P.C.R. Hearing.

DISCUSSION

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right... ..to have the assistance of counsel for his defense." U.S. Const. amend. VI. The right to the effective assistance of counsel means the right to "effective assistance of counsel." See Cuyler v. Sullivan, 446 U.S. 335, 344, 352 (1980); also see United States v. Morrison, 449 U.S. 361, 366 (1981); Tollett v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir.), cert. denied ___ U.S. ___, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct reasonably substantial investigation of the case.

The test formulated in Strickland v. Washington, 466 U.S. 668 (1984), for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland, the Court identified two components to any ineffective assistance of counsel claim. (1) deficient performance; and (2) prejudice. Under that decision, a criminal defendant alleging prejudice must show that counsel's errors were serious enough to deprive the defendant of a fair trial. Strickland v. Washington, 466 U.S. at 687, see also Kimmelman v. Morrison, 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional

errors so upset the adversarial balance between the defense and prosecution that the proceeding was rendered unfair and the conviction suspect).

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224, 226 (4th.Cir.), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues -- to which the defendant, a layman, will be oblivious. Garland v. Cox, 472 F.2d 875, 879 (4th.Cir.).

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense. The American Bar Association Standards for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "it is the duty of the lawyer to conduct prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to

secure information in the possession of the prosecution and law enforcement authorities. See ABA for Criminal Justice 4-4.1 (2nd. ed. 1982 Supp.). The failure to investigate, research and prepare is equivalent to not representation at all. Brubaker v. Dickson, 310 F.2d 30, accord Willaims v. Beto, 354 F.2d 698, and Brooks v. Texas, 381 F.2d 619.

It's clear by the record that there was no Trial Strategy for counsel herein this argument and a clear violation of clearly Established Federal law. see: Strickland v. Washington, 466 U.S. 668 (1984) and a violation of Petitioners 6th and 14th Amendment to the U.S. Constitution under Due Process.

Petitioner respectfully ask for the Grant of a New Trial.

ARGUMENT 4

4.) Did the Prosecutor commit Prosecutorial Misconduct in a violation of Petitioner's United States Constitutional right under the 14th Amendment under Due Process of Law?

FACTS

The Solicitor committed Prosecutorial misconduct; misrepresentation; False representation; Knowingly false testimony of government witness; unlawful and improper behavior which will be discussed herein, in the following: Colloquy / Trial Transcript.

Mr. Robert B. Bryan clearly made a Negligent; Fraudulent misrepresentation of a inadvertent False statement to the Court.

22. Mr. Bryan: If it please the Court, Your Honor, just
 23. with respect to the last issue, as far as I met Mr.
 24. Kinloch yesterday, I have never, ever spoken to him that I'm
 25. aware of...

Tr. T. page 24 lines 22 - 25

5. ... I was unaware
 6. of his involvement potentially in this case...

Tr. T. page 25 lines 5-6

12. ... MR AXELROD: Your Honor, so if I hear the Solicitor
 13. correct, he's saying that yesterday was the first day he met
 14. Mr. Kinloch, or spoke to him...

Tr. T. page 25 lines 12 - 14

21. MR. BRYAN: Can I see the R.A.P. sheet again?
 22. Your Honor, yes, he does. It's on our docket. As I
 23. said Your Honor, I did not speak to him about his charges
 24. don't know because I didn't want to know, because I didn't
 25. discuss it with him nor wish to...

Tr. T. page 25 lines 21 - 25

22. Q. ... but you
 23. met me yesterday; is that correct?
 24. Yes sir.
 25. Q. And have I ever corresponded with you, written you a
 1. letter?
 2. A. No, uh uh.
 3. Q. And has any representative of my office, or law
 4. enforcement, ever talked to you about this issue prior to me
 5. bringing you yesterday and speaking to you about it.

Tr. T. page 110 lines 22 - lines 5 page 111

17.

... I never spoke to

18. Dori. As an officer of the court I was never aware Mr.19. Kinloch would be involved in this case, never heard from him

20. talked to him, nor Ms. Beaugiani, and so we would say that it

21. would be unfairly prejudicial to raise the implication that

22. this was some kind of deal which he received for his

23. testimony. It would be misleading to the jury, as well as

24. unfairly prejudicial.

Tr. T. page. 91 lines 17-24

By looking at the letter to this very same Solicitor dated 8-4-06 record on Appeal Bate stamp page 155 also marked as Courts Exhibit 9 ["Dear Mr. Bryan"] and page 157 copy of envelope addressed to Mr. Bryan Solicitor it's clear by the record and Evidence that the Prosecutor just lied to the court, to the defense as an officer of the court. We must also note for the record that the stamp ["Received"] Aug. 07, 2006 page 157 also part of Exhibit 9 this very same Solicitor used a fake stamp that he also used and was caught using as a Prosecutor in the Georgetown County Solicitor's office in the Dayo/white case and he was moved out of that office to the Horry County Solicitor's office. Petitioner filed a complaint against Robert B. Bryan, Esquire matter number 09-DE-L-0426 see attached Fortior Exhibit herein.

Whereupon the S.C. Supreme Court of South Carolina office of Disciplinary Counsel, on August 14, 2009, an investigative panel of commission concluded this matter. The panel did not dismiss your complaint, but made a disposition that remains "Confidential" under the provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

The Solicitor's actions of failing to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting.

Tr. T. Record on Appeal Bate Stamp page 146 - 147 Order from
The Honorable Roger L. Couch

The record herein is clearly proof that Mr. Robert B. Bryon lied to the court; misrepresentation of False Fraudulent statement; of wanton misconduct; using a government witness to give False testimony of his reprehensible methods to get a "prejudicial" conviction in using jail House snitch to get an illegal conviction. Petitioner submits at the evidentiary hearing he will present Evidence and testimony in support to fully develop the record as to all of the Prosecutorial misconduct involved with this issue herein.

8 Q. On Cross-examination you mentioned several people - I
 9. dont know how many -- and I can't call their names now. Did
 10. you mention all those people to me?

11. A. No

12. Q. Okay. So, to your knowledge, is there any way that me,
 13. or another representative of the state would know that he had
 14. said that to all those people?

15. A. No.

16. Q. So you told what you know, but you didn't tell me that
 17. he told other people?

18. A. No, uh uh. I just told just what I knew.

19. Q. Is there any reason you didn't tell me, or you just
 20. didn't think about it?

21. A. No, I just didn't thought about it at the moment, you
 22. know, till Mr. Axelrod got out of hand.

Tr. I. page 118 lines 8-22 Redirect- Examination by Solicitor Bryan

The above redirect - Examination by Solicitor Bryan he's obstructing justice; miscarriage of justice, by getting a state witness to give perjured testimony of Facts that he was well aware of coupled with the fact that he withheld the letter of impeachment material; letter addressed to him of "Mike Jones"; rubber stamp proves a clear case of prosecutorial misconduct he knew about Mike Jones from the

letter from Aaron Kinloch that he failed to disclose / hid from defense, by his dishonesty; persuaded the court; and jury by using deceptive and unprofessional reprehensible methods just to get a Conviction which Petitioner received a life sentence by his planned "Trial by Ambush" by telling Defense on Friday that Petitioner's Trial would start on Monday when he had protection in Horry County and knew Defense would not be ready for trial.

Petitioner submits that Prosecutors are ministers of justice and not merely Advocates. Prosecutors has special responsibilities to do justice and is held to the highest standards of Professional ethics. A prosecutor's responsibility carries with it specifically obligations to see that the petitioner herein is accorded procedural justice and that guilt is decided upon sufficient Evidence, the judiciary bears the ultimate responsibility, for maintaining the judicial integrity and the high standards of professional conduct among the members of the Bar and for protecting and defending the "Constitutional rights of an accused."

DISCUSSION

Petitioner submits the United States Constitutional rights Amendments V; VI; VIII to Due Process of Law; by Solicitors actions above stated deprived petitioner of Life; Liberty; and Due Process of Law. Petitioner herein further submits that the Solicitor is an

officer of the Court. see: Berger V. United States, 295 U.S. 48, 88 (1935) (Government Attorney is the representative 'of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done");

ABA Standards for Criminal Justice ; Prosecution Function & Defense Function, Standard 3-1.2(c) (3d ed. 1993) ("The duty of the prosecution is to seek justice, not merely to convict.") Nat'l Dist. Attys. Ass'n. National Prosecution standards, standard 1.1 (2nd ed. 1991) ("The primary responsibility of prosecution is to see that justice is accomplished.")

Thus, a prosecutor may not seek a conviction at any price. see also: State V. Porter 526 N.W. 2d 359, 362-63 (Minn. 1995); Salitros, 499 N.W. 2d at 817 [Many prohibitions that the Solicitor committed also appear in standards of conduct the American Bar Association has established for prosecutors as well as defense counsels alike, see: ABA Standards for Criminal Justice, Prosecution Functions, Standards 3-5.4 (prosecution),

A prosecutor may prosecute with earnest and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his [duty] to refrain from [improper] methods calculated to produce a wrongful conviction as it is to

use every legitimate means to bring about a just one" 295 U.S. at 88, 55 S.Ct. 629 at 633 (emphasis added).

The South Carolina Supreme Court echoed this same standard in State v. King, 71 S.E. 2d 793 (1952) "A Solicitor is an officer of the Court representing all the people, including the accused, and occupies a quasi-judicial position and must see that justice is done, that no conviction takes place except in [Strict] conformity with the Law and that the accused is not deprived of any Constitutional Rights or privileges and, however strong his/her belief may be of an accused's guilt, he must conduct the Trial in a manner fair and impartial to the accused..." The Court has specifically indicated that the "duty of a Solicitor is to see that justice is done and not just to convict the defendant and furthermore, the Solicitor is quasi-judicial officer, and must not do things which prevent a fair Trial. see: State v. Durden, 212 S.E. 2d 587 (1975)

Petitioner respectfully ask that the Court Vacate his conviction and Order his immediately release from custody without re-indicted as a matter of Law; and justice, as to Prosecutorial misconduct.

FORTIOR EXHIBITS

[to support Argument 4 on
Prosecutorial Misconduct]



The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

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Telephone: (803) 734-2038
Fax: (803) 734-1964

September 11, 2009

PERSONAL AND CONFIDENTIAL

Shannon D. McGee #147120
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

RE: NOTICE OF FINAL DISPOSITION
Lawyer: Robert B. Bryan, Esquire
Matter Number: 09-DE-L-0426

Dear Mr. McGee:

You previously filed a complaint with the Commission on Lawyer Conduct concerning Robert B. Bryan. On August 14, 2009, an investigative panel of the Commission concluded this matter. The panel did not dismiss your complaint, but made a disposition that remains confidential under the provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

The action taken by the Commission constitutes final disposition of the proceedings in this matter. Your cooperation with the Commission and this office is appreciated.

Sincerely,

Susan B. Hackett
Susan B. Hackett

"The overriding theme of the Brady cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, 'the prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative...of sovereignty...whose interest...in a criminal prosecution is not that it shall win a cause, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.'"

Riddle at 46, citing Kyles v. Whitley, 514 U.S. at 438-40, 115 S.Ct. 1555.

The Solicitor's actions of failing to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting. A letter from a witness that demonstrates the willingness to make a deal in exchange for his testimony should be given to the defendant regardless of the actual existence of a deal. However, while this evidence could have been favorable to the defendant, it did not indicate that in fact a deal for the testimony had been reached. In light of all the evidence and testimony, and in particular, the lack of any facts indicating any deal struck between the witness and the Solicitor, it is this court's finding that the defendant received "a fair trial resulting in a verdict worthy of confidence." Riddle.

After a review of the record in this case, there is no evidence that any type of deal existed between the State and Kinloch for his testimony in this matter. The Solicitor met with Mr. Kinloch the day before the trial, which was after all of the charges against Mr. Kinloch had been

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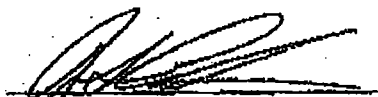
resolved, except for the charge of receiving stolen goods. That charge came before this judge the day after the trial, but Mr. Kinloch's plea was taken without recommendations or negotiations as to sentencing. In addition, the dismissed burglary charge was dismissed on July 28, 2006. The letter from Kinloch, in which he asks for some help in exchange for his testimony, was dated August 4, 2006, which was after the burglary charge had been dismissed. The dismissed burglary charge would have very little probative value, if any, as to a deal between Solicitor Bryan and Mr. Kinloch. Thus, Solicitor Bryan's actions do not rise to the level of bring the trustworthiness of the verdict into question and thereby requiring the granting of a new trial.

THEREFORE, it is the Order of this Court that Defendant's Motion for a New Trial is denied.

IT IS SO ORDERED.

Spartanburg, South Carolina

November 9, 2006


Roger L. Couch
Presiding Judge

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NOV 17 4:10:46
CLERK OF COURT

8-4-06

EXHIBIT

Court's

Dec 9-2206

Dear

Mr.

Bryan,

First I want to send my prayers to you and your family, secondly I'm writing this letter in reference on the case you are prosecuting concerning Mr. Shannon M^e Fee. Mr. Bryan on July 24th you spoke with Micheal Sonome Son about this matter, the reason is because he came back and told me about it, and then turned around and told Mr. Shannon M^e Fee about the you not having nothing on him sense the girl changed her story etc.

But Mr. Bryan I'm writing to say is that, I know the whole story of what happened between Shannon and his stepdaughter, because he told me what and why how it happened, he been told me about 2 months ago, and it's disgusting, I have 4 daughters and my oldest is turning 16 in Dec. and I can't explain what I'll do if some-one like that touches or tries to touch her. I know why the rape test at the hospital came back inconclusive, from what he told me. Mr. Bryan Micheal never spoke to Shannon or on one, I did!!! I know him from the streets

so he came to me, and told me what happened on that night. I told Micheal Jones but I didn't tell him all. So if you wish to speak me, I'm willing to help, if you are can. do need your help.

Thank-You

Oason

P.S. IF Need Be
I will Testify!

~~W~~irlock

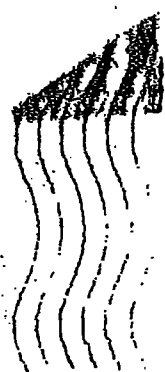
And also I know something about Micheal Jones Case also, because his Codependent Mrs. Jesse Walker is married to my Uncle Mr. Franklin Walker, he didn't know that until after he spoke with me about his charges and who was with him..

331 157

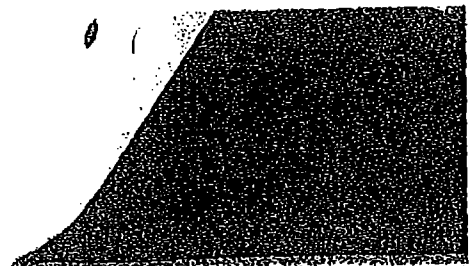


Aug 11 2005

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CHIEF OF POLICE
OF ALBUQUERQUE, NM



11/11/05
Sol. 7/05

602 F.M. Hill
2344073624

ARGUMENT 5

5.) Was Counsel ineffective for failing to object to the Trial Court's Jury Instruction that impermissibly commented on the Facts?

FACTS

Petitioner submits that S.C. Constitution Art. V, § 21 prohibits Jury instruction as will be shown in the following colloquy / Tr. T.

- 21. ... Direct evidence is testimony from an
- 22. individual, or a person who claims to have direct knowledge
- 23. concerning some material fact in the case.

Tr. T. page 178 lines 21-23

- 21. ... The Defendant is not required to prove himself
- 22. innocent of any charge. The Burden of proof, as I have told
- 23. you throughout this trial, is upon the state to prove the
- 24. Defendant guilty beyond a reasonable doubt.

Tr. T. page 181 lines 21-24

- 16. I also Charge you, the testimony of a "victim in a
- 17. criminal sexual conduct case case [need not be corroborated.]"

Tr. T. page 183 lines 16-17

DISCUSSION

Petitioner herein submits that the language of S.C. Code Ann. § 16-3-65² states: "A victim's testimony need not be corroborated" but Petitioner herein argues it is a violation for Judge to charge the Jury with instruction as such because it would be an impermissibly commented on the facts in a violation of S.C. Constitution Art. V, § 21 because to tell the jury that "the testimony of a victim in a criminal sexual conduct case need not be corroborated" would prematurely direct the verdict for the state, because it confused the jury made them think that they had to look no further than the victim's testimony.

And the state could argue that this language is proper under the case State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) which the S.C. Supreme Court relied on an Indiana case, Accord Lottie V. State 273 Ind. 529, 406 N.E.2d 632. (1980) which has since the Schumpert ruling has been reversed in Luddy V. State, 784 N.E.2d 459 (2003) which will be discussed herein.

In Schumpert (supra) the court did not approve such a charge, but held only that the given charge did not constitute reversible error under the circumstances of that case given as a whole.

In Schumpert the Supreme Court first noted the statute and that the trial judge had charged, "the testimony of the victim need not be corroborated in prosecution under § 16-3-65², that being the offense of criminal sexual conduct with a minor." The Court then noted Schumpert's

argument to the effect that this was an erroneous charge on the facts. Finally, the Schumpert Court held, "The trial judge properly charged the jury it could believe any single witness over several, it was the sole judge of the facts, he had no opinion about those facts, and the state had the burden of proving the offense charged beyond a reasonable doubt. Taking the charge as a whole, the Court found no reversible error. Accord Lottie V. State, 273 Ind. 529, 406 N.E.2d 632 (1980)."

The South Carolina Supreme Court in Schumpert specifically indicated that its holding that the erroneous charge did not constitute reversible error was in accord with the holding of the Indiana Supreme Court in Lottie V. State, 273 Ind. 529, 406 N.E. 2d 632 (1980). This Court however, should decide to reconsider its decision as to the propriety of the "no corroboration" charge and as to the reversible nature of the erroneous giving of such a charge in light of the fact that the Indiana Supreme Court has [since reconsidered] its holding and reversed the Lottie decision on grounds very similar to the arguments raised by Petitioner. In Ludy v. State, 784 N.E. 2d 459 (2003), the Indiana Supreme Court [overruled] Lottie in a well reasoned decision, explaining:

The challenged instruction or argument is problematic for at least three reasons. First

it unfairly focuses the jury's attention on and highlights a single witness's testimony. Second, it presents a concept used in appellate review that is irrelevant to a jury's function as fact-finder. Third, by using the technical term "uncorroborated", the instruction or argument may mislead the jury.

The Indiana Supreme Court further indicated, "Instructions and argument that unnecessarily emphasize one particular evidentiary fact, witness, or phrase of the case have long been disapproved ... [A]n instruction directed to the testimony of one witness erroneously invades the province of the jury when the instruction intimates an opinion on the credibility of a witness or the weight to be given to his testimony." The Indiana Court in Ludy noted that appellate courts discussing the sufficiency of the evidence "observe that a conviction may rest upon the uncorroborated testimony of a victim". However, the court indicated that this was an appellate standard, unsuitable for jury's consideration. The Ludy Court observed, "The mere fact that certain language or expression [is] used in the opinions of this Court to reach its final conclusion does not make it proper language for instructions or arguments to a jury." The Ludy Court further observed that the meaningful term "uncorroborated" in this

instruction is likely not self-evident to the lay juror and that the use of the word "uncorroborated" in the charge or argument without a definition renders the argument or charge "confusing, misleading, and of dubious efficacy." The Ludy Court held that the giving of this argument and instruction was error. The Court overruled [all] prior decisions approving such argument and instructions, including the Lottis decision specifically referenced in Schumpert.

The Ludy Court found that in that case there was substantial probative evidence establishing the elements of the charged offenses independent of the victim's testimony and that, therefore, while the challenged argument and instruction was erroneous, the error did not require reversal. Similarly, in Schumpert, the prosecution presented the victim's testimony but also relied on several witnesses to whom the victim had complained and on expert testimony regarding rape trauma. In contrast, in Petitioner's case there was no evidence of guilt independent of the victim's testimony other than a jailhouse snitch who prosecution committed Prosecutorial misconduct on several grounds before, during, and after Trial. And the State's entire prosecution rested entirely on the victim's allegations; who made a allegation to have petitioner arrested and charged but made a taped statement / recanted statement but ultimately testified. The statute S.C. Code Ann. § 16-3-657 does say "the victim's testimony, not need to

be corroborated," but for judge to give such a charge to the jury would be clearly a violation of impermissibly commenting on the facts; and directed verdict for the State in violation of South Carolina Constitution Art. V, § 21 "Judicial comments on the facts are prohibited in South Carolina. A trial judge may not instruct the jury regarding what weight should be given certain Evidence or even that certain Evidence is or is not entitled to consideration from them. As the S.C. Supreme Court said in State v. Hartley, 414 S.E. 2d 182 at 183 "Judges shall not charge in respect to matters of fact, but shall declare the law. State v. Bagwell, 23 S.E. 2d 244 (1942) (A judge cannot express in his charge, or intimate any opinion as to the weight or sufficiency of testimony without violating the prohibition of the Constitution as to charging upon the facts.) see 75A Am. Jur. 2d Trial § 1203 at 693 (1991) (The trial court may not instruct the jury what weight should be given [to the Evidence], or even that any particular Evidence is or is not entitled to receive weight or consideration from them). State v. Edwards, 120 S.E. 2d 490 (1973). Further where there is a conflict between a statute and the Constitution... "The Constitution overrides, see: Anton v. South Carolina Coastal, 469 S.E. 2d 604. Counsel was ineffective in a violation of Strickland v. Washington, 466 U.S. 668 (1984) as a matter of law Petitioner respectfully ask for Grant of New Trial.

ARGUMENT 6

6.) Was Appellate Counsel Ineffective for failing to preserve for appeal Petitioner his Constitutional Right to a fair Presentment of his preserved issues on Direct Appeal?

FACTS

Petitioner submits Appellate Counsel was Ineffective for failing to raise the following motions on Direct Appeal.

- 1.) Motion for Continuance see: Tr. T. pages 14-21
- 2.) Motion for Direct verdict see: Tr. T. page 136
- 3.) Motion for Mistrial see: Tr. T. page 211-212

DISCUSSION

Ineffective Assistance of Appellate Counsel

see: Evitts v. Lucey, cite as 469 U.S. 387, 105 S.Ct. 830

see: Jones v. Barnes, cite as 463 U.S. 745, 103 S.Ct. 3308

Petitioner respectfully ask court for the Grant of Appeal as to the above issues that was properly preserved for Direct Appeal.

ARGUMENT 7

7.) Was Counsel Ineffective for failing to Object to the Solicitor's Improper closing Argument that impermissibly Commenting on Facts not in Evidence Pertaining to expert witnesses testimony that is in a violation of Petitioner's sixth Amendment right to the United States Constitution for failing to properly object and to preserve the issue for Appeal; and also a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

Petitioner submits the Solicitor in his closing impermissibly commented on Facts not in Evidence of governments expert witness Ms. Carol Ann Rahter M.D. see: following colloquy/Tr. T.

4. Q. Is recanting a rare thing for a twelve year old victim
5. of C.S.C.?

6. A. No. Actually the statistics and the research show
7. anywhere between twenty-five and seventy-five percent of
8. adolescent children recant, depending on which research study
9. you are looking at.

Tr. T. page 125 lines 4-9 Carol Ann Rahter M.D. Direct by Bryan

7. [I thought] what she also testified to, [as an expert], was
 8. even maybe as interesting, or [more informative for you], which
 9. is delayed reporting. I think, what ninety-nine percent of
 10. the time why it's -- at least in Georgetown and Horry Counties
 11. -- that's consistent with what happened here, recantation is
 12. part of the known cycle that goes on; it happens in a
 13. substantial number of cases.

Tr. T. page 155 lines 7-13 States Summation (Bryan)

DISCUSSION

see: U.S. v. Walker, 155 F.3d 180 (3rd Cir. 1998) And
Strickland v. Washington, 466 U.S. 668 (1984)

Petitioner herein submits that his Trial Counsel was ineffective for failing to object and there's a reasonable probability exist that the result of the proceeding would have been different had my Attorney made the proper objection. Petitioner believes in good faith that he is entitled to the Grant of a New Trial, for the issue hereto argued.

CONCLUSION

Petitioner believes that through the issues presented, citations of authorities relied on, that he has shown unto this Court that he was denied his Sixth Amendment right to the effective Assistance of trial Counsel that is guaranteed by the Sixth Amendment, as well as Petitioner was also denied his right to a fair trial that is protected under the Due Process Clause of the Fourteenth Amendment of the South Carolina Constitution as well as the United States Constitution.

Due to the complexity of the issues involved, and the Fact that SCDC has not purchased any new Law Books since 2003. The Prison Law Library is inadequate to properly research and prepare all remaining issues not raised herein. Petitioner is a Layman and not represented by counsel, Therefore any issues not raised herein is NOT WAIVED, EXPRESSED, OR IMPLIED. Petitioner would ask to be appointed counsel as soon as possible to research and Amend [Any and All] remaining issues. Petitioner hereby reserves that right.

For the requested relief stated herein. Petitioner will forever pray that this Court will Grant the requested relief of a New Trial.

Respectfully Submitted,

/s/ Shannon D. McGee
Shannon D. McGee, #147120

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

) C/A No. 2011-CP-22-00195

Shannon D. McGee, #147120)

Petitioner,)

v.)

State of South Carolina)

Respondent)

) MOTION TO ADDRESS ALL
) ISSUES PRESENTED PURSUANT
) TO: S.C. CODE ANN § 17-27-80
)
)
)

COMES NOW, Petitioner respectfully asks this Honorable Court to direct the Attorney General's office to address [all] issues presented, pursuant to S.C. Code Ann § 17-27-80, as decided by the South Carolina Supreme Court in Pruitt v. State, 423 S.E. 2d 127. That each and every issue presented be addressed at any P.C.R. Hearing that is held according to Bryson v. State, 493 S.E. 2d 500 (1997).

Petitioner further asks that each and every issue raised herein be addressed by the Court, at any hearing that is held and that this Court direct that all issues be addressed in Order issued by this Court.

For the requested, Petitioner respectfully prays.

ALMA Y. WHITE
CLERK OF COURT

2011 MAR -7 PM 1:54

FILED
GEORGETOWN COUNTY, S.C.

Respectfully prays/ submits

/s/ Shannon D. McGee
Shannon D. McGee, #147120

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

) C/A No. 2011-CP-22-00195

Shannon D. McGee, #147120)

petitioner,)

MOTION TO INVOKE

v.)

FULL DISCOVERY

State of South Carolina)

Pursuant to S.C. Code Ann

Respondent,)

§ 17-27-150(A)

ALMA Y. WHITE
CLERK OF COURT

2011 MAR -7 PM 1:55

FILED
GEORGETOWN COUNTY, S.C.

FACTS

Petitioner herein motions the Court to Order the production of Full Discovery Pursuant to S.C. Code Ann §17-27-150(A) which states as follows:

§ 17-27-150. Discovery in postconviction relief proceeding

(A) A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the process of discovery available under South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise

Petitioner herein invokes Full Discovery under good cause shown herein. The solicitor Mr. Robert B. Bryan was the Prosecutor who prosecuted

Petitioner as will be shown herein to attack on issue/Argument 4;

4.) Did the Prosecutor commit Prosecutorial Misconduct in a violation of Petitioner's United States Constitutional right under the 14th Amendment and Due Process of Law?

1.) This Prosecutor / Robert B. Bryan lied to Defense; and Court.
As can be proven herein by attached Trial Transcript referenced in Argument 4.

2.) This Prosecutor / Robert B. Bryan produced a government witness to give perjured testimony.

3.) This Prosecutor / Robert B. Bryan failed to turn over to defense prior to trial of a witness / jailhouse snitch's letter to this Prosecutor willing to strike a deal to save his own hide and did testify at Trial.

see: Tr. T. record on Appeal Bate stamp pg. 155-157 also Courts Exhibit 9

4.) This Prosecutor / Robert B. Bryan used a rubber stamp on envelope of a government witness / jailhouse snitch that he also withheld ⁽¹⁾ envelope & ⁽²⁾ letter of witness which was recently discovered in the Georgetown Solicitors office in the Dayo / white case. Tr. T. page 157

5.) This Prosecutor / Robert B. Bryan was brought before the South Carolina Supreme Court Disciplinary Panel on August 14, 2009 from a complaint

filed by petitioner and the panel did not dismiss the complaint, but made a disposition that remains confidential under the provisions of the Rules of Lawyer Disciplinary Enforcement, Rule 413, SCACR.

also see: hereto attached as Evidence to Argument 4

6.) This Prosecutor / Robert B. Bryan was sanctioned in a Order signed by the Honorable Roger L. Couch dated November 9, 2006 as follows:

see: Tr. T. record on Appeal 146

The Solicitor's actions of "failing" to disclose the contents of the letter in question were a clear disregard for his responsibility as a prosecutor to seek justice in any case which he is prosecuting. A letter from a witness that demonstrates the willing to make a deal in exchange for his testimony should be given to the defendant regardless of the actual existence of a deal.

DISCUSSION

Petitioner submits that for "good cause shown" hereto above that he is entitled to Full Discovery of the Government's Files due to the miscarriage of justice herein described under S.C. Code Ann § 17-27-150 Petitioner is entitled to discovery under the extraordinary circumstances of a lying; vindictive Prosecution who has after the Petitioner Trial been caught hiding / failing to turn over to Defense of [impeaching Evidence] of Government witness / jailhouse snitch who wrote Prosecutor a letter tryin to strike a deal.

Petitioner feels that in the interest of justice that the Court should issue an Order for the good cause shown herein this motion to protect Petitioner of his Fundamental Rights of the United States Constitution; and Due Process of Law under the 14th Amendment. Because Petitioner therefore believes that the Respondents are in possession of other ["raw materials"] that maybe detrimental to the guilt and innocent of Petitioner.

The Following relief is therefore prayed upon the Grant of Full Discovery of case File from the Government that's in the possession of "The Georgetown County Solicitor's office to include any and all other Legal Documents in the possession of any Georgetown County Law Enforcement Division not unlimited to city / and county; stled; ect.

Respectfully submitted,
lsr Shannon D. McGee

Shannon D. McGee, #147120

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Shannon D. McGee, # 147120,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-22-0195

RETURN
(Attorney Appointment Requested)

FILED
GEORGETOWN COUNTY, S.C.
2011 MAR 23 PM 10:06
ALMA Y. WHITE
CLERK OF COURT

Respondent, making its Return to the Application for post-conviction relief filed February 14, 2011, by Shannon D. McGee, and to the Amendment filed March 7, 2011, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. The Applicant was indicted in June 2006 for criminal sexual conduct ("CSC") with a minor in the second degree (2006-GS-22-580), lewd act upon a minor (2006-GS-22-581), and assault with intent to commit CSC with a minor (2006-GS-22-582). Stuart M. Axelrod, Esquire, represented the Applicant. On September 18-20, 2006, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Roger L. Couch. Judge Couch sentenced him to life without parole, pursuant to S.C. Code Ann. § 17-25-45, for second-degree CSC with a minor, twenty (20) years for assault with intent to commit CSC with a minor, and fifteen (15) years for lewd act upon a minor.

The day after trial ended, on September 21, 2006, defense counsel filed a motion for new trial. A hearing was held on September 22, 2006. Defense counsel contended that the Applicant was entitled to a new trial based upon a Brady violation by the solicitor and upon evidence

discovered after the trial. On November 9, 2006, Judge Couch issued an Order denying the motion for new trial. Judge Couch found that although a Brady violation had been committed, the Applicant was not prejudiced and still received a fair trial. (See pages 4-5 of Order). A timely notice of appeal was filed, and Kathrine H. Hudgins, Esquire, perfected an appeal on the Applicant's behalf. She argued that the judge should have granted a new trial based upon the Brady violation. On November 19, 2009, the South Carolina Court of Appeals affirmed the convictions. See State v. McGee, Unpublished Opinion No. 2009-UP-539. The Applicant's petition for rehearing was denied on January 20, 2010. The Applicant appealed to the South Carolina Supreme Court, but certiorari was denied on January 20, 2011. The matter was remitted to the circuit court on February 7, 2011.

Incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the convictions, the Applicant's records from the Department of Corrections, the trial transcript and post-trial motion transcript, and the direct appeal records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. – Allegations and Relief Sought

In his Application and Amended Application, Mr. McGee alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of trial counsel:
 - a. Failure to object to improper bolstering in the solicitor's closing argument (see transcript pages 152-62);
 - b. Failure to object to the solicitor's improper closing argument which violated the Golden Rule (see pages 47-49; p. 150-162);
 - c. Failure to conduct any pretrial investigation (see pages 14-21);
 - d. Failure to object to trial court's jury instruction that impermissibly commented on the facts (see p. 178, lines 21-23; p. 181, lines 21-24; p. 183, lines 16-17); and

- e. Failure to object to the solicitor's improper closing argument that impermissibly commented on facts not in evidence with regard to expert witness Dr. Carol Ann Rahter (see pages 125 and 155).
- (2) Prosecutorial misconduct, in violation of the due process clause of the 14th Amendment;
 - (3) Violation of the 5th, 6th, and 14th Amendments of the U.S. Constitution, and violation of the due process clause of the S.C. Constitution; and
 - (4) Ineffective assistance of counsel of appellate defender – failure to raise the following issues on direct appeal:
 - a. Motion for continuance (see p. 14-21);
 - b. Motion for directed verdict (see p. 136); and
 - c. Motion for mistrial (see p. 211-12).

The Applicant states he is seeking to have his conviction vacated without re-indictment for the prosecutorial misconduct, and/or granting of a new trial for ineffective assistance of counsel.

III. – Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Stalk v. State, 375 S.C. 289, 297, 652 S.E.2d 402, 405 (Ct. App. 2007) (citations omitted); Rule 71.1(e), SCRPC. “Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that ‘counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.’” Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). “In order to prove that counsel was ineffective, a PCR applicant must show that: (1) counsel’s performance was deficient; and (2)

there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. (citations omitted). "Furthermore, when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. (citations omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id. (citations omitted). The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

Respondent submits that the Applicant will not be able to meet his burden of proof as to any of his claims. However, because the allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. – Res Judicata/Collateral Estoppel – Prosecutorial Misconduct Issue

The Respondent submits that the prosecutorial misconduct issue was specifically raised and addressed at the trial court level and on direct appeal.¹ The South Carolina Court of Appeals affirmed the convictions and found no due process violation, and the South Carolina Supreme Court declined to reverse the Court of Appeals' opinion. The PCR court is not a place for asserting, or re-asserting, direct appeal issues. See Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993). The

¹ The Applicant also asserts that the prosecutorial misconduct matter was raised in a grievance proceeding. (See Amended Application, pages 28-29).

Respondent therefore requests that this Court summarily dismiss the allegation regarding prosecutorial misconduct.

V. – Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that the record clearly illustrates that the Applicant's appellate attorney rendered effective assistance of counsel. Therefore, Respondent requests that this Court dismiss the allegation regarding ineffective assistance of appellate counsel.

VI.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED.

VII.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held regarding the allegation of ineffective assistance of trial counsel.

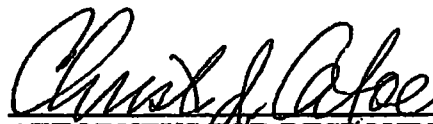
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

March 18, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Shannon D. McGee, # 147120,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

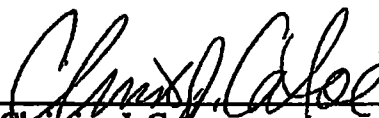
2011-CP-22-0195

CERTIFICATE OF SERVICE BY MAIL

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

**Shannon D. McGee, # 147120
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472**

DATED this 18th day of March, 2011.


Christina J. Capoe

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ALMA Y. WHITE
CLERK OF COURT

2011 MAR 23 AM 10:06

FILED
GEORGETOWN COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Shannon D. McGee, # 147120,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

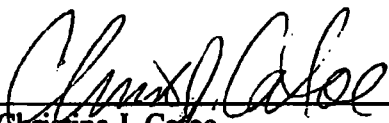
2011-CP-22-0195

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
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**Shannon D. McGee, # 147120
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472**

DATED this 18th day of March, 2011.


Christina J. Capoe
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2011-CP-22-00195

SHAWNON D. MCGEE, # 147120)

Petitioner,)

-vs-)

STATE OF SOUTH CAROLINA)

Respondent,)

SUBPOENA

TESTIFICANDUM

FILED
 2011 APR 25 AM 9:11
 ALMA Y. WHITE
 CLERK OF COURT

Petitioner respectfully comes before this Honorable Court requesting that the below listed parties be served with subpoena requiring their presence at the above "captioned" Post-CONVICTION HEARING.

(x) The below listed parties are necessary as witnesses because petitioner's case involves serious allegations of misconduct; which can only be proven by their testimony.

PARTIES NEEDED TO BE SERVED

- 1) Robert B. Bryan, former deputy solicitor of Georgetown Co.
- 2) Dori Brangiani, Assistant Solicitor Georgetown Co.
- 3) Alma Y. White, Clerk of Court Georgetown Co.

- 4) Michael Jerome Jones, INCARCERATED S.C. DEPT. CORR.
- 5) AARON KINLOCH, INCARCERATED S.C. DEPT. OF CORR.
- 6) MATTHEW MORTICI, Assistant Solicitor Charleston Co.
- 7) James Elmore, Deputy Sheriff Georgetown Co.
- 8) Chaplain Williams, Georgetown Co. Detention Center.
- 9) ROGER L. COUCH, RETIRED JUDGE Georgetown Co.
- 10) RICHARD ^{COLVIN} ~~COUCH~~, ATTORNEY 'Georgetown Public Defender
- 11) Thomas LANE, witness - 409 W. Ashland St.; Andrews, S.C. 29510
* P.O. Box 906 *
- 12) Thomas Brogden, witness - 809 West Hemlock St., Andrews, S.C. 29510
- 13) Tony Hicks McGEE, witness - McEize Trial/ee park, Hurdle St, Andrews, S.C.
- 14) Dr. Caroline Babter, witness - "child discovery center
- 15) Kelley Collins, witness - McEize Trial/ee park, Hurdle St, Andrews S.C.
- 16) Minor Child - witnesses - [REDACTED] [REDACTED] [REDACTED]

Petitioner, respectfully moves this court to have
subpoenas issued to the above-named persons.

Respectfully Submitted,

Shannon D. McGee

SHANNON D. MCGEE

SCDC# 147120

PRO SE

DATED: 4/18/2011

Sylvia Jones

NOTARY OF PUBLIC South Carolina

MY COMMISSION EXPIRES: 1/24/2018

"SEAL"

Shannon D. Mc Gee, # 147120
Lieber Corr. Inst. C-A-48
P.O. Box 205
Ridgeville, S.C. 29472

357

January 17, 2012

Georgetown County Clerk of Court
Attn: Ms. Alma Y. White, Clerk
P.O. Box 479
Georgetown, S.C. 29442

RE: Filing of Amendment to Original Application For P.C.R.
Pursuant to Rule 15 SCRCiv.P C/A No. 2011-CP-22-00195

Dear Ms. White,

Please find 1 Original Courts Copy and 1 copy
for my Files of the above mentioned matter. Please
Clock-stamp and File and Forward to me my
copy in the envelope provided. I thank you for all
your time and help with this matter. May God
Bless you all Abundantly.

I AM,

Sincerely yours,

(s) Shannon D. Mc Gee

Shannon D. Mc Gee, #147120

cc. Ms. Christina Catoe, A.G.
Mr. James B. Moore, III

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)
) C/A No. 2011-CP-22-00195
Shannon D. McGee, #147120)
petitioner,) AMENDMENT TO ORIGINAL
V.) APPLICATION FOR P.C.R.
State of South Carolina,) Pursuant to Rule 15 S.C.R.Civ.P.
Respondents,)
_____)

Petitioner herein through Attorney of Record, respectfully moves this Honorable Court to Amend the Original Application for Post Conviction Relief in the above captioned pursuant to Rule 15 S.C.R.Civ.P.

FILED
GEORGETOWN COUNTY, S.C.
2012 JAN 25 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

Respectfully Submitted,
/s/ Shannon D. McGee #147120

ARGUMENT 8

8.) Was Counsel Ineffective for failing to Object to the Solicitor's "Pitting of the Witnesses" in a violation of Petitioner's Sixth Amendment to the United States Constitution And a violation of Petitioner's Due Process under the 14th Amendment?

FACTS

The Solicitor on several instances was in violation of "Pitting of the Witnesses" in a violation of Petitioner's Sixth Amendment to the United States Constitution And a violation of Petitioner's Due Process under the 14th Amendment By Trial Counsel failing to Object; this argument will be fully argued at the Evidentiary Hearing and Trial Transcript pages will be referenced to prove "just that" and "how the Petitioner was unfairly Prejudiced."

DISCUSSION

The South Carolina Supreme Court has repeatedly ruled that "Pitting of the Witnesses" was improper. "Pitting of the witnesses" refers to a question which asks one witness to comment in some way on the veracity of another witness. This may be a request to comment on the truthfulness of an adverse witness or to explain the testimony of another witness who has testified. Burgess v. State, 329 S.C. 88, 495 S.E.2d 445 (1998). No matter how the question is worded, this kind of argumentative questioning is improper. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).

Improper pitting of the witnesses constitutes reversible error,

See also: State v. Benning, 338 S.C. 59, 524 S.E. 2d 852 (Ct. App. 1999) (it is improper to crossexamine in a way that requires a witness to attack another witness's credibility).

See: Strickland v. Washington, 466 U.S. 668 (1984)

When Trial Counsel fails to object to Pitting of witness he's in violation of Petitioner's 6th Amendment to the U.S. Constitution and a violation of Petitioner's 14th Amendment right to Due Process.

Petitioner respectfully ask for the Grant of a New Trial.

Respectfully Submitted,

/s/ Shannon B. McKea #147120

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

) C/A No. 2011-CP-22-00195

Shannon D. McGee, #147120)

Petitioner,)

v.)

State of South Carolina)

Respondents,)

CERTIFICATE

OF

SERVICE

I hereby certify that a true copy of (1) Amendment to Original Application for P.C.R. Pursuant to Rule 15 S.C.R.Civ.P.; (2) Certificate of Service, has on This 20 day of January, 2012, been served on the Respondents by way of placing the same in the U.S. postal mail postage prepaid.

Office of the Attorney General
Attn: Ms. Christina Catoe, Assist. A.G.
Post Office Box 11549
Columbia, S.C. 29211

FILED
GEORGETOWN COUNTY, S.C.
2012 JAN 25 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

Respectfully Submitted,

/s/ Shannon D. McGee

Shannon D. McGee, #147120

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 18th DAY OF January

2012
S. Jones

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES

1/24/2018

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NON-JURY
2 COUNTY OF GEORGETOWN) (2011-CP-22-00195)
3)
4 SHANNON McGEE)
5)
6 vs.) TRANSCRIPT OF RECORD
7)
8 STATE OF SOUTH CAROLINA) December 19, 2013
9) Georgetown, S. C.
10)
11)
12)

13 B E F O R E:

14 HONORABLE STEVEN H. JOHN, Judge

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

16 WILLIAM L. RUNYON, JR., ESQ.
17 ATTORNEY FOR APPLICANT

18 JOSHUA L. THOMAS, ESQ.
19 ASSISTANT ATTORNEY GENERAL
20 STATE OF SOUTH CAROLINA
21 ATTORNEY FOR STATE

22 DIXIE COX EUBANK
23 CIRCUIT COURT REPORTER
24 FIFTEENTH JUDICIAL CIRCUIT
25

I N D E XWITNESSESDIRECTCROSSRDRC

STUART MARK AXELROD

Mr. Runyon

5

27

Mr. Thomas

16

MICHAEL JEROME JONES

Mr. Runyon

42

Mr. Thomas

47

SHANNON D. McGEE

Mr. Runyon

51

Mr. Thomas

62

APPLICANT'S SUMMATION (RUNYON)

68

RESPONDENT'S SUMMATION (THOMAS)

70

COURT

73

I N D E X CONTINUEDE X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
APPLICANT'S 1	Trial Notebook		28
RESPONDENT'S 1	Motion and Attachments		24

1 **(THE FOLLOWING TAKES PLACE ON DECEMBER 19, 2013.)**

2 **THE COURT:** County of Georgetown, Applicant is Shannon
3 D. McGee versus State of South Carolina. This is a Post-
4 Conviction Relief Application hearing for Mr. Shannon D.
5 McGee.

6 **MR. THOMAS:** For CSC with a Minor, second degree, Lewd
7 Act on a Minor, and Assault with Intent to Commit CSC on a
8 Minor. He went to trial on September 18th through 20th, 22nd,
9 2006, as indicted. He was sentenced to life without the
10 possibility of parole under the recidivist statute, one year
11 for the Assault with Intent to Commit CSC.

12 He was represented on appeal by Katherine Hudgins, in
13 the Office of Appellate Defense. The Court of Appeals
14 affirmed the conviction in an unpublished Opinion 2009,
15 Effective Assistance of Counsel and Prosecutorial Misconduct
16 were the due process issue related to a couple of issues that
17 went into.

18 He's represented by Mr. William Runyon of the Charleston
19 Bar. He's present in the courtroom ---

20 **MR. RUNYON:** Yes, Your Honor, and we are prepared to go
21 forward. We reserve comments -- or statements till ---

22 **THE COURT:** The conclusion?

23 **MR. RUNYON:** ---Until conclusion, Judge.

24 **THE COURT:** All right. Very good. All right. Be glad
25 for you to make your presentation.

1 **MR. RUNYON:** Your Honor, we would call Mr. Stuart
2 Axelrod ---

3 **THE COURT:** All right, Mr. Axelrod, if you would come
4 around, sir, and be sworn.

5 **STUART MARK AXELROD,** being first
6 duly sworn, testifies as follows:

7 **DIRECT-EXAMINATION BY MR. RUNYON:**

8 Q. Mr. Axelrod, what's your job, occupation or profession?

9 A. I'm an attorney.

10 Q. All right. How long have you been a lawyer, sir?

11 A. I passed the bar, and sworn in in November of '97.

12 Q. All right. And harking back to 2011, actually harking
13 back to before that. Did you have an occasion to represent
14 Mr. Shannon McGee?

15 A. I did.

16 Q. And how did you come to represent Mr. McGee?

17 A. I believe he was appointed to me.

18 Q. Okay. Now ---

19 A. I had a contract with the Public Defender's Office in
20 Georgetown.

21 Q. All right. And so you met with Mr. McGee, you
22 investigated his case?

23 A. I did.

24 Q. And you discussed the various aspects of his case with
25 the Solicitor's Office?

STUART MARK AXELROD - DIRECT BY RUNYON

6

1 A. I did.

2 Q. All right. Let's -- let's proceed to the period of
3 time when his case was, in fact, tried.

4 A. Okay.

5 Q. When did you first find out that his case was going to
6 be called for trial?

7 A. I think they published some type of trial docket, or
8 roster or something, and having one I -- I -- they would
9 publish a roster ---

10 Q. All right, sir.

11 A. ---And it would be on that. And so I knew that it was
12 a possibility that it would be tried that week ---

13 Q. Well, let me ---

14 A. ---Or that -- or that month.

15 Q. All right. Let me ask you about that. Now they would
16 publish -- now when you say they would publish, who published
17 the trial roster?

18 A. The Solicitor's Office.

19 Q. All right. And this was not a -- strike that. Now,
20 you -- you practiced law both civilly and -- in Civil Court
21 and Criminal Court?

22 A. I do. I practice -- my majority of my -- my -- my
23 business within my firm is, I do the criminal side. I do
24 criminal law on all different levels, in different counties.

25 Q. All right. And you do criminal court in Federal Court?

1 A. I have, yes.

2 Q. Okay. Now, is the -- when you refer to the roster, is
3 this a docket, back then, like you would have in say Federal
4 Court, or with Civil Court ---

5 A. Well ---

6 Q. ---Or is it just a list?

7 A. ---What the Solicitor will do is, he would -- the
8 Solicitor's Office, they have a list each month, let's say, or
9 in Georgetown. They would put out a list. And Georgetown has
10 one term of General Sessions. They would put out a list a
11 week or so, or two weeks before it, and they would list maybe
12 ten, twelve, fourteen cases for trial that week.

13 Q. All right. Now, was there any system, priority for
14 those cases? I mean, how would you know how to prepare for a
15 trial?

16 A. Well, if I had a trial that required, let's say
17 specific witnesses, I would try to get the Solicitor to give
18 me a specific date, or if you say I was going to go to trial
19 or I was not going to go to trial, so I can be prepared. A
20 lot of times -- lot of times you didn't know who was going to
21 go to trial actually. I mean, I -- as a Public Defender I
22 could have my name on -- I'm just giving you an example -- I
23 could have my name on four or five of those cases, and they
24 might know who was going to try a case, per se, the Solicitor,
25 but even to this day it's still done the same way. They will

1 get a list of twenty cases, and you really don't know -- it's
2 not done in order. It's numbered, but there's always an
3 asterisk at the end of the Order that says that even anybody
4 in the jail -- forget that list -- but even anybody in that
5 jail that's been in jail for more than ninety days, they could
6 be called or ready for trial as well.

7 Q. All right. Now, I'm -- just for the record - these may
8 be kind of redundant questions, but the record -- you and I
9 know how the system works, and maybe the Court, what-have-you,
10 but we need to put it in the record how it works. That's why
11 I'm asking you these questions.

12 A. Okay.

13 Q. Now, at the time that Mr. McGee's case, quote, could
14 have been called for trial, had you been noticed to try any
15 other cases at that particular point in time?

16 A. My recollection is that that next week, the week that
17 Mr. McGee's case originally -- I actually tried the case, I
18 believe I was told the week before, or ten days before -
19 excuse me - that I was going to be doing DUI trials in Horry
20 County, and I would not be doing Mr. McGee's case.

21 Q. All right. So you prepared for your DUI trials in
22 Horry County?

23 A. I did.

24 Q. When did you first know that you would be trying Mr.
25 Shannon McGee's case?

1 A. I believe it's -- it's from my recollection - now it's
2 a lot of years - I believe it was on that Friday, that last
3 Friday, that I told -- I don't know if I called the Solicitor,
4 or the Solicitor called me, but at some point I believe on
5 that day, on that Friday, I was told that I was actually going
6 to be doing Shannon's trial, and I complained because I had
7 been told prior that I would have been doing Magistrate work
8 in Horry County; I wasn't going to be trying a case in
9 Georgetown.

10 Q. And when -- and when were you told that the case would
11 be called for trial, the next Monday?

12 A. Yes, I -- I think ---

13 Q. All right now we are ---

14 A. ---Three days, three days later.

15 Q. All right. Just for the record, we are talking about
16 Shannon McGee, who is the gentleman sitting right here by --
17 by the table, right?

18 A. Yes sir. He looks a little older now.

19 Q. Well, he is a little bit older.

20 Now, during the course of this trial -- the case was, in
21 fact, called for trial?

22 A. It was, sir.

23 Q. And can you tell us the -- were there any particular
24 witnesses that -- strike that.

25 Did you file your appropriate motions for **Brady** material

1 and/or Rule 5?

2 A. I did.

3 Q. And did you receive all of the materials that you
4 thought you should have, or could have received to prepare for
5 the -- for the trial?

6 A. I would hope so.

7 Q. Well, did you, in fact, receive the materials that you
8 needed?

9 A. I received whatever discovery they gave me. That was
10 what I received.

11 Q. All right. Well, let me go forward here. Subsequent
12 to the trial did you have an occasion to investigate any
13 omissions regarding any witnesses presented by anyone in the
14 course of the trial?

15 A. I did.

16 Q. And do you recall the name of the witness?

17 A. Aaron Kinlock.

18 Q. All right, now, who was Aaron Kinlock?

19 A. He was a witness called by the State that -- I believe
20 his testimony was that -- testimony was such that he said that
21 Shannon confessed to him of doing an act to this girl.

22 Q. All right. Were you aware of him prior to the trial --
23 the case being called to trial?

24 A. No, I was not.

25 Q. Were -- was he given to you on a witness list?

1 A. I'm not sure. I'm not sure if he was on the witness
2 list. I don't know if you have a witness list here that I
3 could look at, but I'm not sure if he was. I can't tell that
4 to the Court. He was a surprise to me for his testimony.

5 Q. All right. Now, as it relates to Mr. Kinlock, at the
6 time he was called were you given, for example, his record,
7 his NCIC record?

8 A. I was given an NCIC, and I believe I asked him at trial
9 if he had been promised anything, or if any deals had been
10 made with the Solicitor, something to that effect, and he told
11 me no, and they brought him from jail, in a jail suit, so I
12 knew he was in jail, and I guess at some point Mr. Bryan gave
13 me an NCIC that didn't show maybe what he was in jail for. It
14 was devoid. It wasn't there.

15 Q. Did you subsequently find out whether or not the NCIC
16 that you had been given by the State was, in fact, accurate?

17 A. It wasn't. I ---

18 Q. And how did you find out it wasn't?

19 A. The next day, on the sentence -- I don't know if it was
20 before the sentencing or it might have been the day after the
21 sentencing; I'm not sure, but I was given a note by somebody
22 in the courthouse that I needed to go look at Aaron Kinlock's
23 file that the Clerk had, and I did, and what I found in Aaron
24 Kinlock's file that the Clerk had -- I'm not sure if it was
25 pending charges, or it was other charges, I found things that

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12

1 I thought I would have been able to impeach him on had I been
2 given the truthful NCIC I thought, or one that showed what I
3 found. Whatever I found wasn't on the NCIC, and I thought
4 there was a -- could have gone to -- under a Sixth Amendment
5 argument that I think I could have impeached Mr. Kinlock with
6 that material that I found subsequent to the trial.

7 Q. Now, as it relates to the case, and your recollection
8 of the case -- and I realize it's been some time -- but how
9 was your trial going until Mr. Kinlock testified?

10 A. I think Mr. Kinlock caused me to lose the case, and
11 ultimately Shannon be found guilty. I thought his testimony -
12 - I thought it was -- well, I think whenever somebody says,
13 well as in -- in this case, if somebody testifies that Mr.
14 McGee told him this, and he did this, I think that's powerful
15 in any courtroom when you have somebody say that the defendant
16 confessed to him. I think that's -- that's always, you know,
17 a confession, whether it's to the police or to a cell mate. I
18 think a jury puts great weight on it.

19 Q. Now, how did -- how did Mr. Kinlock come to be known to
20 the State? Do you recall that?

21 A. I don't think I do. I just know he kind of appeared.

22 Q. All right. Well, did the discovery that you were given
23 show an statements from Mr. Kinlock?

24 A. None. Not that I know of. Mr. Kinlock's testimony was
25 a surprise to me.

1 Q. And at no time was that given to you by the State?

2 A. It was not. And at this point I don't know if he was
3 on the witness list. I wish I had that in front of me to be
4 able to tell you that. I don't know that.

5 Q. Now, did you subsequently make a motion to reconsider,
6 or did you bring the matter -- subsequent to sentencing did
7 you bring the matter of Mr. Kinlock's, and the absence of Mr.
8 Kinlock's Rule 5 information to the attention of the Court?

9 A. I did. I don't have it in front of me. I don't know
10 if I made the motion a motion to set aside the verdict, or a
11 motion to reconsider, or a motion for a new trial. I don't
12 know what I wrote, but I -- it really bothered me what I had
13 found, and I did file paperwork within that -- I believe
14 within that ten day period. I think I -- I noticed the Court
15 that I would, and I filed paperwork based on what I found
16 after the sentencing or the trial, because I thought -- I
17 thought it was improper.

18 Q. Mr. Axelrod, did you conduct a pretrial investigation
19 prior to trying the case? Did you meet with Mr. McGee?

20 A. I think I did. I did.

21 Q. All right. And did you -- did you review the
22 information that was given to you by the State?

23 A. I give -- I give the defendant the discovery, and I'm
24 sure I went over it with him. I can't say I -- I'm sure I saw
25 him and went over the discovery. Mr. McGee maintained that he

1 had not done what they said he did, and we subsequently had a
2 trial.

3 Q. So certainly in your conversation with Mr. McGee, or in
4 your review, Mr. Kinlock's devastating testimony was not made
5 known to either you or Mr. McGee?

6 A. I don't think it was, because I think that if it had
7 been -- I think if it had been that would have been something
8 that I would have pushed Mr. McGee on. I would think that --
9 when you have a confession, whether it's to the police or
10 somebody else, it's something that I want to look at. As far
11 as I can remember Mr. Kinlock was a complete surprise to me
12 when he was called to testify ---

13 Q. And ---

14 A. ---And that would be as well to Mr. McGee, because I
15 don't think we had an information on Mr. Kinlock.

16 Q. And you had no concept of how Mr. Kinlock came to be
17 known to the prosecution?

18 A. No sir, not at that time.

19 Q. And Mr. -- and the prosecutor never told you how they
20 came to know about him?

21 A. No sir, they -- and I'm not sure now. I'm not sure if
22 he was called as a rebuttal witness. I don't remember. I
23 don't remember if he was called in his case-in-chief or as a
24 rebuttal witness, but I believe he was the last witness that
25 the State put up.

1 Q. It doesn't matter whether he was called as a rebuttal
2 witness or case-in-chief; you weren't given the information
3 about Mr. Kinlock?

4 A. No. I was unaware of him as a witness.

5 Q. All right. Now, let's go back to what the Attorney
6 General and I have discussed as -- I believe we have generally
7 characterized as **Langford** issue, a possible **Langford** issue,
8 and that is the -- just to crystalize the method of scheduling
9 of criminal trials. The scheduling of a criminal trial is in
10 the sole discretion of the Solicitor, as a matter of practice?

11 A. It is.

12 Q. Was there, in fact, a docket system as compared to
13 Federal Court or the Civil docket system was maintained in the
14 courts in this State?

15 A. No.

16 Q. And Mr. McGee's case was unknown to you until the
17 Friday before you actually tried it?

18 A. I'm trying to think about it now because what I think
19 happened -- and I've been thinking about it while I'm sitting
20 here, is that I think on that Friday I believe I called down
21 to the Solicitor's Office in Georgetown and told them that
22 since I'm doing the DUI trials I won't be there in Georgetown,
23 and I think that was how they told me on that Friday that I
24 was trying that case, because I had been told by the
25 Magistrate Solicitor that I would be doing DUI trials in

1 Myrtle Beach that week, for that coming week, and my focus was
2 to that. I think I gave a courtesy call to the Solicitor and
3 said, hey, you know, I'm not going to be there because I'm
4 doing trials in Myrtle Beach. I think that's how it came
5 about.

6 Q. So, as a practical matter, you were not given any real
7 notice whatsoever, and until you called, trying to let them
8 know where you would be, in Myrtle Beach?

9 A. Yes sir.

10 MR. RUNYON: All right. No further questions of this
11 witness at this time, Your Honor.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION BY MR. THOMAS:

14 MR. THOMAS: Good morning, Mr. Axelrod.

15 A. Morning.

16 Q. Let's go over some background stuff. How many meetings
17 did you say you had with Mr. McGee?

18 A. Probably several. I don't remember, but I pretty much
19 see my clients on a regular basis. He was housed in
20 Georgetown - I don't know for how long - but I would come
21 usually once a month down to Georgetown to see people.

22 Q. And when you were first appointed to the case did you
23 review the indictments?

24 A. I'm sure I reviewed the entire file.

25 Q. So you did file the standard Rule 5 Brady motions?

1 A. Yes sir.

2 Q. And based upon that discovery, or the discovery that
3 was provided to you, what -- could you just briefly summarize
4 the State's case against Mr. McGee?

5 A. Well, they alleged that he had committed a sexual act
6 on a child, and his position to me all along was that she was
7 lying, and he had reprimanded her for -- I don't know if she
8 had a boyfriend, or was having sex with her boyfriend or
9 something, but he reprimanded her and then she brought these
10 alleged charges against him.

11 Q. And did you get a chance to share that discovery with
12 Mr. McGee?

13 A. We went over it.

14 Q. Did you discuss with him the elements of the crimes?

15 A. I did.

16 Q. Did you discuss his maximum exposure?

17 A. I'm sure I did.

18 Q. Did you discuss with him any possible defenses he might
19 have?

20 A. I probably did. I -- if memory serves me correctly I
21 think they offered him -- I think it was eight years on a
22 plea, and in this type of situation I would usually tell me
23 client that what you are facing on the back end, being it's a
24 child alleging this occurred, I usually push my clients, I try
25 to at least, to -- for them to consider taking a plea.

1 I thought the maximum exposure on a sex case is high, so

2 ---

3 Q. So you did communicate that plea offer to him?

4 A. I'm sure I did, yes.

5 Q. And it was his decision to decline it?

6 A. It was.

7 Q. Let's back up a little bit to the roster procedure, and
8 this is your -- I need you to help me work through it so ---

9 A. Okay.

10 Q. ---The Solicitor's Office publishes a roster for the
11 term of court they have every month?

12 A. They did, and they still do, yes sir.

13 Q. And they do that one or two weeks beforehand?

14 A. Approximately, I would think. A couple of weeks.

15 Q. And do they -- I'm assuming they forward you a copy of
16 that. That's how they tell you about the roster?

17 A. Yeah. We got -- we got by e-mail. We get it by e-
18 mail.

19 Q. And so you would have known that Mr. McGee's case was
20 at least on that roster?

21 A. I did.

22 Q. Okay. And so you made a motion, it looked like, at the
23 beginning of trial for continuance, and you brought all this
24 to the Trial Court's attention about your other commitments in
25 Horry County?

1 A. I did because I prepare extremely well for trials,
2 whether it be a DUI trial, speeding ticket, or a CSC in the
3 first degree, and I had been told that I would be doing
4 Magistrate trial work in Horry County that week, and I made
5 the motion because -- I made the motion because, you know,
6 trial by ambush was what it felt like to me, enough to make
7 the motion and preserve it on that record, because if I had
8 been told that Shannon McGee's trial would have been that day,
9 on that Monday, I would have absolutely seen Shannon more than
10 I did see him.

11 Q. And would your discussions with him -- how would that
12 have changed your trial strategy if you had had an opportunity
13 to meet with him more often than you did?

14 A. Well, prior to a trial -- I mean, honestly, I would
15 have probably seen Shannon every day before -- that week
16 before the trial. I would have come down to Georgetown and
17 gone over the case with him every day.

18 The trial notebook had been prepared, but I would have
19 gone over every part of that trial with him. And I don't know
20 what else I would -- might have found out. I might have found
21 out -- maybe I would have found out about Mr. Kinlock, I don't
22 know. I just know that I was under the impression I would not
23 be trying a case that week.

24 Q. But as far as any witnesses that needed to be
25 subpoenaed to come in and be interviewed, was there anybody .

1 specifically that you didn't get an opportunity to interview?

2 A. All -- it's hard to ask that because if I had met with
3 Shannon the week before he might have -- maybe there was a
4 witness that he would have told me to get, or go see. I can't
5 answer it because I didn't do it because I wasn't -- I was
6 under the impression I would not be trying this case, and
7 clearly I -- I put that on the record the morning of the
8 trial, so everyone was aware of what had happened, not so much
9 to me but what had happened to my client, really.

10 Q. As far as your conduct at trial though, you had an
11 opportunity to cross-examine all of the State's witnesses,
12 didn't you?

13 A. I did.

14 Q. And do you feel like further discussion with him would
15 have given you anything else to cross-examine him on, aside
16 from Mr. Kinlock, obviously?

17 A. Well, you know, I don't know if Mr. McGee had told me
18 about Mr. Kinlock, and if he didn't there might have been some
19 more knowledge I might have gained on Mr. Kinlock, or possibly
20 his history, and the reason I say that, I think Georgetown is
21 a unique County in our State, that most people know everybody.
22 It's almost like you can walk down the street and everybody
23 knows everybody in Georgetown, and it's different than other
24 counties that I have encountered, enough so that after the
25 trial I was forwarded a piece of paper by somebody that told

1 me to go look at Mr. Kinlock's record in the courthouse.

2 That's never happened to me before.

3 Q. And I guess regarding -- let's talk about Mr. Kinlock's
4 testimony. You said you were given an inaccurate copy of his
5 NCIC, it was your testimony, I believe?

6 A. Yes. I believe that what I saw in the -- his
7 sentencing sheets that were in the courthouse; he had
8 sentencing sheets in the courthouse - they weren't on NCIC -
9 and that was impeachable. I believe, if I remember right, it
10 was impeachable material in his file that was not on the NCIC.

11 Q. But his NCIC did demonstrate that he had a fairly
12 extensive record, correct?

13 A. Well, it -- I don't remember. He had a record, but
14 what was not on the NCIC I would have been able to impeach
15 with him further, and that was why I filed that post-trial
16 motion.

17 Q. But you did get an opportunity to impeach him on the
18 items that you did see from the NCIC you were provided,
19 correct?

20 A. I guess not effectively because I lost the trial.

21 Q. But you did, you did get an opportunity to ask a bunch
22 of questions?

23 A. I did. I did. I did.

24 Q. And regarding that post-trial motion, what was the
25 Judge's ruling on that?

1 A. If I remember right I believe he -- may I ask a
2 question? Did I make a motion to reconsider the sentence or
3 to set aside? Do you recall, because I don't.

4 MR. THOMAS: I'll tell you in a second. I believe you
5 denominated it a motion for a new trial.

6 A. Okay. My -- the motion for a new trial, I guess I did
7 it because of what happened with Mr. Kinlock. It was denied
8 by the Trial Court, and I think I'm right, to say that the
9 Appellate Court denied it as well, because we are here today.

10 Q. And you couched that as a **Brady** violation, correct?

11 A. I did.

12 THE COURT: Stop for one second. It was for a new
13 trial, set aside the verdict, and grant a mistrial. That's
14 what Mr. Axelrod's motion was. It's on page two eighteen of
15 the transcript, lines ten through twelve.

16 "At this point, Your Honor, I would ask for a motion for
17 a new trial, set aside the verdict, grant a mistrial on
18 several issues."

19 That's what it was. Thank you very much. Continue on.

20 MR. THOMAS: That's correct, Your Honor. I'm looking
21 at the -- I think I have a copy of something you are not
22 finding within that -- looking in the actual motion.

23 Q. Let's say you moved for all of those things based upon
24 **Brady** ---

25 A. Could I see that actual -- you have the motion. May I

1 see it?

2 THE COURT: And I was reading from the Transcript of
3 Record ---

4 MR. THOMAS: Absolutely, Your Honor.

5 THE COURT: ---What took place at that time.

6 MR. THOMAS: May I approach, Your Honor?

7 THE COURT: Yes sir.

8 (MR. THOMAS APPROACHES THE WITNESS.)

9 MR. AXELROD: Your Honor, may I read this for one
10 minute?

11 THE COURT: Yes sir.

12 (MR. AXELROD REVIEWS THE DOCUMENT.)

13 MR. THOMAS: Is that -- what I've handed you, do you
14 recognize that?

15 A. It's three pages that I wrote. May I read it -- may I
16 read it to myself for a minute?

17 MR. THOMAS: Absolutely.

18 A. Thank you.

19 (MR. AXELROD REVIEWS THE DOCUMENT.)

20 Q. Have you had an opportunity to review that?

21 A. I did.

22 Q. And do you recognize it?

23 A. I wrote this.

24 Q. What is that?

25 A. It's an Affidavit in Support of New Trial based on

1 newly-discovered information after the jury trial, and what --
2 was clocked October the 3rd, 2006, and I stated, Number Four,
3 that the Solicitor Bryan disclosed a letter after the trial in
4 which witness Kinlock asked for help from Mr. Bryan. I stated
5 that the Solicitor Bryan knew that the witness, Aaron Kinlock,
6 had pending charges.

7 Q. Let me -- let me stop you there. Let me ask you this.
8 That's a copy of it, correct?

9 A. Yes.

10 Q. Is that a -- is that the exact copy? Is that an exact
11 copy of the motion you submitted to the Court?

12 A. Yes, it's -- without the attachments. I think it had
13 some attachments to you.

14 MR. THOMAS: Okay. At this time, Your Honor, I would
15 move to introduce that as Respondent's Exhibit Number 1.

16 THE COURT: Any objection?

17 MR. RUNYON: Absolutely no objection, Judge.

18 THE COURT: All right. It's in evidence.

19 (MOTION ADMITTED INTO EVIDENCE AS RESPONDENT'S EXHIBIT
20 NUMBER 1.)

21 MR. AXELROD: Your Honor, I don't know if it's possible
22 but -- there may be all these ---

23 Q. Is this all?

24 A. This is all Kinlock right here.

25 This is Kinlock. This is all Kinlock.

1 I believe this is -- this was my package that I put with
2 that motion. I think it's all one package.

3 Q. Let me ask you a couple of questions about that. So
4 that's the entire packet that you submitted?

5 A. Yes sir. I believe so, yes.

6 MR. THOMAS: Okay. Your Honor, I would just ask that
7 we add all of that to the Respondent's Exhibit 1.

8 MR. RUNYON: No objection.

9 THE COURT: So can we staple it all together, or put it
10 together in some way?

11 MR. THOMAS: Yes. May I approach? I have a binder
12 clip.

13 THE COURT: All right. Let's put it all together then.
14 And what exhibit is that?

15 MR. THOMAS: Respondent's 1, Your Honor.

16 THE COURT: Respondent's 1. All right. Very good.

17 Q. So that's the motion you submitted to the Court?

18 A. Yes sir.

19 Q. And the Court denied that motion?

20 A. Yes sir.

21 Q. And the Appellate Court affirmed the Trial Court's
22 denial of that motion?

23 A. I believe so, yes.

24 Q. Regarding Mr. Kinlock's testimony, he didn't testify to
25 any specifics of what Mr. McGee was accused of doing; he just

1 testified that Mr. McGee had admitted to him that he had
2 committed a crime?

3 A. I believe so, yes. Yes.

4 Q. Just briefly, kind of circling back to the issue of the
5 docket. At that time the Solicitor had exclusive control of
6 the docket; isn't that correct? In terms of there was no --
7 there was no court opinion saying that that was
8 unconstitutional, or a violation of separate issue powers at
9 that time?

10 A. No. They had -- they had -- they had control. And
11 Georgetown and Horry County, even as two different counties,
12 but it was all done by the same Solicitor's Office, the
13 Fifteenth Judicial Solicitor's Office.

14 COURT REPORTER: I'm sorry. I can't hear you.

15 A. I'm sorry, the -- even though there's two counties,
16 Horry and Georgetown County, they are controlled by one
17 Solicitor's Office, the Fifteenth Judicial Solicitor's Office.
18 There is a Deputy in this County, and then Horry County has
19 it's own deputy, and then there's the Solicitor for both, same
20 Solicitor.

21 Q. And so if a court opinion were to come out saying that
22 the Solicitor was not allowed to control the docket in that
23 manner would that be a clear break or deviation from what had
24 been the standard practice for years?

25 A. I would guess so.

1 Q. And as far as your representation of Mr. McGee, you had
2 about three days notice you said? You were told on Friday,
3 started on Monday?

4 A. Yes. I had less time -- I would have had more time if
5 they had told me the week before, that I was going to be up
6 first for a serious trial.

7 Q. But you -- you were aware that he was on the docket,
8 and you had already -- I think -- I believe you said you had
9 already prepared the trial notebook?

10 A. Yes sir, but ultimately I was told that I would not --
11 I would be doing DUI trials, so that week prior that was what
12 my focus was on, my Magistrate -- and I believe I had a DUI
13 trial that week. That's what I had been focused on. And
14 that's why I made that motion for that continuance, is that I
15 thought it was unfair to me, and ultimately it was unfair to
16 my client that that happened, so I raised it, and I preserved
17 that.

18 MR. THOMAS: That's all the questions I have. Thank
19 you.

20 THE COURT: Redirect.

21 MR. RUNYON: Briefly, Your Honor.

22 REDIRECT-EXAMINATION BY MR. RUNYON:

23 MR. RUNYON: Permission to approach, Your Honor.

24 THE COURT: Yes sir.

25 Q. Mr. Axelrod, I hand you a three-ring binder, tattered,

1 worn. Can you tell me if you recognize that?

2 A. It's mine.

3 Q. All right.

4 A. Maybe that's why I couldn't find it; you had it.

5 And it's -- this is old, but I tell you how I would
6 think that it's mine. Because the first thing I put in my
7 trial notebook are the indictments, and then the second thing
8 I put in is the arrest warrant, and the third thing I put in
9 is the incident report, in every single notebook I create.

10 Q. All right. So you identify this as your notebook, and
11 it's substantially like you had it back then?

12 A. I think it was neater back then.

13 Q. It's seen a lot of wear?

14 A. Well, I'm looking at -- I'm looking at the front page.
15 I don't know if this was -- maybe it went to Appellate Defense
16 at some point; I'm not sure ---

17 Q. All right.

18 A. ---But I was looking for it.

19 MR. RUNYON: Your Honor, we would offer this as
20 Applicant's Number 1.

21 MR. THOMAS: I just beg the Court's indulgence.

22 THE COURT: Yes sir.

23 MR. THOMAS: No objection, Your Honor.

24 THE COURT: All right. So Applicant's 1, Trial
25 Notebook, is in evidence.

1 (TRIAL NOTEBOOK ADMITTED INTO EVIDENCE AS APPLICANT'S
2 EXHIBIT NUMBER 1.)

3 MR. AXELROD: May I see it another minute?

4 THE COURT: Yes sir. Go ahead.

5 MR. RUNYON: Are you looking for a witness list?

6 MR. AXELROD: Yes. That's what I'm looking for.

7 MR. RUNYON: There is a witness list in there, and it
8 does have Mr. Kinlock as a witness listed, so you have a good
9 memory.

10 THE COURT: Do you have any idea where it is in the
11 Trial Notebook, so you can point Mr. Axelrod to it?

12 MR. RUNYON: I sure can, Judge.

13 THE COURT: All right. Mr. Axelrod, why don't you let
14 him -- if you haven't found it how about let him find it, so
15 you can see where it is.

16 Q. I show you an unnumbered page. Is that the witness
17 list that you seem to recall saying?

18 A. Right. And I wrote on it, Mr. Aaron Kinlock's name. I
19 put a hyphen, and I wrote, "prior criminal records", so what I
20 probably did when I saw this, I might have asked Shannon, I'm
21 not sure, but for some reason I had the impression that he
22 would have a prior criminal record.

23 Q. Correct. So that was of some issue to you?

24 A. Yes. I mean, I -- I wrote -- that's my handwriting.

25 THE COURT: All right. Further questions?

1 **MR. RUNYON:** No further questions of this witness, Your
2 Honor.

3 **THE COURT:** All right. Mr. Axelrod, let me ask you a
4 couple of questions. You got a copy of the Transcript of
5 Record there?

6 **MR. AXELROD:** I do not, sir.

7 **THE COURT:** Does somebody have a copy of the Transcript
8 of Record they could give Mr. Axelrod, please?

9 **MR. THOMAS:** I have a copy. So he can use mine, Your
10 Honor.

11 **THE COURT:** Do y'all have one?

12 **MR. RUNYON:** The transcript of the record?

13 **THE COURT:** Yes, Transcript of Record. If you would
14 let Mr. Axelrod look at that, please.

15 And that's the -- what I'm talking about is Transcript
16 of Record from the trial of September 18, 19, 20, 22 of 2006;
17 is that right?

18 **MR. RUNYON:** I believe so, but this isn't the complete
19 Transcript of Record.

20 **THE COURT:** All right, then Mr. Attorney General, go
21 ahead and give him what your copy is and ---

22 **MR. THOMAS:** May I approach, Your Honor?

23 **THE COURT:** Yes. All right.

24 And if you could look, Mr. Axelrod, look at the top
25 right -- top right corner, and try and find page ninety-one,

1 if you could.

2 MR. AXELROD: I'm there, Your Honor.

3 THE COURT: And if you look over to the left it says,
4 "The following takes place outside the presence of the jury."
5 The next witness is Mr. Kinlock, and ---

6 MR. AXELROD: Your Honor ---

7 THE COURT: Okay.

8 MR. AXELROD: ---Where am I ---

9 THE COURT: On ninety. On ninety. If you look to the
10 left on page ninety. I'm sorry. If you look to the left on
11 page ninety it says, "The following takes place outside the
12 presence of the jury."

13 MR. AXELROD: Yes sir, Judge, I'm there.

14 THE COURT: Okay. And the Court is talking, and Mr.
15 Axelrod, after you've had a chance to look over what
16 information -- I don't know if they have gathered any
17 information at this point in time to confirm the situation as
18 far as incarceration, but if you wish me to conduct a proffer
19 on that question I'll be happy to do so, so everyone should be
20 prepared again at one-thirty, and break for lunch, and then it
21 goes on, and there was -- be glad for you to look, but it
22 looks like for an extended period of time for a transcript of
23 record anyway, through I believe page one hundred, that the
24 issue is discussed before the Court as to Mr. Kinlock's prior
25 record, and what information was available to you or not

1 available to you, and specifically the issue about that
2 burglary charge.

3 MR. AXELROD: I think it's a different burglary, Your
4 Honor. May I look at ---

5 THE COURT: Well, I'll be glad for you to do so, and
6 that's why I'm looking at it. Now he had a conviction --
7 okay, he had convictions for a 1995 burglary, and a 2003 petty
8 larceny, a 2006 receiving stolen goods, but what I'm talking
9 about here is the issue where he pled guilty to the receiving
10 stolen goods in 2006, apparently shortly before this trial, he
11 pled guilty.

12 MR. AXELROD: But see what I found -- and this is where
13 it gets confusing, Your Honor. The trial was in September of
14 '06 ---

15 THE COURT: Right. And he pled guilty earlier that
16 year to receiving stolen goods ---

17 MR. AXELROD: Got you.

18 THE COURT: ---Based upon an indictment -- well, he was
19 arrested for burglary first, he was indicted for burglary
20 second, and then he actually pled guilty to receiving stolen
21 goods, correct?

22 MR. AXELROD: Correct. And he had -- his burglary
23 first charge was nolle -- he had a burglary first charge nolle
24 prossed on July the 28th of '06 ---

25 THE COURT: Okay.

1 **MR. AXELROD:** ---Which I think -- I don't know -- I
2 have to refresh my memory here now.

3 **THE COURT:** Okay. Go ahead.

4 **MR. AXELROD:** His burglary charge was dismissed prior
5 to trial. That I was not aware of.

6 **THE COURT:** Okay.

7 **MR. AXELROD:** Now -- and I don't -- I'm not sure if
8 it's the same one that Your Honor said. I understand what you
9 are saying, Judge.

10 **THE COURT:** Okay.

11 **MR. AXELROD:** I don't know if he had a prior one to
12 this one.

13 **THE COURT:** Okay. But that's the indication that was
14 given to the Court at that time, that -- this confusion about
15 the burglary charge came from him being arrested for burglary
16 first, indicted for burglary second, and then pleading guilty
17 later on to receiving stolen goods. That's what, at least the
18 Court was told at that point in time, correct?

19 **MR. AXELROD:** Your Honor, may I read my ---

20 **THE COURT:** Sure. Go ahead.

21 **MR. AXELROD:** ---Because it is important.

22 **THE COURT:** Yes sir.

23 **MR. AXELROD:** On page ninety-one, Your Honor, Mr. Bryan
24 says that the '95 burglary would be admissible, as well as the
25 '03 petty larceny, and the '06 receiving stolen goods.

1 **THE COURT:** Correct.

2 **MR. AXELROD:** Now, ---

3 **THE COURT:** And you are making your argument about it's
4 not on the NCIC. If you look at page ninety-six, down to
5 the -- near the bottom of page ninety-six ---

6 **MR. AXELROD:** Yes sir.

7 **THE COURT:** ---You are making that argument it's not on
8 the NCIC, and the Court is being told what the situation was,
9 or what's the State's belief the situation was, and you are
10 making the argument, well, it's not on the NCIC.

11 **MR. AXELROD:** Court's indulgence, Your Honor.

12 **THE COURT:** Yes sir.

13 **MR. AXELROD:** I do want to read that, my Affidavit,
14 because I ---

15 **THE COURT:** Oh, go ahead.

16 **MR. AXELROD:** ---I kind of just -- I made a lot there.

17 **THE COURT:** All right. Go ahead.

18 **MR. AXELROD:** All right. Your Honor, on August the
19 1st, 2006, Mr. Kinlock is given a warrant for possession of
20 stolen property. The week -- the week before that his true-
21 bill burglary was nolle prossed by the Solicitor's Office.

22 **THE COURT:** And that's when he pled guilty, that's when
23 he pled guilty to those charges.

24 **MR. AXELROD:** Okay.

25 **THE COURT:** All right. I mean, again, looking at that

1 area, pages ninety-one to one hundred.

2 MR. AXELROD: Yes sir, Your Honor.

3 THE COURT: You had an opportunity to cross-examine Mr.
4 Kinlock outside the presence of the jury, correct?

5 MR. AXELROD: Correct.

6 THE COURT: Okay. And he's telling you that, in that
7 July period he pled guilty to that receiving stolen goods that
8 ---

9 MR. AXELROD: Correct. But what I was never aware of
10 is that he had that burglary first charge ---

11 THE COURT: Okay.

12 MR. AXELROD: ---That that was the arrest, the nolle
13 pros. There was nothing on the NCIC that I was provided to
14 show that.

15 THE COURT: Okay. And I appreciate that, and
16 understand what you are saying, but that issue was explored
17 with the Trial Judge, Roger Couch, prior to him testifying,
18 correct?

19 MR. AXELROD: I don't think so, but that -- let me look
20 now, because ---

21 THE COURT: Well, I mean, you are telling the Court ---

22 MR. AXELROD: I wasn't aware of the burglary first
23 charge that gave rise to the stolen property charge.

24 THE COURT: Okay. Look at the bottom of ninety-six.

25 MR. AXELROD: Okay.

1 **THE COURT:** Okay. Mr. Bryan talks to the Court. You
2 say, "Sir, but Your Honor, my argument is, if I may, it's not
3 on his NCIC."

4 **MR. AXELROD:** Let me go back from here up, Judge, and -
5 --

6 **THE COURT:** All right. That's fine.

7 **(MR. AXELROD REVIEWS THE DOCUMENT.)**

8 **THE COURT:** Do we need to take a short break, or are
9 you close to being done? I mean, if you need to take a break
10 I'll be glad for you to do so, to look at that, but I'm just
11 trying to look at the time and see -- do you want to?

12 **MR. AXELROD:** Maybe ten or fifteen minutes.

13 **THE COURT:** All right. We'll take a short break for
14 about ten minutes. Okay.

15 **MR. AXELROD:** Thank you, Your Honor.

16 **(THE FOLLOWING TAKES PLACE AFTER A BREAK.)**

17 **THE COURT:** All right. Have you had a chance to look
18 at that -- the paperwork, Mr. Axelrod?

19 **MR. AXELROD:** I have -- I have, Your Honor.

20 **THE COURT:** All right. Very good. So -- oh, I thought
21 he was in here. Let's wait.

22 **(COURT AWAITS THE DEFENDANT TO ENTER THE COURTROOM.)**

23 **THE COURT:** All right. Reconvening the hearing.

24 Mr. Axelrod, you've had an opportunity to review that
25 information you wanted to look at?

1 **MR. AXELROD:** I have, Your Honor.

2 **THE COURT:** All right. Very good. So, before Mr.
3 Kinlock testified -- basically the point of my question is,
4 was not the issue addressed by -- beforehand? It wasn't on
5 the NCIC and you wanted to bring that to the Court's attention
6 and get the Court's ruling on it?

7 **MR. AXELROD:** Yes sir, Your Honor.

8 **THE COURT:** All right. And the end result of it was
9 that Judge Couch did not agree with you, and allowed Mr.
10 Kinlock to testify?

11 **MR. AXELROD:** Correct.

12 **THE COURT:** All right, now, he did allow you to ask
13 questions of Mr. Kinlock, as to whether or not there was any
14 kind of deal, correct ---

15 **MR. AXELROD:** Correct.

16 **THE COURT:** ---For his testimony. All right, now,
17 there was an issue about -- also in all that, and it continues
18 on when he actually got on the stand to testify, that -- his
19 position was, and what he stated out of the presence of the
20 jury, and in the presence of the jury, Mr. Kinlock, was that
21 there wasn't a deal, he got sentenced for that receiving
22 stolen goods charge, and after that was done he initiated
23 contact with the Solicitor's Office through a letter?

24 **MR. AXELROD:** All right. Here's where it gets
25 confusing, Your Honor.

1 THE COURT: All right.

2 MR. AXELROD: Three days prior to my trial, on
3 September the 13th, Your Honor ---

4 THE COURT: Okay.

5 MR. AXELROD: ---I'm showing you ---

6 THE COURT: Okay.

7 MR. AXELROD: ---He is given a true-bill indictment for
8 a new receiving stolen goods charge.

9 THE COURT: Okay.

10 MR. AXELROD: That's not the stolen goods charge he was
11 in prison for, because I asked him during the proffer -- he
12 testified that the time he was serving was for all the charges
13 he had.

14 THE COURT: Okay.

15 MR. AXELROD: I didn't know that five days, or three
16 days prior to trial he was given this indictment for stolen
17 goods, and now it's clicking in my mind. I believe the very
18 next day after Shannon's trial Kinlock pled to a new charge
19 that I was unaware of at the time of the trial.

20 THE COURT: Okay.

21 MR. AXELROD: And that was my argument, that -- that he
22 pled the very next day, and there was the possible deal for
23 the bias that I tried to bring out, because ---

24 THE COURT: Okay.

25 MR. AXELROD: My -- this indictment, Your Honor, it's

1 in my package ---

2 THE COURT: And I appreciate that. So that was the
3 purpose of your motion that you filed with Judge Couch, your
4 post-trial motion?

5 MR. AXELROD: That one point, and then the point
6 about -- I guess Aaron Kinlock -- I don't know how we found
7 it, but there was a letter written asking ---

8 THE COURT: Well, he testified to that. He testified
9 about that in that hearing that you had before he testified,
10 and he testified in front of the jury that, after I got
11 sentenced on that guilty plea I sent the Solicitor a letter.
12 I mean, that's in the record ---

13 MR. AXELROD: Right. Right.

14 THE COURT: ---In two places ---

15 MR. AXELROD: Right.

16 THE COURT: ---So ---

17 MR. AXELROD: And I was given that after the trial, so
18 that was the other issue I raised at ---

19 THE COURT: Okay.

20 MR. AXELROD: That letter I was never given prior to
21 trial.

22 THE COURT: All right. So, you raised that with Judge
23 Couch ---

24 MR. AXELROD: Uh huh (indicating positive)

25 THE COURT: ---He rules on the motion ---

1 MR. AXELROD: Uh huh (indicating positive)

2 THE COURT: ---And denies your motion?

3 MR. AXELROD: Correct.

4 THE COURT: There's -- and you preserved that for the
5 record?

6 MR. AXELROD: I did.

7 THE COURT: All right. The Appellate Defense takes up
8 that same issue and appeals Mr. McGee's conviction on that
9 issue, which results in a affirmation of the Trial Judge by
10 the Court of Appeals?

11 MR. AXELROD: Yes sir.

12 THE COURT: All right.

13 MR. AXELROD: Yes sir.

14 THE COURT: So, all that to say, you raised the issue
15 in a proper fashion ---

16 MR. AXELROD: Yes sir.

17 THE COURT: ---To the Trial Judge ---

18 MR. AXELROD: Yes sir.

19 THE COURT: ---Give him all the information that's
20 available ---

21 MR. AXELROD: As best I could.

22 THE COURT: ---All right, the Court doesn't agree with
23 you, denies your motion.

24 MR. AXELROD: Correct.

25 THE COURT: It's in the record, the Appellate Court

1 hears it, agrees with the Trial Judge, and denies the appeal?

2 MR. AXELROD: Correct.

3 THE COURT: All right.

4 Questions from the Attorney General's Office?

5 MR. THOMAS: None, Your Honor.

6 THE COURT: Questions from the Applicant's attorney?

7 MR. RUNYON: None, Your Honor.

8 THE COURT: You may step down, sir.

9 MR. AXELROD: Thank you, Your Honor.

10 MR. RUNYON: Your Honor, we would call ---

11 THE COURT: Well, I appreciate that you want to do
12 that. We are going to stop for lunch.

13 MR. RUNYON: Oh, Okay.

14 THE COURT: We are going to break for lunch, and we
15 will come back at 1:30, and we will continue on with the
16 hearing at that time.

17 Thank you very much.

18 MR. AXELROD: Your Honor, am I excused?

19 THE COURT: Any reason Mr. Axelrod cannot be excused?

20 MR. RUNYON: None whatsoever, Your Honor.

21 MR. THOMAS: No sir.

22 THE COURT: You are excused, sir.

23 MR. AXELROD: Thank you, Your Honor. Have a good
24 holiday, Your Honor.

25 THE COURT: Yes sir.

MICHAEL JEROME JONES - DIRECT BY RUNYON

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1 All right. Thank y'all very much. See you at 1:30.

2 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK.)

3 THE COURT: All right. Applicant ready to proceed?

4 MR. RUNYON: Absolutely, Your Honor.

5 THE COURT: All right, sir. Next witness, please then.

6 MR. RUNYON: We call Mr. Michael Jones.

7 THE COURT: All right, sir. Please come around to be
8 sworn.

9 MICHAEL JEROME JONES, being first
10 duly sworn, testifies as follows:

11 DIRECT-EXAMINATION BY MR. RUNYON:

12 Q. Mr. Jones, how old are you, sir?

13 A. I'm fifty-three, sir.

14 Q. And where do you live?

15 A. [REDACTED] in Salters, South Carolina.

16 Q. Okay. What do you do for a living?

17 A. I'm a tree cutter.

18 Q. Okay. Back in July or August, June, July, August of
19 2006, did you have an occasion to be detained in the
20 Georgetown County Detention Center?

21 A. Yes sir.

22 Q. What were you detained for?

23 A. I was detained for -- they had me charge with burglary
24 first.

25 Q. Okay. And do you -- after that -- have you since

- 1 disposed of that matter?
- 2 A. Yes sir.
- 3 Q. What happened in that matter?
- 4 A. I have received five years.
- 5 Q. Okay. Now, do you have an occasion to see Mr. Shannon
- 6 McGee?
- 7 A. Yes sir.
- 8 Q. And were you in jail together?
- 9 A. Yes sir. We was in the same cell block.
- 10 Q. You were in the same cell block?
- 11 A. Yes sir.
- 12 Q. Did you know anything about his case?
- 13 A. Not -- when I first got to jail in April -- you know,
- 14 like once you go to jail, then once you start talking to
- 15 people you hear certain things about different people's cases,
- 16 so then I did find out why he was in jail.
- 17 Q. You found out why he was in jail?
- 18 A. Correct.
- 19 Q. But you had no personal knowledge of his case?
- 20 A. No sir.
- 21 Q. And did -- did he ever discuss his case with you?
- 22 A. Yes sir.
- 23 Q. And did you ever have an occasion to speak with anyone
- 24 from the prosecution in this matter?
- 25 A. Yes sir, Mr. Bo Bryan.

MICHAEL JEROME JONES - DIRECT BY RUNYON

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1 Q. And where did that occur?

2 A. Well, like -- when you get ready to go to court they
3 put you in like the bull pen, so Mr. Bo Bryan came the first
4 time I had come so -- because I had a co-defendant, was a
5 lady, so we talked about that. Then on the second occasion he
6 asked me about other people in jail, so in other words, he was
7 looking for a snitch, or somebody to tell about different
8 people's cases. So the third time I talked with Mr. Bo Bryan
9 he pulled me out the cell. All he wanted to talk about is
10 Shannon McGee.

11 Q. And as a result of that conversation you were
12 ultimately listed as a witness on the witness list ---

13 A. Right. Right.

14 Q. ---By the State, were you not?

15 A. Yes. He wanted me to testify against Shannon, so on
16 this conversation this day he told me about Shannon's wife,
17 their daughter, where they went to ate, what they had, so I
18 said, Mr. Bo Bryan, I can't give you nothing on this man; the
19 only thing me and Shannon talk about his case, he said, Mike,
20 I swear to God I did not do it. He said he disciplined the
21 child because she was sneaking out the window. So I got back
22 to the jail and I'm telling everybody, and I told Aaron
23 Kinlock. See, the whole story is, Aaron Kinlock, he already
24 had received a year, so once he's getting ready to go to
25 prison, and I come back and told him Bo Bryan needed somebody

1 to testify against Shannon, he took that and ran with it,
2 because ---

3 MR. THOMAS: Objection, Your Honor. He's speculating
4 as to what Mr. Kinlock would have thought.

5 THE COURT: All right. Just relate what you personally
6 know about it, and any conversations you had with Mr. Kinlock,
7 or Kinlock.

8 A. Okay. Mr. Kinlock had a year. They came and charged
9 with Mr. Kinlock with a burglary, a burglary charge, told Mr.
10 Kinlock he could get ten years. So after I talked to Bo Bryan
11 I went back and told Kinlock. Kinlock ---

12 Q. What did you tell Mr. Kinlock about anything?

13 A. I told Mr. Kinlock, I said, Mr. Bo Bryan talked to me,
14 told me about the baby, the birthday, and he's looking for
15 somebody to testify against Shannon. If you can remember,
16 when y'all was talking to Mr. Axelrod this morning about how
17 he received that letter, Aaron wrote Bo Bryan the letter.

18 Q. Okay.

19 A. Kinlock already had a year, so the other charge going
20 to come up, he testify against Shannon.

21 Q. Okay, now, let me ask you this. Let's go back to your
22 conversation with the State, the last time you had a
23 conversation with the Assistant Prosecutor ---

24 A. Mr. Bo Bryan.

25 Q. ---The Assistant Solicitor. I -- is it my

1 understanding Mr. Bryan just asked you, do you know anything
2 about Mr. McGee's case?

3 A. Well, I had talked to Mr. Bo Bryan basically twice,
4 because I'm trying to get this lady free, you know, cause I
5 had a co-defendant, so ---

6 Q. No. What I'm asking you though is, is did Mr. Bryan
7 ask you about Mr. McGee?

8 A. Yes.

9 Q. Did you tell him that you had any information for him?

10 A. I told Mr. Bo Bryan all I can tell him about Shannon is
11 what Shannon told me.

12 Q. And ---

13 A. He did not commit that act which y'all talking with.

14 Q. Were you offered anything in return for testimony
15 adverse to Mr. McGee?

16 A. If I would testify against Shannon he was going to drop
17 the charges on the young lady.

18 Q. All right. Now, let me -- let me get this clear in my
19 mind, because sometimes it might run a little slow. Did he
20 ask you to testify just to the truth, Mr. Bryan?

21 A. Not if -- if you can hear the conversation, he didn't
22 care what I got up on the stand and said about Shannon, long
23 as I testified. That's all he wanted. He just wanted
24 somebody out at the jail to say Shannon threw a piece of
25 paper on the ground, Shannon did this. That was it. And I

1 told Mr. Bryan, the last time I talked to him, because me and
2 Shannon already talked, I said, Mr. Bryan, Shannon said he
3 didn't do it, Shannon said he's going to get you.

4 Q. All right.

5 A. I told Mr. Bryan that. He said, I ain't worried about
6 Shannon. And so when he got that -- whatever happened in
7 court that day, that's what happened.

8 Q. All right.

9 MR. RUNYON: I have no further questions of this
10 witness at this time, Your Honor.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION BY MR. THOMAS:

13 Q. Mr. Jones, had you known Mr. McGee before you were
14 incarcerated?

15 A. No sir.

16 Q. When did you first discuss with Mr. Bryan Mr. McGee's
17 case? What date was that?

18 A. Oh great. You can't -- I can't really testify to this.
19 I was in jail almost a year, from April all the way to 2007,
20 when I got that time, so if you know how you go to court, they
21 might carry you to court like two times out of a month, so
22 every time I did go to court we happened to talk, and the last
23 time he carried -- pulled me out of the cell and talked.
24 That's when he told me about Shannon's wife, the birthday
25 party, the daughter, and all that.

1 Q. But you don't know -- you don't remember the exact date
2 of that?

3 A. No sir.

4 Q. When did you first tell somebody else about your
5 conversations with Mr. -- with Bo Bryan? When did you first
6 tell somebody that was not Mr. McGee or Mr. Kinlock?

7 A. Okay. Once they carried me back from the courthouse,
8 back to the jail, I got back to the cell, so I'm talking to
9 Joey Lewis, I told Aaron, and I told Cory, so Cory said, man,
10 you know how Shannon gets, because Shannon he thinks somebody
11 is going to snitch on him, so I ain't really said nothing to
12 Shannon, so when it did come out I said, Shannon, Bo Bryan
13 told me all this about the birthday and all this, so Shannon
14 said, how do you know you had -- I had to talk to Bo Bryan,
15 because didn't nobody know that but Shannon, because the --
16 you know, the girl he was talking to at the time, he told me
17 about the birthday party, so he know I had to talk to Bo
18 Bryan.

19 Q. So you informed Mr. McGee before his trial that Mr.
20 Bryan had asked you ---

21 A. Right.

22 Q. ---To testify against him?

23 A. Right. See, the whole plot was, Aaron already had a
24 year, now they are offering you ten years, and once I told
25 them Bo Bryan was looking for somebody to testify he wrote Bo

1 Bryan a letter. That's why y'all cannot find the charges
2 y'all talked about here this morning.

3 Q. But Mr. McGee was aware that Mr. Bryan was looking for
4 people to testify against him, and that you had told this Joe
5 and this Mr. Kinlock?

6 A. Right.

7 Q. And when is the first time you told somebody that was
8 not in jail about this? Have you ever told Mr. -- Mr.
9 Axelrod? Did you ever speak with Mr. Axelrod about it?

10 A. No, because see, they had -- once everything had came
11 out they had moved me out the cell. They put me in A-Block,
12 like protective custody, for some reason. So then Aaron had
13 came back from prison. I said what you doing back. He said,
14 I come to testify against Shannon. I said, man, you are
15 wrong.

16 Q. Who is the prosecuting Solicitor on your cases?

17 A. Mr. Bo Bryan.

18 Q. So ultimately he was the person that prosecuted your
19 sentences and got you that five year sentence?

20 A. Yes.

21 Q. When he came to speak to you did he ever ask you to lie
22 about anything?

23 A. Basically, if you listen to the conversation he was
24 trying to get somebody to lie.

25 Q. But he never told you, I need you to lie about ---

1 A. He ain't never come out and said, Mike, I want you to
2 lie on him.

3 Q. And once you told him that Mr. McGee told you he was
4 innocent he no longer asked you for any more information?

5 A. No.

6 MR. THOMAS: That's all the questions I have.

7 THE COURT: Any redirect?

8 MR. RUNYON: No further testimony. Mr. Jones can come
9 down, Your Honor.

10 THE COURT: All right, sir. Very good, sir. You can
11 step down.

12 Do you wish Mr. Jones to be excused?

13 MR. RUNYON: Beg your pardon?

14 THE COURT: Do you wish Mr. Jones to be excused?

15 MR. RUNYON: Yes, Your Honor.

16 THE COURT: Any objection from the State?

17 MR. THOMAS: No objection.

18 THE COURT: All right, Mr. Jones, you are released from
19 your subpoena. You can go back to your regular activities.

20 Thank you.

21 All right, Mr. Runyon, further testimony from the -- on
22 the Applicant's case?

23 MR. RUNYON: Yes, Your Honor. We have the Applicant.
24 We call the Applicant at this time.

25 THE COURT: All right, sir, please come around to be

1 sworn. Just come around right over here, please sir.

2 SHANNON M. McGEE, being first duly
3 sworn, testifies as follows:

4 **DIRECT-EXAMINATION BY MR. RUNYON:**

5 Q. Mr. McGee, we are going to -- we are going to cover
6 several areas, and not necessarily in a particular order, so
7 bear with us at this point in time.

8 As it relates to Mr. Kinlock, did you ever discuss your
9 case in jail with Mr. Kinlock?

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

11 Q. Did you ever tell Mr. Kinlock that you, in fact -- did
12 you ever confess to Mr. Kinlock?

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

14 Q. Okay. Did you -- do you know Mr. Jones?

15 A. Yes sir.

16 Q. All right, now, did you ever have a conversation with
17 him in jail prior to your trial?

18 A. Yes, we spoke. Me and him were in Bible Study
19 together. That's how it all came about, all those guys get to
20 know, in Bible Study.

21 Q. Okay. Now, did you know when you were going to go to
22 court?

23 A. No. I didn't know when I was going to court. What I
24 learned as during Bible Study, supposedly he had a
25 conversation with Robert Bo Bryan around July, somewhere

1 around that July the 24th. He came back and he let -- they
2 discussed it, but he let this guy know, a dude they call
3 "Black", which is -- I can't remember his -- Molly Jerome
4 Grove, I think was his name, but a guy came and told me that
5 he had a conversation with Michael Jones.

6 And the issue as far as him being put on P -- you know,
7 on PC, protective custody he was speaking about was when I
8 found out I confronted Michael Jones, and we got into a tussle
9 - let the truth be told on the record - me and him got in a
10 tussle, me and him getting in a fight behind it, because I
11 felt that y'all was going to church with me why was y'all
12 plotting together to try to sink me, take my life, like that,
13 no reason, so me and that fellow fought, and they locked him
14 up.

15 But the issue was that came out -- but I never knew that
16 he told Aaron Kinlock until trial, till Aaron Kinlock showed
17 up, but as far as it goes, the letter was wrote, and when I
18 read the letter - I finally got a chance to read the letter
19 that Aaron Kinlock wrote. When he wrote Bo Bryan he wrote Bo
20 Bryan on the basis of the conversation that he had with Mike
21 Jones, which was improper. You understand what I'm saying?

22 Q. Right.

23 A. And then as far as, you know, once you go into -- we go
24 into this transcript and start reading it states that he was
25 unaware that this man was a witness in his case. How could he

1 -- you be unaware of this man being a potential witness in
2 your case at the time when you are a deputy sheriff, I mean,
3 you are the Deputy Solicitor at that time. Nobody else can
4 put this man in your case. But you are lying to the Court.
5 You use everything to the advantage you could as a strategy to
6 take my life unlawfully, and that's not right.

7 Q. Mr. McGee, when your case was coming up for trial had
8 you been noticed that your case was coming up for trial?

9 A. No. I didn't know until that Friday, I mean, I knew
10 that I was -- you know, I was in jail, I know that I'm going
11 to trial eventually, but I didn't know until the Friday before
12 my trial, when Axelrod informed me that I -- my case would be
13 coming up Monday.

14 Q. All right. And prior to that time there had been no
15 notice that you were, in fact, going to trial?

16 A. No. No. Nothing was never spoke to me about going to
17 trial until that Friday prior to the time.

18 Q. Did you have -- did you meet with Mr. Axelrod on
19 several occasions to discuss your case?

20 A. To be honest with you, I met with Mr. Axelrod once, and
21 I met with -- what do you call it -- what do you call --
22 paralegal, like one or -- once, once, you know, they came to
23 the country. But then I met with them the day before trial as
24 -- because that's when he wrote up the thing, it's hard trying
25 to find some witnesses to get a continuance to the case,

1 because he wasn't prepared. He had already he prepared for
2 trials in Horry County; he wasn't prepared for my case.

3 Q. All right. Now, as a practical matter, you filed a
4 Petition in this case seeking the Court to review it, and
5 stating the grounds that you have for relief, correct?

6 A. Yes. Yes sir.

7 Q. And you have filed various exhibits?

8 A. Yes sir.

9 MR. RUNYON: And Your Honor, I think the common
10 practice for all those matters are -- are matters of record
11 for the Court to consider.

12 THE COURT: I appreciate that. I mean, if you want to,
13 or I can. I would appreciate it if you would go over each
14 ground set forth in the Application and ask if he is pursuing
15 that particular matter at this time.

16 MR. RUNYON: All right.

17 Q. Let's start with your first ground for relief. What is
18 your first ground for relief, Mr. McGee?

19 A. The first one that I have in my Petition, or just
20 period?

21 THE COURT: In the Petition, in the Petition.

22 Q. Any order you want, in your Petition.

23 A. The first one, was counsel ineffective for failing to
24 object to the Solicitor's improper closing arguments that
25 impermissibly bolstered -- bolstered and vouched for the

1 credibility of the victim as State witness, and in violation
2 of the Fifth and Sixth Amendment Rights to the United States
3 Constitution, failing to properly object and preserve the
4 issues for appeal, and a violation of Petitioner's due process
5 under the Fourteenth Amendment. It says, Facts, and so this -
6 --

7 THE COURT: You don't have to read that. I just ---

8 MR. RUNYON: You don't have to read all that.

9 THE COURT: Each ---

10 A. Just go to the issue?

11 THE COURT: Right.

12 Q. What's your next ground for relief that you seek? What
13 is the next ground that you seek relief on?

14 THE COURT: He's actively pursuing that one, correct?

15 MR. RUNYON: Yes sir.

16 THE COURT: All right. Let's go on to the next one.

17 A. The next one, was counsel ineffective for failing to
18 object to Solicitor's improper closing argument that
19 impermissibly violated the golden rule, and a violation of
20 Petitioner's Sixth Amendment to the United States Constitution
21 for failing to properly object, and to preserve the issue for
22 appeal, and a violation of Petitioner's due process under the
23 Fourteenth Amendment.

24 Q. All right. Your next ground for relief that you are
25 actively pursuing?

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1 **THE COURT:** Okay. You are moving along. Are you
2 actively pursuing that one?

3 **MR. RUNYON:** Yes sir.

4 **THE COURT:** Okay. Because I didn't hear anybody ask
5 Mr. Axelrod question one about that.

6 We'll continue on.

7 **MR. RUNYON:** Continue on.

8 A. Was counsel ineffective -- was counsel ineffective for
9 failing to conduct a pretrial investigation both factual and
10 legal, and as a result of counsel's interaction Petitioner was
11 denied his Sixth Amendment to the effective assistance of
12 counsel, and his Fourteenth Amendment Right to a fair trial.

13 Q. Now Mr. McGee, you were in jail at the time, correct?

14 A. Yes sir.

15 Q. How do you know that Mr. Axelrod did not properly
16 investigate the matter, or have someone properly investigate
17 the matter?

18 A. If he would have Aaron Kinlock would have been knowed
19 about, and apparently him saying that he didn't know about the
20 letter or anything in question would have been investigated.
21 The charge of how everybody keeps saying that Aaron -- the
22 Order that he wrote up for the Judge, if he would have
23 properly did what he was suppose to investigate, on the Order
24 that he wrote up for the Judge for July 28th and 29th
25 burglary, which has nothing to do with the burglary that he

1 received on August 1st. He received on August the 1st, from
2 John L. Sparkman, he received a warrant for -- as a matter of
3 fact, you have my paper on your desk. I need that to read
4 from.

5 MR. RUNYON: You need this paper to refresh your
6 recollection?

7 A. Yes, to refresh my recollection.

8 (DOCUMENT IS HANDED TO THE WITNESS.)

9 Q. Don't tell us what's said, just see if it -- just
10 review it and see if it refreshes your recollection.

11 A. Going back to the issue at hand, if he would have been
12 able -- if he would have properly investigated he would have
13 found, during the course of the investigation on August the
14 1st of 2006, Aaron Kinlock was actually served with a warrant
15 for stolen goods, and/or first degree burglary it wouldn't
16 have been as said on the Order when he went back to the one
17 that he was originally charged with on July the 28th, of first
18 degree burglary, that was reduced to a second. That has
19 nothing to do with the issue of my charge. The one on August
20 the 1st for receiving stolen goods, and first degree
21 burglary -- and/or first degree burglary, that's the one that
22 should have been investigated, not the 28th. But they -- when
23 he -- when they brought the charge up he came before court
24 they said he only had a receiving stolen goods, but it says,
25 receiving stolen goods and/or first degree burglary. That was

1 the warrant.

2 Q. All right.

3 A. That's the one that he went -- the day after my trial
4 he went before the Judge on.

5 Q. All right. What is the next ground for relief that you
6 are actively pursuing?

7 A. The fourth one, did the prosecutor commit prosecutorial
8 misconduct, and a violation of Petitioner's United States
9 Constitutional Right under the Fourteenth Amendment for due
10 process.

11 Q. Okay now, Mr. McGee, those are nice words and what-
12 have-you, but how do you contend that Mr. Bryan committed
13 prosecutorial misconduct?

14 A. Excuse me. Your Honor, am I allowed to go through my
15 issues or I'm not?

16 **THE COURT:** Answer the question that your attorney
17 asks.

18 Q. How do you -- how do you suggest that Mr. Bryan was
19 conduct ---

20 A. All right. On the Transcript -- if I'm allowed to go
21 to my Transcript, it's documented on my Transcript. I would
22 like to read from Transcript pages.

23 Q. All right. Answer the question.

24 A. Mr. -- let me see, it says, Mr. Bryant could have made
25 a negligent, fraudulent misrepresentation or inadvertent false

1 statement to the Court. All right. And I'm going to read,

2 Mr. Bryan: If it pleases the Court, Your Honor, just
3 with respect to the last issue, as far as I know I met Mr.
4 Kinlock yesterday. I never ever spoken to him that I am aware
5 of. Transcript, page twenty-four, lines twenty-two to twenty-
6 five, and go down to my next one was: I was unaware of -- I
7 was unaware of his involvement potentially in this case.
8 Transcript, page twenty-five, lines five through six.

9 Q. Now, let me ask you this. You indicated that Mr.
10 Axelrod was ineffective because he did not object to the
11 Court's jury instructions that there was impermissible -- just
12 let me get to this point, okay. That he did not object to the
13 impermissible -- possibly impermissible commenting on the
14 facts. That was -- that's one of your -- your grounds that
15 you were seeking -- were seeking relief on, correct?

16 A. Yes.

17 Q. Now, you understand, of course, that your case was
18 appealed?

19 A. Yes.

20 Q. And that was addressed -- would have been addressed by
21 the appellate action in this case?

22 A. If it was properly presented, which it wasn't.

23 Q. All right. Okay. Now, tell us about your next grounds
24 for relief that you are pursuing.

25 A. Excuse me. Your Honor ---

1 **THE COURT:** Sir ---

2 A. ---Can I ask a question?

3 **THE COURT:** ---Ask -- if you want to talk to your
4 attorney and ask a question you can ask your attorney a
5 question.

6 Do you want to ask your attorney a question?

7 A. Yes.

8 **THE COURT:** Go ahead. Go up there and talk to him.

9 **(COUNSEL CONFERS WITH THE WITNESS.)**

10 Q. What is your next ground for relief that you wish to
11 assert to this Honorable Court?

12 A. Oh boy. The next one is Item Five. Was counsel
13 ineffective for failing to object to the Trial Court's jury
14 instructions that impermissibly commented on the facts.

15 Q. All right. Now you have filed these, together with
16 copious discussion, have you not, sir?

17 A. Yes sir.

18 Q. And you want the Court to consider that -- those
19 discussions?

20 A. Yes sir. Yes sir.

21 Q. You understand it's not necessary for you to
22 necessarily read every word of your Petition to the Court to
23 draw attention -- the Court's attention to those things that
24 you want him to ---

25 A. Yes sir.

1 Q. Do you follow me?

2 A. I've got it.

3 Q. Okay.

4 A. All this is on record, right?

5 Q. Yes sir.

6 A. Okay.

7 Q. Now, what's your next ground for -- strike that. Do
8 you have a ground that questions the appellate Counsel's being
9 ineffective?

10 A. Yes sir.

11 Q. What ground is that?

12 A. Was appellate counsel ineffective for failing to
13 preserve for appeal Petitioner his Constitutional Right to a
14 fair presentment of his preserved issues on direct appeal?

15 Q. So it's your contention that -- that appellate counsel
16 didn't address the issues properly on appeal?

17 A. Right.

18 Q. Okay. Now, are there any specific matters in your
19 seventh ground that you can point the Court to that -- about
20 the Solicitor's closing argument being impermissible comment
21 on the facts? Is that contained in the Petition that you have
22 submitted to the Court?

23 A. It is contained in the Petition, the Petition and
24 discussion.

25 Q. And you've set that -- and you set out the reference to

1 the specific lines in your Transcript that you want the Court
2 to read, correct?

3 A. Yes sir.

4 Q. All right. Now, let's go back to Mr. Kinlock and -- he
5 testified in your trial; did he not?

6 A. Yes sir. Mr. Kinlock testified in my file.

7 Q. All right. Did either you or Mr. Axelrod expect him to
8 testify in your trial?

9 A. No sir, I did not.

10 Q. Okay. Mr. Jones was listed as a witness in your trial?

11 A. Yes sir, from my understanding of the conversation he
12 had had with me, that was spoken to pertaining to my trial.

13 Q. But he did not testify?

14 A. He did not testify.

15 Q. All right. Now, so it's your contention, based upon
16 the testimony of Mr. Axelrod, and what you just testified to
17 here this afternoon, that these issues were -- should have
18 been raised -- should have been preserved on the record for
19 appeal, but were not preserved properly, or were not
20 effectively argued on appeal?

21 A. It was not effectively argued on appeal.

22 MR. RUNYON: No further questions at this time.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION BY MR. THOMAS:

25 Q. Mr. McGee, how many -- I think you already said this.

1 You met with Mr. Axelrod you said once before the -- once the
2 day before the plea, or the weekend before the trial. Were
3 there any meetings before that? So you have two meetings with
4 him face to face?

5 A. Basically two. Maybe three at the most.

6 Q. At any point in time did you go over with him the
7 discovery that the State had in your case?

8 A. Yes, we spoke of it, and he was suppose to get back to
9 me. What he did when he came to see us was like about thirty
10 of his -- thirty of his clients at one time, trying to
11 question everybody, so he couldn't effectively be able to
12 handle my situation, I felt, at that time.

13 Q. Did you discuss with him your version of the events?

14 A. Yes, I did.

15 Q. And did you discuss with him any possible defenses?

16 A. No. We never really had time to sit down. We talked
17 in part, five minutes here, five minutes there. There was
18 no -- really no time to sit down and discuss anything, because
19 when he came to see me he didn't only come to see me, he come
20 to see -- he had like about ten or fifteen of his clients in
21 one room at one time.

22 Q. Did you ever give him any leads to investigate?

23 A. Well, when I found out about Mike Jones I asked him to
24 call Mike Jones as a witness.

25 Q. You did ask him to call Mr. Jones as a witness?

1 A. Yes. During the course of my trial -- during the
2 course of when the trial was going on, when he kept trying to
3 explain to the Judge about pending charges I got that because
4 I knew about the pending charge from Kinlock from the
5 conversation that I had with Mike Jones of him going to
6 testify.

7 Q. Did you ever tell Mr. Axelrod that Bo Bryan was going
8 around asking for people to testify against you?

9 A. I told him I've heard it, yes.

10 Q. You were offered a plea in this deal, weren't you?

11 A. Yes sir.

12 Q. And whose decision was it to turn that down?

13 A. Mine. If I'm not guilty of something I'm not going to
14 take a plea, you are not going to make me plead if I'm not
15 guilty. I was guilty of armed robbery when I was a teenager;
16 I pled guilty. As a matter of fact, I turned myself in
17 because I was guilty of the crime, but if I'm not guilty of
18 something you are not going to force me to plea to something
19 just because you feel like you have authority or position. It
20 don't work like that.

21 Q. Did you ever give Mr. Axelrod any witnesses to call
22 other than Mr. Jones?

23 A. Well, when we got before the Judge on that Monday, when
24 he was trying to get a continuance, he asked me if anybody did
25 I know of as a witness. I asked him to call Mike Jones, and

1 Ms. Collins, and he -- which he never -- well, he called her,
2 just repeated them that day, but he never used them. He never
3 even talked to them until that day of my trial.

4 Q. Do you remember having an opportunity at trial, when
5 the Judge stood you up and talked to you about your right to
6 testify? Do you remember that?

7 A. Yes sir.

8 Q. And you chose not to testify?

9 A. No, it was not that I actually chose not to testify; I
10 was advised by my counsel, being that he was trying to get a
11 continuance, that it was in my best interest, if you know what
12 I'm saying, not to testify. By me not knowing Law, and
13 figuring that he know Law, he know what's best in my interest
14 I took his word for it.

15 Q. But you -- the Trial Judge told you it was your
16 decision whether or not you would ---

17 A. I understand what you are trying to present, but
18 understand what I just said; I didn't understand Law. I
19 didn't go to law school like he did. I didn't understand Law,
20 so I'm not going to allow you to sit there and try to sway
21 something differently.

22 Q. Have you had any contact with Mr. Jones since you were
23 locked up together in Georgetown County?

24 A. Nope.

25 Q. Were you guys -- so you guys weren't in SCDC together?

1 A. No sir. How I found Michael Jones, there's a paper
2 trail that is the Bell Law Firm. They appointed them as my
3 counsel. I have the whole paperwork right here where they
4 went and found him. I gave him the name, everything that they
5 wanted to know, how to find him, because they couldn't find
6 him at first. I gave them the name. I've got all the
7 paperwork right here from the Bell Law Firm. Everything was
8 done properly and orderly. They found him in Williamsburg
9 County Jail, went and talked to him, and it shocked me when he
10 came to testify for me, because like I said, I had beat the
11 man up prior to that, when I found out the man was about to
12 testify on me and they put him in protective custody. But
13 they found -- even the paperwork is right here. They found
14 him at Williamsburg County. Once he got out he met with them.
15 I have the paper trail, everything right here, where they
16 hired an investigator and they found him themselves, James B.
17 Moore, III, Attorney at Law, Bell Law Firm, Georgetown, South
18 Carolina.

19 Q. I'm looking at argument Number Four in your -- I guess
20 your Amendments you made, where you talk about prosecutorial
21 misconduct and Mr. Bryan's false statements. What evidence do
22 you have that those statements were false?

23 A. How do you mean what evidence do I have that they are
24 false? They solidify themselves when they said right here, he
25 says, on transcript of my pages on PCR twenty-eight, but it

1 says, I never spoke to him, from seventeen on down, Knowing
2 Ms. Biagianti as an officer of the Court, I was never aware
3 that Mr. Kinlock would be involved in this case, never heard
4 it from him, talked to him, nor Ms. Biagianti, so we would say
5 that it would be unfairly prejudicial to raise the implication
6 that this was some kind of deal reached which he received for
7 his testimony. It would be misleading to the jury as well as
8 unfairly prejudicial. Transcript, page ninety-one, lines
9 seventeen -- seventeen through twenty-four. That's plain and
10 simple. This man just lied to the Court. He said he was
11 unaware of this. Man, you are the Deputy Solicitor, how could
12 you be unaware? Nobody else couldn't put that man in this
13 case but him.

14 Q. You were aware the case was going to be called for --
15 you were aware your case was on the trial roster?

16 A. Excuse me?

17 Q. You were aware your case was on the trial roster?

18 A. No sir, I wasn't.

19 MR. THOMAS: That's all the questions I have, Your
20 Honor.

21 THE COURT: Redirect.

22 MR. RUNYON: No more redirect at this time.
23 Come down, Mr. McGee.

24 THE COURT: Further testimonial evidence from the
25 Applicant?

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1 **MR. RUNYON:** No, Your Honor. We have a short argument
2 to cap the -- cap it.

3 **THE COURT:** All right. Very good.
4 Wait till your client gets back to the ---

5 **MR. RUNYON:** Yes sir.

6 **THE COURT:** All right. I'm glad to hear from you, sir.

7 **MR. RUNYON:** Your Honor, the Court has -- the
8 Transcript, or the Court Reporter's record it clearly reflects
9 that the Court had been on top of the facts of this case by
10 the questions the Court has asked and what-have-you, so I'm
11 not going to recount ad nauseam lines of transcriptual
12 testimony and what-have-you.

13 The issues that the Applicant has put in his filings and
14 that he has testified to are the issues that we would like the
15 Court to review; however, I do think that the Court really
16 needs to look at this issue at -- not more important I guess
17 than any other, but from a lawyer's point of view, since it is
18 in the jurisprudence stream in South Carolina today is the --
19 but the Honorable Attorney General and I have called a
20 **Langford** issue, and that us the docketing issue.

21 **THE COURT:** Okay.

22 **MR. RUNYON:** Judge, I would like to point out that this
23 is a typical case -- and I realize the practice -- I've
24 practiced for forty-six years, done a lot of criminal work, I
25 know that the practice has been for solicitors to give lists

1 of cases and then maybe call a case that you never heard of
2 and all of that, but the simple fact, Judge, is if under
3 Article Five of the State Constitution the Courts are given
4 the sole paramount authority to manage the Courts in this
5 State, the statute under which the Solicitors operate, and it
6 varies from Circuit to Circuit, quite frankly, and even from
7 County to County, the -- those systems are done under the
8 auspices of the statute passed by the State Legislature which
9 really Constitutionally does not have the authority to alter
10 the Constitution in any fashion, Judge, except I would point
11 out this. In the Constitution, Judge, when they adopted the
12 State-Wide Grand Jury plan, the Constitutional specifically
13 gives the Legislature certain Legislative authority in
14 implementing the State-Wide Grand Jury system, but it doesn't
15 do that with regard to the docket.

16 Here we have a case, a very significant case, a
17 significant case for Mr. McGee, because he's doing life
18 without parole, and he had a lawyer who was a good lawyer, a
19 very skilled lawyer, practice -- is still practicing, and he
20 says until Friday before the Monday that it was called I
21 didn't know we were going to be trying this case. To a
22 certain extent, Judge, it was trial by ambush, and we think
23 that that underpins most of the other grounds that are talked
24 about in the -- in the Applicant's Petition, and I would ask
25 the Court -- and I know the Court will seriously consider the

RESPONDENT'S SUMMATION (THOMAS)

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1 Applicant's Petition, and render a decision accordingly.

2 Thank you very much.

3 **THE COURT:** Thank you, sir.

4 Yes sir, Mr. Attorney General.

5 **MR. THOMAS:** Your Honor, I apologize if this gets a
6 little long. I just need to run through all of the
7 allegations.

8 Regarding his allegation that counsel was ineffective
9 for objecting to closing arguments, I don't think there was
10 any evidence presented to support those allegations.

11 So far as the allegation about pretrial investigation,
12 where Axelrod first thing he -- Mr. Runyon asked him was, did
13 you investigate this. He said yes.

14 And the argument about the record of the testifying
15 witness, Mr. Kinlock, and that was clearly went over ad
16 nauseam at trial.

17 Again, the prosecutorial misconduct, there's no evidence
18 that he's made any -- that Mr. Bryan made any false
19 statements. He stated what he stated about Mr. Kinlock, his
20 knowledge of it.

21 The failure to object to the jury instructions. Those -
22 - I've looked at those. Look to be the standard charges to
23 me. I haven't seen anything. I don't think the record
24 supports anything there.

25 The failure to appeal certain issues. The motion for a

1 mistrial was addressed.

2 The motion for a directed verdict. Even if that should
3 have been raised as an issue on appeal there's -- there's
4 clearly direct evidence in the form of the victim's testimony
5 that would have supported sending that to a jury, and denying
6 that directed verdict motion.

7 And the motion for continuance, that's obviously in the
8 sound discretion of the Trial Judge, which I guess is sort of
9 the **Langford** issues that's been raised.

10 Your Honor, the first argument would be, **Langford** is not
11 retroactive. It's a new rule of Law that was created, and
12 that's -- I talked to Mr. Axelrod about that. He said that
13 for years and years and years this is how the system was
14 operated, and when **Langford** came down that introduced a new
15 Rule, so as a new Rule it's prospective when it's a clear
16 break from precedent, and I'm citing to you **Yates versus**
17 **Aiken**, and that's 290 SC 231. It's a 1986 case that was
18 actually overturned by the United States Supreme Court, but
19 they said the same thing, prospective application with new
20 rules of law.

21 Clearly this was not a -- it's a clearly -- a clear
22 break. Mr. Axelrod testified, even if it wasn't -- even if it
23 is to be retroactively applied, even the **Langford** Opinion
24 itself required a showing of prejudice for Mr. Langford to
25 have his conviction overturned. In that case the Court said,

RESPONDENT'S SUMMATION (THOMAS)

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1 you know, even if he -- even if the Solicitor violated the
2 separation of powers by calling the case to trial Mr. Langford
3 still had to be prejudiced.

4 In this case, Your Honor, I would submit that there has
5 been no prejudice shown. Mr. McGee was not deprived of his
6 right to counsel. I guess under **Cronic**, which is a U.S.
7 Supreme Court case, it cites sort of the instances where
8 prejudice is presumed. This is not one of those cases.

9 And **Cronic** actually also cites the case of Avery versus
10 Alabama, 388 U.S. 444. In that case the United States Supreme
11 Court said that an attorney who was appointed three days
12 before trial had failed to demonstrate any prejudice from that
13 appointment when he couldn't demonstrate that there were other
14 witnesses or defenses that could have been discovered, and
15 that sort of goes along with the line of what the testimony
16 here was today. I mean, Mr. Axelrod kind of speculated that
17 maybe he would go and look for somebody else, but, I mean, Mr.
18 McGee has said, I told him everybody that I had, and Mr.
19 Axelrod clearly chose not to call any witnesses, Mr. McGee
20 chose not to testify on his own behalf. The record shows Mr.
21 Axelrod thoroughly cross-examined everybody, and that would
22 just be our position on the **Langford** issue.

23 As far as the -- any **Brady** violations or due process
24 allegations arising out of the Solicitor not addressing, or
25 not telling the defense about Mr. Kinlock that's already been

1 raised too and ruled upon by the Court of Appeal.

2 Thank you, Your Honor.

3 **THE COURT:** I want to -- let's talk real briefly about
4 the **Langford** issue. Is it your position, Mr. Runyon, that the
5 **Langford** Decision requires this Court to give retroactive
6 relief?

7 **MR. RUNYON:** Judge, in all candor, I've been doing this
8 too long not to be candid with the Bench. In all candor,
9 Judge, I cannot tell you that **Langford** requires the Court to
10 do that.

11 **THE COURT:** Okay.

12 **MR. RUNYON:** I think the issue of retroactivity has got
13 to be more clearly defined, and perhaps imposed, because all
14 too often it's too easy to simply say, now we're going to do
15 it prospectively it's too many and get all these things
16 backlogged, and I cannot suggest to the Court that there's any
17 authority that requires the Court to retroactively apply them.

18 **THE COURT:** Okay. Now, understanding you are not from
19 this Circuit, or not regularly practice here, and since it's
20 not, you know, the record before me I can't tell you when
21 exactly it occurred, but this Circuit adopted, with the Chief
22 Justice's permission, a differentiated case management system,
23 at some point in time. Also, during various times when I have
24 been Chief Administrative Judge for the Court of General
25 Sessions, the Fifteenth Circuit, I've issued a short

BY THE COURT

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1 Administrative Order regarding the production of dockets, when
2 they should be produced, how long before the date of trial
3 they would be produced, that sort of thing. Now, I can't tell
4 you, because I've been the Administrative Judge a number of
5 times, if, on September 18, 19, 20, and 22nd of 2006, there
6 was a differentiated case management system in this Circuit,
7 or an Administrative Order in effect, either by myself or some
8 other Judge. Those matters aren't in the record before me so
9 I don't know. I'm just telling you, at various times, and
10 probably more recently than maybe at that point in time, and
11 none of those might have existed in 2006, but they did exist,
12 or at least have existed at some point in time I know since
13 then. So I just have to bring that to your attention. So,
14 there may or may not have been in effect in September of 2006,
15 a differentiated case management system or an Administrative
16 Order. I don't know. Just pointing that to your attention.

17 Let's go to -- now the issue regarding the Motion for a
18 Continuance. Clearly Mr. Axelrod made a Motion for a
19 Continuance before Judge Couch, correct?

20 MR. RUNYON: That is correct, Your Honor.

21 THE COURT: All right. And he set forth, and I would
22 say for a motion for a continuance, fairly at length why he
23 ought to have a motion for a continuance as to things that he
24 needed to do, or could do, or what his reasons were, correct?
25 That's in the -- it's in the record?

1 **MR. RUNYON:** There is no question about that, Judge.

2 **THE COURT:** Okay. And the Court, in it's discretion,
3 the Trial Court, Judge Couch, denied the motion, correct?

4 **MR. RUNYON:** Correct, Judge.

5 **THE COURT:** Is there anything else Mr. Axelrod was
6 suppose to have done regarding that issue?

7 **MR. RUNYON:** Well, the Petitioner has made certain
8 allegations that he referenced in his -- in his Brief,
9 testimony on those issues.

10 **THE COURT:** Right.

11 **MR. RUNYON:** But the simple fact is, I cannot suggest
12 to the Court that there is anything else Mr. Axelrod could do
13 short of being held in contempt, and I don't suggest the
14 lawyer be held in contempt ---

15 **THE COURT:** Right.

16 **MR. RUNYON:** ---So I would concur with the Court that
17 he did about everything he could do on the continuance
18 application, Judge.

19 **THE COURT:** I know I'm skipping around here a little
20 bit. The -- in here in argument five of your client's
21 Amendment to the original PCR Application ---

22 **MR. RUNYON:** Yes sir.

23 **THE COURT:** ---He raises an issue. This is in his
24 argument, was counsel ineffective for failing to object to the
25 Trial Court's jury instructions. I'll be frank with you, I

BY THE COURT

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1 don't think there's much of an argument regarding the direct
2 evidence charge or the Defendant's not required to prove
3 himself innocent; the burden of proof, as I have told you
4 throughout the trial, is upon the State to prove the defendant
5 guilty beyond a reasonable doubt, I don't think there's much
6 to those arguments, but he does raise the issue -- and it's a
7 statute, and there has been some discussion about that, that
8 in a charge to a jury that the Court should not tell the jury,
9 the argument being the statute is instructive to the Bench and
10 the Bar, but it's not something to be charged to the jury that
11 a victim in a criminal sexual conduct case, basically their
12 testimony doesn't have to be corroborated, and your client's
13 argument is that that invades the province of the jury by an
14 improper suggestion by the Court as to credibility and
15 believability or certain things. What do you have to say
16 about that?

17 MR. RUNYON: Your Honor, the problem we have with that,
18 Judge, the -- once again, trying to be candid with the Court -
19 --

20 THE COURT: Yes sir.

21 MR. RUNYON: ---Is that there are overlapping issues
22 here that overlap with Appellate review ---

23 THE COURT: Right.

24 MR. RUNYON: ---And -- but at the same time my client
25 and the Applicant is trying to get the best review he can,

1 Judge, and we are going to raise it all, and even if -- even
2 if it's redundant, and you recognize -- and I've explained to
3 Mr. McGee that he doesn't get two Appellate reviews so -- of
4 the original -- he doesn't get two appeal reviews; he gets one
5 Appellate review ---

6 THE COURT: Right.

7 MR. RUNYON: ---And then it's a question of whether or
8 not the appellate counsel handled it properly, and whether or
9 not -- the question for this Court is, did the Appellate
10 counsel handle it properly, not whether or not it should have
11 been reviewed by them.

12 THE COURT: Right. And then that's a -- that's a
13 different standard. Just like the trial attorney has a
14 standard, the Appellate attorney has a standard too, and
15 that's what the Court is looking at.

16 MR. RUNYON: That is correct.

17 THE COURT: All right. Very good.

18 MR. RUNYON: And please understand, we are doing the
19 best we can with what we've got to work with.

20 THE COURT: And I appreciate that. I appreciate that.
21 I'm just trying to look at some of these issues and have a
22 discussion with y'all about it.

23 MR. RUNYON: Yes sir.

24 THE COURT: Anything else you want to tell me?

25 MR. RUNYON: Nothing at this time, Your Honor. We know

BY THE COURT

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1 the Court will give us ---

2 THE COURT: Well, I'm going to take the matter under
3 advisement. I appreciate that, but I just wanted to see if
4 there was anything else you wanted to discuss with the Court
5 at this time. All right.

6 From the State?

7 MR. THOMAS: We are good, Your Honor.

8 THE COURT: All right. Very good. Thank you,
9 gentlemen. I appreciate it very much. I'm going to take the
10 matter under advisement. There are -- though I've reviewed
11 the file I want to do it again in light of the testimony
12 that's been presented here today. I want to review the file,
13 Application and -- in conjunction with the Transcript of
14 Record, in conjunction with what the Court has heard today,
15 and then issue a ruling. Okay.

16 Thank you very much. I appreciate it.

17 MR. THOMAS: Thank you very much.

18 MR. RUNYON: Thank you, Your Honor. Thank you, sir.

19 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

20

21

22

23

24

25

CERTIFICATE OF REPORTER

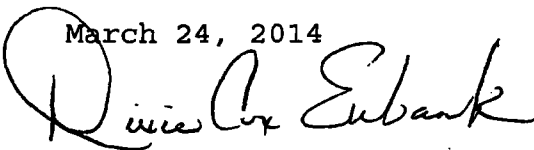
79

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **POST-CONVICTION RELIEF HEARING** of the captioned case, relative to appeal, in the **COURT OF COMMON PLEAS NON-JURY** for **GEORGETOWN COUNTY, SOUTH CAROLINA**, on the 19th day of December, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

March 24, 2014


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

Afelrods Trial Notebook - Inventory

Pocket - proof of service for Hicks, Cathy Coons, Willie Sparkman, Mable McBel, Daniel Coons, Diana Coons, Daron Gainey, 7 pgs. of

Section 1 - Indictments (June 2006)

all 3 w/ corresp. G.J. sheet

(1) Arraunt w/ intent 2 commit crim. sexual cond. w/ a minor 2nd deg.
(2) lewd act on minor child (3) crim. sexual cond. w/ a minor, 2nd deg.

Section 2 - Notices 2 seek wife w/out parole - June 2006

Section 3 - Warrants

1 - delivered 11/28/05 (inv. Eddie Lee)

- sent 5/20/2005

crim. sexual conduct w/ minor 2nd degree

Section 4 - Incident report

6/20/05 & another copy of Sharcia Hicks statement & investigating officers' report

Section 5 - Booking report 11/28/05

Section 6 - another copy of J statement

Section 7 - victim statement (2nd 6/20/05)

Section 8 - Child. Recovery center

- a printout statement - not much info on it

Section 9 - subpoena 9/18/06 (day before trial)

- noted "2 hour notice" exists afelrods' cell & C. Coons cell

Section 10 - last contact

Section 11 - additional discovery - signed for 02/03/06

abt. m's prior conv.

Section 12 - arrest info

Section 13 - gov't witnesses (noted 2 get Kinloch's prior conv. record

Section 14 - "Re trial counsel's lack of preparation" + affs. in support of new trial based on newly disc. info. after jury trial

Section 15 - state witness - Kinloch

Section 16 - affs. of Michael Jerome Jones & Thomas Lane & Noel Lewis

EXHIBIT

Appellations

dec 1 12-19-13

09/18/2006 17:25

8439169311

AXELROD & ASSOCIATES

PAGE 01

PROOF OF SERVICE	
SERVED	DATE 09/19/06
PLACE	
SERVED ON (PRINT NAME) Hicks	MANNER OF SERVICE IN PERSON
SERVED BY (PRINT NAME) Cornell Johnson	TITLE DEPUTY
DECLARATION OF SERVER	
I certify that the foregoing information contained in the Proof of Service is true and correct.	
Executed on: 09/19/06 1009 hrs.	SIGNATURE OF SERVER
DATE	430 North Fraser St.
	ADDRESS OF SERVER
	Georgetown, S.C. 29440

09/18/2006 17:37 8439169311

AXELROD & ASSOCIATES

PAGE 01

SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA		CASE NO. 21169
SHANNON DERONE MC GEE		SUBPOENA FOR ☐ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO: Cathy Coons Childrens Recover Center 1801 Legion Street Myrtle Beach, S.C.		
☐ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina	COURTROOM General Sessions DATE AND TIME 9/19/06 - 9/22/06 9:30 a.m.	
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):		
LIST DOCUMENT(S) or OBJECT(S): <i>tape of S. Hicks</i>		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT <i>Stuart M. Axelrod</i>	DATE 9/18/06	
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant	ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 604 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300	

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

*Two hour notice**Axelrod's cell # 843-446-4357**C. Coons cell # 843-457-0361*

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
Executed on _____	DATE _____	SIGNATURE OF SERVER _____
		ADDRESS OF SERVER _____

09/18/2006 17:25 8439169311

AXELROD & ASSOCIATES

PAGE 01

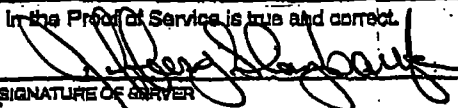
PROOF OF SERVICE		
SERVED	DATE	PLACE
	09/18/06	
SERVED ON (PRINT NAME)		MANNER OF SERVICE
WILIE SPARKMAN		IN PERSON
SERVED BY (PRINT NAME)		TITLE
JEFFERY SLAYBAUGH		DEPUTY
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
Executed on	09/18/06	
	DATE	SIGNATURE OF SERVER
		430 N FRASER
		ADDRESS OF SERVER
		LOTION

09/18/2006 17:25

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AXELROD & ASSOCIATES

PAGE . 01

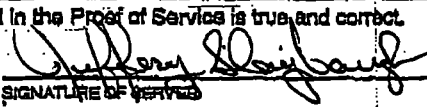
PROOF OF SERVICE	
SERVED	DATE 09/18/06
PLACE	
SERVED ON (PRINT NAME) MATTIE MCGEE	MANNER OF SERVICE In Person
SERVED BY (PRINT NAME) JERRY SLANBAUGH	TITLE Deputy
DECLARATION OF SERVER	
I certify that the foregoing information contained in the Proof of Service is true and correct.	
Executed on 09/18/06 DATE	SIGNATURE OF SERVER  433 N FRASER ADDRESS OF SERVER G-Town

09/18/2006 17:25

8439169311

AXELROD & ASSOCIATES

PAGE 01

PROOF OF SERVICE	
SERVED	DATE 09/18/2006
PLACE	
SERVED ON (PRINT NAME) DARTUS COLLINS	MANNER OF SERVICE IN PERSON
SERVED BY (PRINT NAME) JEFFERY SLAYBAUGH	TITLE SHERIFF'S DEPUTY
DECLARATION OF SERVER	
I certify that the foregoing information contained in the Proof of Service is true and correct.	
Executed on 09/18/2006 DATE	SIGNATURE OF SERVER 
ADDRESS OF SERVER 430 N FRASER G-TOWN SC 29446	

09/18/2006 17:25 8439169311

AXELROD & ASSOCIATES

PAGE 01

PROOF OF SERVICE			
SERVED	DATE	PLACE	
	09/18/2006		
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
Diana Collins		In Person	
SERVED BY (PRINT NAME)		TITLE	
Darryl Washington		Cpl.	
		Sheriff's office	
DECLARATION OF SERVER			
I certify that the foregoing information contained in the Proof of Service is true and correct.			
Executed on 09/18/2006		DATE	
		SIGNATURE OF SERVER	
		430 N. Fraser St.	
		ADDRESS OF SERVER	
		G-Town S.C. 29440	

09/18/2006 17:25

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AXELROD & ASSOCIATES

PAGE 81

PROOF OF SERVICE		
SERVED	DATE 09/19/0926	PLAC
SERVED ON (PRINT NAME) Daron GAING		MANNER OF SERVICE In person
SERVED BY (PRINT NAME) John Gregory		TITLE Deputy
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
Executed on 09/19/2006 DATE 0926		SIGNATURE OF SERVER George Davis Co. Sheriff Office ADDRESS OF SERVER

It started when I was just getting out of 6th grade, the summer, I just moved back with my mother. When my mom went to work, he called me into the room and told me to close the door. I was sitting beside him and even though I felt uncomfortable, I kept quiet. 2 days later I was told to ~~put~~ put my hand on his penis ~~and~~ and move it back and forth. I hated doing this. One morning he told me to wear a skirt being young, about 11 years old. I did it even though I didn't want to. He was so close to entering me that it was disgusting but it NEVER happened. He used to touch inappropriately like my butt or my vagina. He would look at my breast and use to suck on my nipples. He said "they would grow." I hated that but I was too scared to say anything. My mother got a new job ~~schedule~~ schedule where she'd leave at 5:00 am and return 1:00 pm. Early in the morning he would call me in the room. I'd often not come but he screamed and told me to come so I went.

VOLUNTARY STATEMENT

McGee

DATE: June 20
Minor Childon 05 . TIME 11:30 P.M. PLACE A PD
am 13 years old and I live atI am giving this statement to Joyce Roberts I.D. VI who has identified himself as a victim's advocate

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I started around June or July Summer of 2005. My mom started going to work and when my mom went to work he called me into his room. I didn't feel comfortable but I stayed. He started to touch on me inappropriately on my butt and vagina area. He told me to put my hand on his penis and move it back and forth until he ejaculated. He called me into their room again and almost entered his penis inside of me but it never happened. When my mother got a new work schedule, working from 5:00 am to 1:00 pm he started to call me into his room early. He told me to lay down and relax but I never did. He was even trying to kiss but I squirmed and told him to stop. When my mother was fired, he'd mess with me at night. He'd finger me even if I told him stop or pull it out he would continue. He sucked on my breasts and did bad things to me. Going to school with this on my mind affected school.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm the facts and statements contained herein are true and correct.

Minor Child

Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

(This must be one and the same person as named above)

Witness

Dana Nasmith
6/20/05

Joyce Roberts

Indictments

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

INDICTMENT FOR:

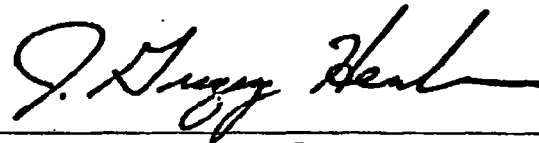
ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT WITH A MINOR-
SECOND DEGREE

At the Court of General Sessions, Convened on June 14, 2006 the Grand Jurors of Georgetown County present upon their oath:

That Shannon D. McGee, whose date of birth is June 12, 1967, did in Georgetown County on or between June 1, 2003 and March 31, 2005 commit the offense of Assault with Intent to Commit Criminal Sexual Conduct, Second Degree, with a Minor in that he did assault the victim, Minor Child

, whose date of birth is [REDACTED] with the intent to accomplish a sexual battery, to wit: the defendant did lie on top of the defendant and attempted to have sexual intercourse with her. This is in violation of Section 16-3-656, 16-3-655, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

133

WITNESSES:

ANDREWS POLICE DEPARTMENT

ARREST WARRANT NUMBER:

DIRECT INDICTMENT

0396 §16-03-0655(2)

DOI: On or between 6-01-03 and
3-31-05

SID: SC00621178

ACTION OF GRAND JURY

TRUE BILL

Date

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 00-0322-080

The State of South Carolina,

County of Georgetown

21169

RBB

COURT OF GENERAL SESSIONS

JUNE TERM 2006

THE STATE

vs.

SHANNON D. MCGEE

SS#:

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

CRIMINAL SEXUAL
CONDUCT WITH A MINOR
IN THE SECOND DEGREE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT FOR:
LEWD ACT ON A MINOR CHILD

At the Court of General Sessions, Convened on June 14, 2006 the Grand Jurors of Georgetown County present upon their oath:

That Shannon D. McGee, whose date of birth is _____, did in Georgetown County on or between June 1, 2003 and March 31, 2005 willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, ^{Minor Child} _____, whose date of birth is _____, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said Defendant or of the victim, to wit: the defendant did put his mouth on the victim's breast and forced her to touch his penis and masturbate him. This is in violation of Section 16-15-140, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

RBB

WITNESSES:

ANDREWS POLICE DEPARTMENT

ARREST WARRANT NUMBER:

DIRECT INDICTMENT

2468 §16-15-0140

DOI: On or between 6-01-03 and
3-31-05

SID: SC00621178

ACTION OF GRAND JURY

6/14/04 TRUE BILL

Date

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

The State of South Carolina,

County of Georgetown

21169

RBB

COURT OF GENERAL SESSIONS

JUNE TERM 2006

THE STATE

vs.

SHANNON D. MCGEE

2

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

LEWD ACT UPON A
MINOR CHILD

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) INDICTMENT FOR:
) CRIMINAL SEXUAL CONDUCT WITH A MINOR
) SECOND DEGREE

At the Court of General Sessions, Convened on June 14, 2006 the Grand Jurors of Georgetown County present upon their oath:

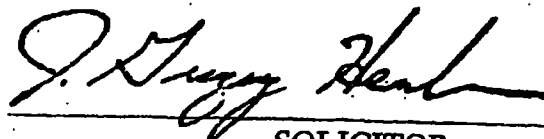
That Shannon D. McGee did in Georgetown County on or between June 1, 2003 and March 31, 2005 engage in sexual battery with a victim at least eleven years of age, but less than fourteen, Minor Child, to wit: the defendant did digitally penetrate the minor victim's vagina, the victim's

date of birth being

This is in violation of Section 16-3-0655(2), S. C. Code of

Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR
RBB

WITNESSES:

ANDREWS POLICE DEPARTMENT

ARREST WARRANT NUMBER:

DIRECT INDICTMENT

0254 §16-3-656, 16-3-655

DL:

DOI: On or between 6-01-03 and
3-31-05

SID: SC00621178

ACTION OF GRAND JURY

6/14/06 TRUE BILL
Date
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 00-0322-002
The State of South Carolina,

County of Georgetown

21169

RBB

COURT OF GENERAL SESSIONS
JUNE TERM 2006

THE STATE

vs.

SHANNON D. MCGEE

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

ASSAULT WITH THE
INTENT TO COMMIT
CRIMINAL SEXUAL
CONDUCT WITH A MINOR-
SECOND DEGREE

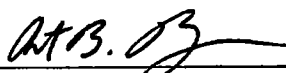
Like w/o parole

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF GEORGETOWN) WARRANT # H-386145

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 vs.) NOTICE TO SEEK
) LIFE WITHOUT PAROLE
 SHANNON DERONE MCGEE,)
)
 DEFENDANT.)

TO: SHANNON D. MCGEE AND HIS ATTORNEY STUART AXELROD

Pursuant to Section 17-25-45, South Carolina Code of Laws (1976), as amended,
 the State is seeking life imprisonment without parole as to warrant number H-386145,
 charging the defendant with Criminal Sexual Conduct with a Minor in the Second Degree.


 Robert B. Bryan
 Deputy Solicitor
 15th Judicial Circuit

Georgetown, South Carolina

Dated: 1-11-, 2006

FILED
 GEORGETOWN COUNTY, S.C.
 2006 JAN 11 PM 3:58
 ALMA Y. WHITE
 CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) IN THE COURT OF GENERAL SESSIONS
INDICTMENT(S) # 06-GS22-580 & 582

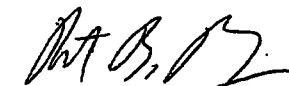
STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
vs.)
SHANNON DERONE MCGEE,)
DEFENDANT.)

NOTICE TO SEEK
LIFE WITHOUT PAROLE

FILED
GEORGETOWN COUNTY, S.C.
2006 JUN 16 AM 11:53
ALMA Y. WHITE
CLERK OF COURT

TO: SHANNON D. MCGEE AND HIS ATTORNEY STUART AXELROD

Pursuant to Section 17-25-45, South Carolina Code of Laws (1976), as amended, the State is seeking life imprisonment without parole as to indictment numbers 06-GS22-580 & 06-GS22-582, charging the defendant with Criminal Sexual Conduct with a Minor in the Second Degree and Assault with the Intent to Commit Criminal Sexual Conduct with a Minor in the Second Degree.



Robert B. Bryan
Deputy Solicitor
15th Judicial Circuit

Georgetown, South Carolina

Dated: 6/12/, 2006

CERTIFIED A TRUE
AND CORRECT COPY

Annice N. Wade
DEPUTY CLERK OF COURT
GEORGETOWN COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF
GENERAL SESSIONS

INDICT. # 06-GS22-580 & 58

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

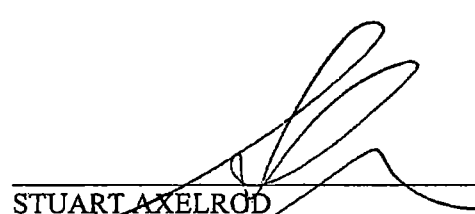
vs.)

RECEIPT OF NOTICE TO SERVE
LIFE WITHOUT PAROLE

SHANNON DARONE MCGEE,)

DEFENDANT.)

I have this 30th day of June, 2006, received a copy of the Notice of
Imprisonment in the above captioned case.


STUART AXELROD

Attorney for the Defendant

June 30th, South Carolina

Stuart, 2006

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs.)

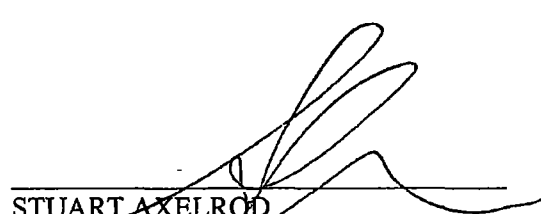
SHANNON DARONE MCGEE,)

DEFENDANT.)IN THE COURT OF
GENERAL SESSIONS

INDICT. # 06-GS22-580 & 582

RECEIPT OF NOTICE TO SEEK
LIFE WITHOUT PAROLE

I have this 30th day of June, 2006, received a copy of the Notice to Seek Life Imprisonment in the above captioned case.


STUART AXELROD

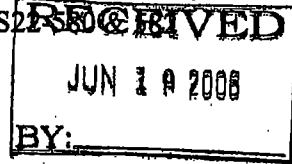
Attorney for the Defendant

June 30th, South Carolina

Stuart, 2006

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT(S) # 06-GS22-580 & 582

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs.)

SHANNON DERONE MCGEE,)

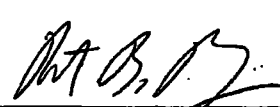
DEFENDANT.)

NOTICE TO SEEK
LIFE WITHOUT PAROLE

FILED
GEORGETOWN COUNTY, S.C.
2006 JUN 16 AM 11:53
ALMA Y. WHITE
CLERK OF COURT

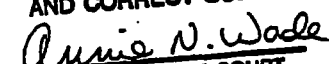
TO: SHANNON D. MCGEE AND HIS ATTORNEY STUART AXELROD

Pursuant to Section 17-25-45, South Carolina Code of Laws (1976); as amended, the State is seeking life imprisonment without parole as to indictment numbers 06-GS22-580 & 06-GS22-582, charging the defendant with Criminal Sexual Conduct with a Minor in the Second Degree and Assault with the Intent to Commit Criminal Sexual Conduct with a Minor in the Second Degree.


Robert B. Bryan
Deputy Solicitor
15th Judicial Circuit

Georgetown, South Carolina

Dated: 6/12/, 2006

CERTIFIED A TRUE
AND CORRECT COPY

ANNE N. WADE
DEPUTY CLERK OF COURT
GEORGETOWN COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF
GENERAL SESSIONS

INDICT. # 06-GS22-580 & 582

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs.)

RECEIPT OF NOTICE TO SEEK
LIFE WITHOUT PAROLE

SHANNON DARONE MCGEE,)

DEFENDANT.)

I have this ____ day of _____, 2006, received a copy of the Notice to Seek Life Imprisonment in the above captioned case.

STUART AXELROD

Attorney for the Defendant

_____, South Carolina

_____, 2006

WATER "BUBBLES" WYRIND

ARREST WARRANT

XEPJL ENTER LANGUAGE=PC H=386145 H386145

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

THE STATE

against

SHANNON MCGEE

DR.

ANDREW

Phone: _____ SSN: _____
Race: B Height: 5 Weight: 250

DL State: _____ DL #: _____

DOB: _____ Agency ORI#: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

CRIMINAL SEXUAL CONDUCT W/MINOR - VICTIM

TO 14 YRS OF AGE

Offense Code: _____

Code/Ordinance Sec. 16-03-0655(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of _____

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Shannon McGee

on 11/29/05

James Hayswood
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JUDGE ISAAC L. PYATT
33 CLELAND STREET
GEORGETOWN, S.C.

294420807

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

GEORGETOWN COUNTY, S.C.

2005 DEC - 1 AM 9:23

ALMA Y WHITE

AFFIDAVIT

INV. EDDIE LEE

SHANNON MCGEE

5/20 2005

16-03-0655(2)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MAY 20, 2005 IN THE COUNTY OF GEORGETOWN. THE DEFENDANT DID ENGAGE IN SEXUAL BATTERY BY ENTERING HIS FINGER INTO THE VICTIMS VAGINA AND FONDLING HER BREAST, WITH THE VICTIM BEING THIRTEEN YEARS OLD. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND A VIOLATION OF SOUTH CAROLINA CODE OF LAW 16-03-0655(2).

CASE#0506335/INV. EDDIE LEE

Sworn to and subscribed before me
on 6/27/2005

Isaac L. Pyatt (L.S.)
Signature of Issuing Judge

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 5/20/2005 defendant SHANNON MCGEE

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: 16-03-0655(2)
CRIMINAL SEXUAL CONDUCT W/MINOR - VICTIM 11 TO 14 YRS OF AGE INCLUSIVE - 2ND DEG

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Isaac L. Pyatt (L.S.)
Judge's Address 333 CLELAND STREET
GEORGETOWN, S.C.

Signature of Issuing Judge 899
Judge Code: _____

Judge's Telephone 8435453381

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

INCIDENT REPORT

AGENCY I.D.
SC0220100ANDREWS POLICE DEPARTMENT
INCIDENT REPORTCASE NUMBER
0506135NOC
IND ENT

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 0 - CRIMINAL SEXUAL CONDUCT TO A MINOR		☒ YES ☐ NO	☐ YES ☐ NO	20		☐ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		DOB 09/23/1972		SSN	ZIP CODE	WEAPON TYPE
E ANDREWS S.C.		DR LIC #			29610	90
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	LOCATION NO.
06/20/2006		2240		06/21/2006	0259	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		DISP. DATE	DISP. TIME	TIME ARRIVED
SUMPTER, FITZGERALD		PA		06/20/2006	2242	2306
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
[REDACTED]		HEMINGWAY	S.C.	29664	2	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
[REDACTED]		[REDACTED]	J S O U	B	M	33
HEIGHT		WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	DOB
0-0		0				
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
[REDACTED]						
VISIBLE INQUIRY (NOC. 1) ☐ YES ☐ NO EXPLAIN -						
VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☐ UNK DRUGS: ☐ YES ☐ NO ☐ UNK						
TWO-MAN VER. ☐ ONE-MAN VER. ☐ DETECTIVE/SPL. ASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown						
SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH
MCGEE, SHANNON		B	M	00	N	11
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		P-H #		SSN		
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
[REDACTED]		ANDREWS	SC	29610	2	
SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK DRUGS: ☐ YES ☐ NO ☒ UNK TYPE		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
06/20/2006		0		06/20/2006		2240
ON 06/20/2006 AROUND 2242, OFFICER NESMITH WAS DISPATCHED TO KENTUCKY FRIED CHICKEN LOCATED ON EAST MAIN STREET IN REFERENCE TO CRIMINAL SEXUAL CONDUCT TO A MINOR. ON ARRIVAL OFFICER NESMITH SPOKE TO THE COMPLAINANT MR. FITZGERALD SUMPTER WHO RESIDES AT [REDACTED]. MR. SUMPTER STATED THAT HIS MINOR DAUGHTER CALLED HIM TWO WEEKS PRIOR SO THAT SHE AND HER BROTHER COULD STAY WITH HIM. MR. SUMPTER STATED THAT HE FOUND OUT ON 06/20/2006 THAT HIS MINOR DAUGHTER WAS ALLEGEDLY BEING SEXUALLY ABUSED BY HER STEP FATHER MR. SHANNON MCGEE WHO RESIDES AT [REDACTED]. ANDREWS, MR. SUMPTER MINOR DAUGHTER WROTE A VOLUNTARY STATEMENT STATING THAT SHE WAS BEING ABUSED BY MR. MCGEE SINCE SHE WAS 11 YEARS OLD. VOLUNTARY STATEMENT EXPLAINS DETAILED INFORMATION ABOUT HOW MR. MCGEE ALLEGEDLY SEXUALLY ASSAULTED HER. REPORTING OFFICER NOTIFIED VICTIM ADVOCATE, LT. NOEL, AND SPOKE WITH CHIEF SPARKMAN, REPORTING OFFICER AND VICTIM ADVOCATE MS. FRASIER TRANSPORTED VICTIM TO THE GEORGETOWN MEMORIAL HOSPITAL FOR A MEDICAL EVALUATION. MR. SUMPTER WILL DO A FOLLOW UP WITH MS. FRASIER AT LATER DATE, THIS INCIDENT WILL BE TURN OVER TO INVESTIGATIONS.						

TYPE (GROUP)						TOTAL VALUE
Blind						
Countersigned						
Deaf/Deafened						
Recommended						
Unknown						
SUBJECT IDENTIFIED	☒ YES ☐ NO	SUBJECT LOCATED	☒ YES ☐ NO	ACTIVE	☒ YES ☐ NO	ADJ. CLOSED
REASON FOR EXCEPTIONAL CLEARANCE:	1. ☐ OFFENDER DEATH	2. ☐ NO PROSECUTION	3. ☐ EXTRACTION DENIED	4. ☐ VICTIM DECLINES COOPERATION	5. ☐ VICTIM - NO CUSTODY	
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	
OLIVER NESMITH	06/20/2006	205				
FOLLOW-UP INVESTIGATION OFFICER						
☐ YES ☐ NO						

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	N/A	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	N/A

AGENCY I.D.
SC022D100

ANDREWS POLICE DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

05035

NCIC
INQ. ENT.

☐ ORIGINAL
REPORT

MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT

☐ CASE STATUS
CHANGE

☒ ADDITIONAL
VICTIMS

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY

☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1

V I C T I M S U B J O V E R L O O K I N G I N F O R M A T I O N	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ET	
	☒ VICTIM # 2	JUVENILE VICTIM				#1	#2	#3	0	S	O	U	B	F	13
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						DOB	SSN		
	☐ RUNAWAY	0-0	0									DR LIC #			
	☐ WANTED	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHON				
	☐ WARRANT									H	B				
	☐ ARREST	☒ VICTIM NO. 2 VISIBLE INJURY: ☐ NO ☐ YES				VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.				☐ TWO-MAN VEH. ☐ DETECTIVE/SPLASMT ☐ ALONE					
	☐ JAIL	EXPLAIN: Possible Internal Injury				DRUGS: ☐ NO ☐ YES TYPE:				☐ UNK ☐ ONE-MAN VEH. ☐ OTHER ☐ ASSIST					
	☐ SUMMONS	☐ SUBJECT NO. USING ALCOHOL: ☐ NO ☐ YES													
	☐	USING DRUGS: ☐ NO ☐ YES TYPE:								☐ UNKNOWN					
N A R R A T I V E															
					JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					

A D V I S I T	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
	REPORTING OFFICER(S) OLIVER NESMITH		DATE 06/20/2005		UNIT NUMBER 205	APPROVING OFFICER		DATE
					FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☐ NO			UNIT NUMBER

VOLUNTARY STATEMENT

DATE: June 20, 2005 TIME 11:30 ^{PM} M. PLACE APD
 I, Minor Child, am 13 years old and I live at _____

I am giving this statement to Joyce Roberts I.D. VI, who has
 herself as a victim's advocate

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at a

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above e: rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

It started around June or July Summer of 20
My mom started going to work and when my m
went to work he called me into his room. I did
feel comfortable but I stayed. He started to t
on me inappropriately on my butt and vagina area
He told me to my hand on his penis and move it
back and forth until he ejaculated. He called m
into their room again and almost entered his pe
inside of me but it never happened. When my mi
got a new work schedule, working from 5:00 am to
1:00 pm he started to call me in to his room earl
He tell me to lay down and relax but I never I did.
He was even trying to kiss but I squirmed and told h
to stop. When my mother was fired, he'd mess with m
at night. He'd finger me even if I told him stop or f
it out he would continue. He sucked on my breasts a
did bad things to me. Going to school with this on
mind affected school.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm facts and statements contained herein are true and correct.

Minor Child

Signature of person making voluntary statement

The above warnings were given by and
 this voluntary statement was taken by

Witness

Dee Nesmith
6/20/05

Joyce Roberts
 (This must be one and the same person as named above)

6th grade, the summer, I just moved back with my mother. When my mom went to work, He called me into the room and told me to close the door. I was sitting beside him and even though I felt uncomfortable, I kept quiet. 2 days later I was told to ~~put~~ put my hand on his penis ~~and~~ and move it back and forth. I hated doing this. One morning he told me to wear a skirt being young, about 11 years old. I did it even though I didn't want to. He was so close to entering me that it was disgusting, but it NEVER happened. He use to touch inappropriately like my butt or my vagina. He would look at my breast and use to suck on my nipples. He said "they would grow." I hated that but I was too scared to say anything. My mother got a new job ~~schedule~~ schedule where she'd leave at 5:00 am and return 1:00 pm. Early in the mornings he would call me in the room. I'd often not come but he screamed or told me to come so I went.

Handwritten: *Handwritten*

INVESTIGATIVE OFFICER'S REPORT

475 Page #:

DATE vs. 0506335 SHANNON MCGEE
(Full Name of Arrested) (Alias)

INSE: 00-00-0000 - 0000 - TEMPORARY OFFENSE

DATE OF OFFENSE: _____

ADDRESS OF ACCUSED: / ANDREWS, SC 29510
(Street, City, etc.)

LOCATION OF OFFENSE: _____
(Street, Highway, Land, etc.)

ARRESTED: NO IF ARRESTED: _____
(Time, Date, Place)

ARRESTING OFFICER: _____

WARRANT: NO JAIL: NO BOND: NO
(If Yes, Where)

WITNESSMAN: _____
(Name and Address)

ATTORNEY FOR ACCUSED: _____
(If Known)

PHYSICAL EVIDENCE: _____
(Gun, Knife, Goods, Fingerprints, Blood, Footprints, etc.)

POSSESSION OF EVIDENCE: _____
(Who found / Where kept)

WERE TESTS MADE ON EVIDENCE: NO BY WHOM: _____

REPORT: _____

WITNESS: _____

Race: _____ Sex: _____ DOB: _____ Height: _____ Hair: _____ Eyes: _____
(Address, City, State, Zip)

SSN: _____ Phone: _____ Weight: 0

Officer: I1 Date Entered/Changed: 06/26/2005 Reviewer: _____ Review Date: / /

TAILED STATEMENT OF INVESTIGATION: ON THE DATE OF 06-25-2005, INVESTIGATOR LEE AND THE VICTIM ADVOCATE (MS JOYCE BERTS) ARRIVED AT THE CHILDREN RECOVERY CENTER; LOCATED AT 1801 LEGION STREET, IN MYRTLE BEACH. WHILE AT THE RECOVERY CENTER, CONTACT WAS MADE WITH MR. FITZGERALD SUMPTER, AND HIS JUVENILE DAUGHTER, ALONG WITH MS CATHY COONS, RECOVERY PROGRAM COORDINATOR. THE COMPLAINANT IN THIS MATTER, MR. SUMPTER HAD FILED A REPORT WITH THE ANDREWS POLICE DEPARTMENT, STATING THAT HIS JUVENILE DAUGHTER WAS ALLEGEDLY SEXUALLY ABUSED BY HER STEP FATHER (SHANNON MCGEE) MR. SUMPTER DAUGHTER HAD PROVIDED MS JOYCE ROBERTS WITH A WRITTEN STATEMENT OF THE BEHAVIOR OF SHANNON MCGEE TOWARDS HER, AND THE WRITTEN STATEMENT IS IN DETAIL. MS CATHY COONS HAD INTERVIEWED MR. SUMPTER DAUGHTER BY VIDEO TAPE, WHILE INTERVIEWED BY INVESTIGATOR LEE AND MS ROBERTS AND A CO-WORKER OF MS COONS. AFTER THE INTERVIEW WITH MR. SUMPTER DAUGHTER, MS COONS STATED THAT SHE HAD NO CONCERNS WITH MR. SUMPTER DAUGHTER INTERVIEW. ALSO WHILE AT THE RECOVERY CENTER, MR. SUMPTER STATED TO INVESTIGATOR LEE THAT HIS JUVENILE SON HAD STATED TO HIM (MR. SUMPTER) HAD STATED THAT HIS DAUGHTER MOTHER (MS TONYA RICKS MCGEE) HAD CAME INTO THE BEDROOM ONE NIGHT AND HAD STATED TO HER HUSBAND (SHANNON MCGEE) WHAT ARE YOU DOING) WHILE MR. SUMPTER DAUGHTER WAS IN THE BEDROOM WITH MR. SHANNON MCGEE. MS COONS STATED THAT AT SHE WILL PROVIDE INVESTIGATOR LEE WITH A WRITTEN REPORT, REGARDING HER INTERVIEW WITH FEMALE JUVENILE. INVESTIGATOR LEE WILL MAKE AN EFFORT TO LOCATE SHANNON MCGEE. ACCORDING TO THE VICTIM ADVOCATE MS ROBERTS, SHE AND OFFICER NESMITH HAD TRANSPORTED THE JUVENILE TO THE GEORGETOWN HOSPITAL, AND THAT THE JUVENILE WAS EXAMINED BY DR. AMMEL. THIS CASE IS ACTIVE.

During report

STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

Shannon D. McLean 101 E. 1st St. Lealt
DEFENDANT'S SIGNATURE AT TIME OF ARREST OFFICER

STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON
AT THE TIME OF MY ARREST.

X

Victim #1 Statement

It started when I was just getting out of 6th grade, the summer, I just moved back with my mother. When my mom went to work, He called me into the room and told me to close the door. I was sitting beside him and even though I felt uncomfortable, I kept quiet. 2 days later I was told to ~~put~~ put my hand on his penis ~~and~~ and move it back and forth. I hated doing this. One morning he told me to wear a skirt being young, about 11 years old I did it even though I didn't want to. He was so close to entering me that it was disgusting but it NEVER happened. He use to touch ^{me} inappropriately like my butt or my vagina. He would look at my breast and use to suck on my nipples. He said "they would grow." I hated that but I was too scared to say anything. My mother got a new job ~~for~~ schedule where she'd leave at 5:00 am and return 1:00 pm. Early in the morning he would call me in the room. I often not come but he screamed

Victim 2nd Statement 9/20/05

DATE June 20, 2005 TIME 11:30 ^{PM} M. PLACE APD
 Minor Child _____, am 13 years old and I live at _____

I am giving this statement to Joyce Roberts I.D. VI, who has identified
 myself as a victim's advocate

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I started around June or July Summer of 2003. My mom started going to work and when my mom went to work he called me into his room. I didn't feel comfortable but I stayed. He started to touch on me inappropriately on my butt and vagina area. He told me to my hand on his penis and move it back and forth until he ejaculated. He called me into their room again and almost entered his penis inside of me but it never happened. When my mother got a new work schedule, working from 5:00 am to 1:00 pm he started to call me in to his room early. He tell me to lay down and relax but I never did. He was even trying to kiss but I squirmed and told him to stop. When my mother was fired, he'd mess with me at night. He'd finger me even if I told him stop or pull it out he would continue. He sucked on my breasts and did foul things to me. Going to school with this on my mind affected school.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and con

Minor Child

The above warnings were given by and
 this voluntary statement was taken by

Orin Nesmith
 Witness

6/20/05

Joyce Roberts
 (This must be one and the same person as named above)

Children's Recovery Ctr.

6/25/05

G-Town Hospital

484

DATE: 08/01/05 @ 1029
USER: AHICKSGeorgetown Memorial Hospital
Patient Inquiry

PAGE 1

Account # G00005531876

Name

Minor Child

Unit # M000180563

Pt Status DEP ER

Soc Sec Num

Mar Status S

AA

Birthdate

Religion
AffiliationMaiden/Other
Mother's Name HICKS, TONYA

Patient Address

Patient's Employer

CHILD

(OTHER)

E-Mail

Use E-Mail

Alternate Address N

(Bus)

Occupation

Emp Status

Person to Notify

Next of Kin

HICKS, TONYA

Rel EMER

HICKS, TONYA

Rel EMER

ANDREWS, SC 29510

(Home) (843)264-2718

(Bus)

ANDREWS, SC 29510

(Home) (843)264-2718

(Bus)

Guarantor

Guarantor's Employer

HICKS, TONYA

Rel CHIL

UE

ANDREWS, SC 29510

(Home) (843)264-2718

SS #

(Bus)

E-Mail

Occupation

Emp Status

Use E-Mail

Insurance #1

Insurance MEDICAID SC

Street P O BOX 1458

Street

City COLUMBIA

State SC

Code 29202

Phone (803)731-8225

Subscriber

Relation SP

Policy Num 9223141402

Status VERIFIED on 05/21/05

Effect Date

Expire Date

Coverage #

Benefit Plan

Co/Org UNEMPLOYED

Co/Org #

Emp Status UE

Emp Name UE

Emp Loc'n

Deductible

Co-Pay

Authorization # Eff Date Exp Date Auth Status Verif Status/Date Units Ref Type Reqst Prov Diag Code

UB92 Conditions

1 05

UB92 Occurrences

06/20/05 2200

Admit Source EMR

Last Hosp

From

Through

Physicians

Financial Class MD

Pri:

Adm:

Att:

Fam:

Oth:

ER: GAMMJOSE GAMMEL, JOSEPH J MD

Location ED

Patient Arrived by PV

ER Departure Date 06/21/05 Time 0245

ER Departure Disp HOM

ER Departure Comment

VIP Patient N

Adm/Svc/Res Date 06/21/05
Adm/Svc/Res Time 0035
Adm/Reg Priority ER

Reason For Visit

SFI

Comment

Subpoenas

South Carolina General Sessions Court		COUNTY: Georgetown	
STATE OF SOUTH CAROLINA		CASE NO. 21169	
SHANNON DERONE MC GEE		SUBPOENA FOR ☐ PERSON ☐ DOCUMENT(S) or OBJECT(S)	
TO: Cathy Coons Childrens Recover Center 1801 Legion Street Myrtle Beach, S.C.			
☐ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.			
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06 - 9/22/06 9:30 a.m.	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):			
LIST DOCUMENT(S) or OBJECT(S): Tape of S. Hictor Darryl Washington (C) 602-0672			
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.			
CLERK OF COURT <i>Shirley P. Richey</i>		DATE 9/18/06	
(BY) DEPUTY CLERK			
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 604 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300	

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

Two hour notice
Axelrod's cell # 843-446-4357
C. Coons cell # 843-457-0361

09/18/2006 17:18 8439169311

AXELROD & ASSOCIATES

SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA		CASE NO. 21169
SHANNON DERONE MC-GEE		SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO: Annette Hicks Andrews, S.C.		
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06 - 9/22/06 9:30 a.m.
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):		
LIST DOCUMENT(S) or OBJECT(S):		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT <i>Mina C. R. O.</i>		DATE 9/18/06
(BY) DEPUTY CLERK		
This subpoena is issued upon application of me: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 604 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA		CASE NO. 21169
SHANNON DERONE MC GEE		SUBPOENA FOR ☐ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO: Willie Sparkman, Chief of Police 101 N. Morgan Avenue Andrews, S.C.		
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06 - 9/22/06 9:30 a.m.
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):		
LIST DOCUMENT(S) or OBJECT(S): (w) 264-5223 # 106 (c) 359-2094		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT <i>Alma G. R. [Signature]</i>		DATE 9/18/06
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 504 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

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09/18/2006 17:18

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AXELROD & ASSOCIATES

PAGE 05

SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA v. SHANNON DERONE MC GEE		CASE NO. 21169
		SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO: Mattie McGee		
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06_ 9/22/06 9:30 a.m.
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): LIST DOCUMENT(S) or OBJECT(S): 		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT <i>Anna P. R. O.</i>		DATE 9/18/06
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 504 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

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AXELROD & ASSOCIATES

PAGE 02

SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA		CASE NO. 21169
v. SHANNON DERONE MC GEE.		SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO: Darius Collins		
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06- 9/22/06 9:30 a.m.
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):		
LIST DOCUMENT(S) or OBJECT(S): (C) 325-3013 (H) 264-9237 @ 2:00 P.M.		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT <i>Alma W. R. C.</i>		DATE 9/18/06
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 504 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300

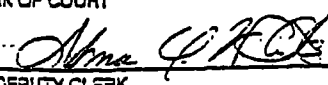
BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

South Carolina General Sessions Court		COUNTY: Georgetown	
STATE OF SOUTH CAROLINA		CASE NO. 21169	
SHANNON DERONE MC GEE.		SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) or OBJECT(S)	
TO: Diane Collins reet Andrews, S.C.			
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.			
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06- 9/22/06 9:30 a.m.	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): LIST DOCUMENT(S) or OBJECT(S):			
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.			
CLERK OF COURT <i>Anna C. R. [Signature]</i>		DATE 9/18/06	
(BY) DEPUTY CLERK			
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 504 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300	

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

Extra Subpoenas

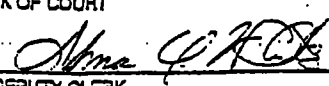
SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA		CASE NO. 21169
v. SHANNON DERONE-MC-GEE		SUBPOENA FOR ☐ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO:		
☐ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06 - 9/22/06 9:30 a.m.
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This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT 		DATE 9/18/06
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 604 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300

BLANK DOCUMENT SIGNED BY CLERK OF COURT AS PRESENTED BY ATTORNEY

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
Executed on _____ DATE		SIGNATURE OF SERVER _____ ADDRESS OF SERVER _____

SUBPOENA IN A CRIMINAL CASE

South Carolina General Sessions Court		COUNTY: Georgetown
STATE OF SOUTH CAROLINA v.		CASE NO. 21169
SHANNON-DERONE-MC-GEE		SUBPOENA FOR ☐ PERSON ☐ DOCUMENT(S) or OBJECT(S)
TO:		
☐ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE Georgetown County Courthouse Georgetown, South Carolina		COURTROOM General Sessions DATE AND TIME 9/19/06 - 9/22/06 9:30 a.m.
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CLERK OF COURT 		DATE 9/18/06
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the: ☐ Solicitor ☒ Defendant		ATTORNEY'S NAME AND ADDRESS Stuart M. Axelrod 604 16th Ave. N Myrtle Beach, S.C. 29577 Tel. (843) 91609300

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PROOF OF SERVICE	
SERVED	DATE
PLACE	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE
DECLARATION OF SERVER	
I certify that the foregoing information contained in the Proof of Service is true and correct.	
Executed on _____	SIGNATURE OF SERVER _____
DATE	ADDRESS OF SERVER _____

Last Contact w/wife 7/10/96

8-10-00 Roger Sillers plea

3:05pm James Norton about COURT in the
Am 7/11/00 # about COURT.

3:06pm Shannon McGee wife and daughter

Legal Put in for a dismissal

was granted and whether he

has to ~~come~~ next COURT → # 558-0391

also need to know if he needs dress clothes

Terrence Counts # Assault deadly wp

Attempt to Kill

also has a CO-Defendant #305-3819

3:05pm Joe Lewis was charges dropped

* 3:15pm Debbie Mark Graswhite

want Status of case, Sexual Harassment

(843) 455-5439 ~~William~~ Debbie

LF msg →

3:14pm Richard Corray: gave to Diana

3:30pm Corey Rutledge Status of

Motion of Discovery already had

preliminary hearing just want

Status of case

* 3:15 Julie Jenkins gave information

* 3:45 William Simmons - trial is wednesday
has some questions gave to Debbie

8-10-06 Roger Sillers ^{Pres.}

10-10-06

3:05pm James Norton about COURT in the
Am 7/11/06 # about COURT.

3:06pm Shannon McGee wife and daughter

Legal Put in for a dismissal

was granted and whether he

has to ~~come~~ next COURT → # 558-0391

also need to know if he needs also pictures

(Terrence Counts & Assault deadly w/

Attempt to Kill

also has a CO-Defendant #345-3579

3:05pm Joe Lewis has charges dropped

* 3:15pm Debbie Mark Chaswhite

want Status of case, Sexual Harassment

(45) 455-5439 ~~Debbie~~ Debbie

LF meg →

3:16pm Richard Corray: gave to Diana

3:30pm Corey Rutledge Status of

Motion of Discretionary currently need

preliminary hearing just want

Status of case.

* 3:15 Julie Jenkins gave information

* 3:45 William Simmons - trial is wednesday
has some questions gave to Debbie