

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

RODNEY ALEXANDER SIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000676

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY SIMMONS,

APPELLANT

INITIAL ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in performing its gatekeeping duties by failing to make the three preliminary findings fundamental to Rule 702 of the South Carolina Rules of Evidence before permitting the jury to consider expert testimony from Nancy Henderson, Wiley Garrett and Thomas Evans?
- II. Whether testimony from Wiley Garrett constituted improper corroboration and bolstering?

STATEMENT OF THE CASE

Rodney Alexander Simmons was indicted for criminal sexual conduct with a minor, second degree by the Spartanburg County Grand Jury on July 31, 2008. Simmons' case proceeded to trial before the Honorable J. Derham Cole, Jr., and a jury on November 29 through 30, 2010. Simmons was represented by Richard Welchel. The State was represented by Susan Shaver Reese and Jennifer Jordan.

Simmons was found guilty as charged, and sentenced to eighteen years imprisonment.

STATEMENT OF THE FACTS

Rodney Simmons knew Kimberly Brown for approximately thirty years. Tr. 189, ln. 4-16 Simmons was a carpenter and painter in North Carolina, and frequently helped Ms. Brown repair and maintain two of her houses in South Carolina: one in Cowpens, and another afterward in Spartanburg. Tr. 89, ln. 7-12.

On the countless times when Ms. Brown needed Simmons' help, she would contact him through Scott Tate, who was Ms. Brown's first cousin, and Simmons' friend. Ms. Brown would then arrange to take Simmons—and sometimes Tate as well—from North Carolina to her home, where he would stay until the work was completed; she would then take Simmons back to his abode in High Point, North Carolina usually a week to a week and a half later. Tr. 90, ln. 18—Tr. 91, ln. 3; Tr. 181, ln. 3—Tr. 182, ln 7.

When Simmons and Tate stayed at Brown's house in Cowpens, Simmons met Ms. Brown's children, including the complaining witness (Child). Ms. Brown never had any concerns regarding Simmons and the children. Tr. 90, ln., 8-11. In fact, when Simmons was asked to help fix Ms. Brown's house in Spartanburg, he also helped Ms. Brown with the children by looking after them when they all went to Six Flags amusement park, and by playing basketball with them as well. Tr. 180, ln. 1-11; Tr. 182, ln. 10-18.

Further, when Simmons worked at the Browns' house, it was not unusual for him to stay in the boys' room with the Child and a younger sibling. Tr. 74, ln. 24—Tr. 75, ln. 18. Simmons testified that he slept in the younger sibling's bed—not the Child's—because if not, the sibling would refuse to go to bed. Tr. 182, ln. 12-25.

Simmons stated that the last time he stayed at the Browns' house in Spartanburg was 2003 or 2004 when he painted their foyer and laid hardwood flooring in their kitchen. Tr.

184, ln. 11-21; Tr. 187, ln. 9-25. He later moved to Thomasville, North Carolina in 2004/2005, and became engaged. Simmons testified that in 2005, he remodeled the home of an older gentleman originally from Mississippi named Mr. Jackson. Simmons took the proceeds from that job, paid off outstanding balances to the North Carolina Department of Motor Vehicles, and obtained his commercial drivers' license to begin a new, better paying career in trucking. Tr. 184, ln. 18—Tr. 185, ln. 16.

Testimony of the Child differed regarding the summer of 2005. He indicated that both Simmons and Tate were at the Brown home in Spartanburg to paint the dining room, living room, and kitchen, and during that time Simmons sodomized him once in his bedroom during the day. Tr. 71, ln. 19—Tr. 72, ln. 3; Tr. 75, ln. 19-22; Tr. 78, ln. 5-10. Two years later, the Child disclosed his mother, Ms. Brown; the following day, she took him to the police, and then to the Children's Advocacy Center of Spartanburg (CAC). Tr. 79, ln. 4-12; Tr. 94, ln. 21-23; Tr. 96, ln. 13-21.

Although Ms. Brown indicated the Child exhibited troubling behavior between 2005 and 2007, such as scowling, bedwetting, and keeping knives, she also acknowledged he had disciplinary behavioral issues prior to 2005. Tr. 92, ln. 8—Tr. 94, ln. 5; Tr. 104, ln. 1-16. Further, Ms. Brown acknowledged that she thought the Child's behavior issues were due to her recent divorce from his father in 2006, and that he was a withdrawn child. Tr. 94, ln. 15-17; Tr. 99, ln. 24—Tr. 100, ln. 17.

The State also elicited testimony from Dr. Nancy N. Henderson, the pediatrician who examined the Child at CAC on June 8, 2007. Tr. 107, ln. 18-20; Tr. 111, ln. 15-18. Dr. Henderson physically examined the Child, and took a "history" from both the Child and his mother regarding the alleged incident. Tr. 11, ln. 19—Tr. 113, ln. 18. The physical

examination of the Child was normal: there was no physical indication of a sexual assault. Tr. 114, ln. 19-20. Dr. Henderson further testified not only to the time and place that the Child alleged the incident occurred based upon the "history" provided to her, but also that the Child's examination and her findings in that examination were "consistent with the report that he made to [her]." Tr. 112, ln. 1-12; Tr. 115, ln. 12-15.

Licensed social worker Wiley Garrett was the forensic interviewer at CAC that evaluated/assessed the Child. Garrett stated an assessment is "where, not only the child is interviewed, but also the non-offending caretaker . . . , it's an opportunity for that child to be able to say what they've seen, heard, and experienced." Tr. 144, ln. 15-21. Garrett was permitted to testify to the three main rules identified for these interviews, all of which militate toward ensuring the child is telling the truth. Tr. 145, ln. 5-13. He also testified to the time and place that the incident occurred based upon the Child's allegations to him.

Beyond the time and place of the alleged incident, Garrett further indicated that he looks at the child in general during a forensic interview in an effort to corroborate their stories:

"I'm not looking for any certain kind of behavior because we know that you can't look at anyone and tell if, just by looking to them if they've been traumatized. Many people are skilled at hiding that and, and don't want to show you how they feel, but we are looking for instance, how they felt about that person before and how they were before the event that they're telling us about and what their life has been like after the event, and we're also looking for, again, what corroborating information from the parents with the non-attending caregiver as well."

Tr. 149, ln. 12-23. Part of this quest for verification is to look for specific "sensory cues" when a child is disclosing information about an alleged incident. Here, Garrett was allowed to verify that the Child exhibited "sensory cues" about the incident; specifically, Garrett

stated, “[The Child] talked about things he heard. He talked about a number of things he smelled. He talked about things he saw. He talked about things he felt inside his body as well.” Tr. 150, ln. 5-14. Garrett also stated that, based on the behavior and information from the Child and his family, the Child’s disclosure was consistent with someone who was sexually traumatized. Tr. 154, ln 20—Tr. 155, ln. 2. However, Garrett finally admitted on cross-examination that he did not have anything to which he could testify for the jury independent of what the Child said to him. Tr. 155, ln. 18-21.

The Child’s therapist, Thomas Bomar Evans, Jr., also testified on behalf of the State. He saw the Child from August 15, 2007 through April 30, 2008. Tr. 161, ln. 13-16. In addition to corroborating where and when the alleged incident occurred, he also testified that the “feelings, thoughts, [and] assessments were all consistent with a child or trauma symptoms of a child who has been sexually abused[.]” Tr. 163, ln. 21-25.

Finally, the State also called Harold London, a federal inmate who spent one to two months in the same high-security pod¹ as Simmons at the Spartanburg County Detention Center during 2010. Tr. 124, ln. 4-15. London alleged that Simmons came across the prison pod on some unknown day at an unknown time to London’s cell, and confessed through the door to London—a complete stranger—that he sodomized a child. Tr. 127, ln. 24—128, ln. 13.

Simmons emphatically denied the allegations at trial. Tr. 188, ln. 12-17. The jury found Simmons guilty as charged, and he was sentenced to eighteen years. Tr. 249, ln. 22—Tr. 250, ln. 2; Tr. 253, ln. 15-20. This appeal follows.

¹ London testified that Pod Five contained solitary confinement cells, and the inmates were permitted to leave their cells for only one hour per day. Tr. 124, ln. 13—Tr. 125, ln. 10.

ARGUMENT

I. The trial court erred in performing its gatekeeping duties by failing to make the three preliminary findings fundamental to Rule 702 of the South Carolina Rules of Evidence before permitting the jury to consider expert testimony from Nancy Henderson, Wiley Garrett and Thomas Evans.

As stated by the South Carolina Supreme Court, “expert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony.” Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (emphasis added).² “First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.” Id. (emphasis added): Second, “the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” Id. Third, “the trial court must evaluate the substance of the testimony and determine whether it is reliable.” Id.

“[O]nly after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it seems appropriate.” Id. In short, if the three requirements are not met, then the expert testimony is not admissible. Id.

² Rule 702, SCRE provides as follows: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

In the present case, the trial court never conducted the three pronged inquiry mandated by the Supreme Court before it qualified Henderson, Garrett, and Evans as experts. Although the State presented testimony as to the requirement of the experts' qualifications,³ nothing was presented regarding the first requirement for any of the three experts, and only Garrett proffered any testimony as to the reliability requirement of his methods; there was no evidence proffered or findings by the trial court—prior to allowing the jury to consider the experts' testimonies—indicating the testimony from any of the three experts was “necessary to assist the jury in resolving a factual question,” or even, with the exception of Garrett, whether it was reliable. *Id.* (emphasis added). Therefore, under these circumstances, the trial court should not have permitted the jury to consider the expert testimony of Henderson, Garrett, or Evans in Simmons' trial. *Id.* 389 S.C. at 456, 699 S.E.2d at 180 (“If these preliminary requirements are not met, as a matter of law, the trial court may not permit the jury to consider the evidence.”).

Had the trial court properly performed its gatekeeping duties, it would have learned that expert testimony was not necessary for the jury to decide the primary issue upon which each testified: whether the Child was sexually abused. For example, although Dr. Henderson opined that the Child's examination and her findings in that examination were consistent with the report of sexual abuse he made to her, she also admitted on cross examination that she had nothing to which she could testify before the jury indicating a sexual assault other than the “history” provided to her by the Child and his mother. Tr. 116, ln. 11-25.

³ Tr. 107, ln. 19—Tr. 110, ln. 10; Tr. 141, ln. 9—Tr. 144, ln. 2.

Garrett's testimony suffers the same fundamental defect. While he opined that the Child's disclosure was consistent with someone who has been sexually assaulted, he also admitted on cross examination that he had nothing to which he could testify before the jury independent of what the Child told him. Tr. 155, 11-21. Likewise, Evans also indicated on direct examination that his opinion that the Child was sexually abused was based on his interaction with the Child. Tr. 163, ln. 21-25.

Thus, all three expert opinions merely served as echo chambers for evidence that the jury already knew: that the Child and his mother alleged that the Child was sexually assaulted. The jury already heard this basic evidence from the Child and his mother when they testified. Tr. 77, ln. 12—Tr. 79, ln. 5; Tr. 94, ln. 21—Tr. 96, ln. 12. As such, there was no necessity for an expert to assist the jury on this matter. Watson, 389 S.C. at 446, 699 S.E.2d at 175.

Further, Simmons was prejudiced by this error. Each expert gave an opinion that the Child's disclosure was consistent with sexual assault. Tr. 115, ln. 12-16; Tr. 154, ln. 20—Tr. 155, ln. 2; Tr. 163, ln. 21-25. This is unsurprising, since, as discussed above, the primary basis for their respective opinions was the disclosure made by the Child and history given by his mother, rather than through independent findings.

Moreover, as elucidated by the State in closing argument, the question in this case "is one of credibility." Tr. 214, ln. 5. Here, the likely effect of the impermissible expert testimony on the jury was improper corroboration and bolstering of the Child's allegations. In a case where credibility is key, "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. Accordingly, admission of the evidence mandates reversal of the conviction." State v. Barrett, 299 S.C. 485, 487, 386 S.E.2d 242,

243 (1989) (reversing conviction for criminal sexual conduct of eleven year old victim due to improper corroboration).

II. The testimony of Wiley Garrett constituted improper corroboration and bolstering.

Testimony from Wiley Garrett corroborated more of the complaining witness's statement than merely the time and place of the incident alleged. As such, it constituted improper corroboration. Additionally, Garrett's testimony amounted to improper bolstering as it served to authenticate the veracity of the Child's allegations. Admission of these statements prejudiced Simmons because they bolstered the credibility of the complaining witness' testimony in a case wherein the primary issue was "one of credibility." Tr. 214, ln. 5. Thus, Simmons' conviction should be reversed.

Corroborative testimony is limited in criminal sexual conduct (CSC) cases to the time and place of the alleged assault. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 632 (2010) (interpreting and applying Rule 801(d)(1), SCRE). "The corroborative testimony cannot include 'details or particulars' regarding the assault." Id.

In the case at bar, testimony elicited by the State from forensic interviewer Garrett exceeded the limits placed upon corroborative testimony in CSC cases. Specifically, the State went beyond asking Garrett where and when the Child told him the incident occurred, and inquired whether the Child gave any "sensory cues in his disclosure." Tr. 148, ln. 4-12; Tr. 150, ln. 9-10. Garrett responded that the Child did indeed talk about "sensory cues" from the incident: "He did talk about things he heard. He talked about a number of things he smelled. He talked about things he saw. He talked about things he felt in his body as well." Tr. 150, ln. 11-14. Discussion of these "sensory cues" experienced by the Child during the alleged assault are beyond the scope of the time and place limitations imposed by law. Accordingly, it constitutes inadmissible corroborative hearsay testimony. Id. (granting

PCR relief from second degree CSC with a minor conviction due to improper corroborative hearsay and bolstering testimony of a forensic interviewer).

Furthermore, the State elicited testimony from Garrett bolstering the veracity of statements made to him by the Child. For example, when describing forensic evaluation assessments, Garrett indicated the three rules children must follow, all of which center around telling the truth. Tr. 145, ln. 5-13. He also testified that he asks “questions related to truth and lie to ascertain if they know the difference between truth and lie.” Tr. 146, ln. 10-11. When asked by the State, “what kinds of things do you look for as you’re evaluating a child in determining his disclosure,” Garrett indicated that he looks at the child’s life in general before and after the alleged event to determine whether he or she is attempting to hide prior traumatization. Tr. 149, ln. 8-23.

In short, the State elicited testimony from Garrett suggesting his methods empower him to act as a human lie detector in relation to statements made to him by children alleging sexual abuse. This understanding was tacitly verified by the State’s questioning on redirect examination of Garrett:

Q Have there been times when you have made a finding, after interviewing a child, that the child’s disclosure was not consistent or it was unclear and you could not say the child’s behavior was consistent with sexual abuse”

A Oh, yes, many many times.

Q And those cases never came to court?

A That is correct.

Tr. 156, ln. 14-20. Therefore, Garrett's opinion testimony that the Child was sexually assaulted served to improperly bolster the Child's credibility in a case where credibility of the Child was the main issue. See, e.g., id. 386 S.C. at 569, 689 S.E.2d at 633.

Simmons was prejudiced by Garrett's improper corroborating hearsay and bolstering. The jury heard the impermissible statements not only when Garrett testified, but also when the State specifically referenced Garrett's testimony in its closing argument in an effort to strengthen the veracity of the Child's allegation. Tr. 226, ln. 1-17. Although cumulative to the Child's testimony, "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. Accordingly, admission of the evidence mandates reversal of the conviction." Barrett, 299 S.C. at 487, 386 S.E.2d at 243.

CONCLUSION

For the foregoing reasons, Rodney Simmons respectfully requests reversal of his conviction, and remand of his case for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY SIMMONS,

APPELLANT

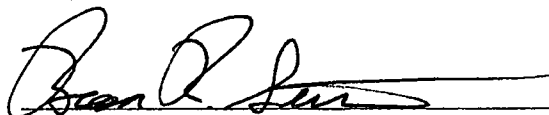
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Trial transcript, p. 1-255.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 7th, 2011



Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY SIMMONS,

APPELLANT

CERTIFICATE OF SERVICE

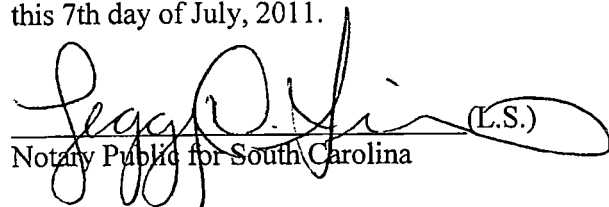
The undersigned attorney hereby certifies that a true copy of the Initial Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and on Rodney Simmons, #343814 at Lee Correctional Institution, this 7th day of July, 2011.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017 .

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY SIMMONS,

APPELLANT

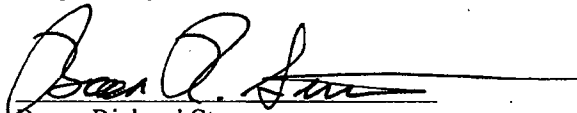
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rodney Simmons states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on November 30, 2010, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issues which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Rodney Simmons.

Respectfully submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2011.

1 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SPARTANBURG)
 3
 Rodney Alexander Simmons,)
 4 Applicant,) TRANSCRIPT OF RECORD
 5 -vs-) 2012-CP-42-0106
)
 6 The State,)
)
 7 Respondent.) June 26, 2013
) Spartanburg, South Carolina

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9
10

11 B E F O R E:
 12 HONORABLE R. LAWTON MCINTOSH, JUDGE

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14

15 A P P E A R A N C E S:
 16 MARK ALAN NOWELL, ESQUIRE
 Attorney for the Applicant
 17
 SUZANNE H. WHITE, ESQUIRE
 18 Attorney for the Respondent

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23 Margaret A. Woods
 Circuit Court Reporter

24
25

1 MS. WHITE: Thank you, Your Honor. This is, uh, in the
2 matter of Rodney Simmons vs. the State, it's Case Number
3 2012-CP-42-0106, represented today by Mr. Mark Now -- Nowell
4 or Nowell?

5 MR. NOWELL: Nowell.

6 MS. WHITE: Nowell and, uh, I've been informed that he
7 has a motion before the Court so I'm gonna turn it over to him
8 at this time.

9 THE COURT: How do you spell your last name?

10 MR. NOWELL: N-O-W-E-L-L. Thank Your Honor. Uh, I had a
11 chance to speak with Mr. Simmons this mornin' here in the
12 jail, uh, we spoke about my investigation a this case, he felt
13 it was deficient and he asked that I bring this to the Court's
14 attention, that he would like to relieve me as counsel and,
15 uh, that bein' the case I'll have him stand and articulate his
16 reasons.

17 THE COURT: Alright, Mr. Simmons, would you raise your
18 right hand.

19 RODNEY ALEXANDER SIMMONS, having
20 been first duly sworn, testified as follows:

21 EXAMINATION BY THE COURT:

22 Q. Okay, now tell me the basis why you want Mr. Nowell
23 Nowell to be, uh, relieved as your attorney.

24 A. Your Honor, in this, in my case, uh, even at trial,
25 durin' my trial case, uh, it's it's expert witnesses dealin'

1 with this case right here and I need rebuttal witnesses in
2 here to prove my allegations that I have against Mr. Whelchel,
3 without any rebuttal witnesses I can't prove my allegations.
4 I'm tryin' to, uh, I'm tryin' to prove ineffective assistance
5 of counsel as far as Mr. Whelchel confrontin' the expert
6 witnesses. Under Rule 701(c) it's impossible for him to
7 confront expert witnesses, uh, questions that he cannot
8 answer, he's just a layman when it comes to them and I need
9 expert testimony on my behalf in order to prove my
10 allegations, Your Honor.

11 Q. What type a expert testimony do you think you need?

12 A. I need, sir, I need a, I need a pathologist, I need a
13 psy -- and I need a psychologist and I a -- also, I need a
14 therapist ---

15 Q. You need ---

16 A. --- 'cause I ---

17 Q. --- what?

18 A. I have -- I I need a pathologist, I need a a, well she
19 was a pediatrician, she was the the anal doctor. Uh, I need,
20 a a ---

21 Q. Was it a criminal sexual conduct case?

22 A. Yes, sir, it is, sir. Yes, sir, it is.

23 Q. Okay.

24 A. Uh, ---

25 Q. Well well ---

1 A. --- I have, I have, Your Honor, I have and I I don't, I'm
2 no -- I don't, I don't, I I know I I I'm not ready to present
3 this yet but I have burden a proof beyond reasonable doubt
4 that the experts in this matter they committed perjury on that
5 stand and I need rebu -- I need rebuttal witnesses to confirm
6 that.

7 Q. So what does that have to do with you releavin' this
8 counsel? You you -- he ---

9 A. Well I've I've ---

10 Q. Just one second, just -- no, just one second, let me
11 finish my question, sir.

12 A. Yes, sir.

13 Q. Uh, Mr. Nowell said that he met with you this mornin' ---

14 A. Yes, sir.

15 Q. --- and you told him that he felt like he had properly
16 in -- investigated this matter, ---

17 A. Yes, he ---

18 Q. --- do do you agree with that statement?

19 A. No, sir, I don't. Mr. Mr. ---

20 Q. What regard do you disagree?

21 A. He has, uh, the c -- the the the statement that he has he
22 comes up with somethin' about he wanted to, uh, uh, bring a
23 argument in sayin' that Mr. Whelchel didn't ---

24 Q. Don't tell me what your attorney told you, alright, I'm
25 just askin' you what deficiencies do you say that ---

1 A. Well he didn't -- he he hasn't -- I've 1 -- I've I've I
2 addressed, I addressed the firm with a letter oh, it's been
3 eight to nine months ago I addressed him with a letter lettin'
4 him know who I needed in the courtroom, who I wanted in the
5 courtroom at the time to support my allegations and just as my
6 trial I see no one's here. It's the same, it's the same
7 pattern, hasn't changed. I I I confronted them with it, if I
8 have a letter here, Your Honor, if I can, if I can get it that
9 I had, uh, addressed them with statin' who I wanted in the
10 courtroom at at this time and, uh, they never responded to me.
11 It was ---

12 Q. Has he met with you?

13 A. No, that -- I -- this is my first time ever seein' this
14 man, I don't even know who he is. He just told me who he was
15 so I have to assume that he is who he is as this is my first
16 time seein' him and they'd been on my case for seventeen
17 months.

18 Q. Have you not met with him yet?

19 MR. NOWELL: Your Honor, uh, I was not appointed on this
20 case, my law partner was. I stepped in about three weeks ago
21 on this matter so I have not met with him, no.

22 THE COURT: How 'bout, how 'bout your ---

23 MR. NOWELL: I I I ---

24 THE COURT: --- partner, has he met with him?

25 MR. NOWELL: --- I couldn't -- I I don't know, Your

1 Honor.

2 THE COURT: Alright, I tell you what I'm gonna do, uh,
3 I'm gonna continue the case, I'm gonna deny your motion to
4 relieve this firm but I'm gonna direct that ya'll meet with
5 him, whoever's gonna handle the case.

6 MR. NOWELL: Yes, Your Honor.

7 THE COURT: Specifically look at his request for experts
8 or these other witnesses so that the case can get prepared,
9 ready to go, okay?

10 MR. NOWELL: Certainly.

11 THE COURT: Alright.

12 MR. NOWELL: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 THE DEFENDANT: Your Honor, thank you.

15 THE COURT: Yes, sir.

16 MS. WHITE: Thank Your Honor.

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CERTIFICATE OF REPORTER

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I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 26, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 6, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

October 22, 2014

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.