

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM Horry COUNTY

John C. Hayes, Circuit Court Judge

Case No. 2014-002676

Justin Rayl #00349311, Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

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APR 17 2015

SC SUPREME COURT

INDEX

INDEX..... 1

ORDER OF DISMISSAL, November 17, 2014..... 3

SENTENCE SHEET FOR 2007-GS-26-03067, December 19, 2011..... 10

NOTICE OF APPEAL, December 18, 2014 11

APPLICATION FOR PCR, December 13, 2012 13

SUPPLEMENT TO APPLICATION FOR PCR, December 13, 2012..... 19

PCR HEARING TRANSCRIPT, Heard October 27, 2014 28

Witnesses

Justin Rayl

Direct Examination31

Cross Examination37

Kia Wilson

Direct Examination46

Cross Examination70

Laura Teal

Direct Examination77

PLEA HEARING TRANSCRIPT, Heard December 13 and 14, 201184

Witnesses

Jackson v. Denno as to 1/16/07 Statement

Detective Daryl Williams

Direct Examination96

Cross Examination102

Redirect Examination.....107

Recross Examination108

Jackson v. Denno as to 2/12/09 Statement

Detective Daryl Williams

Direct Examination111

Cross Examination123

Jackson v. Denno as to 1/30/07 Statement

Brad Whiteis

Direct Examination	127
Cross Examination	133

Jerry Lee McKenzie, III

Direct Examination	169
Cross Examination	181
Redirect Examination.....	187

WARRANT J-132020.....	215
-----------------------	-----

INDICTMENT 2011-GS-46-01837.....	216
----------------------------------	-----

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Justin Monroe Rayl,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-26-9603

HORRY COUNTY
 14 NOV 17 PM 2:59
 CLERK OF COURT

ORDER

This is a Post-Conviction Relief Proceeding

Application filed this Application for post-conviction relief (PCR) on December 13, 2012 along with a Supplement to application and memorandum of law.¹ The undersigned heard this case on October 27, 2014. Lacy Lee, II, Esquire, represented the Applicant. The State was represented by Josh Thomas, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the July 2007 term of the Horry County Grand Jury for abuse/to inflict great bodily injury upon a child (2007-GS-26-3067) and assault and battery of a high and aggravated nature (2007-GS-26-3068). Kia Wilson, Esquire, represented Applicant. On December 13, 2011, Applicant proceeded to trial by jury. However, on December 14, 2011, Applicant pled guilty to abuse/to inflict great bodily injury upon a child. The Honorable Edward B. Cottingham sentenced Applicant to ten years imprisonment. The State nolle prossed the assault and battery of a high and aggravated nature charge on December 16, 2011 (84628-1).

¹ This Supplement is spiced with facts which have not been substantiated by the evidence presented at the hearing. The facts addressed in this Order are those developed at the hearing.

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Applicant filed an appeal on December 21, 2011 to the South Carolina Court of Appeals. The South Carolina Court of Appeals dismissed Applicant's appeal on July 18, 2012 and the matter was remitted to the lower court. The state avers that Applicant currently has another pending appeal.

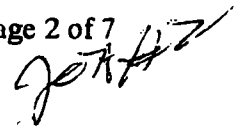
Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Trial counsel rendered ineffective assistance of counsel by:
 - a. failing to properly review all evidence prior to trial
 - b. failing to fully investigate and interview potential witnesses
 - c. failing to retain testimony of expert witnesses to refute State's medical expert testimony
 - d. failing to provide discovery evidence to client for review prior to trial
 - e. failing to effectively cross examine state's witnesses."
2. "Plea counsel's actions resulted in Mr. Rayl's guilty plea not being freely, voluntarily, and understandingly made."

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 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 on 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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient.



Under this prong, the court measures an attorney's performance by its "reasonableness under 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.E. at 117-18, 386 S.E.2d at 625.

The court reads the allegation of the application for post-conviction relief to be an allegation of ineffective assistance of counsel.

With respect to guilty plea trial counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Applicant testified that he met with trial counsel three of four times and that trial counsel was aware that Applicant had been interviewed twice by law enforcement and given a polygraph test. Applicant testified that when he plead he was not aware that trial counsel did not have the transcript of the interview.

Applicant testified that he did not receive discovery until after his plea and that he never received a copy of his second interview and the transcript he did receive had errors "throughout."

Applicant testified that trial counsel received one-half of a transcript and that it contained discrepancies. Trial counsel testifies that she did not have a copy of a transcript of the second interview and the tapes she did get were inaudible. Trial counsel testified Applicant never told her of a second interview nor did anyone else. Trial counsel informed the trial judge that she had not been provided anything regarding a second interview. This is reflected by her statement to the trial judge (TR p. 26 LL 3-25) during a *Jackson v. Denno*² hearing. At the *Jackson v. Denno*

² *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

hearing trial counsel asserted to the court that she was unaware of the second interview and the trial court gave trial counsel overnight to review the state's transcription. The transcript of Applicant's trial and plea reflects the second statement issue was not addressed on the next day.

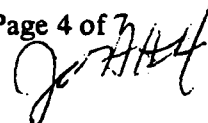
The record reflects that trial counsel exerted all efforts a reasonable attorney would when she found out, the day of trial, that a second interview of Applicant had taken place. This effort resulted in the trial judge granting trial counsel overnight to review the second interview transcript and discuss its ramifications with Applicant.

The Applicant has not provided this court with transcripts of either interview and therefore the court cannot address what, if any value, they had to the State or Applicant. The hearing testimony from trial counsel was that the second interview transcript had a confession on it and that Applicant had never conveyed to her that he had confessed and actually when confronted with its existence Applicant claimed he did not remember it. Applicant testified that his statements during the second interview did not constitute a confession.

Again, the second tape issue is moot as Applicant has failed to place into evidence the tape or the transcripts for this court's assessment of its value or impact on Applicant's trial.

In addition to allegations specifically listed as failures of trial counsel, Applicant additionally asserts his guilt was not freely, voluntarily, or understandingly made based on "plea counsel's advice."

Based on Applicant's testimony his complaint regarding his plea is several fold. First, he testifies he would not have plead guilty if he knew trial counsel did not have the transcription of the second interview. This is belied by the fact that at the time of the plea he was well aware of the issue regarding the second interview as it had been discussed by the state, trial counsel, the Court, and himself on the first day of his trial.



Applicant also alleges he would not have plead guilty but for trial counsel's insistence that he needed to plea or he would be convicted and get a thirty year sentence. Trial counsel testified that she encouraged Applicant to enter a plea of guilt, testified that based on the confession in the second interview Applicant had no defense and told Applicant this. Trial counsel testified she advised Applicant that he could go forward with his trial but she had nothing to offer.

Trial counsel's father, an attorney, was present on the morning of the second day and met with trial counsel and Applicant.³ Applicant testified that trial counsel's father advised him to plead or he would get a 30 year sentence which is exactly what trial counsel had conveyed to Applicant. Applicant testifies trial counsel's father told him trial counsel had done the best she could do and that applicant had no option but to plea. There is nothing in the record that establishes that trial counsel shared any confidential information with her father.

Applicant has not proven that trial counsel's advice was ineffective. That is, the record does not reflect this advice was not true or lacked factual or legal basis. Trial counsel's advice was well within the range of competence demanded of attorneys in criminal cases. Clearly, trial counsel felt the advice she conveyed to Applicant was in his best interest. This being the case, this court need not analyze the second prong of the applicable standard, the "but for" prong, as trial counsel was not ineffective and committed no errors in her representation of Applicant nor in her advice as to a plea being in his best interest.

Applicant attempts the usual artful dodge when confronted with his answers to questions posed by the trial judge during the plea. The dodge is "my attorney made me do it." This position is not supported by the record or the hearing testimony. Applicant claims he was told to

³ Trial counsel also testified that her father also was present when she spoke with the judge prior to Applicant's guilty plea.

couch his answers, not based on the truth, but on what the trial judge wanted to hear. Applicant points to his hesitance to answer the trial judge at page 115 lines 17-25 of the transcript. This portion of colloquy does not support but rather negates Applicant's position. At this point it does appear Applicant had been remonstrated by the trial judge for what the trial judge considered a hesitancy in answering the trial judge's question. At this point, Applicant did confer with counsel (TR p. 115 LL 5-9). Thereafter, the trial judge makes it clear he was not looking for particular answers but wanted to be assured Applicant was pleading guilty freely and voluntarily and Applicant confirmed his plea (TR p. 115 L 9 through p. 116 L 4). If Applicant was simply parroting answer, the trial judge made it clear that what he wanted was confirmation of a free and voluntary plea. Applicant thereafter unequivocally confirmed his plea was being entered freely and voluntarily.


Applicant cannot now dodge his responses to the judge by now stating he lied to the judge. In *Dalton v. State*, 376 S.C. 130, 654 S.E.2d 870 (Ct. App. 2007) the Court of Appeals fully addressed the standard by which apply to review of a plea of guilt, *Dalton* establishes the sanctity of a guilty plea and the hurdles one attacking his or her plead of guilt must vault. Applicant has not established that trial counsel told him how to answer the questions posed by the judge. Even if she told him how to couch his answers this does not eviscerate his plea. Applicant, regardless of how he answered, stated repeatedly, as set forth herein above that he was entering his plea freely and voluntarily. Applicant cannot now with any degree of credibility establish his plea, regardless of how he answered the judge's questions, was anything other than a free and voluntary act on his behalf.

Applicant has failed to carry his burden of proof and failed to prove his counsel was ineffective or that his plea was anything but freely, voluntarily, and understandingly made.

Wherefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

Applicant is hereby placed on notice that any petition for certiorari to the South Carolina Supreme Court must be filed within thirty (30) days. See Appellate Court Rules 203, 206, and 227(b).

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #7

November 16th, 2014
Conway, South Carolina

COUNTY OF Horry
STATE VS.

INDICTMENT/CASE#: 2007GS2603057

Justin Monroe Rayl

A/W#: 1476707

AKA:

Date of Offense: 1/7/2007

Race: WHITE Sex: M Age: 28

S.C. Code §: 16-03-0095(A)

DOB: 10-23-1983 SS#: [REDACTED]

CDR Code #: 2766

Address:

City, State, Zip: [REDACTED]

DL#: 011319027 SID#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Abuse / To inflict great bodily injury upon a child

CONVICTED OF or PLEADS

SENTENCE SHEET

in violation of § 16-03-0095(A) of the S.C. Code of Laws, bearing CDR Code # 2766
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] SCB75159 [Signature] 69441
Livesey, Name SC Bar# 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 § 16-15-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-25 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
 Set by SCDPPPS

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.00

 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 install-
ments of \$ 25.00 beginning 01/14/2012
\$ paid to Public Defender Fund
Other: Ankle monitor (GPS);
Bondsman must remain on bond;
Report on January 9, 2012 at 5:00pm

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Melanie Harris Ward
Court Reporter: Kay Richardson
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2091
Sentence Date: December 14, 2011

FILED
HORRY COUNTY
CLERK OF COURT
DEC 14 2011
PM 4:30

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM Horry County
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge


FILED
HORRY COUNTY
2014 DEC 18 PM 2:44
KELANIE HUGGINS-WARD
CLERK OF COURT

Case No. 2012-CP-26-9603

The State, Respondent.
v.
Justin Rayl, Appellant.

NOTICE OF APPEAL

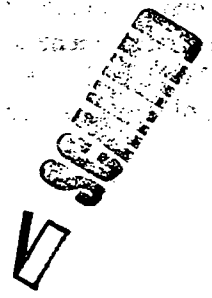
Justin Rayl appeals the denial of post-conviction relief in this case. The Order of Dismissal was served on Appellant on November 25, 2014.



Bobby G. Frederick
P.O. Box 8219
Myrtle Beach, SC 29578
Phone: 843-444-6122
Attorney for Appellant

Other Counsel of Record:
Joshua Thomas, Esquire
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

December 17, 2014



THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

FILED
HORRY COUNTY
2014 DEC 18 PM 2:44
MELANIE HUGGINS-WARD
CLERK OF COURT

Case No. 2012-CP-26-9603

The State, Respondent.

v.

Justin Rayl..... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and copy of the Request for Transcript to the following recipients by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2014, addressed to:

Daniel Shearouse, Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

Horry County Common Pleas
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

Other Counsel of Record:
Joshua Thomas, Esquire
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Mindi Ellison
Mindi Ellison
Legal Assistant

December 17, 2014

FILED
HORRY COUNTY
2014 DEC 17 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Justin Monroe Rayl, SCDC #349311)
Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

HORRY COUNTY
12 DEC 13 PM 4:14
RECLERK

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 Kershaw Correctional Institute
2. Name and location of Court which imposed sentence Court of General Sessions for the Fifteenth Judicial Circuit, Horry County Judicial Center, Courtroom 3A, 1301 Second Avenue, Conway, South Carolina 29526
3. Name(s) of co-defendant(s) (if any) Emily McKenzie
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Case # 2012-GS-26-3067; Infliction of Great Bodily Injury Upon a Child
 - (b) Case # 2012-GS-26-3068; Assault and Battery of a High and Aggravated Nature
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) December 14, 2011, 10 years imprisonment
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Post conviction relief is appropriate; see attached.
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached.
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached.
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. N/A

Revised 3/2003

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

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) Post conviction relief is appropriate; see attached.

(b) _____

Revised 3/2003

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Kia Wilson, 203 Laurel Street, Conway, South Carolina 29526
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Kia Wilson - Arraignment, Trial, Guilty Plea.
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
Any relief available in post conviction relief proceedings to include a new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)
)
County of Horry)

VERIFICATION

I, Angela D. Harrison, on behalf of Justin Monroe Rayl, 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.

Angela D. Harrison

SWORN to and subscribed before me this 13th
day of December, 2012

Stephanie M. Jurgalski (L.S.)
Notary Public

My Commission Expires: 3/8/2014

HORRY COUNTY
12 DEC 13 PM 4:44
MELANIE JOHNSON-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Justin Monroe Rayl

v.

State of South Carolina

)
)
) SUPPLEMENT TO APPLICATION FOR
) POST-CONVICTION RELIEF AND
) INCORPORATED MEMORANDUM OF LAW

12 DEC 2011 3:41 PM
CLERK OF COURT
HORRY COUNTY

Petitioner Justin Monroe Rayl, by and through his counsel, respectfully requests that the Court grant his petition for post-conviction relief, on the following grounds:

JURISDICTIONAL STATEMENT AND STATEMENT OF FACTS

Justin Monroe Rayl was charged in Horry County, South Carolina, with Abuse to Inflict Great Bodily Injury on a Child and Assault and Battery of a High and Aggravated Nature in February of 2007. Mr. Rayl was indicted on the same charges in Horry County, South Carolina on July 19, 2007. Shortly after he was charged, Thomas Floyd of the Horry County Public Defender's Office was appointed as his counsel. At some point during the pendency of his case, Mr. Rayl's case was transferred to Kia Wilson with the Horry County Public Defender's Office, who represented him at the time the case was called for trial in Horry County in December of 2011.

Prior to the close of the State's case and at the close of the first day of testimony, the Solicitor produced a transcript of a taped interview with Mr. Rayl, which had previously not been provided to Mr. Rayl's counsel. The next morning, December 14, 2011, on the advice of his attorney, Mr. Rayl pled guilty to the charge of Abuse to Inflict Great Bodily Injury on a Child and Assault and Battery and was sentenced to ten years in prison.

FIRST GROUND FOR POST CONVICTION RELIEF:

PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO PROPERLY REVIEW ALL EVIDENCE PRIOR TO TRIAL

Strickland v. Washington, 466 U.S. 668 (1984), sets forth a two-pronged test for claims of ineffective assistance of counsel: 1) that counsel's advice was not within the range of competence demanded of attorneys in criminal cases; and 2) that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on a trial. Id.; see also Hill v. Lockhart, 474 U.S. 52 (1985) (applying the Strickland standard to guilty plea challenges based on ineffective assistance of counsel). Petitioner's testimony that he would have proceeded to trial is sufficient evidence to satisfy the prejudice prong. Jackson v. State, 321 S.C. 554 (1996) (*overruling* Judge v. State, 321 S.C. 554 (1996), which held that prejudice must be shown by objective evidence).

At the commencement of Mr. Rayl's trial, his counsel moved for a continuance based on not having adequate time to prepare Mr. Rayl's case due to the late discovery of several items, in particular a report from Dr. Peterson, an ophthalmologist who treated the victim in the case despite the case being several years old and discovery having been provided well in advance of trial. Mr. Rayl's counsel failed to properly review all discovery provided by the Solicitor. Had counsel done so, the ophthalmologist's report as well as the transcript of Mr. Rayl's February 12, 2007 statement would have been discovered prior to the start of trial and would have afforded trial counsel sufficient opportunity to review these documents, conduct independent investigation, and take all steps reasonably necessary to prepare for trial. The Solicitor's office contends that the tapes were sent tendered to the Horry County Public Defender's Office on in February of 2011, and the

statement is referenced in the Police Investigation Report, which was sent to Mr. Rayl's counsel in initial discovery provided in 2007. Additionally, a motion hearing was held during October 2012 at which the tapes were referenced. Counsel had close to five years from the date of the original charges until the commencement of trial, counsel in the exercise of reasonable diligence should have been alerted to the existence of these documents, and took the necessary steps to procure transcripts prior to trial, particularly where the quality of the taped statements had been called into questions previously. Had counsel properly reviewed and inventoried the evidence, counsel would have discovered the missing transcript at an earlier date, allowing her to have been better prepared to try the case.

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052 (1984); *see also* Nance v. Ozmint, 367 S.C. 547, 557 n.8, 626 S.E.2d 878 n.8 (2006) (*quoting* Wiggins v. Smith, 539 U.S. 510, 524-25 (2003)) (“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.”) Counsel failed to read the documents prepared by the State, meaningfully evaluate them, and pursue the necessary next steps.

“While a defendant must ordinarily show that counsel’s ineffective assistance resulted in actual prejudice, such a showing may be exempted where counsel’s ineffectiveness is so pervasive as to render a particularized prejudiced inquiry unnecessary.” Frett v. State, 298 S.C. 54, 57, 378 S.E.2d 249, 251 (1988). Additionally, actions resulting in a constructive denial of

counsel result in a determination of per se prejudice. Constructive denial of counsel occurs when a lawyer “entirely fails to subject the prosecution’s case to meaningful adversarial testing, thus making the adversary process itself presumptively unreliable.” Nance v. Ozmint, 367 S.C. 547, 552, 626 S.E.2d 878, 880 (2006); *also see id.*

SECOND GROUND FOR POST CONVICTION RELIEF:

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO FULLY INVESTIGATE AND INTERVIEW POTENTIAL WITNESSES

“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.” Ard v. Catoe, 372 S.C. 318, 331 (2007); *see also Lounds v. State*, 380 S.C. 454 (2008).

The state’s case against Mr. Rayl rested heavily on the statement of his codefendant, the victim’s mother, who had a long history of violent behavior toward Mr. Rayl as well as the victim in the case. Plea counsel did not independently interview Mr. Rayl’s codefendant, nor did plea counsel have copies of Ms. McKenzie’s statements to police and caseworkers with the Department of Social Services, instead relying on the incident reports and summarizations of statements by the officers and officials involved.

Mr. Rayl provided counsel with an extensive list of potential witnesses who could testify to his codefendant’s violent behavior toward both Mr. Rayl and the victim. Additionally, several medical providers stated opinions in medical records that were beneficial to Mr. Rayl’s case.

However, trial counsel did not interview these witnesses prior to trial. Counsel failed to sequester Mr. Rayl's sister, Amanda Loehr, stating that counsel did not intend to call her to testify.

Despite having knowledge of two prior incidences of Criminal Domestic Violence in which Mr. Rayl's codefendant was the primary aggressor, counsel failed to obtain police reports, photographs of Mr. Rayl's injuries, or even interview responding officers.

Having these witnesses available to testify and having an idea of to what matters they would testify would have resulted in Mr. Rayl's having a better understanding of the case to be presented on his behalf and his being able to make a knowing and intelligent decision regarding whether to proceed with trial. Had Mr. Rayl been aware of the testimony to be presented at trial and confident that his counsel had performed diligent investigation, research, and preparation of his case, he would have been better able to assess whether to proceed with trial or plead guilty.

THIRD GROUND FOR POST CONVICTION RELIEF:

PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO RETAIN TESTIMONY OF EXPERT WITNESSES TO REFUTE STATE'S MEDICAL EXPERT TESTIMONY

Counsel has an obligation to conduct a thorough and independent investigation of the allegations in the case. See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052 (1984).

Mr. Rayl's case very significantly hinged on a determination of the cause and timing of the injury to the victim. As such, it was necessary for counsel to subject the state's medical evidence to a thorough and independent investigation. By her own admission during pretrial motions, counsel had not interviewed at least one of the doctors, whose report she viewed as critical in the case. Further, she did not interview the nurses who treated the victim, and she engage any expert witnesses to review the medical records in the case so that she would be able to put forth a meaningful rebuttal to the State's evidence. This resulted in severe prejudice to Mr. Rayl, precluding his ability to make a knowing and voluntary waiver of his right to trial. Had Mr. Rayl felt confident that counsel had properly investigated the case and prepared his defense, he would not have pled guilty.

FOURTH GROUND FOR POST CONVICTION RELIEF:

PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO PROVIDE DISCOVERY TO CLIENT FOR REVIEW PRIOR TO TRIAL

Mr. Rayl's guilty plea was not knowingly entered into because plea counsel did not provide Mr. Rayl with copies of discovery received from the Solicitor. Because of plea counsel's failure to provide these documents, Mr. Rayl had to rely on counsel's review of the evidence and her ultimate advice that she could not properly defend him with the evidence against him and that his only appropriate course of action was to accept the plea offer from the Solicitor.

FIFTH GROUND FOR POST-CONVICTION RELIEF:

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO EFFECTIVELY CROSS EXAMINE STATE'S WITNESS

The first and only witness prior to Mr. Rayl's guilty plea was the victim's father, whose testimony included several inconsistencies with evidence in the case as well as statements he had previously made. Plea counsel never questioned the witness regarding any of these inconsistencies. There were several opportunities for impeachment, on which plea counsel failed to capitalize. For instance, Mr. McKenzie testified that the victim was healthy and well-developed, but medical records clearly showed that he was not potty-trained despite being three-years old, was developmentally challenged, and was seen very regularly at the doctor and other hospitals in the area. Additionally, Mr. McKenzie testified at trial that Mr. Rayl's codefendant was a "wonderful mother," despite several negative comments he made about her parenting skills in the initial incident reports and throughout the investigation.

Plea counsel's failure to even attempt to impeach the State's witness resulted in a failure of the adversarial process, further convincing Mr. Rayl that a trial was futile and that his only available course of action was to accept the State's plea offer.

SIXTH GROUND FOR POST-CONVICTION RELIEF:

PLEA COUNSEL'S ACTIONS RESULTED IN MR. RAYL'S GUILTY PLEA NOT BEING FREELY, VOLUNTARILY, AND UNDERSTANDINGLY MADE

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "The longstanding test for

determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

However, "a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case." Sanchez v. United States, 50 F.3d 1448, 1453 (9th Cir.1995); accord Gustine v. State, 325 S.C. 123, 127-28, 480 S.E.2d 444, 446 (1997) ("waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences").

I. MR. RAYL'S GUILTY PLEA WAS COERCED

On the second day of trial, plea counsel brought her father, a well-respected former Horry County Solicitor, into the conference with Mr. Rayl and his family. Mr. Rayl's family was very familiar with Mr. Wilson and respected his legal expertise. Mr. Wilson advised Mr. Rayl that His only viable option was to plead guilty to the charges. Mr. Wilson advised Mr. Rayl that Ms. Wilson had done all she could for Mr. Rayl and that pursuing trial any further would be futile. This resulted in a form of coercion, forcing Mr. Rayl to believe that he had no viable option of continuing with trial.

II. PLEA COUNSEL REFUSED TO FURTHER DEFEND MR. RAYL

Plea counsel arrived for the second day of trial and appeared very agitated. Not only did plea counsel request the presence of her Father, a well-respected former Horry County Solicitor, but she made it clear that she was no longer prepared to represent Mr. Rayl in light of the newly

discovered statement. Instead of asking for a continuance or withdrawing from counsel, Ms. Wilson informed the defendant that he needed to take the offer that the Solicitor gave him and plead guilty, effectively denying Mr. Rayl his right to a jury trial.

CONCLUSION

Justin Rayl's trial counsel rendered ineffective assistance of counsel by 1) failing to properly review all evidence prior to trial; 2) failing to fully investigate and interview potential witnesses; 3) failing to retain expert witnesses to refute the State's expert medical testimony; 4) failing to provide evidence to Mr. Rayl to review prior to trial; and 5) failing to effectively cross-examine state's witnesses. Mr. Rayl would have elected to not plead guilty and proceed to trial but for counsel's advice. Furthermore, Mr. Rayl's guilty plea was not made knowingly, voluntarily, or intelligently made due to cumulative errors on the part of trial counsel, coupled with coercion by trial counsel's father.

Respectfully submitted,



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December 13, 2012

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OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
COUNTY OF HORRY) CASE NO.: 2012-CP-26-9603
PCR HEARING

October 27, 2014

BEFORE: The Honorable John C. Hayes

JUSTIN RAYL,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

 **ORIGINAL**

APPEARANCES:

Joshua Thomas, Esq.
Attorneys for the Respondent.

Lacey Lee, Esq.
Attorneys for the Petitioner.

Official Court Reporter
Natalie Dahl, RPR

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I N D E X

WITNESS

PAGE

JUSTIN RAYL

Direct Examination by Ms. Lee..... 4
Cross-Examination by Mr. Thomas..... 10

KIA WILSON

Direct Examination by Ms. Lee..... 19
Cross-Examination by Mr. Thomas..... 43

LAURA TEAL

Direct Examination by Ms. Lee..... 51

E X H I B I T S

PETITIONER'S

MARKED

ADMITTED

1 Letter 26 26
2 Medical records 30 30

P R O C E E D I N G S

1
2 MR. THOMAS: This is Justin Rayl versus State of
3 South Carolina, 2012-CP-26-9603. He was indicted in
4 July of 2007 for assault and battery of a high and
5 aggravated nature and inflicting great bodily injury
6 on a minor child. He was represented on these charges
7 by Kia Wilson. He began a trial on September 13,
8 2011, but the next day, the 14th, he pled guilty to
9 inflicting great bodily injury on a child. The ABHAN
10 was nulle prossed in exchange for that. Judge
11 Cottingham sentenced him to ten years, and Ms. Wilson
12 filed a Notice of Appeal, but because it was from a
13 plea, the Court of Appeals dismissed that.

14 A PCR was filed in December of 2012 alleging
15 ineffective assistance of counsel, failure to review
16 discovery, failure to investigate witnesses, failure
17 to retain experts, failure to share discovery, failure
18 to cross-examine witnesses and also an involuntary
19 guilty plea. He is present in the courtroom
20 represented by Lacey Lee.

21 THE COURT: Ms. Lee.

22 MS. LEE: Going over the grounds of the PCR, we'll
23 cover that counsel was ineffective in properly
24 reviewing all of the evidence. We're withdrawing the
25 second ground to investigate potential witnesses, as

1 well as the third ground with the experts, and going
2 forward on the remaining grounds of failure to provide
3 discovery to the client, failure to effectively
4 cross-examine witnesses and providing discovery to the
5 client, as well as the guilty plea being not
6 voluntary, and coerced.

7 THE COURT: All right.

8 MS. LEE: At this time, we'll call Justin Rayl.

9 (JUSTIN RAYL, having been duly sworn,
10 testified as follows:)

11 THE CLERK: State your name and spell your last for
12 the Court.

13 THE WITNESS: Justin Rayl, R-A-Y-L.

14 DIRECT-EXAMINATION

15 BY MS. LEE:

16 Q How many times did you meet with your attorney,
17 Ms. Wilson, before trial?

18 A Maybe three or four times, ma'am.

19 Q How many times did you meet with the police
20 before you were arrested?

21 A Twice, ma'am -- well, three times if you -- twice
22 for an interview, and once for a polygraph, ma'am.

23 Q Okay. And was your attorney aware of both of
24 these interviews?

25 A Yes, ma'am.

1 Q How was she aware of these meetings?

2 A It was mentioned in not only the previous motion
3 hearings, but also during talk with her and I and my
4 family and such.

5 Q And your attorney claims she didn't get these
6 until the day of trial, correct?

7 A Correct, ma'am.

8 Q Had your attorney reviewed both transcripts of
9 these interviews and been aware of both meetings before
10 your trial date, would you have pled guilty?

11 A No, ma'am.

12 Q Justin, when did you get the discovery in your
13 case?

14 A After my case was over with. I finally got the
15 discovery three weeks after I pled guilty, two days
16 before I actually went into incarceration, ma'am.

17 Q When -- had you asked for discovery before?

18 A Yes, ma'am.

19 Q And you did not receive it?

20 A Correct.

21 Q How did you go about getting your discovery after
22 a plea?

23 A Numerous phone calls were done, and I showed up
24 at the Public Defender's Office multiple times.
25 Finally, I just went down there and sat in the office

1 for about an hour until they came out with most of it.
2 They said, This is most of it. It is photocopied.
3 Here you go. At that point, I mentioned where is the
4 tapes, where is the rest of it, and they say, oh,
5 we'll get it. At that point, I'm like, Listen, I'm
6 going to prison in like two days, this is essential
7 that I have this. I haven't had it before. They
8 said, We'll get it to you, don't worry, and just kind
9 of dismissed me from there.

10 Q Did you ever get those tapes?

11 A No, ma'am.

12 Q Would you have pled guilty had you been aware of
13 all the discovery in your case?

14 A No, ma'am.

15 Q And what did you see in your discovery after you
16 pled guilty that may have stuck out?

17 A There were lots of different things, such as the
18 actual transcript from my second interview. I never
19 received a full copy of it until after this. It was
20 -- there were errors throughout the entire thing.
21 There was testimony from one of the medical experts
22 that interviewed the victim, in which she said that --
23 the victim claimed that it was the mother that
24 inflicted the injuries. When she said, Who did this
25 to you, he said, My mommy did it. That wasn't brought

1 up at any point.

2 There was also things like an ophthalmologist
3 review, which was -- it was a report that my lawyer
4 never even procured or that she had shown me. I mean,
5 there was a lot in there. It was a very thick binder.

6 Q Had you been aware of everything in that binder,
7 all of this discovery before trial, would you have
8 pled?

9 A No, ma'am. No, ma'am.

10 Q Justin, who met with you the morning before you
11 pled guilty?

12 A That would be my lawyer and also my lawyer's
13 father, Mr. Wilson.

14 Q Did you know him before that day?

15 A No, ma'am.

16 Q Did you know that he was an attorney before that
17 day?

18 A It had been mentioned to me, but I didn't know
19 the man's position.

20 Q What did Kia say -- Ms. Wilson -- in that meeting
21 before you went in to plead guilty?

22 A In that meeting, she basically just introduced
23 her father and said this is my father, he's going to
24 tell you what is going on, and then Mr. Wilson
25 proceeded to tell me, you know, Kia has done

1 everything she can. There is no other options. You
2 have to give it up. You are going to prison for 30
3 years if you keep trying. She's done everything she
4 can. But right before that meeting, the transcript
5 that I had been provided, it was about 28 pages long,
6 I would say, Page 1, 3, 5, 7 and 9 and such forth was
7 given to me. I was only provided half of the
8 transcript. When I informed Kia Wilson of this that
9 day, she said, Don't worry, you don't need it, it is
10 over with.

11 THE COURT: Which transcript?

12 MS. LEE: The transcript from the second interview
13 of him with the police. It was in February. The
14 first one was in January.

15 A You know, I'm trying to make her aware, Kia, this
16 thing is riddled with errors. This is obviously not a
17 shut case. We can still fight this. And she was
18 like, No, I can't properly defend you, but I'm not
19 going to recuse myself, you have to take this deal or
20 you'll go to prison for 30 years, and that is what she
21 told me.

22 Q (MS. LEE) Before you went in the courtroom, did
23 Kia go over the rights with you that the judge would
24 go over with you as well?

25 A Yes, ma'am, in a fashion she did. She instructed

1 me that the judge who was presiding over the case
2 would ask me questions. She told me that she's not
3 going to tell me to lie, but answer him exactly the
4 way he wants to be answered, that any kind of answers
5 he doesn't like, he will throw out the plea deal and
6 I'll have to go to court, and if I do, I'll go to
7 prison for 30 years. There was no ifs, ands or buts,
8 you must answer him exactly how he wants or you will
9 go to prison for 30 years.

10 Q And you almost didn't answer the way he, quote,
11 wants; is that correct?

12 A Correct, ma'am.

13 Q I'm referring to Page 114 in the transcript,
14 starting at Line 17, to Page 115 through Line 25 on
15 that page. You hesitated, is that correct, when going
16 over these rights?

17 A Yes, ma'am.

18 Q And what did the judge say to you?

19 A Unbeknownst to the judge, he didn't know what my
20 lawyer had just told him, so he didn't realize that he
21 was coercing me into doing this, but he made sure --
22 you have to answer me immediately, right as soon as I
23 ask you, you know. I forget in which way he worded
24 it, but basically telling me no delays, no nothing,
25 you have to answer me right away, you know, or else

1 he'll throw out the guilty plea and we'll go through
2 the trial. It was already explained to me that
3 because my lawyer would not represent me properly --
4 that she couldn't represent me properly, that a trial
5 meant 30 years, that that is what a trial meant. They
6 were synonymous with each other at that point.

7 Q Had that meeting not occurred, and had you not
8 met with Ms. Wilson's father, would you have pled
9 guilty?

10 A No, ma'am.

11 MS. LEE: No further questions.

12 MR. THOMAS: If it pleases the Court.

13 CROSS-EXAMINATION

14 BY MR. THOMAS:

15 Q Sir, you said you had about three, four meetings
16 with Ms. Wilson?

17 A Yes, sir.

18 Q And during those meetings, did you get a chance
19 to discuss -- I guess you said she never gave you all
20 the evidence in your case?

21 A Correct, sir.

22 Q So did you at least get a chance to discuss that
23 evidence with her?

24 A Some of it. She was still trying to procure
25 evidence even as the trial started. She was still

1 trying to procure more evidence the day, literally, it
2 was starting. She hadn't gotten it all even on the
3 day.

4 Q So she discussed with you what she had as it was
5 coming in, though?

6 A Some of it. A lot of it that she had, she --
7 such as, there was a whole bunch of tapes. The tapes
8 in general, she said, We won't get them transcribed.
9 The Solicitor won't get them. If he is not going to
10 send us a transcription, we won't bother with it. But
11 a lot of stuff, you know, I would continuously try to
12 call the Public Defender's Office and, you know, not
13 get replies and such, you know, trying to find out
14 what was going on with the specific aspects.

15 Q Let's talk about the tapes a little bit. You had
16 a discussion with Ms. Wilson about your defense to this
17 charge, that it was going to be that somebody else
18 probably inflicted these injuries on the child?

19 A Yes, sir.

20 Q You remember giving two different statements to
21 the police?

22 A I remember a little bit of it. It was a crazy
23 time back then. Initially, I was told by my
24 codefendant, you know, this isn't something that is
25 bad, everything is fine, we'll be good. As time

1 progressed, it started escalating more and more into
2 looking like it was something negative. So I tried to
3 work with the police, including calling them numerous
4 times and trying to get them; however, every time I
5 tried to call, you know, I don't remember the
6 officer's name who was investigating, I never got a
7 response back. It seemed like they we're evading me
8 every time we tried to get in touch with them.

9 Q Let's talk about the two times you did speak with
10 them. You went on January 16th; is that correct?

11 A I don't know.

12 Q You met with them for the first time in January?

13 A I would assume.

14 THE COURT: What year?

15 MR. THOMAS: 2009, Your Honor.

16 MS. LEE: 2007.

17 THE COURT: Okay.

18 Q (MR. THOMAS) So you meet with them the first
19 time, and then you went back a month again in February
20 and met with police again?

21 A That sounds correct. I believe so, sir.

22 Q And that is when you were arrested?

23 A Yes, sir.

24 Q There was -- you did eventually get a transcript
25 of that second interview that you gave to police?

1 A I got half of the transcript, sir.

2 Q And you said, from what you recall from reading
3 that transcript, that there were discrepancies in it?

4 A Yes, sir.

5 Q So you remember your conversation with police in
6 February when you were arrested?

7 A Not so much that I -- I don't remember the whole
8 thing, but just reading the transcript, it's blatantly
9 obvious there is discrepancies.

10 Q Did you ever tell Ms. Wilson what that transcript
11 actually said?

12 A By that -- by that time? The night that she had
13 the transcript and I had the transcript -- well, I had
14 half of it -- she called me on the phone that night,
15 and I tried to talk with her about it; however, in no
16 way, shape or form or fashion was she hearing what I
17 saying. She said, Look on Page 18, it means it's over
18 with. I was like, Kia, at this point it has this
19 wrong, and at this point it has this wrong. There is
20 no way that this one little part, which doesn't even
21 look bad, is a clencher. And she's saying, No, no,
22 listen, we're done, it's over with, talk with you
23 tomorrow, and off the phone literally that fast.

24 Q The gist of the second transcript is that you
25 gave, basically, a confession with the police?

1 A No.

2 Q That is not what the second transcript indicated?

3 A That is what they were trying to put up; however,
4 in no way, shape, form or fashion did I give any kind
5 of confession.

6 Q You never told Ms. -- never explained to her
7 before you got that transcript -- did you ever tell her
8 what the substance of your conversations were in that
9 second meeting with the police?

10 A We went over it generally, but she had contested
11 that the -- the quality of the tapes had degraded so
12 much that they would need transcribing; however, she
13 said if the Solicitor wasn't going to transcribe the
14 tapes, then she wasn't because it didn't need to be
15 done.

16 Q So you said in your direct testimony that you
17 would not have pled guilty if you had known about the
18 second transcript?

19 A I would not have pled guilty if I had access to
20 that transcript ahead of time and had known what was
21 in it, no, sir.

22 Q But you remember giving that statement to the
23 police on that day, so you knew what you said that day?

24 A I vaguely remember hardly anything from that day.
25 That day was the craziest day I ever had in my life,

1 sir.

2 Q But you remember there were these minute details
3 wrong in the --

4 A As I'm reading the transcript, it became obvious.
5 Things like my nephew's name was incorrect. It
6 started rambling on about discrepancies about my
7 schooling. At one point it says that the
8 investigating officer was having a relationship with
9 the -- with my codefendant, and that the victim
10 mentions sleeping at the officer's door, and that
11 seemed like a big one to me.

12 Q You said she told you to be compliant with the
13 judge and answer his questions like he asked?

14 A Yes, sir, to the point that if I did not answer
15 them exactly how he wanted them, then my guilty plea
16 would be thrown out and I would go to prison for 30
17 years.

18 Q If you didn't want to plead guilty, why were you
19 complying with the judge?

20 A Pardon?

21 Q You said you were coerced into pleading guilty,
22 but the judge gave you an opportunity to --

23 A Yes, sir.

24 Q But you still said, No, Judge, I want to plead
25 guilty?

1 A Because, at the time, I was being coerced into
2 not only 30 years -- 10 versus 30 -- but I was being
3 denied counsel. My lawyer just told me that she's not
4 going to be able to properly represent me, and I'm
5 going to prison for 30 years if I don't take the 10.

6 Q Do you remember the judge asking you if you were
7 satisfied with Ms. Wilson's services?

8 A Yes, sir.

9 Q What did you tell him?

10 A I said, Yes, sir. Because at the time, I was
11 told that if I didn't answer the judge exactly how he
12 wants, I would go to prison for 30 years because we
13 would have to go through the whole trial.

14 Q So you were afraid of going to prison for 30
15 years?

16 A I imagine anybody would be, sir.

17 Q Did you plead guilty to avoid going to trial and
18 getting that 30-year sentence?

19 A I pled guilty -- I guess that would be it, yes,
20 sir.

21 Q Didn't tell the judge that Ms. Wilson didn't give
22 you anything?

23 A Pardon?

24 Q When the judge asked if Ms. Wilson had done
25 everything you wanted, you didn't tell him anything in

1 response to that?

2 A At the time, he was aware of many things already
3 wrong with my case. He had gotten -- there was a
4 motion --

5 Q Mr. Rayl, I'm not -- and I appreciate that, but
6 I'm not asking you what you think the judge knew at the
7 time, I'm asking you why when the judge said, Has she
8 done everything you wanted her to, why didn't you say,
9 No, Judge, actually she hadn't?

10 A Because I didn't want to go to prison for 30
11 years. I was told if I did not answer this gentleman
12 exactly how he wishes, that I would go to prison for
13 30 years, and that I would have no proper
14 representation to defend myself. If I didn't do
15 exactly how he wants, then it was over with.

16 Q So you lied to the judge to get the ten-year
17 sentence instead of 30 years?

18 A I was forced into it and told to do this, or that
19 is it, 30 years.

20 Q So you got what you expected when you lied to the
21 judge?

22 A Pardon?

23 Q When you lied to the judge you expected what to
24 get, the ten-year sentence instead of 30?

25 A When you don't know any better -- you know, I

1 don't know anything about the law. I didn't know that
2 you can't be coerced, you can't be forced into it, you
3 can't be lied to, you have to properly be represented.
4 I didn't know all of this at the time.

5 Q You can't be lied to, but it is okay to lie to
6 the judge?

7 A All I knew is at the time they were telling me
8 that if I don't do exactly what he wants, that I'm
9 going to go to prison for 30 years.

10 MR. THOMAS: No further questions.

11 THE WITNESS: And the judge said answer exactly how
12 I want you to answer me.

13 MR. THOMAS: Thank you. No further questions.

14 THE COURT: Redirect?

15 MS. LEE: Court's indulgence.

16 (A brief pause in the proceedings.)

17 MS. LEE: No further questions.

18 THE COURT: You can step down. Thank you.
19 Anything further?

20 MS. LEE: I would like to call Ms. Kia Wilson.

21 (KIA WILSON, having been duly sworn, testified
22 as follows:)

23 THE CLERK: State your name and spell your last for
24 the record.

25 THE WITNESS: Kia Wilson, W-I-L-S-O-N.

DIRECT-EXAMINATION

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BY MS. LEE:

Q Ms. Wilson, how long did you have this case?

A Probably about a year or so. I believe that Mr. Rayl had been represented in our office for about five years. He was represented by Tom Floyd initially. I don't know if Mr. Floyd was relieved or what happened, but ultimately I was appointed.

Q Okay. And during the motions before the trial started, it came up about the second transcript, correct?

A Yes.

Q And you said you had a problem with the second interview?

A Yes.

Q And you said you did not have a copy of the transcript from him talking to the police on February 12, 2007?

A Right.

Q There is a reference in the transcript on Page 26, Lines 10 through 11.

You did have the first interview from January 16th, correct?

A I don't remember the date, but I had the first one, yes.

1 Q Had you not been aware of this transcript at a
2 prior hearing about both of those interviews?

3 A No. As a matter of fact -- well, this is where I
4 think the confusion came in. We had spoken -- and
5 despite the fact he said he only had three, four maybe
6 interviews or conferences, we spoke quite frequently,
7 primarily because I was coming into this case kind of
8 late in the game. The discovery was all out there.
9 Everything was supposedly already available in this
10 case when I got it; and it was old, very old.
11 Apparently, a lot had not been done with it prior to
12 my receiving it. So I was relying heavily on my
13 conversations with my client. I spoke with him and
14 various members of his family about this incident.

15 At no point in time did he ever -- we talked
16 about the tapes. We sat together and tried to listen
17 to them. They were inaudible. He couldn't make out
18 stuff, I couldn't. I talked to my boss about getting
19 the transcript, she said the State is going to be
20 transcribing it, get their copy and let's use that.
21 Makes perfect sense.

22 When we get the transcript, I get a transcript.
23 We go through it. At no point in time does my client
24 say to me, There was another conversation, where is
25 that one, or -- and there seems to be a gap because I

1 recall asking, Was this it? Is there anything else?
2 At any point in time did you talk to the police?
3 Nobody ever seemed to know there was another
4 conversation, which clearly the confession portion was
5 in. So I don't know -- I don't know what happened
6 there. I was very frustrated, because we put in a lot
7 of work and time in preparing this for trial. I
8 thought we had a pretty good case theory, but go
9 figure.

10 Q So you had not been made aware of that transcript
11 at a prior hearing?

12 A I don't think so; and if I had, I don't know that
13 I was under the impression that that second transcript
14 was a different hearing date.

15 Q On Page 26 of the transcript, Line 18, did the
16 Solicitor say, Tell the judge that not only did we have
17 a hearing earlier about both of these interviews,
18 transcribed both tapes, sent them to Ms. Wilson and
19 then met with her at the Horry County PD to look
20 through all the tapes?

21 A And those things are true. What is true is that
22 she was supposed to send me the transcripts. Now,
23 when she sent me the one, she claimed she also sent
24 the other one. If you also look at the transcript,
25 I'm pretty sure it talks about the fact that I very

1 specifically said on the record that I did not receive
2 this from her, and I maintain that to this day.

3 There were a lot of little dirty tricks and
4 things going on with the Solicitor in this case,
5 sending me voluminous amounts of medical records out
6 of order, not giving me a couple of pages in one
7 medical report, which would have, of course,
8 necessitated me going back and getting the two pages,
9 and then she would send me the entire stack all over
10 again, again out of order. A lot of things were
11 happening here. So my work was doubled, basically.

12 Still, I am very clear that that transcript was
13 never received. And also in that report the judge --
14 I asked the judge specifically to request of the State
15 the signed receipt saying that I had got that
16 transcript, and they were never able to present it,
17 because they never sent it. We never got it. I got
18 it the day of trial.

19 Q And going off of Page 35, Line 16 of the
20 transcript, did the Solicitor also say that Detective
21 Williams stated in his interview that he met with the
22 Defendant twice?

23 A In his interview where? On the tapes?

24 Q In his report did he say that?

25 A Yes. And we actually talked about that. My

1 client said he did not recall another interview, and I
2 didn't have -- he did -- we discussed -- that is where
3 the gap issue was coming in. My client was telling me
4 one thing, the officer was saying he met with him, but
5 I had no way of knowing what else happened, and I
6 didn't realize that there was a confession in the
7 other statement, that was the real problem.
8 Certainly, if my client had said something that
9 incriminated himself, I would expect he'll remember
10 that, if he remembers nothing else, okay.

11 We had many discussions about what he might have
12 said. I couldn't hear the tapes. He couldn't hear
13 the tapes. We sat in my office together going through
14 those audio tapes, can't hear a thing. He never once
15 said that there was a second meeting with the cops
16 where I said I did this.

17 Q And knowing that, did you not -- did you ever
18 think maybe there was a misunderstanding in that second
19 transcript as to that confession?

20 A You said "misunderstanding," what do you mean?
21 You mean between me and my client?

22 Q And the tapes itself. You could barely hear the
23 tapes, so the person transcribing could also barely
24 hear the tapes?

25 A I would assume so. As a matter of fact, I can

1 only speculate as to whether or not there might have
2 been an error. I would have hoped for one, and I
3 probably would have argued for one if we had gone on
4 to trial, but I will say this. I was aware -- by the
5 time I got the transcript, which was that evening, the
6 first night of the trial, two things were apparent.
7 One, I would never forget my -- that moment during the
8 Jackson V. Denno when I'm questioning this officer and
9 I realize that there is something completely separate
10 that I had no clue about, with all the work and time I
11 put into this case, it was a bad feeling. I go back
12 to the table, to my client, and I'm asking, you know,
13 What is he talking about. I know that two people had
14 to have known -- well, three actually. The State
15 obviously knew, and clearly the officer was aware of
16 what had happened. We had discussed his meeting with
17 my client, but he didn't refer to a second one at that
18 time, okay, not a separate one where there was a
19 confession. Certainly, you know, maybe there was some
20 oversight because I was believing that I had
21 everything that I was supposed to have. It did not
22 help that he didn't tell me about it, and I know he
23 had to have known. So it became apparent, two things:
24 My client lied to me, and the State was lying to me.
25 Q Did you ever try to listen to that full tape?

1 A Yes. We sat in my office together and listened
2 to the tapes.

3 Q Including that second interview?

4 A We don't know. That is what I'm saying. We
5 couldn't hear it. We listened to the tapes. Nothing
6 was clear. When I'm saying "inaudible," I'm not
7 kidding. I mean, we couldn't make out -- you know, it
8 was low and it almost sounded as if the tape quality
9 was poor, so you couldn't hear anything. So I was
10 relying heavily on those transcripts. So when I got
11 it, I thought that is what it was.

12 Q Approximately how many tapes did the Solicitor
13 have in this case?

14 A I want to say there might have been two or three,
15 but I'm sure they are in the file over there. There
16 was stuff on disk. There were many different
17 interviews. Some were on disk, statements from
18 various parties in the case, those were all on, I
19 think, CDs. I think the interviews that we're talking
20 about at the jail or whatever were on the actual
21 tapes.

22 Q So there were multiple interviews?

23 A Well, you mean over --

24 Q Overall.

25 A Absolutely. There were many different people

1 that were interviewed. I think there was one with the
2 grandparents of the victim, one of the mother of the
3 victim -- yes, there were other interviews.

4 Q Did you have transcripts from all of those?

5 A No. Those were clearly audible, especially one
6 on the -- on the CD. There was one I think with the
7 grandparents of the victim that was apparently taped
8 recorded while the officer was on the phone, because I
9 remember having a question about when it occurred or
10 what they were saying at one point, but I was told
11 that that was not an in-person recording, but it was
12 taken by the detective by phone. Generally, you could
13 hear everything else.

14 MS. LEE: May I approach the witness?

15 THE COURT: Yes.

16 Q (MS. LEE) Are you familiar with this letter?

17 A (Witness examines document.) Vaguely, yes. I
18 remember this letter, basically. Not specifically,
19 but, yes.

20 Q Is it a fair and accurate representation of the
21 letter that the Solicitor sent to you on May 7, 2011?

22 A I would have to assume so, yes.

23 MS. LEE: At this time, I would like to enter this
24 letter into evidence.

25 THE COURT: Any objection?

1 MR. THOMAS: No objection.

2 (Petitioner's Exhibit 1 marked and admitted.)

3 Q (MS. LEE) This is marked as Petitioner's Exhibit
4 1. Ms. Wilson, in this letter does the Solicitor
5 address there are six audio tapes included in the
6 discovery?

7 A Yes.

8 Q And in these tapes would be both of those
9 interviews with Mr. Rayl?

10 A Presumably.

11 Q In this letter does she say she listened to the
12 original recording?

13 A She does.

14 Q Did she invite you to make an appointment with
15 the Horry County evidence custodian to review the
16 original tapes yourself?

17 A Yes.

18 Q Did you go and review those original tapes?

19 A We went out there. I don't recall us reviewing
20 the original tapes. We went out there, sat down, went
21 over the various items of evidence. I remember having
22 gotten the transcript already, the one copy, the one
23 transcript, and I think the detective was there along
24 with Ms. Livesay and myself. I do not recall there
25 being another copy of a transcript, but she had

1 basically the different items from -- I guess from the
2 trial -- from the discovery present.

3 Q Did you ask her for a transcript from the other
4 inaudible tape?

5 A Let's back up. There could not be a request for
6 the other transcript because I did not know that there
7 was a second interview. I mean, I can't stress that.
8 That was the main issue here, it really was. I had no
9 idea. I could not hear the tape, and I requested a
10 transcript of the tapes. So when she sent the one
11 transcript, I didn't know what the content of the
12 other tapes were. I couldn't hear them. I'm
13 trusting -- which, again, if anything is my fault, I
14 definitely believe that is. I'm responsible for
15 believing that I'm getting everything I'm supposed to
16 get from the State, and that was my mistake here. I
17 didn't get it. I thought I had it. I get to trial,
18 and I'm basing my trial prep, case theory is based on
19 a single transcript of tapes, and I'm thinking that is
20 it. I'm not hearing anything different from my
21 client, so I think I've got everything I'm supposed to
22 have. I didn't have it. I never knew I didn't have
23 it until I got to the Jackson V. Denno and was
24 questioning this officer.

25 Q Do you believe not having that transcript

1 prejudiced Mr. Rayl?

2 A Absolutely, I do.

3 Q Before the plea, the State was able to call one
4 witness, correct?

5 A Yes. I think they called the father of the
6 victim.

7 Q Correct, Mr. Jerry McKenzie?

8 A Yeah, that sounds right.

9 Q On cross-examination, did you ask Mr. McKenzie if
10 he was going through a divorce at the time of the
11 incident with the mother of the child?

12 A I do not recall, sorry. If it is in the
13 transcript, I certainly am happy to look and tell you,
14 but I don't recall that with any specificity.

15 Q Did you ask Mr. McKenzie if there was a custody
16 battle going on with the child's mother at that time?

17 A It's possible.

18 Q Did you have access to the child's medical
19 records?

20 A Yes. I had voluminous amounts of medical
21 records.

22 MS. LEE: May I approach the witness?

23 THE COURT: You may.

24 Q Is this a fair and accurate representation of one
25 of the medical documents from the child?

1 A I would have to assume so. It appears to be.

2 MS. LEE: I would like to introduce the medical
3 records into evidence.

4 MR. THOMAS: Two objections. One, foundation. She
5 hasn't identified it. Two, anything in here would be
6 the testimony of -- looks like Dr. Summer, so it would
7 be hearsay.

8 THE COURT: I'll allow it over objection for
9 whatever value it may have.

10 (Petitioner's Exhibit 2 marked and admitted.)

11 Q (MS. LEE) I'm referencing Petitioner's Exhibit
12 2. In this medical document, Ms. Wilson, does it say
13 that the mom at this time attributes the bruising to
14 rough play? I'm under the "history of present
15 illness" about nine lines down.

16 A It says -- sorry. Nine lines?

17 Q Yes, ma'am.

18 A Yes, it does: Mom at this time attributed his
19 bruising to rough play and states that he is a bully.

20 Q Did you ask the father if the child was a bully?

21 A I don't recall doing that.

22 Q Did you -- does this record also say that the mom
23 reports that Hunter is a violent child?

24 A Yes, it does say that.

25 Q Did you ask the father if the child was a violent

1 child?

2 A I don't recall doing that.

3 Q And in this document does it say he's violent,
4 especially when he returns from his father's house?

5 A Yes, it does say that.

6 Q Did you ask Mr. McKenzie about the violence at
7 his house with the child?

8 A I don't recall. It's likely I may not have, but
9 I don't recall that. That wasn't my case theory.

10 Q Did you ask Mr. McKenzie about his living
11 situation at the time of this incident?

12 A I don't know. Again, if you have a copy of the
13 transcript and you want to show it to me that I did or
14 didn't, I'm willing to see that, but I don't recall it
15 at this point if I asked him specifically whether or
16 not he was living -- I'm assuming -- with the victim's
17 mother.

18 Q No, with his paramour.

19 A Okay. I don't recall that, sorry.

20 MS. LEE: Would you like me to give her a copy of
21 the transcript?

22 THE COURT: You could, yes.

23 THE WITNESS: Thank you.

24 Q (MS. LEE) Ms. Wilson, I don't know off the top
25 of my head where that cross-examination is on. I'll

1 know in just a moment.

2 A I think maybe it starts on --

3 Q Page 98.

4 A Yeah. Lets' see, I don't see a page number.

5 Q It's at the top right.

6 A I see, okay. What is your question?

7 Q Did you ask Mr. McKenzie about his living
8 situation at the time of the incident?

9 A I'm sorry, I'm flipping through seeing what is
10 what. Initially, I'm not seeing it, so I might need
11 to read further.

12 (A brief pause in the proceedings.)

13 THE WITNESS: I'm not seeing it. Do you have
14 somewhere specifically where you saw it?

15 Q (MS. LEE) No, ma'am.

16 A I'm not seeing it.

17 Q So for the record, you did not ask him about his
18 living situation?

19 A I don't think so.

20 Q Did you ask him if he was living with his
21 pregnant paramour during the time of this incident?

22 A I don't think so.

23 Q Did you ask him if that presented a problem
24 between him and the child's mother?

25 A Doubtful that I would have asked that if I didn't

1 ask about the paramour.

2 Q Are you familiar with this document I just handed
3 you? It is a complaint from the divorce proceeding
4 between the mother and father of the child.

5 A Offhand, I would say no. Honestly, I don't
6 recall seeing it, but that doesn't mean that I didn't,
7 it just means I don't remember it. I don't recall it.

8 Q Do you remember reviewing this at all in your
9 trial prep?

10 A I don't remember, sorry. I really don't. I just
11 don't have -- there was so much stuff, I don't recall
12 if I saw this or not.

13 Q Okay. You don't recall seeing that the mother
14 asked the Court not to let the child stay with the
15 father because of the paramour?

16 A Again, you know, I would give you a different
17 answer if I could, but I don't recall with any
18 specificity seeing this document. That does not mean
19 I did not see it, it just means I don't recall it.

20 Q You don't recall the mother asking that the
21 father is limited to daytime hour visitation with
22 supervised visits?

23 A I remember something vague about them having some
24 disputes about the child and visitation and custody.
25 I remember some vague things about that, but, again, I

1 don't remember very specifically any of that. Their
2 relationship was not a primary focus for me. It
3 wasn't that I didn't think it was somewhat
4 significant, but that wasn't the focus to me.

5 Q And you didn't ask Mr. McKenzie any of that
6 information?

7 A I don't recall doing so, and I don't see that in
8 this transcript.

9 Q Okay. Did you ask Mr. McKenzie about how he
10 communicated with the mother?

11 A I want to say that it says something about the
12 fact that I asked him about arguments and things of
13 that sort. I think I read that. I don't recall the
14 page. I flipped back out. Maybe on Page 101, around
15 Line 11, I asked specifically if he had ever been a
16 witness or experienced any violence in the home while
17 married to Emily McKenzie, he says no. I said, None
18 at all, no fights, no arguments, nothing like that?
19 He said they had typical verbal arguments like any
20 married couple. He denied anything turning physical.
21 I asked about issues of truthfulness between them,
22 open exchange of information.

23 Q So you were not aware that in the divorce
24 complaint that the mother stated that the Defendant
25 here, the father, had often become mean spirited in

1 nature?

2 A Offhand, I would have to say I don't -- I don't
3 know. I mean, I just don't remember it. I don't
4 remember specifically this complaint. Again, I want
5 to be clear, I'm not saying we didn't have it, I just
6 do not recall it. I don't know if the basis for my
7 questions came from things we discussed, as in me and
8 Mr. Rayl, or if it came from this complaint, I can't
9 tell you that. I'm sorry, I don't know that.

10 Q That's fine. You said you can't remember
11 receiving the complaint. Do you remember receiving any
12 affidavits that went along with the family divorce
13 proceedings?

14 A (Witness examines document.) Not specifically.
15 Not this one. You know, I certainly believe we did
16 receive this, I just don't remember it specifically,
17 if that is what you are asking me.

18 Q Okay. So you do not remember seeing an affidavit
19 from Harold Johnson?

20 A No, that is not what I'm saying. I am saying I
21 don't recall this specifically. I'm certain we
22 received this affidavit. I couldn't tell you that I
23 remember any details, how I got it or when.

24 Q And in this affidavit, is Mr. Johnson saying that
25 the father of the son chose his relationship with his

1 girlfriend at the time over his son?

2 A Basically, that is what it appears to be saying,
3 yes.

4 Q And did you ask Mr. McKenzie anything about that
5 topic?

6 A No, not that I recall.

7 Q Before you met with Justin before his guilty
8 plea, who all was there?

9 A Well, on the day of -- the day before -- the
10 first day of the trial after the Jackson V. Denno, it
11 was me. I was there with him, some members of his
12 family I think were present, the State, jury and
13 judge. The judge refused outright to hear anything
14 about wrongdoing from the State. He basically -- I
15 mean, I have great respect for Judge Cottingham;
16 however, I had been at this point in time probably
17 five, six years in practicing as a public defender, so
18 I appeared in front of him a number of times. I
19 already knew what would happen. I knew that once he
20 told me that he was not going to find any wrongdoing
21 on the part of the State, and basically that is what
22 he was telling me. He basically told me on the record
23 that I must have overlooked it somehow, despite the
24 fact that the State was unable to produce a receipt
25 showing that they had sent and delivered to me that

1 second transcript.

2 After he -- we ended a little early that day. We
3 went back to my office, Mr. Rayl, myself and I believe
4 some of the family may have been there. We went
5 through the transcript, talked about it. At that
6 point, I was -- again, I was pretty much disgusted. I
7 already had opened to the jury, and in my opening
8 statement I said that no one could -- and I will not
9 forget this -- I said that no one could point to my
10 client and say that he was the person that committed
11 this crime, not one person. Every witness that was
12 going to take the stand had general information about
13 things, but none of them had any firsthand knowledge
14 that he committed this crime. That was my case
15 theory. Not one person. They could get up and talk
16 all day, but none could say they saw him do this. I
17 was feeling really good about that, actually, that
18 theory.

19 When I read the transcript that night with Mr.
20 Rayl present, his statement says, I am the one, that
21 goes to the heart of what I had already put out there
22 in front of the jury. So after he left, you know, I'm
23 basically trying to control the damage. How do I fix
24 this? I can go on with the trial and basically set my
25 client up for a fall. Judge Cottingham and myself had

1 already -- we had I think a couple of sidebars at the
2 bench with the State where he basically was not having
3 it. I think it kind of continued over the next
4 morning, but that night I spoke to my father, who is
5 an attorney here, because I knew he had way more
6 experience in court and in contact with Judge
7 Cottingham and how best to try to fix this situation
8 for my client. I'm looking at my client looking at a
9 number of years in prison. How do I save this case?
10 How do I save him? I was looking for some advice. I
11 would have taken it just about anywhere I could have
12 gotten it, but I don't think I could have gotten help
13 from a better source.

14 My father did accompany me the next morning to do
15 damage control, not really for Justin in person, but
16 in the back with Judge Cottingham because we had to
17 have another conference with him that morning where I
18 was still trying to get him to throw this case out,
19 call a mistrial, do something. Of course, these
20 things were off the record, but it happened
21 nonetheless. I already knew it wasn't happening, but
22 I had to make the effort, and we tried that morning.

23 So then it became a matter of what else can we
24 do. The only other option was to try to get a better
25 deal on the table for my client. If I put him up --

1 even if I -- the bottom line was that I couldn't take
2 back what I already said to the jury. I didn't have a
3 transcript, which would have materially affected how I
4 presented my case. It probably would have -- it would
5 have affected what I told my client. He couldn't get
6 it before I had it. We didn't get it until the end of
7 the first day of the case. It was such a mess. I was
8 really angry. I was mad at myself in great part. I
9 was also mad at my client because I could not believe
10 that in all that time he didn't tell me, I made a
11 statement to the cop incriminating myself. That is a
12 major thing.

13 So my father did come and he did speak to Justin,
14 but not the way that Justin thinks. It was not for
15 him, it was really to go back there with me to speak
16 with Judge Cottingham. My father was really trying to
17 see if we could get a mistrial or something.

18 Q But you did ask your father to come with you that
19 day?

20 A Absolutely.

21 Q And did your father tell Mr. Rayl that you
22 represented him to the best of your ability?

23 A I'm sure he did. I mean, he knew what had
24 happened up to that point, and then he knew what
25 happened in the back. I don't remember that

1 specifically, but I can't imagine he would have come
2 out and bad-mouthed me.

3 Q Did your father tell Mr. Rayl that he had no
4 defense?

5 A I don't recall that. I will say that what I
6 remember telling Mr. Rayl myself, very specifically,
7 was that he had -- I think I told him the night
8 before, so it didn't happen just that morning. We
9 discussed that transcript that evening in my office,
10 and I want to say his father -- somebody else was in
11 there with us talking about the fact that there was a
12 second interview, because apparently someone took him
13 to the second interview; he didn't go alone. When all
14 of this is coming out, we're discussing it and
15 discussing the case theory that I already put out
16 there, and I was trying to figure out how to reconcile
17 what I said with what he already said in the
18 transcript that I just received.

19 So it was really me telling him that he needed to
20 understand that I'm already tied up in what I have
21 said to the jury. You are basically hamstrung by what
22 I told them, basically. That wasn't something I could
23 overcome. I didn't know how to cure that for him for
24 trial purposes. So, yes, at that point I was trying
25 to figure out how to save him from many years in

1 prison.

2 Q Did your father tell Mr. Rayl he would get 30
3 years if he did not plead?

4 A I don't recall that, but I knew what the charge
5 carried, and I know what I told him. I also remember
6 telling him there was a great opportunity that given
7 what he said in the second transcript, and given what
8 I had already told the jury, that if he continued to
9 trial, he was going to be convicted, which means time,
10 more time than he would have gotten on a plea, which
11 is, again, what I was trying to fix. I don't have
12 anything better than that.

13 Q Did your father read through all Mr. Rayl's
14 discovery?

15 A No. No.

16 Q So he was not aware of the facts of the case?

17 A No, he couldn't have read through all of the
18 discovery.

19 Q Did your father listen to the tapes --

20 A My father did not represent Justin, I did.

21 Q Did your father talk to any of the witnesses?

22 A Again, my father did not represent him, I
23 represented him. I talked to witnesses. I talked to
24 doctors. I talked to Justin. I talked to Justin's
25 various family members. I talked to the grandparents.

1 I talked to Emily. I don't recall if I actually spoke
2 to the father of the child. I spoke to just about
3 everyone in this case that was possible to speak to.
4 I did all of that work.

5 Q So your father did not investigate this case?

6 A He did not represent him.

7 Q He did not review the medical records?

8 A Again, no.

9 Q Did you tell Justin that pleading guilty was his
10 only viable option?

11 A It was the only viable option in my estimation.
12 He did have the option to have the trial continue, but
13 I discouraged him from doing that, and I don't think I
14 would have been doing my job if I said, yeah, you
15 should have this trial. I think it was my job to say
16 this is where we are, this is what we have, I don't
17 think this is a good idea. I encouraged him based on
18 what I had in front of me. I don't regret that part.
19 I think it was the right decision to tell him what he
20 was looking at. I don't think I could change that.

21 MS. LEE: Court's indulgence. No further
22 questions.

23 THE COURT: Cross?
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CROSS-EXAMINATION

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BY MR. THOMAS:

Q Ms. Wilson, let's just skip over the preliminary stuff. Mr. Rayl was very involved in the defense of this case?

A Yes.

Q And you had enough meetings with him that you felt like you had all of the information you needed to be ready to go forward with the trial, up until the surprise?

A Yes. I know I said three -- we had way more than three to four meetings.

Q And at any point, did he ever ask you for a copy of all of his discovery?

A I don't recall it. Literally, when the medicals came in -- and that was, again, like I said, voluminous amounts of records, all out of order. We literally would sit down and go through some of the documents together trying to piece things together and the time line. I don't recall him asking for a copy of the discovery until after the plea.

Q And safe to say your defense theory was basically -- in not so many words -- trying to cast doubt on maybe the mother did it, maybe somebody else could have done it?

1 A Absolutely.

2 Q At any point was there any indication that maybe
3 the father had caused these injuries while he was
4 staying with the father?

5 A I think that at one point -- I don't recall that.
6 I'm trying to think if there was something else that
7 might have suggested the father was involved, but I
8 think the biggest problem there was that we had -- the
9 time frame was narrowed down to a time where it was
10 Justin and the mother actually having the child.
11 There was some suggestion that maybe there was some
12 contact with the father previously, but that didn't
13 jive with what most of the doctors were saying about
14 when the injury likely occurred.

15 Q Okay. So --

16 A If I remember correctly.

17 Q So your defense strategy wasn't that the father
18 caused it?

19 A I didn't care who did it, I just wanted to show
20 it wasn't him that anyone could point to.

21 Q So the cross-examination of Mr. McKenzie, that
22 was trying to show that the mother was a violent person
23 or not trustworthy?

24 A A little bit. I wanted to -- when she got up
25 there, I was hoping that maybe he had issues. I

1 figured if I could get everybody to cast dispersions
2 on each other and no one point a finger at Justin, I
3 might have a shot.

4 Q You objected with going forward with the case
5 based on a Brady violation, that type of theory?

6 A Yes, and it wasn't the first one.

7 Q And you made a point to make sure it was
8 preserved for the record?

9 A Yes, I did. I was upset about the transcript,
10 obviously, but I also had received I think some
11 medical reports. Mind you, the case was five years
12 old at the time of this trial. I was on the case for
13 about a year. In five years to still send me
14 something the week of trial, I mean it just chapped my
15 hide. I was really angry. That, on top of what I
16 perceived as Brady violations going on, you know, as I
17 prepped, that just really -- it was just -- I felt
18 that something needed to be done.

19 Q And did you discuss with Mr. Rayl before he pled,
20 did you discuss with him that, hey, listen, we can try
21 and work around this and go forward, or you can plea
22 and forget this transcript issue?

23 A I told him -- I did. I told him he could have a
24 trial still, but I personally couldn't see the point,
25 and I'm pretty sure I said that. I probably did come

1 off pretty confident that it would not be successful.
2 I don't think right now it would have been successful
3 if we would have a trial at that point given what I
4 said in my opening statement, and then given his
5 statement to the police officer in that second
6 transcript. I don't even know how I could have
7 overcome that, how I could have fixed that problem.

8 Q I guess you had a lengthy conversation with him
9 about the second statement after you got a copy?

10 A That evening in my office we talked. I don't
11 know how lengthy it was. We talked about what he
12 said. I think my questions were probably more in line
13 of how did you give this statement and not tell me all
14 this time. We talked. I mean, I like to think that
15 we had a pretty good working relationship up until
16 then, and at that point, like I said earlier, I feel
17 -- I feel responsible for not ensuring that I had
18 everything I was supposed to have. I think that I was
19 relying on my client's statements to me, and I'm not
20 sure that was the right thing to do. I think that my
21 preparation for -- it kind of has affected how I
22 prepare now. I don't think it should be based solely
23 on -- my case shouldn't fail because my client doesn't
24 tell me something.

25 Q Right. But that is the case here. I mean, he

1 never told you?

2 A I did not know it, no. I never heard it until I
3 got the transcript, and even then he said he didn't
4 remember it.

5 Q So he denied making that statement?

6 A In effect.

7 Q If you had a copy of that transcript earlier
8 where he confessed, would you still have advised him to
9 go to trial, or would that have made you lean more
10 towards the plea side of your discussions?

11 A I probably would have worked harder for something
12 other than a trial for him. I probably would have
13 encouraged him more towards a plea. You know,
14 confession out there for the jury just generally
15 doesn't go over well when you backtrack from that. I
16 probably would have tried to encourage him to do
17 something other than a trial.

18 Q As far as your father's conversations with him,
19 was any of that overbearing or threatening in any
20 manner? What was his demeanor?

21 A I mean, if I remember correctly, he was kind of
22 there to support me more than anything. I was -- you
23 know, I know that the complaint says I was agitated,
24 and I'm pretty sure I was. I was real -- I was angry
25 and felt like I was being pushed around a little by

1 the Court. I was pushed around a little bit by the
2 State, and I felt that my client hadn't been totally
3 honest, and I'm working very hard to get a case ready
4 that never really had a chance. That made me angry,
5 but I was also upset because somebody who I
6 represented and I really felt I could help all the
7 sudden, even that was out of my hands.

8 Like I said, it was a terrible morning, and I
9 know it had to be equally terrible for them, for him
10 and his family, but I was trying to fix it. So I know
11 my father came in to help me to the best of his
12 ability with Judge Cottingham, but I think he was just
13 laying out the facts, and the facts weren't good. I
14 think also the Solicitor came in with Nancy Livesay --
15 at this time it was the current solicitor, but at that
16 time I think he was maybe team leader, Jim Richardson,
17 who was present with Nancy. But I didn't think that
18 anyone threatened Mr. Rayl at any point in time.

19 Q Did you tell him you weren't going to go forward
20 and represent him if he wanted to go forward?

21 A No. As a matter of fact, I don't recall that I
22 said I was going to get off of his case. I can't just
23 quit in the middle of a trial if my client is saying
24 he wants to go forward. The bottom line is he still
25 could have. I don't think it would have been helpful

1 for him to go forward. I don't think this could have
2 worked out, but I don't recall telling him or saying
3 I'm done with you, I'm done with this case and walking
4 out. I wasn't going to recuse myself from the case.
5 I didn't see that as necessary.

6 Q Did you ever tell him to lie to the judge?

7 A No. I probably shouldn't say that. I take
8 offense at the suggestion I told him that. I'm very
9 clear with my clients, and I know for a fact, like a
10 lot of judges, Judge Cottingham would not have
11 accepted any plea where the person hesitates or
12 hemming or hawing. Those might have been the exact
13 words I used but I never tell anybody to go in front
14 of a judge or court and say anything that is not true.
15 I'm not going to do it for them, and I don't expect
16 them to do it. I expect them to be truthful. I
17 explained what the options were. When he got up there
18 to do a plea, that is on him. I cannot make him say
19 anything or do anything. I'm not standing there with
20 a pistol to his side. He was informed of the rights.
21 I always go over those with all of my clients. I
22 think we even discussed what might have happen on a
23 sentence, an estimate of the time he might do. We had
24 a lengthy conversation that morning in there with his
25 family, without his family and then we got up to do

1 the plea.

2 Q Did he ever indicate to you at any point during
3 the plea that he was going to change his mind and
4 wanted to go back to trial?

5 A No. I think after -- well, I will say this. He
6 was wanting to fight the entire time. When I
7 approached him about -- when we talked that morning,
8 he was still saying that he wanted a trial. I was
9 explaining to him that that was going to be basically
10 a dead end. It wasn't until after we spoke with him,
11 spoke with his family more, he then spoke with his
12 family that I think it was a decision to go ahead with
13 the plea. Again, I think that decision was based on
14 trying to control some of the outcome as far as
15 sentencing, because obviously there wouldn't be any
16 way to control that after a trial if we were
17 unsuccessful.

18 MR. THOMAS: Thank you.

19 THE COURT: Redirect?

20 MS. LEE: No further questions.

21 THE COURT: You can step down. Thank you.

22 MS. LEE: I would like to call Laura Teal.

23 (LAURA TEAL, having been duly sworn, testified
24 as follows:)

25 THE WITNESS: My name is Laura Teal, T-E-A-L.

DIRECT-EXAMINATION

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BY MS. LEE:

Q Were you present in the meetings right before your son pled guilty?

A I was.

Q And what did Ms. Wilson's father tell you and Justin?

A The whole family was in the meeting, we were all there. Kia had come in with her father and they had met with Judge Cottingham and she said at -- well, the statement that was brought to light the night before, suddenly they are saying it is a confession, when it wasn't a confession. There is nothing in there that says it is a confession, so she said based on this confession and the facts that she felt that she had no defense, she said she would not be recused from the case, the case would go on, the trial would go on, but she did not have a defense. Her father talked to us and Justin and told us that she had done the best she could, but that there was basically nothing else that she could do and that Justin should take the plea, that that was his only option, and if he did not take the plea, that Judge Cottingham most likely would give him 30 years if found guilty, and he would be found guilty.

1 Q So she did not give the option that he could go
2 on to trial?

3 A No. She told him he could still go on with the
4 trial, but she had no defense for him and that she
5 really couldn't help him, but she would still be his
6 attorney, but had nothing to offer.

7 MS. LEE: No further questions.

8 MR. THOMAS: No questions.

9 THE COURT: Thank you. You may step down. We
10 appreciate your time; is that it?

11 MS. LEE: Yes.

12 MR. THOMAS: Nothing from the State.

13 MS. LEE: Judge, may I summarize the issue, please,
14 for the record?

15 THE COURT: You may.

16 MS. LEE: Judge, I would like to say a few things.
17 I have not even been given the complete copy of the
18 second transcript. I got what the family and Justin
19 were given, but from what I read, it is not a
20 confession. From what I have seen, it was --

21 THE COURT: You can't testify now, you can tell me
22 what you want to tell me if you want me to -- start
23 testifying, we'll have a problem. We'll put you under
24 oath.

25 MS. LEE: I apologize. The mom did go into that a

1 little bit.

2 THE COURT: You know the best way to make a
3 determination is to have it in my hand.

4 MS. LEE: If I would have had the whole thing, I
5 would enter it into evidence, but I still don't have
6 the entire transcript. I want to also point out that
7 he was given two options that day. He was told that
8 either he was getting 30 years and going to trial, or
9 get this plea. He was told that he was given -- she
10 did not have a defense for him.

11 The second transcript as well, it was referenced
12 throughout the discovery, so whether or not my client
13 remembered this second interview statement is
14 referenced in Detective Williams' report, and that is
15 in the transcript where the Solicitor says that it is
16 in the report that they met with him twice, and she
17 also had copies and access to these tapes that had the
18 second interview on there, so she did have access to
19 it before trial.

20 THE COURT: Don't you have access to it, I mean?

21 MS. LEE: I do not have any copy of the tapes.

22 THE COURT: You don't have the ability to get it?

23 MS. LEE: I was not given the tapes.

24 THE COURT: I didn't ask that. I said, You don't
25 have the ability to get it?

1 MS. LEE: Yes, Judge. But as Ms. Wilson concluded
2 in the testimony, though, she said Mr. Rayl wanted to
3 fight the entire time, even after the morning, he
4 still wanted to fight for a trial.

5 THE COURT: Okay. Thank you. Mr. Thomas.

6 MR. THOMAS: Briefly, Your Honor. You know, I
7 agree that everyone told Mr. Rayl he only had two
8 options, that is generally the way it works, you can
9 go to trial or plead guilty. I think the testimony
10 just indicated that he understood the risk and
11 benefits of both of those options, and while he may
12 have felt he had no other choice, he pled guilty to
13 avoid a harsher sentence, which is what defendants do
14 every day. I submit that he hasn't met his burden for
15 the involuntary guilty plea.

16 As far as the issue with the transcript and
17 counsel not being prepared with it, one, she testified
18 that that probably would have changed her advice in
19 that she would have leaned harder on him to plead
20 guilty, so I'm not sure how there is any prejudice on
21 that. She objected to it at trial, and she preserved
22 that for the record. If he would have gone forward,
23 that could have been an appellant issue, but because
24 he pled guilty understanding that that was something
25 they were objecting to, he's waived that as a ground

1 for relief, and I submit he hasn't met the burden of
2 these allegations.

3 THE COURT: I'll take it under advisement, and
4 we'll break until 2:30.

5 MS. LEE: May I give you the case law for this?

6 THE COURT: You may, certainly.

7 (Whereupon, the proceedings concluded.)

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CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter 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 captioned case, relative to appeal, for Horry County, South Carolina, on the 27th day of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 7, 2015

Natalie Dahl, RPR

Natalie Dahl, RPR

Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 07-GS-26-03068, 03067

THE STATE OF SOUTH)
CAROLINA,)

Plaintiff,)

vs.)

JUSTIN MONROE RAYL,)

Defendant.)

Transcript of Record

December 13 and 14, 2011

B E F O R E :

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Nancy Livesay, Esquire
Attorney for Plaintiff

Kia Wilson, Esquire
Attorney for Defendant

Kay H. Richardson, CVR
Circuit Court Reporter

	<u>I N D E X</u>	
		<u>Pg.</u>
1		
2		
3	<u>December 13, 2012</u>	
4	Motion to Continue	4
5	Jackson v. Denno as to 1/16/07 Statement	
6	Detective Daryl Williams	
7	Direct by Ms. Livesay	13
8	Cross by Ms. Wilson	19
9	Redirect by Ms. Livesay	24
10	Recross by Ms. Wilson	25
11	Jackson v. Denno as to 2/12/09 Statement	
12	Detective Daryl Williams	
13	Direct by Ms. Livesay	28
14	Cross by Ms. Wilson	40
15	Jackson v. Denno as to 1/30/07 Statement	
16	Brad Whiteis	
17	Direct by Ms. Livesay	44
18	Cross by Ms. Wilson	50
19	Motions	51
20	Jury Selection	56
21	Opening	
22	By Ms. Livesay	82
23	By Ms. Wilson	84
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X (continued)

Pg.

Jerry Lee McKenzie, III
 Direct by Ms. Livesay 86
 Cross by Ms. Wilson 98
 Redirect by Ms. Livesay103

December 14, 2012
Plea110
Statement by Jerry Lee McKenzie, III120
Sentence of the Court125
Certificate of Court Reporter131

E X H I B I T S

<u>No.</u>		<u>ID</u>	<u>EV</u>
S1	Advisement of Miranda Rights	30	
S2	1 Photograph		92
S3	1 Photograph		92
S4	1 Photograph		92
S5	1 Photograph		92

1 (December 13, 2011)

2 MOTION TO CONTINUE BY MS. WILSON:

3 THE COURT: All right. Ms. Livesay, as I understand, we
4 have a motion in the case to be tried this afternoon. Let me
5 -- state the case for the record, please.

6 MS. LIVESAY: Yes, sir, Your Honor. State v Justin Rayl
7 for infliction of great bodily injury upon a child; that is
8 indictment 2007-GS-26-3067. The second indictment is State v
9 Justin Rayl; indictment number 2007-GS-26-3068, Your Honor.

10 And the Defense does have a motion.

11 THE COURT: What is the second indictment for?

12 MS. LIVESAY: It's for assault and battery of a high and
13 aggravated nature.

14 THE COURT: Which indictment do you propose to proceed
15 on?

16 MS. LIVESAY: I'll be proceeding on both, Your Honor.

17 THE COURT: On both?

18 MS. LIVESAY: Yes, sir. ABHAN is not a lesser included
19 of infliction of great bodily injury.

20 THE COURT: Well, we'll talk about that. Let the record
21 reflect that the Defendant -- Ms. Wilson is in court
22 accompanied by the Defendant himself -- the Defendant's
23 attorney.

24 You may be seated.

25 Ms. Wilson, I understand you had a motion?

1 MS. WILSON: Yes, sir, very briefly, Your Honor. I have
2 a motion for continuance this morning. My motion is based on
3 two things at this point. One, we received a couple of
4 reports late last week. All right. One report is actually
5 not a report as much as it's about the images from the report
6 that were mentioned in the report. I didn't realize that the
7 images were gonna play an important part in my defense. I
8 think that they would be important at this point after having
9 spoken with the doctor, Dr. Spanpinoto (spelled phonetically)
10 who actually is the reviewer of those records. We don't have
11 those. We've never had the -- my understanding when I spoke
12 to her is that the State did not have them midweek this past
13 week. And my understanding is they had sent them over or were
14 trying to send them. I think they were coordinating. By my
15 understanding from the solicitor is that she does not have
16 them. I think that it could be important to us because I'm
17 more concerned about maybe having had an expert review those
18 to make sure that it's exactly as this one doctor is saying.

19 THE COURT: She doesn't have them either?

20 MS. WILSON: No, she does not.

21 THE COURT: If she doesn't have them, she can't give them
22 to you.

23 MS. WILSON: And I do not dispute that, Your Honor. I'm
24 talking about how important it might be for me to have them so
25 that I could have someone else review the findings.

1 THE COURT: Well, aren't the findings given to you in the
2 detailed report by the physicians involved?

3 MS. WILSON: Your Honor, they were given to me in a
4 report but the images being reviewed by an expert, another
5 expert, might yield completely different information and
6 that's something that I have to take some notice of.

7 THE COURT: Counsel for the State, how you want to
8 respond to that?

9 MS. LIVESAY: Yes, sir, Your Honor. The defense attorney
10 has had the report from the radiologist now for at least six
11 months if not longer. All the medical records were given to
12 her at -- originally Tom Floyd and then sent to Ms. Wilson.
13 They've had those medical records for over six months. This
14 Defendant has been arraigned at least twice at which time she
15 was asked the pertinent questions, do you have everything you
16 need, are you ready to go forward; both times, it answered
17 yes, I have everything I need. The report was given to her.
18 I did not have the images. I went to MUSC where at that time
19 the radiologist went through the report with me and showed me
20 the images. I also spoke with her this week. Every doctor
21 that's testifying from MUSC except for one has confirmed with
22 me that they have spoken to Ms. Wilson in depth, provided her
23 any information that she needs. We've done everything that we
24 can at this point as far as provide her with every document
25 and access to every document ---

1 THE COURT: What testimony -- are you gonna have any
2 testimony regarding the images?

3 MS. LIVESAY: The only testimony will be from her report,
4 Your Honor, and she will mark on a board, a poster board
5 indicating what her report says. On the report, it says
6 there's an injury here and she's gonna mark it on the board.

7 THE COURT: I'm going to deny your motion. I think
8 you've had sufficient opportunity to get the medical that you
9 require, Ms. Wilson.

10 MS. WILSON: I wasn't finished, Your Honor, I
11 actually have something else as well on that same issue. I
12 understand what the State's position is there and I understand
13 that the Court feels that that was sufficient time but I'm not
14 talking about the records, I'm talking specifically about the
15 images. But more to the point, there is an ophthalmology
16 report that I did not get until last week. That was not in my
17 discovery. Okay.

18 THE COURT: You got it last week?

19 MS. WILSON: Yeah, I got it last week. You can't -- not
20 only can I not find the doctor in the case and I've been
21 looking. I actually didn't go to court half a day on Thursday
22 and on Friday trying to find this doctor.

23 THE COURT: What about the ophthalmologist report?

24 MS. LIVESAY: I certainly will, Your Honor. There were
25 215 pages of medical records that were sent to Ms. Wilson.

1 The ophthalmology report was in those 215 pages. I sent that
2 to her over six months ago. It was midway through the medical
3 documents. I found it, it was in my documents. All we did
4 was take a copy of the medical records that they sent to us
5 and forward them straight to Ms. Wilson.

6 THE COURT: Is the author of that ophthalmologist report
7 going to be testifying?

8 MS. LIVESAY: That report, yes, the ophthalmologist will
9 be testifying.

10 THE COURT: Well, he is available to you, Ms. Wilson.

11 MS. WILSON: I could not find him, Your Honor. And when
12 I got this ---

13 THE COURT: Well, before he testifies I'll make him
14 available to you. When can you do that. When's he gonna
15 testify?

16 MS. LIVESAY: She can be available today by phone, Your
17 Honor. She's at MUSC and I also have her email address.

18 THE COURT: When we walk out this door, I want you to go
19 with Ms. Wilson ---

20 MS. LIVESAY: I will.

21 THE COURT: Get that party on the phone and let Ms.
22 Wilson talk to them.

23 MS. LIVESAY: Yes, sir, I will. Thank you.

24 THE COURT: Ms. Wilson, if she found her, she was at the
25 Medical University, why couldn't you find her?

1 MS. WILSON: I don't know. Maybe it's because I only
2 had a day and half to find her.

3 THE COURT: Well, you had all last week.

4 MS. WILSON: Your Honor, I didn't have all last week. I
5 got this document mid last week.

6 THE COURT: Okay. Did you ask Ms. Livesay where she was?

7 MS. WILSON: No, sir. I actually didn't get the
8 document until mid-last-week and I didn't ---

9 THE COURT: I understand mid-last-week -- why didn't you
10 say where is she?

11 MS. WILSON: Your Honor, because I was busy talking to
12 people and I thought I would be able to find this doctor with
13 relative ease and ---

14 THE COURT: Well, we gonna -- you gonna find the doctor
15 this morning and talk to her; that'll take care of that.

16 MS. WILSON: Yes, sir. Yes, it will.

17 THE COURT: In my view, if you were looking for one of
18 her witnesses, you could've inquired of her Thursday, Friday,
19 Saturday or Sunday, or yesterday.

20 MS. WILSON: Well, Your Honor -- well, my position is,
21 Your Honor, that even if I speak to the doctor, that still
22 doesn't give me time to know what the doctor is gonna say, it
23 still doesn't give me time to find ---

24 THE COURT: You'll have an opportunity -- you'll have an
25 opportunity this morning. You've had all this information for

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 10
MOTION TO CONTINUE

1 a period of time.

2 MS. WILSON: I -- and I ---

3 THE COURT: Ms. Wilson ---

4 MS. WILSON: Yes, sir.

5 THE COURT: We're gonna try this case this week.

6 MS. WILSON: I'm trying to try it, Your Honor. I just
7 want to make one more point.

8 THE COURT: Okay.

9 MS. WILSON: Regardless of what the State says about
10 what they sent me. I have gone through my files with a fine
11 tooth comb and I am not inclined to come into court and be
12 untruthful about what I have and have not received. I did not
13 have that ophthalmology report. That is why I asked for it.
14 And I didn't find out about it until after I spoke to the
15 expert from MUSC.

16 THE COURT: She said she delivered it to you some time
17 ago.

18 MS. WILSON: Well, that's fine, Your Honor.

19 MS. LIVESAY: Your Honor, if I may, please for the
20 record, all of those records were sent at one time. The
21 ophthalmology report was in the middle of the records so
22 there's no way that that one page ---

23 THE COURT: Well, anyway, she's got it now and you're
24 gonna make -- I want you to walk out the door with her -- it's
25 9:15, you won't be called until tomorrow or the next day for

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 11
MOTION TO CONTINUE

1 sure.

2 MS. LIVESAY: Yes, sir.

3 THE COURT: I want her to have adequate time to talk to
4 her on the phone or in person.

5 MS. WILSON: Yes, sir.

6 THE COURT: Now, Ms. Wilson can talk to her on the phone
7 today and then I want to make it available to her to talk to
8 her personally when she comes to the courthouse to testify.

9 MS. LIVESAY: I will.

10 THE COURT: I want her available to Ms. Wilson prior to
11 her testimony.

12 MS. LIVESAY: Yes, sir.

13 THE COURT: What's next, Ms. Wilson?

14 MS. WILSON: That's it.

15 THE COURT: All right. Thank you so much.

16 MS. WILSON: Thank you, Your Honor.

17 THE COURT: Thank you so much. Now, go out call and talk
18 to her right now and she'll be available in person.

19 MS. WILSON: Going right now, Your Honor. Yes, sir.

20 THE COURT: All right. Thank you.

21 MS. LIVESAY: Thank you.

22 THE COURT: And we're gonna be picking the jury at 2:30.

23 MS. LIVESAY: Yes, sir.

24 MS. WILSON: Yes, sir.

25 (END OF MOTION HEARING)

1 *****OFF THE RECORD*****

2 (On the Record.)

3 JACKSON V. DENNO HEARING:

4 THE COURT: All right. At this time, I want to hear the
5 motions regarding the case we're getting ready to try.
6 Solicitor, state the case.

7 MS. LIVESAY: Yes, sir. We actually have three motions
8 for Jackson v. Denno for the Defendant's statements. There
9 are two audio recorded and one that he made to the Department
10 of Social Services. Each statement is about forty-five
11 minutes long that he made to Horry County...

12 THE COURT: We don't need to get into what the statements
13 are, we just need to get into the fact whether it was freely
14 and voluntarily made and Mirandized.

15 MS. LIVESAY: Yes, sir.

16 THE COURT: We don't need to listen to forty-five-minute
17 statements.

18 MS. LIVESAY: I understand. I'm just making the Court
19 aware ---

20 THE COURT: I see. Both of you come forward and let me
21 discuss an issue with you, too.

22 (REPORTER'S NOTE: A bench conference was held off the
23 record.)

24 THE COURT: I need the copies of the indictments up here.
25 Let's go forward with the Jackson v. Denno hearing. You

1 understand I got a jury waiting down there?

2 MS. LIVESAY: I understand.

3 MS. WILSON: And, Your Honor, in addition to her
4 motions, I just have a couple of quick ones as well.

5 THE COURT: Ma'am?

6 MS. WILSON: In addition to the *Jackson v. Denno*, I just
7 have a couple of quick motions myself.

8 THE COURT: That's fine but let's get rid of the *Jackson*
9 *v. Denno*. We don't need to hear the forty-five-minute tape.

10 MS. WILSON: Right.

11 THE COURT: My interest is Mirandizing and voluntariness.

12 MS. LIVESAY: Yes, sir. And you're ready -- can I go
13 ahead and call Detective Williams now or you want to ---

14 THE COURT: No, I'm ready to go.

15 MS. LIVESAY: Okay. At this time, we'd call Detective
16 Daryl Williams to the stand.

17 DETECTIVE DARYL WILLIAMS, HAVING BEEN

18 SWORN, TESTIFIED AS FOLLOWS:

19 CLERK: If you'll state your full name and spell your
20 full name.

21 MR. WILLIAMS: Daryl Williams, D-A-R-Y-L W-I-L-L-I-A-M-S.

22 DIRECT EXAMINATION OF DETECTIVE DARYL WILLIAMS BY MS. LIVESAY:

23 Q: Mr. Williams, where are you currently employed?

24 A: I am employed with the Horry County Police Department.

25 Q: And how long have you been employed with ---

1 A: Approximately eight years.

2 Q: And were you employed for Horry County PD on or around
3 January of 2007?

4 A: Yes.

5 Q: And what were your responsibilities at that time?

6 A: I was a detective in the violent crimes division.

7 Q: And what's considered a violent crime in Horry County?

8 A: Crimes involving a victim as far as opposed to property
9 or other types of intellectual things, victims like children,
10 adults, elderly persons, anything to that extent.

11 Q: Okay. And when you were working for Horry County as a
12 detective in violent crimes, did you have an occasion to
13 investigate a case dealing with Justin Rayl?

14 A: Yes.

15 Q: And when did you begin that investigation?

16 A: In January of 2007, I believe the initial report was
17 written on the 9th and I believe it was submitted to me on the
18 following day.

19 Q: Okay. And as part of your investigation, did you
20 interview Justin Rayl?

21 A: Yes.

22 Q: How many times?

23 A: Twice.

24 Q: Just as to the first time, please tell the Court when you
25 interviewed the Defendant.

1 A: Let's see. The first interview of Justin was ---

2 Q: Do you need your notes to refresh your memory?

3 A: My notes, yes, please. I want to be positive. Thank
4 you. The initial interview with ---

5 THE COURT: Did he not review his file before he got on
6 the stand?

7 MS. LIVESAY: I'm sorry, Your Honor?

8 THE COURT: He did not review his file before he got on
9 the stand?

10 MS. LIVESAY: Yes, sir. He reviewed it, I know for a
11 fact earlier today and yesterday.

12 THE COURT: All right. Proceed then.

13 A: The initial interview of Justin was on January 16th,
14 2007.

15 BY MS. LIVESAY:

16 Q: Okay. And was there anybody else present when you talked
17 to him?

18 A: Yes, there was also Detective Neil Livingston with the
19 Horry County Police Department.

20 Q: And where were you when you talked to him?

21 A: At the Horry County Police Department.

22 Q: Okay. Did he voluntarily come to the police department?

23 A: Yes.

24 Q: Okay. And at that time, was he in custody?

25 A: No.

1 Q: And at that time, was he a suspect?

2 A: No.

3 Q: Okay. Did he understand why he was there?

4 A: Yes.

5 Q: Did you review with him why he was there?

6 A: Yes, at the beginning of the interview and over the phone
7 when we spoke to him and asked him to come.

8 Q: And he drove himself to the police department; is that
9 right?

10 A: That is correct.

11 Q: Okay. And when you spoke with him then was he a suspect
12 or a potential witness?

13 A: A potential witness.

14 Q: Okay. And when you spoke with him, did you read him
15 Miranda?

16 A: During the first interview, no.

17 Q: Okay; and why not?

18 A: Because he was not in custody nor did I anticipate taking
19 him into custody.

20 Q: Okay. And were his answers responsive to the questions
21 you were asking?

22 A: Yes.

23 Q: And during the time you spoke with him, did it appear
24 that he was impaired by any sort of drugs or alcohol?

25 A: No.

1 Q: Okay. Did it appear that he had a physical or mental
2 impairment at all and could not understand the situation?

3 A: No.

4 Q: And about how long did you talk to him?

5 A: Approximately forty-five minutes.

6 Q: Okay. And during that time, did he ever indicate to you
7 that he did not want to answer your questions?

8 A: No.

9 Q: Okay. And was he denied a break or a phone call or
10 anything like that?

11 A: No.

12 Q: Okay. Did you make him aware that he was not in custody
13 at that time?

14 A: Yes.

15 Q: Okay. And did you promise him anything in exchange for
16 him talking to you?

17 A: No.

18 Q: And did anybody coerce him during that interview to talk
19 with you?

20 A: No.

21 Q: Okay. And after the interview, was he free to leave?

22 A: Yes, he was.

23 Q: Okay. And during the interview, did he ever ask for an
24 attorney or appear not to want to be there?

25 A: No.

1 Q: Was there anything that happened during that forty-five-
2 minute interview that indicated to you that he did not
3 understand what was going on?

4 A: No.

5 Q: Did anything happen during that forty-five-minute
6 interview that indicated to you that he was not there to speak
7 to you voluntarily?

8 A: No.

9 Q: Did he ever give any indication to you that he did not
10 want to speak to you?

11 A: No.

12 MS. LIVESAY: Your Honor, at this time, the State asks
13 that the first statement made on or around January 16th to
14 Detective Williams be declared voluntarily.

15 THE COURT: Go forward with whether or not he was given
16 his Miranda rights and, if so, what they were.

17 MS. LIVESAY: Okay. On the first statement, Your Honor?

18 THE COURT: On all of them.

19 BY MS. LIVESAY:

20 Q: Okay. On the first statement, did you read him Miranda?

21 A: No.

22 Q: And tell the Court why not?

23 A: Because he was viewed as a potential witness. He was not
24 in custody. We did not anticipate taking him into custody.

25 We called him and explained that it was ---

1 THE COURT: That explains it then.

2 MS. LIVESAY: Thank you, Your Honor, we ---

3 THE COURT: I will not make a finding until she has an
4 opportunity to cross examine.

5 MS. LIVESAY: Yes, sir.

6 MS. WILSON: Thank you, Your Honor.

7 THE COURT: This is as to the voluntariness issue on the
8 first statement?

9 MS. WILSON: Yes, sir.

10 CROSS EXAMINATION OF DETECTIVE DARYL WILLIAMS BY MS. WILSON:

11 Q: Detective Williams, didn't you in fact induce Mr. Rayl to
12 the Horry County Police Department for this interview with
13 false information?

14 A: No.

15 Q: Did you not tell him that this interview was just an
16 interview, that he didn't need an attorney?

17 A: I told him -- I asked him to come because my
18 understanding was he had lived in the residence for some time
19 and maybe he could help us get an understanding. At no time
20 during the interview did we treat him as a suspect.

21 Q: Did you offer him the opportunity to have a drink or you
22 didn't, did you?

23 A: We told him where the bathroom was and I believe we -- we
24 might've asked him if he wanted something to drink. We
25 usually do but we didn't withhold him from getting a drink or

1 anything to that effect.

2 Q: So, you're saying you don't recall if you asked him or
3 not, if he wanted a beverage?

4 A: Not, no, not particularly.

5 Q: And you don't recall if you asked him if he wanted to
6 have something to eat?

7 A: No, not particularly.

8 Q: Now, you had him wait for about an hour before you
9 actually saw him for this interview, didn't you?

10 A: I don't recall having him wait for an hour.

11 Q: So, the -- you're saying then that the minute he got to
12 the jail or to the police department, you immediately saw him?

13 A: I'm not saying that; I'm saying I don't recall him
14 waiting an hour.

15 Q: So, then if -- would -- how about this, would you say
16 then that it was approximately a thirty-minute wait before you
17 actually saw him?

18 A: I don't recall it being a significant wait at all. Once
19 we're notified he's up front, we usually gather up whatever we
20 need to get and go on back. I don't recall it being a
21 significant wait for any purpose.

22 Q: Now, you say that this interview took approximately
23 forty-five minutes. Are you certain that it was only about
24 forty-five minutes?

25 A: Approximately -- no, I'm not certain of the exact length

1 of the interview.

2 Q: So, then it could've been an hour, it could've been two
3 hours, correct?

4 A: I would say it's approximately forty-five minutes.

5 Q: Okay. Now, you did tell him he wasn't gonna be arrested
6 when he came in for this conversation you all were gonna have,
7 correct?

8 A: Well, that depends, if he asks whether or not he was
9 gonna be arrested, I told him I have no plans on arresting him
10 and I did not have any plans nor was he arrested.

11 Q: So, you did tell him that in fact he was not gonna be
12 arrested?

13 A: I said that this interview, I just want to talk with you,
14 like I said, just an interview as you put it and I have no
15 plans on arresting you.

16 Q: Okay. And when he came in, then you understood that he
17 thought that he was there just to discuss that he was not
18 gonna be arrested and that he was showing up without an
19 attorney because he had nothing to worry about; isn't that
20 correct?

21 A: And that was my understanding as well; he had nothing to
22 worry about.

23 Q: But then isn't it true that at the end of this interview
24 you stopped the tape and you arrested him and took him into
25 custody and left his father sitting out there waiting on him,

1 correct?

2 A: No, that's not correct.

3 Q: So, then you're saying that you didn't arrest him at the
4 end of the interview?

5 A: I did not, no.

6 Q: So, you let him go home at the end of the interview?

7 A: Yes; that's correct.

8 Q: So, he went home and then you decided later to arrest
9 him?

10 A: He was arrested subsequent to his second interview. The
11 first interview he was not arrested. He went home freely.

12 Q: Yes, sir. Now, you said that, I believe your testimony
13 was that he didn't -- he drove himself out to the HCPD. When
14 you went out there to take him to the back, he wasn't alone,
15 was he?

16 A: I'm not sure -- I know we didn't transport him anywhere
17 to or fro. He came there on his own; I'm not sure who drove
18 him but upon going to get him out of the lobby or whatever
19 have you, I'm not exactly sure whether I personally brought
20 him out in the lobby or others. It's no set way of doing that
21 now.

22 Q: Okay, so then this actually brings me back to my initial
23 question, that means you also really can't say then how long
24 he'd been out there since you didn't actually go out there to
25 retrieve him yourself?

1 A: Oh, well, what I'm saying is I don't recall whether I
2 retrieved him not. What I'm saying is upon being notified
3 that your guest is here, you go get him, and that's what we
4 done -- that's what we did, excuse me.

5 Q: Now, you say there were two interviews ---

6 THE COURT: Let's deal with the first one. Now, I want
7 to deal with ---

8 MS. WILSON: Okay, so just the first one.

9 THE COURT: --- with the first one first. I propose to
10 take any state's witnesses on the first one, and then take any
11 of yours, make a ruling and then we'll go from there.

12 MS. WILSON: Okay. Yes, sir, that's fine.

13 THE COURT: All right. So, do you have any other
14 witnesses on this issue?

15 MS. LIVESAY: No, sir.

16 MS. WILSON: I have one more question, Your Honor.

17 THE COURT: Sure, go ahead.

18 BY MS. WILSON:

19 Q: What was the date of the first interview? And I'm sorry,
20 that's actually not phrased properly. The date of the first
21 interview was January 16th of '07; correct?

22 A: That is correct.

23 Q: And the date of the second interview was what date?

24 A: One second. February 12th of '07.

25 MS. WILSON: Court's indulgence for one second, Your

1 Honor.

2 Your Honor, no further questions on this first interview.

3 THE COURT: All right. Is there any other witness on
4 this issue?

5 MS. LIVESAY: Just a couple of questions on this one,
6 Your Honor, if you don't mind.

7 THE COURT: Okay.

8 REDIRECT EXAMINATION OF DETECTIVE DARYL WILLIAMS BY MS.

9 LIVESAY:

10 Q: Detective Williams, just so we're clear on the record,
11 you interviewed him the first time January 16th; is that
12 correct?

13 A: That is correct. Yes, that's correct.

14 Q: And then you interviewed him again February the 14th --
15 February the 12th; I'm sorry.

16 A: February 12th, that's correct, yeah.

17 Q: Okay. Now did he voluntarily leave that day after
18 January the 16th?

19 A: On January 16th he came on his own devices and he did
20 leave after that interview.

21 Q: And did you do further investigation after that?

22 A: Yes.

23 Q: Okay. So, at that point, nobody was arrested; is that
24 correct?

25 A: That is correct; no one was.

1 Q: Okay. And nobody was even arrested in the month of
2 January; is that correct?

3 A: That is correct.

4 Q: And you did further interviews after this one on January
5 the 16th; is that correct?

6 A: That is correct.

7 Q: Okay. So, at this point, you didn't even have a suspect;
8 is that correct?

9 A: That is correct.

10 MS. LIVESAY: No further questions, Your Honor.

11 MS. WILSON: One quick as on redirect, Your Honor.

12 RE-CROSS EXAMINATION OF DETECTIVE DARYL WILLIAMS BY MS. WILSON:

13 Q: Detective Williams, you were present at the first
14 interview, correct?

15 A: Yes.

16 Q: With Livingston?

17 A: Yes.

18 Q: And you were present at the second interview?

19 A: Yes.

20 Q: With Livingston or alone?

21 A: No, with Detective Todd Cox.

22 Q: No further questions, Your Honor.

23 THE COURT: All right. Come down. Do you have any other
24 witnesses on this first statement?

25 MS. LIVESAY: No, sir.

1 THE COURT: All right. Do you have any witnesses with
2 regard to the first statement, Ms. Wilson?

3 MS. WILSON: Your Honor, I think we need to approach --
4 well, we don't actually have to approach, we're not in the
5 presence of the jury.

6 THE COURT: Correct.

7 MS. WILSON: We have a quick problem. I don't know how
8 quick it's gonna be really. We have a problem.

9 THE COURT: What is it?

10 MS. WILSON: This second interview, I don't know
11 anything about this second interview.

12 THE COURT: Well, I can't help that. You've had the case
13 for some time and had all last week to look at it.

14 MS. WILSON: Not if I didn't get all the evidence and
15 that's what I'm saying. I have this 1/16 interview. I'm
16 confused about this second interview.

17 THE COURT: Well, let's stop ---

18 MS. LIVESAY: Well, I can clear it up, Your Honor,
19 because not only did we have a hearing earlier about both of
20 these interviews, I transcribed both tapes, sent them to Ms.
21 Wilson, then I met her out at the Horry County PD and we
22 looked through every tape. So, she's had it and the
23 transcript.

24 MS. WILSON: There is no transcript for that. I have
25 one transcript dated 1/16/07.

1 THE COURT: Let's do this. Have a seat and I'm gonna go
2 through the second one and then we'll see where we're going.

3 With regards to the first interview, and that is only as
4 to that one, we're talking about -- what was the date in
5 January of this interview?

6 MS. LIVESAY: January 16th, Your Honor.

7 THE COURT: Okay. I have held an evidentiary hearing in
8 this matter and I am convinced beyond a reasonable doubt and
9 so find that the statements obtained from the Defendant at
10 that time, was freely and voluntarily given and that the same
11 was given without duress without coercion and without undue
12 influence without any threats, inducements or hope of reward,
13 finding that his statement was of his own unferreted will.

14 Okay. You may come down.

15 Now, tell me about the second statement.

16 MS. LIVESAY: Yes, sir. At this time, the State calls
17 Detective Daryl Williams to the stand.

18 THE COURT: Now, address for me for the second statement,
19 Ms. Wilson's concerns that she was never provided that.

20 MS. LIVESAY: I've got Amy Ayers going down right now to
21 show that we sent that in discovery but we sent that in
22 discovery, we went out to the Horry County PD last week. We
23 met with Daryl Williams. Daryl Williams, then Detective
24 Williams, then brought out every tape interview video that we
25 have. Ms. Wilson was there to look at it and she reviewed all

1 of the photographs, everything that we had at that time, she
2 reviewed it.

3 THE COURT: Well, she may have -- let's hear what he says
4 about this one. She may now have a recollection that she has
5 got it. Let's hear it.

6 MS. LIVESAY: Thank you, Your Honor.

7 JACKSON V. DENNO HEARING AS TO FEBRUARY 12, 2009 STATEMENT:

8 DIRECT EXAMINATION OF DETECTIVE DARYL WILLIAMS BY MS. LIVESAY:

9 Q: Detective Williams, after talking with the Defendant on
10 January the 16th, did you have an occasion to speak with him
11 again?

12 A: Yes.

13 Q: And when was that?

14 A: That was on February the 12th.

15 Q: Okay. And who was present for that interview?

16 A: That was Mr. Rayl, Detective Todd Cox with the Horry
17 County Police Department and myself.

18 Q: And at that time, were you still a detective at Horry
19 County PD?

20 A: Yes.

21 Q: And what was Detective Cox's role at that time?

22 A: He was also a violent crimes detective.

23 Q: Okay. And where did you meet with the Defendant at that
24 time?

25 A: At the Horry County Police Department.

1 Q: Okay. And did you transport him there?

2 A: No.

3 Q: And did Detective Cox transport him there?

4 A: No.

5 Q: Okay. And during that interview, was the Defendant, did
6 he appear to be under any sort of alcohol or drugs?

7 A: No.

8 Q: Did he appear to be under any sort of mental or physical
9 impairment not to be able to understand what was going on?

10 A: No.

11 Q: Okay. And at that time, did you Mirandize the Defendant?

12 A: Yes.

13 MS. LIVESAY: Your Honor, at this time, I'd like to
14 approach Detective Williams.

15 THE COURT: For the record, I want him to state exactly
16 what he told him by way of Mirandizing him.

17 MS. LIVESAY: I will, Your Honor. And can I -- I'm gonna
18 mark the Miranda advisement that he signed in as State's
19 Exhibit for this hearing.

20 THE COURT: Okay. And you, of course, are entitled to
21 introduce it at the trial of the case.

22 MS. LIVESAY: Yes, sir.

23 THE COURT: Have you showed -- have you given ---

24 MS. LIVESAY: Yes, sir.

25 THE COURT: You have it?

1 MS. WILSON: I do have a copy of that, Your Honor.

2 THE COURT: Does it relate to a February issue?

3 MS. LIVESAY: Yes, sir.

4 MS. WILSON: It relates to February 12th, Your Honor.

5 THE COURT: Well, then you do have notice that there was
6 a statement made on February 12th.

7 MS. WILSON: I don't have any tape. I don't have
8 anything other than the fact -- as far as I know, he went down
9 there and got arrested; that's all I know, Your Honor.

10 THE COURT: Well, they did more than that, you've got a
11 document in your hands that says he executed a Miranda form
12 waiving his constitutional rights.

13 MS. WILSON: I don't disagree with that. I just
14 disagree about what he waived.

15 THE COURT: Well, you can't hardly disagree with that you
16 had notice of it if you've got the form in your hands that
17 says he's waiving his constitutional rights and signed it.

18 MS. WILSON: Your Honor, I don't -- my client apparently
19 took a polygraph and then waived his rights. I don't know
20 what he waived -- I'm saying I don't have any substantive
21 information.

22 THE COURT: Go forward.

23 STATE'S EXHIBIT NUMBER ONE

24 MARKED FOR IDENTIFICATION.

25 MS. LIVESAY: Thank you, Your Honor. At this time, the

1 State is showing Detective Williams State Exhibit marked
2 Number One.

3 BY MS. LIVESAY:

4 Q: Mr. Williams, do you recognize that document?

5 A: Yes, I do.

6 Q: And what is that document; tell the Court.

7 A: It is a written Advisement of Miranda Rights.

8 Q: And on that document, does it list the Defendant's
9 rights?

10 A: Yes, it does.

11 Q: And for the Court's purposes, will you please read those
12 rights into the record.

13 A: Okay. It's says, you have the right to remain silent.

14 Anything you say can and will be used against you in a court
15 of law. You have the right to talk with a lawyer and have him
16 present with you while you are being questioned. If you
17 cannot afford to hire a lawyer, one will be appointed to
18 represent you before any questioning if you so desire. If you
19 make a statement or answer any questions, you have the right
20 to stop at any time.

21 Q: Now, tell the Court, on that document marked as State's
22 Exhibit One, are there any questions where the Defendant
23 initials as to whether or not he understands those rights?

24 A: Yes.

25 Q: And would you please read that into the record, that

- 1 question.
- 2 A: Okay. There are two questions. The first one is, Do you
3 understand your rights as I have read them to you? And the
4 second question is, Understanding your rights ---
- 5 Q: I'm sorry. Before we go -- did he initial by that first
6 question?
- 7 A: He did, yes.
- 8 Q: And what did he initial beside it?
- 9 A: He initialed beside yes that he understood his rights.
- 10 Q: Okay. Now, is there a second question on that document?
- 11 A: Yes.
- 12 Q: What is that question? Please read that to the Court.
- 13 A: The second question reads, Understanding your rights, do
14 you wish to waive them and make a statement or answer any
15 questions at this time?
- 16 Q: Did he initial beside that question?
- 17 A: He did.
- 18 Q: And what did he initial beside?
- 19 A: He initialed beside yes.
- 20 Q: Okay. And is there anything at the bottom of that form
21 where the Defendant signs?
- 22 A: Yes.
- 23 Q: Is his signature down there?
- 24 A: It is.
- 25 Q: Is there any other written information on that document?

1 A: There is a date, time, location and witness.

2 Q: Okay. Would you please read the date and the information
3 that's written on that document?

4 A: The date reads, February the 12th, 2007; the time is 2
5 P.M. or 1400 hours. The location is 2560 North Main Street,
6 Conway, South Carolina which is the Horry County Police
7 Department and witness is my signature.

8 Q: And is that indeed your signature at the bottom?

9 A: It is.

10 Q: Detective Williams, do you remember where you interviewed
11 him on that date?

12 A: Yes.

13 Q: Where were you?

14 A: We were in one of the two interview rooms at the Horry
15 County Police Department.

16 Q: Okay.

17 THE COURT: How about elicit generally what he said if
18 anything or what was done perhaps that would refresh Ms.
19 Wilson memory as to what she's got in her file.

20 MS. LIVESAY: Okay. I will, Your Honor.

21 BY MS. LIVESAY:

22 Q: And you say Detective Cox was present as well?

23 A: Yes.

24 Q: Okay. Now, had there been -- because there was some
25 issues about a polygraph test, was there a polygraph test

1 prior to this interview?

2 A: Yes, there was.

3 Q: Okay. But it wasn't on that date?

4 A: No.

5 Q: Okay. When was the polygraph test?

6 A: The polygraph was -- actually, my notes are out there --
7 on the 7th of February.

8 THE COURT: We're not gonna let a polygraph test come in.

9 MS. LIVESAY: Okay. I know, I understand, Your Honor, I
10 just -- that was mentioned so I wanted to make sure everybody
11 knew that this form did not relate to anything ---

12 BY MS. LIVESAY:

13 Q: So it was not on that date?

14 A: Oh, no; it was not.

15 Q: Okay. And what exactly did you interview the Defendant
16 about that day?

17 A: On that day, the interview was -- pertained to his
18 potential involvement and the incident or the ---

19 THE COURT: Can you tell me where we're talking about a
20 written statement, oral statement or video?

21 MS. LIVESAY: Oral statement.

22 THE COURT: Pardon me?

23 MS. LIVESAY: I'm sorry.

24 BY MS. LIVESAY:

25 Q: I'm sorry. Detective Williams, did you record the

1 statement he gave on February the 14th; I mean February the
2 12th?

3 A: On February -- yes; yes, we did.

4 THE COURT: All right. Were you provided with a February
5 12th statement, Ms. Wilson?

6 MS. WILSON: Your Honor, the tapes were of such poor
7 quality, when I spoke to the solicitor ---

8 THE COURT: No, I didn't ask you about that.

9 MS. WILSON: I don't have a tape from February 12th, I
10 just ---

11 THE COURT: I didn't ask you about the tape. Were you
12 provided a recorded statement of February 12th, 2009?

13 MS. WILSON: I do not believe I was, that's -- 2007 and
14 no, sir, I do not believe that I was.

15 MS. LIVESAY: Your Honor, if I mind, the report that
16 Detective Williams did clearly states that he interviewed this
17 Defendant twice, January 16th, February the 12th. And in
18 fact, in the report, he documents what was said and the fact
19 there was a change in the story from the first interview to
20 the second interview.

21 THE COURT: Give her at this moment the -- another copy
22 of the February 12th statement.

23 MS. LIVESAY: Your Honor, I don't have the -- okay, I do
24 have it, Your Honor. You want her to have the actual tape?

25 THE COURT: I want -- if she wants it and I want her to

1 have a actual transcription of the tape.

2 MS. LIVESAY: Certainly, Your Honor, it's right here in
3 my file.

4 MS. WILSON: And for the record, Your Honor, I want to
5 be clear. We talked about the tapes. I received a transcript
6 of the 1/16/07, that was the only thing we had. We got the
7 transcript for that because it was so hard to hear. I don't
8 have any kind of transcript or any notice of it. I know
9 what's in my file, that statement is not in it. And I'm fine
10 with receiving it, I'm just making it -- I want to be clear to
11 the Court about that.

12 THE COURT: You're saying that you -- when did you say
13 you gave her the February statement?

14 MS. LIVESAY: We're looking through the discovery right
15 now, Your Honor, to find when that was handed over.

16 THE COURT: In the meanwhile you're looking give it to
17 her now.

18 MS. LIVESAY: It's right here, Your Honor. It says it
19 was handed over or we did it on October 3rd, 2011 and that was
20 the transcript of interview with the Defendant. We've got it
21 documented leaving our office on October 3rd, 2011. That is
22 just the transcription. We're looking now to see when the
23 tape itself was turned over but ---

24 THE COURT: But you gave her the transcripts?

25 MS. LIVESAY: Yes, sir.

1 THE COURT: Okay. Let me ask you this. I want her to
2 have a chance to look at the transcripts tonight before you
3 put him up as to any statements.

4 MS. LIVESAY: Okay, Your Honor.

5 THE COURT: We don't have to put him up this afternoon,
6 do you?

7 MS. LIVESAY: No, sir.

8 THE COURT: If she says she didn't have it, she may have
9 it and overlooked it but in fairness to her, I want her to
10 have today and tonight to examine that statement before he
11 puts it up.

12 MS. LIVESAY: I understand.

13 THE COURT: You understand, Ms. Wilson?

14 MS. WILSON: Yes, sir, I do. And I think that if we
15 accepted discovery, they must have some kind of signed
16 documentation saying that we accepted it.

17 THE COURT: Well, I don't whether they sent by mail or
18 not.

19 MS. WILSON: They're gonna get something back, Your
20 Honor, from October; yes, sir. Thank you very much, Your
21 Honor.

22 THE COURT: Have you got the statement now, Ms. Wilson?

23 MS. WILSON: No, I do not.

24 THE COURT: I told you ten minutes ago to give it to her.

25 MS. LIVESAY: The transcription that I have up here, Your

1 Honor, has my notes on it. So, what we're gonna have to do is
2 get another copy, a clean copy and give to her.

3 THE COURT: This is what I want done. And there can't be
4 any question about it. When this proceeding is over, when we
5 are through this afternoon, I want a clean copy presented to
6 her exactly as to what that transcript would show if we showed
7 the video.

8 MS. LIVESAY: Yes, sir.

9 THE COURT: I will not permit him to testify as to any
10 second statement until she has, tonight, had an opportunity to
11 examine it and prepare for cross examination. He is not to be
12 called on that issue until that's done.

13 MS. LIVESAY: I understand, Your Honor,

14 THE COURT: And I'm gonna inquire of Ms. Wilson in the
15 morning has she done it.

16 MS. LIVESAY: I understand.

17 MS. WILSON: And I will be ready in the morning, Your
18 Honor.

19 THE COURT: All right.

20 Now, let's move on.

21 BY MS. LIVESAY:

22 Q: Mr. -- Detective Williams, about how long did you talk
23 with the Defendant on February the 12th?

24 A: Approximately forty-five minutes.

25 THE COURT: And while we're doing it, I want you to

1 continue to look at your files and see if there's any
2 acknowledgement that you received it.

3 MS. LIVESAY: I will, Your Honor.

4 THE COURT: All right.

5 BY MS. LIVESAY:

6 Q: At that time ---

7 A: Forty-five minutes or maybe an hour.

8 Q: --- did you promise him anything in exchange for his
9 statement?

10 A: No.

11 Q: Okay. Did you ever coerce him to give a statement?

12 A: No.

13 Q: Okay. And during that time, did he voluntarily speak
14 with you?

15 A: Yeah, he was asked to come and he did voluntarily come
16 and he was Mirandized and then he answered all the questions.
17 He didn't -- he didn't stop the interview or ---

18 Q: Did he ever ask for an attorney?

19 A: No.

20 Q: Did he ever tell you he didn't want to speak with you any
21 longer?

22 A: No.

23 Q: Did he ever indicate to you that he did not want to talk
24 with you?

25 A: No.

1 Q: Okay. Was he allowed during that interview to leave the
2 room for a break if he wished?

3 A: If he would've asked to use the bathroom or whatever,
4 yeah, we would've definitely let him use the bathroom. There
5 was no -- he didn't ask for a break and we just went through.
6 I mean, none of us initiated breaks either. Like I said, the
7 interview was maybe forty-five minutes, maybe an hour, but ---

8 Q: And at that time, was he a suspect?

9 A: Yes, at that time, he was.

10 Q: And at that time, did he sign Miranda saying he
11 understood his rights?

12 A: Yes, he did.

13 Q: Did he sign saying he wanted to voluntarily waive them?

14 A: Yes, he did.

15 Q: During that interview, did he ever indicate to you that
16 he didn't want to speak to you?

17 A: No, he did not.

18 Q: Did he ever indicate to you that he wanted an attorney?

19 A: No.

20 Q: No further questions.

21 THE COURT: You may examine.

22 MS. WILSON: Thank you, Your Honor.

23 CROSS EXAMINATION OF DETECTIVE DARYL WILLIAMS BY MS. WILSON:

24 Q: Detective Williams, you say this last interview was about
25 forty-five minutes. Did you at any point in time --

1 approximately, was this a morning or afternoon interview?

2 A: The second interview was at 2 P.M.

3 Q: 2 P.M. So Mr. Rayl arrived on time for that interview?

4 A: I want to say he did; I'm not exactly sure of his arrival
5 time.

6 Q: And when he got there, you took him straight to the back
7 or did he have to wait?

8 A: Once again, I'm not exactly sure. Once I'm notified,
9 then I usually go out there and get the -- whoever is waiting
10 and take them on back. There may be a short wait if I need to
11 gather up some materials or, you know, get recording materials
12 or whatever have you but once again I don't recall any
13 significant wait.

14 Q: And when you called him this time, didn't you tell him
15 that no attorney was necessary, he didn't need any
16 representation?

17 A: No, I don't recall telling him that.

18 Q: So, this time you anticipated arresting him?

19 A: This time -- at this point, he was a suspect.

20 Q: So, when he arrived, you had him sign off the Miranda,
21 correct?

22 A: When he -- after he arrived, before we interviewed him,
23 he did sign a Miranda, yes.

24 Q: Okay. And then once he was Mirandized, you and Detective
25 Cox took turns questioning him, correct?

1 A: We both questioned him. I think I primarily questioned
2 him but I think Detective Cox also did question him as well.

3 Q: Okay. And while he was being questioned, you said it was
4 approximately forty-five minutes; are you sure about that
5 timeframe?

6 A: I am not. Like I said, it was approximately forty-five
7 minutes, maybe it's an hour. It's not too much more than
8 that, however.

9 Q: And during that hour, did he not say that he wanted to
10 take a break, did he not ask for an attorney?

11 A: He did not ask for an attorney. He did not ask for a
12 break in the interview, no.

13 Q: Did he not seem concerned about the way the questions
14 were going that he might incriminate himself or that he might
15 seem to incriminate himself?

16 A: Explain what you're ---

17 Q: Did he seem as if he was becoming discomfited by the
18 questioning?

19 A: Not particularly. He, he held a certain, you know, he
20 had his version of what took place and he stuck to it. He
21 didn't seem to grow distressed, necessarily. It wasn't that
22 type of an interview.

23 MS. WILSON: The Court's indulgence one second, please.
24 And -- let me just make sure I've covered the question.
25 You didn't tell him that he didn't need to be worried about

1 this conversation or interview with you?

2 A: On the second interview, no, anything once -- excuse me
3 -- earlier we spoke about the first interview and how it was
4 just to gain knowledge and he might be a potential witness.
5 And at the time we explained to him that he was not under
6 arrest and he, you know, we didn't anticipate taking him under
7 arrest. The second interview is -- we explained that we have
8 some issues, some conflicting statements and that's the
9 basically the extent of painting -- the picture we painted and
10 we just wanted to straighten those things out. And then we
11 talked with Mr. Rayl subsequent to the Miranda.

12 MS. WILSON: No further questions, Your Honor. Thank
13 you.

14 MS. LIVESAY: Nothing further from the State, Your Honor.

15 THE COURT: Any other witnesses on this issue?

16 MS. LIVESAY: No, sir.

17 THE COURT: All right. I find again as follows, that
18 there has been an evidentiary hearing in this matter with
19 reference to alleged statement number two and I am convinced
20 beyond a reasonable doubt and so find that the confession of
21 statement was made freely and voluntarily without threats,
22 coercion or duress and without any hope of promise or reward.
23 I find clearly that such statement was freely and voluntarily
24 made after having been Mirandized.

25 Go ahead.

1 All right. What's your next question?

2 MS. LIVESAY: I've got one more *Jackson v. Denno*, Your
3 Honor.

4 THE COURT: All right.

5 MS. LIVESAY: At this time, the State calls Brad Whiteis
6 to the stand.

7 THE COURT: Now, with reference to the last statement,
8 was that the video in addition to the statement?

9 MS. LIVESAY: Both statements were audio taped, Your
10 Honor.

11 THE COURT: Okay. That's fine. And have you found out
12 what I needed to know about her ---

13 MS. LIVESAY: They are looking for it downstairs right
14 now, Your Honor.

15 THE COURT: Okay. Thank you.

16 JACKSON V. DENNO HEARING AS TO JANUARY 30, 2007 STATEMENT:

17 THE COURT: Call your witness.

18 BRAD WHITEIS, HAVING BEEN SWORN,

19 TESTIFIED AS FOLLOWS:

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

21 MR. WHITEIS: Sure. Brad Whiteis, B-R-A-D-W-H-I-T-E-I-S.

22 DIRECT EXAMINATION OF BRAD WHITEIS BY MS. LIVESAY:

23 Q: And Mr. Whiteis, where are you currently employed?

24 A: The Horry County Department of Social Services.

25 Q: And how long have you been employed there?

1 A: I've been there for about six years now.

2 Q: And what are your current responsibilities?

3 A: I supervise the Child Protective Services Investigation

4 ---

5 Q: And were you employed with DSS or around January of 2007?

6 A: I was.

7 Q: And did you happen to have occasion to come across the
8 Defendant in this case?

9 A: I did.

10 Q: Okay. And how did you speak with the Defendant?

11 A: I had two conversations -- with Emily you're talking
12 about or Justin?

13 Q: How about Justin right now.

14 A: Justin, I had a telephone conversation with Justin on ---
15 it'd be January 30th, 2007.

16 Q: Okay. And as an employee of the Department of Social
17 Services, do you have the power of arrest?

18 A: No.

19 Q: Could you put him into custody?

20 A: No.

21 Q: At any time did you indicate to him that he was in
22 custody?

23 A: Absolutely not.

24 Q: At any time did you tell him that you could put him in
25 custody?

- 1 A: No, ma'am.
- 2 Q: Okay. And how long did you speak with Justin Rayl?
- 3 A: Justin and I spoke for -- it was a brief telephone
4 conversation. I knew there was a law enforcement
5 investigation going on so I didn't want to get too much into
6 it. We spoke for maybe ten minutes on the phone if that.
- 7 Q: And did he know what you were speaking to him about?
- 8 A: He did. I let him know who I worked for and in what
9 capacity and why I was talking with him.
- 10 Q: And tell the Court what you indicated to him as to what
11 you wanted to speak to him about?
- 12 A: Any time we interview a parent, boyfriend, we let them
13 know that they're -- that we're not law enforcement, we're
14 there to conduct an investigation as far as the allegations of
15 possible child abuse and that we're gonna concurrently
16 investigate the allegations with the police and that I just
17 needed a statement from him regarding what had happened.
- 18 Q: And did he speak to you that day?
- 19 A: He did.
- 20 Q: And did he speak to you about the incident regarding
21 H M , the victim in this case?
- 22 A: He did.
- 23 Q: Okay. Did he ever indicate to you that he did not want
24 to talk with you?
- 25 A: No.

1 Q: Okay. And did you coerce him in any way to talk to you?

2 A: No.

3 Q: Did you promise him anything in order to speak with you

4 A: No, ma'am.

5 Q: Okay. Did you put that statement in writing that he gave
6 you?

7 A: I did.

8 Q: Okay. And could you please tell the Court the statement
9 that he gave you in regards to the incident we're here today
10 for?

11 A: Okay. Our conversation, like I said, was on January
12 30th, 2007. I telephoned him at about 2 P.M. and he let me
13 know what his living arrangements were and he basically just
14 gave me quick summary ---

15 THE COURT: May I inquire why we are having this? He
16 doesn't have the power of arrest. He has no ---

17 MS. LIVESAY: I understand, Your Honor, but my
18 understanding was any time the Defendant gives his statement I
19 have to do a *Jackson v. Denno* to declare that it was
20 voluntary.

21 THE COURT: We can do that but I mean, he doesn't have
22 the power of arrest or power to give ---

23 MS. LIVESAY: Yes, sir. I was just gonna have him read
24 what Justin told him regarding this incident so it would be on
25 the record and it would be ---

1 THE COURT: That's fine. I can do that but ---

2 MS. LIVESAY: Thank you, just so it will be clear when I
3 call him during the trial.

4 THE COURT: I understand. I just want to clarify -- I'm
5 sure Ms. Wilson understands.

6 MS. WILSON: I do understand, Your Honor.

7 MS. LIVESAY: Thank you, Your Honor.

8 BY MS. LIVESAY:

9 Q: Could you please read that for the Court?

10 A: Sure. And this would be documented anytime I have a
11 conversation with an individual it goes into our system. I
12 made a telephone contact with him January 30th, 2007 at 2 P.M.
13 He let me know that he was Emily's paramour, that they had
14 recently separated because of this whole ordeal. He let me
15 know on January 7th, 2007 while Emily was out-running errands,
16 he began to play wrestle with the child and he was not doing
17 it aggressively. He let me know that the child began wheezing
18 and throwing up so he immediately called Emily. He states
19 that Emily came home and they tended to the child, that they
20 eventually put the child to bed hoping that the next morning
21 he would be okay. He says the next morning on January 8th,
22 2007, the child was still acting odd. I asked him what odd
23 meant and he said kind of inactive, throwing up and so forth,
24 no appetite. He said the child continued to act this way
25 throughout the day and that Emily, the mother, eventually took

1 the child to Waccamaw Hospital the next day, January 9th.
2 Told me he did not go to the hospital with them. He let me
3 know that he, of course, denied abusing the child or wrestling
4 aggressively with the child. He denied ever hitting the child
5 except for a light smack on the hand or on the child's
6 buttocks. He also denied that Emily ever smacked his -- the
7 child. He stated that Emily would never abuse Hunter. He
8 proceeded to talk -- part of my questioning to him was about
9 illegal drug use. The ---

10 MS. LIVESAY: Your Honor, I understand that's prejudicial
11 and I understand that's not coming in.

12 THE COURT: Yes.

13 MS. LIVESAY: So, I just want to make sure he knows as
14 well that ---

15 A: Okay. I'm gonna skip that part. We ended our
16 conversation by him letting me know that he has since moved
17 out of the home because Emily and the grandparents had
18 apparently told us that he was not living there although he
19 was and that he just, quote, didn't want to get caught in the
20 lie, so he did remove himself from that home.

21 MS. LIVESAY: Your Honor, that's the only questions I
22 have.

23 THE COURT: Again, what was the prejudicial remark that
24 will not come in the record?

25 MS. LIVESAY: I'm sorry, Your Honor?

1 THE COURT: You said he issued a prejudicial remark, what
2 was it?

3 MS. LIVESAY: Oh, he was gonna go into the fact of the
4 drug use of the Defendant.

5 THE COURT: No, no. Clearly, I just want to make clear
6 even now that that's not coming in.

7 MS. LIVESAY: Yes, sir. I won't -- and he understands
8 that's not gonna be admissible.

9 THE COURT: Okay.

10 Ms. Wilson, you'll have an opportunity to examine him
11 when he's called as a witness.

12 MS. WILSON: Yes, sir. This is just a very brief issue
13 on the issue of the *Jackson v. Denno* since she's brought it
14 up.

15 CROSS EXAMINATION OF BRAD WHITEIS BY MS. WILSON:

16 Q: My first question is, this interview took approximately
17 how long?

18 A: Oh, gosh, maybe ten minutes, very fast.

19 Q: And did you record this interview in any way?

20 A: No, no, ma'am.

21 Q: So, this is just your recollection of -- based on your
22 notes?

23 A: Within twenty-four hours I would've documented our
24 conversation within the computer, so ---

25 Q: And it was by phone, correct?

1 A: That's right.

2 Q: Not in person. Okay. Thank you, Your Honor.

3 THE COURT: Okay. I would find that this issue freely
4 and voluntarily made. He doesn't have the power of arrest,
5 not an officer. It -- clearly this was just an interview by
6 DSS. It's admissible but leave out the part about the drugs.

7 MS. LIVESAY: I understand.

8 THE COURT: All right. Now any other issues? That's
9 coming in.

10 MS. LIVESAY: There's no further issues from the State,
11 Your Honor, as far as pretrial motions.

12 MOTIONS BY MS. WILSON:

13 THE COURT: Okay. Ms. Wilson, you have another motion
14 about something?

15 MS. WILSON: I do. Just very briefly, Your Honor, the
16 normal sequestration of witnesses, we would ask the Court to
17 allow that ---

18 THE COURT: You're entitled to that and I want your
19 witnesses sequestered too.

20 MS. WILSON: Absolutely, Your Honor, and I understand
21 that.

22 THE COURT: I would leave -- you'll have your chief
23 investigating officer and who else here?

24 MS. LIVESAY: Yes, sir. The chief investigating officer
25 and the father of the child but he will be testifying first so

1 that ---

2 THE COURT: No, but the father of the child is entitled
3 to be in the courtroom surely even though he's a witness.

4 MS. LIVESAY: Yes, sir.

5 THE COURT: You can't exclude the father of the child for
6 ---

7 MS. WILSON: And I don't actually object to that, Your
8 Honor.

9 THE COURT: Oh, I know you don't.

10 MS. WILSON: And, Your Honor, my other issue would be --
11 and the solicitor and I spoke about it but I feel the need to
12 preserve that issue for the record. I would like to keep out
13 the term shaken baby specifically. I believe that Dr. Abel
14 prefers to use a term, physical trauma, which I think is more
15 appropriate as no one who testifies will be able to speak
16 directly as to the issue of ---

17 THE COURT: I'm not gonna tell a doctor how he -- how he
18 defines an injury. I can't do that. If he in his knowledge
19 as an expert uses the term shaken baby, I'm not gonna say
20 anything about it.

21 MS. WILSON: Well, she actually doesn't prefer the term
22 and that's my position. I don't think that there should be
23 anything submitted to the jury that says shaken baby nor
24 should anyone be talking about shaken baby since there is no
25 testimony ---

1 THE COURT: Well, I don't know whether there is or not,
2 I'll have to see but if an expert tells me that from his
3 experience he concludes it's a shaken baby, I'm gonna let it
4 in. If he doesn't say that, it's not coming in but I can't
5 rule now because I hadn't heard any testimony.

6 What about that issue, ma'am, Ms. Livesay?

7 MS. LIVESAY: Your Honor, at this point, the State has no
8 -- no indication that I'm gonna use the term shaken baby or
9 that any of the witnesses are. Ms. Wilson has already spoke
10 with my expert witnesses, so she's already clear on what
11 they're gonna say.

12 THE COURT: Okay. That's fine. To the extent possible
13 we're gonna leave it out but I'll have to wait and see what an
14 expert says.

15 MS. LIVESAY: I understand, Your Honor.

16 THE COURT: All right.

17 MS. WILSON: And, Your Honor, I just want to reiterate
18 that specifically in the medical records for Dr. Haseltine, it
19 says shaken baby and that is my concern and it says it
20 throughout some of the medical records from Waccamaw. That's
21 what I'm talking about.

22 THE COURT: Well, I cannot and will not tell a doctor
23 what he can and cannot say.

24 MS. WILSON: Yes, sir.

25 THE COURT: If for instance he says in his experience and

1 education and practice, it's a shaken baby, I can't deny him
2 the right to say that.

3 MS. WILSON: Yes, sir. I understand. Thank you, Your
4 Honor.

5 THE COURT: Okay. I'm not gonna let any other than
6 professionals say that though.

7 MS. WILSON: Yes, sir. Yes, sir.

8 THE COURT: All right. Are we now ready for the jury?

9 MS. LIVESAY: Yes, sir. We're ready for the jury.

10 THE COURT: All right. Bring my jury up, please.

11 These folks at the back, let them come forward here and
12 sit up front so my jury can sit back there. And those of you
13 over there, move back as far as you can on the -- get on the
14 back row while I pick a jury, please.

15 *****OFF THE RECORD*****

16 (On the Record.)

17 THE COURT: All right, Ms. Livesay, go ahead. Let's come
18 to order. Proceed, Ms. Livesay.

19 MS. LIVESAY: Your Honor, just very briefly, I want to
20 put on the record that at this time we have handed over a copy
21 of the transcript to Ms. Wilson as to the second interview
22 that was on February the 12th of 2007. We've also got a copy
23 where we handed over six audio tapes. Those audio tapes
24 included both interviews as well as an interview with Emily
25 McKenzie and everybody else that Detective Williams and ---

1 THE COURT: Who handed them over to her and when?

2 MS. LIVESAY: The date on this, Your Honor, is February
3 the 7th, 2011.

4 THE COURT: And who handed them over to her?

5 MS. LIVESAY: It says this was prepared by Melissa Stover
6 who is the administrative assistant, Your Honor.

7 THE COURT: And she is says she ---

8 MS. LIVESAY: And this is a copy showing that we sent
9 that stuff to her.

10 THE COURT: Okay. That's fine.

11 MS. WILSON: Your Honor, I understand that they're saying
12 that they sent it. I'm saying I didn't get that. And this
13 interview is not the copy of the transcript of the interview
14 that I received. I have one copy. I am in receipt of this
15 now and I'm certainly gonna be prepared for tomorrow morning,
16 I just want my objection to what the State is claiming on the
17 record as well.

18 THE COURT: I understand but ---

19 MS. WILSON: Thank you, Your Honor.

20 THE COURT: --- regardless of whether you received it or
21 not, you have it now?

22 MS. WILSON: I do have -- yes, sir, and I will be
23 prepared.

24 THE COURT: And if necessary I'll make that doctor
25 available to you prior to testimony.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 56
SELECTION OF THE JURY

1 MS. WILSON: Yes, sir, thank you.

2 THE COURT: I want to protect the record and I understand
3 your problem.

4 MS. WILSON: Yes, sir; I appreciate it.

5 THE COURT: All right. Bring the jury in, please.

6 Any special voir dire, Ms. Livesay?

7 MS. LIVESAY: None from the State, Your Honor.

8 THE COURT: How about it, Ms. Wilson?

9 MS. WILSON: None, Your Honor.

10 THE COURT: All right.

11 *****OFF THE RECORD*****

12 (On the Record.)

13 (REPORTER'S NOTE: Jury panel enters courtroom.)

14 SELECTION OF THE JURY:

15 THE COURT: All my panel here?

16 DEPUTY: Yes, sir.

17 THE COURT: All thirty-five.

18 Ladies and gentlemen of the potential jury panel, by way
19 of introduction, I'm Judge Cottingham from Marlboro County,
20 Bennettsville and have the high honor under our system of
21 rotation to be one of the trial presiding judges this week. I
22 sent down a message asking that thirty-five of you come up and
23 be ready to go at 2:30 this afternoon. Recognizing that your
24 time is valuable too, I want to tell you why we're an hour
25 late and there's two reasons for that. One is, we're in the

1 trial of another serious case where we just got through
2 charging the jury and that jury is now deliberating in a very
3 serious case of burglary 1st degree. I wanted to conclude
4 that before I brought you up and we just concluded that.
5 There is another reason that I wanted to have your jury
6 selected today and it will inure to the benefit of those not
7 selected. I'm advised that we will not need another jury this
8 week for General Sessions or Criminal Court and thus it is
9 that after I select the twelve jurors and two alternates from
10 your panel you are excused for not only the rest of the day
11 but for the rest of the week. My alternative was to have
12 brought you in tomorrow and you would've wasted another day.
13 As it is, you wasted an hour and I hope you understand why
14 you're late. I always like to let a jury know that why you're
15 late because sometimes they think that they don't think your
16 time is valuable; I do. Jurors sometimes think that when
17 we're late we're out there smoking and telling jokes but
18 that's not happened. We were attending to the state's
19 business and I was interested in getting my jury from your
20 panel tonight so that the rest of you could go about your
21 regular business for the rest of the week and I do hope you
22 understand.

23 I do want to say to you that as presiding judge here this
24 week and having been a judge here for the last twenty-seven
25 years, I appreciate the folks of Horry County and particularly

1 appreciate the jurors who come to us sworn to uphold their
2 duties. All the jurors in Horry County do an excellent job
3 and you're to be congratulated and I thank you, all of you,
4 for your participation.

5 You may call the case, solicitor, when -- hold on a
6 minute.

7 *****OFF THE RECORD*****

8 (On the Record.)

9 MS. LIVESAY: Please, Your Honor, real quick. The first
10 indictment is State v. Justin Rayl, and that's indictment
11 2007-GS-26-3067; that is for infliction of great bodily injury
12 upon a child. The second indictment is State v. Justin Rayl,
13 2007-GS-26-3068; that is for assault and battery of a high and
14 aggravated nature.

15 THE COURT: Ladies and gentlemen, the State of South
16 Carolina has called these two cases that you've just heard
17 upon these indictments against the Defendant, Justin Monroe
18 Rayl -- is it pronounced Rayl or Rowell?

19 MS. WILSON: It's Justin Rayl, Your Honor.

20 THE COURT: Justin Rayl. I specifically tell you and
21 charge you that to these indictments, this defendant has pled
22 not guilty. You will have these indictments in the jury room
23 with you during your deliberations but I tell you that the
24 allegations in these indictments are simply that, they're
25 allegations only. It is not any evidence. The evidence comes

1 from this witness stand and other matters introduced in the
2 trial of this case.

3 *****OFF THE RECORD*****

4 (On the Record.)

5 THE COURT: Now, ladies and gentlemen, you have heard the
6 case of the indictments as against Mr. Rayl to which
7 indictments he pleads not guilty. The State of South Carolina
8 who has charged Mr. Rayl with this indictment, and Mr. Rayl's
9 attorneys too, desire from your number twelve jurors with no
10 friends to reward, no enemies to punish, twelve jurors who can
11 say upon their oath, Judge, I'm -- I will base my verdict on
12 the law and evidence in this courtroom and no other place.

13 Swear the jury for me, please -- they're sworn.

14 Now, first ladies and gentlemen -- Mr. Rayl, please
15 stand. Face the jury. Are any of you related by blood or
16 connected by marriage with this defendant, Justin Monroe Rayl,
17 R-A-Y-L, if so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Do any of you have any close personal
20 relationships with Mr. Rayl or his family, church members, co-
21 workers, neighbors or anything.

22 Come forward.

23 Good morning, sir, or good afternoon, maybe good night.

24 JUROR 234: Good afternoon.

25 THE COURT: What is your name?

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 60
SELECTION OF THE JURY

1 JUROR 234: Greg O'Sullivan.

2 THE COURT: And what is your response to my inquiry?

3 JUROR 234: When I was about fourteen, we were in a
4 church group together.

5 THE COURT: Would that affect your ability to be a fair
6 juror for the State of South Carolina and him, the fact that
7 you knew him some years ago?

8 JUROR 234: Yes.

9 THE COURT: It would?

10 JUROR 234: Yes.

11 THE COURT: I'm gonna excuse -- I'm just curious, why
12 would it? Come forward, let's talk lightly. When's the last
13 time you seen him?

14 JUROR 234: I was fourteen years old.

15 THE COURT: And how old are you now?

16 JUROR 234: Twenty-seven.

17 THE COURT: You haven't seen him in that many years?

18 JUROR 234: No, but we were -- we hung out a lot and went
19 on trips together and I don't want it to ---

20 THE COURT: Fourteen, that's nine years ago, thirteen.

21 JUROR 234: Well, I don't want it skew my ---

22 THE COURT: I'm gonna excuse you. If you say it will
23 affect your ability to be a fair juror, I'll excuse you.

24 Thank you. You may leave.

25 And I think him for that inquiry. How many of you know

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 61
SELECTION OF THE JURY

1 Mr. Rayl or his family -- Mr. Rayl, in any capacity
2 whatsoever, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: You may be seated. Is there anyone here of
5 the family of the alleged victim H M , if so,
6 please stand. Who is here? I was told that the father of
7 H M was here? Didn't you hear what I said.

8 MR. MCKENZIE: I apologize, Your Honor.

9 THE COURT: All right. Who are the two folks. Who are
10 you, sir?

11 MR. MCKENZIE: I'm the child's father.

12 THE COURT: And who are you?

13 MS. MCKENZIE: Mother.

14 THE COURT: Pardon me?

15 MS. MCKENZIE: The child's mother.

16 THE COURT: All right. Are any of you related by blood
17 or marriage to these two individuals? Do any of you in any
18 way have any close personal connection with these folks? How
19 many of you knew these people in any capacity whatsoever prior
20 to their standing today? If so, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: You may seated and I thank you.

23 There are allegations of assault and battery upon one
24 indictment and allegations of abuse and great bodily harm upon
25 another indictment of a minor, H M It having

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 62
SELECTION OF THE JURY

1 been alleged that these events, which are denied, occurred on
2 January the 7th, 2007. Not likely but have any of you at any
3 time since then or today heard or discussed any issue about
4 this case? Would any of you have read anything about it,
5 know anything about it, have any interest in it whatsoever?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: This case, ladies and gentlemen, involves an
8 allegation of abuse of high and aggravated nature and great
9 bodily harm to a child. And I ask if any of you have any
10 particular biases or prejudices that would prevent you from
11 being a fair juror for the State and the Defense.

12 Let me tell you what I mean, it has nothing to do with
13 this case. Some years ago, I was getting ready to try a young
14 man for a felony DUI, it having been alleged that while drunk
15 driving, he killed a young girl. I asked that question with
16 reference to prejudice. A lady got up in the back and said,
17 Judge, I can't be fair to that young man, my daughter was
18 killed by a drunk driver last year. And obviously, I excluded
19 her. Interestingly enough, a gentleman got up in the back and
20 said, Judge, I can't be fair to the State of South Carolina,
21 he tried my son three times for a similar event. Jurors were
22 eleven to one for acquittal on the first two and acquitted him
23 on the third time and he put my child through that and I will
24 not be fair to the State of South Carolina and the solicitor.
25 Has nothing to do with this case but it's simply an indication

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 63
SELECTION OF THE JURY

1 of how sometimes based on life's experiences, we develop
2 prejudices.

3 Now, this involves allegations of abuse to a child,
4 tender child, which is specifically denied. The State has the
5 burden of proving it if they can beyond a reasonable doubt.
6 My question is, however, do any of you have such biases or
7 prejudices based on past experiences that you could not be
8 fair as a juror in this case recognizing that for most of you,
9 you are parents or grandparents or nieces or nephews or uncle
10 or aunts, but if you have such bias or prejudice, either for
11 the State or for the Defendant that you could not be fair in a
12 case of this kind, please stand.

13 Come forward.

14 Counsel for the State and Defense, you may come forward
15 and join us.

16 May I have your name, please?

17 JUROR 169: Laura Kosinski.

18 THE COURT: Who?

19 JUROR 169: Kosinski.

20 THE COURT: May I have your jury number?

21 JUROR 169: 169, sir.

22 THE COURT: Thank you.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the jury but out of hearing of the jury.)

25 THE COURT: This witness [sic] is excused by and with the

State v Rayl 2007-GS-26-3067 & 3068 -- December 13, 2011 - 64
SELECTION OF THE JURY

1 consent of the State and the Defendant.

2 The State of South Carolina represented by the
3 Solicitor's Office of the Fifteenth Circuit any of you have
4 any close relationship or folks employed by the Solicitor's
5 Office of the Fifteenth Circuit?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Any of you have any relationships with Ms.
8 Livesay who represents the Circuit at this time?

9 (REPORTER'S NOTE: No response.)

10 THE COURT: The Defendant is represented by Ms. Irving
11 and Mr. McCoy -- I'm sorry, that's the last case -- Ms. Kia
12 Wilson. Are you any you employed by Ms. Wilson or related to
13 her in any way?

14 (REPORTER'S NOTE: No response.)

15 THE COURT: I apologize for calling you Mr. Irving.

16 MS. WILSON: It's no problem, Your Honor.

17 THE COURT: All right. Other than the potential witness
18 list for the State, is there any additional inquiry asked for?
19 Ms. Livesay?

20 MS. LIVESAY: No, sir.

21 THE COURT: Ms. Wilson?

22 MS. WILSON: I'm sorry, Your Honor. What was that
23 question?

24 THE COURT: Any additional inquiry other than inquiring
25 of the witnesses?

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 65
SELECTION OF THE JURY

1 MS. WILSON: No, sir. Thank you, Your Honor.

2 THE COURT: Then that will stand.

3 Ladies and gentlemen of the potential jury. I'm going to
4 give you a list of potential witnesses that may or may not be
5 called by one side or the other. I don't want you to be
6 scared by the number of them I'm listing. I'm sure we're not
7 gonna hear all of these witnesses but anyway I need to make
8 inquiry. My inquiry is are any of you related by blood or
9 marriage to any of these potential witnesses or are you close
10 personal friends. I'm gonna call them at this time and if you
11 can answer to any of inquiries, please let me know. Detective
12 Daryl Williams, Emily McKenzie, Jerry McKenzie, Detective Neil
13 Livingston, S. Esposito, Ned Moore, Brad Whiteis, Registered
14 Nurse Jen Sadler, Dr. Haseltine -- any of you patients of Dr.
15 Haseltine -- same thing Dr. Ann Abel -- Dr. Haseltine of
16 Pawleys Pediatrics, Dr. Millicent Peterson -- any of you
17 clients of Dr. Peterson -- potential witness Taylor Rowlett --
18 Let me see these -- Anna Rowan, Bobby Jayroe -- what does
19 Apple mean?

20 MS. WILSON: Your Honor, that's just a note.

21 THE COURT: Mike -- how you pronounce that last one --
22 Van ---

23 MS. WILSON: Vanartsdalen.

24 THE COURT: Anybody related by blood or marriage to that
25 individual?

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 66
SELECTION OF THE JURY

1 (REPORTER'S NOTE: No response.)

2 THE COURT: Dr. Eugene Mayeaux, Waccamaw Community
3 Hospital, Dr. Haseltine, I've already asked, Loria Lee Teal,
4 Steve Teal, Natasha Simmeon-Major, Dr. Frederick Daniels,
5 Natalie M. Edwards-Kis, registered nurse; Caroline E. Allen,
6 Amanda L-o-t-h-r -- is that correct?

7 MS. WILSON: It's Amanda Loehr, Your Honor.

8 THE COURT: Amanda Loehr.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: The jury has indicated they are not related
11 by blood or marriage and do not have any close personal
12 connections with those folks.

13 Are we now ready to select a jury?

14 MS. LIVESAY: Yes, sir.

15 THE COURT: The jury, of course, is five and five.

16 MS. LIVESAY: Yes, sir.

17 THE COURT: And we will select two alternates upon which
18 the strikes are one and two to be used separately. Okay?

19 MS. LIVESAY: Yes, sir.

20 THE COURT: All right. Proceed, Madame Clerk with the
21 call of the jury. As the jury is called, I ask that you come
22 forward, turn and face the panel.

23 CLERK: And also if you'll bring any belongings that you
24 have with you to bring them up with you also.

25 Juror Number 115, Jerry Green.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 67
SELECTION OF THE JURY

1 What say the State?

2 MS. LIVESAY: Please present this juror.

3 CLERK: Defense?

4 MS. WILSON: Court's indulgence. Please seat this juror.

5 CLERK: Please be seated in the jury box.

6 280, Richard Santos.

7 What say the State?

8 MS. LIVESAY: Your Honor, could you please present this

9 juror.

10 CLERK: Defense?

11 MS. WILSON: Please excuse this juror.

12 CLERK: You're excused from this particular case.

13 288, Shelby Singleton.

14 What say the State?

15 MS. LIVESAY: Would you please present this juror.

16 CLERK: Defense?

17 MS. WILSON: Please excuse this juror.

18 CLERK: You are excused from this particular case.

19 106, Betty Gerald.

20 What say the State?

21 MS. LIVESAY: Could you please present this juror.

22 CLERK: Defense?

23 MS. WILSON: Could you please seat this juror.

24 CLERK: Please be seated in the jury box.

25 187, John Mack.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 68
SELECTION OF THE JURY

1 What say the State?

2 MS. LIVESAY: Please present this juror.

3 CLERK: Defense?

4 MS. WILSON: Please excuse this juror.

5 CLERK: You are excused from this particular case.

6 317, Melonie Thomas.

7 What say the State?

8 MS. LIVESAY: Please present this juror.

9 CLERK: Defense?

10 MS. WILSON: Please seat this juror.

11 CLERK: Please be seated in the jury box.

12 346, Keith Wolff.

13 What say the State?

14 MS. LIVESAY: Would you please present this juror.

15 CLERK: Defense?

16 MS. WILSON: Please seat this juror.

17 CLERK: Please be seated in the jury box.

18 320, Claude Todd.

19 What say the State?

20 MS. LIVESAY: Would you please excuse this particular

21 juror.

22 CLERK: You are excused from this particular case.

23 100, Nicketta Gardner.

24 What say the State?

25 MS. LIVESAY: Please present this juror.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 69
SELECTION OF THE JURY

1 CLERK: Defense?
2 MS. WILSON: Please seat this juror.
3 CLERK: Please be seated in the jury box.
4 153, Rhonda Hutchins.
5 What say the State?
6 MS. LIVESAY: Would you please present this juror.
7 CLERK: Defense?
8 MS. WILSON: Please seat this juror.
9 CLERK: Please be seated in the jury box.
10 232, April Nieves.
11 THE COURT: Which one is this now, please?
12 CLERK: 232.
13 THE COURT: Okay.
14 CLERK: What say the State?
15 MS. LIVESAY: Would you please present this juror.
16 CLERK: Defense?
17 MS. WILSON: Please seat this juror.
18 CLERK: Please be seated in the jury box.
19 7, Michel Azar. Michelle or is it Michael.
20 JUROR 7: It's kind of Michel without an A.
21 CLERK: What say the State?
22 MS. LIVESAY: Please present this juror.
23 CLERK: Defense?
24 MS. WILSON: Please seat this juror.
25 CLERK: Please be seated in the jury box.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 70
SELECTION OF THE JURY

1 338, Debbie Walters.
2 What say the State?
3 MS. LIVESAY: Please present this juror.
4 CLERK: Defense?
5 MS. WILSON: Please seat this juror.
6 CLERK: Please be seated in the jury box.
7 161, Tommy Jones.
8 What say the State?
9 MS. LIVESAY: Please excuse this particular juror.
10 CLERK: You are excused from this particular case.
11 95, James Freeman.
12 What say the State?
13 MS. LIVESAY: Please excuse this particular juror.
14 CLERK: You are excused from this particular case.
15 321, Edwin Todd.
16 What say the State?
17 MS. LIVESAY: Would you please present this juror.
18 CLERK: Defense?
19 MS. WILSON: Please seat this juror.
20 CLERK: Please be seated in the jury box.
21 236, Danny Owens.
22 What say the State?
23 MS. LIVESAY: Please present this juror.
24 CLERK: Defense?
25 MS. WILSON: Please excuse this juror.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 71
SELECTION OF THE JURY

1 CLERK: You are excused from this particular case.

2 148, Angel Hunt.

3 What say the State?

4 MS. LIVESAY: Would you please present this juror.

5 CLERK: Defense?

6 MS. WILSON: Your Honor, can we approach briefly.

7 THE COURT: Yes.

8 (REPORTER'S NOTE: A bench conference was held off the record
9 in the presence of the jury but out of hearing of the jury.)

10 MS. WILSON: Please excuse this juror.

11 CLERK: You are excused from this particular case.

12 428, Priscilla Herrington.

13 What say the State?

14 MS. LIVESAY: Would you please present this juror.

15 CLERK: Defense?

16 MS. WILSON: Please seat the juror.

17 CLERK: Please be seated in the jury box.

18 70, Francine Dagostino.

19 What say the State?

20 MS. LIVESAY: Please present this juror.

21 CLERK: Defense?

22 MS. WILSON: Please seat the juror.

23 CLERK: Please be seated in the jury box.

24 THE COURT: All right. That constitutes the twelve. We

25 will now have two alternates. Remember the strikes are one

1 and two.

2 MS. LIVESAY: Yes, sir.

3 THE COURT: Proceed.

4 CLERK: 76, Kathleen Desorcy.

5 What say the State?

6 MS. LIVESAY: Please present this juror.

7 CLERK: Defense?

8 MS. WILSON: Please excuse this juror.

9 CLERK: You are excused from this particular case.

10 301, Wesley Spivey.

11 What say the State?

12 MS. LIVESAY: Please excuse this particular juror.

13 CLERK: You are excused from this particular case.

14 159, Mary Johnson.

15 What say the State?

16 MS. LIVESAY: Please present this juror.

17 CLERK: Defense?

18 MS. WILSON: Please seat this juror.

19 CLERK: Please be seated in the jury box.

20 179, Eric Lemons.

21 What say the State?

22 MS. LIVESAY: Please present this juror.

23 CLERK: Defense?

24 MS. WILSON: Please seat this juror.

25 CLERK: Please be seated in the jury box.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 73
SELECTION OF THE JURY

1 THE COURT: All right. You got another jury room back
2 there, hadn't you?

3 CLERK: Yes, sir.

4 THE COURT: Please escort this jury to the jury room.
5 I'll be calling you back very shortly. Remember to have the
6 alternate seat the same place and I'll designate a foreman in
7 the morning.

8 CLERK: Yes, sir.

9 (REPORTER'S NOTE: The jury retires to the jury room.)

10 THE COURT: Are there any issues regarding the
11 composition of the jury? What say the State?

12 MS. LIVESAY: No, sir.

13 THE COURT: Regarding the composition of the jury, what
14 say the Defense?

15 MS. WILSON: I'm sorry, what?

16 THE COURT: Regarding the composition of the jury, is
17 there any issues?

18 MS. WILSON: No, sir.

19 THE COURT: All right. The jury will stand as selected.

20 *****OFF THE RECORD*****

21 (On the Record.)

22 THE COURT: I have a communication here on the jury that
23 we just picked. Come forward -- bring the juror, Debbie
24 Walters out, please.

25 MS. LIVESAY: Do we need to come up, Your Honor.

State v. Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 74
SELECTION OF THE JURY

1 THE COURT: Come forward. Ms. Walters, come forward,
2 please. Good afternoon, Ms. Walters. I've received a
3 communication and it's no big problem. Just tell us gently
4 what your concern is, if any.

5 (REPORTER'S NOTE: Bench conference with Juror 338 and counsel
6 for State and Defense outside the presence of the remaining
7 jurors.)

8 THE COURT: Ms. Walters, Juror 43 [sic], has advised me
9 now that she belatedly recognized the Defendant he having been
10 some years ago a student in her class. Anyway, by and consent
11 of the State and the Defendant, I'm going to excuse her. Is
12 that correct?

13 MS. WILSON: Yes, sir.

14 THE COURT: Now, Madame Clerk ---

15 CLERK: Yes, sir.

16 THE COURT: Put the two alternates in a dish for me and
17 we'll pull up one of the two alternates. Is that satisfactory
18 with you, Ms. Wilson?

19 MS. WILSON: Yes, sir.

20 MS. LIVESAY: Yes, sir.

21 THE COURT: All right. Thank you for calling ---

22 JUROR 338: Thank you.

23 THE COURT: --- no, you did exactly what I asked you to
24 do and you are excused for the week but I thank you. What you
25 did is just simply the sign of a good juror.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 75
SELECTION OF THE JURY

1 JUROR 338: Okay.

2 THE COURT: So don't feel bad about it. And that's why I
3 get two jurors or two alternates because somebody else could
4 come up after awhile and I'm gonna say no. Listen, having
5 done that, I would like now to pick one more alternate.

6 MS. LIVESAY: Yes, sir.

7 THE COURT: Let me deal with this first. Ms. Wilson,
8 come forward and draw from -- we've got two, let the record
9 reflect that I've got two names in a container in accordance
10 with the rule so provided, we're drawing one of them. Madame
11 Bailiff come forward. Who is it?

12 CLERK: 179, Eric Lemons.

13 THE COURT: Please tell Eric Lemons for good cause and
14 reason I had to excuse the prior juror and he has now been
15 selected as one of the twelve jurors.

16 Now, let's proceed with the selection of another
17 alternate. Is that agreeable, Ms. Wilson?

18 MS. WILSON: Yes, sir, it is, Your Honor.

19 THE COURT: For the State, is that agreeable?

20 MS. LIVESAY: Yes, sir.

21 THE COURT: Strikes are one and two.

22 Madame Clerk ---

23 CLERK: Yes, sir.

24 THE COURT: --- proceed to call the roll.

25 CLERK: Juror Number 116, Rebecca Gregory.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 76
SELECTION OF THE JURY

1 What say the State?

2 MS. LIVESAY: Present the juror.

3 CLERK: Defense?

4 MS. WILSON: Please seat the juror.

5 THE COURT: All right. Madame Juror, you're one of my
6 alternates; congratulations.

7 All right. Any further motions regarding the composition
8 of the jury? What say the State?

9 MS. LIVESAY: No, sir.

10 THE COURT: What say the Defense?

11 MS. WILSON: No, sir.

12 THE COURT: All right.. Now, understanding this, I'm now
13 going to let the jurors go home for the night and for the
14 week. Everybody understand that?

15 MS. WILSON: Yes, sir, Your Honor.

16 MS. LIVESAY: Yes, sir.

17 THE COURT: All right. What you raising your hand about?

18 JUROR: Thank you.

19 THE COURT: That's appropriate. Good evening and thank
20 all of you for your patience. Bye-bye.

21 (REPORTER'S NOTE: Remaining jury panel exits courtroom.)

22 THE COURT: Madame Bailiff.

23 BAILIFF: Yes, sir.

24 THE COURT: Let Ms. Pricilla Harrington understand that
25 she is the duly selected forelady of the jury. Bring the jury

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 77
SELECTION OF THE JURY

1 out.

2 (REPORTER'S NOTE: Court confers with Bailiff.)

3 All right. You got your first witness ready? Ms.
4 Livesay?

5 MS. LIVESAY: Yes, sir, we're ready.

6 THE COURT: Have you complied with the writ of
7 sequestration?

8 MS. LIVESAY: Yes, sir.

9 THE COURT: Understanding the two I told you that could
10 say, the investigator and the father.

11 MS. LIVESAY: Yes, sir. And this is the father's wife
12 but she will not be testifying.

13 THE COURT: She's permitted to stay.

14 MS. WILSON: And Your Honor my client's parents are gonna
15 be testifying, his mother and his stepfather and I would ask
16 that they be allowed to stay in the courtroom.

17 THE COURT: They're not testifying?

18 MS. WILSON: One of both of them will, Your Honor.

19 THE COURT: Well, no, I'll let his parents stay here but
20 not the ---

21 MS. WILSON: That's who I'm talking about. They are his
22 parents.

23 THE COURT: I'll permit them to stay. Parents are
24 entitled are stay while their son is being tried. I'm letting
25 the parents stay for the other crowd, so we can do that.

1 MS. WILSON: In addition, Your Honor, I just want to make
2 clear that Amanda Loehr is on the witness list but I am not
3 gonna be calling her.

4 THE COURT: Okay. That's fine.

5 MS. WILSON: So, she will remain in as well.

6 THE COURT: Ms. Loehr may stay. Just I ask -- sometimes
7 it's difficult, just do your best to comply with my order of
8 sequestration.

9 MS. WILSON: Yes, sir. Thank you.

10 THE COURT: Ms. Livesay ---

11 MS. LIVESAY: Yes, sir.

12 THE COURT: Do you have any witnesses you wish to call
13 today who would be inconvenienced if you had to call them
14 tomorrow?

15 MS. LIVESAY: We have all -- we have the first two
16 witnesses available, Your Honor, but honestly the second
17 witness will be a rather lengthy witness but I'm ready to call
18 a witness today if the Court wishes.

19 THE COURT: Oh, yeah, we're gonna be here, why not you
20 too.

21 MS. LIVESAY: That's fine, Your Honor.

22 THE COURT: All right, fine. I hope to take in both of
23 them but we'll see where we're going. I'm gonna keep this
24 jury -- I probably won't work much beyond six o'clock but
25 we'll see where we are. What I well may do is take the second

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 79
SELECTION OF THE JURY

1 witness' direct and do the cross examination in the morning
2 but I'll work out a schedule.

3 MS. LIVESAY: Okay. Thank you, Your Honor.

4 THE COURT: All right. Bring the jury in, please.

5 (REPORTER'S NOTE: The jury returns to the courtroom.)

6 THE COURT: Ms. Harrington, I have designated you as
7 foreperson of the jury and respectfully ask that you occupy
8 that seat at all times. The alternates will occupy those two
9 seats. The rest of you may sit as you choose. Your duties
10 will be to be the jury spokesman, Madame Foreman, in the
11 courtroom and to handle the deliberations in the jury room. I
12 will keep you and the jury fully advised of your duties. At
13 the appropriate time, I will give you a verdict form for your
14 consideration and I'll be glad to answer any other questions
15 that you or your jury have at the appropriate time. I suspect
16 this is the first time you've been the foreman of a jury but
17 I'm delighted to have you as are counsel for the State and the
18 Defense.

19 Swear the jury.

20 JUROR: I'm just the alternate.

21 THE COURT: Are the alternates sitting where you usually
22 -- in different counties we do different ways. Are the
23 alternates sitting where they usually sit here?

24 BAILIFF: Yes, sir.

25 THE COURT: We're fine then. They rest of you may sit as

1 you please.

2 Swear the jury, please.

3 (REPORTER'S NOTE: Jury is duly sworn.)

4 THE COURT: Madame Foreman, ladies and gentlemen,
5 recognizing that for many of you this is the first time you
6 have sat as jurors in a criminal case. Let me briefly tell
7 you how we will proceed to help you do your duties. First and
8 foremost, I want to explain to you that as of this minute, you
9 twelve are the sole and only finders of the facts in this
10 case. There is nobody in this wide world, including this
11 trial judge that can tell you twelve what the facts are.
12 Jurors have said to me in the past, Judge, how we do know what
13 the facts are. Well, you will hear the testimony under oath
14 of various witnesses. In addition to that, there may be
15 photographs or statements introduced into evidence. You will
16 consider that testimony and the evidence in making your
17 findings of facts. In making that determination, I will also
18 charge you that you are the sole and only judges of the
19 credibility, meaning the believability of every witness who
20 testifies. You may believe if you choose all of what a
21 witness says or none. You may believe, if you choose, small
22 portions and disregard the larger. You may believe one
23 witness against that of many. Obviously, you do not determine
24 the truth or falsity of a matter by counting up the number of
25 witnesses who have testified for one side or the other.

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 81
SELECTION OF THE JURY

1 As I explained briefly, this defendant was brought before
2 you upon two charges. To these charges, he has specifically
3 pled not guilty which places the burden of proof upon the
4 State of South Carolina of proving him guilty if they can to
5 your satisfaction beyond a reasonable doubt. That concept and
6 other legal concepts will be explained by me to you at the
7 conclusion of the testimony.

8 We'll begin by Ms. Livesay who represents the State of
9 South Carolina having a short opening statement as to what she
10 says her case is about as a guideline. Ms. Wilson also will
11 have a short opening statement as to what the Defendant's
12 position is. We'll then take the testimony from the various
13 witnesses and at the end of the testimony, counsel will have
14 an opportunity at length, first the State and then the
15 Defense, of giving you their view of the evidence. Now what
16 the lawyers tell you in opening statement or in the concluding
17 statements is not evidence. Evidence comes from this witness
18 stand. So, first, we'll have opening statements; then we'll
19 have the testimony; then the instructions in the law; and then
20 you'll have final summation of counsel after which I will ask
21 you to begin your deliberations upon both indictments. There
22 are two separate indictments. Your verdict will be either
23 guilty or not guilty as to both or guilty and not guilty as to
24 one of the other. Your verdict doesn't necessarily have to be
25 the same as to both indictments; it can but it may be not

1 guilty of one and guilty of the other or the other way around.
2 I will explain that more to you in detail at the appropriate
3 time.

4 Ms. Livesay, have a short opening statement just as a
5 guideline to your case.

6 MS. LIVESAY: I understand, Your Honor. Thank you.

7 THE COURT: All right.

8 OPENING STATEMENT BY MS. LIVESAY:

9 MS. LIVESAY: Ladies and gentlemen of the jury, I'm Nancy
10 Livesay. I'm a prosecutor for the Fifteenth Judicial Circuit,
11 that is Horry and Georgetown County and sitting beside me is
12 Detective Daryl Williams from the Horry County Police
13 Department. You're here today to hear a case for infliction
14 of great bodily injury on a child. The second indictment is
15 for assault and battery of a high and aggravated nature. I'm
16 gonna begin by telling you exactly what infliction of great
17 bodily injury on a child is. That is inflicting a injury that
18 is likely to cause death or serious or permanent injury on a
19 child. He's also -- the Defendant in this case is also
20 charged with assault and battery of a high and aggravated
21 nature. That is exactly what it sounds like. It is an
22 assault and battery that is high and aggravated and has caused
23 some injury to that person other than just a regular battery.
24 We're talking broken bones, a high and aggravated assault.

25 The victim in this case is H M . At the time,

1 he was three years old. You're gonna hear that at the time he
2 was living with his mother Emily McKenzie along with her
3 boyfriend, the Defendant in this case, Justin Rayl. You're
4 gonna hear that while he was living in that home, he suffered
5 injuries that would likely cause death or permanent damage.
6 He was injured in a way of great bodily injury. He was taken
7 to the ER in Waccamaw by his mother Emily McKenzie. You're
8 gonna hear from the pediatrician at Waccamaw. You're gonna
9 hear from all the doctors at MUSC. You're gonna hear that he
10 was airlifted from Waccamaw Hospital to the Medical University
11 in Charleston. You're gonna hear that the reason he was
12 airlifted was because he sustained brain injuries that could
13 not be treated at Waccamaw. There's no mistake here as to
14 the injuries. We are talking in this case bleeding in the
15 brain, contusions in the brain and retinal hemorrhaging behind
16 the eyes. So, we're talking about a three-year-old that has
17 suffered brain damage, infliction of great bodily injury and
18 assault is considered high and aggravated.

19 The question in this case is how it had happened. The
20 State is going to present testimony that on the night of
21 January the 7th, Emily McKenzie left her child, H , a
22 toddler at the time, with her boyfriend who was living in the
23 home, Justin Rayl. She's gonna tell you that day before she
24 left, that child was playing, everything was fine. She laid
25 him down to a nap with her boyfriend. Then she left to run

1 some errands. You're gonna find out that he called her that
2 night telling her to come back home. That child was wheezing
3 and vomiting. He had gotten sick. That's what you're gonna
4 hear. That child wasn't sick. That child had bleeding in the
5 brain. That was the injury. She then came home to try to
6 treat that child. After two days of nothing working, she took
7 the child to the ER where they found the brain injury. You're
8 also gonna hear from Dr. Daniels, his pediatrician up till
9 this point. You're gonna hear that there was never any brain
10 injury to that child, never any suspicious bruising, nothing
11 until Justin Rayl moved into that house and there's never been
12 any since. You're gonna hear that that child had never
13 suffered a broken bone or any injury to the head. Justin Rayl
14 moved in in December of 2006 and by January the 9th of 2007,
15 that child was being airlifted to MUSC.

16 I ask you to listen to all the testimony in this case by
17 the State and the Defense. Thank you.

18 THE COURT: Ms. Wilson.

19 MS. WILSON: Thank you, Your Honor.

20 OPENING STATEMENT BY MS. WILSON:

21 MS. WILSON: Good afternoon. My name is Kia Wilson and I
22 represent Mr. Justin Rayl. Mr. Rayl has been charged with
23 very serious, serious crimes in this case. And as you heard
24 the State lay out before you, there's serious, massive
25 injuries to this child. What she cannot tell you and what

1 none of her witnesses are gonna be able to tell you is that
2 Mr. Rayl committed the crime that caused those injuries.
3 They're gonna tell you that the child was hurt. They're gonna
4 tell you the child suffered a serious brain bleed. They're
5 gonna tell you that there were bruises on the child. But what
6 they can't say, what nobody is gonna be able to say is that he
7 did it and that is what you are here for today. You're here
8 to listen to all the evidence that the State presents, to
9 listen to all the evidence that we present, listen with a
10 careful and critical ear to everything that everyone says when
11 they take the stand during the pendency of this trial. When
12 you do, I think that it's gonna be more than clear that while
13 something happened, who actually did it and what actually
14 happened is gonna be the very questions that you still have at
15 the end of this trial. And if those are your questions at the
16 end of this trial, I think that you're gonna find that you're
17 gonna have to acquit my client of all the charges in this
18 case.

19 Now, I understand that there is going to be lots of
20 witnesses, lots of people talking about lots of different
21 things, lots of injuries, lots of technical information,
22 medical information, just bear with it. At the end of the
23 day, at the end of this trial, I think that our position is
24 gonna be abundantly clear and that is that if -- no one can
25 say he did it, no one can testify that he caused it, he is not

1 guilty in this case.

2 I thank you for your time and your attention.

3 THE COURT: Thank you, Ms. Wilson.

4 You may call your first witness.

5 MS. LIVESAY: Thank you, Your Honor. At this time, the
6 State calls Jerry McKenzie to the stand.

7 JERRY LEE MCKENZIE, III, HAVING BEEN

8 SWORN, TESTIFIED AS FOLLOWS:

9 CLERK: If you'll state your full name and spell your
10 last name.

11 MR. MCKENZIE: Jerry Lee McKenzie, III, M-C-K-E-N-Z-I-E.

12 DIRECT EXAMINATION OF JERRY LEE MCKENZIE, III BY MS. LIVESAY:

13 Q: Mr. McKenzie, where do you currently live?

14 A: Myrtle Beach.

15 Q: And who lives in your home?

16 A: My wife, my son, my four-year-old daughter and my twenty-
17 month-old daughter as well as my father-in-law and mother-in-
18 law.

19 Q: Okay. And can you tell the jury their names.

20 A: My wife is Katherine McKenzie; son is H

21 M ; daughter is Madison Katherine McKenzie; my other
22 daughter is Harley Ann Elizabeth McKenzie; father-in-law is
23 Barry Elliott; and mother-in-law is Katherine Elliott.

24 Q: And how old is H M now?

25 A: He's currently eight years old.

- 1 Q: Okay. And how old was he in 2006?
- 2 A: He was three years old.
- 3 Q: Okay. Was he living with you at that time?
- 4 A: No, no, ma'am.
- 5 Q: And at that time were you and his mother living together?
- 6 A: No, ma'am.
- 7 Q: Okay. And can you tell the jury what the situation was
8 at that time?
- 9 A: I was separated from his mother; we had separated March
10 of 2006. At the time I was permitted custody of H on two
11 weekends out of the month.
- 12 Q: And when is H birthday?
- 13 A: August 31st -- well, he was born in 2003.
- 14 Q: Okay. And you've said that you and Emily and him lived
15 together until what date?
- 16 A: March of 2006 -- it was March the 9th of 2006.
- 17 Q: And during that time, did the three of you live in a home
18 together?
- 19 A: Yes, ma'am.
- 20 Q: And during that time, did H ever suffer from any
21 sort of broken bones or injuries?
- 22 A: No, ma'am.
- 23 Q: Had he ever been to the emergency room?
- 24 A: No, ma'am.
- 25 Q: Okay. In 2006, he was three years old. How well could

1 H: communicate at that time?

2 A: He didn't communicate very well other than, you know,
3 mom, dad, simple words that children would say.

4 Q: But he couldn't carry on any sort of conversation with
5 you?

6 A: No, ma'am.

7 Q: And how regular -- how regular were you seeing H at
8 that time?

9 A: When we first separated, due to the schedule that I
10 worked, I had a short week and a long week. On the short
11 weeks, I would have H on all my days off which would
12 consist of like a Monday, Tuesday and then a Friday, Saturday,
13 Sunday. We then had a custody hearing which, you know,
14 allowed me to have H from Friday till Sunday. So, then
15 that would be two weekends out of the month.

16 Q: So, approximately every other weekend?

17 A: Yes, ma'am.

18 Q: Okay. And during the time when you had visitation with
19 H, did you ever notice any sort of bruising on H?

20 A: No, ma'am.

21 Q: Okay. Did he ever get sick during your visitation with
22 him where he had to be taken to the ER?

23 A: No, ma'am. He did have asthma but other than that,
24 nothing as serious as going to the ER, no.

25 Q: Okay. And at that time, was there open communication

1 between you and Emily as to his medical care?

2 A: Yes, ma'am.

3 Q: And during that timeframe, did she ever notify you that
4 she was taking him to the ER?

5 A: The night of January the 8th, she contacted my now wife,
6 Katherine McKenzie and advised us that she was taking him to
7 the ER.

8 Q: And that was on or around January 8th or 9th of 2007?

9 A: Yes, ma'am.

10 Q: When was the last time you had seen H ?

11 A: December the 25th, that evening.

12 Q: Okay. And tell the jury what H was like the last
13 time you saw him.

14 A: He was real happy, very playful three-year-old. Of
15 course, you know, he'd gotten a bunch of toys from Santa, so
16 he was happy. I'd seen him the night previously before and he
17 was, you know, in a very good mood. That was Christmas Eve.
18 He spent Christmas Eve with me and my family until Emily and
19 Justin came and picked him up. And then I had him Christmas
20 Day from roughly around eleven o'clock until about that
21 evening probably seven, eight o'clock.

22 Q: So, around the last time you saw him was December 25th of
23 2006?

24 A: Yes, ma'am.

25 Q: Okay. When he left your house, was he sick at all?

- 1 A: No, ma'am.
- 2 Q: Did he appear not to feel good?
- 3 A: No, ma'am.
- 4 Q: Did anything at all appear to be wrong with him?
- 5 A: No, ma'am.
- 6 Q: Okay. On the last day that you saw him, December 25th,
7 2006, did you notice any bruising on him?
- 8 A: No, ma'am.
- 9 Q: Okay. When was the next time that you saw your son?
- 10 A: The emergency room at Waccamaw Hospital.
- 11 Q: Okay. And tell the jury how you were notified to come
12 down there and what you did upon arrival?
- 13 A: As I stated, Katherine, my wife now was notified by my
14 ex-wife Emily that H was at the ER and that he was
15 dehydrated and asked that Katherine, you know, come down there
16 and sit with H while she got some stuff together because
17 they were gonna be in the hospital that evening. When Katie
18 arrived, she contacted me and said that I needed to come down
19 the hospital that something was really wrong with H and
20 that I needed to see what was going on. When I walked into
21 the room, H was in the room and he was very unresponsive.
22 He wasn't like a three-year-old would pop up and, you know, be
23 happy to see you, he was laying there. And he had bruises on
24 his arm and his face and upon, you know, looking at him a
25 little bit more I noticed that he had them across his back as

1 well. You could talk to H and he would look at you and
2 just roll over and wouldn't say nothing at all. About that
3 time, the pediatric doctor came in and I pointed out the
4 bruising to him and asked him, you know, if this was something
5 that was very common with dehydration, you know, if you would
6 have this amount of bruises or bruising ---

7 THE COURT: Let's don't get into any conversation with
8 the doctor now.

9 MS. LIVESAY: I understand.

10 BY MS. LIVESAY:

11 Q: You cannot tell us what the doctor told you.

12 A: I was saying what I asked the doctor.

13 Q: Okay. Go ahead; I'm sorry.

14 A: So, you know, the doctor left the room. We went back out
15 and they took us to another room and conducted an MRI at which
16 time I found out that he had to be air-lifted to Charleston.
17 The next time after that, you know, I just watched him get on
18 the helicopter and go to Charleston and got in my vehicle and
19 drove up to Charleston that evening with my -- with Katherine,
20 my wife now and my father.

21 Q: And the child, H , that you saw, your son, around
22 January the 9th, was that the same kid that you saw December
23 25th?

24 A: No, ma'am; it wasn't.

25 Q: Okay. And you said that you pointed out the bruises to

1 the doctor, what made you point out the bruises to the doctor?

2 A: I'd never seen him bruise like that before, I never seen
3 him act that way. You know, it looked like he had grab marks
4 on his arms. On his back there were several bruises. On the
5 side of his face there was a bruise. And, you know, it -- he
6 didn't seem like a three-year-old would, you know, three-year-
7 olds are real happy, wants to play with you. He was just --
8 he just looked at you; there was no life in his eyes. He just
9 looked at you and didn't say anything.

10 MS. LIVESAY: Your Honor, may I approach. I'm gonna mark
11 these -- I'll show them to Ms. Wilson first.

12 THE COURT: Has Ms. Wilson seen them before?

13 MS. WILSON: I have, Your Honor.

14 MS. LIVESAY: Yes, sir.

15 THE COURT: Okay. May I look at them, please?

16 MS. LIVESAY: Thank you, Your Honor. I'm gonna mark them
17 as State's Exhibit Two, Three ---

18 THE COURT: Let me look at them first.

19 MS. LIVESAY: Yes, sir. She just saw them.

20 THE COURT: I haven't seen them.

21 MS. LIVESAY: Okay, of course, Your Honor.

22 THE COURT: Without objection, they are admitted.

23 MS. LIVESAY: Thank you, Your Honor.

24 STATE'S EXHIBIT NUMBERS TWO, THREE, FOUR AND FIVE

25 ADMITTED INTO EVIDENCE

1 MS. LIVESAY: Your Honor, at this time, I'm showing the
2 witness what's been marked as State's Exhibit Five.

3 BY MS. LIVESAY:

4 Q: Mr. McKenzie, do you recognize that?

5 A: Yes, ma'am.

6 Q: And tell the jury what that's a picture of?

7 A: That's picture of my son's arm when he was laying in the
8 hospital bed at Waccamaw.

9 Q: And is that picture an accurate depiction of what he
10 looked like down there?

11 A: Yes, ma'am.

12 Q: And is that him in the Waccamaw bed at ER -- at the
13 emergency room?

14 A: Yes, ma'am. Yes, ma'am.

15 MS. LIVESAY: Your Honor, at this time, the State wishes
16 to move States Exhibit Number Five into evidence and publish
17 it to the jury.

18 THE COURT: You may do so and you may publish at this
19 time.

20 Madame Foreman, these matters that I introduced into
21 evidence they may publish now but all of them will be with you
22 in the jury room during your deliberations.

23 MS. LIVESAY: Thank you, Your Honor.

24 THE COURT: But she may publish at this time. Let the
25 foreman look at them and pass them around.

1 MS. LIVESAY: Thank you, Your Honor.

2 BY MS. LIVESAY:

3 Q: Had you ever seen bruises on his arm like that before?

4 A: No, ma'am.

5 MS. LIVESAY: Your Honor, I'm showing what's been marked
6 as State's Exhibit Number Four to Mr. McKenzie.

7 BY MS. LIVESAY:

8 Q: Do you recognize that?

9 A: Yes, ma'am, that's H back.

10 Q: Okay. And had you ever seen bruising like that on his
11 back before?

12 A: No, ma'am.

13 Q: Okay. Now, this isn't a very good picture, Mr. McKenzie.
14 Can you tell the jury where that bruising was that you saw?

15 A: On the lower part of his spine and he had one up here on
16 the top part of his spine.

17 Q: Okay. And when you saw him on December 25th, did you see
18 any bruising on him like that at that point?

19 A: No, ma'am, I didn't.

20 Q: Okay. And any time before that point, have you ever seen
21 bruising like that on him before?

22 A: No, ma'am.

23 MS. LIVESAY: Your Honor, at this time, the State is
24 motioning Exhibit Number Four into evidence and to publish.

25 THE COURT: You may do so.

1 BY MS. LIVESAY:

2 Q: Now, Mr. McKenzie, I notice in those pictures that H
3 has on -- it appears to be diapers; is that right?

4 A: Yes, ma'am.

5 Q: Okay. At that time, was he potty-trained?

6 A: No, ma'am, he was not.

7 MS. LIVESAY: Okay. I'm showing the witness what's been
8 marked as State's Exhibit Number Three, Your Honor.

9 THE COURT: Yes, ma'am.

10 A: That's H laying down at the hospital. He kept on --
11 as you can see he's doing like this (indicating), he pulled
12 his head like that a good bit while he was in the hospital and
13 keep his eyes closed and that's his arm with the bruising.

14 BY MS. LIVESAY:

15 Q: And is that the way he appeared for the majority of the
16 time you were down there?

17 A: Yes, ma'am.

18 Q: And is that the way he normally looked when you saw him?

19 A: No, ma'am.

20 Q: Had you ever seen him like that before?

21 A: No, ma'am.

22 MS. LIVESAY: Your Honor, at this time, State's admitting
23 State's evidence Number Three and publishing it to the jury.

24 THE COURT: You may do so. And it is admitted.

25 MS. LIVESAY: Thank you. I'm showing the witness

1 State's Exhibit Number Two.

2 BY MS. LIVESAY:

3 Q: Do you recognize that?

4 A: Yes, ma'am. That's H

5 Q: And is that a accurate depiction of him in the hospital
6 on that day?

7 A: Yes, ma'am.

8 Q: Okay. And those cuts on his face, had you ever noticed
9 those before?

10 A: No, ma'am, I hadn't.

11 Q: Okay. And were those there on December 25th, the last
12 time you saw him?

13 A: No, ma'am.

14 Q: Okay. And were those, the first time you saw him when
15 was in the hospital?

16 A: Yes, ma'am.

17 Q: Now, this picture is a picture of his face. Is that the
18 look that he normally had on his face?

19 A: No, ma'am.

20 Q: Okay. At that time, was he responsive to any of your
21 questions?

22 A: No, ma'am. He couldn't answer me and tell me what
23 happened or how he got any of the marks or bruises or -- he
24 acted like he didn't want to talk at all, he just wanted to,
25 you know, lay in sort of like a fetal position and keep his

1 eyes closed.

2 MS. LIVESAY: Your Honor, the State is publishing State's
3 Evidence Number Two.

4 THE COURT: That's okay. Proceed.

5 BY MS. LIVESAY:

6 Q: Now at that time, H was three years old; is that
7 correct?

8 A: Yes, ma'am.

9 Q: Okay. And up until March of 2006, you were living in the
10 home with H ; is that correct?

11 A: Yes, ma'am.

12 Q: Okay. Had you ever seen anything like that on H
13 before?

14 A: No, ma'am.

15 Q: Okay. And between March and December 25th, you were
16 having regular visitation; is that correct?

17 A: Yes, ma'am.

18 Q: Okay. During that time, was he spending the night at
19 your house?

20 A: Yes, ma'am, he would spend the night.

21 Q: Okay. And at that time were you still having to bathe
22 him?

23 A: Yes, ma'am.

24 Q: Okay. And it appears that you were still having to
25 change his diaper; is that right?

1 A: Correct, yes, ma'am.

2 Q: Okay. During that time period, did you ever notice
3 anything on him like that?

4 A: No, ma'am.

5 Q: Okay. Was he able to communicate anything to you at the
6 hospital?

7 A: No, ma'am. He was real -- just unresponsive at the
8 hospital.

9 MS. LIVESAY: No further questions for this witness, Your
10 Honor.

11 THE COURT: Ms. Wilson.

12 MS. WILSON: Thank you very much, Your Honor.

13 CROSS EXAMINATION OF JERRY LEE MCKENZIE, III, BY MS. WILSON:

14 Q: Good evening, Mr. McKenzie.

15 A: Good evening, ma'am.

16 Q: Now, at -- you said that you last saw H on December
17 25th, correct?

18 A: Yes, ma'am.

19 Q: And so December 25th to January 8th, which is the next
20 time you saw him at the hospital ---

21 A: Yes, ma'am.

22 Q: It's about a two-week period of time; isn't it?

23 A: Yes, ma'am.

24 Q: So, in that two-week period of time, you didn't see him
25 with Emily and you didn't see him with Justin, did you?

- 1 A: No, ma'am.
- 2 Q: And you say H had asthma, right?
- 3 A: Yes, ma'am.
- 4 Q: He actually had really serious problems with asthma,
5 didn't he?
- 6 A: Whenever the weather would change, and it still goes on
7 till this day, whenever the weather would change, he would
8 have more problems wheezing and breathing. So if it would get
9 cold out, he'd have more congestion in his chest. Summertime,
10 of course, with the pollen, that's sneezing, which would also
11 cause him to have problems, you know, with the breathing, with
12 the asthma.
- 13 Q: Okay. And so then January, it would've been a little bit
14 colder, correct?
- 15 A: Yes, ma'am. I can't recall, you know, how cold it was.
- 16 Q: Certainly; I understand.
- 17 A: Reasonably, yes.
- 18 Q: Yes, sir. Thank you. Now, in fact, H was actually
19 using some kind of an inhaler, albuterol, I believe it was?
- 20 A: He was using a breathing machine at the time, a little,
21 you know a small little white box with a dinosaur mask on it
22 for him.
- 23 Q: So, it was -- I think they're called nebulizers, right?
- 24 A: Yes, ma'am. That's it.
- 25 Q: I think that's -- I thought it might be. And he often

1 had to use the nebulizer, didn't he?

2 A: Not often, just -- you know, whenever like I was saying
3 that when the weather would change or, you know, he would have
4 a breathing problem, you know, you would give it to him but it
5 never has been on a regular basis, you know, all eight years
6 of his life.

7 Q: I'm sorry. So, would you say then that he would probably
8 needed to use the nebulizer maybe once every few months?

9 A: Reasonably, yes, ma'am.

10 Q: Now, you say that the -- you noticed the bruises when you
11 got to the hospital, correct?

12 A: Correct.

13 Q: And you came in, saw the bruises and -- did you -- you
14 mentioned that to someone, didn't you?

15 A: I asked the doctor when he came in the room how this
16 bruising could've been caused.

17 Q: So, you noticed it instantly ---

18 A: Yes, ma'am.

19 Q: --- when you got there? And the child's mother, Emily
20 McKenzie, actually took the child to the hospital, correct?

21 A: Correct.

22 Q: And didn't make any mention to the doctors about this
23 bruising, correct?

24 A: Not that I recall. Emily was not there when I got to the
25 hospital. She had left. My wife now was there with him.

1 Q: So, these bruises that you are saying are all over this
2 child that Emily has care and custody of, correct?

3 A: Yes, ma'am.

4 Q: She didn't bring up to the people at the hospital when
5 she got there with the child?

6 A: Like I said, the doctors hadn't addressed it with me at
7 that time. They really weren't saying a lot to me. When the
8 pediatric doctor came in, that's when I asked about the
9 bruising. You know, Emily had already left because my wife
10 had came there to relieve her.

11 Q: And now have you ever been a witness to or experienced
12 any violence in your home when you were married to Emily
13 McKenzie?

14 A: No, ma'am.

15 Q: None at all? No fights, no arguments, nothing that
16 became ---

17 A: Oh, we had -- you know, typically verbal arguments like
18 any married couple does. We, you know, you don't always agree
19 on everything.

20 Q: And but nothing that ever turned physical where you were
21 attacked?

22 A: No, ma'am.

23 Q: Okay. Court's indulgence for one second.

24 Now, my understanding is that you have had some issues
25 with truthfulness between, I guess, clear and open exchange of

1 information between you and Ms. McKenzie, correct?

2 A: I don't understand what you're asking.

3 Q: Well, specifically, I'm asking have you ever had a
4 situation where she's been untruthful with you about something
5 pertaining to H care or well-being?

6 A: There has been some things that she probably wasn't
7 forthcoming with at first or, you know, didn't admit to me at
8 the time, yes.

9 Q: And would one of those things then be the fact that she
10 told you and I believe Katie that H was diabetic?

11 A: Yeah, she did tell us that.

12 Q: When in fact, he was not, correct?

13 A: Correct.

14 Q: And even had gone so far as to have you try to order
15 medical equipment for the care and -- caretaking of a child
16 who didn't have this disease; isn't that correct?

17 A: The only type medical equipment that she asked for was
18 the nebulizer. My wife's family owns a medical supply or DME
19 company and supplied the nebulizer for H.

20 Q: There was no issue about trying to order a Glucometer?

21 A: Not that I recall, no, ma'am.

22 MS. WILSON: Court's indulgence one second.

23 BY MS. WILSON:

24 Q: Specifically -- apparently, and I'm asking if you recall
25 speaking with the doctors and saying to them that you and your

1 finance were trying to order a Glucometer for H because
2 she had indicated that he was diabetic, that she never gave
3 any proper information surrounding the ordering of the
4 machine?

5 A: We asked the doctor if H was diabetic, that Ms. --
6 Emily had stated that he was diabetic and the doctors at that
7 time said there's no signs that he was.

8 Q: But you don't recall anything about the Glucometer?

9 A: I've never heard anything about a Glucometer. I couldn't
10 tell you what it was, ma'am.

11 Q: Okay. But she did tell you that he was diabetic.

12 A: Yes.

13 Q: Was there any other incidents where she -- let me
14 rephrase that -- there were other incidences, weren't there,
15 where she wasn't truly forthcoming about medical issues with
16 H ?

17 A: That's the only thing that I can really call was about
18 the diabetic thing. You know, there, you know, were personal
19 issues in our lives but, you know, any married couple that
20 won't admit to each other or disagree upon but as far as I can
21 -- I can't recall anything other diabetes, the diabetic thing.

22 MS. WILSON: The Court's indulgence. No further
23 questions, Your Honor. Thank you.

24 THE COURT: All right. Is there anything you ---

25 MS. LIVESAY: Just a couple, Your Honor, real quick.

1 THE COURT: All right.

2 REDIRECT EXAMINATION OF JERRY LEE MCKENZIE, III BY MS.

3 LIVESAY:

4 Q: Ms. Wilson asked you about H having asthma. Does he
5 still have asthma?

6 A: Yes, ma'am.

7 Q: Okay. She asked you about a sugar problem. Is he
8 diabetic now?

9 A: No, ma'am.

10 Q: To your know, would he be diabetic then?

11 A: No, ma'am.

12 Q: Were you administering any medicine to him then for
13 diabetes?

14 A: No, ma'am.

15 Q: Are you administering any medicine now for diabetes?

16 A: No, ma'am.

17 Q: Since January of 2007, has he suffered any injuries like
18 he did that day?

19 A: No, ma'am.

20 Q: Has he ever been back to the ER for any sort of brain
21 injury?

22 A: No, ma'am.

23 MS. LIVESAY: No further questions, Your Honor.

24 THE COURT: All right. You may come down. Thank you.

25 Call your next witness.

1 MS. LIVESAY: Your Honor, can we approach?

2 THE COURT: Yes.

3 (REPORTER'S NOTE: A bench conference was held off the record
4 in the presence of the jury but out of hearing of the jury.)

5 THE COURT: As I understand, Solicitor, that's all the
6 witnesses you will have available tonight?

7 MS. LIVESAY: Yes, sir.

8 THE COURT: All right.

9 Madame Foreman, ladies and gentlemen, first let me say
10 that I appreciate again your attendance today. I'm sorry we
11 had to work you so late and I apologize for keeping you
12 waiting downstairs but it's 5:30 and I know you need to get
13 home with your families and your other pursuits. There's
14 several instructions I'd love to give you though. Do not
15 discuss this case with anyone, let no one discuss it with you.
16 If per chance there's something on T.V. or a newspaper about
17 it, please don't follow that up. Whatever your verdict is, I
18 want it to be based on the law and evidence in this case.

19 And, Madame Foreman, under our rules, it is impermissible
20 for this jury to discuss any issue involving this case until I
21 have given it to you for your deliberation. So, under no
22 circumstances permit any discussion in the jury room about any
23 issue in this case unless of course some juror has a question
24 that they would like for me to answer and you may write that
25 down and I'll be glad to answer it.

1 By way of example, sometimes, two or three jurors may
2 leave, as y'all will be leaving tonight and go to your car,
3 and three or four of you may be talking about or want to talk
4 about some issue in the case and that's improper for the
5 following reason, whatever your final verdict is, it must be the
6 unanimous verdict of all twelve of you. And if several of you
7 are downstairs at a lunch or dinner talking about some issue
8 in the case, you are depriving your fellow jurors of your
9 process, thought process and they're entitled to that and
10 therefore we say there will be no discussions about this case
11 until I have given you the case for your deliberation. And
12 under no circumstances, talk to no one about the case, let no
13 one discuss it with you.

14 Now, I'm going to excuse you and ask that you return not
15 to the courtroom but to the jury room promptly at 9:30 in the
16 morning. We'll have some hot coffee and some doughnuts
17 waiting on you.

18 Now, Mr. Foreman -- or Mr. Bailiff, with reference to
19 these ladies, it's dark outside. Have someone escort them to
20 their car, please.

21 BAILIFF: That's fine.

22 THE COURT: Okay?

23 MR. BAILIFF: Yes, sir.

24 THE COURT: You are now excused to be back in your jury
25 room at 9:30. Thank you.

1 (REPORTER'S NOTE: The jury is excused for the day.)

2 THE COURT: All right. Anything further tonight?

3 MS. LIVESAY: I'm sorry, Your Honor.

4 THE COURT: Anything further tonight?

5 MS. LIVESAY: No, sir.

6 THE COURT: Ms. Wilson?

7 MS. WILSON: Nothing, Your Honor.

8 THE COURT: Were those admonitions satisfactory to
9 everybody?

10 MS. WILSON: Yes, sir.

11 THE COURT: All right. Let's be ready to go. Have your
12 witnesses here at 9:30 remembering my sequestration rule.

13 MS. LIVESAY: Yes, sir.

14 THE COURT: See everybody at 9:30. Thank you.

15 MS. WILSON: Thank you, Your Honor.

16 MS. LIVESAY: Thank you, Your Honor.

17 *****OFF THE RECORD*****

18 (On the Record.)

19 (REPORTER'S NOTE: Outside the presence of the jury.)

20 THE COURT: The Defendant's bond will be revoked during
21 the course of this trial

22 MS. WILSON: And, Your Honor, I would ask the Court to
23 allow him to remain out. For five years, he's been coming
24 every ---

25 THE COURT: I know, but I know from experience things

1 happen during the course of a trial. Some juror will
2 inevitably say that he called her and I put him in jail for
3 his protection because it will happen that some witness or
4 some juror will say that he tried to contact them. It happens
5 every time.

6 MS. WILSON: We would be willing to waive it, Your Honor.

7 THE COURT: Pardon me?

8 MS. WILSON: If somewhere were to say it, we would waive
9 that.

10 THE COURT: What you say, Ms. Livesay.

11 MS. LIVESAY: Your Honor, I don't have any problem with
12 it as long as he understands that if doesn't come back, then
13 the trial will continue in his absence.

14 MS. WILSON: He understands that.

15 THE COURT: All right. I'm gonna tell him now -- I'm
16 just telling you ---

17 MS. WILSON: Yes, sir.

18 THE COURT: --- that I've been on the bench twenty-seven
19 years and that's why I usually lock them up because it
20 invariably happens.

21 MS. WILSON: I understand that, Your Honor, but my client

22 ---

23 THE COURT: The axe will fall if I find out it happened
24 in this case now I'm telling you.

25 MS. WILSON: Yes, sir. And we would expect it to, Your

1 Honor.

2 THE COURT: All right.

3 MS. WILSON: Thank you.

4 THE COURT: Young man, I'm violating my rule in a serious
5 case and this is a serious case, outside the presence of the
6 jury, you must not attempt to contact anybody involved in the
7 trial of this case including the mother of the child, the
8 father of the child, any witnesses nor anybody on your behalf;
9 do you understand?

10 MR. RAYL: Yes, sir.

11 THE COURT: If I find out that somebody on your behalf
12 has done that, they going to jail.

13 MR. RAYL: Yes, sir.

14 THE COURT: Can I be more clear than that?

15 I don't suggest for a moment that you would but I'm
16 suggesting it better not happen.

17 MR. RAYL: That's understood, sir, and I appreciate it
18 very much.

19 THE COURT: All right.

20 MS. WILSON: Thank you, Your Honor.

21 THE COURT: And I do it another reason to give her ample
22 opportunity to prepare your defense.

23 MS. WILSON: Thank you, Your Honor.

24 MS. LIVESAY: Thank you.

25

*****OFF THE RECORD*****

1 (On the Record.)

2 DECEMBER 14, 2011

3 (REPORTER'S NOTE: Outside the presence of the jury.)

4 PLEA OF THE DEFENDANT

5 THE COURT: All right, Solicitor.

6 MS. LIVESAY: Thank you, Your Honor. The State calls
7 Justin Rayl, he's present with his attorney, Kia Wilson, on
8 indictment 2007-GS-26-3067, that is for infliction of great
9 bodily injury upon a child. It has been True Billed by the
10 Grand Jury, Your Honor. He is here to plead guilty to that
11 charge. There is no recommendation or negotiation by the
12 State.

13 THE COURT: Yes, Ms. Wilson?

14 MS. WILSON: Thank you, Your Honor. My client is present
15 to plead guilty, Your Honor.

16 THE COURT: All right. Ms. Wilson, knowing that you are
17 a very abled attorney with many years of services as a public
18 defender, I know that you've advised him of his constitutional
19 rights but I want the record to reflect that. Have you fully
20 advised him of his constitutional rights and, if so, what did
21 you tell him?

22 MS. WILSON: Your Honor, I did advise him and I explained
23 to him that obviously he has a right to a jury trial. In this
24 jury trial, he would many important rights but two of the most
25 important, obviously, are you right to confront witnesses and

1 your right to remain silent at trial.

2 I also told him that the Judge would have the ability to
3 -- would instruct the jury at the conclusion of this trial
4 when the jury has been charged that they can't hold his
5 refusal to take the stand and speak at his own trial in his
6 own defense against him.

7 THE COURT: And I'm sure that you fully advised him of
8 his right to trial by jury because we are engaged in that
9 process at this moment?

10 MS. WILSON: Yes, sir. Yes, sir.

11 THE COURT: I want the record to reflect that a jury was
12 selected on yesterday and the trial began with opening
13 arguments and some testimony. That trial was adjourned last
14 evening at about 5:30 to begin again this morning at 9:30 and
15 the same jury is waiting to commence the beginning of the
16 trial.

17 These folks with you, is that his parents?

18 MS. WILSON: Yes, sir, he has many family members here
19 but this is Laura Lee Teal, my client's mother; this is Mr.
20 Terry Rayl, who is my client's biological father and this is
21 another father figure, his stepfather, this is Mr. Steve Teal.

22 THE COURT: I want to thank all of you for your presence
23 here and I always like to see the family of a defendant
24 standing with him. That tells me that he has a good family
25 behind him. Now, as the mother, I know and would understand

1 that this is a difficult process for you too.

2 MS. EMILY MCKENZIE: Yes, sir.

3 THE COURT: I fully understand that.

4 Now, young man, how old are you, please?

5 MR. RAYL: Twenty-eight, Your Honor.

6 THE COURT: And how far did you go in school?

7 MR. RAYL: I started some college.

8 THE COURT: Okay.

9 You are fully aware of the charges against you?

10 MR. RAYL: Yes, sir.

11 THE COURT: And you are fully aware that as to those
12 charges, you are entitled to and we actually began a trial to
13 determine your innocence or guilt, did we not?

14 MR. RAYL: Yes, sir.

15 THE COURT: And -- do you fully understand that even at
16 this moment, if you said to me, said, Judge Cottingham, I've
17 changed my mind, I want a continue with this trial, I would
18 do so. You understand that?

19 MR. RAYLE: I understand, sir.

20 THE COURT: Ms. Wilson, did you tell him the possible
21 penalty that could be imposed if, and I say that advisedly, if
22 a jury found him guilty beyond a reasonable doubt?

23 MS. WILSON: Yes, sir. It's twenty years and eighty-five
24 percent of the great bodily injury, which is a violent
25 offense, it's non-paroleable; there's no PTI and it's not

1 Youthful Offender Act eligible. In addition, he has an
2 assault and battery of a high and aggravated nature which a
3 zero to ten and it's under the old law. So, it's considered
4 an unclassified misdemeanor but certainly, he understand that
5 the total possibility run consecutively it would be the thirty
6 years.

7 THE COURT: Correct, you understand that. Now, let me
8 ask you this, we've had a pretrial conference this morning.
9 Ms. Wilson, of course, is an excellent attorney, ready to
10 continue the trial of your case. She's worked on it very
11 diligently. I think they gave you all of last week so that
12 you could prepare.

13 MS. WILSON: No, sir, not quite, but I had to struggle to
14 get about a day and a half in there.

15 THE COURT: I understand.
16 Are you satisfied with her services?

17 MR. RAYL: Yes, Your Honor.

18 THE COURT: Done everything you've asked her to do.
19 Now, you're charged upon both indictments that you're
20 well aware of and my question to you, are you pleading guilty
21 to both of these indictments?

22 MS. LIVESAY: Your Honor, the State is only entering this
23 plea on the great bodily injury.

24 THE COURT: You are pleading to that charge?

25 MR. RAYL: Yes, Your Honor.

1 THE COURT: You are pleading freely and voluntarily?

2 MR. RAYL: Yes, Your Honor.

3 THE COURT: You understand you are waiving your various
4 constitutional rights including the right to trial by jury?

5 MR. RAYL: Yes, Your Honor.

6 THE COURT: You had a right to testify on your own
7 behalf. If you elected to remain silent, I would've charged
8 the jury that that could not be used against you in any way.
9 I would've charged the jury that that is no inference against
10 you for failure to testify. I would charge the jury that the
11 fact that you did not testify, could not even enter into their
12 deliberations. Upon a jury trial, you would have a right to
13 testify and you would have a right to call any witnesses and
14 you would have a right to confront the witnesses against you.
15 You understand these things.

16 MR. RAYL: Yes, Your Honor.

17 THE COURT: All right. You are saying to me that you are
18 guilty of inflicting serious bodily harm upon that three or
19 four-year-old infant at that time; is that what you're saying
20 to me?

21 MR. RAYL: Yes, Your Honor.

22 THE COURT: You look at me now real carefully, if you
23 equivocate in any way, I'm gonna bring that jury out and we're
24 going forward with the trial of this case; you understand
25 that?

1 MR. RAYL: Yes, sir.

2 THE COURT: Do you?

3 MR. RAYL: Yes, sir.

4 THE COURT: Don't hesitate with me now because ---

5 MS. WILSON: Your Honor, may I have the Court's
6 indulgence one second.

7 THE COURT: Okay.

8 (REPORTER'S NOTE: Ms. Wilson confers with Defendant.)

9 MS. WILSON: Thank you, Your Honor.

10 THE COURT: Young man, the reason I am insisting on this
11 is this, I have a responsibility as the trial judge in this
12 case to make sure that you are fully aware of your
13 constitutional rights and you say that you are. I have an
14 obligation to make sure that you are freely, knowingly and
15 intelligently waiving those rights, including the right to a
16 trial by jury. You say that you are. I have an absolute
17 responsibility to make sure that you are pleading guilty
18 freely and voluntarily and you're telling me that you are
19 guilty; do you understand?

20 MR. RAYL: Yes, sir, I understand; I apologize.

21 THE COURT: I understand that. I could understand your
22 hesitancy but you are pleading guilty to this charge?

23 MR. RAYL: Yes, sir.

24 THE COURT: Knowing what the charge is?

25 MR. RAYL: Yes, sir.

1 THE COURT: Pleading freely and voluntarily?

2 MR. RAYL: Yes, sir.

3 THE COURT: And saying that you are guilty; is that
4 right?

5 MR. RAYL: Yes, sir.

6 THE COURT: All right.

7 Ms. Wilson ---

8 MS. WILSON: Yes, sir.

9 THE COURT: Is there any other thing that you would have
10 me inquire about as to his guilty plea?

11 MS. WILSON: No, sir, Your Honor. We would -- we have
12 one request and this request I'm making on behalf of my client
13 as well as the family. My client understands obviously that
14 the Court is about to sentence him. That being said, you
15 know, this is just a plea from the family's heart. They're
16 asking the Court to consider allowing Mr. Rayl to have a
17 deferred report date and the reason being is that his sister
18 Angela Rayl -- Angela, if you could please stand up -- Angela
19 is planning to marry in January. My client understands he's
20 going to be going away for a number of years at eighty-five
21 percent and, you know, there's no getting around that.
22 Angela's wedding is at the very beginning of January, I
23 believe it's on January 7th and we're asking the Court to
24 consider an ankle monitor and allow him a deferred report date
25 on January 8th to J. Reuben Long Detention Center.

1 THE COURT: He's been out on bond for a number of -- what
2 three years?

3 MS. WILSON: Almost five years, Your Honor.

4 MS. LIVESAY: He's been out on bond, Your Honor, since
5 about March of 2007.

6 THE COURT: And he's reported regularly?

7 MS. LIVESAY: He's been on bond for a while. He's come
8 to all the court appearances.

9 THE COURT: It seems to me that that request, given the
10 fact that he's been out on bond for all these years to defer
11 sentencing to a date to be determined in January after the
12 wedding is appropriate.

13 MS. LIVESAY: Your Honor, I don't feel comfortable with
14 the deferment of the sentence because my victims are here
15 today, we're ready to go forward and they're ready to get it
16 behind them.

17 MS. WILSON: No, no, Your Honor. We're asking that the
18 sentence be imposed ---

19 THE COURT: No, I'm talking about the -- I'm going to
20 impose sentence today but I'm talking about deferring
21 reporting until the date in November -- in January.

22 MS. LIVESAY: Your Honor, I'm gonna leave that in the
23 Court's discretion.

24 THE COURT: Well, I'm gonna require ankle monitoring.

25 MS. LIVESAY: Okay.

1 THE COURT: Yeah, I would think that's appropriate, I
2 mean ---

3 MS. WILSON: Thank you, Your Honor.

4 THE COURT: But it has nothing to do with the sentence.
5 The sentencing will be complete this morning when I leave this
6 bench. Do you understand?

7 MS. WILSON: Yes, sir.

8 MS. LIVESAY: Yes, sir.

9 THE COURT: We only talking about deferral, not deferring
10 the sentence.

11 MS. LIVESAY: Yes, sir.

12 THE COURT: For the record, and let me say to the
13 victims, I appreciate the family, their presence here.

14 For the record, give me the State's case to which he
15 tenders a plea of guilty, the facts in the case.

16 MS. LIVESAY: Yes, sir. On January the 7th of 2007, the
17 Defendant in this case did inflict great bodily injury on the
18 victim, one H M . H M at the time was
19 three years old. His injuries included bleeding in the brain,
20 contusions in the brain, retinal hemorrhaging, bruising on the
21 back and the arm, Your Honor.

22 THE COURT: And I think -- I think there was pretrial
23 testimony fortunately the child has basically recovered as I
24 understand it though there were some serious injuries
25 inflicted on that child.

1 MS. LIVESAY: Yes, sir, Your Honor, there were very
2 serious injuries and just at the appropriate time, Mr.
3 McKenzie, the child's father does want to speak to the Court.

4 THE COURT: Be glad to hear him at this time.

5 MS. LIVESAY: Thank you, Your Honor.

6 THE COURT: All the doctors were -- so that Ms. Wilson,
7 you of course, a very able trial attorney, you would
8 understand that the doctors were here prepared ---

9 MS. WILSON: Oh, absolutely, Your Honor.

10 THE COURT: Prepared to testify and ---

11 MS. WILSON: We knew that from the outset and I knew what
12 they were gonna say; yes, sir.

13 THE COURT: And I believe after you reviewed the file,
14 too, that you concluded that there was a confession by him on
15 video?

16 MS. WILSON: Specifically, Your Honor, the statement that
17 I received on yesterday; yes, sir.

18 THE COURT: But it is a actual confession?

19 MS. WILSON: Absolutely, Your Honor.

20 THE COURT: All right. I'll be glad to hear from the --
21 come to the ---

22 MR. MCKENZIE: Here, Your Honor?

23 THE COURT: That's fine, go ahead.

24 MR. MCKENZIE: Right here?

25 THE COURT: Yes, that's fine.

1 STATEMENT BY JERRY LEE MCKENZIE, III:

2 MR. MCKENZIE: Thank you for hearing me, Your Honor; I
3 appreciate it. I can't tell you that, you know, that any of
4 this process has been very easy for me. The last five years,
5 you know, feeling the burden of a father, your son being three
6 years old, hurt -- when he was in the hospital and asking
7 every day, Dad, why was I in the hospital. He's a very
8 questionable child. You know, wants to know and understands
9 that he was in the hospital at the time.

10 THE COURT: Do you have custody of the child now?

11 MR. MCKENZIE: Yes, sir, I do. He has made a full
12 recover. He's an honor roll student, playing sports. The joy
13 that he brings to my life every day, you know, takes away some
14 of the pain that I felt as a father letting him down, you
15 know, you feel like you're guilty of letting him, you know,
16 get hurt. I, you know, I served as a public servant for ten
17 years.

18 THE COURT: I can understand that as a father and a
19 grandfather; I understand.

20 MR. MCKENZIE: And I served as a public servant for ten
21 years, you know, before I had to end my career due to a
22 medical injury and, you know, you just -- you feel like you
23 let him down. I mean, that's all I can say to you, he's three
24 years old; he couldn't defend himself. You know, he wasn't
25 talking at the time, he was in diapers. He didn't deserve

1 none of this to happen to him and he still ain't gonna deserve
2 when I finally have to tell him what happened.

3 THE COURT: Well, I tell you that, I've been on the bench
4 twenty-seven years and I have been involved in numerous cases
5 like this and they harden the heart because you can't
6 understand how anybody could inflict such injuries on a little
7 child.

8 MR. MCKENZIE: Yes, sir.

9 THE COURT: But sometimes my experience has been some
10 people otherwise no prior record of any kind, as this
11 individual has, just for some reason loses it and
12 unfortunately does this damage to a child. We never know why.
13 And quite often, the Defendant is a young man such as this one
14 that had no prior record.

15 MR. MCKENZIE: Yes, sir.

16 THE COURT: And it's just -- can't understand but I thank
17 you for your presence and I know the suffering that you
18 endured. I'm so delightful though that this plea of guilty
19 and sentencing will bring closure to you.

20 MR. MCKENZIE: Yes, sir.

21 THE COURT: Especially appreciative of the fact that your
22 child is doing so well.

23 MR. MCKENZIE: Yes, sir.

24 THE COURT: Thank you.

25 MR. MCKENZIE: Thank you.

1 THE COURT: What you would care to tell me about this
2 young man?

3 MS. WILSON: Your Honor, my client is twenty-eight years
4 old.

5 THE COURT: And again, I thank his family for being here.

6 MS. WILSON: Yes, sir. Yes, sir. My client is twenty-
7 eight and single, he has no children, Your Honor. He tells me
8 that he had -- as mentioned to the Court earlier that he
9 attended Horry/Georgetown Technical College for approximately
10 a year and a half. He was working on an Associates in Arts
11 and a Business Associates in Arts. My client was employed,
12 Your Honor, for about one and half months so far at Indie
13 Ventures, which is where he works as a web site developer. He
14 tells me that he has four sisters and three brothers and a
15 couple of whom are present here today. Obviously his mother
16 and his father, the stepfather, his brother-in-law and future
17 brother-in-law are present here with him as well today and
18 they have been here every step of the way supporting him,
19 trying to just be there for him. And I think that makes a
20 completely -- I mean, I think it makes a huge difference in
21 how my client progresses through a case when his family is
22 involved and they've been invaluable. My client served about
23 a week, Your Honor, in jail. He has no -- as the Court has
24 already stated, no adult record. He does live with his
25 parents. That is where he will live once the Court sentences

1 and allows him the ankle monitor. My understanding is that
2 they have a phone. He will be able to have the ankle monitor
3 there and he understands that if the Court has agreed, he will
4 report ---

5 THE COURT: There's one other condition before he's
6 released, I want you to make sure that the bondsman is
7 agreeable to remaining on the bond.

8 MS. WILSON: Yes, sir. I will call and make sure.

9 THE COURT: And I don't want him to leave here until you
10 can assure the Solicitor's Office that that has been done.

11 MS. WILSON: Yes, sir.

12 THE COURT: I want to make sure now that you've had a
13 complete opportunity to review the record and all the material
14 sent to you and with specificity you have had an opportunity
15 to review in your file his actual confession to this crime.

16 MS. WILSON: And, Your Honor, again and I want to be
17 clear for the record. I certainly -- my entire case theory
18 was based on something that I did not -- obviously, I did not
19 have that. I got it yesterday afternoon and when I reviewed
20 it, immediately, I mean, this was a relatively restless night
21 for me because I've been trying to come up with a way to cure
22 the problem presented in this second transcript. And we
23 appreciate all efforts the Court has made to accommodate us
24 and this change in our plans as far as this trial is concerned
25 this morning.

1 THE COURT: In fairness to the Solicitor's Office now, I
2 understand that you didn't read it or didn't see it or didn't
3 have it or whatever but their records will reflect that this
4 material including the confession was delivered to you when,
5 Ms. Livesay?

6 MS. LIVESAY: Yes, sir.

7 MS. WILSON: He said when?

8 THE COURT: When, what date?

9 MS. LIVESAY: I'm sorry, Your Honor?

10 THE COURT: When was it delivered to her, the confession
11 itself?

12 MS. LIVESAY: I think it was around February the 11th
13 with the other tapes, Your Honor, of this year.

14 THE COURT: Okay. I just want to make sure that you
15 delivered it and, of course, if she says she doesn't have it
16 or didn't see it, I accept that but I don't -- want to make
17 sure that the record reflects that you, in fact, delivered
18 everything to her.

19 MS. LIVESAY: Yes, sir.

20 THE COURT: And I believe we addressed that issue
21 yesterday, too.

22 MS. LIVESAY: Yes, sir.

23 THE COURT: All right. Anything further, Ms. Wilson?

24 MS. WILSON: No, sir, Your Honor.

25 SENTENCE OF THE COURT:

State v Rayl 2007-GS-26-3067 & 3068 -- December 13, 2011 - 125
SENTENCE OF THE COURT

1 THE COURT: All right. Young man ---

2 MR. RYAL: Yes, sir.

3 THE COURT: I take no pleasure in sending a young man
4 with no prior record to jail but I have an obligation to the
5 law and with specificity I have an obligation to all the young
6 children who may be hurt by somebody in the future. And I
7 want to send a word, a strong word, that we will not in this
8 country and in this county and in this state accept an adult
9 abusing a young baby child.

10 MR. RAYL: I understand.

11 THE COURT: Totally unacceptable. It is the judgment and
12 sentence of this Court that you be confined in the state
13 penitentiary for period of ten years. I'm going to defer
14 incarceration until -- you got the date so this -- in all
15 fairness to him, he's been on bond.

16 MS. WILSON: Yes, sir.

17 THE COURT: When is his sister's wedding?

18 MS. WILSON: On January 7th, Your Honor.

19 THE COURT: What day of the week was that?

20 MS. ANGELA RAYL: Your Honor, it's on a Saturday.

21 THE COURT: On a Saturday.

22 MS. WILSON: Yes, sir.

23 THE COURT: I want him to report to the detention center
24 no later than five o'clock the following Monday morning, which
25 would be what date?

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 126
SENTENCE OF THE COURT

1 MS. WILSON: The 9th, Your Honor. January the 9th.

2 THE COURT: Now there is no excuse that I would accept
3 for you not to report and if you should fail to report at that
4 time, there would be serious consequences for you; you
5 understand that?

6 MR. RAYL: Yes, sir.

7 THE COURT: And his mother -- I know you want your son at
8 your daughter's wedding?

9 MS. TEAL: Yes, sir.

10 THE COURT: And I can understand that. But you need to
11 know it's a very serious matter now and make sure you have him
12 there on that Monday at five o'clock.

13 MS. TEAL: Yes, sir.

14 THE COURT: And I thank all of you for being here.

15 MS. WILSON: Thank you very much, Your Honor.

16 THE COURT: Ms. Wilson, I thank you for your ---

17 MS. WILSON: I'm gonna call the bondsman at this point,
18 thank you.

19 MS. LIVESAY: Your Honor, would there be a GPS monitor on
20 him?

21 THE COURT: Yes, ma'am. Get the monitor worked out and
22 the bondsman and the -- if he tells you he's on it, then tell
23 her and we'll let him go.

24 MS. WILSON: Okay.

25 THE COURT: Keep him in the jail, I don't need to send

1 him to the detention center unless he's got some personal
2 matters.

3 All right.

4 MS. WILSON: Thank you, Your Honor.

5 THE COURT: All right. We will keep him here until --

6 All right. Bring me the jury that was considering this
7 case.

8 (REPORTER'S NOTE: The jury returns to the courtroom.)

9 THE COURT: Good morning. Did everybody find the biscuit
10 satisfactory.

11 (REPORTER'S NOTE: Jury responds affirmatively.)

12 THE COURT: Sorry I couldn't get the red eye gravy.

13 Ladies and gentlemen, I asked that you be back promptly
14 at 9:30 and you are wondering why in the world Judge
15 Cottingham is keeping me here till 10:15 and bringing me out
16 and wasting my time.

17 I'm pleased to tell you that the case that you are trying
18 and would've been trying through probably through Friday, has
19 resulted in a plea of guilty. And that Defendant upon the
20 charge of serious bodily injury to a baby has been
21 appropriately sentenced upon his guilty plea, he having
22 acknowledged under oath that he understood his right to trial
23 by jury, that he understood that we would continue the trial
24 at your hands if he desired and I would permit him that moment
25 to withdraw his plea and go forward with the process and the

1 witnesses. I further advised him that if he went to trial, he
2 would have a right to confront the witnesses against him, he
3 would have a right to testify on his own behalf. I advised
4 him that he was presumed innocent and didn't have to prove a
5 thing and if he elected not to testify I would charge the jury
6 that that could not be used against him that there would be no
7 adverse inferences. The fact that he did not testify could
8 not even enter into the jury room against him. He was
9 represented by Ms. Kia Wilson, a fine public defender who
10 stated to me that in reviewing the file, she found that he had
11 actually confessed some two or three years ago in a video and
12 he admitted to me under oath that he had confessed to it then
13 and was guilty today and that his plea was freely and
14 voluntarily made. Upon the acceptance of the plea, he was
15 sentenced by me to a period of incarceration of ten years. He
16 had no prior record and I think was twenty-three or twenty-
17 four at this time ---

18 MS. WILSON: Twenty-eight, Your Honor.

19 THE COURT: Twenty-eight. But given the fact that no
20 prior record, the fact that it was three or four years old and
21 more especially that he came in and admitted in the presence
22 of the victim's daddy that -- thus giving some closure -- that
23 he was guilty, I felt that it was appropriate sentence.

24 Now in this regard, I want to first congratulate the
25 attorney general being represented in this case by Ms. Livesay

1 and the investigating officers involved in the case. This is
2 a serious case and it happens more frequently than we know but
3 it needs to be brought to the day of light any by the
4 investigating efforts of the authorities, that was done and by
5 Ms. Livesay's efforts and the Solicitor of the Fifteenth
6 Circuit, he was prosecuted vigorously. And you have rendered
7 to the County of Marlboro [sic] and the State of South
8 Carolina, investigators and Ms. Livesay, a wonderful service.

9 On the same token, I want to thank Ms. Wilson. Under our
10 system of justice, we say that if an individual cannot afford
11 an attorney, we will appoint one for him, a good one. Ms.
12 Wilson is an excellent attorney and she's been before me, I
13 suspect more years now than she wants to say, as a public
14 defender. I regard Ms. Wilson as one of the outstanding
15 public defenders in the State of South Carolina. She too
16 rendered a valuable service, was willing to go to trial and go
17 to the bat to the last draw but once the Defendant started
18 telling her the truth, admitted there was a confession and Ms.
19 Wilson came forward and thus accomplished a plea. The plea
20 resolves it for the people of Horry County, gives a modicum of
21 relief to the victims and satisfies my concern that those who
22 would punish a young child will go to jail. I want to thank
23 all of you for your services. This would not have been
24 accomplished had you twelve folks not been sitting here ready
25 to give him a trial; it would not have happened. So, I want

1 you to know that your services here this week and in this
2 trial has been invaluable.

3 You are now excused for the day and the week with my
4 gratitude and wishing you a Merry Christmas.

5 (REPORTER'S NOTE: Jury is excused and exits courtroom.)

6 THE COURT: All right. Ms. Livesay, Ms. Wilson, I thank
7 both of you.

8 MS. WILSON: Thank you, Your Honor.

9 MS. LIVESAY: Thank you.

10 (Adjourned.)

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ORIGINAL

State v Rayl 2007-GS-26-3067 & 3068 - December 13, 2011 - 131
CERTIFICATE OF COURT REPORTER

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I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial proceedings and plea held in the case of The State versus Justin Monroe Rayl, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on December 13 and 14, 2011.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson, CVR
Official Reporter

November 26, 2012.

ARREST WARRANT

1-478707

STATE OF SOUTH CAROLINA

County of Henry Municipality of _____

Body

THE STATE

VERSUS

Justin McGeorge Rayl

Address: _____

Phone: _____ Sex: _____ Height: 5 7 Weight: 140

DOB: 10/31/1983 SC DL #: 011319027 Agency Code: SC0268400

Presenting Agency: Henry County Police Department

Presenting Officer: Daryl C Williams - 0462

Offense: Abuse / To inflict great bodily injury upon a child

Other Code: 2766

Code/Offense Sec: 16-03-085(A)

THIS WARRANT IS QUASHED FOR SERVICE IN THE _____

County of _____ Municipality of _____

TO BE Served according to the law. The accused shall be according to the law.

Date: _____

Signature: _____

RETURN

A copy of this arrest warrant was delivered to defendant Justin M. Rayl on 02.12.07

RETURN WARRANT TO: _____

General Services

FO Box 677

1901 2nd Avenue

County, SC 29528

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County Municipality of _____

Henry

Presently appeared before me the officer Daryl C Williams

being duly sworn, advised that Justin McGeorge Rayl

did violate the county and state on or about 01/07/2007

State of South Carolina for _____

in the following violation: _____

ABUSE / TO INFLECT GREAT BODILY INJURY UPON A CHILD

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: That on 1/7/07 while at 803 Sylvania Drive in the Little River section of Henry County the defendant did inflict great bodily injury upon a minor child causing internal and external injuries that required emergency medical attention.

Signature of Officer

STATE OF SOUTH CAROLINA

County of _____ Municipality of _____

Henry

Officer's Address: 2560 N. Main Street

County: 29528

Officer's Telephone: _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICERS OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I appearing from the above stated that there are reasonable grounds to believe that

on or about 1/7/2007

County Municipality of _____

Henry

ABUSE / TO INFLECT GREAT BODILY INJURY UPON A CHILD

Justin McGeorge Rayl

did violate the county and state on or about _____

State of South Carolina for _____

in the following violation: _____

ABUSE / TO INFLECT GREAT BODILY INJURY UPON A CHILD

on or about 02/12/2007

Judge's Address: 1201 Third Avenue

County, SC 29526-5105

Judge's Telephone: (843)915-3290

Judge's Code: 5991

(L.A.)

Judge's Court: Magistrate Municipal Circuit

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WITNESSES

DARYL WILLIAMS/HCPD

DOCKET NO. 2007-GS-26

3067

THE STATE OF SOUTH CAROLINA

HURRY

COUNTY OF HORRY

HORRY

BILL

APR 19 PM 4:35

COURT OF GENERAL SESSIONS

MELANIE HODGINS WASH
CLERK OF COURT

JULY

TERM 2007

THE STATE

ARREST WARRANT NO.

1476707

CDR: 2766 16-03-0025(A)

JUSTIN MONROE RAYL

W/M

DOB: 10/21/83

SSN:

DOA: 2/12/07

ACTION OF GRAND JURY

TRISTE ELLI

JUL 19 2007

Foreperson of Grand Jury

ATTORNEY: TOM FLOYD

VERDICT

INDICTMENT FOR:

ABUSE/TO INFLICT GREAT BODILY INJURY UPON A CHILD

WAL

Foreman of Petit Jury Date:

J. GREGORY HEMEREE, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR:
ABUSE/TO INFLICT GREAT BODILY INJURY UPON A CHILD

At a Court of General Sessions, convened on July , 2007, the Grand Jurors of Horry County present upon their oath:

ABUSE/TO INFLICT GREAT BODILY INJURY UPON A CHILD

CDR: 2766 16-03-0095(A)

That JUSTIN MONROE RAYL did in Horry County on or about January 7, 2007, unlawfully inflict great bodily injury upon a minor child, H M age 3 years, by shaking the minor victim and striking or causing him to strike his head, thus committing the crime of Infliction of Great Bodily Injury Upon A Child, in violation of Section 16-03-95(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

FILED
HORRY COUNTY
2011 DEC 19 PM 4:35
MELANIE TIGGANS, CLERK
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM HORRY COUNTY

John C. Hayes, Circuit Court Judge

Case No. 2014-002676

Justin Rayl #00349311, Petitioner,

v.

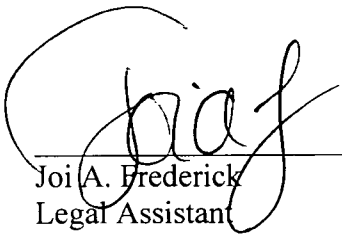
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a redacted Appendix to the following recipient by depositing a copy of it in the United States Mail, postage prepaid, on April 15, 2015, addressed to:

Joshua L. Thomas
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3737
Attorney for Respondent

April 15, 2015



Joi A. Frederick
Legal Assistant
Frederick Law Office
P.O. Box 8219
Myrtle Beach, SC 29577
843-444-6122