

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

RICHARD RATLIFF,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001868

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON
 FILE WITH THIS COURT:
 STATE'S EXHIBIT NOS. 5, 7, 8, 9, 12, 13,
 16, 17 (ALL PHOTOGRAPHS)**

ED PRESTIGIACOMO -- CROSS -- MR. WILLIAMS

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1 A Yes.

2 MR. STUMBO: That's all the questions I have
3 your Honor.

4 THE COURT: Thank you, Solicitor. How long
5 are you going to be, Mr. Williams?

6 MR. WILLIAMS: Brief.

7 THE COURT: You may proceed.

8 CROSS EXAMINATION

9 BY MR. WILLIAMS:

10 Q It's my understanding that these items which you
11 found in the car were all -- you gathered all of
12 these items as a result of the consent of my
13 client?

14 A Yes, sir.

15 Q Now, let me take you back to the statements which
16 you referred to, the first statement. This is
17 referred to as State's Exhibit Number 32.

18 A Yes, sir.

19 Q I believe you said that that was your handwriting
20 on State's Exhibit 32?

21 A Yes, it is.

22 Q And that's the blue ink which we see?

23 A Yes.

24 Q And that's where you wrote the statement would be
25 continued?

1 A Yes.

2 Q Now, who wrote the statement underneath that in
3 blue ink?

4 A That was another issue that we had. This
5 statement, ^{Minor 3} we were going to continue
6 with this statement. She wrote her first sentence.
7 We decided to go to a new sheet to do a
8 question/answer type of statement. That's when I
9 lined out the first one and the first sentence of
10 her beginning of the statement.

11 Q But now --

12 A And I initialed it.

13 Q You signed above any signature by ^{Minor 3} --
14 would you step down here, please, sir.

15 A (Witness leaves the witness stand).

16 Q You signed at the very next line after ^{Minor 2}
17 statement. You signed, this is your
18 statement, Continuation of statement with
19 Detectives Beaver and Prestigiacomo. You signed
20 that, correct?

21 A Yes, I did. That is my handwriting, correct.

22 Q And at that point in time, you are going to go to a
23 different piece of paper; right? Isn't that what
24 you said?

25 A Yes.

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1 Q Yet below that you have the signature of one of the
2 other alleged victims; is that correct?

3 A That is correct. That is correct.

4 Q Thank you.

5 A (Witness resumes the witness stand).

6 Q And for her to have signed that, she would have had
7 to have been in the same room as ^{Minor 2} ;
8 correct?

9 A This was done separately when we first had ^{Minor 3}
10 separate from the other witnesses. She began her
11 statement and we were going to continue with one
12 continuous statement form. We decided against -- I
13 decided against it.

14 I lined out the one line, her first line, I
15 initialed it, and I continued with a new statement
16 form to do a question/answer type thing because we
17 needed to get done quickly because of the exigent
18 circumstances we were facing, to get done quickly.

19 Q Let's talk about those question and answer
20 statements that you did. Referring to State's
21 Exhibit Number 29, is that your quick question and
22 answer way to get a statement from ^{Minor 2}

23

24 A Yes, sir, it is.

25 Q Would you kind of just read out the questions.

1 A Okay.

2 Q Just the questions.

3 A Okay. Did Richard touch your privates a week ago?

4 Yes, with his hand.

5 Q Just the questions.

6 A Okay. What did Richard do with his finger? What

7 went inside your vagina? Did it hurt? Who went

8 inside of your butt and anus? Did it hurt? Did

9 anything else happen? Did his tongue touch your

10 vagina? Did he do anything else? Did you fight

11 him?

12 Q Officer --

13 A Was he drinking? Where did this happen? What

14 happened the next day? Where did this happen?

15 Q That's good enough.

16 A Okay.

17 Q Officer, do you understand about leading questions,

18 questions that would suggests an answer?

19 A I understand.

20 Q You would agree that this statement which you took

21 was based on giving leading questions to the person

22 who was giving the answers so that you could secure

23 the answer that you wanted?

24 A It is purposefully done on my part when -- may I

25 answer?

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1 Q I haven't stopped you.

2 A If I get a verbal statement from a victim and they
3 indicate there are specific events that take place,
4 particularly penetration, which would have allowed
5 us to get this warrant immediately, which does not
6 have to be corroborated by State law, I geared the
7 questions specifically.

8 That's what was done in this particular case.
9 It's not always done that way, but with these type
10 of cases it's very efficient to get what I need to
11 get done on this night.

12 Q And is it your testimony that the material which is
13 included in your question and answer statement to
14 be the same information which is included in the
15 statement signed by ^{Minor 2} ?

16 A Yes, purposefully done once again. My intention on
17 this night was to secure a warrant for Mr. Ratliff,
18 and I wanted to hear it for myself about the
19 penetration incidents so I can go swear a warrant
20 in front of a judge legally.

21 Q And, again, this statement, which is State's
22 Exhibit Number 32, was the exhibit in which another
23 victim had signed off on and was beginning her
24 statement?

25 A That's correct.

1 Q And who was in the room when your question and
2 answer procedure was going on?

3 A Detective Roger Beaver.

4 Q And he is no longer with the police force?

5 A Correct.

6 Q And you did not record this in any way in terms of
7 a tape recorder or anything like that?

8 A No, sir.

9 Q And is there some other reason why you simply could
10 not have had her write a full statement which would
11 incorporate the facts which you were trying to
12 elicit?

13 A I decided to do it this way and that's how I did
14 it.

15 Q Because that helped you get the answers you needed?

16 A It helped me to corroborate and hear the incidents
17 of penetration that she had referenced in her
18 earlier statement that me and Detective Beaver
19 needed to hear the details so we could swear out
20 the three warrants that we were able to get on that
21 night with probable cause.

22 Q Who was in the room with you and her?

23 A Detective Roger Beaver.

24 Q And who else? Who else?

25 A Halfway through the statement she wanted her

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1 mother, and she came into the room as well.

2 Q So her mother wasn't in there for the first half?

3 A I think part of it, no, but then she got upset, and
4 I wanted to know if she wanted her mother. She
5 said yes and we went and got her, and she came into
6 the room.

7 Q Did you have her mother sign the statement
8 verifying that she was a witness?

9 A No, sir.

10 Q But you would agree on the first statement that was
11 given, the mother signed the statement?

12 A According to what Detective Davis testified to and
13 what I saw, yes.

14 Q Was there some reason why you did not record these
15 statements in -- well, go ahead and answer if you
16 know.

17 A I didn't say anything.

18 Q Was there some reason --

19 THE COURT: I wish we would get back to
20 question and answer, please.

21 BY MR. WILLIAMS:

22 Q Is there some reason why you did not record the
23 statement procedure on a tape recorder?

24 A I chose not to do that.

25 Q Why is that?

1 A Sometimes it makes people uncomfortable. I respect
2 their -- respect them enough to let them know when
3 I am recording. With very sensitive information,
4 particularly with a child rape, I think and I have
5 found in the past it makes them uncomfortable.
6 That's not what I wanted to do at that point in
7 time is upset them worse than what was going on.

8 Q And the reason you sent -- you only sent one child
9 to the A.R.C., didn't you?

10 A Myself and Detective Beaver ordered those. The
11 best I can recall ^{Minor 2} went to the A.R.C. I
12 don't recall the other two going.

13 Q So you only sent one alleged victim to the A.R.C.?

14 A Correct.

15 Q Even though you considered the other two
16 individuals as being victims in some sort of crime?

17 A Yes.

18 Q What is the purpose of A.R.C.?

19 A To obtain information through a professional
20 interview and medically examine -- have them
21 medically examined as far as for sexual trauma.

22 Q And why is it that you only sent one child to
23 A.R.C.?

24 A I don't recall the reasoning. I think it was the
25 severity of what ^{Minor 2} went through, being

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1 penetrated on both areas of her body, and the mere
2 fact that we suspected a lot more happened, which I
3 couldn't prove, was the reason why that was done.

4 Q So you didn't think that there was any type of
5 trauma that the other two might have suffered?

6 A That decision was made by myself and Detective
7 Beaver at the time, and that's how we did it. They
8 were not sent.

9 MR. WILLIAMS: That's all the questions I
10 have, Your Honor.

11 THE COURT: Redirect, Solicitor?

12 MR. STUMBO: Just a couple questions, Your
13 Honor.

14 REDIRECT EXAMINATION

15 BY MR. STUMBO:

16 Q Detective Prestigiacomo, is this the first time you
17 have ever done a question and answer format in a
18 witness statement?

19 A No, absolutely not.

20 Q You do that a lot?

21 A Yes, I do.

22 Q And is it your experience that in a question and
23 answer format, the question asked typically is
24 built on the answer just previously given?

25 A A lot of times it based on the answer I know I am

1 going to get already, which I was already verbally
2 advised. It tightens it up in a nice package for
3 me to deal with warrants and having direct
4 information.

5 Q Did you ever suggest to ^{Minor 2} the answers she
6 should give to you for those questions?

7 A Absolutely not.

8 Q Were those her words?

9 A Yes, sir.

10 MR. STUMBO: No further questions, Your Honor.

11 MR. WILLIAMS: No questions on recross.

12 THE COURT: Thank you. Thank you very much,
13 Detective. You may step down.

14 THE WITNESS: Thank you.

15 (Witness leaves the witness stand).

16 THE COURT: Perhaps it would be a good time
17 for us to take our evening recess. I appreciate y'all's
18 patience and willingness to work late this evening.

19 I would remind you during the evening recess,
20 you are not to discuss this case with anyone. That
21 includes your fellow jurors, your family members, your
22 friends or anyone else.

23 If anyone tries to talk with you about the
24 case, please let me know. Remember to keep an open mind
25 and do not begin your deliberations until you are

1 directed to do so.

2 I would ask you to please be back in your jury
3 room at 9:30 in the morning. Please be back promptly at
4 9:30. We will start as quickly as we can thereafter. I
5 hope you have a pleasant evening, and leave your notes
6 on the chair. Thank you very much.

7 (The jury is excused for the day at 6:13 p.m.)

8 THE COURT: Anything further from the State?

9 MR. STUMBO: Nothing tonight, Your Honor.

10 THE COURT: Defense?

11 MR. WILLIAMS: Nothing other, Your Honor, from
12 the defense for the record. I would request a
13 conference with the judge and with the solicitor.

14 THE COURT: All right. We can do that. Thank
15 you very much. Court will be in recess until 9:30 in
16 the morning.

17 (Whereupon the proceeding were concluded for
18 February 25, 2009).

19 (The following proceeding were reported on
20 February 26, 2009).

21 THE COURT: Anything before we bring in our
22 jury, Solicitor?

23 MR. STUMBO: Yes, Your Honor. As we discussed
24 in chambers -- and I don't know if we want to take this
25 up now or after our case, but I will mention it now. We

1 would make a motion to amend the indictment, the lewd
2 act indictment, 2888, that we discussed yesterday.

3 The authority for that, Your Honor, I found a
4 1939 murder case, State versus McGill, 191 S.C. 1. I
5 found that case this morning. Your Honor, this was a
6 murder case.

7 In that case the State moved to amend the name
8 of the victim of the homicide. It was allowed by the
9 trial court and appears to have been affirmed by the
10 Supreme Court under the case law and the statutes at
11 that time.

12 Your Honor, I just found this case. Obviously
13 the statutes and codes have changed. I haven't had time
14 to refer the old statute about amending indictments to
15 the new statute, but I do have State versus McGill, as
16 well as State versus Gentry, which notes that the
17 sufficiency of an indictment goes to notice to the
18 Defendant and is not a jurisdictional issue.

19 So under State v. Gentry, State v. McGill, we
20 would ask the Court to amend Indictment 2007-GS-32-2888
21 to refer only to Minor 3 There were two names in
22 the indictment, Minor 1 and Minor 3

23 The evidence that has been presented to the
24 Court is that on July 9 this act in the car on the trip
25 to Wal-Mart that is referenced both as to Minor 2

1 which is indictment 2887, Minor 3 was also in the
2 car, 2888.

3 On that date Minor 1 was not in the
4 vehicle, and it was an oversight on our part having her
5 name in there first. It should have referred twice to
6 Minor 3 instead of Minor 1 and Minor 3
7 So we move to have it amended, the reference to Minor 1
8 Minor 1 in that indictment, to read Minor 3 instead
9 of Minor 1

10 THE COURT: Mr. Williams?

11 MR. WILLIAMS: Your Honor, as we discussed
12 earlier, I certainly understand what the Court's
13 position on this is. We would object for the record in
14 regard to the amendment because if it is a notice
15 provision, then the Defendant would not be in a position
16 to know exactly which one he would have to worry about
17 having been in the car with.

18 As an aside, Your Honor, even though I
19 understand the Court's ruling that the Court is getting
20 ready to put on the record, it's my understanding though
21 that I would still be able to reference, at least to the
22 jury, what the original indictment said because it was
23 read to the jury earlier for whatever purpose that is.

24 THE COURT: What about that, Solicitor?

25 MR. STUMBO: Your Honor, I believe as to -- it

1 may confuse the jury if we start talking about what it
2 said before and what it says after the amendment. I
3 understand it has already been read to them. I don't
4 believe the indictment is going back into the jury room
5 with them anyway.

6 I think it needs to be what we corrected it to
7 to make it more accurate as to the evidence put on the
8 stand that has been put before them the last few days.
9 I believe if Mr. Williams is allowed to go in and talk
10 about, Well, there's two names in this indictment. How
11 do we know which one it is, when we have already
12 corrected that, that will be an issue that will confuse
13 them.

14 THE COURT: Mr. Williams.

15 MR. WILLIAMS: Unless Your Honor instructs
16 the jury that there was an error made on behalf of the
17 Solicitor's Office and they incorrectly had two
18 defendants --

19 THE COURT: Two victims.

20 MR. WILLIAMS: Two victims in the indictment,
21 and he has made a motion to amend, and as a result of
22 the amendment, I have allowed him to change the
23 indictment to be this one person. Because, you see,
24 they have heard this. So either I get to explain it in
25 closing or Your Honor should instruct them.

1 THE COURT: It's not a jury issue. My problem
2 with it, as I think through it sitting up here now,
3 Mr. Williams, is that I charge the jury that the
4 indictments are not evidence.

5 They are mere allegations and they are no
6 evidence whatsoever of the allegations contained
7 therein. So whether it says ^{Minor 1} or ^{Minor 3}
8 [REDACTED], they are not an item of evidence for them to
9 consider one way or the other.

10 MR. WILLIAMS: Could you not just tell the
11 jury that?

12 THE COURT: It's not their decision. What if
13 I were -- A., I'm commenting on a judicial decision on
14 something that is not an item of evidence before the
15 jury.

16 It seems like -- it would be like I would be
17 instructing them, for example and by way of analogy,
18 what my thought processes may be of why I let a
19 statement in of the Defendant.

20 That's not for the jury's consideration,
21 particularly given the fact that I charge them, going
22 back to the indictments, indictments are not evidence.
23 They are a formal notice document. They are not
24 evidence of any of the allegations contained therein.
25 The fact he has been indicted, arrested, charged is no

1 way evidence in this case.

2 I only read those out -- and, of course, when
3 I read them out, I tell them that also. I read them out
4 so that we will be able to qualify the jury in case it
5 brings to mind something they may or may not know or may
6 know about the case.

7 I think you cannot comment on an item that is
8 not in evidence. You can argue obviously facts in
9 evidence and reasonable inferences therefrom. For
10 example -- and I don't need to tell you how to do
11 closing arguments, Mr. Williams, I don't know how to do
12 them.

13 But State's Exhibit Number 32 with the writing
14 on it, you know how you can comment on that and the
15 facts therefrom and the reasonable inferences to be
16 drawn.

17 I don't think you can comment on it. If I
18 allowed you to do that, then what would be the
19 prohibition if you wanted to, for example, to argue,
20 Well, the solicitor didn't type his indictments real
21 well because he even got the statute wrong on the other
22 three indictments. It's a slippery slope that we go
23 down quickly. I will deny that.

24 MR. WILLIAMS: All right.

25 MR. STUMBO: Thank you, Judge.

1 THE COURT: I am going to amend 07-GS-32-2888,
2 the next to the last line of that where it says the two
3 words, Minor 3 shall be amended to read --

4 MR. STUMBO: Your Honor, actually we want it
5 further up in the indictment. Minor 1 needs to be
6 changed to Minor 3 So that would be the motion,
7 not vice-versa.

8 THE COURT: I guess I misunderstood your
9 motion. I am amending the indictment for when the word
10 or name Minor 1 appears to read Minor 3 and I
11 am placing my initials there.

12 The indictment now reads that Richard David
13 Ratliff did in Lexington County, South Carolina, on or
14 about July 10 of '07, being a person over the age of 14,
15 willfully and lewdly commit or attempt a lewd or
16 lascivious act upon or with the body or its parts of a
17 child under the age of 16 years, to wit, Minor 3
18 initialed R.K.M., with the intent of arousing, appealing
19 to or gratifying the lust or passions or sexual desires
20 of the person or of the child, to wit, the Defendant did
21 rub the breasts and vagina of Minor 3 age 13, in
22 violation of 16-15-140 of the Code of Laws of South
23 Carolina. I think that complies with Section 17-19-20
24 of the South Carolina Code of Laws.

25 Also, there was no motion under 17-19-90 prior

1 to the swearing of the jury. Also, 17-19-100 gives the
2 Court the authority to amend an indictment if there is a
3 variance between the allegations in the indictment and
4 the evidence offered and the proof.

5 State versus McGill, 191 S.C. 1, 1939, in fact
6 is a death penalty case out of Greenville County. The
7 judge who tried it, his son is upstairs, not Judge
8 Cottingham, but his son is upstairs observing the trial,
9 by way of historical note of course.

10 Also, State versus Gentry, 610 S.E.2d 494. It
11 is clear that this indictment is sufficient. The
12 offense was stated with sufficient certainty and
13 particularity to enable the Court to know what judgment
14 to pronounce and the Defendant to know what he is called
15 upon to answer and whether it apprises the Defendant of
16 the elements of the offense for which he is charged.

17 Anything further, Solicitor?

18 MR. STUMBO: Nothing further at this time,
19 Your Honor.

20 THE COURT: Mr. Williams?

21 MR. WILLIAMS: Nothing from the Defendant at
22 this time.

23 THE COURT: If you would bring us our jury,
24 please, Madame Bailiff.

25 (The jury returns to the courtroom at

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1 10:07 a.m.)

2 THE COURT: It's appear our jury is present.

3 Good morning, ladies and gentlemen of the
4 jury. I certainly am not encouraging gambling. I was
5 just wondering if y'all were back there taking a pool or
6 bets on when I would get you out here this morning.

7 I assure you that the parties have been here
8 since before court was to start this morning and working
9 diligently. So the delay is not caused by that. Do not
10 hold that against any of the parties at all. I
11 appreciate your patience and continuing to focus your
12 attention in this matter. With that being said, the
13 State is presenting its case in chief.

14 Solicitor, you may call your next witness.

15 MR. STUMBO: Your Honor, the State would call
16 Heather Smith to the stand.

17 HEATHER MARIE SMITH, being
18 first duly sworn, testifies as follows:

19 CLERK: State your full name and spell your
20 last name.

21 THE WITNESS: My name is Heather Marie Smith,
22 S-M-I-T-H.

23 DIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Good morning, Ms. Smith. How are you doing today?

1 A Doing well, thank you.

2 Q Could you tell us where you are currently employed?

3 A I work at the Assessment and Resource Center, also
4 known as the A.R.C. and the Children's Advocacy
5 Center of Richland County. I also work at the
6 Lexington County Children's Advocacy Center, known
7 as the Dickerson Center, for part-time employment.

8 Q And what services do you provide in your employment
9 at those two places?

10 A I am a forensic interviewer for the majority of my
11 job duties. I also provide training for the State
12 throughout the country, and also internationally
13 and provide treatment coordinating and clinical
14 supervision for treatment services.

15 Q You mentioned the term you do forensic
16 interviewing. What is a forensic interview?

17 A A forensic interview is different from other types
18 of clinical mental health interviews. Forensic
19 interviewing is for an investigation, either a
20 criminal investigation or a family court
21 investigation. It's very specific to fact finding,
22 trying to find out something that may have
23 happened.

24 Q And this is in the context of children?

25 A Yes.

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1 Q What is Finding Words?

2 A Finding Words is actually now called Child First,
3 but it is an intensive 40-hour child forensic
4 interview and course that the A.R.C. teaches for
5 the State. It teaches a protocol for forensic
6 interviewing that is naturally recognized known as
7 R.A.T.A.C.

8 Q And is this protocol used by forensic interviewers?

9 A It is.

10 Q Have you ever instructed that course?

11 A I have. I'm on the faculty of the Child First
12 course as we call it now.

13 Q During the course of your career, about how many
14 children do you think you have forensically
15 interviewed?

16 A Approximately between 6 and 700 children at this
17 point.

18 Q How many years have you been doing it?

19 A Six years.

20 Q And did you receive education beforehand to prepare
21 you for this?

22 A I did. I have a Master's in Counseling through the
23 University of South Carolina School of Medicine,
24 with an advanced specialized degree in psychiatric
25 rehabilitation.

1 THE COURT: Psychiatric what?

2 THE WITNESS: Rehabilitation.

3 BY MR. STUMBO:

4 Q Also, in the course of your job, other than
5 forensic interviewing, you say you have done
6 training. Are there any other services you provide
7 to the Child Advocacy Center?

8 A I do. I provide the training as part of my job
9 duties. I also coordinate treatment and provide
10 clinical supervision for treatment that is offered
11 at the A.R.C.

12 Q When you say treatment, what do you mean by that?

13 A Therapy services, mental health therapy services
14 that are provided there.

15 Q And this is for children or adults?

16 A Only children. Our clinic sees children from ages
17 three to approximately eighteen and some vulnerable
18 adults who are older.

19 Q What type of children do you typically work with?

20 A It really depends on the role, the job that I am
21 doing. When I am a forensic interviewer, I do not
22 do the treatment services portion of it. It's just
23 the forensic interview because it is a fact finding
24 interview for an investigation.

25 But all of the children that come to the

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1 clinic, to the A.R.C., have had some type of
2 allegations of child maltreatment, and that's
3 different types. That could be sexual abuse,
4 physical abuse, child neglect, witness to a crime.
5 Those are the majority of types.

6 Q Are there different approaches to counseling and
7 forensic interviewing?

8 A Yes.

9 Q Could you explain the difference of those two
10 things to the jury?

11 A Sure. A forensic interview is only for -- it's a
12 fact finding interview for an investigation. So
13 once the interview is completed, then that goes to
14 whoever the investigating agency is, and that is a
15 part of the investigation.

16 When you are doing mental health treatment,
17 you are focusing more on a treatment plan over a
18 longer period of time. So you will see the child
19 more than once, more than a few times, and provide
20 therapy. So it's very different.

21 Q Have you ever been recognized as an expert in the
22 courts of this State in the fields of child sexual
23 abuse treatment and -- let me put it this way,
24 child sexual abuse analysis?

25 A Yes, I have, both for forensic interviewing and for

1 child abuse trauma and treatment.

2 MR. STUMBO: Your Honor, at this time the
3 State would offer Ms. Heather Smith as an expert in the
4 field of child sexual abuse trauma.

5 THE COURT: Mr. Williams?

6 MR. WILLIAMS: A couple of questions.

7 THE COURT: All right. Yes, sir.

8 VOIR DIRE EXAMINATION

9 BY MR. WILLIAMS:

10 Q Ma'am, when you testified in court and you were
11 certified as an expert, is it your testimony that
12 you were certified as an expert in child sexual
13 abuse?

14 A To be honest I don't know. I have been qualified
15 as an expert in many different counties throughout
16 the State, in both family and criminal court. I do
17 not know the exact designation that the attorneys
18 qualified me as.

19 I definitely have been qualified as a forensic
20 interviewer, and I have also been qualified in
21 child abuse trauma and treatment. I don't know if
22 child sexual abuse was one of the qualifications.

23 Q So by that are you saying that you have been
24 certified as an expert in regards to how forensic
25 evaluations are conducted?

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1 A That's one way I have been qualified. I have also
2 been qualified as an expert in child abuse trauma
3 and treatment, which is the mental health portion
4 of that.

5 Q And by that are you saying that you have been
6 certified as an expert in the treatment of a child
7 who has been sexually abused?

8 A Yes.

9 Q Any other expert that you have been certified as?

10 A Those are the only two that I recall.

11 MR. WILLIAMS: Your Honor?

12 MR. STUMBO: We can fix the language, Your
13 Honor. We would ask that she be qualified as an expert
14 in child abuse trauma and treatment, and that's what she
15 has been qualified as before. I apologize.

16 MR. WILLIAMS: I'm okay with that, Your Honor.

17 THE COURT: All right. No other questions
18 then, Mr. Williams?

19 MR. WILLIAMS: No, sir.

20 THE COURT: Mr. Foreman, ladies and gentlemen
21 of the jury, normally a person cannot give opinion
22 testimony. Normally when a person testifies, they must
23 testify as to what they either saw or heard or sensed by
24 smell or something of that nature.

25 However, there is an exception. When someone

1 is qualified because of education or experience in some
2 particular field or profession or art, they are
3 permitted to give their opinion in certain areas if the
4 Court qualifies them that way.

5 This witness, Heather Smith, will be qualified
6 in the area of child abuse trauma and treatment to give
7 opinion testimony in that area. That does not mean that
8 you must accept the opinion, but it is evidence for you
9 the jury to use in any way that you see fit. Thank you.

10 Thank you, Solicitor. You may continue.

11 MR. STUMBO: Thank you, Your Honor. May it
12 please the Court.

13 DIRECT EXAMINATION

14 BY MR. STUMBO:

15 Q Ms. Smith, these forensic interviews, have the
16 children you have dealt with, does it involve just
17 abuse or sexual abuse or both physical and sexual?

18 A Physical, sexual abuse and other typologies that I
19 mentioned earlier.

20 Q And in the 6 to 700 times you have forensically
21 interviewed a child, can you give us or give the
22 jury an idea of how children typically disclose
23 instances of sexual abuse?

24 THE COURT: Just a minute. Let me stop you
25 there. Solicitor, if y'all would approach the bench,

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1 please.

2 (Whereupon there was a bench conference off
3 the record in the presence of the jury but out of the
4 hearing of the jury).

5 THE COURT: Thank you, Solicitor.

6 MR. STUMBO: Yes, sir.

7 BY MR. STUMBO:

8 Q Ms. Smith, just one follow-up question as to
9 qualifications and what you have been qualified as
10 an expert in before. Child abuse trauma, is that
11 part -- is forensic interviewing part of that
12 analysis? Would you consider that part of
13 analyzing child abuse trauma?

14 A Part of conducting forensic interviews in the
15 intensive training that we received in order to do
16 that does involve learning about the dynamics of
17 child abuse trauma, but the forensic interviewing
18 is an added piece of the protocol in how to conduct
19 child interviews.

20 Q You are saying it's an added thing?

21 A Sure.

22 MR. STUMBO: Your Honor, at this time before
23 we proceed, we would offer additionally Ms. Smith as an
24 expert in the field of forensic interviewing based on
25 her extensive experience forensically interviewing

1 children.

2 THE COURT: Mr. Williams?

3 MR. WILLIAMS: I have no objection to that,
4 Your Honor.

5 THE COURT: Ladies and gentlemen, I will not
6 go through that charge again, but that is an additional
7 field that Ms. Smith is qualified in, and I wanted to
8 clarify that for the record.

9 Ms. Smith is also qualified as an expert in
10 the field of forensic interviewing and may give opinions
11 in that area. Thank you. You can do with those
12 opinions whenever you the jury sees fit. Thank you.

13 Thank you very much, Solicitor. You may
14 proceed.

15 MR. STUMBO: Thank you, Your Honor.

16 BY MR. STUMBO:

17 Q Ms. Smith, I believe the question before was in the
18 course of interviewing 6 to 700 children you have
19 interviewed, how do children typically describe or
20 disclose instances of sexual abuse?

21 A The majority of children that tell about the abuse
22 tend to -- they don't tell immediately when it
23 happens, and they tend to tell about it over a
24 period of time as opposed to everything all at
25 once.

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1 It's hard sometimes for adults to understand
2 why children wait to tell. Because we would as
3 adults if someone were hurting us, we would
4 immediately go and find someone and tell them so
5 that it would stop.

6 But with children -- and there are lots of
7 reasons for that, for the dynamic of waiting to
8 tell, but it is more typical for children to wait
9 to tell or to never tell than it is to actually
10 disclose sexual abuse or any abuse.

11 Q Why is that in your opinion do they wait to tell
12 and tell in a process instead of all at once?

13 A There's lot of dynamics to the reasons behind that.
14 One is oftentimes in abuse, in sexual abuse
15 particularly, it is a trusted family member or a
16 caregiver or someone that the child is very close
17 to. So they don't want to get that person in
18 trouble.

19 They also are afraid of what will happen once
20 they do tell. They might be removed from their
21 home. They might not be believed. Oftentimes
22 children worry about that. It might make the
23 family break up.

24 They have a lot of issues about keeping the
25 family together and not getting someone in trouble.

1 They may even be threatened, so they are afraid to
2 tell because they might be hurt or someone they
3 love might be hurt, and those are just a few.

4 Q And typically how does the process of disclosing
5 go? Is it less to more or more to less?

6 A It's definitely less to more. Often children --
7 and research has been done to look at the patterns
8 of how children disclose. It has been my
9 experience and my clinical practice that children
10 may even deny it at first when they are asked
11 directly and specifically, Has someone done
12 something to you?

13 They often deny or they may tell you a little
14 bit and then they are kind of looking at you to see
15 how are you going to react and how are you going to
16 respond. Then they may tell you more over a period
17 of time.

18 So oftentimes when children do tell initially,
19 they just tell little bits and pieces, not
20 everything all at once, which is one reason why
21 forensic interviewing as a technique and a field is
22 so important so that trained professionals are able
23 to understand those dynamics and then are able to
24 find out what happened, knowing that, keeping that
25 in mind.

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1 Q You said they do go from less to more, eventually
2 with details. Another question about details, what
3 about dates with children? How do they typically
4 describe when something happened?

5 A Well, for all children, even adolescents -- I am
6 speaking of age three up to eighteen -- it gets
7 better the older that they get. Child development
8 happens. So your brain is developing as you are
9 growing.

10 For very young children, time is very
11 difficult for them. It's almost impossible for
12 them to relate time to an interviewer. The older
13 they get, it does get better, but it's still very
14 difficult, even for an adolescent to be able to
15 give perfect time frames of when something
16 happened.

17 Even for adults it's hard if something has
18 happened over a long period of time or more than
19 once. If different events and instances have
20 happened over a period of time, it would be hard
21 for adults even to remember dates and specific
22 times and that type of thing, but for children even
23 more so just because their brain is not -- has not
24 developed to that capacity yet to do that.

25 Q In your experience of interviewing 6 to 700

1 children that you have interviewed, how often does
2 a child give you a specific date that something
3 happened?

4 A It's very rare. I don't know. I don't have a
5 percentage or anything like that, just that the
6 older ones are more able to do that if the date
7 that they remember has some type of special
8 significance.

9 We are trained to ask, How do you remember
10 that or why do you remember that particular date?
11 But it's very rare for a child to remember a date
12 and a time.

13 Q And how do you get any idea from the child of what
14 the times was at all if they don't have a specific
15 date? What other kind of questions are asked to do
16 that?

17 A We sometimes ask questions about if they remember
18 the season that it happened in, were they in
19 school, what grade were they in. We try to anchor
20 it in some type of -- what class or what grade, who
21 was your teacher, who were you living with when it
22 happened.

23 So we are trying to get peripheral details to
24 really help them anchor a time. We may even get
25 information or the investigating -- the

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1 investigator may get information from other sources
2 to help corroborate that.

3 But typically it's, who was around you when
4 those things were happening, were you in school,
5 what grade, those types of detail we will try to
6 get to anchor it.

7 Q So is determining a date an incident happened in
8 your field an exact science?

9 A No.

10 Q Now, this case in particular, did you interview any
11 of the children alleged to have been abused in this
12 case?

13 A I did not.

14 Q How many forensic interviewers do y'all have over
15 at the A.R.C.?

16 A I'm sorry, we just lost one. We have five right
17 now.

18 Q Was a forensic interview to your knowledge done in
19 this case?

20 A It was.

21 Q At the A.R.C.?

22 A A forensic interview was conducted at the A.R.C. on
23 August 17, 2007.

24 Q Who was the child interviewed, do you have a record
25 of that?

- 1 A Who was the interviewer?
- 2 Q Who was the child, first of all, who was
- 3 interviewed?
- 4 A Minor 2 I hope I am pronouncing that
- 5 right was the child.
- 6 Q And who conducted the interview?
- 7 A Melanie Trimble.
- 8 Q Do you know Melanie Trimble?
- 9 A I do.
- 10 Q Is she with the A.R.C. at this point? Is she still
- 11 working?
- 12 A She does not work there anymore.
- 13 Q Why is that?
- 14 A She just had a baby and has decided to stay at home
- 15 and raise two children instead of coming back.
- 16 Q When you say just had a baby, how recently has she
- 17 just had a baby?
- 18 A A week ago.
- 19 Q Did you ever review the records concerning Minor 2
- 20
- 21 A I did.
- 22 Q You didn't personally conduct the interview?
- 23 A No, I did not.
- 24 Q Was a medical exam done to your knowledge at the
- 25 A.R.C.?

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1 A I do not know that. I could look in the chart to
2 see if that happened. Would you like me to do
3 that?

4 Q Sure.

5 A (Pause). On the intake that we receive when we
6 schedule the interview, there is a medical exam
7 scheduled. So I think that happened, but I don't
8 have the record with me.

9 Q When a medical exam is done and a forensic
10 interview is done, are those records -- is it
11 protocol for those records to be sent by the A.R.C.
12 to the investigating officer?

13 A Yes.

14 Q For their review?

15 A That's correct.

16 Q Just a couple more questions, Ms. Smith. You have
17 interviewed 6 to 700 children you say. Do you
18 typically make a finding when you do a forensic
19 interview of some sort? How do you -- let me back
20 up a little bit. What terms do you use in terms of
21 your findings after a forensic interview?

22 A We have two different categories that we use in our
23 report that we provide to the investigating agency
24 who requested the interview. Let me reference the
25 report so I get them exactly correct.

1 Q I'm not asking the question specifically as to this
2 interview. I say generally when you do a forensic
3 interview, what are the possible findings?

4 A We have two different categories where we list the
5 interview as a finding of either compelling or
6 problematic. So under the compelling finding, we
7 are looking at the different types of abuse that we
8 have been asked to question the child about.

9 It could be compelling for no abuse, meaning
10 that we found based on the child's statements in
11 the interview, that the interview was compelling
12 for no abuse or the different types of abuse that
13 we conduct evaluations for: Sexual abuse, physical
14 abuse, neglect, a witness to some type of a crime.

15 Or it's a problematic interview. That's the
16 other kind of category that we have. And
17 problematic for all of those things that I just
18 mentioned is a finding where in the interview, the
19 child's statements were -- did not reach a level of
20 where the statements that the child made were not
21 able to give us that level of detail or coherence
22 or consistency that a compelling finding would
23 give.

24 Q Of the interviews that you have done, just
25 approximately, how often do you find a child is

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- 1 giving a disclosure that is compelling for abuse?
- 2 A We have done some -- we have kind of looked at some
3 numbers. It's about a third of the cases that we
4 see at the A.R.C. are found compelling.
- 5 Q So the majority of the time the finding is it's not
6 compelling for abuse?
- 7 A Right.
- 8 Q Do you have any agenda when you go in to do a
9 forensic interview at the A.R.C.?
- 10 A No. Part of the training and part of using the
11 protocol is that it's a non-leading, non-suggestive
12 type of an interview. It's very important not to
13 have any type of idea or an opinion before you go
14 into an interview. You have to say very
15 non-leading and non-suggestive things and look at
16 other possibilities of what might have happened.
- 17 Q And if there is a finding that one is problematic,
18 is that information forwarded on, that finding
19 forwarded onto law enforcement?
- 20 A It is. The forensic interview is just one piece of
21 the whole investigation. It's not the end of it.
22 It's actually the beginning of it. Once the facts
23 are found in the interview, then that is forwarded
24 to the investigator who then continues with the
25 investigation, doing what they need to do to

1 complete it.

2 MR. STUMBO: That's all the questions I have
3 for Ms. Smith, Your Honor.

4 THE COURT: Thank you, Solicitor.
5 Mr. Williams.

6 MR. WILLIAMS: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. WILLIAMS:

9 Q Ma'am, as I understand your testimony, you did not
10 interview or do a forensic evaluation of ^{Minor 2}
11 [REDACTED]; did you?

12 A I did not.

13 Q Did you do it on any of the other two girls who
14 were alleged as victims in the trial?

15 A No, I did not.

16 Q Do you know whether or not there was an evaluation
17 done on either one of the two girls who are alleged
18 victims in this trial today?

19 A I do not know that.

20 Q You don't? Did you check it?

21 A No.

22 Q Were you not asked by the solicitor to check and
23 see if a forensic interview was done of the other
24 two victims?

25 A Not that I recall I was not asked.

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1 Q And in regards to the questions, the general
2 questions, that were asked to you, they were
3 essentially about disclosure, dates, things of that
4 nature that the solicitor was asking you about.
5 And correct me if I'm wrong, I think you said that
6 sometimes children won't disclose immediately, they
7 will wait to disclose things?

8 A Yes.

9 Q You say that is typical of a case which might be
10 subject to child abuse?

11 A That is typical.

12 Q Isn't that also typical of a child who was not
13 sexually abused, and they come up with this at some
14 later time?

15 A Are you asking me about is it typical in cases of
16 false allegations? I'm confused about the
17 question.

18 Q I am simply asking whether or not that really makes
19 a difference in terms of whether or not there is
20 child abuse or not or isn't it just an explanation
21 from you as to why they don't immediately report?

22 A It's not diagnostic of any type of abuse if
23 that's -- if I am getting the question correct.

24 Q That's absolutely correct.

25 A It is definitely not a diagnosis. So if a child

1 waited to tell you, it would not be a diagnosis,
2 but it is a dynamic of typical ways that child tell
3 about abuse that a forensic interviewer would need
4 to know about. Because a child may not -- it may
5 have been some time since the child or since the
6 actual incidents happened.

7 Q And one of the other questions that was asked you
8 by the solicitor was the fact that children may or
9 may not know the dates that events occurred. Now,
10 again, that is not diagnostic in terms of whether
11 or not abuse occurred but it is sometimes an
12 explanation, isn't it, as to why maybe they don't
13 recall events because they are young, they are
14 traumatized or whatever?

15 A Children don't remember dates about lots of
16 different things, not just abuse. It's a child
17 development issue. They don't have the brain
18 development to be able to have that level of logic
19 and brain power.

20 Q And it could mean that it didn't happen if they
21 don't remember the date?

22 A I wouldn't say it's diagnostic either way. I
23 wouldn't say it means that it didn't happen or that
24 it does. It's just a dynamic of children.

25 Q So essentially all those questions that were asked

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1 to you of the solicitor earlier had nothing to do
2 with a diagnostic value in determining whether or
3 not child abuse occurred, but are dynamics about
4 child abuse sometimes?

5 A Are definite dynamics, correct.

6 Q And as I understand it, you don't know what the
7 results of the medical exam that was performed on
8 Minor 2 was?

9 A I don't have that chart, no.

10 MR. WILLIAMS: That's all the questions I
11 have, Your Honor.

12 THE COURT: Thank you, Mr. Williams.
13 Solicitor, anything in redirect?

14 MR. STUMBO: Just one, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. STUMBO:

17 Q Ms. Smith, you talked about the diagnostic versus
18 dynamics. In the course of your job as a forensic
19 interviewer, are you allowed to make a finding of
20 whether a child is telling the truth or not?

21 A No, we are not.

22 Q Why is that?

23 A That is not the role of the forensic interviewer,
24 that's the role of the courts.

25 Q So if you were to say, I think such and such a

1 child is telling the truth, could you say that in
2 court?

3 A No.

4 Q You can only talk to dynamics and the factors that
5 lead you to be it may be compelling or not
6 compelling?

7 A That is right.

8 MR. STUMBO: That's all I have, Your Honor.

9 THE COURT: Recross, Mr. Williams?

10 **RECROSS EXAMINATION**

11 BY MR. WILLIAMS:

12 Q Again, your testimony is general in nature to child
13 abuse and children in general?

14 A It's expert testimony of children that have been
15 abused, right.

16 MR. WILLIAMS: That's all the questions I
17 have, Your Honor.

18 THE COURT: Thank you, Mr. Williams. Thank
19 you very much, Ms. Smith. You may step down.

20 THE WITNESS: Thank you, Your Honor.
21 (Witness leaves the witness stand).

22 MR. STUMBO: Your Honor, may Ms. Smith be
23 excused?

24 THE COURT: Any objection?

25 MR. WILLIAMS: No objection.

1 THE COURT: Thank you very much. Yes, you may
2 be excused, Ms. Smith. Thank you for being here.

3 Solicitor, you may call your next witness.

4 MR. STUMBO: Your Honor, that's the State's
5 case.

6 THE COURT: The State rests; is that correct?

7 MR. STUMBO: Yes, sir.

8 THE COURT: All right. Mr. Foreman, ladies
9 and gentlemen of the jury, at this stage I am required
10 to take up certain matters outside of your presence. I
11 hesitate to say it should not take too long because
12 right now if I tell you that, you will say, Yeah, right.
13 But it should not take too long.

14 I will allow y'all to take at least a
15 15-minute recess. During this recess do not discuss the
16 case amongst yourselves and keep an open mind and do not
17 begin your deliberations until you are directed to by
18 the Court. If you will leave your notes out here on the
19 chair, they will be waiting for you upon your return.
20 With that you may now go with our bailiff.

21 (The jury retires to the jury room).

22 THE COURT: Do you have any motions,
23 Mr. Williams?

24 MR. WILLIAMS: Your Honor, without specifying
25 each and every indictment number, we would move at this

1 time for dismissal of each and every indictment that my
2 client is charged with on the basis that the evidence
3 taken in the light most favorable to the State is
4 insufficient as a matter of law for this jury to return
5 a verdict of guilty.

6 THE COURT: I would respectfully deny your
7 motion. I think there is more than sufficient evidence,
8 both direct and circumstantial evidence, direct evidence
9 based on the testimony of the victims themselves,
10 Minor 3 , Ms. Minor 1 and Minor 2 , and
11 circumstantial evidence based on the various and sundry
12 items of evidence that were introduced during the course
13 of the proceeding, both from the residence in Virginia
14 and the motel room in Lexington County upon the arrest
15 of the Defendant. With that being said do you have any
16 other motions, Mr. Williams?

17 MR. WILLIAMS: No, Your Honor, I don't.

18 THE COURT: Do you intend to produce any
19 evidence?

20 MR. WILLIAMS: I do not, Your Honor.

21 THE COURT: Would you like me to question the
22 Defendant concerning his right to testify or not to
23 testify?

24 MR. WILLIAMS: I have talked to my client this
25 morning, as well as late yesterday afternoon, and it is

1 my understanding from talking to him that he does not
2 wish to testify.

3 THE COURT: Thank you. Thank you,
4 Mr. Williams.

5 Mr. Ratliff, would you please stand for me.
6 Madame Clerk, would you place Mr. Ratliff
7 under oath.

8 RICHARD DAVID RATLIFF is first
9 duly sworn.

10 CLERK: Please state your full name.

11 THE DEFENDANT: Richard David Ratliff,
12 R-A-T-L-I-F-F.

13 THE COURT: Mr. Ratliff, I need to go over
14 some things with you. I do this with everyone who is on
15 trial, and that's why I had you placed under oath.

16 We have reached the stage of the trial where
17 the State has rested, and your side, the defense, now
18 has the opportunity to present evidence for the jury to
19 consider. Do you understand where we are at in the
20 trial?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: In that regard you may call
23 witnesses to testify and if you choose to testify
24 yourself, you may do so. Do you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: No one can force you to testify.
2 You have the absolute right to remain silent. If you
3 choose not to testify, I will tell the jury that they
4 cannot hold your silence against you in any way. I will
5 tell the jury that they are not to discuss that in the
6 jury room. Do you understand?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If your side offers no evidence at
9 all, in other words, if neither you nor anyone on your
10 behalf testifies or offers any evidence or exhibits,
11 then your attorney will get to make the last argument to
12 the jury. Otherwise the prosecutor gets to make the
13 last argument. Do you understand?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Does Mr. Ratliff have a criminal
16 record that would subject him to impeachment, Solicitor?

17 MR. STUMBO: Not that I'm aware of, Your
18 Honor.

19 THE COURT: Do you agree with that,
20 Mr. Williams?

21 MR. WILLIAMS: I do agree, Your Honor.

22 THE COURT: The decision about whether you
23 testify or not is your decision to make and yours alone.
24 I expect you have conferred with your attorney, whose
25 opinions you value on that important decision, but the

1 decision about whether you testify or not is your call,
2 your decision. Do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Has anyone exercised any undue
5 influence over you to get you to choose to testify or
6 not to testify?

7 THE DEFENDANT: No Your Honor.

8 THE COURT: Today are you under the influence
9 of any drug, alcohol, medication or anything that
10 adversely affects your thinking ability?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Do you suffer from any physical or
13 mental problems that adversely affect your thinking
14 ability today?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Whatever decision you have made
17 about whether to testify or not to testify, is it your
18 decision made of your own free will and accord?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you have any questions you
21 would like to ask me about your right to testify or not
22 to testify?

23 THE DEFENDANT: None, Your Honor.

24 THE COURT: I find that Mr. Ratliff knowingly
25 and intelligently understands his right to testify and

1 not to testify. What is your decision in that regard?

2 THE DEFENDANT: To not testify, Your Honor.

3 THE COURT: That is your choice?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: That's your decision?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you, Mr. Ratliff. I further
8 find that the decision of the Defendant to not testify
9 is his own decision, made freely, knowingly, and
10 voluntarily.

11 Anything further from the State?

12 MR. STUMBO: Nothing further, Your Honor. I
13 would ask if we could have maybe 20 minutes. I do have
14 a PowerPoint for my closing and if I can set this cart
15 up so we can get our exhibits out and that sort of
16 thing.

17 THE COURT: Make sure on the exhibits there
18 are none that are just marked for identification
19 purposes only that would be shown to the jury. Make
20 sure they are separated.

21 Anything further, Mr. Williams?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: In that regard we will take a
24 break until about 11:10. I believe I will have the
25 clerk go in there and make arrangements for our jury's

1 lunch so we don't send them out. When we get back, we
2 will go right into your closing, Solicitor. One
3 closing?

4 MR. STUMBO: Yes, sir.

5 THE COURT: And then Mr. Williams and I will
6 charge on the law. Any specific requests to charge?

7 MR. STUMBO: Your Honor, I've tried many cases
8 with you. I am comfortable with your reasonable doubt
9 charge. I think that's the only thing of contention I
10 have. I assume you are going to charge the statutes.

11 One thing I know, the criminal solicitation of
12 a minor statute has a very detailed definition section
13 as to what a sexual activity is. Just so Your Honor
14 knows, I know there's a about five subsections there how
15 that is defined. As long as the definitions --

16 THE COURT: Do you want all that definition
17 section charged?

18 MR. STUMBO: I don't think we need all of it.

19 THE COURT: I haven't looked at it.

20 MR. STUMBO: There's five subsections to the
21 sexual activity definition. I know the first one
22 involves masturbation, Subsection (a) of 16-15-375.
23 Subsection (5) (a) includes masturbation. (C) includes
24 touching in a sexual manner.

25 I think the other is a very broad definition

1 and includes a lot of other stuff that doesn't really
2 apply to this case if you want to cut some of that out.

3 THE COURT: I will obviously try to charge
4 what applies to the case. Do you have any specific
5 requests to charge, Mr. Williams?

6 MR. WILLIAMS: No, sir.

7 THE COURT: We will be in recess until about
8 10 after 11. Thank you very much.

9 (Whereupon there was a recess).

10 THE COURT: Let me make sure I am correct,
11 Solicitor, on this criminal solicitation under
12 16-15-342, I will read the appropriate part of the
13 16-15-342 statute and then 16-15-375 (5), sexual
14 activity includes any of the following acts of
15 simulation thereof: (a), masturbation whether done
16 alone or with another human being or animal, and, (c),
17 touching in an act of apparent sexual simulation of
18 sexual abuse of the clothes or unclothed genital, pubic
19 area or buttock or another person or the clothed or
20 unclothed breasts of the human female. That's the two
21 subsections 375, (5) (a) and (c). That's what you want
22 charged?

23 MR. STUMBO: That is correct, Your Honor.

24 THE COURT: That is correct, Mr. Williams?
25 You don't want those other subsections charged?

1 MR. WILLIAMS: No, sir.

2 THE COURT: Anything further before we bring
3 in our jury?

4 MR. STUMBO: We are ready, Your Honor.

5 MR. WILLIAMS: Nothing, Your Honor.

6 THE COURT: When we bring them out,
7 Mr. Williams, I will have to turn to you, and you will
8 have to rest formally in front of the jury.

9 MR. WILLIAMS: Your Honor, I have always been
10 curious about what happens in terms of when you don't
11 put up evidence. Obviously there are two times at which
12 you make the motion for directed verdict. That's after
13 the State's case, as well as after your case. Since we
14 not putting up a case, I would like the record to note
15 that I have made that motion if I need to make that.

16 THE COURT: Certainly, so noted. Madame
17 Bailiff, would you bring our jury, please.

18 (The jury returns to the courtroom).

19 THE COURT: Welcome back, ladies and gentlemen
20 of the jury. The State has now rested. The defense may
21 now put up testimony if it chooses to do so. The
22 defense is never required to put up evidence.

23 The State has the burden of proving the case
24 beyond a reasonable doubt, and the Defendant is presumed
25 to be innocent. However, if they choose to do so, they

1 may do so.

2 With that being said, Mr. Williams?

3 MR. WILLIAMS: Your Honor, we are prepared to
4 argue to the jury at this time.

5 THE COURT: The defense rests?

6 MR. WILLIAMS: Yes, sir, we do.

7 THE COURT: Thank you very much. Mr. Foreman,
8 ladies and gentlemen of the jury, the stage we are at
9 now is you have heard all the witnesses you are going to
10 hear during the trial of this case. All the evidence
11 that is going to be presented by the parties has now
12 been offered and accepted into evidence.

13 We are at the stage of the closing arguments
14 by the attorneys. The closing arguments are different
15 from opening statements. These are true arguments. The
16 attorneys may argue facts, they may argue reasonable
17 inferences to be drawn from the facts, and how those
18 facts and the inferences to be drawn apply to the law
19 that I will charge you after the closing arguments.

20 The procedure we will follow is the solicitor
21 will close first and after the solicitor has closed
22 first, then Mr. Williams will present his closing
23 argument on behalf of his client, Mr. Ratliff.

24 After the closing arguments, I will then
25 charge you the law that you are sworn to follow in the

1 trial of this case. After that the case will be
2 submitted to you for your deliberations and for your
3 verdict.

4 I would remind those in the audience today, I
5 do not allow anyone to come in and out. Sheriff, if you
6 would keep that in mind during the time at which the
7 attorneys are addressing the jury.

8 They may certainly leave after the solicitor's
9 closing and before -- in other words, between the
10 closings. They may certainly leave after both closings
11 or before I begin my charge to the jury, but I don't
12 allow any movement about.

13 It's a very important part of the process. I
14 would ask you to please give the attorneys your complete
15 and undivided attention during the course of these
16 closing arguments as you have done to all the parties
17 throughout the trial of this case.

18 With that being said, Solicitor, you may
19 address the jury.

20 MR. STUMBO: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: Yes, sir.

23 CLOSING ARGUMENT

24 MR. STUMBO: A trusted adult is a term that is
25 real popular these days. A lot of times we hear it used

1 synonymously with a parent telling children that if you
2 are in trouble or if you have anything wrong, go to a
3 parent or a trusted adult.

4 Richard Ratliff, ladies and gentlemen, for a
5 large part of these young girls' lives was a trusted
6 adult, not only to them, but to their mothers and their
7 friends.

8 That was before he took that trust, threw it
9 on the ground in front of him, and trampled all over it.
10 That was before he took the lives of two 11 year olds
11 and a 13 year old and shattered their innocence.

12 That was before, ladies and gentlemen, Minor 1
13 Minor 1 sent this letter to her mother telling her what
14 had happened to her, and that was before Minor 2

15 [REDACTED] sent this e-mail to her mother telling her what
16 that man had done.

17 Ladies and gentlemen, it has been our burden
18 of proof in this case. It has been our pleasure,
19 Ms. Howard and I, to have the burden of proof in this
20 case. The reason is, ladies and gentlemen, that the
21 burden of proof means we get the opportunity to put the
22 evidence before you.

23 That responsibility is on us. The judge is
24 going to tell you that in his instruction. It's our
25 burden of proof to show that that man over there is

1 guilty of all the things that he has been charged with.

2 Ladies and gentlemen, I am going to submit to
3 you that the primary evidence that you heard in this
4 court and saw, saw in the exhibits and heard by way of
5 this witness stand, was the testimony of these three
6 girls.

7 That's what this case is about. At the end
8 of the day, it's about what happened to these little
9 girls and what they told you about from this witness
10 stand.

11 As we go through the evidence here over the
12 next few minutes, you are going to see that their
13 account of what happened to them was corroborated every
14 step of the way. The story these three girls gave
15 dovetailed together perfectly.

16 Now, I talked a little bit about the burden of
17 proof in this case being beyond a reasonable doubt. The
18 judge is going to tell you in a few minutes what that
19 is.

20 If I say something different from the judge,
21 Judge McMahon is the judge of the law. He knows it a
22 lot better than I do. It is his role to give you the
23 law in this case. I want you to listen to him and not
24 me.

25 Let's talk a little bit about what reasonable

1 doubt is. He is going to tell you that it's not a
2 doubt -- proof that is beyond all doubt, but it's only
3 beyond a reasonable doubt. And what is a reasonable
4 doubt?

5 You are going to hear this term from Judge
6 McMahon that it's proof that leaves you firmly convinced
7 of the Defendant's guilt. That's it. There is nothing
8 magical about the term reasonable doubt.

9 It's after you have seen the evidence and the
10 12 of you go back into that room and ponder what you
11 heard and what you have seen, are you firmly convinced
12 that Richard Ratliff is guilty?

13 Firmly convinced, I want you to remember that
14 term. It's our burden, Ms. Howard's and I, to show that
15 we have met every single element of every single offense
16 that he has been charged with. We have to do that.
17 Mr. Williams will tell that you. He doesn't have to
18 prove anything.

19 I submit to you that we have done that in this
20 case. What are the elements that we have to meet? We
21 have got three separate criminal offenses that
22 Mr. Ratliff has been charged with, varying instances and
23 counts of those offenses, but we have three different
24 criminal offenses here.

25 The first, we have three counts of criminal

1 sexual conduct with a minor in the second degree. What
2 are the elements we have to prove under the law that
3 Richard Ratliff is guilty of that particular crime?

4 First and foremost, there is a sexual battery
5 committed. We will talk about what a sexual battery is
6 in a moment, but a sexual battery is committed upon a
7 victim who is between the ages of 11 and 14.

8 That's it, two elements in this charge. If we
9 proved that he has committed a sexual battery upon a
10 girl or a child who is between the ages of 11 and 14, he
11 is guilty of criminal sexual conduct with a minor in the
12 second degree.

13 What is a sexual battery? The judge is going
14 to instruct you on this as well. There are several
15 different things involved. It's sexual intercourse
16 cunnilingus, fellatio, which are the two words for oral
17 sex, anal intercourse, any intrusion, however slight, of
18 any part of a person's body or of an object into the
19 genital or anal openings of another person's body.

20 So oral sex committed by a male on a female if
21 there is any penetration whatsoever, it says however
22 slight, which could mean a tongue. Cunnilingus is
23 essentially oral sex on a male to a female. That's a
24 sexual battery. If there is any intrusion into the
25 vagina or anal openings of a child's body, that's a

1 sexual battery under the law.

2 How about committing or attempting a lewd act
3 upon a minor? This one has a few more elements. It's a
4 little bit more complex, but we will go through this
5 here together.

6 First and foremost, the Defendant is over 14
7 years of age. That one is easy enough. Secondly, the
8 victim is under 16. It can be from birth to 16. There
9 is no range here like with the other crime of 11 to 14.

10 The Defendant willfully commits or attempts to
11 commit a lewd or lascivious act upon or with the body or
12 its parts of a victim. We will talk a little bit more
13 about lewd and lascivious in a moment.

14 There is an intent element, number four here,
15 with the intent of arousing, appealing to or gratifying
16 the lust, passions or sexual desires of the Defendant
17 himself or of the child.

18 So there has to be an intent here to commit an
19 act which is defined as lewd and lascivious on a child.
20 The main difference here between this and criminal
21 sexual conduct with a minor -- well, first of all, let's
22 look at lewd and lascivious.

23 It says preoccupied with sex, sexual desire,
24 lustful, obscene, indecent. Lascivious means giving to
25 or expressing lust, exciting sexual desires, salacious.

1 These are definitions that come out -- just out of the
2 dictionary.

3 It's not terms we hear every day but terms
4 that are familiar. The main difference, ladies and
5 gentlemen, between this and C.S.C. with a minor,
6 criminal sexual conduct with a minor, is that a sexual
7 battery is not required for a lewd act.

8 In other words, if there was a touching or an
9 act of some sort upon the body of a minor and the intent
10 of the actor is to get some kind of sexual gratification
11 from it, that's a lewd act. It's something that would
12 maybe stop short of actual penetration.

13 How about criminal solicitation of a minor?
14 This is our third type of criminal offense which
15 Mr. Ratliff has been charged with. It's three elements
16 here.

17 First and foremost, the person is over 18. So
18 it's a little bit different than lewd act, a person over
19 16 in that situation. Here it's over 18. Secondly,
20 there is some kind of contact or communication with a
21 person by the person over 18 with a person under the age
22 of 18.

23 The purpose of that contact or communication
24 is this, and this is the key part of this statute. The
25 purpose is or with the intent of persuading, inducing,

1 enticing or coercing the child to engage in sexual
2 activity or with the intent to perform a sexual activity
3 in the presence of the child.

4 So it's an either/or. It's not an "and" here.
5 If a defendant tries by communicating with a child to
6 induce them to participate in a sexual activity, that
7 counts under the statute.

8 Secondly, if that individual actually performs
9 some sort of sexual activity in front of a child, he is
10 guilty as well. Now, sexual activity is defined under
11 the statutes, and the judge will instruct you on this as
12 well.

13 It's defined a little bit differently than a
14 sexual battery for purposes of criminal sexual conduct.
15 These are the sexual activities that are very broadly
16 defined under the statute. There's several other
17 sections of this definition, but I will give you the
18 ones that really apply to this case.

19 It includes what are call sexual batteries,
20 which is sexual intercourse, but it also includes a lot
21 of other things. First and foremost, Subsection (a)
22 says that masturbation is included.

23 So if an individual masturbates in the
24 presence of a child and he is over 18 and she is under
25 18 or he, then they are guilty of criminal solicitation

1 of a minor.

2 Furthermore, if they ask the child and try to
3 induce them to participate in that masturbation act,
4 they are also guilty under the statute under both
5 sections.

6 Subsection (c) even makes it broader than
7 masturbation, but any kind of touching in an act of
8 apparent sexual stimulation or sexual abuse, whether
9 it's clothed or unclothed.

10 So if that individual starts touching
11 themselves in a manner, even if it's over the clothing
12 in front of this child and it's of a sexual nature, that
13 is included as a sexual activity under the statute.

14 Ladies and gentlemen, let's talk a little bit
15 about the defenses in this case that we have heard so
16 far through Mr. Williams' cross examination of our
17 witnesses.

18 Ladies and gentlemen, I have been around
19 baseball, the sport of basketball, my entire life. One
20 thing I always remember about what coaches have said and
21 what I have instructed before is this.

22 You have to keep your eye on the ball when you
23 are at the plate. When you are up to bat -- I am sure
24 if any of us have been around a little league ball field
25 or even a high school game, all the way up to the major

1 leagues, the key is for a batter to keep their eye on
2 the ball.

3 That's what I will ask you to do in this case.
4 As a jury as a whole, I would ask each and every one of
5 you to keep your eye on the ball in this case. What
6 Mr. Williams is here to do, ladies and gentlemen, is to
7 take your eye off of the ball.

8 He is going to try to take your eye off what
9 really matters in this case, and that's the witnesses
10 you heard from this witness stand and what they have to
11 say about what Richard Ratliff, his client, did to these
12 girls.

13 What are some of the potential distractions he
14 will throw in front of you? What about specific dates
15 on the indictments? You heard the judge read the
16 indictments before the case. What is contained in those
17 indictments are some specific dates.

18 What I want you to remember is this. The
19 charges involve dates that say on or about. So our
20 instances of criminal sexual conduct involved the dates
21 in July and dates in June.

22 Now, it gives specific dates in those
23 indictments. It says on or about that date. You heard
24 from Heather Smith this morning to tell you about how
25 children disclose sexual abuse.

1 I don't know if you remember when he asked
2 Minor 1 this question when Mr. Williams had
3 grilled her on cross about, Well, you can't really tell
4 me specifically what date these things happened; can
5 you?

6 Ladies and gentlemen, you remember what we
7 talked about after that. I asked Minor 1, Are these
8 things you write down on a calendar? Are these banner
9 dates in your life? Are these things you want to
10 remember?

11 They are not, ladies and gentlemen. What
12 these girls remember are that the events happened, and
13 they can give us sensory detail about what happened,
14 what was in the room, other things that corroborate the
15 fact that it did happen.

16 As to time, you heard what Ms. Smith said. In
17 law enforcement charging decisions are made. Sometimes
18 you can't pin it down to a definite date, particularly
19 in these sort of cases. That's why the language is used
20 both in the warrants and indictments and what is used in
21 the indictments before you are on or about a particular
22 date.

23 I imagine Mr. Williams is going to get up here
24 and talk about the girls can't really tell you --
25 Minor 2 can't really tell you that the event at

1 America's Best happened on July 24. That's what is in
2 the indictment.

3 It says on or about July 24. We do know based
4 on the testimony from Mr. Steven Kilgore, Richard
5 Ratliff had a stay -- and you will have one of the
6 receipts back there with you -- but he had a stay at
7 America's Best July 9 through July 12. That's the first
8 visit.

9 He came back July 23, and Mr. Kilgore told you
10 that he was there when Mr. Ratliff checked in the hotel
11 and that he saw and he identified for you ^{Minor 2} He
12 has seen ^{Minor 2} before.

13 There was a girl between 10 and 11 years old
14 with sandy blond hair. So, ladies and gentlemen, when
15 we talk about dates, we know that Richard Ratliff stayed
16 there July 9 through the 12th, and July 23 and 24.

17 An approximation on the date in the indictment
18 is July 24, on or about. I would submit to you, ladies
19 and gentlemen, it's not -- it's a distraction trying to
20 get your eye off actually what happened between his
21 client and Stefanie in that hotel room to convince you
22 that we have the burden of proof that it happened
23 exactly on that day.

24 We don't. It's your job to consider whether
25 it happened and whether it happened on or about that

1 date. So I want you to keep that in mind as to each of
2 the indictments.

3 How about the multiple statements that were
4 given? I will show you State's 32 because there was a
5 lot made yesterday as to several of the witnesses, and
6 you will have this in the jury room to look at yourself.

7 This statement that ^{Minor 2} gave on July 30
8 at the Sheriff's Department, the first statement she
9 gave, there is this blue writing afterwards, and there
10 was a lot of questions asked and doubts cast upon what
11 that is and whether that's tampering.

12 Mr. Williams asked Detective Davis, who has
13 been in law enforcement for years, if he knew how to
14 basically write a statement and questioned his
15 credibility on writing a statement because he signed the
16 statement where there was some crossed-out information.

17 Ladies and gentlemen, that's another instance
18 where your eye is being diverted away from what happened
19 in this case. Because with one question, Detective
20 Prestigiacomo cured that.

21 All he said was, Yeah, I came in to do a
22 second interview. We did that on both girls. He
23 started to use that sheet as a continuation of it and
24 then decided otherwise to start on a new page. He
25 scratched it out and initialed it.

1 If you think that is tampering, ladies and
2 gentlemen, I would submit to you it's not. Mr. Williams
3 is going to try to take your eye off the ball in that
4 regard.

5 What about the fact that the girls met
6 together beforehand? Minor 1 called Minor 2 and they
7 talked about, Should we tell mom? Should I tell my mom?
8 We've got to tell somebody. They are talking about this
9 thing.

10 Mr. Williams asked the victims on cross, Well,
11 y'all talked about this beforehand; right? In other
12 words, the implication is y'all cooked this up, all
13 these details of this story and then decided to come
14 forward.

15 So there is some grand conspiracy between
16 these three young ladies to accuse this man of something
17 that is very embarrassing to them. There is no
18 conspiracy here, ladies and gentlemen.

19 These are girls talking together beforehand
20 because they are scared to come forward. They are
21 scared of what the moms might do or say. They are
22 scared people might not believe it.

23 It's completely normal. You heard Heather
24 Smith, an expert in this area, talk about that this
25 morning. Why do kids wait to tell what happened? As

1 adults we would come forward right way if somebody
2 wronged us.

3 It's not the same with kids. They have fears,
4 fears that are preyed upon by people like Richard
5 Ratliff. There is no conspiracy here. Don't let him
6 take your eye off the ball.

7 How about Seth? We heard a lot about Seth,
8 this young man that apparently ^{Minor 2} knows and she
9 had said had a crush on at one point. Mr. Williams'
10 implication to ^{Minor 2} on cross, You wanted to see
11 Seth, right?

12 That's really why you didn't want to go to
13 Virginia. So you cooked up this entire incident that
14 you have to go through a couple of years of reliving,
15 talking to sheriffs hours on end, deputies, going in for
16 forensic interviews, coming in and talking about this in
17 court this week.

18 She is going to cook up all that story, get
19 her friends ^{Minor 1} and ^{Minor 3} to come along with her
20 just so she can stay and see Seth for a week? It
21 doesn't make any sense, ladies and gentlemen.

22 Mr. Williams would have you believe that Seth
23 is a reason why this was all just made up. I will leave
24 it to your common sense to determine whether that is
25 legitimate or not.

1 How about at one point there was some cross
2 questioning of Ms. Sharpe -- or excuse me --
3 Ms. Smotzer, ^{Minor 2} mother, Tracey Smotzer. He was
4 asking her about, When did you really go to the
5 Sheriff's Department and who was there asking these
6 questions.

7 Several times she got confused quite honestly.
8 At one point she said it was Deputy Sharpe that was
9 there with us. Of course, a big deal was made about,
10 Who is Deputy Sharpe?

11 One question on redirect absolutely showed you
12 that was not the case. That was Ms. Sharpe she was
13 referring to, and she clarified that the deputy she met
14 with was the uniformed young black male, Mr. Grooms,
15 that sat before you and testified that he took the
16 initial report. It was Deputy Grooms, the resource
17 officer at Batesburg Leesville.

18 It becomes clear after the questions are
19 clarified, but the distraction to take your eye off the
20 ball is she is talking about some Deputy Sharpe. Who is
21 that? Don't let him take your eye off the ball, ladies
22 and gentlemen.

23 There's other things I'm sure you will hear
24 from Mr. Williams. Oftentimes when witnesses testify,
25 there are ways you can pick apart for your own purposes

1 to show they are inconsistencies, to show that the
2 things didn't happen. But, again, I would propose to
3 you that is taking your eye off the ball.

4 It reminds me of a story about a man standing
5 by a puddle. At the bottom of that puddle is a gold
6 coin. Another man walks up to the puddle, and the man
7 is standing there with a stick in his hand and says to
8 the other man, I bet you five dollars I can make that
9 gold coin at the bottom of that puddle disappear.

10 The other guy said, Well, that's pretty good.
11 It takes magic to make that coin disappear that I am
12 looking at right now. He said, I will take that bet.
13 The other guy with the stick in his hand takes the stick
14 and scribbles up the mud in the puddle around the coin.
15 The water starts to become cloudy, and that gold coin
16 disappears.

17 Let's clear the waters, ladies and gentlemen.
18 Is Richard Ratliff guilty of criminal sexual conduct
19 with a minor? First and foremost, was the victim in the
20 first indictment, 2884, which is Minor 2 was
21 she between 11 and 14 at the time of this battery?
22 July 2007 Minor 2 was 11 years old. She turned 12 in
23 August of that year.

24 How about a sexual battery? Minor 2
25 described in the hotel room at the America's Best when

1 this happened in July 2007, this instance where
2 Mr. Ratliff flips her over on the bed and forces himself
3 on her at this point, and he uses his fingers to
4 penetrate both her vaginal region and her anus.

5 She describes that in great detail how he did
6 it and talked about how it hurt even, and she remembers
7 that. I would submit to you that the two elements of
8 criminal sexual conduct with a minor in this case are
9 corroborated.

10 You heard from the America's Best employee,
11 Mr. Kilgore, talk about how ^{Minor 2} was there and he
12 introduced her as his granddaughter is what Mr. Kilgore
13 remembered. That corroborates ^{Minor 2} testimony.
14 She was there and always referred to as Mr. Ratliff's
15 granddaughter.

16 How about the second indictment, is she
17 between 11 and 14? This one involves ^{Minor 3}
18 was 13 in June 2007. In fact, the whole summertime of
19 2007 she was 13 years old. She was born [REDACTED]
20 [REDACTED], is what she told us was her date of birth. So the
21 entire summertime she was 13. She was to turn 14 that
22 next February.

23 How about a sexual battery on ^{Minor 3}
24 told you about this time where she was over at
25 ^{Minor 2} house in West Columbia. I believe she

1 specified the [REDACTED] location, although at this
2 time Minor 2 and her mother moved from [REDACTED] to
3 [REDACTED], and there was some lag time in there
4 where they were at both places. Both residences are in
5 West Columbia as testified to by Detective
6 Prestigiacomo.

7 She talks about a time where they were at
8 Minor 2 house. Richard Ratliff gets her alone in the
9 bedroom, and he performs oral sex on her, said that he
10 put his head between her legs and licked her vagina,
11 forcefully spread her legs open and did that. She
12 ultimately pushed him away and it ended in that fashion.

13 I want you to remember about this event. She
14 also said that Minor 2 and her mom were in the house in
15 another area of the house at that time, and she didn't
16 say anything to them because the incident ended at that
17 point.

18 Ladies and gentlemen, that is corroborated by
19 the testimony from Minor 2 and Minor 2 mom who talk
20 about how Minor 3 was over there nearly every weekend for
21 a while.

22 Minor 2 and Minor 3 had become very close
23 during that sixth grade school year, and Minor 3 spent a
24 lot of time over at Minor 2 house. Richard came
25 there quite often to see them and also pick them up and

1 take them to the store.

2 How about the third charge of criminal sexual
3 conduct, 2886. This is another one involving ^{Minor 2}
4 in July 2007 at the Knights Inn hotel. She was, as we
5 said, 11 years old.

6 How about the second element of sexual
7 battery? What ^{Minor 2} describes to us this time is
8 after they go swimming, she goes back into the room and
9 is able to take a shower.

10 She comes back out to lay on the bed clothed
11 to watch Sponge Bob on T.V. I am sure you are familiar
12 with that cartoon, Sponge Bob, if any of you have kids.
13 While she is watching Sponge Bob, Richard Ratliff comes
14 over, again flips her over, overpowers her according to
15 ^{Minor 2} She said she gave up trying to fight because
16 he was stronger than her.

17 He put his head between her legs and performed
18 oral sex on her. She also describes during this time at
19 the Knights Inn that he again penetrated her with his
20 fingers.

21 All three counts, ladies and gentlemen, the
22 elements have been met. I know this is very difficult
23 to read. I anticipated it would be a little bit bigger,
24 but I can read it for you, and we will go through it one
25 at a time.

1 There are five other charges Mr. Ratliff has
2 been charged with along this left side. The first three
3 are the solicitations of the minor, 2891, 2893, 2894.
4 Ladies and gentlemen, the elements, as we said before of
5 solicitation, are threefold.

6 You have a defendant over 18, communicating
7 with a person under 18 for the purpose of enticing
8 sexual activity or to perform sexual activity in the
9 presence of that minor.

10 In this case we have Richard Ratliff who is
11 obviously over 18 years old. He is an older gentleman
12 by your observation. Minor 3 was 13 years old in May of
13 2007. We already established that during the
14 summertime, Minor 3 was 13. She wasn't to turn 14
15 until the next year, until February of 2008.

16 What did he do in front of Minor 3 She
17 describes several times, both in the car and at
18 Minor 2 house in West Columbia, Richard Ratliff
19 masturbated in front of her, sometimes both in front of
20 her and Minor 2 She also described instances where it
21 happened in the house.

22 How about solicitation of a minor, the second
23 charge? Obviously Richard Ratliff is an older
24 individual. November 2006 are these allegations, the
25 date on these allegations.

1 The next two involve November of 2006, and
2 that's a date that was given by Minor 1 from the witness
3 stand. I think you heard us talk about on redirect how
4 she refreshed her memory by looking at a document.

5 She remembered that that particularly stuck
6 out in her mind that one of these times or several of
7 these times were in November of '06 when Mr. Ratliff
8 lived in [REDACTED] her neighborhood. This is Minor 1
9 neighborhood, [REDACTED] Mobile Home Park. He had a
10 place there and also in Moore Mobile Manor, which is
11 over close to the hospital.

12 These two instances are charged basically for
13 the masturbation that Richard Ratliff did in front of
14 both Minor 2 and Minor 1 They were both 11 years old
15 in November of 2006.

16 They said it happened numerous times. They
17 gave us a particular date. Minor 1 said from this
18 witness stand this sort of thing happened more times
19 than she could count. She particularly gave a date of
20 November 2006 in [REDACTED]

21 She knows at that time she was living in Pine
22 Ridge, and Mr. Ratliff had a place in [REDACTED] In
23 fact, he was managing the mobile home park in [REDACTED]
24 at that time.

25 That was corroborated by other witnesses as

1 well, by Minor 1 mother who lives in [REDACTED] She
2 was familiar with Richard Ratliff. She had known him
3 for years.

4 So are the elements of that, the next two
5 indictments met for solicitation? I would submit they
6 are. Richard Ratliff masturbated in front of these two
7 girls numerous times, particularly in November 2006,
8 which has been charged in the indictments.

9 That is a sexual activity performed in the
10 presence of a minor, and as to both girls, he is guilty
11 of all three counts. He masturbated in front of all
12 three of these girls. That's what these three counts
13 stand for.

14 How about the lewd act, attempting or
15 committing a lewd act on a minor, the next two
16 indictments, 2887 and 2888? Number 2887 involves
17 Minor 2 was 11 years old in July 2007. Both
18 of the these, ladies and gentlemen, involve an incident
19 which we have dated as July 9.

20 You will have the statements in your jury room
21 from Minor 2 All those were entered into evidence.
22 You can look at all of those. One of these statements
23 references this trip to Wal-Mart, which Minor 3 said
24 there was more than ten times probably they went to
25 either the store or Zaxby's, Dollar General or Wal-mart.

1 Particularly in that statement that was given.
2 by Minor 2 to the detective, one of these trips they
3 remember -- and this was a couple of weeks after -- at
4 that point they remember this was July 9.

5 If you remember Richard Ratliff, according to
6 the America's Best records, was in South Carolina
7 between the dates of July 9 and July 12 staying at
8 America's Best.

9 Well, this incident occurred in the car, and
10 it involved both Minor 2 and Minor 3 Minor 2 was 11
11 again and Minor 3 was 13 in July of 2007. Now, did the
12 Defendant commit a lewd or lascivious act with the
13 intent of arousing himself or the child? That's the
14 question we have on lewd act of a minor.

15 Both girls testified that during this trip to
16 Wal-Mart, during the trip to Wal-Mart specifically, they
17 remember where he bought them thong panties. During
18 that trip in the car, he fondled both of them.

19 Minor 2 says she was sitting, she remembers,
20 in the passenger front seat of the car, and Minor 3 is
21 sitting behind in the back. During this trip both of
22 them recall Richard Ratliff reaching over and touching
23 their breasts and their vaginas over the clothes.

24 If you remember the elements of lewd act on a
25 minor, it's on the clothed or unclothed genitals of a

1 child. The elements here, ladies and gentlemen, are met
2 as to this trip to Wal-Mart.

3 Now, these are the specific charges we have
4 before you. You heard from this witness stand from all
5 three victims how this happened over a course of time.
6 All of those instances that they told you about are part
7 of Mr. Ratliff's scheme, ladies and gentlemen.

8 They are part of his scheme and plan to
9 sexually take advantage of these girls. These are the
10 specific times he has been charged with, and I submit to
11 you, ladies and gentlemen, each and every element of the
12 eight indictments before you in this case have been met,
13 and then some.

14 It's really about what these girls had to say
15 on this witness stand. What these girls had to say on
16 this witness stand, ladies and gentlemen, was
17 corroborated each and every step of the way by this
18 evidence before you.

19 You will have this box in the jury room. I
20 will not get a lot of these items out. You have the
21 option to do that. It will all be back there with you,
22 the pictures of the things they had seen. Each of them
23 said these sex toys, these naked pictures, this
24 pornographic D.V.D.

25 These girls said all those are things he

1 showed them that were laying around the house, things
2 that were laying in his car, the things he maid readily
3 available to these girls in order to prepare them for
4 what he wanted to do to them.

5 It was calculated, it was cold, and he did it
6 over a period of time, grooming these girls for what he
7 wanted to do later. You will have all those items in
8 the jury room, ladies and gentlemen.

9 Just a couple of note here. You will have the
10 panties and the sex toys and the K.Y. jelly and condoms
11 and other things that Detective Prestigiacomo found in
12 the hotel room when he went and arrested Mr. Ratliff.

13 You will see this receipt, which is State's
14 35. The time on that was 4:32 in the afternoon of
15 July 30. He had come and checked into that hotel room
16 and made a call to have ^{Minor 2} come to that hotel room
17 that night.

18 This is what he had waiting on her. You will
19 have the receipt and the items they found: Three pairs
20 of size 5 girl's panties, a pack of condoms, a tube of
21 K.Y. jelly.

22 You will have all those items in the jury
23 room, ladies and gentlemen. You will have the receipt
24 to look at. He was cold and it was calculated. Thank
25 God, Detective Prestigiacomo showed up at the door that

1 night instead of Minor 2

2 Thank God those girls had already had the
3 courage to come forward and tell what that man had done
4 to them. You will have all those items in the jury room
5 to look at.

6 How about the Virginia stuff that we
7 introduced through these pictures by the detectives from
8 Virginia? You remember Sheriff Vaughan who investigated
9 a room Richard had stayed in up in Virginia with his
10 mother and his brother.

11 Look at this bag. You will have this picture
12 in the jury room to look closer at, this bag that they
13 found in that room. It has got two pictures which

14 Minor 2 has identified as herself, one on the back of
15 the car and this one with this other child which she
16 identified in this case as the Defendant's grandson.

17 Ladies and gentlemen, in this same bag with
18 these pictures of Minor 2 we find a sex toy, another
19 tube, unrelated tube, of K.Y. jelly, this strap item
20 here, and a pair of girl's panties.

21 Solicitor Howard showed the pictures of these
22 bags to Minor 2 Minor 2 said that she had a
23 pair of panties the same color. She identified the
24 color of these panties. She believed them to be hers,
25 along in the same bag with the sex toys and pictures of

1 Minor 2

2 Does that tell you anything about that man's
3 intent, what he wanted to do to Minor 2 what he had
4 already done? I'm not going to pull all these items out
5 of this box, ladies and gentlemen. You will have all of
6 them in the jury room. You can do what you want with
7 them.

8 Consider the evidence in this case. I would
9 submit to you though, ladies and gentlemen, this case is
10 about these girls' testimony, how they are dovetailed
11 together, how they are corroborated every step of the
12 way by the other witnesses that you have seen on this
13 witness stand, including Ms. Heather Smith this morning.

14 She told you how many children she had
15 interviewed and how it's very common for children to
16 disclose stories in this same manner. They start with
17 less detail and go to more.

18 They usually describe time periods that they
19 occurred as not specific dates but seasons of the year,
20 how old they were, what grade they were in in school.
21 That's what these girls did, ladies and gentlemen. We
22 heard sixth grade. That was the year that Minor 2 and
23 Minor 3 became friends. We know the time periods they
24 lived in these houses.

25 All the other evidence corroborates, that you

1 heard, corroborates these girls' stories, from Robert
2 Shaw at the mobile home park, to the hotel employee,
3 Mr. Kilgore, to the detectives from Virginia who put
4 these items of evidence in front of you.

5 By the way, how do you think these girls would
6 have known about these items in Virginia? They didn't.
7 They didn't tell the detectives about these specific
8 items. They said they had seen certain pictures and
9 certain things.

10 Two days later, lo and behold, in Virginia,
11 hours away from Columbia, South Carolina, two detectives
12 with Wythe County find all these items that these girls
13 have seen time and time again. It's all corroborated
14 together, ladies and gentlemen.

15 You may ask yourself in this case one
16 question, why did it take them so long to come forward?
17 I want you to remember this statement that ^{Minor 2}
18 made. I want this to resonate with you as you go back
19 to the jury room. We were scared that no one would
20 believe us.

21 Remember what Heather Smith said this morning?
22 She wasn't in the jury room (sic) to hear ^{Minor 2} say
23 that yesterday or she wasn't in the courtroom to hear
24 ^{Minor 2} say that from the stand.

25 Heather Smith says that is typical of children

1 who have been abused. They don't believe people will
2 believe them. They are scared of what might happen.
3 They didn't hate Richard Ratliff. He had actually acted
4 to Minor 2 somewhat of a father figure.

5 According to her mother, he took her from a
6 young age, took her to the store, bought things for her,
7 was a mentor for her in her mind. Little did she know
8 the evil that was in his heart and his mind when he was
9 with Minor 2 all those times when she was younger. He
10 was looking for an opportunity, the perfect opportunity,
11 to take advantage of Minor 2 and ultimately take
12 advantage of her two friends.

13 At the beginning of this case, ladies and
14 gentlemen, you heard Solicitor Howard argue to you about
15 these girls' faces. She wants you to remember their
16 names and their faces. Remember Minor 1 who you heard
17 first. She wants you to remember Minor 2 who you heard
18 from second, and she wants you to remember Minor 3 who we
19 heard from third.

20 I submit to you, ladies and gentlemen, that
21 those are faces you may remember while you are
22 deliberating on this case, but there is a face and
23 things that these three girls are going to remember
24 their entire life. It's the face of this man right
25 here.

1 I want you to take a good look at it. That is
2 the face that these three girls are going to remember
3 every time they start a new relationship with a young
4 man, every time when they get older when they have any
5 kind of experience that should be good in life, a
6 healthy relationship with another human being, they are
7 going to remember what that man did to them when they
8 were 10 or 11 years old.

9 Mr. Williams told you in opening that it's not
10 your job to do anything but to do justice in this case.
11 I couldn't agree with Mr. Williams more, ladies and
12 gentlemen.

13 It's time to do justice. The lies stop today.
14 That man's deception which he carried out for years
15 stops today. It's time to do justice, ladies and
16 gentlemen. It's time to find that man guilty. Thank
17 you.

18 THE COURT: Thank you. Thank you very much,
19 Solicitor. Mr. Williams.

20 MR. WILLIAMS: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: Do you need that off,
23 Mr. Williams?

24 MR. WILLIAMS: Yes, sir.

25 (Pause).

CLOSING ARGUMENT

1
2 MR. WILLIAMS: You need a podium to lean on
3 when you get a certain age. You have to lean on it.
4 Sometimes when you drink a lot of coffee in the morning,
5 you tend to get nervous and walk around a lot. I have
6 been told that when you walk around a lot, sometimes it
7 distracts jurors, and I don't want to distract you.
8 It's a nervous habit.

9 I want you to pay attention, not just to me,
10 because I think I told you at the beginning that what we
11 lawyers tell you is not evidence. Evidence in a case is
12 what is being sworn to, what is being testified to.

13 I guess the older I get -- I'm not old but I
14 have been doing this for about 33 years -- the more I
15 appreciate the jury system because I have never known
16 the jury to get it wrong. That's a strong statement,
17 isn't it? And that's because jurors are better than
18 machines if you ask me.

19 Each and every one of you 12 jurors were
20 chosen because of your individual background, the
21 belief that we thought that you could be a fair juror,
22 that you would not be swayed by emotion, that you
23 could make up your own mind, that you wouldn't have to
24 listen to somebody else to make up your own mind, and
25 you can.

1 You see, each one of you jurors are 12 judges
2 or 13 judges. I say that with 12 because eventually
3 when I get through and the judge instructs you as to
4 the law, if you have all made it that far, then only 12
5 are probably going to get to hear the case and
6 participate.

7 But you are all judges. You have a right to
8 make a call on whatever the charge is, and that is your
9 decision. I would remind you that we have eight
10 different charges.

11 You may think this is an easy case, but it's
12 not an easy case because you have eight distinct charges
13 with eight distinct elements and the resulting
14 punishment that goes with it. So you have got eight
15 trials in one.

16 So somehow you jurors are going to have to
17 evaluate each and every one of these cases. Now, I
18 listened to the solicitor, and I heard him say things
19 like I am going to try to distract you. Keep your eye
20 on the ball.

21 Well, I played a little baseball, too, growing
22 up. You know, if anybody ever played baseball and was
23 the catcher, then what the catcher was taught to do was
24 when the ball is thrown if it's a little bit on the
25 inside, if it's a little bit on the outside, you move

1 the mitt, but you try not to let the umpire see you move
2 the mitt.

3 So I don't disagree with keeping your eye on
4 the ball, but I would ask you to keep your eye on where
5 the ball is headed and what is being thrown around, no
6 pun intended, so that you won't see the direct pass.

7 There is a statement that says that perception
8 is reality. That is, if you see it as such, it is such.
9 If that were true, then we would have no magicians in
10 the world.

11 Perception is not always reality, and in this
12 case there has been an effort made to create a
13 perception that is really not based on evidence. It's
14 based on what you are to believe or what you are to see.

15 You are saying, why would Mr. Williams say
16 that? It's actually pretty easy for me to say because,
17 you see, we start off with a long list of witnesses who
18 are supposed to testify. You are voir dired on those
19 witnesses, and for whatever reason some witnesses are
20 called and some witnesses are not called.

21 Remember now that the burden of proof is
22 always on the State to prove its case beyond a
23 reasonable doubt. If there are witnesses and testimony
24 which is not presented to you by the State which leaves
25 you to question whether or not a person is guilty or not

1 guilty, I think he used the word, and I am sure the
2 judge will use the word, firmly convinced.

3 Well, you know, if you don't put up certain
4 evidence, then you may not be firmly convinced of
5 something. Now -- I say now too much. When you listen
6 to the testimony, you have heard a story that begins
7 with one theme, and that theme is that Richard Ratliff
8 was a grandfatherly like man who was a grandfather to
9 Minor 2

10 All the mothers say that, all the adults say
11 that, anybody who has ever seen how he reacted with
12 girls, young girls, said he was a grandfatherly like
13 person.

14 I would hope that I would have the ability as
15 a parent or as an adult, if all this was going on, to be
16 able to see that something was wrong, but you never
17 heard a single witness testify to anything differently.

18 But what we are going to use to make sure that
19 you 12 jurors convict Richard Ratliff of sexual
20 offenses, to include lewd act and what have you, is we
21 are going to introduce items that will repulse you.

22 I think I'm fair in saying that. When you go
23 home, you probably don't have that (indicating) at home
24 and it offends you. It makes you kind of turn your eyes
25 and turn your head and say, you know, he is a bad

1 person. How could he do -- how could he look at this
2 kind of stuff? He must be guilty.

3 Well, what did you see in all this stuff that
4 had absolutely nothing to do with the allegations? This
5 is going to sound gross, but I don't know how you talk
6 about a sexual case without talking about sex. How do
7 you do that?

8 Did any of the alleged victims say that any
9 type of K.Y. jelly was used on them? That sounds gross.
10 I know it does. But what do you say? What is a
11 discrete way for me to say that? See, I have got to
12 walk around.

13 Did any of these children say that any of
14 these sexual items were used on them? No. Did any of
15 these children say that they watched videos of sexual
16 acts? No. Then why, why do we have all these items
17 here?

18 We have these items so that you will think
19 that Richard Ratliff is a bad guy. He's not a good guy,
20 convict him. We are going to go further than that.
21 What we are going to do, if you are not convinced yet
22 that he should be convicted, then what we are going to
23 do is we are going to take some items that we find in
24 Virginia in Eddie Ratliff and Eddie Ratliff's mother's
25 home, and we are going to take a picture of them.

1 You remember the testimony of the sheriff? I
2 hope I made it apparent. We are going to take a picture
3 of it, and all of the pictures of the little girls, we
4 are going to put them all together, and we are going to
5 take one of these items that is used in a sexual act,
6 and we are going to put it right next to it.

7 We are not going to pull all the items out of
8 the bag, but we are going to put that one next to it,
9 and we are going to take a picture of it because we want
10 the jury to see it. We want you to see it in connection
11 with the little girls.

12 Everything is done in a trial with a purpose.
13 What else are we going to do? We are going to put up a
14 chart here, and we are going to go through that chart
15 and because we put it up here in writing, you see, it's
16 more important if you see it in writing because that
17 means it's true.

18 We are going to get a statement about, We were
19 afraid, and we are going to put it in writing, and we
20 are going to make sure you see it. We are going to put
21 it up in big print, and we are going to play it and give
22 you a little time to look at it.

23 If you didn't get a chance to see it long
24 enough, you should have raised your hand. Because it's
25 in writing, so it has got to be true. Well, we have

1 talked about the coin in the puddle. I don't know who
2 is stirring the water, but I will tell you this.

3 Every time I kept looking at this case and I
4 was looking to when there would be some evidence that
5 would substantiate the testimony from these alleged
6 victims or some tangible piece of evidence that I could
7 look at to substantiate the testimony, it disappeared.

8 Well, you see, there were pictures taken of
9 these two little girls in the shower. We don't have it.
10 They were torn up. Were they torn up or did we use
11 scissors to cut them?

12 You see, it's always a problem when you have
13 two people who are telling the same story. If you are
14 not paying close attention, you don't always tell the
15 exact same story.

16 You might have -- even if you are sitting in
17 the same courtroom, you might not tell the same story.
18 Was it torn up? Did we use scissors to cut it?
19 Remember all the witnesses, all these little girls, were
20 sitting here during the entire trial.

21 Well, you've got to get that straight. If we
22 had that, you know, maybe that would be something. Are
23 there any pictures out of all of this box that we had
24 down in Virginia and down here in the car and the motel
25 room and whatever, did you find picture one of any minor

1 child without her clothes on?

2 I can't make up my mind what kind of person
3 Richard Ratliff is. Is he just real sexually oriented
4 or is he attracted to little girls? Well, if he is
5 attracted to little girls, it seems like he would have
6 some pictures of little girls. He has got pictures of
7 himself and adult women, an adult woman.

8 You see, it doesn't all add up. Let's talk
9 about what is not presented and why wasn't it presented.
10 You get a picture of children who are abused, and these
11 children who are abused must have therapy. They must
12 have counseling. They must be examined by a doctor.

13 I'm not making light of that. Don't get me
14 wrong. But if the children were abused, if they were
15 examined, where is that doctor who examined ^{Minor 2}
16 Smotzer?

17 You heard one witness say that there was a
18 medical exam made. Where is that doctor? What was the
19 report? What physical evidence of sexual assault was
20 there?

21 Well, either there was no physical evidence or
22 it wasn't done. According to one witness, it was done
23 because it was organized. Why do you send one out of
24 three witnesses or three victims to the A.R.C. to have
25 an evaluation? Why wouldn't you send the other two? Do

1 you not believe the other two? Is one traumatized more
2 than all three? I don't know.

3 What is the purpose of A.R.C.? It is for a
4 forensic evaluation, for a trained person to examine, to
5 make a determination as to whether or not there is
6 evidence of sexual assault or sexual abuse.

7 Well, we had a forensic evaluation of ^{Minor 2}
8 Smotzer, but we are not going to give you that
9 information. Why not? Well, the forensic evaluator who
10 did it just had a baby seven days ago. So we are not
11 going to give you -- she can't come or she quit her job
12 and she can't come.

13 Well, is there anybody who works at the A.R.C.
14 who is capable of having the records introduced? Nope.
15 We are all drawn back to what the children said, aren't
16 we?

17 Well, no, what we want you to do is think
18 about these girls are going to be traumatized when they
19 have their first boyfriends. It's going to be bad. I
20 want you to focus on that.

21 I want you to focus on how bad it's going to
22 be for them. Every time they meet a new boyfriend, I
23 want you to see this picture. It's impressive, isn't
24 it? It's theatrics is what it is.

25 I want to hear from the doctors who examined

1 these children. I want to see the forensic evaluations.
2 I want to see the medical reports. I want to see
3 something other than what these three girls have decided
4 to tell us. How about you?

5 Well, we have got this other evidence. We
6 have got these statements that were made, and we are
7 preparing the jury for every reason why our case is not
8 solid.

9 Because, you know, children, they can't
10 remember dates. Children, I don't know, they are
11 sometimes late at telling you when something happens.
12 You remember when I had the expert on the stand, I said,
13 Now, is this a diagnostic tool, your testimony? Is what
14 you are telling me, that it is a diagnostic tool? Can
15 you prove something happened by that?

16 Oh, no, this is just a general
17 characterization of some things that we see when we
18 see children who are abused. But by putting up that
19 bit of evidence to you in the form of one witness, we
20 can excuse every question that you 12 jurors have about
21 why the children don't remember when it happened, why
22 the children didn't report it when it allegedly
23 happened. So even if we haven't proven our case to you,
24 well, there is your excuse.

25 Is it guilty until proven innocent? It's not

1 that way. If you check, even if you check -- let's go
2 back to the first event. Because, you see, that's what
3 we are talking about.

4 We are talking about these two items that
5 started the whole thing. What we have is we have an
6 e-mail. You will have State's Exhibit Number 3 which
7 you can look at it, and it says: Hi, momma. I'm really
8 sorry but Richard has tried to touch me and stuff.

9 It goes on. It says, And that was the reason
10 why I didn't want to go to Virginia with him. It goes
11 on. It also references the fact that Minor 1 had told
12 her mother yesterday.

13 You know, you need to get your e-mail straight
14 when you start putting stuff in your e-mails because you
15 are kind of stuck with that as long as you print it out.
16 So we go back to when Minor 1 mother found out about
17 it. Did she find out about it the day before or did she
18 supposedly find out about it the same day?

19 Do you remember what her testimony was? And
20 remember, there was another e-mail which Minor 1 mother
21 had. What happens is, supposedly, Minor 1 mother goes
22 to take a shower, and she does this e-mail deal. The
23 daughter comes out. She reads the e-mail. That gets
24 destroyed. Why do we have State's Exhibit Number 2?
25 Why do we have that?

1 Is that what told the mother that something
2 happened? Or is it props? You know, I could go on and
3 pick out each and every little inconsistency that these
4 witnesses have said. But you know what the State would
5 say to me if I did that? They can't remember everything
6 exactly right. They are children. They just can't
7 remember it right.

8 Remember the testimony from the mother of
9 Minor 2 and I asked her about the last time that she
10 and Minor 2 saw Richard Ratliff. That was the time in
11 which supposedly the child was assaulted.

12 She leaves to go pick up her live-in boyfriend
13 and her live-in boyfriend's friend who lives with them,
14 and they come back with a bunch of beer involved. When
15 they come back, Minor 2 and Richard, she gets Minor 2
16 and they go back to the swimming pool to swim some more.

17 Then they come out and they are tired and they
18 go home. If that child was assaulted right before she
19 got there, then why would the child want to go back to
20 swimming? Why wouldn't she just say, Momma, please take
21 me home?

22 You see, it just doesn't make sense. So now,
23 now, somehow the burden of proof has shifted, and now
24 the Defendant has to come up with some kind of reason
25 why these three children would say what they said.

1 Number one, the burden of proof hasn't
2 shifted, but I will tell you what is probably a
3 plausible explanation. All of this testimony about this
4 Seth individual, I don't know what the truth is.

5 You heard the little girl say it was just a
6 friend. You heard momma said it was a boyfriend. You
7 heard -- I don't know if Mr. Ratliff was supposed to be
8 taking the child to Virginia, and that caused the
9 issuance of this e-mail or as her mother has said, she
10 had already told her that she doesn't have to go.

11 I think when you do this type of thing, you
12 have to get your themes together. I think what is
13 plausible is that ^{Minor 2} doesn't want to go to
14 Virginia, and she has a boyfriend that she wants to see.

15 And because of that, she tells her mother, I
16 don't want to go. I don't care if you want me to. You
17 remember, the mother was going to drop her child off for
18 a couple of days because she had something to do.

19 She didn't want to be around her for a couple
20 of days so they could have some time apart. So she was
21 going to drop her off, and she came up with this story
22 to keep from having to go because she wanted to be
23 there.

24 She talked to her friends, and the friends get
25 their stories together about looking at pornography and

1 about masturbation, and they tell their mothers and then
2 it gets involved.

3 Because now, now what started off as, I don't
4 want to go to Virginia and here is my reason, turns into
5 to golly this thing is -- oh, we have got several counts
6 of criminal sexual conduct and several counts of lewd
7 act. You have got all these terrible things happening.

8 So we go down to the Sheriff's Department. I
9 don't even see all the exhibits. We go down to the
10 Sheriff's Department, and we make a report, first
11 report -- first report -- only said what?

12 It didn't have anything to do about any
13 criminal sexual conduct second. It didn't have anything
14 to do with that. It was some sort of exposure, wasn't
15 it? But we explain that because remember the police
16 officer says, Well, I'm just there for the tip of the
17 iceberg. I'm just there to take the initial report.

18 You know, we've got an excuse for every reason
19 why we don't have evidence, and we've got an excuse for
20 every reason why we don't have all the facts in our
21 statement, and we have got an excuse why we can't
22 remember anything.

23 But the reason you ought to convict Richard
24 Ratliff is because he is a bad guy. He is a bad guy.
25 We go in there and we have the police officer who comes

1 in and he starts taking a statement.

2 Then momma signs the statement and then some
3 other child is writing on the statement. There is
4 nothing wrong with that, Mr. Williams. I don't know
5 what your problem is. This is the way we do it around
6 here.

7 Why didn't you record it? That is some
8 sensitive stuff. You think this isn't sensitive stuff?
9 How about a tape recording about what happened? We
10 can't do that. That's sensitive stuff. Oh, no, it's
11 better to put the little girl on the stand and have some
12 mean guy like me cross examine her.

13 The burden of proof is on the State. I'm not
14 going to belabor all this. Probably by now you have
15 either made up your minds that you are going to convict
16 him because he's a bad guy or not. I am hoping you
17 haven't.

18 I don't think you have because I think you are
19 going to think about this. Think about the evidence.
20 Listen to the judge about the burden of proof, about
21 what they must prove about eight distinctive charges.

22 Lastly, even though you may feel like somehow
23 I have wasted your time or yelled at you, I sincerely
24 appreciate what you have done. It is difficult to look
25 at these items. If you don't come away from this trial

1 with anything else, come away from it with my sincere
2 thanks for participating. Thank you.

3 THE COURT: Thank you. Thank you very much,
4 Mr. Williams.

5 MR. WILLIAMS: Thank you, Your Honor.

6 THE COURT: Mr. Foreman, ladies and gentlemen
7 of the jury, my charge will be probably be about 30
8 minutes. I would prefer to press on if everyone is all
9 right. Thank you very much.

10 (Whereupon the Court charged the jury as
11 follows).

12 THE COURT: This is pretty well scripted.
13 There are certain areas I must cover. The way I cover
14 it is I charge the general law that applies to all
15 criminal cases tried in South Carolina. I will give you
16 the caption of the paragraph I am covering at the time.
17 When I change from one paragraph to another, I will give
18 you that caption.

19 After I cover the general law, I will cover
20 the three charges. They are eight indictments, of
21 course, obviously charging three separate offenses:
22 Criminal sexual conduct with a minor in the second
23 degree, attempting to commit or committing a lewd act on
24 a child, and criminal solicitation of a minor.

25 After I cover those three offenses, I will

1 then cover the form of the verdict. I would ask you to
2 please give me your complete and undivided attention
3 throughout the course of my charge to you.

4 The indictments in this case, eight different
5 indictments, allege several different offenses. There
6 are three indictments for criminal sexual conduct with a
7 minor in the second degree. There are two indictments
8 for committing or attempting to commit a lewd act on a
9 minor, and there are three indictments for criminal
10 solicitation of a minor.

11 Each indictment charges a separate and
12 distinct offense. You must decide each indictment
13 separately on the evidence and the law applicable to it,
14 uninfluenced by your decision as to any other
15 indictment.

16 The Defendant may be convicted or acquitted on
17 any or all of the offenses charged, and you will be
18 asked to write a separate verdict of guilty or not
19 guilty for each indictment.

20 I remind you again the fact that the Defendant
21 was arrested, charged, and indicted in this case is not
22 evidence in the case and cannot be considered by you as
23 evidence of guilt, nor does it create any presumption or
24 inference of guilt.

25 These documents again are simply the formal

1 written instruments which contain the charges made
2 against the Defendant. They are the formal documents by
3 which the case is brought into court.

4 Presumption of innocence. The Defendant has
5 pled not guilty to these indictments. That plea puts
6 the burden on the State to prove the Defendant guilty.
7 A person charged with committing a criminal offense in
8 South Carolina is never required to prove himself
9 innocent.

10 I'm sorry, would you please move the podium
11 for me.

12 MR. WILLIAMS: I'm sorry, Your Honor.

13 THE COURT: That's quite all right. I just
14 noticed it. I try to look down at different areas of
15 the jury. They may like me being more blocked from
16 their view anyway, Mr. Williams, but I will not give
17 them that opportunity. Thank you, Mr. Williams.

18 MR. WILLIAMS: Yes, sir.

19 THE COURT: Again, covering the presumption of
20 innocence. I charge you that it is an important rule of
21 the law that the Defendant in a criminal trial, no
22 matter what the seriousness of the charge may be, will
23 always be presumed to be innocent of the crime for which
24 the indictment was issued unless guilt has been proven
25 by evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 This presumption of innocence does not end
3 when you begin your deliberations, but it accompanies
4 the Defendant throughout the trial until you reach a
5 verdict of guilt based on the evidence satisfying you of
6 guilt beyond a reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the
9 Defendant which remains with the Defendant until it has
10 been stripped from the Defendant by evidence satisfying
11 you the jury of the Defendant's guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is not a mere
14 legal theory. It is not just a legal phrase. It is a
15 substantial right to which every defendant is entitled
16 unless you the jury are satisfied from the evidence of
17 the Defendant's guilt beyond a reasonable doubt.

18 Reasonable doubt. The State has the burden of
19 proving the Defendant guilty beyond a reasonable doubt.
20 Some of you may have served as jurors in civil cases
21 where you were told it is only necessary to prove that a
22 fact is more likely true than not true, such as by the
23 greater weight or preponderance of the evidence.

24 In criminal cases the State's proof must be
25 more powerful than that. It must be beyond a reasonable

1 doubt. Proof beyond a reasonable doubt is proof that
2 leaves you firmly convinced of the Defendant's guilt.

3 There are very few things in this world that
4 we know with absolute certainty, and in criminal cases
5 the law does not require proof that overcomes every
6 possible doubt.

7 If based on your consideration of the evidence
8 you are firmly convinced that the Defendant is guilty of
9 the crime or crimes charged, you must find the Defendant
10 guilty.

11 If, on the other hand, you think there is a
12 real possibility that the Defendant is not guilty, you
13 must give the Defendant the benefit of the doubt and
14 find him not guilty.

15 Duties of jury and trial judge. I remind you
16 that during this trial, you and I have certain duties to
17 perform. As the trial judge, it is my responsibility to
18 preside over the trial of the case, and I also have the
19 duty to rule on the admissibility of evidence offered
20 during the trial.

21 You are to consider only the competent
22 evidence before you. If there was any testimony ordered
23 stricken from the record in this case during this trial,
24 you must disregard that testimony.

25 You are to consider only the testimony which

1 has been presented from this witness stand and any
2 exhibits which have been made a part of the record in
3 this case.

4 I have the additional duty to charge you the
5 law that applies in this case. As the presiding judge,
6 I am the sole judge of the law of this case, and it is
7 your duty as jurors to accept and apply the law as I now
8 state it to you.

9 If you already have any idea as to what the
10 law is or what the law ought to be and it does not agree
11 with what I now tell you the law is, you must abandon
12 that idea because you are sworn to accept the law and
13 apply the law exactly as I state it to you.

14 In every case tried in this court before a
15 jury, the jury becomes the sole and exclusive judge of
16 the facts in a case. A trial judge cannot intimate,
17 state, comment on or make any statement to a trial jury
18 about the facts in a case.

19 Since you the jury are the sole judge of the
20 facts in this case, you are not to infer from what I
21 have said during the progress of this trial in ruling
22 upon the admissibility of evidence or otherwise or
23 anything that I say now during the course of this
24 instruction to you that I have any opinion about the
25 facts in this case.

1 The law does not allow me to have an opinion
2 about the facts in this case. This is a matter solely
3 for you the jury to determine. As jurors it is your
4 duty to determine the effect, the value, the weight, and
5 the truth of the evidence presented during the trial.

6 Direct and circumstantial evidence. There are
7 two types of evidence which are generally presented
8 during a trial, direct evidence and circumstantial
9 evidence.

10 Direct evidence is the testimony of a person
11 who claims to have actual knowledge of a fact, such as
12 an eyewitness or an ear witness. It is evidence which
13 immediately establishes the main fact to be proved.

14 Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be
18 inferred. Circumstantial evidence is based on inference
19 and not on personal knowledge or observation.

20 Our law makes absolutely no distinction
21 between the weight or the value to be given to either
22 direct or circumstantial evidence, nor is there a
23 greater degree of certainty required of circumstantial
24 evidence than of direct evidence.

25 You should weigh all of the evidence in the

1 case. After weighing all of the evidence if you are not
2 convinced of the guilt of the Defendant beyond a
3 reasonable doubt, you must find him not guilty.

4 Credibility of witnesses. Necessarily you
5 must determine the credibility of witnesses using your
6 good judgment and common sense. Credibility simply
7 means believability. It becomes your duty as jurors to
8 analyze and evaluate the evidence and determine which
9 evidence convinces you of its truth.

10 In determining the believability of witnesses
11 who have testified in this case, you may believe one
12 witness over several or several over one. You may
13 believe part of the testimony of a witness and reject
14 the remaining part of the testimony of that same
15 witness. You may believe the testimony of a witness in
16 its entirety or reject the testimony of a witness in its
17 entirety.

18 You may consider whether any witness has
19 exhibited to you any interest, bias, prejudice, or other
20 motive in this case. You may also consider the
21 appearance, the manner, the demeanor of the witness
22 while on the witness stand.

23 Expert witnesses. The rules of evidence
24 ordinarily do not permit witnesses to testify to
25 opinions or conclusions. An exception to this rule

1 exists for witnesses we call expert witnesses.

2 A witness who by education and experience has
3 become expert in some art, science, profession or
4 calling may state an opinion as to relevant and material
5 matter in which the witness claims to be an expert and
6 may also state the reasons for the opinion.

7 You should consider any expert opinion
8 received in evidence in this case and like any other
9 evidence give it the weight you think it deserves. If
10 you decide that the opinion of an expert is not based on
11 sufficient education or experience or if you conclude
12 that the reasons given in support of the opinion are not
13 sound or that the opinion is outweighed by other
14 evidence, you may disregard the opinion entirely.

15 An expert witness' testimony is to be given no
16 greater weight than that of other witnesses simply
17 because the witness is an expert. Further, you are not
18 required to accept an expert's opinion even though it is
19 not contradicted.

20 I instruct you and emphasize that the fact the
21 Defendant did not testify is not a factor to be
22 considered by you in any way in your deliberations or
23 your consideration on the question of the guilt or
24 innocence of the Defendant. It must not be considered
25 by you in any manner whatsoever.

1 A defendant has the constitutional right to
2 remain silent, and the assertion of this right must not
3 be considered by you in your deliberations. I repeat,
4 under your oath you are to draw no conclusions
5 whatsoever from the fact that the Defendant in this case
6 did not testify.

7 The fact that this Defendant did not testify
8 should not even be discussed in the jury room. The
9 burden of proof, as I have stated to you, is on the
10 State. The Defendant is not required to prove his
11 innocence. The burden of proof remains on the State to
12 prove guilt beyond a reasonable doubt.

13 Intent. In order to establish criminal
14 liability, criminal intent is required. For example,
15 the mental state required to be proven by the State for
16 a particular crime might be purpose, intent, knowledge,
17 recklessness or the like.

18 Criminal intent must be proven by the State
19 beyond a reasonable doubt. Criminal intent is always a
20 matter that must be determined by the jury from the
21 circumstances surrounding the situation.

22 There is no way to prove intent to a
23 mathematical certainty. There is no way for medical
24 science to dissect a person's brain and determine what
25 the person had in mind.

1 So the law says that criminal intent may be
2 inferred from the circumstances shown to have existed.
3 This is how you make your determination of whether or
4 not the element requiring intent was present.

5 It is not necessary to establish intent by
6 direct and positive evidence, but intent may be
7 established by inference in the same way as any other
8 fact, by taking into consideration the acts of the
9 parties and all the facts and circumstances of the case.

10 Criminal intent is a mental state, a conscious
11 wrong doing. It is up to you to determine what the
12 Defendant intended to do based on the circumstances
13 shown to have existed.

14 Criminal intent can arise from action or a
15 failure to act. It may arise from recklessness or an
16 indifference to duty or to consequences that are
17 considered by the law to be the equivalent of criminal
18 intent.

19 Ladies and gentlemen, I now am moving into the
20 charges. I will cover them in the order, criminal
21 sexual conduct with a minor in the second degree. I
22 will cover that first -- yes, ma'am.

23 JUROR: Your Honor, would you go back through
24 criminal intent?

25 THE COURT: I will, yes, ma'am. Thank you so

1 much.

2 In order to establish criminal liability,
3 criminal intent is required. For example, the mental
4 state required to be proven by the State for a
5 particular crime might be purpose, intent, knowledge or
6 recklessness.

7 Criminal intent must be proven by the State
8 beyond a reasonable doubt. Criminal intent is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation.

11 There is no way to prove intent to a
12 mathematical certainty. Obviously there is no way
13 medical science can dissect a person's brain and
14 determine what the person had in mind. So the law says
15 criminal intent may be inferred from the circumstances
16 shown to have existed.

17 This is how you the jury make your
18 determination of whether or not the element requiring
19 intent was present. It is not necessary to establish
20 intent by direct and positive evidence but intent may be
21 established by inference in the same way as any other
22 fact, by taking into consideration the acts of the
23 parties and all the facts and circumstances of the case.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. It is up to you to determine what the

1 Defendant intended to do based on the circumstances
2 shown to have existed.

3 Criminal intent can arise from action or a
4 failure to act. It may arise from reckless conduct or
5 an indifference to duty or to consequences that is
6 considered by the law to be the equivalent of criminal
7 intent. That is the charge on criminal intent, Madame
8 Juror.

9 I am now going to cover the three specific
10 crimes charged. The order I will cover them is criminal
11 sexual conduct with a minor in the second degree, then
12 committing or attempting to commit a lewd act on a
13 minor, and finally criminal solicitation of a minor.

14 The Defendant is charged with criminal sexual
15 conduct with a minor in the second degree. The State
16 must prove beyond a reasonable doubt that the Defendant
17 engaged in a sexual battery with the victim.

18 A sexual battery is defined as sexual
19 intercourse, cunnilingus, fellatio, anal intercourse or
20 any intrusion, however slight, of any part of a person's
21 body or of any object into the genital or anal openings
22 of another person's body, except when the intrusion is
23 accomplished for medically recognized treatment or
24 diagnostic purposes.

25 The State must prove beyond a reasonable doubt

1 that the Defendant engaged in a sexual battery with the
2 victim. The State must then prove beyond a reasonable
3 doubt that, one, the victim was at least 11 years old
4 but not more than 14 years of age at the time the sexual
5 battery occurred.

6 Consent, willingness, indifference or
7 ignorance on the part of the minor, if any, as to what
8 was taking place does not in any way affect the charge
9 of criminal sexual conduct with a minor because an
10 unmarried woman under the age of 14 cannot legally
11 consent to sexual battery.

12 That is the charge on criminal sexual conduct
13 with a minor in the second degree. There are three
14 indictments for that. I will cover it in a little bit
15 more detail in the form of the verdict.

16 There is an allegation that on or about
17 June 25, he did commit a sexual battery with and upon
18 the body of Minor 3 in the performance of
19 cunnilingus and Minor 3 was 13 at the time.

20 Another indictment, that the Defendant did, on
21 or about July 24 of '07, commit a sexual battery with
22 and upon the body of Minor 2 alleging
23 cunnilingus, her age being 11 at the time.

24 Then another indictment that on or about
25 July 23 of '07, he did commit a sexual battery with and

1 upon the body of Minor 2 by digital penetration
2 of the anus and vagina, Ms. Smotzer being age 11 at the
3 time. That is the charge of criminal sexual conduct
4 with a minor in the second degree.

5 Lewd act on a minor. There are two
6 indictments for committing or attempting to commit a
7 lewd act on a minor.. One indictment alleges that on or
8 about July 10 of '07, he did commit a lewd act on the
9 minor, Minor 2 in that he did rub the vagina
10 of Minor 2 age 11.

11 The other indictment alleges that on or about
12 July 10 of '07, he did commit a lewd act with and upon
13 the body of Minor 3 in that he did rub the breasts
14 and vagina of Minor 3 age 13.

15 The Defendant is charged with committing a
16 lewd act on a minor. A minor is a person under the age
17 of 18 for purposes of this statute. The State must
18 first prove beyond a reasonable doubt that the Defendant
19 was over the age of 14.

20 Next the State must prove the Defendant
21 willfully and lewdly committed or attempted a lewd or
22 lascivious act on or with the body or its part of a
23 child under the age of 16 with the intent to arouse,
24 appeal to or gratify the lust, passion or sexual desires
25 of the Defendant or of the child.

1 Willfully. This goes back to the general
2 charge on intent. Willfully means voluntarily and
3 intentionally with the specific intent to do something
4 the law forbids.

5 Lewd means obscene, lustful, indecent or
6 lecherous. Lascivious means intending to incite lust,
7 lewd, indecent, obscene or tending to deprave the morals
8 with respect to sexual relations.

9 On the charge of lewd act on a minor, just to
10 clarify, I noted in one part of my charge, I defined
11 minor as a person under the age of 18. The caption of
12 the statute is lewd act on a minor, a child under the
13 age of 16, a child under the age of 16. The State must
14 prove beyond a reasonable doubt that the Defendant was
15 over the age of 14, and the child was under the age of
16 16.

17 The next two indictments, ladies and
18 gentlemen -- three indictments -- are criminal
19 solicitation of a minor. The allegations are that in
20 November of '06, he did masturbate in front of the
21 victim Minor 1

22 Also November of '06, he did masturbate in
23 front of the victim Minor 2 and in April of
24 '07, he did masturbate in the presence of the victim
25 Minor 3

1 In South Carolina the statute is 16-15-342,
2 criminal solicitation of a minor. It reads a person 18
3 years of age or older commits the offense of criminal
4 solicitation of a minor if he knowingly contacts or
5 communicates with or attempts to contact or communicate
6 with a person who is under the age of 18 or a person
7 reasonably believed to be under the age of 18 for the
8 purpose of or with the intent of persuading, inducing,
9 enticing, coercing the person to engage or participate
10 in a sexual activity as defined in Section 16-15-375 (5)
11 or with the intent to perform a sexual activity in the
12 presence of the person under the age of 18 or a person
13 reasonably believed to be under the age of 18.

14 We have to look to 16-15-375 (5) to get the
15 definition of sexual activity. Sexual activity includes
16 any of the following acts or simulations thereof: A.,
17 masturbation, whether done alone or with another human
18 or animal.

19 Next, B. or C., touching in an act of apparent
20 sexual simulation or sexual abuse of the clothed or
21 unclothed genitals, pubic area or buttock of another
22 person or the clothed or unclothed breast of a human
23 female. That is the charge on criminal solicitation of
24 a minor.

25 Finally, ladies and gentlemen, as to the form

1 of verdict -- I appreciate your continued patience and
2 focus and your undivided attention -- you will have,
3 Mr. Foreman, a verdict form in there.

4 I think it's very self-explanatory. I have
5 listed the charges in the order I have explained them to
6 you, criminal sexual conduct with a minor in the second
7 degree.

8 Under there I have A., A., and C. I will
9 change that to A., B. and C. Then I have committing or
10 attempting a lewd act. Under that I have A. and B.
11 Then, three, I have criminal solicitation of a minor,
12 and under that, A. and B.

13 Again, these have to be decided separately and
14 distinctly. What I have done is, for example, under
15 criminal sexual conduct, A., as to ^{Minor 2} on
16 or about July 23 of '07, we the jury unanimously find
17 the Defendant guilty or not guilty.

18 Your verdict must be unanimous. It must be
19 the verdict of all members of the jury. If after your
20 consideration of the evidence as to that charge,
21 applying the law as I told you the law is, the State has
22 met its burden of proof, you would find the Defendant
23 guilty.

24 If the State has failed to meet its burden of
25 proof and you have a reasonable doubt, you will find the

1 Defendant not guilty. I would ask you to check to the
2 left of whichever your finding would be and circle both
3 the check and the word, whatever it is.

4 I can go through each and every one of these.
5 I don't think I need to. You will see the dates that it
6 alleges, or about July 24, on or about June 25. The
7 other dates November of '06, again, each of your
8 verdicts must be done separately and distinctly.

9 There is absolutely no significance whatsoever
10 in the order in which I have listed the charges or the
11 possible verdicts. One must be listed first. One must
12 be listed second. It's that simple.

13 All 12 of you must agree on your verdict.
14 Your verdict cannot be based on sympathy, passion,
15 prejudice, emotion or any other consideration not in
16 evidence in the case.

17 Mr. Foreman, when the jury agrees on the
18 verdict, you will write and fill out the proper form.
19 As you go through, the last page is the date line and
20 signature line for you as the presiding juror.

21 Once y'all have reached your verdict,
22 unanimous verdict, as to all charges, knock on the door
23 and inform the bailiff you have reached a verdict. At
24 that time we will receive you back into the courtroom.

25 I will ask you momentarily to go to your jury

1 room. Do not begin your deliberations until you are
2 directed to do so by the clerk or by the bailiff. What
3 will happen is our alternate would come out, and you
4 would then be directed to begin your deliberations or I
5 may have to bring you back in here.

6 If you need anything, if you have any
7 questions, as madame juror did previously, if you would
8 write it out, knock on the door and give to the bailiff.
9 Yes, ma'am.

10 JUROR: Will I be in there?

11 THE COURT: You will come out. Everybody
12 looks very well..... So what will happen is the evidence
13 will be presented to them, you would come out. Then you
14 would be directed then to begin your deliberations. All
15 right. Do not discuss it until you are directed to do
16 so. If you have any questions, write them out and knock
17 on the door and give it to the bailiff. I will
18 certainly respond.

19 FOREMAN: Your Honor?

20 THE COURT: Yes, sir.

21 FOREMAN: In what we are going to take back to
22 the room, will the instructions on what our verdict is
23 to be based on be included in there, the verbiage you
24 just used?

25 THE COURT: What part of the verbiage, the

1 particular crimes?

2 FOREMAN: No. What you just said our verdict
3 is to based on, not to be based on, you know, prejudice.

4 THE COURT: Passion, prejudice, sympathy.

5 FOREMAN: Exactly.

6 THE COURT: All right.

7 FOREMAN: I would really like a copy of that.

8 THE COURT: I will consider that.

9 FOREMAN: Thank you.

10 THE COURT: I will consider that. Anything
11 else? Yes, sir.

12 JUROR: Sir, any of our prior experience, I
13 don't know how to say this, prior experience --

14 THE COURT: As far as that is concerned, let
15 me ask you to do this. Write out a note for me and give
16 it to the bailiff and let me respond to that, all right?
17 If you have any administrative issues or any other
18 questions or anything of that nature, just let me know.

19 Again, do not begin your deliberations until
20 you are directed to do so. What I may do is just let
21 you eat your lunch. It's probably here. It's probably
22 been here -- close to stale as long as I have talked.

23 But why don't I do that. Why don't y'all
24 leave your notes out here right now. Y'all can go on
25 and eat your lunch. I will respond to you. Just knock

1 on the door as soon as you finish your lunch. Do not
2 begin your deliberations until after lunch. Thank you.

3 (The jury retires to the jury room).

4 THE COURT: Solicitor, exceptions, additions?

5 MR. STUMBO: I have a little bit of an
6 exception to what the foreman said. I don't know that
7 he has not already -- the way he said, Could you send
8 back the instruction on that particular thing, what we
9 are to base on our verdicts on, I don't know that that
10 didn't sound like he's...

11 THE COURT: I will send the whole charge back
12 there. It doesn't bother me. If it doesn't bother
13 y'all, I will send everything.

14 MR. WILLIAMS: Your Honor, on behalf of my
15 client, I would request that if the Court is going to
16 send anything back, that it be what the foreman asked
17 that he wanted or maybe he could be recharged on that if
18 that's the issue.

19 THE COURT: I would be glad to -- if y'all
20 don't agree on it, I will not send anything.

21 MR. STUMBO: I would agree with that, Your
22 Honor.

23 THE COURT: If y'all are not going to agree to
24 it, I will not send anything. I will bring them back
25 after they eat their lunch and charge them further.

1 Y'all need to get the exhibits straight now. Did you
2 have any exceptions, Mr. Williams?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: I apologize.

5 MR. STUMBO: The only other exception I can
6 think of, and I am assuming the second individual will
7 send a note back out, and we can take that up, the issue
8 he started to address Your Honor about.

9 THE COURT: As I recall that juror, he came to
10 the bench during jury qualifications and related an
11 event that occurred in his family to his sister that was
12 perpetrated by another family member.

13 He further related he had never discussed it
14 with his sister and could set it aside. I don't know if
15 that's what he is referring to or not. I didn't want
16 him to go into it any further. That's why I sent them
17 out.

18 MR. STUMBO: We can take that up if and when
19 he sends a note out.

20 THE COURT: All right. Y'all need to check
21 the exhibits.

22 (Pause).

23 THE COURT: I will step out while the jury
24 eats their lunch.

25 (Whereupon there is a recess).

1 THE COURT: We are back on the record in State
2 versus Ratliff. I received this note from the jury,
3 from the juror sitting next to the foreperson who was
4 asking me a question when I asked him to please write
5 the note out.

6 Here is his note: May any prior knowledge
7 slash past experience on how sworn statements are given
8 or taken be considered?

9 Solicitor, do you have a position in that
10 matter?

11 MR. STUMBO: My position is we need to bring
12 him out, and we would ask the Court to inquire of him --
13 separate from the other jurors -- if he can still be
14 fair and impartial and if not seat the alternate if she
15 is still here.

16 MR. WILLIAMS: I would object to that, Your
17 Honor. I think what he asking is whether or not -- I
18 think an instruction to the entire jury that they are to
19 rely on their -- on all of their experiences in life is
20 more of an appropriate instruction without commenting on
21 a specific, Do I rely on my knowledge about it?

22 THE COURT: Solicitor?

23 MR. STUMBO: I will go with that, Your Honor.

24 THE COURT: I would agree with that. I tell
25 them you decide the case based on what you hear in the

1 courtroom, the law, the facts, and inferences drawn from
2 the facts, the law, based on your past life experiences,
3 educational levels, common sense, and good judgment.

4 MR. WILLIAMS: It sounds like he verbalized a
5 question that jurors have been asking for a long time.

6 THE COURT: I think that's the thing to do. I
7 will reread the form of verdict in its entirety. It
8 covers that part that the foreperson asked about. If
9 you would bring us our jury, please, all 13.

10 (The jury returns to the courtroom).

11 THE COURT: It appears our jury is back
12 present in the courtroom. I think I need to respond to
13 two requests. First, Mr. Foreman, your request
14 concerning the last part of my charge.

15 It's about three paragraphs. I will reread
16 it. If any time you have -- if you need to get your
17 notes, you may certainly do so, and if the other jurors
18 need their notes.

19 There are two possible verdicts which you may
20 find in each of these cases, guilty or not guilty.
21 There is no significance whatsoever in the order in
22 which I state these possible verdicts. It is simply
23 that one must be stated first.

24 Ladies and gentlemen, your verdicts must be
25 unanimous. All 12 of you must agree on the verdicts.

1 Your verdict cannot be based on sympathy, passion,
2 prejudice, emotion, or any other consideration not in
3 evidence in this case.

4 Mr. Foreman, when the jury agrees on the
5 verdict, you will write the verdict, check it as I told
6 you, circle the verdict that the jury has decided on,
7 sign your name on the last page, date it, and knock on
8 the jury room door and inform the bailiff you have
9 reached a verdict. At that time we will receive you
10 back into the courtroom.

11 That is the charge covering that section. As
12 I say, if during your deliberations you need -- one of
13 the juror asks to cover a specific section or all of it,
14 I will be glad to do so.

15 FOREMAN: Thank you.

16 THE COURT: As to the question that I received
17 from the other member of the jury, I will respond to
18 that generally. You base your verdicts on the facts as
19 you find them to be and the reasonable inferences to be
20 drawn from the facts and the law as I have told you the
21 law is, using your good judgment and common sense.

22 You come as jurors with your past life
23 experiences or work history, educational levels. There
24 is no way to check that at the steps of the courthouse.
25 So you bring all that with you to bear with your common

1 sense and your good judgment in determining what the
2 facts are, the inferences to be drawn from the facts,
3 and the law as I told you.

4 You cannot base your verdict though on
5 anything that is not a fact in the record or inference
6 to be drawn from the facts or what you may think the law
7 is or what the law ought to be. If that responds
8 appropriately to your question and if it does not, write
9 me out another note. I will try to articulate a better
10 or different response.

11 All right. As I say, if you have any other
12 questions, Mr. Foreman, if you will write them out for
13 me. If you have any needs, just write them out. I
14 believe the parties -- well, since I have spoken with
15 you again, I still must confer outside of your presence.

16 What will happen is I will either bring you
17 back out here to recharge on something or you would be
18 delivered the items of evidence, the verdict form, and
19 our alternate will come out. Everybody still looks
20 fine. The alternate will come out, and you will be
21 instructed to begin your deliberations.

22 FOREMAN: Are we allowed to take our notes
23 back now?

24 THE COURT: You are allowed to take your
25 notes, but do not begin your deliberations until you are

1 instructed to do so.

2 FOREMAN: I understand.

3 (The jury retires to the jury room).

4 THE COURT: Exceptions, Solicitor?

5 MR. STUMBO: Nothing from the State, Your
6 Honor.

7 MR. WILLIAMS: Nothing from the Defendant,
8 Your Honor.

9 THE COURT: Y'all have checked the exhibits?

10 MR. WILLIAMS: We have and the court reporter
11 has done a careful check, a thorough check.

12 THE COURT: Mr. Adams, if you will get the
13 exhibits, the verdict form, and bring the alternate out,
14 please.

15 (The alternate returns to the courtroom and is
16 excused).

17 (The jury commenced its deliberation at
18 2:03 p.m.)

19 (Court's Exhibit Number 2 is marked for
20 purposes of the record).

21 (The following occurred at 5:10 p.m.)

22 THE COURT: Solicitor, I understand we have a
23 verdict. Anything before we bring in our jury?

24 MR. STUMBO: Nothing from the State, Your
25 Honor.

1 THE COURT: Mr. Williams?

2 MR. WILLIAMS: Nothing from the Defendant,
3 Your Honor.

4 THE COURT: Madame Bailiff, if you would bring
5 our jury, please.

6 I would remain anyone in the gallery, there
7 will be no show of emotions one way or the other on the
8 publication of the verdict. Please keep that in mind.
9 Sheriff, if you would please keep a keen look around the
10 courtroom for me.

11 (The jury returns to open court to report its
12 verdict).

13 THE COURT: Madame Clerk.

14 CLERK: Mr. Foreman, do you have a verdict?

15 FOREMAN: We do, Your Honor.

16 CLERK: If you will pass it to the bailiff,
17 please.

18 (Hands to Court).

19 THE COURT: Just to clarify for me,
20 Mr. Foreman, on the 3 C., the very last verdict you
21 reached where you struck through, the one you struck
22 through is not your verdict?

23 FOREMAN: That is correct.

24 THE COURT: The one that you checked and
25 circled and signed next to it is your verdict, the

1 jury's verdict?

2 FOREMAN: That's correct, Your Honor.

3 THE COURT: Thank you. Thank you very much.
4 The verdict appears to be in the proper form.

5 Madame Clerk, if you would publish our
6 verdict, please.

7 (Whereupon the verdicts of the jury are
8 published as follows).

9 CLERK: The State versus Richard David
10 Ratliff, on Indictment 2007-GS-32-2884, 2885, 2886,
11 2887, 2888, 2891, 2893, and 2894, as to the charge of
12 criminal sexual conduct with a minor in the second
13 degree, as to Minor 2 we the jury unanimously
14 find the Defendant guilty. It is so signed.

15 As to Minor 2 on or about July 24,
16 2007, we the jury unanimously find the Defendant guilty.
17 It is so signed.

18 As to Minor 3 on or about July 25, 2007,
19 we the jury unanimously find the Defendant guilty. It
20 is so signed.

21 On committing or attempting lewd act on a
22 minor, as to Minor 2 on or about July 10,
23 2007, we the jury unanimously find the Defendant guilty.
24 It is so signed.

25 As to Minor 3 on or about July 10, 2007,

1 we the jury unanimously find the Defendant guilty. It
2 is so signed.

3 As to criminal solicitation of a minor, as to
4 Minor 1 during November 2006, we the jury
5 unanimously find the Defendant guilty. It is so signed.

6 As to Minor 2 during November 2006,
7 we the jury unanimously find the Defendant guilty. It
8 is so signed.

9 As to Minor 3 during April 2007, we the
10 jury unanimously find the Defendant guilty. It is so
11 signed.

12 Ladies and gentlemen of the jury, was this
13 your verdict and is it still your verdict? Please
14 indicate by raising your right hands.

15 (All jurors so indicate).

16 CLERK: Thank you.

17 THE COURT: Let the record reflect all hands
18 were raised. Anything further from the jury from the
19 State?

20 MR. STUMBO: Nothing from the State, Your
21 Honor.

22 THE COURT: From the defense?

23 MR. WILLIAMS: Yes, Your Honor. We request
24 individual polling.

25 THE COURT: Thank you. Madame Clerk, would

1 you explain that procedure to the jury, please.

2 CLERK: Yes, sir. When I call your name
3 individually, if you will just indicate was this your
4 verdict and is it still your verdict by raising your
5 right hand.

6 THE COURT: In other words, let me say it like
7 this. When she calls your name, raise your right hand
8 so she can identify where you are at. She will ask you
9 two questions: Are these your verdicts, and your answer
10 yes or no. Are they still your verdicts, and your
11 answer yes or no. She will do that with each and every
12 member of the jury.

13 Madame Clerk.

14 CLERK: Bevan Weyburn, are these your verdicts
15 and are they still your verdicts?

16 JUROR: These are my verdicts, and these are
17 still my verdicts.

18 CLERK: Eric Jeffcoat, are these your verdicts
19 and are they still your verdicts?

20 JUROR: Yes, they are.

21 CLERK: Troy Cade, are these your verdicts --

22 JUROR: Yes, they are.

23 CLERK: Are they still your verdicts?

24 JUROR: Yes, they are.

25 CLERK: Sharon Degnan -- I'm sorry -- David

1 Greenbaum, are these your verdicts and are they still
2 your verdicts?

3 JUROR: Yes, they are.

4 CLERK: Hope Wheeler, are these your verdicts
5 and are they still your verdicts?

6 JUROR: Yes, they are.

7 CLERK: Eric Allen, are these your verdicts
8 and are they still your verdicts?

9 JUROR: Yes, they are.

10 CLERK: Emily Byrd --

11 JUROR: Yes, they are.

12 CLERK: Are these your verdicts and are they
13 still your verdicts?

14 JUROR: Yes, they are.

15 CLERK: Alvin Lindler --

16 JUROR: Yes, they are and yes, they are.

17 CLERK: Are these your verdicts and are they
18 still your verdicts?

19 JUROR: Yes.

20 CLERK: John Ervin, are these your verdicts
21 and are they still your verdicts?

22 JUROR: Yes, they are.

23 CLERK: Dave Henrich, are these your
24 verdicts --

25 JUROR: Yes, they are.

1 CLERK: -- and are they still your verdicts?

2 JUROR: Yes, they are.

3 CLERK: Sybil Anderson, are these your
4 verdicts?

5 JUROR: Yes.

6 CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 CLERK: Thelma Isaac, are these your verdicts
9 and are they still your verdicts?

10 JUROR: Yes.

11 CLERK: All jurors are polled, Your Honor.

12 THE COURT: Anything further, Mr. Williams?

13 MR. WILLIAMS: Nothing from the jury, Your
14 Honor.

15 THE COURT: Mr. Foreman, ladies and gentlemen
16 of the jury, thank you very much for your jury service
17 this week. We could not be about the very important
18 business of administering your criminal and your civil
19 court justice system without the participation of
20 yourselves and citizens just like you that are in this
21 courthouse and courthouses throughout South Carolina
22 each and every week of the year.

23 It's a vital function that you perform. It's
24 part of our justice system, and we could not do it
25 without your participation. Momentarily, I will release

1 you from your service for the remainder of the day and
2 remainder of the week.

3 Of course, you have a disqualification from
4 circuit court jury service for the remainder of the
5 year. It won't protect you in magistrate or city court
6 or federal court if you are fortunate enough to be
7 selected.

8 It has been my pleasure and privilege to serve
9 with you this week. I hope you never find yourselves a
10 part of the system again. If you ever do, by way of
11 witnesses or otherwise, I hope that the jury that is
12 selected for the trial of that case is as hard working,
13 as focused, as dedicated, and as patient as you have
14 been throughout the trial of this case.

15 Again, with that being said, it has been my
16 pleasure and privilege to be with you this week. You
17 are now excused. They will take the jury buttons up. I
18 would ask our foreperson if you would meet with the
19 clerk in the office right behind the courtroom. I have
20 to have the indictments conform with the verdict. She
21 will show you that procedure. Again, thank you very
22 much.

23 (The jury is excused).

24 THE COURT: Mr. Williams and Solicitor, if you
25 would come to the bench for a moment, please.

1 (Whereupon there was a bench conference off
2 the record).

3 THE COURT: Mr. Williams, is there any reason
4 sentence should not be imposed at this time?

5 MR. WILLIAMS: Your Honor, first prior to the
6 imposition of sentence note that I make a motion at this
7 time for an arrest of judgment and grant the Defendant a
8 new trial, in that the evidence as a whole in the light
9 most favorable to -- I'm sorry -- as a whole should be
10 insufficient as a matter of law for this jury to return
11 a verdict of guilty.

12 THE COURT: I would respectfully deny your
13 motion. I think there is ample both direct and
14 circumstantial evidence for a jury to return the
15 verdicts which they did return. Any other motions?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: Any reason why sentence should
18 not be imposed at this time?

19 MR. WILLIAMS: No, Your Honor.

20 THE COURT: Solicitor, do you have sentencing
21 sheets?

22 MR. STUMBO: Yes, I do, Your Honor. I am
23 signing them right now.

24 THE COURT: Anything further from the State
25 prior to sentencing?

1 MR. STUMBO: Not prior to sentencing, Your
2 Honor. I need to confer with my victims to see if they
3 want to address the Court in sentencing.

4 THE COURT: If you would check with them,
5 please.

6 (Pause).

7 MR. STUMBO: We are ready to proceed with
8 sentencing.

9 THE COURT: Anything further?

10 MR. STUMBO: Yes, Your Honor. I have got
11 Ms. Sherry Sharpe here beside me. As Your Honor knows,
12 she is one of the witnesses in the case. This is
13 Minor 1 mother. She is going to speak for all three of
14 the girls and for the families in this case, and then I
15 would like to add something on the State's behalf after
16 that. This is Ms. Sharpe.

17 THE COURT: Thank you. Yes, Ms. Sharpe, I
18 would be glad to hear from you.

19 MS. SHARPE: First of all, I want to thank
20 you, Your Honor, for allowing me to speak on behalf of
21 all of our children and the parents. This man has taken
22 away things from these children that can never be given
23 back.

24 He has taken away the trust that these
25 children had for other people. They are confused now on

1 who to trust, if anyone. My daughter has asked me on
2 several occasions, How do I know when to trust someone?
3 I tell her to go with her heart. Her remark to me is,
4 Mom, I did. Look what it got me.

5 These children have to go on the rest of their
6 life with what this man has done to them. Sometimes a
7 simple song played will cause my daughter to cry. She
8 has finally got to where she sleeps at night without
9 worrying about this man coming to get her.

10 She won't walk her dog unless someone walks
11 with her. The anger that is with her now, she has never
12 had before. My daughter was always very happy, loving,
13 playful, run around the neighborhood, not anymore.

14 How do you make all this right again to a
15 13-year-old child and all she did was trust and love
16 someone? It will reflect on their marriage, on how they
17 raise their children, everything.

18 I just know -- I just don't know how someone
19 can stand up and say they love you and deliberately hurt
20 you the way that this man has hurt these children, let
21 alone the parents.

22 I wish someone could explain to her how that
23 can be done. This man has affected not only the
24 children but also the parents. Every time I see a man
25 with a little girl, I wonder if the same things are

1 happening to her, and she is afraid to speak up or maybe
2 doesn't have anyone to turn to.

3 That is something that only this man is going
4 to have to deal with. This man is going to have face
5 God one day, along with every one of us. I know for a
6 fact I have a lot of things that I have to face God
7 with, and I have to deal with God on a one-on-one basis.
8 But all I can say is thank God I do not have to deal
9 with God on hurting a child.

10 What I'm about to say is probably not
11 appropriate. Mr. Ratliff --

12 THE COURT: No, ma'am. Direct your comments
13 to the Court.

14 MS. SHARPE: I'm sorry.

15 THE COURT: I understand the emotion, but you
16 must direct the comments to the Court.

17 MS. SHARPE: Yes, sir. Your Honor, all I can
18 say is I hope this man rots, and that's a feeling that I
19 have to deal with.

20 THE COURT: Thank you. Thank you very much,
21 Ms. Sharpe, for speaking on behalf of your daughter and
22 their children and other families. Thank you.

23 Solicitor.

24 MR. STUMBO: Your Honor, I think the State's
25 position on sentencing here is pretty clear. You heard

1 my closing argument. There is not a lot more I need to
2 add to that, but I do feel like there is a level of
3 deception and deviousness to this particular individual.

4 I prosecuted these kind of cases before, Your
5 Honor, but there is a feeling I get after looking at the
6 evidence and talking to the victims in this case.
7 Mr. Ratliff's behavior this week in terms of bringing
8 this case to trial, I'm not going to belabor the details
9 of that, but I do believe there is a level of -- deeper
10 level of deviousness and deception to this man that I
11 have not seen in a lot of other cases.

12 I would ask Your Honor to impose as much of a
13 sentence as you can give him. It would not disappoint
14 the State if he got every year you could possibly give
15 him on this charge.

16 Your Honor, he is facing up to 20 on each of
17 the C.S.C. seconds. He is facing up to 15 on the two
18 lewd acts, and criminal solicitation of a minor is up to
19 10 years on each count. As Your Honor knows, this is
20 mandatory sex offender registry as well as to all the
21 charges. That's all from the State, Your Honor.

22 THE COURT: Thank you. Thank you, Solicitor.
23 Mr. Williams and Mr. Ratliff, come around,
24 please.

25 (Pause).

1 THE COURT: Mr. Williams, I would be glad to
2 hear from you.

3 MR. WILLIAMS: Your Honor, obviously when a
4 defendant has been convicted, it would not be
5 appropriate for me to argue about a jury verdict or any
6 decisions made therein.

7 I can only tell you that Mr. Ratliff to my
8 knowledge has no prior criminal conviction record of
9 this nature. He is 67. I just leaned over to him a
10 while ago and asked him how old he was because I thought
11 he was actually 69. He is 67 years of age. He has been
12 in jail, Lexington County jail, since -- 20 months.
13 During that time span, he has had three stints placed --

14 THE DEFENDANT: One stint and three heart
15 attacks.

16 MR. WILLIAMS: Three heart attacks and one
17 stint.

18 THE COURT: Not in 20 months he hasn't had
19 three heart attacks. He has had one stint in 20 months,
20 but he had other heart attacks prior.

21 MR. WILLIAMS: Right.

22 THE COURT: I just wanted to make sure I was
23 tracking that.

24 MR. WILLIAMS: He is on a lot of medication.
25 Obviously you see him with a crutch here. In essence he

1 will spend the rest of his life in jail because
2 obviously his life will be shortened because of that.

3 He asked me something and I don't know that
4 the Court has the ability to do this because I think
5 that is a call for S.C.D.C. That is and I will inquire
6 of the Court as to whether or not he could be sentenced
7 to a medical facility.

8 I think that's what will happen if Your Honor
9 will sentence him to whatever term Your Honor will
10 sentence him to. Then S.C.D.C. will decide the
11 appropriate place for him to be based on his medical
12 condition. At least that's my understanding of how it
13 works. He did mention that it to me, and I thought I
14 would mention it while we are here.

15 He has got two grown children, and I know
16 them, both of them, Michael Ratliff and Rick Ratliff.
17 They have no -- they have grown up in fine condition,
18 meaning they are law-abiding citizens. It is what it
19 is. The jury has returned a verdict. He has got all
20 this time facing him. I can only tell you that his past
21 has not been this.

22 THE DEFENDANT: No, it hasn't.

23 MR. WILLIAMS: And I would ask the Court to
24 consider that in any sentencing that the Court gives
25 him, as well as his health condition, Your Honor.

1 THE COURT: I don't think I have the
2 authority, and I think you would agree, with sentencing
3 him to a particular institution within the Department of
4 Corrections. I think it's entirely an administrative
5 decision by the Department of Corrections, and I would
6 decline to try to do their job, along with trying to do
7 mine also, Mr. Williams.

8 Taking into account all the factors and
9 circumstances, although the solicitor did make a
10 statement about putting the victims through that, I
11 never sentence anymore serious because an individual
12 stands trial.

13 He has a constitutional right to a jury trial
14 and does not have to waive that right to a jury trial.
15 I am not holding against it Mr. Ratliff that he
16 exercised his constitutional right to remain silent and
17 to confront his witnesses.

18 However, I find this to be a very despicable
19 group of acts that occurred. It was more than one child
20 victim, three child victims, over a period of months for
21 at least, I believe, the latter part of '06 to the early
22 part of July of '07.

23 With that being said, 07-GS-32-2884, ~~criminal~~
24 ~~sexual conduct with a minor in the second degree~~, the
25 Defendant is committed to the State Department of

1 Corrections for a determinate term of ~~20 years~~.

2 07-GS-32-2885, ~~criminal sexual conduct with a~~
3 ~~minor in the second degree~~, the Defendant is committed
4 to the State Department of Corrections for a determinate
5 term of ~~20 years~~. That is consecutive.

6 07-GS-32-2886, ~~criminal sexual conduct with a~~
7 ~~minor second degree~~, the Defendant is committed to the
8 State Department of Corrections for determinate term of
9 ~~20 years~~. That is concurrent.

10 07-GS-32-2887, ~~lewd act on a minor~~, the
11 Defendant is committed to the State Department of
12 Corrections for a determinate term of ~~15 years~~,
13 consecutive.

14 07-GS-32-2891 -- excuse me, madame court
15 reporter -- this is 07-GS-32-2888, ~~lewd act on a minor~~,
16 the Defendant is committed to the State Department of
17 Corrections for a determinate term of ~~15 years~~,
18 concurrent.

19 07-GS-32-2891, ~~criminal solicitation of a~~
20 ~~minor~~, the Defendant is committed to the State
21 Department of Corrections for a determinate term of ~~ten~~
22 ~~years~~, concurrent.

23 07-GS-32-2894, ~~criminal solicitation of a~~
24 ~~minor~~, the Defendant is committed to the State
25 Department of Corrections for a determinate term of ~~ten~~.

1 ~~years, concurrent.~~

2 07-GS-32-283, ~~criminal solicitation of a~~
3 ~~minor~~, the Defendant is committed to the State
4 Department of Corrections for a determinate term of ten
5 ~~years, consecutive.~~

6 ~~He is given credit for time served. He is on~~
7 ~~the sex-offender registry, and I think I sentenced him to~~
8 ~~65 years, 20, 20, 15, and 10 consecutive, and 45 years,~~
9 ~~concurrent.~~

10 Good luck to you, Mr. Ratliff.

11 THE DEFENDANT: Thank you, sir.

12 MR. WILLIAMS: Thank you, Your Honor.

13 THE COURT: Anything further, Solicitor?

14 MR. STUMBO: Nothing from the State, Your
15 Honor.

16 THE COURT: Thank you. Thank you very much.

17 Court will be in recess until 9:30 in the morning.

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 24th through the 26th days of February, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 18, 2009

L Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD DAVID RATLIFF,

APPELLANT

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in admitting irrelevant and prejudicial physical character evidence found in appellant's bedroom, hotel room and car?

STATEMENT OF THE CASE

Appellant was convicted of three (3) counts of criminal sexual conduct with a minor in the second degree, two (2) counts of lewd act, and three (3) counts of criminal solicitation of a minor after a jury trial held before the Honorable R. Knox McMahon from February 24-26, 2009, in Lexington County. Active sentences of sixty-five (65) years were imposed.

This appeal follows.

ARGUMENT

The trial court erred in admitting irrelevant and prejudicial physical character evidence found in appellant's bedroom, hotel room, and car.

Appellant, a 67 year old male, was tried for sex crimes dealing with three minors in Lexington County. Allegations surfaced after appellant had moved to Virginia. At the suppression hearing it was revealed that the local police in Virginia were contacted by the police in Lexington County to search appellant's bedroom in Virginia. Sgt. Thompson with the Wythe County Sheriff's Office testified that after speaking with the Lexington County authorities he was instructed to look for pornography. (Tr. p. 50, line 21 – p. 54, line 7) He said he found sex toys, K. Y. Jelly, panties, sexual photos of a middle-aged woman, oral sex pictures, and other sexual photos. (Tr. p. 57, line 17 – p. 58, line 11)

Sheriff Vaughn from Virginia also participated in the search. He said he saw pictures of appellant and a middle-aged female both nude. He seized photos, three pair of panties, and a DVD titled Blonde and Anal. (Tr. p. 68, line 12 – p. 72, line 12)

When Sgt. Vaughn took the stand during the actual trial, the solicitor tried to admit State's Exhibit #4, the DVD into evidence. Defense counsel objected on grounds of relevance. (Tr. p. 416, lines 3-8) The solicitor argued that the DVD was relevant because one of the victims testified that she saw the DVD cover case at appellant's mobile home in Lexington. Hence, it corroborated her testimony. (Tr. p. 416, line 15 – p. 419, line 4) Defense counsel countered that the solicitor's argument was gobbley gook and that the prejudicial value strongly outweighed the probative value where there was no testimony any victim viewed it. (Tr. p. 419, line 6-19)

The trial court ultimately ruled that while it acknowledged State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998), it found the testimony in that case very different from the testimony in this case and it was highly probative and admissible under Rule 401 and Rule 403, SCRE. (Tr. p. 424, line 12 – p. 425, line 14) The trial court then admitted over objection seven photographs, Exhibits 5,7,8,9,13,16,17) under the same rationale during Sheriff Vaughan's testimony. (Tr. p. 434, line 18 – p. 436, line 22) The following verbally descriptive testimony was given of these photographs:

- A. Exhibit 5 is a picture of Mr. Richard Ratliff, several Polaroid photographs of him, nude exposing his anus and his genital areas and also photographs of a middle-aged female exposing her genital area. Exhibit 7 is, again, a middle-aged female and Mr. Richard Ratliff performing oral sex on a female.

Exhibit 8 is Mr. Richard Ratliff nude masturbating. Exhibit 9 is a strap-on dildo with photographs of several children. One of the Polaroid photographs is V2. That's Exhibit 9. Exhibit 13 is a picture, Polaroid photograph, of V2 on the back of a car.

Exhibit 16 is a plastic bag that we located in the upstairs bedroom beside the bed. In this bag were small G. string panties, several photographs of the victim and other children, K.Y. lubricant, dildos, and sexual toys. Exhibit 17 is a second photograph of those sexual toys, young girl's panties, K. J. jelly lubricant.

- Q. Thank you, Sheriff Vaughn. I will keep with you State's 16 and 17 and refer you specifically to 16 to start with. You described that as a bag with sex toys and pictures in it?

A. Yes.

- Q. Is that how you found that bag or how did you find that bag?

A Yes, the bag was closed up beside the bed near the nightstand.

Q The picture that was laid out on the bed that you identified as V2 on the back of a car, was that in that bag of stuff?

A Yes, it was.

Q I will refer you to State's 17 again. What color are the girl's panties in that, State's 17?

A There's a white pair of panties with some blue trim and appears to be a light blue or greenish color and then underneath there is another bluish colored panties.

Q Thank you, Sheriff Vaughn.

Later, the following exhibits were admitted over objection during Lexington County's Detective Ed Prestigiacommo's testimony:

Exhibit 44 – K.Y. Jelly

Exhibit 45 – Condoms

Exhibit 39 - Dildo

Exhibit 40 – Super strap

Exhibit 12 – Photo of appellant holding his penis.

(Tr. p. 477, line 23 – p. 488, line 23)

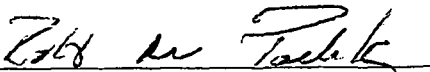
The trial court's decision in admitting this huge list of highly prejudicial evidence was a gross abuse of discretion that flew in the face of the precedent set forth by the South Carolina Supreme Court in State v. Nelson, 331 S.C. 1, 501 S. Ed 2d 716 (1998). In that case the South Carolina Supreme Court noted the clear precedent that the State is prohibited from attacking the character of the defendant unless he first places his character in issue. Citing, Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). The evidence was clearly inadmissible and its only relevance was to reflect on appellant's character as a sexual pervert. Such evidence was used to invite the jury to infer criminal disposition. "The very

apparent prejudicial impact of such evidence would have upon a jury outweighs what probative value, if any, it may have." The State's argument was "merely a cleverly disguised way of asserting [he] committed the crimes because he has a propensity to commit sexual offenses." The evidence was "only relevant to show the 'context' of the crime when the assumption is made that [appellant] was acting in conformity with the character trait [being presented]. As the Court further noted in Nelson, a "necessary corollary to the presumption of innocence is that a defendant must be tried for what he did, not for who he is." (citations omitted).

CONCLUSION

Appellant's conviction should be reversed because he was denied a fair trial in violation of due process.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 18th day of August, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD DAVID RATLIFF,

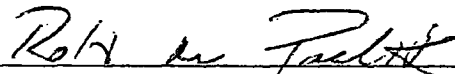
APPELLANT

**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(s);
- (2) Tr. p. 50 – p. 76
- (3) Tr. p. 95 – p. 125
- (4) Tr. p. 128 – p. 291
- (5) Tr. p. 302 – p. 310
- (6) Tr. p. 315 – p. 350
- (7) Tr. p. 364 – p. 367
- (8) Tr. p. 376 – p. 391
- (9) Tr. p. 400 – p. 510
- (10) Tr. p. 519 – p. 544

I certify that this designation contains no matter which is irrelevant to this appeal.
August 18th, 2009


Robert M. Pachak
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

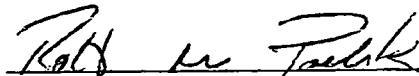
V.

RICHARD DAVID RATLIFF,

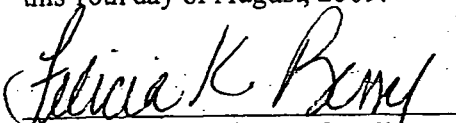
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of August, 2009.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 18th day of August, 2009.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lexington County
Hon. R. Knox McMahon, Circuit Court Judge

The State,

Respondent,

v.

Richard David Ratliff,

Appellant.

INITIAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial court properly admitted evidence that was relevant and probative in this case. Further, Appellant's issue as raised is not preserved for review on appeal.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant, sixty-seven years old at the time of trial, sexually abused three prepubescent or early teen girls over the span of a couple of years. Appellant resided in Lexington County when the abuse began, but later moved to Virginia. He returned to South Carolina, however, and abused one of the victims while staying at a local hotel. The three victims, all friends, were not related to Appellant. All three victims testified at trial regarding the sexual solicitations and abuse by Appellant.

Victim one testified Appellant showed her pornographic magazines as well as photographs of him and women naked. (T.109-110; R.____). Victim one also testified Appellant masturbated in front of her and victim two and tried to get them to either take pictures of him or to touch him. (T.110-111; R.____). Victim one testified Appellant masturbated multiple times in front of her when she would go to his house. (T.111; R.____). According to victim one, Appellant offered her and victim two money to have sex with him and told them they should lose their virginity with him so when they had a boyfriend, they would no longer be virgins. (T.112; R.____). Appellant took Polaroid pictures of victims one and two while they were in the shower, but they were able to locate them and destroy them. (T.113; R.____).

Victim one found out victim two was going to go to Virginia to stay with Appellant after he moved from Lexington County. She became very upset and decided to write a letter to tell her mother about the abuse. The letter was turned over to law enforcement. (T.120-123; State's Exhibit 2; R.____).

Victim two testified Appellant would tell people she was his granddaughter and it made her feel loved. (T.153; R.____). Victim two stated Appellant also made her uncomfortable. She stated Appellant rubbed her vagina while riding in the car. (T.154-155; R.____). She described how he would masturbate in front of her and would ask whether she wanted to "help him" or "join him." (T.155-156; R.____). Victim two testified Appellant showed her pictures of himself naked with a naked woman as well as pictures of his penis. (T.158; 169; R.____). She said he kept the pictures in a drawer in his room. She also testified he kept sex toys in his room. (T.158-159; R.____). Victim two testified Appellant asked her if she "wanted to come stick [a sex toy] in his butt" while he was masturbating and asked if she would have sex with him. (T.162; R.____). Victim two indicated Appellant "pretty much touched me everywhere." Appellant touched victim two's breasts and vagina. (T.165; R.____).

Victim two testified Appellant moved to Virginia, but returned to South Carolina and invited her over to the hotel where he was staying. (T.174-175; R.____). Victim two went to two different hotels to visit Appellant and to go swimming. At one of the hotels, the pool was broken and she did not swim. She stated she watched television instead. She testified Appellant "kept trying to like force his finger to go inside my vagina, and I kept telling him no." She testified she quit resisting because he was stronger than her and he put his finger into her vagina and her anus. (T.177-178; R.____).

Victim two testified she went swimming with Appellant when he stayed at the second hotel. She testified he asked her to take off her bathing suit and to swim naked, but she refused. (T.180; R.____). Victim two again watched television on the bed. Appellant joined

her on the bed, took her clothes off, placed his mouth on her breasts and vagina, licked her vagina, penetrated both her vagina and anus with his finger, and tried to take pictures of her lying nude on the bed. (T.181-183; R.____).

Victim two stated she told her mom in an email after victim one decided to tell her own mom what had happened. (T.186-187; State's Exhibit 3; R.____). Victim two gave several statements to police regarding the sexual abuse by Appellant, especially detailing the abuse at the hotel once Appellant returned from Virginia. (T.204-206; 227-235; R.____).

Victim three met victim two at school and they became friends. (T.241-242; R.____). Victim three testified the first time she met Appellant he commented on the fact she had big breasts and asked what she had done with a guy. (T.242; R.____). Appellant offered victim three money to show him her breasts. (T.243; R.____). Victim three stated Appellant masturbated in front of her and victim two "a lot," and he asked them to help him or to touch him. (T.243-244; R.____). She testified Appellant kept pictures of himself as well as sex toys in his car. (T.245; R.____).

Victim three indicated Appellant offered to buy her things. She stated Appellant offered to buy her a vibrator. She also testified Appellant bought her thong panties from Wal-Mart. Victim three testified Appellant asked to be able to take her picture in the thongs, but she refused. (T.246-247; R.____). Victim three stated Appellant touched her inappropriately, and on one occasion, pulled her pants down and licked her vagina. (T.248-249; R.____). Finally, she testified Appellant offered her money to entice her to show her breasts or to have sex. (T.249-250; R.____).

ARGUMENT

I. The trial court properly admitted evidence that was relevant and probative in this case. Further, Appellant's issue as raised is not preserved for review on appeal.

Appellant contends the trial court erred in admitting evidence found in Appellant's Virginia home, hotel room, and car. He contends the evidence is prejudicial physical character evidence. The issue as raised by Appellant, however, is not preserved for review on appeal because Appellant never maintained it was improper character evidence. Further, the evidence was properly admitted because it was not character evidence, was relevant to the appeal, and was more probative than prejudicial.

PRESERVATION

First, the issue is not properly preserved for review on appeal. In order to preserve an evidentiary issue for review on appeal, a contemporaneous objection must be made when the testimony is offered. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court). If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. Id. In addition, Appellant cannot raise one issue at trial and argue a different issue on appeal. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding issue not preserved when appellant did not object to testimony at

trial on the grounds raised on appeal, that it was improper character evidence, but objected only on the basis of relevancy).

At trial, the victims described items located in Appellant's home during the time of the sexual assaults and solicitations. Victim one testified he had pictures of him with naked women, DVD's of pornography, sex toys shaped like penises, and Polaroid pictures. (T.110-113; R. ____). Victim two testified she saw naked pictures of Appellant and pictures of him and a naked woman. (T.158-159; R. ____). She also stated he had a Polaroid camera and would try to take pictures of her. (T.183; R. ____). Further, victim two testified she saw sex toys shaped like a guy's penis and a lollipop shaped like a vagina. (T.159; R. ____). Victim two also stated she saw pornographic DVD's in the home. (T.160; R. ____). In addition, victim two testified Appellant purchased condoms and girls underwear. (T.163; 169; 172; R. ____). Victim three testified she saw pictures of Appellant in his home and his car. Also, victim three testified she saw sex toys including "a dildo and a strap on" in Appellant's car. Further, she stated Appellant asked if she wanted him to purchase a vibrator for her. (T.245-246; R. ____). Finally, victim three testified Appellant purchased a pack of thongs for her from Wal-Mart. (T.246; R. ____). During the testimony of the three victims, Appellant never objected to the references to the items he now contends are irrelevant, prejudicial, and evidence of bad character.

Additionally, Appellant did not object when Deputy Thompson testified he located photographs in Appellant's bedroom in Virginia and described the photographs to the jury. (T.402; R. ____). Further, Deputy Thompson testified without objection he located a handgun, and a plastic bag with sex toys, KY jelly, and panties. Deputy Thompson further described

the sex toys and the panties for the jury. (T.403; R.____). Appellant never made a contemporaneous objection to the testimony describing the items located. In addition, Appellant made no objection when Sheriff Vaughan testified regarding the items found in Appellant's bedroom in Virginia. During his testimony Sheriff Vaughan testified: "We found three pair of small G. string panties on top of a chest of drawers and one pair on top of a nightstand. We found a D.V.D. labeled Blond and Anal." (T.415; R.____). Therefore, Appellant did not make a contemporaneous objection and no issue could be preserved for review on appeal.

Additionally, Appellant only moved at trial to exclude the evidence based on relevance and its prejudicial nature under Rule 403, SCRE. (T.416; 419; R.____). He never argued the evidence was improper character evidence nor did he argue the holding of State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). While the trial court, *sua sponte*, raised the case of State v. Nelson, Appellant never relied on the case nor argued the evidence was improper character evidence. Even after the trial court discussed Nelson, Appellant did not add its holding to the reason for his objection, he merely state there was nothing further from the Defendant. (T.425; R.____). Accordingly, Appellant's argument on appeal that the evidence was improperly admitted as character evidence under State v. Nelson is not preserved for review on appeal and should not be considered by this Court, even if this Court decides to consider the issues of relevancy and Rule 403, SCRE.

MERITS

On the merits, Appellant's argument also fails. "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed

on appeal absent an abuse of discretion.” State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the trial judge’s ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). “For an error to warrant reversal, however, the error must result in prejudice to the appellant.” State v. Santiago, 370 S.C. 153, 162, 634 S.E.2d 23, 28 (Ct. App. 2006).

Appellant’s main argument, which the State does not believe is preserved, is the evidence was improperly admitted character evidence under State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). In Nelson, the State sought to admit a number of toys, tapes of children’s shows, storybooks, photographs of young children, and statements made by the defendant that he fantasized about children. Over the defendant’s objection, the trial judge ruled the evidence was probative of whether the defendant was a pedophile. The court found that pedophilia was “not of a ‘character issue’ but a ‘personality characteristic.’” Id. at 5, 501 S.E.2d at 718.

The Supreme Court found the evidence was solely admitted to show propensity to commit the crimes against the minor victims. The argument that motive or intent was shown through the evidence was found to be a “a cleverly disguised way of asserting Petitioner committed the crimes because he has a propensity to commit sexual offenses.” Id. at 12, 501 S.E.2d at 722. The evidence admitted in Nelson demonstrated he was a pedophile, and the only reason the Supreme Court found to admit evidence Nelson was a pedophile was to show his propensity to commit crimes against children.

This case is clearly distinguishable because the State is not seeking to admit evidence which demonstrates a “character issue” or a “personality characteristic.” The Nelson opinion

does not indicate the items admitted were ever used by Nelson during the commission of the crimes for which he was charged and convicted. There is nothing in the opinion to suggest the victims even knew of the items, were groomed with the items, or enticed or solicited with the items. The items were introduced merely for purposes of establishing Nelson was a pedophile.

In the instant case, however, the items introduced had a direct bearing on the crimes for which Appellant was charged. Two of the minor victims testified Appellant showed them the pictures and the sex toys, and one girl testified Appellant asked her to put one of the sex toys in his anus while he was masturbating in front of her. Further, one testified he showed them pornographic movies and masturbated after showing a movie. Additionally, two of the girls testified Appellant gave them, or offered to give them, the thong panties located in his room in exchange for showing him their breasts or having sex with him.

The girls were able to identify and describe the sex toys, the photographs, and the DVD as items Appellant used in either his grooming of the girls or his direct solicitation for sexual activities with the girls. The items, whether found in his home, the hotel room, or his car, were all of a similar nature to the ones used by Appellant in the grooming process of the girls and in attempting to entice the girls to do sexual favors for him. Accordingly, the items admitted in the case *sub judice* formed a distinct part of the *res gestae* of the crimes for which Appellant was charged.

The items were not just random sex items used at trial to show he was a sexual deviant. The items played a clear role in his grooming of the girls in an effort to get them to have sex with him, including the pictures and DVD's used to familiarize the girls with sex,

and his attempt to remove any barriers they may foster regarding having sex with Appellant. Further, the items were ones or similar to ones he used in an attempt to solicit sexual favors from the girls. Finally, the sexual toys were ones or similar to ones he attempted to get the girls to use on him while he masturbated in front of them. These were not admitted for character evidence, as was the evidence in Nelson, but as direct evidence forming the *res gestae* of the crimes for which Appellant was charged and convicted.

Additionally, the items were highly relevant to the instant case, for the reasons discussed above. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." Rule 402, SCRE.

The items in the instant case were highly relevant and probative of Appellant's guilt, especially as they relate to the solicitation charges. The items were used for grooming purposes, exposing the children to pornography in an attempt to lessen their resistance to Appellant's desire to have sex with them. Further, the items were used as bribes to entice the children into displaying their bodies or having sex with Appellant. Finally, Appellant specifically asked one of the young girls to use one of the sex toys by placing it in his anus while he masturbated in front of her. Additionally, the items found in his car or his hotel were similar in nature to the ones found at his Virginia home and lend credibility to the

claims regarding his sexual assaults of victim two at the hotels. The items are direct evidence of the crimes, are relevant to corroborate the three minor victims' testimony, and were properly admitted by the trial court.

Finally, under Rule 403, SCRE: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice" As found by the trial court, the evidence in this case is substantially more probative than prejudicial. (T.425; R.____). The evidence corroborates the victims' stories and goes directly to supporting their credibility. Appellant used items as bribes in the solicitation of the minors, and other items Appellant sought to have the children use to sexually pleasure him. Accordingly, the trial court did not err in admitting the highly relevant and probative evidence.

HARMLESS ERROR

Finally, even if this Court finds Appellant's arguments properly preserved and this Court finds the admission of the evidence was error, any error would be entirely harmless. Where improper testimony is admitted, it is harmless when it is merely cumulative to other unobjected-to testimony. See State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (stating that any error in admission of evidence cumulative to other unobjected-to evidence is harmless); State v. Johnson, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) ("The admission of improper evidence is harmless where it is merely cumulative to other evidence."). As discussed above, the items were all described in detail by law enforcement witnesses or the victims in this case. The victims testified they had seen DVD's and sex toys including dildos and strap-ons in his home or his car. The victims also testified Appellant

purchased thong panties and condoms. As a result, any admission of the evidence itself would be entirely cumulative to the descriptions and could not have possibly prejudiced Appellant.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
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ATTORNEYS FOR RESPONDENT

September 28, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lexington County
Hon. R. Knox McMahon, Circuit Court Judge

The State,

Respondent,

v.

Richard David Ratliff,

Appellant.

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

Respondent proposes the following to be included in the Record on Appeal:

- 1) True-billed indictments;
- 2) Trial Transcript pages 46-76; 103-124; 129-291; 302-310; 315-350;
365-367; 377-391; 401-510; 519-543; 627-629; 634-643;
- 3) State's Exhibit 2 (Letter);
- 4) State's Exhibit 3 (email).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. Additionally, Respondent notes personal data identifiers and other sensitive information should be redacted from the transcript or other documents pursuant to the South Carolina Supreme Court Order dated August 13, 2007.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

HENRY DARGAN McMASTER
Attorney General

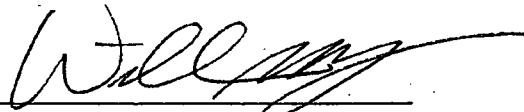
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ATTORNEYS FOR RESPONDENT

September 28, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lexington County
Hon. R. Knox McMahon, Circuit Court Judge

The State,

Respondent,

v.

Richard David Ratliff,

Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of September, 2009.



ELLEN DuBOIS
Legal Assistant
Office of 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.

Richard David Ratliff,

Appellant.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2012-UP-033
Submitted January 3, 2012 – Filed January 25, 2012

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General William Blich, Jr., all of

Columbia; and Solicitor Donald V. Myers, of Lexington, for Respondent.

PER CURIAM: Richard David Ratliff appeals his convictions for three counts of second-degree criminal sexual conduct with a minor, two counts of lewd act with a minor, and three counts of criminal solicitation of a minor. Ratliff argues the trial court erred in admitting irrelevant and prejudicial character evidence. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding an issue was not preserved for review when the party argued one ground at trial and another on appeal); Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) ("An issue is not preserved for review merely because the trial court mentions it.").

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTONRichard DAVID RATHLE - 333368
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

FILED
IN THE COURT OF COMMON PLEAS

2012 APR 12 12:26

APPLICATION FOR

POST-CONVICTION RELIEF

2012CP3201581

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORR. INSTI. - 490 N. SACKY HWY DISNEYVILLE SC
2. Name and location of Court which imposed sentence LEXINGTON COUNTY - LEXINGTON S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-32-2884-CSC WITH A MINOR 2ND DEGREE (2885 CSC 2ND DEGREE)
 - (b) (2886 CSC-2ND DEGREE) (2887 LEWD ACT - UNDER 16) (2888: LEWD ACT FOR MINOR) (2889: LEWD ACT FOR MINOR)
 - (c) (2891 CRIMINAL SOLICITATION OF MINOR) (2893 CRIMINAL SOLICITATION OF MINOR) (2894 CRIMINAL SOLICITATION OF MINOR)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SENTENCE DATE: FEB. 26, 2009 (2884: 20 years) (2885: 20 yrs)
 - (b) (2886: 20 yrs) (2887: 15 yrs) (2888: 15 yrs) (2891: 10 yrs) (2893: 10 yrs) (2894: 10 yrs)

Revised 3/2003

DATE MAILED =

DESCRIPTIONS OF VICTIMS

NOTE: INSTEAD OF WRITING IT ON EACH, THEY ARE ALL ALLEGED!

~~2884~~: ALLEGED EVENTS ACCORDS TO MAJOR CRIME INVESTIGATIONS CASE SUMMARY: ~~2884~~
 2884: SUPPOSEDLY PENETRATING WITH FINGERS ANUS & VAGINA # 2885: ORAL SEX (NOTE
 AGE 11) CAYCE AREA OF LEE COUNTY. A 2884 SAYS UNCON. TOOTH SAY SAME DAY DIFFERENT
 MODELS. UNCONTESTED. LOCATIONS DATES WERE CHANGED ON INDICTMENTS. LEGALLY??
 2885: ALLEGED ORAL SEX AT LOCATION BENT TREE CR. PINE RIDGE MHP. GATTON SAYS I
 PULLED SHORTS DOWN A LITTLE AND DID IT FOR A SECOND MAYBE A MINUTE (NO TESTIMONY
 GIVEN IN COURT OF THIS HAPPENING AT BENT TREE CR) STILL CONVICTED!! HAVE PROOF I WAS
 IN VA/PROOF FROM SCOTL & FINAL BILL DATED OCT 2006. THIS SUPPOSEDLY HAPPENED TWICE
 2007 - HER WORDS A MONTH/WEK BEFORE MY ARREST - JULY 2006 ATTORNEY KNEW/HAD
 EVIDENCE IN HAND WOULD NOT PRESENT IT IN VA. DMV DOCUMENT PROVE I LIVES IN
 VA 2007 - JUNE ~~2886~~ 2887: SAYS I TOUCHED VAGINA 2888 - INDICTMENT
 SAYS LEWD ACT ON BODY OF IT'S PARTS ON CHILD UNDER 16 - NAMES: Minor FIRST-
 THEN SAYS I RUBBED BREAST/VAGINA OF Minor 3 AGE 13. TWO NAMES ON ONE
 INDICTMENT!! 2891: CASE SUMMARY REPORT NUMBER/ORIGINAL ~~2891~~ (SORRY)

NUMBER # 845114 LIST/NAMES VICTIM Minor 2 TRUE BILL OF INDICTMENT
 NAMES Minor 3 DOCKET # 2007-LS-32-2891, CASE SUMMARY NUMBER
 FROM MAJOR CRIME INVESTIGATIONS!! THE ATTORNEY DID NOTHING!! AM I THE ONLY
 ONE WHO KNEW/SAW THIS?? WHAT DOES THAT FALL UNDER IN LEGAL TERMS?? CONVICTED
 INEFFECTIVE COUNSEL AT ITS HIGHEST LEVEL: BOTH TRIAL AND APPEAL??
 2893: ALLEGEDLY MASTERBATED. 2894: SAME AS 2893: ALLEGEDLY NAMES LOCATION PINE
 RIDGE MHP. NO TESTIMONY IN COURT TO THIS HAPPENING AT THAT LOCATION. PAPER
 CHANGED TO OTHER SIDE OF COUNTY. FROM PINE RIDGE TO W. CO. AREA ATTORNEY KNEW. I
 TRIED TO GET HIM TO CHALLENGE IT QUESTION IT. NOTHING!! I WOULD BRING THINGS
 THE DISCREPANCIES TO HIS ATTENTION. HE WOULD NOT DO ANYTHING!!

IN ALMOST ALL OF THE ABOVE I WAS IN VIRGINIA - I DID
 NOT LIVE AT ADDRESS THE SAID. THE ACCUSERS, BY COURT TESTIMONY DID
 NOT LIVE WHERE THEY ALLEGED EVENTS OCCURRED!! THE ATTORNEY WOULD NOT
 CHALLENGE ANYTHING!! IN SEVERAL OF THE ABOVE I WAS TRIED/CONVICTED AND
 SENTENCED TWICE FOR THE SAME (ONE) ALLEGED INCIDENTS!! THERE ARE LEGAL
 TERMS FOR THAT WORKING. I DON'T KNOW HOW TO PUT ON PAPER. I DO KNOW IT'S
 UNLAWFUL. NOT A LEGAL PROCEDURE!!

OUT OF EIGHT INDICTMENTS RETURNED! and I WAS CONVICTED OF: -- NUMBERS 2007-LS-
 32-2884/2885 and 2886 WERE RETURNED WITH INCORRECT WRITING -- ONE OF LAWYER'S
 NUMBERS. THE COURT - THIS INCLUDES MYSELF -- WAS NOTIFIED OF THE PROSECUTOR'S
 ADMITTED MISTAKE NEAR THE END OF TRIAL AFTER RETURNING FROM AFTERNOON BREAK
 SEE BELOW FOR (MORE DETAILS BACK OF PAGE 4) RECESS!!

(c) _____

6. Check whether a finding of guilty was made:

FILED

(a) after a plea of guilty _____

✓(b) after a plea of not guilty ✓ _____

2012 JAN 12 2 12 26

(c) after a plea of nolo contendere _____

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

YES THE MINUTE IT WAS READ

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

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

i. THE SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. DENIED

ii. _____

iii. _____

(c) the date of each such result:

i. SUBMITTED JAN. 3-2012 - FILED JAN. 25-2012 -ii. RECEIVED FEB. 2ND 2012

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

I WAS CHARGED
ARRESTED
WITH-OUT ANY
INVESTIGATION. ON
SAY SO ALONE

INEFFECTIVE COUNSEL AT TRIAL. INEFFECTIVE
APPELLATE COUNSEL. ONE OR BOTH TO ENTER HIGHEST
LEVEL. I WAS DENIED A FAIR AND JUST TRIAL BY THE ACTION'S
OR LACK OF BO - 2 CONVICTIONS
EVIDENCE WAS KNOWINGLY WITHHELD THAT WOULD HAVE CHANGED
1. - ~~REMOVED~~ OUT-COME OF TRIAL

Revised 3/2003

SEE BACK THIS PAGE

• TO WHO-EVER THIS MAY BE ASSIGNED. PLEASE READ CAREFULLY. I HAVE NO ONE TO ASSIST ME. AS A LAYMAN OF LAW I DEPEND ON WHO-EVER MY ATTORNEY MAY BE IN THIS MATTER OF P.C.R. TO CHOOSE THE MOST RELEVANT ISSUE(S). TO PRESENT THEM IN PROPER ORDER TO VINDICATE ME. I'M FILING THIS OUT TO THE BEST OF MY ABILITY. I - - - FIRST AND FORE-MOST THERE WAS NO INVESTIGATION! IF AUTHORITIES HAD INVESTIGATED AS THEY SHOULD HAVE, INSTEAD OF BEING IN SUCH A HASTE FOR AN ARREST, THEY WOULD HAVE FOUND I WAS 200-250 MILES FROM SOUTH CAROLINA WHEN ALMOST ALL THESE INCIDENTS SUPPOSEDLY HAPPENED. THAT I DID NOT LIVE WHERE THEY SAID THINGS HAPPENED, AND THEY DIDN'T LIVE WHERE THEY SAID:

IF THAT HAD BEEN DONE INSTEAD OF GOING BY SAY-SO. THERE WOULD NOT HAVE HAD ENOUGH EVIDENCE FOR AN ARREST!! (A FACT NO ONE WANTS TO FACE!!) I - - - UNIMPEACHABLE EVIDENCE WAS KNOWINGLY AND WILLFULLY WITHHELD AT TRIAL THAT WOULD HAVE COMPLETELY CHANGED THE OUTCOME OF MY TRIAL!! EVIDENCE WAS WITHHELD THAT WOULD HAVE CHANGED ME IF ALMOST EVERYTHING I WAS FALSELY CHARGED AND CONVICTED OF. I HAVE PROOF OF A PLEA I ACCEPTED. (THE ATTORNEY NEVER INFORMED THE STATE PROSECUTOR I'D ACCEPTED) SAID HE GUESSED THEN FORGOT!! I HAVE POLICE REPORTS, STATE DOCUMENTS FROM VA. PROVING I WAS THERE. DOCUMENTS FROM GEORGIA (FINRA ELECTRIC BILL) PROVING I'D NOT BEEN OR HAD POWER IN ONE LOCATION FOR ALMOST 4 YEARS WHEN ONE ACCUSER SAID SOMETHING HAPPENED END OF JUNE 2007!! FINAL BILL IS DATED OCT 2006!! COURT TESTIMONY THAT WAS NOT CONTESTED NOR CHALLENGED THAT WOULD HAVE RESULTED IN NOT GUILTY VERDICTS.

THE TRIAL ATTORNEY HAD AND KNEW ALL THIS AT TRIAL BUT REFUSED TO PRESENT ANYTHING!! INEFFECTIVE COUNSEL AT IT'S HIGHEST LEVEL!! ALTHOUGH HEAR-SAY OF CONSENT FOR A SEARCH IN VA WAS ALLOWED AT TRIAL. IT SHOULD NOT HAVE BEEN. I HAVE A POLICE REPORT THAT WILL PROVE - - EVEN IF CONSENT COULD BE PROVEN - THAT THE SEARCH AND SEIZURE WAS ILLEGAL THAT ITEMS WERE SEIZED WITHOUT WARRENT'S IN VIOLATION OF PROPER PROCEDURE BEING FOLLOWED. THE ATTORNEY WITHHELD THAT INFORMATION ALSO!! A VIOLATION OF DUE PROCESS!!

UNLIKE COUNTY AUTHORITIES WERE CONTACTED AND ASK TO SEARCH BY IN CASE LEXINGTON COUNTY AUTHORITIES OBTAINED ENOUGH EVIDENCE FOR A SEARCH WARRANT!

SEE BACK PAGE 3

- (a) ONE WITH (I HAVE VERIFICATION OF ALL)
 (b) EVIDENCE WITHHELD THAT WOULD HAVE GIVEN THESE TESTIMONY -
 (c) TRIAL ATTORNEYS FAILED TO AGREE - PRESENT A CHALLENGE ISSUES

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

- (a) A POLICE REPORT WAS WITHHELD THAT WOULD HAVE PROVEN THE VA. SERIAL ILLEGAL
 (b) EVIDENCE WITHHELD THAT WOULD HAVE PROVEN THAT I WAS NOT GUILTY VERIFICATION ON
 (c) POLICE REPORTS STATE DOCUMENTS OF PROOF OF PLEA) FROM BILL [REMOVED ALL CHARGES]
(ATTORNEY NEVER TOLD STATE WITHHELD THAT I AGREED TO)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

THAT THERE MIGHT HAVE BEEN A COMPUTER WITH CHILD PORNOGRAPHY. INSTEAD OF WAITING THEY TOOK IT UPON THEMSELVES TO GO TO THE RESIDENCE and gain entry by picking a 30 year old lady, male and an 80 some year old lady they wanted to look in my room. DID I SAY WHAT THEY WERE LOOKING FOR OF course they were allowed for. ~~THAT WAS NO WARRANT~~! They did this knowing full well they intended to search my room yet failed to obtain a ~~search~~ search warrant. They looked at what was in my room felt there was nothing of interest. THERE WAS ~~nothing~~ nothing! "No Videotapes of young girls!" What was found was pictures of me and a ~~woman~~ woman wearing what adults to adults toys, lingerie, a hand gun, to use a police term - items clear and one adult film. Items a national survey found were are in 75% of all homes. But couples & singles upon entering and finding no computer the search should have stopped before picking those items. No computer, no probable cause. They put everything back and left! "Going to return the next day - Again no search warrant no warrant to seize!" They did this knowing full well they were going to seize those legal items.

Said although nothing was illegal they were going to take those items seize and hold them! That was clearly and illegal search and seizure, no order for that to have been legal, warrants should have been brought with them both times -- and served before entering. That was a violation of proper procedure and of due process of law. And never should have been allowed. They were then held and used in the Mannar case presented to the court/judge and jury "To convict me!" JESUS HIMSELF COULD HAVE BEEN THE DEFENDENT AND WITH items such as those presented to a jury in the Bible Beth especially South Carolina/Lexington County and he would have been found guilty guilty!"

When asked why no warrants had been issued and served -- there answer -- NO CRIME HAD BEEN COMMITTED in our county at that time. SINCE WE WERE GIVEN PERMISSION THE DAY BEFORE TO ENTER, WE DIDN'T FEEL ONE WAS NEEDED! NO CRIME HAD STILL BEEN COMMITTED! MAYBE I PHRASED THAT WRONG! THERE STILL HAD NOT BEEN A CRIME COMMITTED. TO ACT IN THAT MANNER IS TO ASSUME THEY WERE ABOVE THE LAW. EVEN THE DENIAL OF MY APPEAL WAS BASED ON THAT clearly illegal search and seizure. HARD TO BELIEVE? READ ON!!
Cont. on BACK 4

- iv. _____
- (d) the date of each such disposition: _____
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

- (a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) BECAUSE I WAS ON DIRECT APPEAL - WHICH I SHOULD HAVE HAD NOW

(b) DID NOT KNOW UNTIL AFTER IT HAD BEEN DENIED

(c) _____

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

~~I HAVE THE POLICE REPORT. MY ATTORNEY HAD THE SAME REPORT AT~~
~~RICK REFUSED KNOWING WILLFULLY AND WANTONLY TO PRESENT IT.~~

WHEN HE HAD CHANCES AT TRIAL TO RAISE ISSUES THAT COULD HAVE
 VINDICATED ME -- HE REFUSED/FAILED TO. ^{DO AS} AN EXPERIENCED DEFENSE
 ATTORNEY HE KNEW THAT ~~UNLESS~~ ^{UNLESS} ~~ARGUED~~ ^{ARGUED} AND RULED UPON AT
 TRIAL THEY WERE NOT PRESERVED FOR REVIEW ON APPEAL!! THAT IS
 ITSELF BAD ENOUGH OF AN EXAMPLE OF INEFFECTIVE COUNSEL AT TRIAL

TO MAKE MATTERS WORSE -- THE APPEAL ATTORNEY - APPEARED ON THE
 SAME ISSUES!! I'M ENCLOSEING THE EXACT WORDING OF THE STATE'S
 OPPOSITION OF MY TRIAL ATTORNEY'S ACTIONS OR LACK OF. I SHOULD SAY!!

THE SAME WORDING (BEST I COULD TELL) OF WHAT THE APPEAL ATTORNEY FILED
 ON. I'M ALSO INCLUDING THE WORDING OF THE APPEAL COURT AFFIRMING
 THE STATE'S OPPOSITION AND AGREEING WITH THE STATE (SEE ATTACHED)

THERE'S NO WAY ON EARTH THAT THE FACT I DID NOT HAVE
 PROPER/COMPETENT COUNSEL BOTH AT TRIAL AND OR ON APPEAL CAN
 BE DENIED!! SO I REPEAT -- AS LAYMAN OF LAW -- I LEAVE THE
 PROPER/MOST IMPORTANT ISSUES WORTHEN AT P.C.R. TO VINDICATE ME
 GRANT ME A NEW TRIAL AND ALHAIL ME RELEASED WITH TIME SERVED
 WITHOUT BIAS/PREJUDICE OR HARASSMENT IN ANY WAY ASAP, TO WHO
 EVER IS APPOINTED TO DECIDE ME AT P.C.R.

and in no way should anything I've said /may fail to say - DUE
 TO MY LACK OF KNOWLEDGE OF WORKING RAISING ISSUES I MAY NOT
 KNOW ISSUES THAT ONLY AN EXPERIENCED ATTORNEY WILL/WOULD ~~RECOGNIZE~~
 RECOGNIZE AS RELEVANT IN MY DEFENSE. IN NO WAY SHOULD ANY OF
 THIS LIMIT MY DEFENSE TO ISSUES HE OR SHE MAY KNOW THAT I'M NOT
 AWARE OF!! ISSUES I MAY HAVE OVERLOOKED!!

(FOLLOW UP FROM BACK OF PAGE ONE)

ANOTHER TRUE BILL OF INDICTMENT RETURNED IN VIOLATION OF LAW. (NOT A TRUE BILL)
 NUMBER 2007-GS-32-2888 WAS RETURNED WITH TWO DIFFERENT VICTIMS LISTED!
 AGAIN PROSECUTOR STATED HE SHOULD HAVE CAUGHT THIS BEFORE HE WENT TO THE
 GRAND JURY (THE JUDGE NOTICED THIS ONE) THE PROSECUTOR FIRST ASK THAT THE
 FIRST THREE -- IF 2884-2885-2886 BE AMENDED OR ALTERED AND CONSIDERED THAT
 DUE PROCESS, PROPER PROCEDURE AND PROPER NOTICE GIVEN!! TO ANNOUNCE ON THE SPOT,
 INSTANTANEOUSLY IS BY NO MEANS DUE PROCESS, PROPER NOTICE AND OR PROPER
 PROCEDURE BEING GIVEN IN ACCORDANCE OF LAW -- AND SHOULD NOT HAVE BEEN
 KNOWN!! ~~IT WAS NOT PROPERLY PROSECUTED IN ACCORDANCE OF LAW!!~~

CAME BACK PAGE 5

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes I had NO HELP WITH THIS APP.

18. If you answered "yes" to one or more parts of (17), list: NOT SURE HOW TO REWRITE THE ANSWER WITH APPROPRIATE

- (a) the name and address of each attorney who represented you: P.J. BOY 84
- i. ROBERT T. WILLIAMS - WILLIAMS HODGINS STEARNS & BARKER LEXINGTON, VA 22304
- ii. ROBERT M. PACHAK - SCID-1330 Lady St. Suite 401 - COLUMBIA, SC 29201
- iii. PRO. DEK 115

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

- i. ROBERT T. WILLIAMS - TRIAL
- ii. ROBERT M. PACHAK - DIRECT APPEAL

iii. _____

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

- (COMPLETE ^{AND/OR} VINDICATION) A NEW TRIAL OR SENTENCE Reduced TO TIME Served
20. Are you now under sentence from any other court that you have not challenged? (Vindication is my goal)
- NO

2017/11/12 10:27

FILED

AFTER THE JUDGE GRANTED MOTION TO AMEND THE THREE INDICTMENTS AND AFTER THE JUDGE GRANTED THAT MOTION IN DIRECT VIOLATION OF THE BEFORE MENTIONED VIOLATIONS OF LAW. AND AFTER BEING INFORMED THAT 2888 HAS BEEN RETURNED WITH TWO NAMES (DIFFERENT) AS VICTIMS DID PROSECUTION ASK FOR THAT ONE TO BE AMENDED OR RETERED AS WELL. (THIS WAS DONE OVER OBJECTION BY/OF DEFENSE COUNSEL) IN THE MIDDLE OF CASE. AND TAKEN UNDER ADVISEMENT FOR RESEARCH. THE FIRST THREE SHOULD HAVE BEEN RULED NULL/VOID/INVALID!! "THOU NOT THERE!!" A MIS-TRIAL DECLARED AND ALL INDICTMENTS RETURNED FOR REVIEW TO GRAND JURY. AND THEN AND ONLY THEN (IF EVIDENCE WARRANTED) RETURNED WITH ALL PROPER/CORRECT AND LEGAL, PROPER CODES, STATUTES, NAMES AS RELEVANT AND IN EFFECT AT TIME OF ALLEGED INCIDENT (BE DEEMED TRUE BILLS OF INDICTMENT) AND RETURNED TO COURT FOR TRIAL!!

REGARDLESS OF HOW THE STATE/PROSECUTOR PRESENTED IT. IT WAS NOT PROPERLY PRESENTED IN ACCORDANCE OF LAW!! TO FURTHER CONFIRM THIS FACT -- TWO OF THE THREE ALLOWED TO BE AMENDED WERE RETURNED AT SENTENCING WITH ONE CORRECT CODE OF LAW'S NUMBER'S - AND ONE INCORRECT!! -- ON EACH SENTENCE SHEET/DOCUMENT!! WHAT DOES THIS FALL UNDER?? CERTAINLY NOT A MINOR ERROR!!

TO ALLOW ONE ERROR (ALTHOUGH ILLEGAL) MAYBE. SO FAR ~~FORWARD~~ AND ~~THE INDICTMENTS!!~~ = 2888 AS MENTIONED ABOVE, SHOULD HAVE BEEN RULED INVALID. NOT AMENDED!! IN VIOLATION OF DUE PROCESS & PROPER PROCEEDINGS IN ACCORDANCE OF LAW. WHAT WOULD HAVE HAPPENED IF WRONG DEFENDENT'S NAME HAD BEEN LISTED? A MIS-TRIAL WOULD HAVE BEEN DECLARED!! WOULD BE SENT BACK TO GRAND JURY WITH ALL INFORMATION ACCURATE, THEN RETURNED!!

YET ANOTHER (FBI ARREST NUMBER) CASE SUMMARY REPORT OF (ALLEGED) INCIDENT FROM MAJOR CRIME INVESTIGATION. DOCKET # 2007-15532-2891 NAMES ONE AS VICTIM. TRUE BILL OF INDICTMENT WAS RETURNED WITH SOMEONE ELSE AS VICTIM. CONVICTED AND SENTENCED!! NO ONE NOTICED -- BUT ME!! ~~SEVEN!!~~ I ASK AGAIN -- WHAT DOES THIS FALL UNDER!!

SEVEN ERRORS/MISTAKE ON EIGHT INDICTMENTS IS BEYOND COMPREHENSION!! ~~SHOCKING!!~~ THIS IS NOT SUPPOSED TO HAPPEN IN ANY COURT OF LAW IN THIS COUNTRY. LET ALONE SOUTH CAROLINA!!

TO RETURN AND ALLOW MULTIPLE TRUE BILL OF INDICTMENTS IN SUCH DISARRAY, TO ABUSE, TO DISTORT, TO IGNORE ALL ASPECTS OF LEGALITY SOLELY FOR SAKE OF CONVICTION. -- IF ALLOWED TO STAND.

COND. ON SEPERATE SHEET MARKED 5 ON TOP

Cont. Rem 4

5

IS TO MAKE A MOCKERY OF LAWS WRITTEN AND MANKIND IS SUPPOSED TO ABIDE BY. AND TO CASUALLY TOSS ASIDE AND BE CONSIDERED SCRIVENER'S ERROR IS SURREAL!!

DUE TO THE MAGNITUDE OF ERRORS, OF SENTENCE, AND WHAT CAN ONLY BE DESCRIBED AS EXPLOITATION OF LAW FOR SAKE OF CONVICTION. I WOULD VENTURE TO SAY AN ACT SUCH AS THIS IS UNHEARD OF -- UNPRECEDENTED IN A COURT OF LAW, IN JOURNALS OF LAW NOT ONLY IN SOUTH CAROLINA, BUT THE ENTIRE COUNTRY!! AND SHOULD BE MADE AWARE OF THE EXTREME INJUSTICE AND LACK OF RESPECT SOUTH CAROLINA, ESPECIALLY LEXINGTON COUNTY, HAS FOR LAW!!

WHAT FOLLOWS IS THE DEFINITION OF A TRUE BILL OF INDICTMENT AS DEFINED BY LAW.

I BELIEVE EVERY ASPECT OF A TRUE BILL WAS BROKEN, IGNORED. THAT TRUTH AND JUSTICE MATTERED NOT. CONVICTION BY ANY MEANS. EVEN TOTAL DISREGARD FOR LAW. WHO'S FAULT IS THAT?? STATE/PROSECUTOR!!

TRUE: IN ACCORDANCE WITH FACT OR REALITY
WITHOUT DEVIATION!!

TRUE BILL: A BILL OF INDICTMENT ENFORCED BY A GRAND JURY AS WARRANTING PROSECUTION OF THE ACCUSED!!

(1) DUE PROCESS: A COURSE OF FORMAL PROCEEDINGS (AS LEGAL PROCEEDINGS) CARRIED OUT REGULARLY AND IN ACCORDANCE WITH ESTABLISHED RULES AND PRINCIPLES --

ALSO CALLED / CALLED ALSO PROCEDURAL DUE PROCESS!!
 (2) A JUDICIAL REQUIREMENT THAT ENACTED LAWS
 MAY NOT CONTAIN PROVISIONS THAT RESULT IN THE
 UNFAIR, ARBITRARY OR UNREASONABLE TREATMENT OF
 AN INDIVIDUAL -- CALLED ALSO SUBSTANTIVE DUE
 PROCESS!!

SUBSTANTIVE; 1: BEING A TOTALLY INDEPENDENT
 ENTITY. 2: REAL RATHER THAN APPARENT.

TRUE: IN ACCORDENCE WITH FACT OR REALITY
WITHOUT DEVIATION!!

IN ACCORDENCE OF LAW, A TRUE BILL OF INDICTMENT
CAN NOT BE ALTERED / AMENDED NOR CHANGED IN
ANY WAY, ONCE A JURY HAS BEEN SWORN, SEATED AND
 EVIDENCE / TESTIMONY GIVEN. TO ALLOW AN INDICTMENT(S)
 TO BE ALTERED / AMENDED / CHANGED IN ANY WAY IS TO
 DEPRIVE THE DEFENDENT OF A FAIR AND JUST TRIAL IN
 VIOLATION OF DUE PROCESS AND OR PROPER PROCEDURE IN
 ACCORDANCE OF LAW!!

AS SUCH, A MIS-TRIAL SHOULD BE DECLARED BY
 JUDGE WHETHER ASK FOR BY DEFENCE OR NOT. AND
 RETURNED TO THE GRAND JURY WITH ALL PROPER CODES
 STATUTES AND RELEVANT ISSUES IN ORDER (PROPER) FOR
 THE GRAND JURY TO REVIEW AND RULE UPON!!

FAILURE TO CORRECT BEFORE MENTIONED ISSUES
 WOULD RENDER ALL NULL-VOID-INVALID!! IT DOES NOT
 IMPLY SMALL ERRORS ALLOWED!! THE MEANING IS CLEAR--
WITHOUT DEVIATION!!

NEXT PAGE

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FILED

STATE VS GENTRY CASE SITE 363-B.C. 93. STATE'S PROPER NOTICE AND DUE PROCESS MUST BE GIVEN TO DEFENDENT. FAILURE TO DO SO IS A VIOLATION OF DUE PROCESS. AND IF CHALLENGED IN MOTION OF DEFENCE MUST BE DONE BEFORE JURY IS SWORN ~~AND~~ IN. NOT AFTER WORD'S.

TO RETURN FROM LUNCH - NEAR END OF TRIAL - AND ANNOUNCE THE STATE/PROSECUTOR HAS FOUND HE MADE AN ERROR THAT SHOULD HAVE BEEN CAUGHT BEFORE SERVING TO THE GRAND JURY. ADMITS HIS MISTAKE -- REST ON THREE INDICTMENTS. THEN THE JUDGE FINDS A FAULT -- AND ASK THEY BE AMENDED / ALTERED CANNOT LEGALLY AND IN ACCORDANCE OF LAW BE CONSIDERED DUE PROCESS AND PROPER NOTICE GIVEN. TO ALLOW SUCH IS A DIRECT VIOLATION OF BOTH DUE PROCESS AND PROPER NOTICE!!

FURTHERMORE -- IN ACCORDANCE OF LAW, NO MATTER HOW IT'S LOOKED AT -- I WAS NOT PROPERLY INDICTED!!

BECAUSE DEFENCE ATTORNEY FAULTS TO OBJECT BEFORE HAND. DOES NOT IN ANY WAY RELIEVE THE STATE/PROSECUTOR OF HIS/HER RESPONSIBILITY TO HAVE ALL PROPER / RELEVANT INFORMATION, CODES, STATUTES IN PLACE BEFORE BEING PRESENTED TO THE GRAND JURY AND OR COURT!! AS IT IS THE SOLE RESPONSIBILITY OF THE STATE/PROSECUTOR TO DO SO!!

THERE MAY BE OTHER RELEVANT ISSUES I MAY HAVE OVERLOOKED OR MAY NOT BE AWARE OF!! ONE THING CLEAR

CHARGE TO THE FACT I WAS DEPRIVED A FAIR AND JUST TRIAL. WHETHER DUE TO INEFFECTIVE COUNSEL AT TRIAL, AND OR APPELLATE COUNSEL AS WELL. THE VERDICT/DECISION OF THE LOWER COURT AND APPEAL COURT SHOULD BOTH BE REVERSED/OVERTURNED AND I, THE DEFENDANT SHOULD BE RELEASED FROM THE DEPARTMENT OF CORRECTIONS, LEE CO. INMATE, BISHAMBLE, S.C. FORTH WITH DUE TO MY AGE (70) AND DECLINING HEALTH (3 HEART ATTACKS), RELEASED WITH TIME SERVED OR GRANT ME A NEW TRIAL!

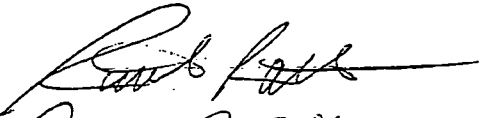
ALL THIS SAID -- IF MY ATTORNEY(S) AT TRIAL AND ON APPEAL HAD DONE THEIR JOB I WOULD NOT BE HERE. COMBINE THIS FACTOR WITH MY NOT BEING GUILTY AS CHARGED: I WAS WRONGLY CONVICTED AND SENTENCED TO LIFE FOR THINGS THAT COULD THEN -- AND CAN NOW BE PROVEN NEVER HAPPENED!!

HAVE I SAID ENOUGH, TOO MUCH, NOT EXPLAINED AS I SHOULD? I AM BEING TRUTHFUL IF ANY ONE INCARCERATED, PRISON AND SHOULD BE VINDICATED -- IT IS I!! EVERY THING IVE SAID CAN BE VERIFIED!! VINDICATION IS MY GOAL!!

I MAY HAVE OVERLOOKED SOMETHING. IVE TRIED TO GIVE WHAT I FEEL IS MOST IMPORTANT AT THIS TIME. TRUTH!!

CAN JUSTICE FOLLOW?? PLEASE RESPOND ASAP!!

Sincerely


Richard Bath

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I'm Enclosing undeniable proof/evidence, not only of ineffective counsel at trial, but ineffective appellant counsel as well combine that with the unheard of amount of errors/mistakes (not minor) allowed on indictments. And that warrants a reversal/overturn of verdict and sentence. That is CRISTAL CLEAR!!!

I'm also including undeniable proof/evidence that was knowingly, willfully and wantonly withheld that proves I was in Virginia when almost all of the false allegations allegedly occurred. Proof of illegal search and seize. By doing so after being told to stand by!

Proof I was in Virginia on or about date of alleged oral sex on a 13 year old girl at a residence at Pine Ridge Mt. P. -- Bent Tree Cr. on or about June 25th 2007!!! In the accusers world's -- a month and a week ago when giving her statement July 30th 2007!! June 25th was the random picked date by that statement.

I have the Final Electric Bill from SKEG dated OCT. 2006!!! Almost a year before the alleged incident. The attorney ~~who~~ KNOW and had this information and more. Refused to present anything!!!

I hope I've given enough information to prove beyond all doubt I am being held unlawfully!! If additional information or verification is needed -- PLEASE inform me and I'll get it to

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DUE TO MY DECLINING HEALTH AND AGE, I ASK THAT
THIS MATTER BE RESOLVED ASAP!! (SORRY FOR MISTAKE)

THE PLAIN SIMPLE FACT (THAT NO ONE WANTS TO HEAR
OR BELIEVE) THAT I'M NOT GUILTY AS CHARGED MAKES
THIS EVEN MORE IMPORTANT!! I DO NOT IN ANY WAY
CONDONE OFFENSE'S AGAINST MINORS, OR ANYONE ELSE FOR
THAT MATTER. IT'S THE WORSE THING TO BE ACCUSED OF,
ESPECIALLY WHEN THE CHARGES ARE FALSE.

BUT AS IN ANY OTHER ALLEGED CRIME -- NOT ALL ARE
GUILTY!! HOPEFULLY THIS IS ONE TIME THAT TRUTH
WILL BE ACKNOWLEDGED!!

Thank you

Rand Latta

200912 01207

FILED

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

SWORN to and subscribed before me this 22
day of Feb 2002

J. Bracey Finn (L.S.)
Notary Public

My Commission Expires: 5-16-07

2012CP3201581

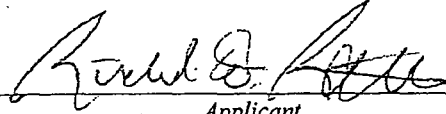
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2012 APR 12 2 12:21

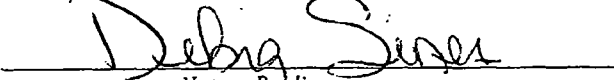
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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


Applicant

SWORN or affirmed to and subscribed before me this
19 day of March, 2012.


Notary Public

My Commission Expires:

11-4-2015

2012 CP3201581

FILED
APR 12 2012

08/06/2007 13:00

12752236127

WYTHE CO SHERIFF

PAGE 87

**VOLUNTEER STATEMENT
(NOT UNDER ARREST)**

Page No. 3 of 7 Pages

I, Eddie R. Ratliff, am not under arrest for, nor am I being detained for any criminal offense concerning the events I am about to make known to the Wythe County Sheriff's Department. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 51 years of age, D.O.B. [REDACTED] and I live at [REDACTED] Max Meadows, Virginia 24360

Ph 2 [REDACTED]

Sometime in the spring of 07, Richard said Tracy and Minor 2 were moving to Phoenix, AZ and he didn't know what he'd do without them. He was upset that the child he cared so much was moving away. He asked if they could come back up and they did earlier in the spring. They came again in two vehicles. Tracy and Minor 2 slept upstairs across from me. Richard slept on the couch downstairs.

Because of my mother's health, I am up and down throughout the night going back and forth downstairs to check on her, make sure she's resting, not in pain. I usually make 3-4 trips downstairs at all times of the night to check in on her, to get water, go to the restroom and etc.. Each time I came downstairs while they were here, Richard was sleeping soundly on the couch. I never observed him coming upstairs or Tracy or Minor 2 coming downstairs (at night). I believe I would have heard something if they had because I doze lightly throughout the night, knowing I have to listen for any potential falls or the possibility mom would get up and try to go through the house alone. Mom slept across the hall from the living room. Her door is always open and the hall light is left on in case I have to run downstairs. She never once mentioned seeing Richard go upstairs in the night or them coming downstairs.

On a couple of occasions, and in daylight in our living room, I saw Minor 2 sit on Richard's lap in front of Tracy...and once alone. It was short and initiated by Minor 2. It didn't appear to be abnormal. It looked paternal and innocent.

Richard said Tracy was quitting her job and moving with Minor 2 in May. We encouraged him to come home and let us nurse him back to health because he was frail and had lost so much weight. I don't recall when he came here but I believe it was in April. *I have proof it was March.*

While here, he spoke regularly of Tracy and Minor 2. I wondered if he and Tracy were still having some kind of affair. Tracy and Minor 2 called Richard regularly. He also called them regularly. He spoke about Minor 2 so much that we put 2 & 2 together—her age and the time he met Tracy, and assumed he just didn't want to admit Minor 2 was his child.

I have read each page of this statement consisting of 7 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at Wythe County Sheriff's Dept. ^{4th} this 3rd day of August, 2007.

WITNESS: [Signature] WCSO 235

WITNESS: [Signature]

Eddie Ratliff
Signature of person giving voluntary statement

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.

Richard David Ratliff,

Appellant.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2012-UP-033
Submitted January 3, 2012 – Filed January 25, 2012

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General William Blich, Jr., all of

Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: Richard David Ratliff appeals his convictions for three counts of second-degree criminal sexual conduct with a minor, two counts of lewd act with a minor, and three counts of criminal solicitation of a minor. Ratliff argues the trial court erred in admitting irrelevant and prejudicial character evidence. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding an issue was not preserved for review when the party argued one ground at trial and another on appeal); Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) ("An issue is not preserved for review merely because the trial court mentions it.").

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

RESPONSE
PART I

FILED
INITIAL BRIEF OF RESPONDENT
STATEMENT OF ISSUE'S ON APPEAL

THE TRIAL COURT PROPERLY ADMITTED EVIDENCE THAT WAS RELEVANT AND PROBATIVE IN THIS CASE.

FURTHER, APPELLANT'S ISSUE AS RAISED IS NOT PRESERVED FOR REVIEW ON APPEAL.

ISSUE AS RAISED BY APPELLANT IS NOT RESERVED FOR REVIEW ON APPEAL BECAUSE APPELLANT NEVER MAINTAINED IT WAS IMPROPER CHARACTER EVIDENCE.

FIRST, THE ISSUE IS NOT PROPERLY PRESERVED FOR REVIEW ON APPEAL. IN ORDER TO PRESERVE AN EVIDENTIARY ISSUE FOR REVIEW ON APPEAL A CONTEMPORANEOUS OBJECTION MUST BE MADE WHEN THE TESTIMONY IS OFFERED.

TO PRESERVE AN ISSUE FOR REVIEW THERE MUST BE A CONTEMPORANEOUS OBJECTION THAT IS RULED UPON BY THE TRIAL JUDGE.

IF PARTY FAILS TO PROPERLY OBJECT, THE PARTY IS PROCEDURALLY BARRED FROM RAISING THE ISSUE ON APPEAL.

ISSUE NOT PRESERVED WHEN APPELLANT DID NOT OBJECT TO TESTIMONY AT TRIAL ON THE GROUND'S RAISED ON APPEAL, THAT IT WAS IMPROPER CHARACTER EVIDENCE, BUT OBJECTED ONLY ON THE BASIC OF RELEVANCY.

• PART 2
OF RESPONSE

APPELLANT ONLY MOVED AT TRIAL TO EXCLUDE THE EVIDENCE BASED ON RELEVANCE AND ITS PREJUDICIAL NATURE UNDER RULE 403, SCRE.

HE NEVER ARGUED THE EVIDENCE WAS IMPROPER CHARACTER EVIDENCE.

APPELLANT NEVER RELIED ON THE CASE NOR DID HE ARGUE THE EVIDENCE WAS IMPROPER CHARACTER EVIDENCE EVEN AFTER THE COURT DISCUSSED NELSON,

APPELLANT DID NOT ADD ITS HOLDING TO THE REASON FOR HIS OBJECTION, HE MERELY STATES THERE WAS NOTHING FURTHER FROM THE DEFENDENT.

IT LISTS EVIDENCE AND ENDS AS FOLLOWS.

AS A RESULT, ANY ADMISSION OF THE EVIDENCE ITSELF WOULD BE ENTIRELY CUMULATIVE TO THE DISCRPTIONS AND COULD NOT HAVE POSSIBLY PREJUDICED APPELLANT.

FOR ALL THE FORE GOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE JUDGEMENT AND CONVICTION OF THE LOWER COURT BE AFFIRMED.

FILED
MAY 12 2008
CLERK OF COURT

33 - PAGE 1
Account Number: 3-2100-7025-5206

A late payment charge of 1.5% will be added to any balance remaining 25 days after billing. Please make checks payable to SCE&G.

FB 002 19 3210070255206
RICHARD DAVID RATLIFF

21635

**C037

Final Bill Amount Due on 11/14/06	\$ 44.75
Amount Enclosed	

SCE&G
Columbia, SC 29218

3210070255206010000000000010060000004475

IMPORTANT: Please return this portion with your payment so that the return address shows in the envelope window.



FINAL BILL

Statement Date: October 18, 2006

Page 1 of 1

Account Number: 3-2100-7025-5206

Name: RICHARD DAVID RATLIFF
Service Address: [REDACTED]
GASTON SC 29053-9518

N 21635

Electric - Rate 008 - Residential Service					
Meter #	Billing Period	Days	Meter Reading	Constant	KWH
001131375 - Mobile Hom	Sep 28 - Oct 18	20	05887 to 06317	1	430
Basic Facilities Charge				\$	5.00
430 KWH					39.75
Total Electric Charges				\$	44.75

If you have questions, you may call us 24 hours a day.
Telephone # 800-251-7234

For gas leaks, downed/sparking power lines, or power outages, you may call us toll free 24 hours a day.
Telephone # 1-888-333-4465

Billing Summary		
Electric Charges	\$ 44.75	
Total Current Charges		\$ 44.75
Previous Bill Amount	\$ 26.27	
Payment Thank You	10/09/06 -26.27	
Balance Brought Forward		\$.00
Final Bill Amount Due on 11/14/06	\$	44.75

SPECIAL MESSAGES:

Thank you for being our customer. This is your final bill with us. Please contact your SCE&G office if we can help in meeting any of your future energy needs.

Electronic check conversion is a more efficient, safe and secure way of processing paper checks. When you mail in a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. Funds may be withdrawn from your account on the day we receive your payment and if your information is electronically sent to your bank, you will not receive your check back from your bank. If you do not wish to have your check converted into an electronic debit or if you have any questions about electronic check conversion, please contact SCE&G at 1-800-251-7234.

PAYMENT INFORMATION

- Pay by check or money order payable to SCE&G and mail it with the bill stub in the enclosed window envelope.
- Pay online at www.sceg.com (directly from your bank account). Simply click on Manage Your Account to get started with ePay. It's fast, secure, and free!
- Pay using your Visa, MasterCard, Discover, Electronic Check, or ATM Debit Cards. Call toll-free 1-800-450-9160, 24 hours a day. There is a fee of \$3.50 per transaction. BillMatrix receives the full amount of the fee as the provider of this service. Additional limitations may apply.

www.sceg.com

08/06/2007 13:00

12752236127

WYTHE CO SHERIFF

PAGE 03
Date 08/06/2007

Page: 2

WYTHE CO SHERIFF'S OFFICE
INCIDENT DETAIL

Direction Of Travel: Mode Of Travel:

SUSPECT VEHICLE INFORMATION

Vyr: 0000 Make: Model: Style: Color:

Lic: Lis: VIN:

VEHICLE INFORMATION

LINKS

SYSTEM LOG

System Log: JCARP 08/02/2007 22:46:28

System Log: JCARP 08/02/2007 22:46:28

Reference CAD: 2007-0000005705

NARRATIVES

Narrative By: VAUGHANR 08/02/2007 15:26

On August 2, 2007, Detective Tracy Barr from Lexington County Sheriff's Office, Lexington, SC, contacted our office and reported that they had arrested Richard Ratliff in their jurisdiction for criminal sexual conduct with a minor. Detective Barr stated that Ratliff lives at [REDACTED] in Max Meadows. She stated that there may have been a computer at the residence with child pornography. They wanted me to remain on stand-by in case they obtained enough information for a search warrant.

SC.

Detective Eddie Prestigiacomo contacted Sgt John Thompson and he went to the residence on [REDACTED]. In the bedroom he observed pornography, panties, and a 32 caliber handgun.

On 8-2-2007, Inv Doug Carner and me went back to the residence, photographed the items in the bedroom and collected the following items:

09-17-07P02:47 0054



Virginia Department of Motor Vehicles
P.O. Box 27412 Richmond, Va. 23269-0001

10/22/08

WYTHEVILLE CSC
Customer Information Form

Page 1

Customer Name: RATLIFF, RICHARD, DAVID

In order to complete your transaction(s), DMV will require the following documentation:

MISCELLANEOUS RETURN REASONS

David Ratliff was in DMV on March 9, 2007 to renew is Diver's License, he also registrated his vehicle on June 27, 2007. The vehicle is a 1998 Ford Taurus.

FILED

2007 OCT 22 12 28

When you return, please bring the following:

1. All of the documents you presented on your first visit.
2. The additional documents/information listed above.
3. Required fees.
4. This form.

Teller: DMVHAP 10

Fax number: _____ Fax Attn: _____

Manager or Designee Signature: Yvonne H. Vooone

Web Address: www.dmvnow.com

DMV Contact Number: 1-866-DMVLINE (1-866-368-5463)

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Richard David Ratliff, #333368

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

2012-CP-32-1581

RETURN

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed April 12, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the October 2007 term of the Court of General Sessions for Lexington County for three counts of criminal sexual conduct with a minor, 2nd (2007-GS-32-2884, 2007-GS-32-2885, and 2007-GS-32-2886), two counts of committing or attempting to commit lewd acts on a minor (2007-GS-32-2887 and 2007-GS-32-2888), three counts of criminal solicitation of a minor (2007-GS-32-2891, 2007-GS-32-2893, and 2007-GS-32-2894). He was represented by Robert T. Williams, Esquire. On February 26, 2009, the Applicant proceeded to trial after which he was found guilty on all charges. He was sentenced by the Honorable R. Knox McMahon, to confinement for a period of twenty (20) years for criminal sexual conduct with a minor, 2nd (2007-GS-32-2884) and twenty (20) years for criminal sexual conduct with a minor, 2nd (2007-GS-32-2885) to be served consecutively, twenty (20) years for criminal sexual

conduct with a minor, 2nd (2007-GS-32-2886) to be served concurrently, fifteen (15) years for committing or attempting to commit lewd acts on a minor (2007-GS-32-2887) to be served consecutively, and fifteen (15) years for committing or attempting to commit lewd acts on a minor (2007-GS-32-2888) to be served concurrently, and ten (10) years for each count of criminal solicitation of a minor to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented by Robert M. Pachak, Esquire on direct appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Richard David Ratliff, Op. No. 2012-UP-033 (S.C. Ct. App. filed January 25, 2012).

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Trial Counsel;
 - a. Failure to object to the revision of the indictments' mistakes after recess
 - b. Failure to investigate
 - c. Failure to present evidence
 - d. Failure to preserve issues for appeal
2. Ineffective Assistance of Appellate Counsel;
3. Violation of Due Process.
 - a. Failure to properly investigate evidence
 - b. Failure to adequately prepare the indictments by having the wrong names associated with the indictments

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of

the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (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).

When a claim of ineffective assistance of appellate 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing

will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Applicant raises additional direct appeal allegations. These allegations are not proper matters for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 833 (1975). Therefore Applicant's direct appeal allegations must be summarily dismissed.

VII.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

IX.

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

X.

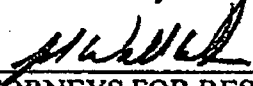
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JOHN W. WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 4th, 2013

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

2012-CP-32-1581

Richard David Ratliff, # 333368

Applicant,

vs

STATE OF SOUTH CAROLINA,

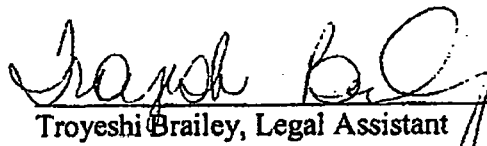
Respondent

AFFIDAVIT OF SERVICE BY MAIL

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

Jason Scott Chehoski, Esquire
306 Connor Park Lane
West Columbia, SC 29170

DATED this 4th day of January, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Richard David Ratliff, #333368,)
Applicant,)
vs.)
THE STATE OF)
SOUTH CAROLINA,)
Respondent.)

FILED
2013 JUL -3 A 11: ELEVENTH CIRCUIT
SETTLE A HARRIS
CLERK OF COURT
LEXINGTON SC

AMENDMENTS TO POST-
CONVICTION RELIEF
APPLICATION

2012-CP-32-1581

The applicant hereby amends answers to number 10 and number 11 of the Application for Post-Conviction Relief to state the following:

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

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

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

(a) The Applicant was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 446 U.S. 688 (1984). The outcome of the Applicant's proceeding was prejudiced, and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

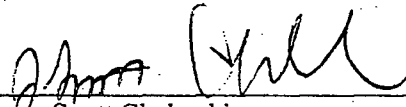
1. Defense attorney failed to effectively discharge his professional responsibilities while he was handling Applicant's case.
2. Defense attorney failed to act as Applicant's diligent, conscientious advocate.
3. Defense attorney did not do the necessary legal investigation in Applicant's case.
4. Defense Attorney failed to investigate a possible alibi defense.
5. The Defense Attorney failed to convey an offer to plead guilty to the Applicant, thus denying the Applicant the opportunity to accept the offer.
6. Defense Attorney failed to notice flaws in the indictments and, thus failed to move to quash flawed indictments before the jury was sworn.
7. Defense Attorney failed to argue against improper character evidence being admitted.
8. Defense Attorney failed to preserve issues on improper character evidence being admitted for appeal.
9. Defense Attorney failed to object to improper statements during the State's closing argument.
10. Defense Attorney failed to file a motion to change the discrepancy between the judge's oral pronouncement and

the conflicting written order.

11. The attorney that represented Applicant on this charge in Court failed to function as the counsel guaranteed by the Sixth Amendment to the Constitution.

Applicant's counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny. Counsel's performance at trial was such that "but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) at 625.

July 3, 2013



Jason Scott Chehoski
Attorney for Applicant
306 Conner Park Lane
West Columbia, SC 29170
(803) 319-1183

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT

Richard D. Ratliff,)
)
) Post-Conviction Relief
 PLAINTIFF,) Hearing
) 2012-CP-32-1581
)
)
 -VS-)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE

AUGUST 15, 2013

LEXINGTON, SOUTH CAROLINA

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

Jason S. Chehoski, Esq.
 For the Applicant

J. Walt Whitmire, Esq.
 For the State

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

I N D E X

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EXHIBITS

PAGE NO.

Applicant's Exhibits Number One through Three, Letters. . . 17

1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 MR. WHITMIRE: The State calls Richard
4 Ratliff v. State of South Carolina, Case Number
5 2012-CP-32-1581. Your Honor, if you'll bear with me
6 just a moment.

7 Mr. Ratliff was indicted for three counts of
8 CSC with a minor second; two counts of attempted lewd
9 act on a minor; three counts of criminal solicitation
10 of a minor; and I believe several counts of CSC first
11 with a minor.

12 He was represented by Mr. Williams. The
13 State called the case to trial. Mr. Ratliff was found
14 guilty as indicted. He was sentenced to an aggregate
15 term of 65 years on the record. Mr. Ratliff did file
16 a notice of appeal. The Court of Appeals affirmed Mr.
17 Ratliff's conviction and sentence in an unpublished
18 opinion. Mr. Ratliff did file a timely notice of a
19 PCR.

20 Mr. Ratliff is present and represented by Mr.
21 Chehoski. Mr. Chehoski did file his amendments
22 timely. The stated amendments are in your record, Your
23 Honor. At this time, I turn matters over to Mr.
24 Chehoski.

25 THE COURT: Mr. Chehoski.

1 MR. CHEHOSKI: Thank you, Your Honor. Good
2 afternoon now.

3 THE COURT: Good afternoon.

4 MR. CHEHOSKI: The applicant calls Mr.
5 Ratliff to the stand.

6 THE COURT: Okay.

7 DIRECT EXAMINATION

8 BY MR. RATLIFF:

9 Q Please state your name for the record.

10 A Richard David Ratliff.

11 Q Okay. Mr. Ratliff, how are you feeling
12 today?

13 A As good as can be expected.

14 Q I understand. The reason why I ask that
15 is --

16 THE COURT: Hold on, sir.

17 MR. WHITMIRE: She didn't realize you hadn't
18 been sworn in yet.

19 THE COURT: Thank you for reminding me of
20 that.

21 MR. WHITMIRE: That might be useful.

22 THE COURT: It will come back to haunt one
23 of us if it doesn't happen.

24 MR. CHEHOSKI: Yes.

25 THE COURT: Mr. Ratliff, if you'd just raise

Richard D. Ratliff - Direct

1 your right hand, please, sir.

2 (Whereupon, the applicant was sworn.)

3 MR. CHEHOSKI: Let's hit the reset button.

4 THE COURT: Okay.

5 RICHARD DAVID RATLIFF, having first been
6 duly sworn, testified as follows:

7 EXAMINATION CONTINUES

8 Q Again, state your name for the record,
9 please.

10 A Richard David Ratliff.

11 Q All right. And, Mr. Ratliff, are you
12 feeling okay?

13 A I am as good as can be expected, sir.

14 Q Have you suffered any medical conditions in
15 the past?

16 A Numerous.

17 Q Do you suffer from any heart conditions?

18 A I've had four heart attacks and four stents.
19 So recently, in March, I had four heart attacks.

20 Q Did you suffer any heart troubles before the
21 trial?

22 A About a month before the trial -- matter of
23 fact, I think it was January 16th, if I'm not mistaken
24 -- I suffered a bad heart attack. I was in the hospital
25 for seven days for that time. And just before --

Richard D. Ratliff - Direct

1 actually, the day before trial -- I had to be rushed
2 back to the hospital again.

3 My blood pressure was like 220 over 200. It
4 was up there drastically, and they had admitted me but
5 -- it was on Monday morning -- but the prosecutor
6 pressed them to release me to go to court. So they
7 released me on Monday morning, and I went to trial on
8 Tuesday.

9 Q When you went to court on Tuesday, how were
10 you feeling?

11 A To be honest, it was like -- I wasn't sure
12 if it was -- like a knife is the best way I can explain
13 it. It's -- things didn't seem real. I couldn't
14 really speak for myself because I was unable to at that
15 time.

16 Q Were you on any medication at the time?

17 A Numerous blood pressure, heart medication,
18 cholesterol medication.

19 Q Did any of those medications affect your
20 ability to understand what was going on in court?

21 A The sheer magnitude of the third heart attack
22 and the high blood pressure made me somewhat
23 disoriented. I don't -- most of what I recall about
24 the trial -- I'm looking at Mr. Williams, and he knows
25 what I'm saying is the truth.

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1 I've known him for 25 years, but he can't
2 contradict what I'm saying without committing perjury.
3 But the things I remember most is trying to get him to
4 present evidence on my behalf, and he didn't want to
5 do it. Most of what I found out, I found out after being
6 sentenced.

7 Q And we're going to get into Mr. Williams'
8 representation of you in a little bit, and we'll go into
9 that in pretty much detail. But, again, the last part
10 about as far as how you were feeling before the trial
11 -- well, during the trial, how much were you able to
12 communicate with Mr. Williams?

13 A Not much -- it was very limited.

14 Q Were you able to -- were you physically able
15 to communicate, is what I'm really trying to get at?

16 A Not where it would benefit me really. And
17 I'm just, you know, being honest.

18 Q All right. Now, I want to kind of talk
19 about, again, Mr. Williams' representation to you.
20 How soon after your arrest did you hire Mr. Williams?

21 A It was probably about 15 months. I didn't
22 hire him right away. I had a Public Defender.

23 Q And how many times did Mr. Williams -- after
24 you hired him, how many times did you visit with him?

25 A At the jail, he probably came I don't think

Richard D. Ratliff - Direct

1 more than two or three times, and it's for maybe 10
2 minutes to 15 minutes. And we really didn't ever
3 discuss anything basically.

4 Q All right. Did he tell you about what
5 charges you were facing?

6 A To an extent, yes.

7 Q Did he tell you what the elements were that
8 the State had to prove in order to convict you?

9 A Not that I recall, no.

10 Q Did he tell you what your maximum penalty was
11 on each charge?

12 A He never told me anything regarding any of
13 that. I was never informed of any of that, no.

14 Q Were you aware of any plea negotiations
15 between him and the State?

16 A Mr. Williams came to me shortly after I hired
17 him and with a plea that he said the prosecutor had
18 offered. He said the prosecutor offered that if I
19 would plead to two lewd acts, they would drop everything
20 else. In return, I was to receive what would amount
21 to a five-year sentence, 51 percent.

22 Now, I agreed to that. What I did I think
23 is what anybody would have done. I tried to get it
24 down. I asked Mr. Williams, I said, "Let's get this
25 down to one charge or ABHAN. That way I can go home

Richard D. Ratliff - Direct

1 with time served."

2 He said that couldn't be done. But I made
3 it clear to him that either way, irregardless, I would
4 accept that plea, just to get it behind me and get on
5 with my life.

6 Q Were you ever brought over to the courthouse?

7 A Three or four times.

8 Q All right. And at those courthouse -- when
9 you were brought over to the courthouse, did you ever
10 see Mr. Williams?

11 A Well, three to four times, every time we went
12 to court, he had to be called. He didn't even know he
13 was supposed to be in court. Somebody had to call him
14 every time. And I know one time he did have a trial,
15 but somebody had to call him every time. Probably the
16 most notable is with Judge Goode when I went for a plea.

17 Q Okay, Judge Goode. And who did you know
18 Judge Goode to be?

19 A I just knew that he was a plea judge as far
20 as that.

21 Q And do you by any chance remember when that
22 was?

23 A I don't remember the exact date. But what
24 I remember distinctly about it is that when I went that
25 day, everybody in Lexington County, Richland County I'd

Richard D. Ratliff - Direct

1 say within the viewing district of Channel 10 knew that
2 Judge Goode was going to be at trial, and I was going
3 to be there for, you know, a plea because even --
4 everybody knew about this except Mr. Williams. They
5 had to call him.

6 Q Do you remember what season it was when that
7 happened?

8 A It was sometime in the fall. It was late
9 August, November, December. It was somewhere in that
10 area. I can't remember exactly.

11 Q Of what year?

12 A I think it was 2008, near the end of 2008.

13 Q If I showed you, you know, a calendar showing
14 when Judge Goode was in court, would that refresh your
15 memory?

16 A You know, dates like that, I'd probably
17 remember it. They wouldn't hear it that day because
18 when Mr. Williams finally got there, he came running
19 in like a bat out of heck. And he ran right by me,
20 turned back around and saw me. I was six seats back.
21 He run back. He said, "Channel 10 is supposed to be
22 here. If a camera shows up, I've got to hear this
23 today."

24 I told Mr. Williams, I said, "Turn around,
25 Theo, and look behind you. The cameraman's right

Richard D. Ratliff - Direct

1 there." So he went back, and he was in there a long
2 time talking with the judge, he and the prosecutor both.
3 He finally came out, and he said, "We're not going to
4 hear this. We're not going to hear it. Testimony here
5 would be unfair to the judge." But, now, he later told
6 my son that I turned the plea down that day. But he
7 didn't even hear it.

8 Q And, again, what was your understanding of
9 what the plea was going to be?

10 A The plea was five years, 51 percent,
11 nonviolent.

12 Q How many charges? On how many charges?

13 A Two lewd acts.

14 Q Okay. Now, again, looking at what I just
15 handed you, you see what I have highlighted?

16 A Yes, sir.

17 Q Is that Judge Goode's term of court?

18 A Now, you know, as far as that goes, I honestly
19 think I'll say the latter part of 2008.

20 Q Yes.

21 A November, December.

22 Q Okay. Does that say October of 2008?

23 A Start date --

24 Q At the bottom there?

25 A Yes.

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1 Q All right. And, again, start date, does
2 that sound about right?

3 A Yes.

4 Q All right. Now, were you aware of any other
5 plea offers outside of the two lewd acts?

6 A At that time, no.

7 Q No. And did you make it clear to Mr.
8 Williams that you wanted to plead guilty to those
9 charges?

10 A Yes, sir, I did. Our communication was
11 mostly by phone and letters and correspondence that I
12 wrote to him reaffirming that I would accept the plea.
13 I have those letters, if the judge would like to see
14 them. I can present them.

15 It was my communication to make sure that he
16 knew that I had accepted that. And I think, in my view,
17 it's highly relevant because I had informed him in
18 numerous letters now. He kept the originals and --

19 MR. WHITMIRE: I want to object, Your Honor,
20 to these letters being offered to the Court without a
21 proper foundation.

22 MR. RATLIFF: I --

23 THE COURT: I'm going to let Mr. Chehoski --
24 he is your attorney.

25 MR. RATLIFF: I'm sorry.

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1 THE COURT: If you'd just let him --

2 MR. RATLIFF: I apologize.

3 THE COURT: -- handle the case. He'll
4 handle it and do a good job.

5 Q You're claiming that you did write letters
6 to Mr. Williams?

7 A Yes.

8 Q You said you had copies of those letters?

9 A Yes, I do.

10 Q May we see those copies?

11 A Yes, sir.

12 Q Or those letters, actually.

13 A Yes. He made -- he kept the originals and
14 sent me the copies. I have the copies here.

15 Q Before we can present them to the Court, I
16 think the State needs to see them.

17 A My apology to the Court.

18 THE COURT: You can pass them around.

19 Q And those letters are dated December 8th, is
20 that right?

21 A I think the 12th, yes.

22 Q '08, all right. Did you ever get out of jail
23 before trial?

24 A No, sir, I did not.

25 Q How many times did Mr. Williams come see you?

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1 A No more than, I'd say, three times.

2 Q Three times. And each visit lasted about
3 how long?

4 A Probably 10 minutes or so.

5 Q All right. And, again, did you ever get to
6 see the incident reports that were written by the
7 police? Did you ever get to see any of the witness
8 statements?

9 A No. The only thing I had was the warrants
10 at that time.

11 Q The arrest warrants?

12 A Yes, sir.

13 Q All right. Did he ever talk to you about
14 whether or not you were going to testify?

15 A Yes, he did. He told me that he didn't want
16 me to testify. If I did, the prosecutor would go last,
17 and he didn't want that to happen. He wanted to go last
18 so that he could explain the case. He told me not to
19 testify.

20 Q All right. And did he -- but did he make
21 clear to you whose choice that was going to be on whether
22 or not you testified?

23 A Yes, he did. But he said he recommended that
24 I didn't.

25 Q Okay, thank you. All right, I'm going to

Richard D. Ratliff - Direct

1 direct your attention --

2 Judge, do you want to see this?

3 THE COURT: Have--

4 MR. WHITMIRE: I have no objection, Your
5 Honor.

6 THE COURT: Okay. Have you had them marked?

7 MR. CHEHOSKI: No, I have not.

8 THE COURT: Okay.

9 MR. CHEHOSKI: I probably should do that.

10 MR. WHITMIRE: Your Honor, I'd request
11 copies, too.

12 THE COURT: We can make the copies later.

13 MR. WHITMIRE: Okay.

14 THE COURT: I'll let you use the copies I
15 have.

16 MR. WHITMIRE: Your Honor, I'd request that
17 I be allowed to use the originals for cross-examination
18 purposes.

19 THE COURT: Oh, yes.

20 MR. CHEHOSKI: No objection, Your Honor.

21 THE COURT: So there's just three?

22 MR. CHEHOSKI: Yes.

23 COURT REPORTER: Applicant's One through
24 Three, Your Honor.

25 (Whereupon, Applicant's

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1 Exhibits Number One, Two, and Three, Letters, were
2 entered into evidence.)

3 THE COURT: Applicant's One through Three?

4 COURT REPORTER: Yes, sir.

5 THE COURT: I believe they're in evidence
6 without objection.

7 MR. CHEHOSKI: Thank you, Your Honor.

8 THE COURT: And those are supposed to be the
9 letters that he wrote to Mr. Williams?

10 MR. CHEHOSKI: They're letters that he wrote
11 to Mr. Williams about going to court.

12 THE COURT: All right, continue.

13 MR. CHEHOSKI: Thank you, sir.

14 Q All right. I'm going to start -- during your
15 conversations, were you aware of the approximate dates
16 of the offenses that you were being charged with?

17 A Yes, vaguely. I think most of them had to
18 do with April and May, and one was in June, I believe,
19 a couple in June. One was allegedly five weeks before
20 I was arrested.

21 Q I'm going to direct your attention to one
22 which is Indictment Number 2007-GS-32-2891, and that
23 was an indictment for criminal solicitation of a minor
24 stating that in April 2007, you did knowingly contact
25 and communicate with Minor 3

Okay, I want to

Richard D. Ratliff - Direct

1 bring that to your attention. Where did they say this
2 incident happened?

3 A This is Minor 3 right?

4 Q Yes.

5 A Well, the first -- the summary incident
6 report stated it happened in the [REDACTED] Gaston area
7 of South Carolina.

8 Q Right.

9 A And the warrant stated that. When we got in
10 court, though, it changed from Gaston to West Columbia.
11 I have the copies of the statements there. It went
12 from, like I say, from Gaston to West Columbia. First,
13 it went from the bedroom of her friend's house in one
14 statement to the Court. Then, in another statement in
15 Court, said in the den.

16 Q Okay. And the den of whose house?

17 A Of her friend's house.

18 Q And would that be --

19 A Minor 2.

20 Q -- Ms. Minor 2 ?

21 A Uh-huh.

22 Q All right.

23 A Now, on or about that date -- what was the
24 date on that?

25 Q That one said it happened in April 2007. And

Richard D. Ratliff - Direct

1 where were you living at the time?

2 A In Virginia.

3 Q In Virginia. And when did you move to
4 Virginia?

5 A I think it was the end of February. I know
6 I have a DMV report showing I was there in March, and
7 I believe I have a statement issued here that was given
8 to the police that states I was there in April. I can't
9 account, you know, for every day, every month.

10 Q Right. But were you in South Carolina in
11 April 2007?

12 A No, I was in Virginia.

13 Q Did you tell Mr. Williams that you were not
14 here?

15 A Yes. He aware of all that.

16 Q All right. Now, you're aware at the trial
17 that Minor 2 was alleging a long period of
18 continuous contact. How long have you known Minor 2

19 [REDACTED] or the Smotzer family?

20 A From the time she was five years old.

21 Q Okay. And how old was she at the time of the
22 trial?

23 A Eleven or twelve.

24 Q Twelve. Six, seven years, around that area?

25 A Yes.

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1 Q And was she alleging that you were making
2 inappropriate contact with her this whole time?

3 A Well, she said it's about a year I think
4 before.

5 Q A year before?

6 A Something in that area. I can't really
7 recall.

8 Q And would that be a year before the trial or
9 a year before you moved?

10 A She alleges I think the incidents supposedly
11 happened at while -- she said I was in South Carolina
12 when I was in Virginia, is when she alleges the events
13 happened.

14 Q And she alleges some of them took place at
15 a hotel?

16 A Yes. As a matter of fact, the motel -- and
17 Mr. Williams, he marked them -- they supposedly
18 happened the same day at two different motels. I have
19 the reports on that.

20 Q Right. And, again, that's what was
21 testified to at trial?

22 A Yes.

23 Q And were there times that you did come down
24 to visit from Virginia?

25 A Yes, there was, and there was -- I came down

Richard D. Ratliff - Direct

1 when they would call me and bug me so much that I would
2 drive down. But I only came down two or three times.
3 And they would call, the mother and daughter both --
4 mother and daughter -- almost daily, constantly,
5 wanting me to come down and wanting me to send them money
6 and stuff. And I didn't have any.

7 Q Let me make sure, they were contacting you?

8 A Almost daily.

9 Q Okay. Were they inviting you to come down?

10 A Inviting me to come down and asking for
11 money.

12 Q And they were asking you for money?

13 A Yes.

14 Q And both -- and Minor 2 was one of
15 the people calling you?

16 A Her and her mother.

17 Q Yes. And she was the one asking you to come
18 down?

19 A Yes -- both of them.

20 Q Okay. And this was while you were living in
21 Virginia?

22 A Yes.

23 Q Who were you living with in Virginia?

24 A My mother and my brother.

25 Q Are they in the courtroom today?

Richard D. Ratliff - Direct

1 A Yes, they are.

2 Q Can you point them out for me, please?

3 A The distinguished gentleman and the very
4 elegant elderly lady.

5 MR. CHEHOSKI: Your Honor, let the record
6 reflect that he has pointed out two people in the
7 courtroom as his mother and his brother.

8 THE COURT: I see them in the courtroom, and
9 I note it for the record. Thank you.

10 MR. CHEHOSKI: Thank you, sir.

11 Q Did you communicate that to Mr. Williams that
12 they had been contacting you?

13 A Yes.

14 Q Did you tell him, again, how often that was?

15 A Yes.

16 Q And in the courtroom, did he ever bring that
17 matter up?

18 A No.

19 Q Did he bring it up to Minor 2

20 A No.

21 Q Tracy Smotzer?

22 A No.

23 Q All right. I also want to bring your
24 attention -- did you ever get -- you have a lot of papers
25 in front of you. When did you get those?

Richard D. Ratliff - Direct

1 A After I went to the prison.

2 Q Okay. Was it after your trial?

3 A Uh-huh.

4 Q Had you ever seen them before that?

5 A No. The only thing I had was the warrants.

6 Q So you had never seen the indictments before
7 then?

8 A No.

9 Q All right. Have you had a chance since then
10 to look at the indictments?

11 A I have. I've had plenty of chances.

12 Q Have you seen anything in the indictments
13 that you feel is not correct?

14 A What I'm going to point out is to me, I don't
15 know -- it seems like -- when it says "ineffective
16 counsel," seems like there has to be another term for
17 so many elements to be overlooked. It seems
18 impossible.

19 First, there was three that I didn't know
20 about that was returned evidently with incorrect code
21 of law. One --

22 Q By the code, you mean like an incorrect
23 statute?

24 A Yes. One had two names on the indictment --
25 two names on the indictment -- and I have those here

Richard D. Ratliff - Direct

1 if you'd like. I can give you the numbers on all of
2 those. Now, one thing that's ironic about this, Mr.
3 Williams didn't notice any of these, not one.

4 Now, the prosecutor caught the three with
5 incorrect codes on them. And he returned after lunch
6 and all of a sudden said, "By the way, I've noticed a
7 mistake" -- a scrivener's error, I believe he called
8 it. "It was entirely my mistake. I'd like to ask this
9 to be amended." And he based Gentry as due process
10 first.

11 Q Let me stop you right there and ask you
12 when --

13 MR. WHITMIRE: Your Honor, I'm going to
14 object. Mr. Williams objected at that trial on page
15 372. Judge McMahon ruled on the merits of both
16 objections to the indictments on 375 as well. It's not
17 an issue for the Court.

18 THE COURT: Okay. I appreciate your
19 pointing that out for me. I appreciate it.

20 Okay, you can forward and ask the question
21 again.

22 Q At what point of the trial were these
23 mistakes brought up?

24 A Near the end of the trial.

25 Q Okay. And were they ever brought up at any

Richard D. Ratliff - Direct

1 time before then?

2 A No.

3 Q Now, you're saying three indictments had an
4 incorrect statute?

5 A Yes.

6 Q One indictment had two different names on it?

7 A Yes, it did.

8 Q That's four indictments. You were indicted
9 for eight charges, is that correct?

10 A Yes.

11 Q All right. Was there anything wrong with
12 the other four indictments?

13 A Each one of those indictments, each one --
14 I have them here. Bear with me and let me get this out
15 here, and I'll read it to you exactly as they are. Each
16 one in the summary report would have one name and age.
17 The warrant would have an age. The indictment would
18 have another. This was on 17, 18, 19, and 20 of them
19 were that way.

20 Q And 17, 18, 19, and 20, are you referring to
21 the --

22 A These are the numbers on the indictments.

23 Q Of the arrest warrants?

24 A On the indictments themselves, but on the
25 arrest warrants.

Richard D. Ratliff - Direct

1 Q Okay.

2 A No one noticed those. No one caught those
3 other four. That's eight out of 11 original
4 indictments that slipped by. No one caught it.

5 Q All right. I'm going to continue on, again,
6 regarding the trial. And you witnessed the trial, was
7 there anything during the trial that you wanted Mr.
8 Williams to cover during cross-examination?

9 A Yes, there was. I wanted him to present, the
10 first I said, the evidence that I was in Virginia and
11 also evidence of an illegal search in Virginia.

12 Q We're going to get to that in a little bit.

13 A All right.

14 Q But as far as, again, regarding after you got
15 your file --

16 A Uh-huh.

17 Q -- I guess you also got to see the witness
18 statements?

19 A Pardon me?

20 Q You got to see the statements made by the
21 witnesses --

22 A Yes.

23 Q -- the alleged victims, okay. And you had
24 a chance to read over those?

25 A Not until after I went to prison.

Richard D. Ratliff - Direct

1 Q Again, when you got the file.

2 A Uh-huh.

3 Q And did you see anything wrong in those?

4 A Yes.

5 Q All right. Was there anything in there that
6 you saw wrong that Mr. Williams did not cover at trial?

7 A There were several issues in there that he
8 didn't cover.

9 Q All right. Do you want to tell the Court
10 about those?

11 A We started with the statements.

12 Q Do you remember specifically who gave the
13 statements?

14 A Yes.

15 Q Okay. And what's the name of the person who
16 gave the witness statement?

17 A Minor 2 as well as Minor 3

18 Q All right. And what, to your memory, was
19 written in those statements?

20 A The allegations that were made, one in
21 particular says, I was supposed to have been in the
22 front of a car driving it, and Minor 3 said that
23 I reached behind while driving and I touched her leg,
24 her knee.

25 Q Okay.

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1 A In part of it, she said I reached directly
2 behind her with a seatbelt on and tried to touch her
3 breast and vagina with her directly behind him. Ms.
4 Minor 2 was supposedly on the other side, and I
5 supposedly did that. That is impossible. Mr.
6 Williams didn't bring that up. He didn't try to
7 contradict anything.

8 Q And was her testimony at trial different than
9 what was in the statement?

10 A Yes.

11 Q And did Mr. Williams at all cross-examine Ms.
12 Minor 3 about the differences in between the statements?

13 A Mr. Williams -- and you are welcome to look
14 at every aspect of the transcript -- at no time did he
15 challenge or counter any of their statements. He would
16 talk with him. But when it came down where he was
17 getting down to where they were going to admit that they
18 lied, he would do just like he did in the final plea.
19 He would say "Nothing more," turn and walk away. He
20 dropped the subject.

21 Q Now, did he explain to you what his strategy
22 was for doing that?

23 A No, sir, he did not.

24 Q You brought up earlier regarding a search in
25 Virginia.

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1 A Uh-huh.

2 Q Now, the State did introduce the evidence of
3 that at trial?

4 A No, they didn't. That statement, what he
5 said was a -- they based it on --

6 Q I'll try to reclarify what I just asked you.
7 At your trial, the State introduced the evidence that
8 they seized --

9 A Yes.

10 Q -- from the home in Virginia?

11 A Yes, they did. I'm sorry.

12 Q All right. And did Mr. Williams object to
13 that?

14 A He objected, but he didn't say anything about
15 -- he tried -- he talked about it.

16 MR. WHITMIRE: Objection, Your Honor.

17 THE COURT: I'm looking at the transcript
18 now. I see where he did object to it. It's on the
19 record.

20 MR. CHEHOSKI: I'm getting to that.

21 Q He did object under it being an illegal
22 search?

23 A Yes.

24 Q Did he also object that the evidence seized
25 was not relevant?

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1 A You know, I really can't remember. Like I
2 said, I don't recall. I had to --

3 Q If the record says that he did, would you
4 disagree with that?

5 A He said it was not relevant?

6 Q If the transcript record shows that he did
7 object, saying that the evidence was not relevant,
8 would you disagree with that?

9 A No, sir.

10 Q All right. But did he object on the grounds
11 that the evidence was unfairly prejudicial?

12 A Now, that, to be honest with you, I can't
13 recall.

14 Q Were there any of the objects -- any of the
15 objects seized in Virginia, were any of them illegal
16 to own?

17 A Absolutely not.

18 Q Were any of them pornographic in nature?

19 A There was an adult movie.

20 Q Okay.

21 A And pictures of adults.

22 Q Yes, right. But, again, as someone who is
23 over the age of 18, are those illegal to own?

24 A No.

25 Q All right. Did any of them -- and, again,

Richard D. Ratliff - Direct

1 this was in Virginia?

2 A Yes.

3 Q Had Minor 2 ever been to Virginia?

4 A Yes.

5 Q Had Minor 3 ever been to Virginia to
6 visit you?

7 A No.

8 Q Had Minor 1 ever been to Virginia?

9 A No.

10 Q Was there anything else at trial that you
11 felt Mr. Williams should have done?

12 A There was a police report related to the
13 search. Lexington County authorities contacted the
14 local police department and asked them -- told them that
15 there might be a computer in my room with child
16 pornography on it. They were asked to stand by in case
17 enough evidence was gathered for a warrant.

18 Instead of waiting, they got the call at
19 approximately 5:30 till 8:45. They had three hours and
20 15 minutes to obtain a warrant. But instead of doing
21 that, they went and asked for consent. They had all
22 that time, but they still didn't get it.

23 And I don't believe a judge would have allowed that
24 evidence if he had known that the police were asked to
25 stand by in case the evidence would deem for a warrant

Richard D. Ratliff - Direct

1 but acted on their own.

2 Q Did Mr. Williams have any documentation
3 saying that they should be waiting for a warrant?

4 MR. WHITMIRE: Object on hearsay.

5 A The police report --

6 THE COURT: Overruled. Go ahead.

7 A The prosecutor and Mr. Williams both had that
8 statement asking -- pertaining to just what I said.

9 Q Did Mr. Williams ever cross-examine any of
10 the officers about waiting for a warrant?

11 A He asked them why, I believe. And their
12 reply was, "No crime had been committed in our county
13 at that time."

14 Q Okay. And now specifically, again, at the
15 trial, was there anything else that you thought Mr.
16 Williams should have done but didn't do?

17 A As far as admitting different things or --

18 Q Again, regarding his performance at the
19 trial.

20 A Yes, he should have presented the evidence,
21 the DMV report that showed that I was in Virginia when
22 a couple of the major incidents allegedly happened. I
23 had the final electric bill where the incidents were
24 alleged to have happened, which he had. I asked him
25 to present it, and he said -- I quote -- "It's just

Richard D. Ratliff - Direct

1 pieces of paper." Now, that's a state document
2 from the Department of Motor Vehicles and an electric
3 bill from SCE&G. I tried to get him to present it, and
4 he wouldn't do it.

5 Q Okay. Is there anything that he did that he
6 shouldn't have done?

7 A That he did that he shouldn't have done?

8 Q Yes, sir.

9 A That could be phrased two or three different
10 ways. I'm not sure exactly what you're referencing to.

11 Q Was there anything that Mr. Williams brought
12 up during trial that you feel he should not have done?

13 A I'd have to look back at it.

14 Q All right. I guess the last question is kind
15 of a catch-all question, Mr. Ratliff. Is there
16 anything else regarding your trial and your subsequent
17 conviction that you wish the Court to know regarding
18 Mr. Williams' performance?

19 A Yes, to me it seems impossible for anybody
20 to overlook as many instances as he did and not notice
21 that, eight indictments. And he overlooked them.

22 Q Anything else that we haven't talked about?

23 A Pardon me?

24 Q Anything else that we haven't talked about?

25 A There is a plea, a plea that I think is highly

Richard D. Ratliff - Direct

1 relevant. Now, the only plea that I was aware of was
2 the one of five years, two lewd acts. Now,
3 when I finally went to court on what I thought was that
4 plea, it had changed. Again, Mr. Williams had to be
5 called to court.

6 But, now, when I asked him what it had been
7 changed to, he said, "I don't know." I said, "What are
8 they offering?" He said, "I don't know." He said, "I
9 already told them that you wouldn't accept it." I
10 said, "Theo, I've already agreed to a plea. What
11 happened to it?" Here was his exact words in the
12 courtroom.

13 MR. WHITMIRE: Objection, asked and
14 answered.

15 THE COURT: I'll note your objection. He
16 can go ahead and say it.

17 A His exact words in the courtroom were this,
18 "I guess they forgot. Besides, Richard, at your age,
19 your health, what difference does it make if it's five
20 years or 15? You'll be dead anyway." That was his
21 remarks to me sitting in court. And that's when I told
22 him I should fire him, and he told me to go ahead.
23 They'd sit me on the corner and try me anyway.

24 Q All right. And, again, other than that and
25 everything that we've already discussed, anything else

Richard D. Ratliff - Direct

1 that we haven't talked about?

2 A Nothing that I can think of at the moment.

3 Q All right. That's all the questions I have
4 for you, Mr. Ratliff. Mr. Whitmire is going to ask you
5 some questions. Please answer anything he has.

6 THE COURT: Okay, Mr. Whitmire. Just give
7 me one second.

8 MR. WHITMIRE: May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. WHITMIRE:

13 Q Good afternoon, Mr. Ratliff.

14 A Good afternoon, sir.

15 Q Mr. Ratliff --

16 A Yes, sir.

17 Q -- if I recall your testimony correctly, you
18 said that you weren't all there during your trial. Is
19 that correct?

20 A Well, I'd just had a massive heart attack,
21 and then I just went to the hospital with blood pressure
22 and stress --

23 Q Mr. Ratliff, didn't Mr. Williams vigorously
24 argue the merits of a continuance for that?

25 A I believe he discussed it. Like I said, I

Richard D. Ratliff - Cross

1 don't -- I wasn't all there. So the majority of what
2 was said, I wasn't aware of it. I had to read it later
3 to find out.

4 Q Mr. Ratliff --

5 A I don't mean to -- you know, I just don't
6 recall.

7 Q Mr. Ratliff, as I recall from your testimony,
8 you just testified that you were upset that Mr. Williams
9 did not press the victims hard enough during that trial.
10 Is that correct?

11 A From what I can recall of the trial, yes.

12 Q So you were actively involved with your
13 trial?

14 A The things that I was active in was when they
15 were -- the evidence that I was trying to get him to
16 present was some lies they were telling blatantly, and
17 I was trying to get him to present something that would
18 contradict it. That's about all I remember of that.

19 Q Didn't Judge McMahon find you competent to
20 stand trial that day?

21 A Well, I'm sure he did, or we wouldn't have
22 had the trial.

23 Q Now, regarding your allegation about the
24 plea offer, did Mr. Williams explain to you that the
25 State can withdraw a plea offer anytime it wants?

Richard D. Ratliff - Cross

1 A No.

2 Q Did he explain to you that unless you do
3 something to detrimentally rely on that offer, you
4 don't have a right to it?

5 A No, sir.

6 Q And did he explain to you that the offer that
7 you were looking at pleading on was not going to be
8 accepted by Judge Goode on that one particular day?

9 A No.

10 Q Did he explain any of this to you?

11 A He didn't explain anything as far as that.
12 He was sitting on this offer, and that was it. As far
13 as the last plea, he didn't even know what was being
14 offered, and I don't know. And that's when I told,
15 "I'll accept whatever I agreed to."

16 Q Now, Mr. Ratliff, I recall that you are
17 presenting an alibi defense here today, and you claim
18 without any documentation or support for the record
19 that you were in Virginia on April 7th -- or what day?

20 A I was in Virginia. The exact date, I can't
21 recall. I don't -- very few people can count where
22 they're at day to day. I was there in that month. When
23 you don't think you're going to have to account for
24 every day, you know, you have no reason to count the
25 days, "I was here on the first or the third." I was

1 there on the first, my father's birthday. He's
2 deceased.

3 Q Do you recall what time of day you visited
4 the DMV from your license?

5 A I have a report here.

6 Q Does it say?

7 A I don't know, but I can look at it for you.

8 Q While you're looking, Mr. Ratliff, you're
9 from Whiteville, is that correct?

10 A Whitville.

11 Q Whitville. I have family close by. I
12 always mispronounce it.

13 A Pardon me?

14 Q I have family close by. I always
15 mispronounce it. And Whitville is only, what, four
16 hours away?

17 A Yes, four or four and a half hours.

18 Q And you also claim that you no longer were
19 living in the [REDACTED] lot residence --

20 A Uh-huh.

21 Q -- after 10/18/06, is that correct?

22 A The power was disconnected there. I have
23 the final electric bill on that also.

24 Q But you don't have a custodian from SCE&G
25 here today?

Richard D. Ratliff - Cross

1 A Yes, I have the electric bill here.

2 Q Mr. Ratliff, that electric bill, all it says
3 is that --

4 A Final electric bill.

5 Q -- the power was no longer in your name, is
6 that correct? That bill doesn't say if the power was
7 completely cut off to that residence, is that correct?

8 A No, sir. But Mr. Williams was given the name
9 of the park owners, their address in Simpsonville. I
10 didn't have the number, and I requested that he contact
11 them to verify that I didn't live there.

12 Q And didn't Mr. Williams investigate all of
13 these things for you?

14 A No.

15 Q Now, Mr. Williams at some point did discuss
16 all of these charges with you, didn't he -- not at all?

17 A No.

18 Q Now, at trial, you learned for the first time
19 at trial that victim Minor 1 testified you abused her
20 at the Moore Manor residence, is that correct?

21 A Moore Manor.

22 Q The [REDACTED] residence, is that correct?

23 A [REDACTED] that's in Gaston.

24 Q And also I believe at different commercial
25 locations throughout West Columbia, is that correct?

Richard D. Ratliff - Cross

1 A That I -- your question, again, sir?

2 Q That she alleged that you abused her at these
3 locations.

4 A Who did?

5 Q Victim Minor 1 -- Minor 1

6 A Supposedly, at the [REDACTED] in November--

7 Q That's enough.

8 A But I wasn't there.

9 Q And, Mr. Ratliff, regarding victim Minor 2

10 [REDACTED] --

11 A Uh-huh.

12 Q -- didn't she testify to 16 different
13 instances of sexual abuse from you?

14 A No.

15 Q No -- not at trial? Didn't she testify that
16 you abused her at Moore Manor?

17 A I'd have to read that --

18 Q Didn't she testify that you abused her at the
19 [REDACTED] residence?

20 A What's your testimony? I don't remember.
21 I'd have to read it. So whatever testimony was given
22 there I don't remember because I could not concentrate
23 on what was going on. You're asking about the reports.
24 Here's an SCE&G bill. Here is the request for the
25 authorities to stand by the search, and the DMV report.

Richard D. Ratliff - Cross

- 1 Q And didn't victim Minor² also testify to
2 abuse at your hands at your Virginia residence?
- 3 A No.
- 4 Q Not at trial?
- 5 A No.
- 6 Q Not in any of the West Columbia locations?
- 7 A No.
- 8 Q And the last question I have on this matter.
9 Didn't the hotel employees in Cayce testify that you
10 were an occupant on the days in question?
- 11 A At what?
- 12 Q Hotel employees in Cayce, over here in West
13 Columbia.
- 14 A I believe he questioned they stated that day
15 they saw mother and daughter. They came by to go in
16 the swimming pool, to go swimming -- mother and
17 daughter..
- 18 Q And the abuse at trial, if I recall, extended
19 over -- the time period was over a few years, is that
20 correct?
- 21 A Pardon me?
- 22 Q The time period that these victims testified
23 to extended over a few years, is that correct?
- 24 A One said that, but no one else.
- 25 Q Are you claiming you're innocent of all these

1 charges, Mr. Ratliff?

2 A I could not look you in the eye and tell you
3 I was one hundred percent completely innocent.

4 Q So you are guilty?

5 A I'm not going to lie. I made one mistake.
6 I didn't make seven or eight, 10 or 11.

7 Q What mistake did you make, I'm curious?
8 What mistake did you make, I'm curious?

9 A This one is there's things that I should
10 never have -- I should have told, but I never did tell,
11 which consequently ended up in a lot of trouble.

12 Q Which is? Will you further elaborate?

13 A I withheld things that were going on that I
14 should have told about and I didn't -- not with these
15 but others.

16 Q Mr. Ratliff, will you elaborate on the
17 specifics of these things that you withheld?

18 A I was told that it wouldn't be relevant.
19 It's in the letters that I think Mr. Williams has about
20 the actions that was going on before was things that
21 I should have told the mother about.

22 Q So you wrote Mr. Williams letters regarding
23 your potential culpability and guilt?

24 A No, I wrote him letters informing him of what
25 was going on next door that I knew about but didn't tell

Richard D. Ratliff - Cross

1 anybody about.

2 MR. WHITMIRE: I beg the Court's indulgence
3 for one moment, Your Honor.

4 THE COURT: Yes, sir.

5 A Did you ask about the DMV report?

6 Q You already answered the question. I do
7 appreciate that, Mr. Ratliff.

8 MR. WHITMIRE: No further questions for this
9 witness, Your Honor.

10 THE COURT: Anything on redirect he brought
11 up during cross-examination?

12 MR. CHEHOSKI: No, sir.

13 THE COURT: All right, thank you, sir. You
14 may step down.

15 Ladies and gentlemen, it is 1:00. And since
16 I am accustomed to eating lunch, I'm going to continue
17 to do that. We'll allow the court personnel to do that,
18 as well. I'll give you a little over an hour in case
19 you all have to go somewhere. Be back about ten minutes
20 after two, and we'll resume with the testimony.

21 MR. WHITMIRE: Thank you, Your Honor.

22 (Wereupon, Court was in
23 recess for lunch after which the following proceedings
24 were had.)

25 THE COURT: All right, Mr. Chehoski, if

Richard D. Ratliff - Cross

1 you're ready, you can call your next witness.

2 MR. CHEHOSKI: Yes. The applicant calls
3 Eddie Ratliff.

4 (Whereupon, the witness was sworn.)

5 CLERK OF COURT: Have a seat and state your
6 name for the record, please, sir.

7 MR. RATLIFF: Eddie Raymond Ratliff.

8 THE COURT: Mr. Chehoski, your witness.

9 MR. CHEHOSKI: Thank you, Your Honor.

10 EDDIE RAYMOND RATLIFF, having first been
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CHEHOSKI:

14 Q Mr. Ratliff, thank you for coming down.
15 Where do you live?

16 A Max Meadows, Virginia.

17 Q All right. And who do you live with?

18 A My elderly mother, who's here in the
19 courtroom today.

20 Q And the first half of the year of 2007, did
21 Mr. Ratliff live with you?

22 A For a brief number of months.

23 Q All right. Do you remember what month he
24 moved back up?

25 A I was thinking it was more around March,

Eddie Raymond Ratliff - Direct

1 somewhere between February and March.

2 Q February and March, all right. To the best
3 of your recollection, how many times did Mr. Ratliff
4 return to South Carolina?

5 A Two or three, at best.

6 Q All right, just a couple of other questions.
7 Were you aware of any contact between your brother --
8 first of all, is Mr. Ratliff your brother?

9 A Yes, he is.

10 Q Were you aware of any contact between your
11 brother and the Smotzers?

12 MR. WHITMIRE: Objection, hearsay.

13 A Yes, I am.

14 THE COURT: I'll note your objection.

15 Go ahead.

16 Q And after Mr. Ratliff moved back to Virginia,
17 were you aware there was contact between those two
18 parties?

19 A Yes.

20 Q Okay. To the best of your knowledge, how
21 often was that contact?

22 A Once.

23 Q Once, all right. And, lastly, after Mr.
24 Ratliff was arrested, did you give a statement to the
25 county authorities?

Eddie Raymond Ratliff - Direct

1 A I did.

2 Q Okay. Was there a possibility that you were
3 going to testify at his trial?

4 A Yes, there was.

5 Q If you were going to testify, would you be
6 testifying for the defense or the State?

7 A For the State.

8 Q Did you have any contact with the prosecutor?

9 A I did.

10 Q All right. Did you ask him if there were any
11 plea offers?

12 A I did.

13 Q Okay. What did he tell you?

14 MR. WHITMIRE: Objection, hearsay.

15 MR. CHEHOSKI: Admission by party opponent,
16 Your Honor.

17 THE COURT: Okay.

18 Q To the best of your recollection, what were
19 those offers?

20 A Well, I asked him had there been any plea
21 discussions because I hadn't heard of any, and I had
22 been in regular touch with my brother. And he said,
23 "Yes, there were two or three."

24 And he was surprised as -- I don't want to
25 say the word -- but surprised as "h" or something of

Eddie Raymond Ratliff - Direct

1 that effect that he didn't take it. He was shocked and
2 astounded that Richard didn't take the plea.

3 Q All right. Do you remember what the offer
4 was?

5 A Yes. He would plead guilty to felony. He
6 didn't specify, to my knowledge, which felony. But I
7 already knew because I had researched the criminal
8 section from that versus the other charges. And he
9 would be sentenced to a maximum of 15 years. He would
10 serve approximately six or seven years and get credit
11 for time he had already served. He would have to
12 register as a registered sex offender and then the
13 normal conditions of parole would apply.

14 Q All right. Now, you stated that you were in
15 regular contact with your brother during this time?

16 A During the entire time after he was arrested.

17 Q After he was arrested.

18 A Discussing his case back and forth.

19 Q Yes. From those communications, did you get
20 the sense that Mr. Ratliff was aware of these plea
21 offers?

22 A No, I didn't. In fact, I kept writing and
23 saying "Richard, there's always plea agreements in
24 these kind of situations. Why is your attorney not
25 going back to the prosecution and seeking a plea

Eddie Raymond Ratliff - Direct

1 agreement, if for no other reason for the children's
2 sake."

3 Q Okay, all right. That's all the questions
4 I have. Please answer anything for Mr. Whitmire.

5 THE COURT: Mr. Whitmire?

6 MR. WHITMIRE: I beg the Court's indulgence
7 for one moment, Your Honor.

8 THE COURT: Take your time.

9 CROSS-EXAMINATION

10 BY MR. WHITMIRE:

11 Q One or two quick questions, Mr. Ratliff.

12 A Yes, sir.

13 Q Mr. Ratliff, who was the Solicitor that
14 prosecuted your brother's case?

15 A I believe his name was David. I don't recall
16 the last name.

17 Q Are you in receipt of any plea offers or plea
18 agreements from Mr. Stumbo?

19 A No, I'm not. I'm just aware of what he told
20 me the week prior to the trial, because he was calling
21 to ask if I would be available to come down and testify
22 on the next Monday. He asked me to be on stand-by.
23 This was Tuesday I believe that he called, he asked me
24 to be on stand-by. He would let me know on Thursday
25 whether or not he needed me to be there.

Eddie Raymond Ratliff - Cross

1 Q And, Mr. Ratliff, you were consenting to be
2 a State's witness in your brother's trial?

3 A Yes, I was.

4 MR. WHITMIRE: I beg the Court's indulgence.

5 A Reluctantly, I might add.

6 Q Mr. Ratliff, when did your brother move back
7 to Virginia prior to his trial?

8 A Prior to his trial? I couldn't give you an
9 exact date. It was February or March. I know he was
10 there in March a good part of the month, if not all the
11 month.

12 Q And we're talking about 2007, right?

13 A Pardon?

14 Q We're talking about 2007, right?

15 A Yes.

16 Q I'm sorry, go ahead.

17 A And I'm aware of these dates because I still
18 have every letter that I wrote during that period of
19 time back and forth between Richard and I.

20 Q Do you recall Mr. Ratliff making trips to
21 South Carolina to visit Minor 2 and her
22 mother?

23 A The first I recall is them making a trip to
24 Virginia.

25 Q Do you have any recollection of your brother

Eddie Raymond Ratliff - Cross

1 coming to visit South Carolina in that time frame?

2 A I don't know where my brother went during
3 that period of time.

4 Q You can't account for his whereabouts?

5 A I can't account for his whereabouts. I can
6 tell you this, there were very few instances during that
7 time that he was in Virginia, and that would be from
8 the time that he got there till the time he was arrested,
9 that he was anywhere but our house.

10 MR. WHITMIRE: No further questions, Your
11 Honor.

12 Thank you, Mr. Ratliff. Have a pleasant
13 trip back go Whitville.

14 THE COURT: Anything on redirect?

15 MR. CHEHOSKI: Nothing on redirect. But I
16 do ask that they be excused.

17 THE COURT: All right, any objection?

18 MR. WHITMIRE: None, Your Honor. They
19 certainly may be excused.

20 THE COURT: All right, Mr. Ratliff, you may
21 step down, and you are excused. Thank you, sir.

22 MR. CHEHOSKI: Your Honor, at this time the
23 applicant rests.

24 THE COURT: Okay.

25 All right, any witnesses for the State?

Eddie Raymond Ratliff - Cross

1 MR. WHITMIRE: Your Honor, the State calls Mr.
2 Robert Williams to the stand.

3 THE COURT: Mr. Williams.
4 (Whereupon, the witness was
5 sworn.)

6 MR. WHITMIRE: I beg the Court's indulgence.

7 THE COURT: Okay.

8 ROBERT THEODORE WILLIAMS, SR., having first
9 been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WHITMIRE:

12 Q Mr. Williams, please state your name for the
13 record.

14 A It's Robert Theodore Williams, Sr.

15 Q Mr. Williams, do you recall when you began
16 representing Mr. Ratliff in this matter?

17 A I do.

18 Q At that time, what was Mr. Ratliff charged
19 with?

20 A He was charged with three counts of criminal
21 sexual conduct with a minor second, two counts of lewd
22 act with a minor, and I want to say six counts of
23 criminal sexual -- I'm sorry, criminal solicitation of
24 a minor.

25 Q At what point did you file for discovery in

Robert T. Williams - Direct

1 this case?

2 A As soon as I took the case over. Actually,
3 he had been represented by Ms. Fullwood for maybe a year
4 and a half, an extended period of time. It was a long
5 time. It may not be a year and a half, but it was a
6 while.

7 Q Did you have the opportunity to go over the
8 statements from the various victims in this case?

9 A I did. As a matter of fact, Mr. Ratliff
10 would actually pull each and every one of the warrants,
11 and he would write on -- after what the allegations and
12 which two the victims were, he would write his response
13 to them. As you can see from looking at these files
14 here, obviously, I got a lot of paperwork from
15 somewhere. A lot of it is from either letters or from
16 documents that I went over with, with Mr. Ratliff, when
17 he gave his responses to the allegations.

18 Q Mr. Ratliff indicated that he had written you
19 letters, and in some of those letters he actually
20 conceded his guilt. Do you recall any of that?

21 A No. I recall him saying he is not guilty as
22 charged. And I don't know that that's the same.

23 Q Briefly detail your plea negotiations in
24 this case.

25 A Well, Beth -- like I say, Beth Fullwood

Robert T. Williams - Direct

1 originally had him, and I consulted with Beth first in
2 regards to what the offers were. And they had a plea
3 offer in September of 2008, and Beth didn't have a
4 written plea offer from the Solicitor's Office. And
5 I secured one, and this is dated November -- I want to
6 say it was sent over November 21, 2008.

7 And it was a written offer of three counts
8 of lewd act on a minor and three counts of criminal
9 solicitation of a minor, straight up, and they
10 dismissed the remaining charges. And Stumbo said that
11 if the case -- if he didn't accept that, then the case
12 would be placed on the February 9th trial docket if it's
13 rejected in December.

14 I don't know if you want a copy of this. I
15 subsequently got the plea offer reduced to two counts
16 of -- that's really my only copy -- two counts of lewd
17 act, with no agreement with regards to how much time
18 would be served. And that was the one that I guess most
19 of the time that Mr. Ratliff and I were operating under,
20 the two lewd acts, which would be running concurrently,
21 but no agreement in regards to whether it would be 15
22 years or five years. He wanted five.

23 Q Mr. Ratliff has spoken on his attempted plea
24 in front of Judge Goode. Can you briefly recall and
25 describe that day?

Robert T. Williams - Direct

1 A He was set to plead in front of Judge Goode
2 on purpose. It wasn't an accident. It wasn't
3 something that we stumbled into. We had tried to plead
4 in front of Judge Goode because we knew he was coming,
5 and we knew that he would be a good judge to plead in
6 front of.

7 When I arrived at the courthouse, I saw that
8 there was all kind of news coverage -- and he's right
9 about that -- all kind of news coverage. And I
10 subsequently found out that this information may have
11 been passed on to the news coverage people from persons
12 in the Solicitor's Office -- I know, strange as it may
13 seem.

14 And we went back -- when I say "we," I'm
15 talking about the Solicitor and I went back and talked
16 to Judge Goode, because my client had authorized me to
17 plead so long as we had five years on the table, not
18 more than five. And Judge Goode had just -- I believe
19 had just had that occasion where he was in the press
20 a lot because he had given in a shaken baby case I want
21 to say some child that got like -- anyway, there was
22 a lot of public outcry because they thought that Judge
23 Goode had not given the type of sentence that he should
24 give. And so Judge Goode very candidly said that there
25 would be no chance that my client would end up with five

Robert T. Williams - Direct

1 years.

2 Q Did you convey all this information to Mr.
3 Ratliff and allow him to make a decision that day?

4 A I told him exactly what I'm telling you. And
5 that is that there was no way in this world that he was
6 going to get five years.

7 Q And what was Mr. Ratliff's decision that day
8 upon that information?

9 A He decided he would wait another day.
10 Matter of fact, a lot of his letters basically were to
11 wait them out until he got what he wanted, which was
12 five years -- or less, or three years, but no more than
13 five.

14 Q And would 15 years effectively serve as a
15 death sentence or death sentence in Mr. Ratliff's case?
16 Well, a 15-year sentence, considering his age, was that
17 a substantial time hanging over his head?

18 A It's certainly not a death sentence.

19 Q Yes.

20 I misphrased, I apologize.

21 A Well, I don't know. He probably -- it's an
22 extended period of time, but it's a long time for
23 anybody, whether they were in their twenties or
24 thirties at that time. I could understand why he
25 wanted the five as opposed to taking a chance on 15.

Robert T. Williams - Direct

1 Q Mr. Williams, to save your time here, I'm
2 just going to go through these allegations one by one.

3 A Okay.

4 Q You've had the opportunity to look at Mr.
5 Ratliff's submitted allegations?

6 A I'm sure I have at some point in time.

7 Q Have you had a chance to review your file
8 today?

9 A I was going through it awhile ago.

10 Q Concerning the fourth allegation regarding
11 ineffective assistance, to investigate a possible
12 alibi defense, you've heard Mr. Ratliff and his brother
13 speak today. Did you have all this information before
14 going into his trial?

15 A Yes.

16 Q What investigation, if any, did you conduct
17 into a potential alibi defense?

18 A Well, the problem was, is that we couldn't
19 say that he was -- that he went to Virginia and stayed
20 in Virginia as opposed to -- because the allegations
21 were that he came from Virginia and went to the hotel
22 where he visited these people in South Carolina. So
23 you couldn't a hundred percent say that he was in
24 Virginia during the time spans that supposedly he was
25 molesting these children.

Robert T. Williams - Direct

1 MR. WHITMIRE: I beg the Court's indulgence.

2 THE COURT: Okay.

3 Q I believe you've briefly touched on this, but
4 going on to the sixth allegation, failure to quash the
5 indictments. Was Mr. Ratliff on notice of all the
6 allegations in front of you? Did you have any
7 concerns?

8 A As I told you, we had answers on each and
9 every thing that was being alleged against him -- at
10 least his response to it, whether it happened in this
11 trailer park or whether or not the power was cut off
12 or not cut off or whether or not he was staying there
13 at the time or whether or not the pool was not working
14 at the time and somebody saw him at the motel or not.
15 Yes, we had plenty of -- I had plenty of information
16 to go through.

17 Q I ask this question as a formality. Did the
18 defect in the indictment have any adverse impact on your
19 ability to prepare a defense in this case?

20 A No.

21 Q A few more questions, Mr. Williams. Mr.
22 Williams, do you recall any improper statements from
23 the Solicitor in closing argument?

24 A I'm sure there were a lot that I objected to,
25 but I don't remember exactly which one you're talking

Robert T. Williams - Direct

1 about.

2 Q I'm just going based on the allegations in
3 front of me.

4 A What was said that he shouldn't have said?

5 Q I am not certain.

6 A Okay.

7 MR. WHITMIRE: That's all the questions I
8 have for this witness at this time.

9 THE COURT: All right.

10 MR. WHITMIRE: Thank you.

11 THE COURT: Yes, sir.

12 MR. CHEHOSKI: Thank you.

13 CROSS-EXAMINATION

14 BY MR. CHEHOSKI:

15 Q Mr. Williams, let's jump in with the
16 indictments and specifically Indictment Number 2888.
17 And that's the indictment that alleges that he
18 willfully -- for the lewd act, that he willfully and
19 lewdly attempted the conduct on Minor 1 by
20 rubbing the breast of Minor 3

21 A Okay.

22 Q Now, you're aware that the indictments are
23 a notice document, right?

24 A Right.

25 Q And with this particular case, there are two

Robert T. Williams - Cross

1 different victims --

2 A Yes.

3 Q- -- on this particular indictment. You
4 didn't notice that inconsistency before the trial?

5 A I don't remember looking at the indictment
6 on that issue. If I didn't pay close attention, I guess
7 I didn't pay close attention.

8 Q If you had noticed it, would you have moved
9 to quash that indictment?

10 A Well, yes, I could have moved to quash the
11 indictment. And then they could have gone back to the
12 Grand Jury and gotten more indictments. So I guess
13 that's as a technical thing.

14 Q And if that were the case, though, that may
15 have delayed the trial?

16 A Yes, it may have delayed the trial -- in
17 regards to that indictment.

18 Q Yes. But you didn't make any motions before
19 the jury was sworn regarding this indictment?

20 A In regards to that particular indictment, I
21 don't recall making any motions on that.

22 Q And if the record doesn't reflect you making
23 any indictments would you agree with that?

24 A Well, I could easily have had -- knowing how
25 that trial was progressing, I'm sure maybe the

Robert T. Williams - Cross

1 Solicitor might have moved to amend it in some way.

2 But, yes, I guess maybe they could have delayed it.

3 Q All right. Next, during pre-trial, you did

4 bring up the search in Virginia, and you did object to

5 that --

6 A I did.

7 Q -- search coming in?

8 A I did.

9 Q You objected it on the grounds of it being
10 without a warrant?

11 A Right.

12 Q You objected on the grounds that you had no
13 meaningful confrontation regarding the consent issue?

14 A Correct.

15 Q And you also objected to the evidence coming
16 in based on relevance?

17 A Correct.

18 Q You did not, however, object to the evidence
19 coming in based on it being unfairly prejudicial?

20 A I don't know that it is unfairly prejudicial.

21 I think that it is more of a relevance issue than

22 anything, because whether or not somebody has sexual

23 items that are involved with an adult, it has absolutely

24 nothing to do with sexual items involving a minor child.

25 Q Right. But items being of an overtly sexual

Robert T. Williams - Cross

1 nature might be unfairly prejudicial?

2 A Well, I hope that sexual items by their mere
3 nature are not character issues. I think it's more of
4 relevance than anything.

5 Q Couldn't they also point to a suggestion by
6 the State of the defendant being a sexual deviant?

7 A Because he has sex toys?

8 Q Because he has sex toys and because he --

9 A Because he has a dirty movie?

10 Q Because he has a dirty movie.

11 A Well, it's not relevant to the charge.

12 Q And isn't it also unfairly prejudicial,
13 though?

14 A Okay. I think it's probably -- it's a
15 stronger issue as to relevance than it is to anything.

16 Q Did you see what happened on appeal regarding
17 this case?

18 A No, I didn't see what happened. I heard or
19 I got a copy saying that the appeal had been dismissed.

20 Q And did you -- it's a one-page opinion. Have
21 you seen it?

22 A I don't think I have.

23 Q May I approach?

24 A Sure.

25 MR. WHITMIRE: Your Honor, I'm going to

Robert T. Williams - Cross

1 object to this line of questioning. Ineffective
2 assistance of appellate counsel is not before this
3 Court today. Mr. Williams has answered that objection
4 based on relevance.

5 THE COURT: Okay. The only thing I know so
6 far is he wanted to know if he'd seen the appeal and
7 had looked at, and he said no. And he handed it to him
8 to look at it. I don't know where he's going to go with
9 that, counsel.

10 Q Have you had a chance to look at it?

11 A I have.

12 Q Did the Court rule on -- did the Court make
13 a ruling on the items from the search in Virginia being
14 unfairly prejudicial?

15 A It says absolutely nothing in that opinion
16 about what they're actually ruling on. All it says is,
17 is that appellate counsel can't take something up on
18 appeal when it's not preserved at trial. It's arguing
19 one thing, an appeal that's not argued in trial. But
20 it doesn't say exactly what that -- and I'll be glad
21 to read it again. I don't remember seeing anything in
22 there about sex items or --

23 Q Okay. Well, it does say that appellate
24 counsel argued over irrelevant and improper --
25 irrelevant and prejudicial character evidence. But

Robert T. Williams - Cross

1 don't they also say that they couldn't argue that
2 because it hadn't been preserved?

3 A Well, what it says is, it says that he
4 appealed the convictions. It says that "Ratliff
5 argues the trial court erred in admitting irrelevant
6 and prejudicial character evidence." And then it says
7 that "We affirm," and it cites the -- but it doesn't
8 say what the prejudicial character evidence was.

9 Q But during the trial, it's conceivable that
10 that evidence was the evidence from Virginia?

11 A I don't have any idea what the Court of
12 Appeals decided it was --

13 Q All right.

14 A -- because the order doesn't state what it
15 was.

16 Q Thank you. We'll move on to your
17 cross-examination of Minor 2 She had on
18 direct testimony testified to a period of inappropriate
19 touching.

20 A Is that a question?

21 Q It's a statement to which you can either
22 agree or disagree. Do you agree with that?

23 A That she said that?

24 Q That she testified to that.

25 A If that's what's in the trial transcript,

Robert T. Williams - Cross

1 then I agree with it.

2 Q All right. Did you have Ratliff's
3 statements?

4 A Did I have Ratliff's statements?

5 Q Mr. Eddie Ratliff.

6 A I had a statement from Eddie Ratliff which
7 was done in Virginia. I did. I had a typed-up
8 statement.

9 Q Okay.

10 A Matter of fact, I think I still have it.

11 Q If you had that statement, you would have
12 been aware of continuing contact between the Smotzers
13 and your client, Mr. Richard Ratliff?

14 A Do you have that statement?

15 Q I do.

16 A Okay, I agree.

17 Q Okay. But you never asked -- you never
18 cross-examined either of the Smotzers regarding that
19 continuing contact?

20 A To what degree? Why would I have done that?

21 Q You don't think it would have been important
22 for the jury to know that the person they're alleging
23 who molested them, that they continued to call him even
24 after he had done that?

25 A Well, I thought that there was evidence in

Robert T. Williams - Cross

1 the record that he had continued to see them after the
2 alleged event.

3 Q You didn't think it was important for them
4 to know that it was at their urging?

5 A Well, this is a statement from Eddie Ratliff
6 reporting what his brother told him.

7 Q Yes.

8 A Well, it's not a statement from Eddie Ratliff
9 saying that the children said such and such to him.

10 Q Yes.

11 A So if I were going to impeach the children
12 or bring up something along those lines, I guess maybe
13 -- I'm not sure how Eddie Ratliff would have been able
14 to testify to that other than to say, "Well, my brother
15 told me that they said so and so." I knew this from
16 talking to Richard. Richard had said that they had
17 called him, that he'd had contact with them.

18 Q But that information was never brought
19 before the jury?

20 A That he had more contact with them, no.

21 Q No. And so therefore the jury wouldn't have
22 been able to consider the fact that the Smotzers
23 continued to pursue a relationship with Richard even
24 after -- and specifically Minor 2 continued to pursue
25 a relationship even after he supposedly abused them?

Robert T. Williams - Cross

1 A Well, here's the thing that I learned a long
2 time ago, and that is that it never pays to ask a witness
3 a question if you don't know what the answer is. So
4 while that little girl was on the stand, if I had asked
5 her if she had continued to call Richard Ratliff about
6 seeing her and she said no, then the only witness I would
7 have would be Richard Ratliff to say, "Well, they
8 continued to call me."

9 Q And we're going to get into that in a moment.
10 I also wanted to ask you about Minor 3
11 Approximately how many statements did she give to the
12 police?

13 A I don't remember.

14 Q You don't remember? You don't remember if
15 it was more than one?

16 A Probably two or three.

17 Q All right, two or three. And would you have
18 remembered if there were any inconsistencies within
19 those statements?

20 A I'm sure at the time I was trying the case
21 and preparing for the case some two or three years, I
22 would have remembered.

23 Q And that would have been information you
24 would have used on cross-examination?

25 A If I had the reports and if they were

Robert T. Williams - Cross

1 inconsistent and if I thought it was going to help
2 trying the case, then I would have asked her.

3 Q But if you didn't -- but if the record showed
4 that you didn't get into the specifics of those
5 statements, you wouldn't disagree with what the record
6 shows?

7 A It would probably mean that I didn't think
8 it would help him at the time.

9 Q All right. Now, Mr. Ratliff testified --
10 well, Mr. Ratliff did not testify on this trial, is that
11 correct?

12 A That's correct.

13 Q And was that your advice that he not testify?

14 A Well, we talked about it. Judge McMahon
15 inquired as to whether or not he wanted to testify, and
16 he said he didn't want to testify.

17 Q And was it your advice that he not testify?

18 A I told him what would happen if he testified,
19 and that is that several things happened. They'd be
20 cross-examining. They could ask him questions, that
21 we would lose the last closing argument. And normally
22 when I try a case with a criminal defendant, they make
23 the decision whether or not to testify or not, because
24 it's one of those constitutional rights that they have.

25 Q Yes, I understand, sir. Now, you did not --

Robert T. Williams - Cross

1 therefore, you did not put up any witnesses in this
2 case?

3 A No.

4 Q And you did not introduce any evidence in
5 this case?

6 A I don't remember introducing any evidence.
7 We had the last closing argument.

8 Q You had the last closing argument. And when
9 you have the last closing argument, you get to hear
10 everything the State says first?

11 A You do.

12 Q Now, one of -- if the State does say anything
13 inappropriate, that's something that you would object
14 to?

15 A No, I don't object every time the State says
16 something inappropriate. You have to see how much
17 damage is done by it.

18 Q But if you feel that it's an improper appeal
19 to a motion, that's something you might object to?

20 A If I think it's bad enough to object to, I'll
21 object to it. And obviously if you try murder cases,
22 those kind of inflammatory type of things in closing
23 arguments happen all the day. You just have to see how
24 bad it is before you bound up and object to it or not.

25 Q Right. The statement that I wanted to

Robert T. Williams - Cross

1 question you about was -- it was towards the end.

2 THE COURT: Page number what?

3 MR. CHEHOSKI: I'm going to find it.

4 THE COURT: Okay. I don't mean to hurry
5 you. I just wanted to make sure you gave me the page
6 number.

7 MR. WHITMIRE: If it's Minor 3 I
8 believe it's pages 268 and 269, Your Honor.

9 Q Okay, I'm talking about closing arguments.
10 And it's right towards the end, and I want to say --
11 okay, page 583, at the top, beginning at line one --
12 let me know when you're there.

13 A I'm there.

14 Q Okay. He says, "That's the face that these
15 girls are going to remember every time they start a new
16 relationship."

17 A Okay.

18 Q And on paper, that's kind -- did you not think
19 that was kind of inflammatory?

20 A I would expect the Solicitor to say that.

21 Q And you do not think that that's an improper
22 appeal to emotion?

23 A I think closing argument by definition is an
24 appeal to emotional circumstance. I don't think that
25 that was so far that it if I had stood up and objected,

Robert T. Williams - Cross

1 it would do anything more than to cause a spotlight
2 about paying attention to that.

3 So the jury would say, "Did you see him object
4 to that?" And they'd start focusing on that statement.
5 And it might even come back to be worse than what that
6 statement was.

7 Q There may have been mothers and fathers on
8 the jury?

9 A I think if you have --

10 MR. WHITMIRE: Your Honor, I'm going to
11 object to it as argumentative and asked and answered.

12 THE COURT: I'll sustain that objection.

13 MR. CHEHOSKI: Thank you, Judge.

14 Q All right, a couple more things. I want to
15 get into your closing argument. Now, if I may ask, what
16 was your theme for your closing argument?

17 A I don't remember.

18 Q All right. After reading it, you never
19 argued for the jury to find him not guilty?

20 A Well, what I probably did is probably
21 mentioned something like -- if I didn't argue that, then
22 I probably would have said something like simple
23 assault, argued for simple assault or some kind of minor
24 lesser-included charge if I did that. But I don't
25 recall the argument.

Robert T. Williams - Cross

1 Q If the record showed that you never said the
2 words "not guilty," would you argue with that, disagree
3 with that?

4 A Well, I don't know that you have to use the
5 words not guilty to argue on behalf of your client that
6 he's not guilty. They haven't proven anything. They
7 haven't said anything that shows that he did these
8 actions. None of those statements say not guilty, but
9 clearly both of those statements are telling the jury
10 that you want your client found not guilty.

11 Q Okay. But ultimately you never did use the
12 words "not guilty"?

13 A I have no idea.

14 Q If the record showed that you never used the
15 words "not guilty," you wouldn't argue with that?

16 A No.

17 Q And, lastly -- and this is going to be where
18 I finish up, Mr. Williams, is at sentencing. Now, did
19 you write down the sentences that Judge McMahon handed
20 down as he was passing them down?

21 A Did I write them down?

22 Q Did you note what the sentences were?

23 A I'm sure I was paying attention.

24 Q Did you look at the sentencing sheets after
25 the sentencing hearing was over?

Robert T. Williams - Cross

1 A I had to get the sentencing sheets to attach
2 it to the notice of intent to appeal when I sent it to
3 the Court of Appeals. I would have had to have gotten
4 a copy of it.

5 Q Now, on the record the judge says that he
6 tried to sentence him to 65 years, correct?

7 A If it says that, he said that.

8 Q Have you looked at the prison records since?

9 A No.

10 Q Okay. The prison records say he's serving
11 an 85-year sentence.

12 A I guess somebody --

13 MR. WHITMIRE: Your Honor --

14 A -- added it up, and it added up to that.

15 MR. WHITMIRE: -- I'm going to object. It's
16 not an appropriate complaint for post-conviction
17 relief. If it's an SCDC matter.

18 THE COURT: Yes, I understand. I think what
19 he's getting at is not the sentencing -- I'm not trying
20 to put words in your mouth, Mr. Chehoski.

21 MR. CHEHOSKI: Actually, Your Honor,
22 under --

23 THE COURT: You're just trying to say -- go
24 ahead.

25 MR. CHEHOSKI: Well, under Bone v. State,

Robert T. Williams - Cross

1 the petitioner was sentenced to -- the petitioner
2 argued that trial counsel provided ineffective
3 assistance for failing to file a motion regarding there
4 was a 10-year discrepancy between the oral
5 pronouncement and the written sentencing order.

6 And in this case, the Supreme Court of South
7 Carolina found counsel ineffective for failing to file
8 that motion. Now, in this case, there is a 20-year
9 discrepancy between the oral pronouncement and what the
10 prison records are saying.

11 THE COURT: You're saying between the prison
12 records or the sentencing sheet?

13 MR. CHEHOSKI: Well, the sentencing -- the
14 reason is, is on one of the sentencing sheets, Judge
15 McMahon checks "consecutive" on the --

16 THE COURT: Twenty-eight ninety-three?

17 MR. CHEHOSKI: Well, his first oral
18 pronouncement is on indictment 2884. He checks the
19 "consecutive" box on that one, even though in the oral
20 pronouncement there's nothing for that sentence to be
21 consecutive to. And so that's where I think there is
22 a -- that's where the discrepancy is, between the oral
23 pronouncement and the written order.

24 THE COURT: Twenty-eight eighty-four, okay.
25 Twenty-nine eighty-four says --

Robert T. Williams - Cross

1 MR. CHEHOSKI: Twenty-eight eighty-four,
2 sir.

3 THE COURT: Twenty-eight eighty-four, okay.

4 MR. CHEHOSKI: And that does say
5 "consecutive."

6 THE COURT: I've got two 2888's. Okay, 2884
7 says "consecutive," okay?

8 MR. CHEHOSKI: Yes, sir. And in the oral
9 pronouncement, that's the very first charge he's
10 handing sentencing down. So there would not be
11 anything that should be consecutive to.

12 MR. WHITMIRE: Your Honor, if you would like
13 for me to be heard on this now or I can take it up in
14 closing.

15 THE COURT: No, I'll let you say something
16 right now.

17 MR. WHITMIRE: Your Honor, oral
18 pronouncement of 65 years, the issue we have and I
19 believe opposing counsel has cited Bone is when the
20 sentencing sheet is in direct opposition to the oral
21 pronouncement, and the oral pronouncement controls
22 when there's no ambiguity whatsoever.

23 The issue is with the sentencing sheet
24 itself. Judge McMahon did not indicate what anything
25 was to run consecutive to. So, Your Honor, certainly

Robert T. Williams - Cross

1 the oral pronouncement controls at 65 years. If there
2 is any issue about SCDC not interpreting that right,
3 that is administrative. It can be handled outside of
4 post-conviction relief.

5 THE COURT: If that's something you get
6 straight with SCDC, you can do that -- if that's the
7 difference.

8 MR. CHEHOSKI: Your Honor, I felt that as
9 post-conviction relief attorney, it was my obligation
10 to --

11 THE COURT: I'm not objecting to you
12 bringing it up. That's not what I mean. What I'm
13 saying is if that is actually an issue -- because I'm
14 not aware of the problem that SCDC has in totalling that
15 up. But if that is a problem, you can try and address
16 that.

17 MR. CHEHOSKI: All right, yes, sir.

18 THE COURT: Okay. I appreciate you
19 pointing that out, and I'll let you point it out. It's
20 on the record. Okay.

21 Q I'm going to try to wrap this up, Mr.
22 Williams, and I appreciate your bearing with me. And
23 other than the one indictment that I did pick up, you
24 didn't make any objections to any other indictments for
25 any flaws that may have been in there?

Robert T. Williams - Cross

1 A I don't remember -- whatever the transcript
2 says.

3 Q If there was an indictment that had a
4 different victim from the arrest warrant, you didn't
5 make any objections to that?

6 A Whatever the trial transcript says.

7 Q All right, thank you, sir.

8 I have no further questions.

9 THE COURT: All right, Mr. Whitmire?

10 MR. RATLIFF: Your Honor, may I say
11 something?

12 THE COURT: No, sir, you may not.

13 Okay, Mr. Whitmire, it's your witness.

14 MR. WHITMIRE: No further questions for Mr.
15 Williams.

16 THE COURT: All right, Mr. Williams, you may
17 step down.

18 MR. WILLIAMS: Thank you, Your Honor.

19 MR. WHITMIRE: Your Honor, the State rests.

20 If I could have the opportunity to make a
21 brief closing argument on the character evidence issue
22 and the oral pronouncement versus SCDC calculations
23 issue.

24 THE COURT: If you all could give me one
25 minute while I look at this. Just for the record, I'm

1 looking back over what he said when he sentenced him,
2 okay?

3 MR. CHEHOSKI: Yes, sir.

4 THE COURT: And it looks like he sentenced
5 him under -- and I'm just going to read off the last
6 four numbers. On 2884, he sentenced him to 20 years;
7 2885, 20 years; 2887, 50 years; and 2893 is 10 ten years.
8 Those are all the consecutive sentences. That means
9 he got 65 years, according to my math.

10 MR. CHEHOSKI: That's, again, my
11 understanding, sir.

12 THE COURT: Okay.

13 MR. CHEHOSKI: I guess my argument in this
14 case is that since Judge McMahon checked the
15 "consecutive" box on 2884 that the prison records --
16 the prison took that to mean that that was consecutive
17 to the other sentence, as well, and now that's making
18 him serve an 85-year sentence.

19 THE COURT: And I understand what you're
20 saying SCDC says. But there are only four sentences.
21 These are the only sentences that are non-concurrent
22 sentences that Judge McMahon gave, and it only totals
23 up to 65 years. I understand somebody could have done
24 the math incorrectly, I guess. But nothing I see --
25 where would the other 20 years come from?

26 MR. CHEHOSKI: My opinion, Judge, and I'm

1 not going to get into the heads of SCDC --

2 THE COURT: Neither am I.

3 MR. CHEHOSKI: But my opinion is coming from
4 2884.

5 THE COURT: You can't give him 40 years on
6 2884.

7 MR. CHEHOSKI: But if you give him 20 years
8 on that and then 20 years on 2886, even though that's
9 concurrent --

10 THE COURT: I'm understand what you're
11 saying. My thing is the most -- according to what he
12 said here and what this says, there's only 65 years for
13 him to serve.

14 MR. CHEHOSKI: Again --

15 THE COURT: And we've got that on the record.

16 MR. CHEHOSKI: Yes.

17 THE COURT: I understand what you're telling
18 me.

19 MR. CHEHOSKI: Yes.

20 THE COURT: I've got notice of that. If
21 we've got somehow to get that straight, I'm all for
22 getting it straight. We'll figure out a way to get it
23 straight.

24 MR. WHITMIRE: And, Your Honor, the State
25 stipulates to straightening it out. It's an SCDC
26 error. It's an SCDC error that occurred during

1 processing well after Mr. Williams' representation,
2 well past the filing of a timely post-trial motion. If
3 there was an error in the sentencing sheet, opposing
4 counsel would be absolutely correct in citing Bone.

5 But there appears to be no error between oral
6 pronouncement and the sentencing sheet. The error
7 that could have occurred, according to the SCDC
8 records, occurred with them, and there's no fight on
9 that. We can get it straightened out.

10 THE COURT: Okay.

11 MR. WHITMIRE: But it doesn't affect Mr.
12 Williams' representation. That's the argument.

13 THE COURT: Okay, I understand that.

14 Mr. Chehoski, you can address anything else
15 that you want to.

16 CLOSING REMARKS BY MR. CHEHOSKI:

17 MR. CHEHOSKI: Your Honor, my point on the
18 improper -- the prejudicial evidence part was that the
19 unpublished opinion, brief as it was, does cite a case,
20 and they cite a case of improper evidence not preserved
21 cannot be argued on appeal.

22 The judge alludes to that with specific
23 regards to this specific evidence that we're arguing
24 during the trial. Yet, Mr. Williams never makes the
25 formal argument for that. And so in that case, because
26 he didn't make that argument, he never preserved that

Closing Remarks by the Applicant

1 specific issue for appeal, which may or may not have
2 been successful.

3 I really don't have any doubt that the judge,
4 even if Mr. Williams did argue it, would have let the
5 evidence in anyway since he's the one who brought it
6 up by himself and then ruled against it. With regards
7 to the other stuff, to the other matters --

8 THE COURT: Yes, sir.

9 MR. CHEHOSKI: -- I think our strongest is
10 with regards to the plea matters. Certainly, if Mr.
11 Ratliff would have knew about a plea offer and would
12 have accepted it and conveyed that information to Mr.
13 Williams and Mr. Williams never acted on it, that's
14 ineffective assistance of counsel and it prejudices
15 him, because he would have been facing 15 years as
16 opposed to the 65 he's serving now.

17 The other matters that I brought before the
18 Court, I think as a cumulative nature, taken all
19 together, also show ineffective assistance of counsel
20 through failure to object to the flawed indictments,
21 not exploring alibi issues, failing to cross-examine
22 the continued contact between the victims and Mr.
23 Ratliff even after this alleged conduct was going on
24 in addition.

25 Also, just the argument, I think -- the

Closing Remarks by the Applicant

1 argument, just the failure to argue to be found not
2 guilty and failing to use the words "not guilty," to
3 get that in the head of the jurors, all of that as a
4 cumulative nature does amount to ineffective
5 assistance of counsel. And that's my argument here
6 before the Court.

7 THE COURT: Okay, thank you, Mr. Chehoski.
8 And, Mr. Chehoski, let me ask you a question. I'm not
9 familiar with the South Carolina case that goes along
10 with the cumulative argument. As a matter of fact, I
11 recently read one South Carolina case that says they
12 had chosen not to adopt cumulative. I don't know the
13 case name dealing with that. Are you familiar with
14 anything in South Carolina law that adopts cumulative?

15 MR. CHEHOSKI: I don't, but given the way Mr.
16 Whitmire just stood up, he may.

17 THE COURT: I'm sure he did. And he is going
18 to remind me what that case is because you've probably
19 read it more recently than I have.

20 MR. CHEHOSKI: And I'm not aware of any
21 case --

22 THE COURT: No, but I do understand because
23 I've had that come up at another -- that argument in
24 another case, and I was presented with it. I just
25 wondered if you'd run into something more recent that

Closing Remarks by the Applicant

1 I have not seen.

2 MR. CHEHOSKI: I have not seen it, sir.

3 THE COURT: Okay, all right. And I
4 appreciate it.

5 MR. CHEHOSKI: Thank you.

6 THE COURT: Yes, sir.

7 CLOSING REMARKS MR. WHITMIRE:

8 MR. WHITMIRE: Your Honor, I'll start right
9 where Mr. Chehoski left off. Addressing cumulative
10 error, Walker v. State is on point. It's the most
11 recent case within our jurisdiction, and that is
12 397-SC-226. It's a case I was going to present Your
13 Honor on the alibi defense in PCR and what is required
14 since it also the most relevant alibi case.

15 Also, there's Green v. State about I believe
16 six years prior to that. Cumulative error has not been
17 recognized in this jurisdiction for post-conviction
18 relief. Several PCR judges have over the years tried
19 to apply cumulative error analysis. Every single
20 Appellate Court has rejected that analysis.

21 THE COURT: And yet the judges keep trying,
22 don't they?

23 MR. WHITMIRE: Yes, Your Honor.

24 THE COURT: Okay, go ahead.

25 MR. WHITMIRE: Specifically, next

Closing Remarks by the State

1 addressing the potential issue of failure to preserve
2 a character evidence argument on appeal regarding the
3 various items that were obtained from Mr. Ratliff from
4 his Virginia residence, Your Honor, it was fully
5 briefed, the relevance issue and the character issue,
6 under 404.

7 I'll let you read a brief from someone much
8 smarter than me -- it's part of the record; it was filed;
9 I've given a copy to Mr. Chehoski too before -- by the
10 South Carolina Attorney General's Office. To
11 summarize items, specific items that were used at trial
12 and obtained pursuant to a valid search by consent were
13 all related to the res gestae of the offense itself.

14 They're all very specific, the testimony
15 offered by these three victims. And he does a much
16 better job distinguishing Nelson and other such cases
17 than I could ever wish to do. So I'm not going to speak
18 any more on that issue. If there's anything else this
19 Court would like to hear, I'd be happy to offer
20 additional argument.

21 THE COURT: Thank you, sir.

22 And, Mr. Chehoski, you were provided a copy
23 of that?

24 MR. CHEHOSKI: Yes, sir.

25 THE COURT: Okay, thank you, sir.

Closing Remarks by the State

1 All right, what I'll do is let me read over
2 anything, and I'll get back to you all with my decision.
3 Okay, thank you all, I appreciate it.

4 MR. CHEHOSKI: Thank you, Your Honor.

5 MR. WHITMIRE: Thank you, Your Honor.

6 THE COURT: Thank you.

7- --End of Transcript of Record--

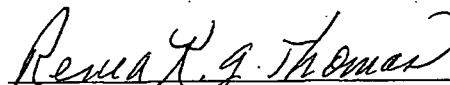
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER,
AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON AUGUST 15, 2013, IN LEXINGTON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR
KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR
AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
TWENTY-THIRD DAY OF OCTOBER, 2014.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
STATE OF SOUTH CAROLINA

THEO, PLEASE READ SOME THINGS I BELIEVE WILL
BE A BIG HELP TO NEGOTIATE A GOOD PLEA.

VERY IMPORTANT (READ)



FIRST, SOME OF THE OFFICERS GUARDING ME AT THE HOSPITAL SAID MY STAY THERE AND MY FAILING HEALTH COULD VERY WELL WORK TO MY ADVANTAGE BECAUSE OF FUTURE COSTS TO THE COUNTY OR STATE FOR MY HEALTH CARE AND I DO HAVE (CAD) CORONARY ARTERY DISEASE FOR WHICH THERE IS NO CURE. THE MOST LIKELY NEXT STEP WILL BE BYPASS SURGERY OR OPEN HEART SURGERY AND IT IS EXPENSIVE. ALSO I COULD VERY EASILY FALL DEAD AT ANY SECOND. SOMETHING FOR YOU TO THINK ABOUT IF IT MIGHT HELP ON THE PLEA.

I CAN NOT SAY IT ENOUGH, I'M NOT GUILTY AS CHARGED. SO PLEASE READ WHAT I'VE WRITTEN, NOT JUST THE WORDS, BUT WHAT MY MESSAGE TO YOU IS. I HAVE THE UTMOST CONFIDENCE IN YOU AS MY ATTORNEY AND DO NOT BELIEVE FOR A MINUTE YOU WOULD FEED ME TO THE LIONS, SO TO SPEAK. ~~BUT A SKIDAWAY AS THIS IS, WE HAVE NOT HAD A CHANCE OR TIME TO DISCUSS THINGS IN MORE DETAIL.~~

SO I'M PUTTING WHAT I CAN I WRITING, EVERY THING YOU READ IS TRUE. ALTHOUGH SOME MAY BE HARD TO BELIEVE, I DON'T THINK ANY ONE COULD MAKE UP WHAT I'M TELLING YOU. IF YOU'VE READ MY OTHER LETTER'S YOU'LL FIND I SAID YOU MAY HAVE TO DO WHAT NO ATTORNEY OR ANY ONE ELSE FOR THAT MATTER WOULD LIKE TO DO. AND THAT IS TO TOTALLY EMBARRASS AND HUMILIATE YOUNG GIRLS IN FRONT OF A

2

Jury and who knows how many other people, then, that is not what I want, that's not my goal. I know you would not want to do that and I don't believe the prosecutor and I know the parents don't want this to happen. That's why I'm willing to plea to something I can live with to avoid all that, not that I'm guilty!! But to keep that from happening to them, they just did not know the trouble they would cause, you know how to present things to the prosecutor, I don't!! But pressure him with this. Get him to go with what he said to start. The two lead acts and agree to no more than (and here I go again) you know I have to try!! That is 3 years, if possible but not more than the 5 we talked about. As you know non-violent would leave me with less than a year work you magic!!) (NO PREDATOR THING!!)

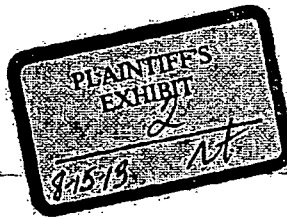
Let him know you will prove from the start that almost everything said is lies and you can!! From HER (Minor 3) First statement about JERZ SEX AT TRACEY'S HOUSE TO HER LAST ABOUT THE SAME SOMEWHERE IN PINE RIDGE (WHERE) NO ONE KNOWS. NOTHING SHE SAID IS TRUE. YOU'LL READ ALL THAT IN THE OTHER PAPER'S ENCLOSED.

NEXT PAGE

SO DONT JUST READ OR LOOK AT THE WORDS, READ THE MESSAGE AND YOU WILL SEE Minor 2. REASONS, Minor 3 and Minor 1 HAS TO BE TO REMAIN FRIENDS. AGAIN, AS HARD AS THIS MAY BE TO BELIEVE, IT'S TRUE."

YOU'LL KNOW HOW MUCH TO REVEAL TO GET YOUR POINT ACROSS. I DONT, TALK HIM TO JUST MENTION SETT AND THE SHEET. HER FACE WILL ANSWER.

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12-08-08

I

Then,

HERE ARE SOME THINGS YOU NEED TO KNOW NOW. THESE ARE THINGS THAT SHOULD NOT BE DISCUSSED OVER THE PHONE, AND SINCE I'M NOT SURE I'LL SEE YOU BEFORE NEXT WEEK YOU HAVE GOT TO KNOW THEM NOW! AND THEN, YOU WILL NOT FIND ME DOING WHAT A LOT OF PEOPLE (JUST ABOUT EVERYONE DOES) AND THAT IS SWEARING TO OR BEFORE GOD THAT WHAT THEY ARE SAYING IS TRUE. THERE IS NO GOD. IT'S RIGHT THERE WITH SANTA & THE TOOTH FAIRY, THEY DON'T EXIST.

SO WHAT I'M TELLING YOU IS THE PLAIN TRUTH. AND AS MY ATTORNEY, YOU EITHER BELIEVE ME AND WILL DEFEND ME AS SUCH, OR LET ME GO TO PRISON FOR THINGS I DID NOT DO!! AND THEN, I DON'T BELIEVE YOU ARE THAT KIND OF AN ATTORNEY OR MAN. EVERY WORD I'M SAYING IS TRUE.

ANY AND ALL REFERENCES OR ALLEGATIONS WHERE ^{Minor 3} [REDACTED] IS MENTIONED ARE 100% FALSE. (100%) NOTHING HAPPENED TO, WITH OR IN FRONT OF HER IN ANY WAY. COUNT THEM, THERE ARE SEVEN WITH HER NAME. AND AS YOU CAN TELL BY READING THEM THEY GO WITNESS, VICTIM. THREE OF THOSE LIST WITNESS AS ^{Minor 2} [REDACTED] THAT IS A TOTAL OF TEN (10) LIES THAT YOU WILL GET, ^{Minor 3} TO ADMIT RIGHT OFF OR CATCH HER IN (NO DOUBT) NOW!!

OVER

2

TO DO THAT THEN, YOU ARE GOING TO HAVE TO DO SOMETHING I DON'T BELIEVE ANY ATTORNEY, OR FOR THAT MATTER ANYONE LIKES TO DO. AND THAT IS TO TOTALLY EMBARRASS AND HUMILIATE A YOUNG GIRL IN FRONT OF A LOT OF PEOPLE. BUT IF THAT IS WHAT IT TAKES TO GET THE TRUTH, SO BE IT!! THIS IS MY LIFE, AND I'LL BE DAMNED IF I'LL GO TO PRISON FOR LIES NO MATTER WHO I HAVE TO HURT OR EMBARRASS NOW!! THIS I DID NOT WANT TO DO, AND I STILL BELIEVE THERE IS A WAY AROUND IT. AND TO DO THAT, THE PROSECUTOR HAS GOT TO KNOW THAT I AM SERIOUS ABOUT THIS. I'M NOT GUILTY AND WILL FIGHT TO HELL AND BACK TO PROVE IT. YOU HAVE TO FIGHT FOR ME.

I AM NOT MAKING THREATS. I'M JUST STATING THE TRUTH. SHE WILL ADMIT SHE LIED, ALONG WITH THE WITNESSES, ^{Minor 2} WHO I FULLY BELIEVE YOU WILL FIND OUT TOLD HER TO. THIS IS WHERE IT GETS ROUGH. I DONOT WANT TO, BUT IF THE TRUTH CAN NOT BE TOLD BEFORE THERE IS A TRIAL AND THEN THE TRUTH COMES OUT!! I WILL FILE CHARGES FOR KNOWING FILING FALSE POLICE REPORTS AS WELL AS FOR GIVING FALSE INFORMATION. THEY HAVE NO IDEA OF THE CONSEQUENCE FOR LIEING, IF THEY DID, THEY WOULD NOT HAVE SAID THESE THINGS FOR THE STATE.

NEXT PAGE

10/1 PAGE 3

cont from 2

3

SOMEONE NEEDS TO SIT DOWN WITH ^{Minor 3} YOU - THE PROSECUTOR OR BOTH. Inform HER OF WHAT COULD BE DONE. YOU'LL GET THE TRUTH!! THIS IS NOT TO HURT THEM!! IT'S TO LET THEM KNOW THE DAMAGE THEY ARE DOING. THIS ALL STARTED BECAUSE ^{Minor 2} I WANTED TO BE SOMEWHERE AND WITH SOMEONE ON A ~~FR~~ FR NIGHT AND I COULD NOT HAVE HER BACK UNTIL SAT.

JUST MENTION THESE TWO WORDS (THE SHED AND SETH) TO EITHER ONE, ESPECIALLY ^{Minor 2} I WANT THEM FACE, AND ASK IF THERE'S ANYTHING THEY WOULD LIKE TO SAY ABOUT THEM. I PROMISED I WOULD NEVER TELL ANYONE WHAT I KNOW, BUT THESE ALLEGATIONS ARE TOO SERIOUS, THE CONSEQUENCES TOO SEVERE FOR ME TO KEEP QUIET.

THERE ARE THINGS THE MOTHERS DON'T KNOW, AND THEY DON'T SURE WOULD NOT WANT THEM BROUGHT INTO THE OPEN. I DON'T WANT THAT EITHER. BUT THEY MAY LEAVE ME NO CHOICE.

THEO, I TRUST AND BELIEVE IN YOU. NOW YOU HAVE TO BELIEVE ME. YOU, AND THE PROSECUTOR ARE GOING TO HAVE ^{TO} WORK OUT SOMETHING REAL GOOD. YOU HAVE TO BELIEVE ME WHEN I SAY I DON'T WANT CERTAIN THINGS TO BE BROUGHT UP IN COURT, AND ^{Minor 3} EVERY WORD ^{Minor 2} SAID ^{Minor 3} HAPPENED TOGETHER OR WITH ^{Minor 3} ALONE, ARE LIES.

OVER

4

I'm sending this out in Monday Night's Mail. You may not get it before we talk Wednesday so I want you to know that if you feel you can get the bond down to 50,75000⁰⁰ where I need it, let's go ahead. I have not given up yet. Get it down, there's still hope.

This last thought with a pattern of lies that I know you will prove, I don't believe a jury or judge would believe that after being caught in 10 lies they would have reason to believe the other three or four were true. After telling that many lies, could or would anyone believe them now? I don't think so, would you?

As from the start then, (Truth) you either believe me or you don't. ^{Minor 3} is the one who will break. If this has to go to trial, she's who you want to question first.

Get back to me right away with anything you have, don't make me go crazy(er).

Thank's
Richard

P.S. I need to talk to you in person before I may make a big mistake. The truth has to come out no matter what it takes. No matter what. I need your help.



GET THIS BEFORE THE BEST JUDGE YOU CAN.

WILL EXPLAINING MY HEALTH PROBLEMS DO ANY GOOD?
 FROM WHAT I'VE SEEN I WOULD SAY NO. BUT YOU KNOW
 BETTER, BUT WHERE EVER I GO, I'LL NEED TO BE NEAR
 OR AT A GOOD MEDICAL FACILITY. IT'S NOT A MATTER
 OF IF, BUT WHEN I HAVE ANOTHER HEART ATTACK, AND
 IN ORDER FOR ME TO SURVIVE, I'LL NEED TO BE AT
 A HOSPITAL WITH A HEART UNIT OR BE WITHIN 15
 MINUTES OF ONE.

I AM ALSO GOING TO HAVE TO HAVE MORE SURGERY
 ON MY KNEE. THIS MAY NOT MEAN ANYTHING BUT JUST
 ASKING.

ALSO THEN, DO NOT RELEASE ANY INFORMATION
 ABOUT MY CASE IN ANY WAY TO ANY MEMBER OF
MY FAMILY. NONE OF THEM. EVEN IF I GO TO
 PRISON, I'LL LET THEM KNOW WHEN I'M RELEASED.

TRY TO LET ME KNOW SOMETHING SOON.

THANK YOU S.I.R.

Kind

P.S. ~~I NEED YOU TO EXPLAIN AGAIN HOW THAT~~
~~WORKS TO GET IT DOWN TO SHELBY'S. BUT I GUESS,~~
~~AS LONG AS YOU DO AND IT WORKS, I DON'T NEED~~
~~TO KNOW~~

COPIES OF MY CORRESPONDENCE WITH TRIAL ATTORNEY
 1x1 - PAGE 1 REGARDING PLEA BE ACCEPTED

12-08-08

THEO, I JUST WANTED TO RUN THESE THINGS BY YOU TO MAKE SURE I UNDERSTAND CORRECT. IS IT TRUE, AS I UNDERSTAND WHAT YOU TOLD ME, THAT ON 5 YEARS NOW-VIOLENT I WOULD DO 51% OR ABOUT 30 MONTHS? OR CHOSE? AND SINCE I'VE BEEN HERE, BY JAN. WILL BE 18 MONTHS, WITH CREDIT FOR TIME SERVED THAT WOULD LEAVE 12 MONTHS BEFORE ANY GOOD TIME OR WORK CREDIT FOR A TOTAL OF ABOUT 9 MONTHS LEFT. IS THIS RIGHT? AND AS I BELIEVE YOU WELL KNOW, THAT IS A HARD 30 TOTAL. AND IF I DIDN'T ASK YOU TO TRY TO GET IT LOWER, YOU AND I BOTH KNOW I WOULD NOT BE HUMAN!! A 3 YEAR SENTENCE WOULD GIVE ME TIME SERVED.

I STILL HAVE FAITH IN YOU. YOU CAN GET THIS DONE!! VERY IMPORTANT!! I KNOW YOU GUYS TALK. CAN YOU MAKE SURE BEFOREHAND THAT THE PROSECUTOR WILL SUPPORT THIS 5 YEAR SENTENCE AND NOT OPPOSE IT AT THE LAST MINUTE? I NEED ASSURANCE OF THIS SINCE I KNOW YOU'VE ALREADY TALKED.

FROM WHAT LITTLE I'VE SEEN, AS LONG AS THE PROSECUTOR (STATE) DOESN'T OPPOSE IT, THE JUDGE'S SEEM TO BE OK WITH EVERYTHING. I WANT IT STATED THAT I DO NOT HAVE TO GO THROUGH THAT PREDATOR ACT THING. IS THERE ANY CHANCE OF GETTING THIS DOWN TO ADHANS-NOW-VIOLENT-TIME SERVED? IF NOT, AND YOU KNOW THE PROSECUTOR WILL AGREE, LET'S DO IT SO I CAN PUT THIS BEHIND ME AND TRY TO FORGET IT EVER HAPPENED

OVER

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Richard D. Ratliff,
S.C.D.C. No. 333368,

Applicant,

v.

State of South Carolina,

Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No: 2012-CP-32-1581

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed April 12, 2012. Respondent made its Return on January 4, 2013. An evidentiary hearing into the matter was convened at the Lexington County Courthouse on August 15, 2013. Applicant was present at the hearing and was represented by Jason S. Chehoski, Esq. PCR counsel timely filed an amended Application for Post-Conviction Relief on July 3, 2013. Respondent was represented by Walt Whitmire, Esq., of the South Carolina Attorney General's Office.

At the hearing, Eddie Ratliff, Applicant and counsel testified. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the October 2007 term of General Sessions for three counts of criminal sexual conduct with a minor, second-degree (2007-GS-32-2884; -2885; -2886), two counts of lewd act on a minor (2007-GS-32-2887;

-2888), and three counts of criminal solicitation on a minor (2007-GS-32-2891; -2893; -2894). He was represented by Robert T. Williams, Esq. On February 26, 2009, the State called its case to trial. Applicant was found guilty as indicted. The Honorable R. Knox McMahon sentenced Applicant to twenty (20) years imprisonment on one count of CSC with a minor, second-degree, fifteen (15) years imprisonment on one count of lewd act with a minor, ten (10) years imprisonment on one count of solicitation with a minor, ten (10) years imprisonment on one count of solicitation with a minor. Those sentences were to be served concurrently. Judge McMahon imposed the following sentences to be served consecutively: twenty (20) years imprisonment for one count of CSC with a minor, second-degree, twenty (20) years imprisonment for one count of CSC with a minor, second-degree, fifteen (15) years imprisonment for one count of lewd act on a minor; and ten (10) years imprisonment for one count of solicitation; with a minor. The aggregate term of imprisonment totaled eighty-five (85) years.

A timely Notice of Appeal was filed on Applicant's behalf and perfected by Robert M. Pachak, Esq., of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. State v. Richard David Ratliff, Op. No. 2012-UP-033 (S.C. Ct. App. filed January 25, 2012). The Remittitur soon followed. At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to investigate Applicant's case and prepare for trial;
 - b. failure to investigate a possible alibi defense;
 - c. failure to convey the State's plea offer;
 - d. failure to make a motion to quash an allegedly defective indictment before the jury was sworn;
 - e. failure to object to improper character evidence and preserve the issue for appeal;
 - f. failure to object to improper statements during

the solicitor's closing argument;
g. failure to make a motion to clarify the trial
judge's sentence;

SUMMARY OF TESTIMONY

Applicant alleged counsel was ineffective for failing to adequately convey the State's guilty plea offer and ensure he had the opportunity to accept it. Applicant testified to suffering various medical ailments prior to the trial. He originally was represented by a Public Defender, prior to retaining counsel. Applicant testified he met with counsel two to three times prior to trial. According to Applicant, these consultations were short. Counsel explained the charges and full sentencing exposure to Applicant. Plea negotiations resulted in counsel obtaining a tentative offer to plead Applicant on two lewd act charges and the possible lesser included offense of assault and battery, high and aggravated nature "ABHAN." Applicant claimed his understanding was that he would receive a five year cap. Applicant was well aware of the portion of active time he was looking at along with collateral consequences inherent in the offenses. Applicant met Applicant at Court to enter the plea. However, counsel advised Applicant not to plead guilty that day when the local media showed up at the scheduled plea hearing. Counsel informed Applicant of chamber discussions. As a result, Applicant testified he declined to plead guilty at that juncture. Applicant testified he wrote to counsel on the continued viability of getting a favorable guilty plea offer. (See Applicant's Exh. 1—3). Nothing materialized.

Applicant alleged counsel was ineffective for failing to investigate his case. Applicant testified counsel did not review the witness statements or State's evidence with him. He testified counsel explained to him the underlying procedure of a General Sessions jury trial. Applicant also testified that he explained his close relationship with one of the victim's mothers. He told counsel that the mother had been harassing him for money when he was broke. Applicant

claimed counsel should have cross-examined the particular child victim on her mother's motive. Applicant claimed he wanted counsel to present an alibi case that he was in Virginia in 2007. Applicant asserted counsel should have presented a utility bill and a Virginia Department of Motor Vehicle "D.M.V." report to corroborate his alibi defense. Applicant acknowledged that he was unable to account specific dates he spent in Virginia. Notably, Applicant could not account for the days in which witnesses placed him in South Carolina. Applicant testified he resided in Danville, Virginia, which was four hours away from Columbia.

Applicant alleged counsel was ineffective for failing to make a motion to suppress allegedly inadmissible evidence obtained from the Virginia residence where he resided. In addition, Applicant alleged the personal effects obtained then should not have been presented at trial because they were unfairly prejudicial.

Applicant alleged counsel was ineffective for failing to move to quash certain defective indictments prior to trial. Applicant was aware of the applicable dates of the alleged offenses. Referencing Indictment -2891, Applicant noted the variance of location compared to the particular victim's testimony. Applicant testified he obtained copies of the warrants and indictments after his conviction. He claimed four indictments contained scriveners' errors and asserted counsel should not have waited until the end of his trial to attack the indictments.

Eddie Ratliff, Applicant's brother, testified that sometime between February and March of 2007, Applicant moved back to Virginia and resided at the family home. Eddie testified he lived at the family home and cared for their elderly mother. Eddie specifically recalled Applicant's continued presence in Virginia in March of 2007. He testified Applicant traveled to South Carolina on maybe three occasions in 2007. He also testified Applicant maintained contact with one of the victims and her mother during this time frame. He further recalled one of the

victims and her mother visiting Applicant in Virginia during 2007. Eddie recalled providing a statement in Applicant's case. He also recalled his conversations with the prosecuting solicitor. He testified he was available to testify as a reluctant witness for the prosecution if called upon. Eddie recalled getting information on Applicant's plea negotiations. He testified he wrote Applicant urging him to continue the pursuit of a plea. Eddie testified he was surprised Applicant case went to trial. He was aware of the original plea negotiations, relevant parole eligibility and mandatory sex offender registry.

Counsel testified to his conduct during the course of the representation. The Lexington County Public Defender, Beth Fullwood, Esq., was originally appointed on Applicant's case. At the outset of counsel's representation, he sent all discovery disclosures to Applicant and had Applicant write responses on the documents. Thus, Applicant provided his version of the facts on each arrest warrant and indictment. Counsel maintained his correspondence with Applicant in his file with his notations that he reviewed each letter. Counsel independently reviewed the State's evidence and formulated a trial strategy to attack the credibility of the victims on cross-examination. Counsel testified "I am sure at the [time of trial] I remember inconsistencies, and if I thought [posing certain questions] would help, I would ask." Counsel further articulated he stayed away from questions in subject matter he thought provided no benefit to Applicant's case. Counsel testified he obtained copy of Eddie Ratliff's statement prior to trial. He further acknowledged that he had all the alleged "alibi evidence" presented before this Court. Counsel articulated, "the problem was that we could not put [Applicant] in Virginia, we couldn't 100% say he did not come down to visit." He was unable to present a complete alibi on all the charges. Furthermore, counsel noted that most of Eddie's statement contained hearsay, and further, that

the statement was not beneficial to Applicant's case. Counsel did not want to cross-examine the main victim on her continued contact with Applicant when he moved to Virginia.

Counsel testified to engaging in plea negotiations on behalf of Applicant. The solicitor made a written offer on November 21, 2008, to plead Applicant to three (3) counts of lewd act and three (3) counts of criminal solicitation straight-up. Counsel was able to further better the offer when the solicitor stipulated to *not prose* one of the lewd act charges. However, the solicitor would not make a favorable sentencing recommendation other than that the solicitor recommended concurrent service on the convictions. Applicant steadfastly told counsel that he wanted maximum five (5) year prison sentence. Counsel advised Applicant that he was exposed to at least a fifteen (15) year term of imprisonment. Counsel maneuvered to get a favorable sentencing judge to take Applicant's plea. As a result, a plea hearing was set before Judge Goode. Counsel and the solicitor conducted a chambers conference with Judge Goode on the matter. Counsel testified that he notified Judge Goode that he was only authorized to accept a guilty plea that capped for a five (5) year term of imprisonment. Judge Goode told counsel that he would certainly impose a longer prison sentence if he took Applicant's plea. Counsel testified that the Judge had received recent bad publicity on imposing light sentences. Furthermore, the media was involved in Applicant's case. Applicant declined to enter a plea and the offer terminated. Counsel testified that Applicant often wrote him and dictated they wait for the solicitor's office out until a five (5) year offer was conveyed. Plea negotiations ended and the solicitor called Applicant's case to trial.

Counsel testified the alleged deficient indictments had no effect on his trial preparations. He noted that the syntax and pronoun use in one indictment would have merited an objection.

However, counsel stated that a motion to quash would have only led to the solicitor's re-indictment. The only possible benefit would have been a mere continuance.

Counsel testified he objected to the admission of Applicant's personal effects obtained by police at the Virginia residence on grounds of relevance. He reasoned relevance was his strongest argument for suppression. He noted he did not find the evidence to be inherently prejudicial noting "having adult items for adults is okay. I hope sexual items themselves are not a character issue."

Counsel testified he did not find the solicitor's closing argument warranted an objection. Referencing trauma caused to the victims was reasonable due to the severity of the offenses. Counsel stated that the closing argument by its nature is emotional, and that burden of objecting here and putting a spotlight on the facts would have caused more harm than benefit to Applicant's case.

Counsel filed a timely notice of appeal on Applicant's behalf. He read the Court of Appeals opinion. He could only recall that the Court of Appeals ultimately found the argument presented by appellate counsel to be unpreserved.

APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds counsel's testimony significantly more credible

than Applicant's testimony. This Court finds counsel's laudable reputation as a competent and vigorous advocate is warranted. The Court finds that counsel's investigation of the facts of the case did not fall below professional norms. Counsel's objections and decisions not to object were competent and were a product of reasonable trial strategy. Defense counsel's decision not to file motions to quash indictments, to modify trial court's order, to not present certain evidence, and not to object to certain character evidence were reasonable under the circumstances and did not fall below professional norms of reasonableness. Applicant's conviction was supported by detailed testimony from the alleged victims.

A.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to adequately investigate and prepare his case. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Id., 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir.1987) (emphasis in original). Here, counsel timely spoke with Applicant and obtained his version of the facts on each charge. In addition, counsel conducted a reasonable independent investigation into the State's evidence. This Court finds counsel's testimony compelling that an alibi defense was not appropriate here.

Outside of Applicant's brief relocation to Danville, Virginia in early 2007 extended to the few weeks that followed, there is no evidence that Applicant was confirmed to have remained in Virginia on the specific days and time of the 2007 offenses for which he was convicted. Furthermore, Applicant testified that the commute from Danville, Virginia to Columbia, South Carolina was but a few hours. In comparison to Applicant's vague alibi testimony that is completely lacking in credibility, a local hotel manager provided compelling testimony of Applicant's visits to Lexington County. (Trial Tr. p.306; p.316).. Applicant's claim here hinges on the testimony of his brother; yet the evidence presented to this Court shows Applicant directed counsel, "[Counsel], do not release any information about my case in any way to any member of my family. None of them. Even if I go to prison, I'll let them know when I'm released." (Applicant's Exh. 1). This Court finds counsel made a valid strategic decision not to pursue an unmeritorious defense. See State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, (1980). Regardless, any possible prejudice here was of Applicant's own making. Therefore, this allegation is denied and dismissed.

This Court also finds Applicant failed to prove that counsel was ineffective for failing to adequately cross-examine Victim 1 on her mother's purported motive to have charges fabricated against Applicant and cross-examine Victim's 1 and 2 on the impossibility of the commission of a criminal sexual conduct, second-degree, offense that occurred while Applicant was operating his automobile. Counsel testified he limited his cross-examination to matters he believed benefited Applicant's case. Upon review of the trial transcript, this Court agrees. Counsel vigorously cross-examined Victim 2 and established the defense's theory that Victim 2's purported motive to fabricate based on abandonment. (Trial Tr. p.211). Counsel also questioned Victim 2's mother on the child's desire to visit Applicant in Virginia. (Trial Tr. p.338). Second,

this Court finds Applicant's allegation that counsel should have questioned Victim's 1 and 2 on the impossibility of Applicant operating an automobile while molesting them to be patently absurd. Counsel exercised tremendous dexterity and skill in cross-examining the child victims. (Trial Tr. pp.128-46; pp.207-26; pp.263-72). Counsel was able to render sufficient cross-examinations despite Applicant's requests that counsel "bully" the victims. See (Applicant's Exh. 1-3). Furthermore, Applicant failed to prove how counsel's alleged inadequate cross-examinations here resulted in prejudice. See Huggler v. State, 360 S.C. 627, 635, 602 S.E.2d 753, 757 (2004). Therefore, these allegations are denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for not advising him to accept the solicitor's original plea offer. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012) "In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice." Id. This Court finds counsel's advice on the matter to be competent and credible. Counsel approached plea negotiations governed by Applicant's particular desires in the length of incarceration. Even Applicant's Exhibits 1 through Exhibit 3 clearly corroborated Applicant's underlying posture. Applicant presented no evidence that he would have accepted a plea offer to two (2) lewd act charges and three (3) solicitation charges straight-up without the underlying assurances in sentencing. Counsel honored Applicant's desires in declining to plead him in front of Judge Goode. This Court finds Applicant made an intelligent and voluntary decision supported by counsel's proficient advice on the matter. Applicant failed to produce any evidence

that the solicitor made subsequent plea offers that were not communicated to him. Applicant has no constitutional right to a plea bargain. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to timely object to defective indictments. "The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17-19-90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged." State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (internal citations and quotations omitted). This Court agrees with the trial judge that minor discrepancies on the Old Code sections listed in the several of the indictments to be absolutely no significance. (Trial Tr. p.373). Applicant's testimony regarding his understanding of plea negotiations before this Court shows he was adequately apprised of all the offenses for which he was charged. The variance was the innocent product of recent legislative change in labeling subsections. However, in denying Applicant's allegation regarding Applicant's failure to object to a deficiency in Indictment 2007-GS-32-2888 "lewd act" this Court places great weight upon counsel's testimony. In the body of this particular indictment, the wrong victim was named in the opening sentence. Yet, the relevant information that supported the charge correctly referred to the correct victim. It read in relevant part, "to wit, the defendant did rub the breasts and vagina of Victim 3, age 13, in violation of 16-15-140." (Trial Tr. p.24). The discrepancy was brought to the

trial judge's attention by the solicitor. Despite counsel's strategic decision to argue for dismissal based on a failure of notice, counsel candidly testified before this Court that the defects in the indictments had no effect on counsel's ability to present an effective defense at trial. (App.p.375). Furthermore, the record shows the solicitor and counsel regularly communicated prior to trial. Simply, Applicant presented no credible evidence to show that all relevant parties misunderstood the Indictment despite its flaws. Furthermore, this Court finds Applicant presented no credible evidence to show how counsel's alleged deficiency prejudiced him. Therefore these allegations are denied and dismissed.

D.

This Court finds Applicant failed to prove counsel was ineffective for not objecting to the admission of Applicant's personal effects obtained by police based upon Rule 403, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Counsel testified he did not believe the evidence at issue was unduly prejudicial. This Court agrees and finds the evidence at issue corroborated the victims' stories and went directly to supporting their credibility. The personal effects here were highly relevant to and probative of Applicant's guilt, especially as they related to the solicitation charges. See Rule 401, SCRE. The victims were able to identify and describe the sex toys, photographs and the DVD as items Applicant used in either his grooming of the victims or his direct solicitation for sexual activities with them. The evidence at issue formed a distinct part of the *res gestae* of the offenses Applicant was charged of committing. This Court notes the trial judge found the evidence in this case to be substantially more probative than prejudicial. (Trial Tr. p.425). Appellate counsel's performance here was reasonable. This Court declines to find deficiency where it agrees with counsel that evidence in question did not merit

an objection. The Record shows the evidence was clearly admissible. Therefore, this allegation is denied and dismissed.

E.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to object to the solicitor's alleged improper closing argument. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id., at 609-10, 602 S.E.2d at 744. "While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done." State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). Here, this Court finds the solicitor's comments were reasonable inferences from the trial. Sexual abuse leads to continued and prolonged harm. Furthermore, this Court finds counsel offered valid trial strategy on not objecting to draw further attention to fact that sexual abuse of children leaves lasting scars on the victims in this particular case. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) ("Where counsel articulates a strategy, it is measured under an objective standard of reasonableness."). This Court takes into account the plethora of counsel's trial experience here. Therefore this allegation is denied and dismissed.

F.

Applicant alleges counsel was ineffective for failing to object to the trial judge's variance from the oral pronouncement to the sentencing sheet. This Court disagrees. "Although this Court has not previously spoken on the issue of whether an oral pronouncement of a sentence controls over a conflicting written sentencing order, the majority of jurisdictions that have considered this

point hold the oral pronouncement controls." Boan v. State, 388 S.C. 272, 276, 695 S.E.2d 850, 852 (2010). This Court finds the oral pronouncement comported with the sentence.

G.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be, and hereby is, denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of Respondent

AND IT IS SO ORDERED this 18th day of August, 2014.



EDGAR W. DICKSON
Presiding Judge
Eleventh Judicial Circuit



_____, South Carolina

WITNESSES

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-32-2884

The State of South Carolina

County of Lexington

DMS

ARREST WARRANT NUMBER

J835084

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

VS.

Richard David Ratliff

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 10-1-07

VERDICT

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH

MINOR 2ND

§ 16-03-0655(2)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

2/26/09

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT WITH MINOR
 2ND

§ 16-03-0655(2)

At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** did in Lexington County, South Carolina on or about July 23, 2007 did commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: the defendant did digitally penetrate the anus and vagina of Minor 2 age 11, in violation of Section 16-3-655(2), South Carolina Code of Laws, 1976, as amended.

A TRUE COPY
[Signature]
 Lex. Co. C.C.C.P., G.S. & E.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 ASSISTANT SOLICITOR

criminal laws of the

9
80 WITNESSES

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-32-2885

The State of South Carolina

County of Lexington

DMS

ARREST WARRANT NUMBER

J835085

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE
vs.

Richard David Ratliff

ACTION OF GRAND JURY
TRUE BILL

Richard D. Ratliff
Foreman

Foreperson of Grand Jury
Date: 12-1-07

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR 2ND

§ 16-03-0655(2)

VERDICT

Guilty

Donald V. Myers
Foreperson of Petit Jury

Date: 2/26/09

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR 2ND

§ 16-03-0655(2)

At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** did in Lexington County, South Carolina on or about July 24, 2007 did commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven years of age, to wit: the defendant did perform cunnilingus on the victim upon Minor 2 age 11, in violation of Section 16-3-655(2), S.C. Code of Laws, 1976, as amended.

TRUE COPY
Lex. Co. C.C.C.P. G.S. 16-03-0655

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DJ M. SLG
ASSISTANT SOLICITOR

W
SCCA

WHO

7/10

WITNESSES

31

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-32-2586

The State of South Carolina

County of Lexington

DMS

ARREST WARRANT NUMBER

J835086

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE
vs.

Richard David Ratliff

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury
Date: 10-1-07

VERDICT

Guilty

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH
MINOR

§ 16-03-0655(2)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

3/26/09

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
 § 16-03-0655(2)

At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** did in Lexington County, South Carolina on or about June 25, 2007 did commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: the defendant did perform cunnilingus on the victim upon Minor 3 age 13, in violation of Section 16-3-655(2), South Carolina Code of Laws, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
ASSISTANT SOLICITOR

3
WITNESSES

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-32-2887

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

DMS

J845115

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

ACTION OF GRAND JURY

TRUE BILL

Richard David Ratliff

THE STATE
vs.

Foreman

Foreperson of Grand Jury

Date: 12-1-07

CDR #: 2468

Indictment for

VERDICT

COMMITTING OR ATTEMPTING LEWD

ACT ON A MINOR

§ 16-15-0140

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

2/24/09

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 COMMITTING OR ATTEMPTING LEWD ACT
 ON A MINOR

§ 16-15-0140

At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** did in Lexington County, South Carolina on or about July 10, 2007 being a person over the age of fourteen, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: Minor 2 with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child, to wit: the defendant did rub the vagina of Minor 2 ; age 11, with his hand, in violation of § 16-15-140 of the Code of Laws of South Carolina, 1976, as amended

A TRUE COPY

[Signature]
 Lex. Co. C.C.C.P., C.S. & P.O.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 ASSISTANT SOLICITOR

5
WITNESSES

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-322888

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

J845116

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE
vs.

Richard David Ratliff

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 10-1-07

VERDICT

CDR #: 2468

Indictment for

COMMITTING OR ATTEMPTING LEWD
ACT UPON MINOR

§ 16-15-0140

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

2/24/09

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
COMMITTING OR ATTEMPTING LEWD ACT
UPON MINOR

§ 16-15-0140

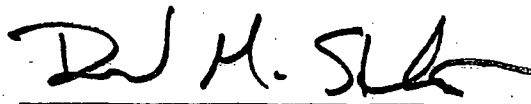
At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** did in Lexington County, South Carolina on or about July 10, 2007 being a person over the age of fourteen, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: ^{Minor 3} [REDACTED] ^(Ren) with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child, to wit: the defendant did rub the breasts and vagina of Minor 3 age 13, in violation of § 16-15-140 of the Code of Laws of South Carolina, 1976, as amended

A TRUE COPY


 Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

7
3
WITNESSES

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-322891

The State of South Carolina

County of Lexington

DMS

ARREST WARRANT NUMBER

J845119

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

Richard David Ratliff

ACTION OF GRAND JURY

TRUE BILL

CRB
Foreman

Foreperson of Grand Jury

Date: *10-1-07*

VERDICT

Guilty

CDR #: 2999

Indictment for

CRIMINAL SOLICITATION OF A MINOR

§ 16-15-342

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date: *2/24/09*

Lexington Co.
205 East Main
Lexington, SC

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
CRIMINAL SOLICITATION OF A MINOR

COUNTY OF LEXINGTON)

§ 16-15-342

At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** being a person eighteen years of age or older did in Lexington County, South Carolina during April, 2007, did knowingly contact or communicate with Minor 3 who is under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, to wit: the defendant masturbated himself in the presence of the victim, in violation of Section 16-15-342 of the Code of Laws for the State of South Carolina, 1976 as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature: D. M. Silb]
ASSISTANT SOLICITOR

WITNESSES

039

Lexington County Sheriffs Department

Roger Beaver

DOCKET NO. 2007-GS-32-2522

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

J845121

DMS

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE
vs.

Richard David Ratliff

ACTION OF GRAND JURY

PAUL BIL

Foreman

Foreperson of Grand Jury

Date: 12-1-07

VERDICT

Acquitted

CDR #: 2999

Indictment for

CRIMINAL SOLICITATION OF A MINOR

§ 16-15-342

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

2/26/08

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
CRIMINAL SOLICITATION OF A MINOR

§ 16-15-342

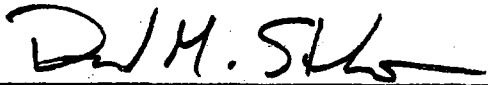
At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** being a person eighteen years of age or older did in Lexington County, South Carolina during November, 2006, did knowingly contact or communicate with Minor 2 who is under the age of eighteen for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, to wit: the defendant masturbated himself in front of the victim, in violation of Section 16-15-342 of the Code of Laws for the State of South Carolina, 1976 as amended.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

841

WITNESSES

LCSD R. Bowen

DOCKET NO. 2007-GS-32-2894

The State of South Carolina

County of Lexington

DMS

ARREST WARRANT NUMBER

J845122

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

VS.

Richard David Ratliff

ACTION OF GRAND JURY

IRUE BILL

Foreman

Foreperson of Grand Jury

Date: 12-1-07

CDR #: 2999

Indictment for

VERDICT

CRIMINAL SOLICITATION OF A MINOR

§ 16-15-342

Foreperson of Petit Jury

Date:

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
CRIMINAL SOLICITATION OF A MINOR

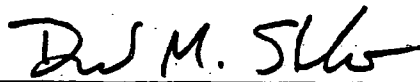
§ 16-15-342

At a Court of General Sessions, convened on OCTOBER 2007, the Grand Jurors of Lexington County present upon their oath:

That **Richard David Ratliff** being a person eighteen years of age or older did in Lexington County, South Carolina during November, 2006, did knowingly contact or communicate with Minor 1 who is under the age of eighteen for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, to wit: the defendant masturbated himself in front of the victim, in violation of Section 16-15-342 of the Code of Laws for the State of South Carolina, 1976 as amended.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE VS.

Richard David Ratliff

AKA:

Race: W Sex: M Age: 66

DOB: SS#:

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-2884

A/W#: J835084

Date of Offense: 7/1/2007 - 7/24/2007

S.C. Code § : 16-03-0655(B)(1)

CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct with a Minor, 2nd Degree

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine: \$

14-1-206 (Assessments 107.5 %) \$

14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

14-1-211(A)(2) (DUI Surcharge) \$100 \$

56-5-2995 (DUI Assessment) \$12 \$

35.13 (Public Def/Prob) \$500 \$

73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

33.7, 1B TP (Drug Court Surcharge) \$100 \$

50-21-114(BUI Breath Test Fee) \$50 \$

56-5-2942(J) (Vehicle Assessment) \$40/ea \$

% to County (if paid in installments) \$

90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ 130

Beth A. Carver
Clerk of Court/Deputy Clerk

Court Reporter: C. Parlsai

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Sex offender Registry

☐ Appointed PD or appointed other counsel \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE John Mark

Judge Code: 2 1 4 1 5

Sentence Date: 26 Feb 09

SCCA/217 (07/2008)

844

OF SOUTH CAROLINA

CITY OF Lexington

VS.

Richard David Ratliff

A:

W Sex: M Age: 66

DOB: SS#:

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-2885

A/W#: J835085

Date of Offense: 7/1/2007 - 7/25/2007

S.C. Code § 16-03-0655(B)(1)

CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct with a Minor, 2nd Degree

in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

A TRUE COPY

Lex. Co. C.C.C.P. G.S. & F.C.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: C. Kanton

PRESIDING JUDGE

Judge Code: 2 1 1 1 4 1 5Sentence Date: 26 FEB 09

SCCA/217 (07/2008)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-2886

A/W#: J835086

Date of Offense: 6/1/2007 - 6/30/2007

S.C. Code § : 16-03-0655(B)(1)

CDR Code #: 0396

SENTENCE SHEET

F SOUTH CAROLINA

Y OF Lexington

VS.

Richard David Ratliff

KA:

Race: W Sex: M Age: 66

DOB: SS#: 16-03-0655

Address:

DL#: SID#:

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct with a Minor, 2nd Degree

in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-155.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 35.13 (Public Def/Prob) \$500 \$ § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ § 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code: 211415Sentence Date: 26 Feb 09Court Reporter: C. Parton

SCCA/217 (07/2008)

846
STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE VS.
Richard David Ratliff
AKA:
Race: W Sex: M Age: 66
DOB: [REDACTED] SS#: [REDACTED]
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2007-GS-32-2887
A/W#: J845115
Date of Offense: 7/9/2007 - 7/12/2007
S.C. Code § : 16-15-0140
CDR Code #: 2468

SENTENCE SHEET

Disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Lewd Act on a Minor (Under 16)

In violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST: [Signature]

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

Fine: \$ _____

} 14-1-206 (Assessments 107.5 %)		\$
} 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
} 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
} 56-5-2995 (DUI Assessment)	\$12	\$
} 35.13 (Public Def/Prob)	\$500	\$
} 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
} 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
} 50-21-114(BUI Breath Test Fee)	\$50	\$
} 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
% to County (if paid in installments)		\$
} 90.11 TP (SCCJA Surcharge)	\$5	\$ 5
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

PRESIDING JUDGE [Signature]

Judge Code: 21 1 1 4 15

Sentence Date: 26 Feb 09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Mr. Richard David Ratliff

AKA: _____
 Race: W Sex: M Age: 66
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

847

INDICTMENT/CASE#: 2007-GS-32-2888A/W#: J845116Date of Offense: 7/9/2007 - 7/12/2007S.C. Code § : 16-15-0140CDR Code #: 2468

SENTENCE SHEET

Disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Sex/Lewd Act on a Minorin violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 or a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 15-43-100.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

Fine: \$ _____

14-1-206 (Assessments 107.5 %) \$ _____

14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

35.13 (Public Def/Prob) \$500 \$ _____

73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

50-21-114(BUI Breath Test Fee) \$50 \$ _____

56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

% to County (if paid in installments) \$ _____

90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ _____

Beth A. Causey
Clerk of Court/ Deputy ClerkCourt Reporter: C. ParsonPRESIDING JUDGE [Signature]Judge Code: 211415Sentence Date: 26 Feb 09

SCCA/217 (07/2008)

SOUTH CAROLINA

Lexington

VS.

Richard David Ratliff

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-2891

A/W#: J845119

Date of Offense: 4/1/2007 - 6/30/2007

S.C. Code § : 16-15-0342

CDR Code #: 2999

SENTENCE SHEET

Race: W Sex: M Age: 66

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Solicitation of a Minor

in violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

A TRUE COPY

Lex. Co. C.C.C.P. G.S. & P.O.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$3.00

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: See Attender 2675724

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 26 Feb 09

Clerk of Court/ Deputy Clerk

Court Reporter: C. Portner

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

VS.
Richard David Ratliff

INDICTMENT/CASE#: 2007-GS-32-2893

A/W#: J845121

Date of Offense: 11/1/2006 - 11/30/2006

S.C. Code § : 16-15-0342

CDR Code #: 2999

Race: W Sex: M Age: 66

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Solicitation of a Minor

in violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to
Lex. Co. C.C.C.P., G.S. & FC

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 35.13 (Public Def/Prob) \$500 \$ § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ § 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ Beth C. Carver

Clerk of Court/ Deputy Clerk

Court Reporter: C. Portman days/hours Public Service Employment.Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: JEX OFFENDER REGISTRATION ☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

 PRESIDING JUDGE THE HON. JUDGEJudge Code: 2 F 1 1 4 1 5Sentence Date: 26 Feb 09

SCCA/217 (07/2008)

STA 850 SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Mr. Richard David Ratliff

AKA:

Race: W Sex: M Age: 66

DOB: SS#

Address:

M#: SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-2894

A/W#: J845122

Date of Offense: 11/1/2006 - 11/30/2006

S.C. Code § : 16-15-0342

CDR Code #: 2999

SENTENCE SHEET

n disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
FO: Criminal Solicitation of a Minor

n violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: *[Signature]*

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
or a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-35

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine: \$

14-1-206 (Assessments 107.5 %)

14-1-211(A)(1) (Conv. Surcharge)

14-1-211(A)(2) (DUI Surcharge)

56-5-2995 (DUI Assessment)

35.13 (Public Def/Prob)

73.3, 1B TP (Law Enforce. Funding)

33.7, 1B TP (Drug Court Surcharge)

50-21-114(BUI Breath Test Fee)

56-5-2942(J) (Vehicle Assessment)

% to County (if paid in installments)

90.11 TP (SCCJA Surcharge)

TOTAL \$

[Signature]
Clerk of Court/ Deputy Clerk

Court Reporter: *[Signature]*

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (07/2008)

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

SEX OFFENDER REGISTRY

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.