

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. Supreme Court

The Honorable R. Ferrell Cothran, Jr.

Appellate Case No.: 2014-001651
PCR Case No.: 2012-CP-02-0321

Russell Jackson,.....Petitioner,

vs.

State of South Carolina.....Respondent.

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF AIKEN)
4)

IN THE COURT OF THE MAGISTRATE

5 THE STATE OF SOUTH CAROLINA)
6 PLAINTIFF(S))

7)
8 VS.)

PRELIMINARY HEARING TRANSCRIPT
WARRANT NO.: M020213

9)
10 RUSSELL B. JACKSON)
11 DEFENDANT(S))
12)
13)
14)

15 Central Preliminary Hearing Court is now in
16
17 session for the purpose of conducting a preliminary hearing on this 18th
18
19 of August, 2010, at Aiken, South Carolina. The purpose of this hearing
20
21 is to examine the facts of the case of the *State v. Russell Bernard Jackson*,
22
23 who is charged under warrant M020213 with criminal sexual conduct with
24
25 a minor or attempt victim under 16 years of age 2nd degree. Let the record
26
27 reflect the defendant is not present in court; however, is represented by
28
29 attorney Andy Anderson. Representing the State is assistant solicitor
30
31 Sam Grimes. The testimony of this hearing will be taken down by tape
32
33 recorder, thereafter transcribed, and when so transcribed will constitute
34
35 the official record of this proceeding. All objections to testimony or other
36
37 evidence offered at this hearing are not waived, but is specifically reserved
38
39 until such time as such testimony or other evidence is offered at a trial or
40
41 trials had of the accused at a date or date subsequent to the date of this
42
43 hearing. It is further stipulated the formal reading of the arrest warrant be
44
45 hereby waived in view of the fact the defendant has been served a copy of
46

1 the charges outlined against him. Is this satisfactory with the defense?
2
3 COUNSEL FOR DEFENSE Yes, sir, Your Honor.
4
5 THE COURT With the State?
6
7 THE STATE Yes, Your Honor.
8
9 THE COURT Let me ask Victim Services has the victim been
10
11 notified?
12
13 VICTIM SERVICES Yes, Judge.
14
15 THE COURT Okay. Please call your witness.
16
17 THE STATE The State calls Cpt. Cook.
18
19 THE COURT Cpt. Cook, if you'll raise your right hand please
20
21 sir. Do you swear or affirm the testimony
22
23 you're about to give is the truth, the whole truth,
24
25 and nothing but the truth so help you God?
26
27 CPT. COOK I do, Your Honor.
28
29 THE COURT Please be seated and answer any questions
30
31 please, sir and if you could get as close as you
32
33 can to that mike. Thank you.
34
35 THE STATE QUESTIONING WITNESS
36
37 Q: Cpt. Cook, could you please present us with the facts and circumstances
38
39 that led to the arrest of the defendant on this charge?
40
41 A: Yes, sir. On April the 5th, 2010, at approximately 5:30 in the afternoon,
42
43 myself and Chief Parks was notified of a sexual assault victim at the
44
45 Aiken Regional Hospital in the ER. We responded there where we found
46

1 the victim, a juvenile and her mother, Christy Green. Walked in, talked to
2
3 her and turned the TV on. She stated she needed to go to the clinic well,
4
5 I'm sorry. We talked to the mother, Ms. Christy Green...
6

7 Q: Captain, if you can try and speak into that microphone as close as possible
8
9 so we can make sure it all gets recorded.
10

11 A: On we met Ms. Christy Green, the mother of the victim, at the Aiken ER.
12
13 She advised us that she got home from work and was sitting down
14
15 smoking a cigarette and watching TV when the juvenile came in the room
16
17 and turned the TV off and stated she needed to go to the clinic. The
18
19 mother asked the juvenile why she needed. She said she was bleeding and
20
21 it was burning when she urinated. The mother took her to the clinic and
22
23 found the clinic to be closed. The juvenile started crying and the mother
24
25 asked her why and that's when she advised her earlier that day that she
26
27 was at home and she was sexually assaulted by Mr. Russell. We walked
28
29 in, myself and Chief Parks, walked in and talked to the juvenile and she
30
31 advised us that while she was home early that morning she took a shower,
32
33 went into the bedroom and everybody had left. While she was in the
34
35 bedroom with her back turned, she was drying herself off, Mr. Russell
36
37 came in from behind, pushed her on the bed and penetrated her, had sex
38
39 with her. She told me she told us that she told him to stop, not to do it,
40
41 and he when he got through he grabbed the towel, wiped himself off, and
42
43 walked out taking the towel with him. We talked to the juvenile and asked
44
45 if he used any force and she said no he hadn't. She advised us of what he
46

1 was wearing, which matched when we talked to Mr. Russell later that
2 evening. After talking to her the ER performed a sexual assault kit that
3 was supplied by SLED, which afterwards we secured and I took back to
4 the office. On that particular evening we made contact with Mr. Jackson
5 and had him come to the office and talk to us. We talked to him. He
6 told us that he had left. He went to the home and went to the Dollar
7 General Store and bought a phone around he wasn't sure what time it was.
8 During the conversation he told us he had masturbated earlier in the day
9 and left it on a towel. For what reason he told us that we wasn't sure.
10 We asked for a DNA sample. Mr. Jackson voluntarily gave it to us.
11 After securing that we had the sexual assault kit transported on
12 April the 6th by Officer Spires to SLED in Columbia to be analyzed, along
13 with the clothing and everything all the other stuff we had gathered. On
14 April the 8th, 2010 the victim and the mother were taken for a forensic
15 interview. During the forensic interview she explained basically the same
16 thing she had advised to us, with more detail. The time period on the
17 forensic interview would be between 11:00 and 11:30 April the 5th. After
18 the interview we waited on SLED to finish the analyzation of the DNA
19 that they found. On June the 2nd I received a Comparative Report, which
20 indicated that Mr. Jackson was one in 23 millionths of a chance that he
21 was not the subject that did the sexual assault. On June 4th, I met with
22 Judge Neal at which time we had a warrant issued for Mr. Jackson for
23 sexual assault with a minor 2nd degree. On June the 9th Mr. Jackson

1 turned himself in to the Aiken County Detention Center where he was
2
3 charged and held. I did find that on April 29th I went to the Dollar General
4
5 Store and from what I could find on the video that he was there between
6
7 got there about 11:15 or 11:30 that morning on April the 5th.
8

9 Q: What relationship is the defendant to the victim?

10
11 A: The father.
12

13 Q: What was analyzed by SLED?
14

15 A: The sample of DNA they found on the panties of the victim.
16

17 Q: What type of sample was that?
18

19 A: The DNA, to my understanding, was semen if I'm not mistaken.
20

21 Q: So the victim indicates, who did she inform initially was that her mother?
22

23 A: Yes, sir. After she never, my understanding told anybody during the
24
25 whole day other than when she met with her mother.
26

27 Q: Did her was it reported to law enforcement the same day?
28

29 A: Yes. We got the report at 5:15 that evening whenever she was taken to the
30
31 ER to be examined.
32

33 Q: Where did this occur at?
34

35 A: At the victim's home on [REDACTED] I'll
36
37 give you an exact location.
38

39 Q: Is that in Aiken County?
40

41 A: Yes, sir. It's [REDACTED] in the County of
42
43 Aiken.
44

45 Q: You said she did an interview with the Child Advocacy Center?
46

1 A: Yes sir. There's a copy of what their her statement that they found. You
2
3 have a copy of their video.
4

5 Q: Do you have a copy of the Child Advocacy Center forensic interview with
6
7 you?
8

9 A: Yes, sir, it's in here. A copy of the statement they typed up, with a
10
11 forensic interview assessment tool, the child's name, date April the 8th,
12
13 2010, New Ellenton Police Department. Observing the interview is
14
15 Officer Franz from the New Ellenton Police Department, Faye (inaudible)
16
17 DSS, Jay Hanna, CSA Aiken who brought the child to the interview.
18
19 Christie Green, mother, and William Green (inaudible).
20

21 Q: Is it consistent?
22

23 A: Yes, sir.
24

25 Q: Go on to about Page 3.
26

27 A: Yes, it's consistent. It's just in that interview she was more detailed.
28

29 Q: It's just more detailed. Is it...
30

31 A: The only difference, I think, would have been she said that from the
32
33 interview there she said the time was between 11:00 and 11:30. I may
34
35 have missed some of (inaudible) but I thought she told us between 11:30
36
37 and 12:30.
38

39 Q: Okay. Essentially, does it describe what you described earlier?
40

41 A: Yes, sir. With the exception that she said in the statement from the
42
43 interview that he did use force. He pushed her down and held her down
44
45 while he penetrated her.
46

1 Q: Did she indicate that she told him to stop in any way?

2
3 A: Yes, she did. She said she told him to stop not to do it.

4
5 Q: How old was the victim when this occurred?

6
7 A: Let me see, 15 I think she was, 15-years-old.

8
9 Q: Please answer any questions defense counsel may have for you.

10
11 COUNSEL FOR DEFENSE ON CROSS EXAMINATION

12
13 Q: Thanks. Did you interview any of the other people that had been around
14
15 her and the defendant that morning?

16
17 A: The only people that were around her she claims were her two younger
18
19 brothers, and later on a friend and her grandfather, a friend of her father's
20
21 and her grandfather came by to pick up Mr. Jackson and they left very
22
23 shortly after that.

24
25 Q: Were any of them interviewed though? Any of those people?

26
27 A: We didn't interview them.

28
29 Q: Okay.

30
31 A: At the time the juvenile advised us there was nobody else in the house but
32
33 her and her father.

34
35 Q: Okay. Did she give you any details about how long the whole incident
36
37 took?

38
39 (A) She gave a window. She just said it was like 15 minutes, 20 minutes. She
40
41 didn't give any specific time frame, no. She just said it wasn't very
42
43 long.

44
45 Q: And then you're saying that the Dollar General people, based on what you
46

1 saw, he was there 11:15 to 11:30?
2
3 A: Yes, sir.
4
5 Q: Is that pretty precise?
6
7 A: That's because the time had changed. I remember it changed fast.
8
9 Q: Yeah.
10
11 A: It was showing him in there about 11:25, pick it back up at 11:15 and he
12
13 left around 11, by the clock would put the time to about 11:30 when he
14
15 was finished.
16
17 Q: Was anybody with him in on the video?
18
19 A: Yes, but I couldn't tell you who it was. It was probably the person who
20
21 picked him up from (inaudible) and the reason I could make him out was
22
23 because the clothing he was wearing. He told me what he did. He went
24
25 and got a cell phone, walked up to him, paid for it, and what he was
26
27 wearing the same clothes. When I talked to him that night he was wearing
28
29 kinda a bluish color tank top and shorts.
30
31 Q: Okay. And ya'll interviewed him before you made the charge.
32
33 A: Yes, sir.
34
35 Q: And he came to yall's station.
36
37 A: Yes, sir. We wanted to get his side of the story.
38
39 Q: Right.
40
41 A: He talked to me for about a minute and we never really asked him any
42
43 questions. We advised him of his rights and what was going on and he
44
45 started talking and we asked if he would voluntarily give us a DNA
46

1 sample. He volunteered.
2
3 Q: And he denied that he did it?
4
5 A: Yes, sir.
6
7 Q: Did ya'll ever do any kind of waiver of rights form with him?
8
9 A: Not at that time because we were looking into the matter.
10
11 Q: Okay.
12
13 A: We asked him to come in. He came in. Made the statements. We didn't
14
15 interview him persay. He was free to leave. If he did not want to
16
17 come up then at that point we were still looking into the matter.
18
19 Q: Ya'll pretty much essentially want to see the DNA. That was pretty
20
21 much...
22
23 A: We wanted to make sure everything, yeah, because a charge like this
24
25 would damage, even if he hadn't done it, it would damage him. We
26
27 wanted to make sure we had everything right before we made any
28
29 case.
30
31 Q: Did you have any problems with the girl's story? Did you have any
32
33 concern that he any doubts about it?
34
35 A: I always have concerns about stories.
36
37 Q: But like did you catch her in any inconsistencies?
38
39 A: I didn't.
40
41 Q: Okay. Do you know did the Chief?
42
43 A: None that we know of but she did come back later and want to recount and
44
45 the Chief had pressed her a little bit and asked or did it happen. She said
46

1 the only reason she was recounting because of her mother's feelings. She
2
3 was really upset and felt real bad and the juvenile stated the only reason
4
5 she was going to recount was to benefit her mother. Not that it didn't
6
7 happen, but to benefit her. But when pressed she went back to the same
8
9 story.
10
11 Q: On that occasion how did she get up to the station?
12
13 A: When she was trying to ...
14
15 Q: When she was taking the story back.
16
17 A: Chief Parks went to the house.
18
19 Q: How did she know to do that? Did the...
20
21 A: She was called there I think it was.
22
23 Q: Okay. Was the mom in the house?
24
25 A: Yes, sir. When she recounted?
26
27 Q: Yeah.
28
29 A: Chief, to my understanding, talked to her one-to-one by herself. Nobody
30
31 around. She said no, it did happen. The only reason she's doing because
32
33 the way her mother felt, but that it did happen.
34
35 Q: Does it appear to you that the mom seems to be kinda between a rock and
36
37 a hard place?
38
39 A: Oh, yes. No matter what happens she's going to lose out.
40
41 Q: Because she loves the daughter and she was supportive of the daughter
42
43 was she not?
44
45 A: Yes, sir.
46

1 Q: But then she expressed doubts about the veracity of the story too.
2
3 Correct?
4
5 A: Yes.
6
7 Q: Okay. Have you heard anything about any STD's that ...
8
9 A: No, sir, I haven't.
10
11 Q: Okay. Now it's pretty clear that the girl is saying it's a rape.
12
13 A: Yes, sir.
14
15 Q: But there were no bruises on her.
16
17 A: None that we were (inaudible).
18
19 Q: And then when they took her into the hospital to check her part there was
20
21 no tearing?
22
23 A: No, sir, none we know of.
24
25 Q: Normal exam. Wasn't there something where the child mentioned to her
26
27 mom something about hurting when she urinated?
28
29 A: Yes, she did say that.
30
31 Q: So there was no explanation for why it would have hurt when she urinated.
32
33 A: They never came out and said any different whether she hurt or not. The
34
35 doctor did an exam, took the samples, and he never advised if there was
36
37 any tearing or any injury.
38
39 Q: Did you talk to the person that did the DNA testing in Columbia, the
40
41 SLED person?
42
43 A: I never talked with them personally.
44
45 Q: Okay. Because what's up with the they took a sample that they say was
46

1 semen from inside of her. Correct?
2
3 A: None that I remember.
4
5 Q: So they...
6
7 A: They did get take samples but none of them showed any DNA.
8
9 Q: Right.
10
11 A: We get the samples, from my understanding from all these reports, from
12
13 the panties.
14
15 Q: Right. Okay. The part about the inside of her they're saying it was semen
16
17 but they couldn't say whose it was?
18
19 A: Well, they took a sample but from my understanding, let me look back at
20
21 the report, there was no semen found. Like I said (inaudible).
22
23 Q: Well, you don't know anything more than what's in the written report.
24
25 A: No, sir.
26
27 Q: Okay. Do you know where on her underwear the semen was found?
28
29 A: No, sir, I don't. No.
30
31 Q: Okay. Let me ask you this. The underwear that they checked did they
32
33 take that underwear off of her or was that underwear already off of her?
34
35 A: No, SLED got when you do a SLED kit you take the clothes they're
36
37 wearing at that time and they give them more clothing to wear. Every
38
39 bit of clothing she had on was taken to SLED.
40
41 Q: I mean the weird thing about this case is that we, the child sat at home
42
43 alone for a long time before she was taken to the hospital.
44
45 A: Yes. She ..Russell Jackson and I forget who was with him at the time
46

1 came back and wanted her to activate a phone.

2
3 Q: Right.

4
5 A: That he just bought. Somewhere along the line she couldn't do it over the
6
7 computer so he then decided to go to AT&T to have the phone activated.
8
9 From the time how long he was there and from the time he got back from
10
11 the Dollar General until he left may have been 20 minutes later 30 minutes
12
13 and was gone for the rest of the day.

14
15 Q: What I'm saying though is there is a great period of time from when the
16
17 girl said she was raped before they went to the hospital?

18
19 A: Yes.

20
21 Q: Are ya'll clear that she had on the same underwear the whole time? I
22
23 mean, that's...

24
25 A: That's what we were told.

26
27 Q: That's what you were told. Okay. Did ya'll take any other evidence pick
28
29 any other evidence up from the house?

30
31 A: No, we didn't.

32
33 Q: Did the girl seem upset?

34
35 A: Yes.

36
37 Q: Have ya'll been did ya'll do any checking of cell phones to see about any
38
39 kind of calls that were made to or from everybody's cell phones?

40
41 A: My understanding she didn't have a cell phone. She had a house phone.
42
43 We didn't do a we didn't go back and forth tracking to see who she had
44
45 called that day. No, sir.
46

1 Q: Okay. Have ya'll ever talked to her boyfriend about this?
2
3 A: I haven't, no, sir.
4
5 Q: Okay. Do you know...
6
7 A: We've been told by the victim that it had been one time this is the only
8
9 time it had happened. We got word the boy said it had happened more
10
11 than one time. This is not the only time. Like some people, you know,
12
13 that some people get emotionally involved and they start adding stuff
14
15 to the story so we didn't take what he said seriously. We were just
16
17 looking at the case we had at hand.
18
19 Q: Okay. Do you know how he conveyed that message to ya'll?
20
21 A: He didn't advise us of it. We just got word from different people.
22
23 Q: Okay. All right. Do you have any explanation why there wouldn't be
24
25 bruising on her and there wouldn't have been tearing in her private part?
26
27 A: I don't have any information because I'm not a doctor. I can't sit here and
28
29 answer that part. Whether there was force used or whether the force was
30
31 just kinda pushing her on the bed holding her down and then
32
33 penetrating her. I couldn't answer that, you know, why it didn't. I've
34
35 seen a lot of different things have happened.
36
37 Q: You know that part where she talks about she could see him in the mirror?
38
39 Did ya'll ever, you know, see if that adds up? If she is on the bed like this
40
41 could she see herself the way she described?
42
43 A: If I remember right Chief Parks went by there and checked the angle. You
44
45 could see, you know, back. How good it would be to be you'd have to
46

1 look at what angle she was at and whether she could see different parts,
2
3 but she, in fact, she said she knew what he was wearing at the time and he
4
5 was the only one home.
6
7 Q: Okay. Did you mentioned that the defendant just basically started talking
8
9 when you first interviewed him, when they came up to the station.
10
11 A: Yes, sir.
12
13 Q: When he gave that voluntary sample.
14
15 A: Yes, sir.
16
17 Q: What was his explanation?
18
19 A: He really said he didn't give an explanation. We don't know why. He was
20
21 emotionally upset.
22
23 Q: Yeah. If he didn't tell you any indication of what he thought was the
24
25 explanation or anything just that he didn't do it.
26
27 A: He didn't do it. He don't know how whether why she would say it.
28
29 Q: Did the girl act like consistent with somebody that in your experience had
30
31 been abused?
32
33 A: I've had them yell and scream, get emotional. Others have been calm.
34
35 She was emotional, but under control. It would indicate that something
36
37 had happened.
38
39 Q: Okay. That's all the questions I have. Thank you.
40
41 A: You're welcome.
42
43 THE COURT Okay. Anything else? Any motions, Mr.
44
45 Anderson?
46

1 COUNSEL FOR DEFENSE

No, thank you, Judge.

2
3 THE COURT

Okay. We bound the case over for probable

4

cause. Thank you.

5

6

7 COUNSEL FOR DEFENSE

Thank you.

8

9

10

11

12

13

S. L. LYNN, JR., MAGISTRATE

14

15

16

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46

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT
2010-GS-02-01523

2 COUNTY OF AIKEN

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 RUSSELL JACKSON,
6 Defendant.

7
8 Heard on Monday, May 23, 2011

9 Aiken, South Carolina

10
11 BEFORE:

12 THE HONORABLE DOYET A. EARLY III

13
14 APPEARANCES:

15 Counsel on Behalf of the State:
16 Brenda Brisbin, Esq.

17 Counsel on Behalf of the Defendant:
18 P. Andrew Anderson, Esq.

19
20
21 Cheri L. Young, RPR
22 Circuit Court Reporter
23 P O Box 1154
24 Aiken, SC 29802-1154
25

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON MONDAY, MAY 23, 2011 AT 12:45 P.M.:

2 (Defendant placed under oath.)

3 THE COURT: Mr. Anderson, you represent Russell
4 Bernard Jackson, age 36, in indictment 2010-GS-2-1523, an
5 indictment for criminal sexual conduct with a victim under
6 the age of 16, second degree, which carries up to 20 years
7 in the State Department of Corrections?

8 MR. ANDERSON: Yes, sir, Your Honor.

9 THE COURT: This is the case we had discussed last
10 week in chambers? This is his daughter?

11 MS. BRISBIN: No, sir, we haven't discussed --

12 MR. ANDERSON: We did last week.

13 MS. BRISBIN: We did?

14 MR. ANDERSON: We met about the chain.

15 MS. BRISBIN: Oh, that's right. It's not his
16 stepdaughter. It's his biological daughter.

17 THE COURT: Biological. Another situation.

18 MS. BRISBIN: Yes, sir.

19 MR. ANDERSON: Not as bad as the earlier case though,
20 Judge.

21 THE COURT: Well, sexual intercourse with his
22 daughter.

23 MR. ANDERSON: It's not good.

24 THE COURT: It's not good. I don't know if you can
25 put a degree on when they start doing this stuff.

1 All right. Mr. Anderson, have you advised your client
2 this carries up to 20 years in the Department of
3 Corrections?

4 MR. ANDERSON: Yes, sir, Your Honor.

5 THE COURT: Have you advised him it's classified as
6 violent and the ramifications of that?

7 MR. ANDERSON: Yes, sir, Your Honor.

8 THE COURT: Have you advised him that it's classified
9 as most serious?

10 MR. ANDERSON: Yes, sir.

11 THE COURT: And the ramification of that?

12 MR. ANDERSON: Yes, sir.

13 THE COURT: Have you advised him of the enhancement
14 laws on most serious?

15 MR. ANDERSON: Yes, sir.

16 THE COURT: Being one strike?

17 MR. ANDERSON: Yes, sir.

18 THE COURT: Have you advised him it's a no parole, 85
19 percent sentence?

20 MR. ANDERSON: Yes, sir.

21 THE COURT: Have you advised him this is going to
22 require registration under the sex offender registry?

23 MR. ANDERSON: Yes, sir.

24 THE COURT: Have you advised him of his right to trial
25 by jury?

1 MR. ANDERSON: Yes, sir.

2 THE COURT: And how does he indicate to you he wishes
3 to plead?

4 MR. ANDERSON: Guilty, Your Honor, in light of our
5 negotiations.

6 THE COURT: And the negotiations are, what?

7 MS. BRISBIN: Eleven and a half years incarceration.
8 I know. It sounds strange. That was -- we went through a
9 lot of negotiations and that was the bottom line.

10 It was a one-time incident, according to the victim.
11 And the victim had recanted several times and really did
12 not want to testify. And it was only because of that we
13 agreed to something less than 20 years.

14 THE COURT: Is that correct, Mr. Anderson?

15 MR. ANDERSON: Yes, sir.

16 THE COURT: That's the negotiations, 11 and a half
17 years?

18 MR. ANDERSON: Yes, sir, Your Honor.

19 (Pause.)

20 THE COURT: Mr. Jackson, you stand before me charged
21 with criminal sexual conduct with a minor, second degree,
22 carries up to 20 years in the Department of Corrections.
23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: This crime or offense is classified as

1 violent which may have some effect on where you're housed
2 in the Department of Corrections.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It's classified as most serious which
5 means that if you become involved in this type of activity
6 or criminal activity classified as most serious in the
7 future, you'd be subjecting yourself to the possibility of
8 life in prison without parole.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Or if you became involved in activities
11 that would be classified as serious twice which is most
12 serious, that's three strikes and the result of life
13 without possibility of parole would be a possibility. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: This is an 85 percent sentence. So you'll
17 do 85 percent of whatever I sentence you to. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Once you're released, you'll be released
21 to a community supervision program. Do you understand
22 that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That you'll be required to register as a
25 sex offender. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Understanding all of that, what you're
3 charged with, the possible sentence, the classification of
4 violent and most serious and what those mean, the fact
5 that it's an 85 percent, no parole sentence, how do you
6 wish to plead; not guilty or guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: When you plead guilty you'll give up your
9 right to remain silent. You'll have to admit to me what
10 you've done. You'll also give up your right to trial by
11 jury.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Obviously if you want a trial, we got a
14 jury ready, willing and able to come in. At that time
15 during the trial you would have the right to confront and
16 cross-examine everyone who testified against you. You'd
17 have the right to present your own case by calling your
18 own witnesses, introducing relevant exhibits and
19 testifying in your own defense.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you chose not to testify, I would tell
22 the jury they could not hold your failure to testify
23 against you in any manner whatsoever. I would instruct
24 them that they could not consider the fact that you didn't
25 testify when they deliberated your guilt or innocence.

1 You would be presumed innocent throughout the trial and
2 the State of South Carolina would have the burden of
3 proving you guilty beyond a reasonable doubt to a jury of
4 12 people.

5 And in order for the jury to convict you, all 12 would
6 have to unanimously agree that you were in fact guilty.
7 And even if you were found guilty you would still have the
8 right to appeal.

9 Now, do you understand your rights to trial by jury?

10 THE DEFENDANT: Yes, sir

11 THE COURT: Understanding those rights, do you still
12 wish to plead guilty or do you want me to set your case
13 for trial?

14 THE DEFENDANT: I plead guilty, sir.

15 THE COURT: Other than the negotiations, has anyone
16 offered you --

17 THE DEFENDANT: No, sir.

18 THE COURT: -- anything to plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: Promised you anything, held out any hope
21 of reward, or threatened you in any manner?

22 THE DEFENDANT: No, sir.

23 THE COURT: You've been represented by Mr. Anderson.
24 Are you satisfied with his representation?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In your opinion, has he had enough time to
2 spend with you, enough time to research the law and enough
3 time to investigate the facts?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So that he can properly defend you here
6 today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is there anything else you want him to do
9 for you today before we move forward other than speak up
10 for you on your behalf?

11 THE DEFENDANT: No, sir.

12 THE COURT: And I ask you once again: Are you totally
13 and completely satisfied with his representation?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you today under the influence of any
16 alcoholic beverages, drugs or prescription medications?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you today aware of any mental, nervous
19 or emotional conditions that would keep you from
20 understanding these proceedings?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you understood all of my questions?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you pleading guilty of your own free
25 will?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you here in Aiken County on or about
3 April 5 of last year, 2010, have sexual intercourse with
4 your daughter [REDACTED], who was 15 at
5 the time?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You're pleading guilty because you are
8 guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're pleading guilty because you had a
11 sexual relationship with a minor?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I find your decision to plead
14 guilty to be freely, voluntarily and intelligently made.
15 You've had the representation of an excellent lawyer,
16 Mr. Anderson, with whom you say you're satisfied. And I
17 will accept your plea.

18 If you disagree with my sentence or these proceedings
19 you have 10 days from today's date to file a notice of
20 intent to appeal. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Ms. Brisbin?

23 MS. BRISBIN: Thank you, Your Honor. On April 5th of
24 2010, New Ellenton Police responded to Aiken Regional
25 Medical Center for a reported sexual assault on a

1 juvenile. The victim, [REDACTED] who was Russell
2 Jackson's biological daughter, and was 15 years old at the
3 time, was -- had asked her mother to take her to the
4 clinic that afternoon when she got home from work.

5 She told her mother that she had bleeding, vaginal
6 bleeding and it burned when she urinated. Her mother took
7 her to the clinic. The clinic was closed.

8 ^{The victim} [REDACTED] then started crying, told her mother that she
9 needed, she really needed to go and that her father had
10 sex with her that morning.

11 The mother then took her to Aiken Regional Emergency
12 Room. They did a sexual assault kit. And in that process
13 they took the panties that she had been wearing and took
14 vaginal swabs and they were sent to SLED for analysis.
15 And the DNA report was that the panties had semen on the
16 crotch area which was consistent with Mr. Jackson's DNA
17 profile.

18 And the chances of someone other than Mr. Jackson
19 matching that profile were one in 23,000,000. The vaginal
20 swabs also had semen on them. The alleles were consistent
21 with Mr. Jackson's DNA profile as well, but there was not
22 sufficient quantity to call it a match.

23 THE COURT: Any prior record?

24 MS. BRISBIN: Yes, sir. He does have a significant
25 prior record.

1 Assault and battery, high and aggravated nature in
2 '94; possession with intent to distribute crack cocaine in
3 '94; resisting arrest in 2001; violation of ABC law in
4 '99; possession of crack cocaine in 2001; fraudulent check
5 in 2001; failure to stop for blue light and resisting
6 arrest and criminal domestic violence in 2003; and
7 receiving stolen goods in 2006.

8 Your Honor, the victim is not present. Her guardian
9 ad litem, Joanie Schisler, is here and she did ask if she
10 could address the Court at the appropriate time.

11 THE COURT: Well, did you involve the guardian ad
12 litem with these negotiations?

13 MS. BRISBIN: She has become involved. And it has
14 been a very difficult negotiation process.

15 The victim's family, including her mother were,
16 appeared to be not supportive of the victim and not
17 wanting to believe this happened despite my explaining to
18 them the DNA analysis.

19 The victim's mother sent the child to live with her
20 grandmother and my understanding is she's still with the
21 Defendant. And --

22 THE COURT: The mother's still with the Defendant?

23 MS. BRISBIN: That's my understanding.

24 And it's been very, very difficult for the victim.
25 She has recanted several times, I believe, because of the

1 family pressure. And she has also told me that it did
2 happen several times, in detail, what happened. And she
3 told the nurse at the hospital what happened in detail.

4 And she did a very compelling Child Advocacy Center
5 videotaped forensic interview in which she gave very good
6 detail and very believable disclosure.

7 But it has been very difficult for her to -- we were
8 scheduled for trial to start in the morning.

9 THE COURT: Basically you're sparing her the agony of
10 --

11 MS. BRISBIN: Very much so. We were scheduled to
12 start trial tomorrow morning. We still would be prepared
13 to do that, and she was prepared to testify but it was
14 extremely difficult for her to testify against her father
15 about this.

16 THE COURT: I understand. Mr. Anderson?

17 MR. ANDERSON: Judge, this really has been an arduous
18 one. And it's rare for me to be able to talk to the
19 alleged victim, but I've got to meet with ^{the victim} [REDACTED] twice
20 and with her guardian both times and ^{the victim} [REDACTED] told me it
21 didn't happen.

22 THE COURT: Well, the DNA just didn't get there.

23 MR. ANDERSON: But her saying -- her recantation is
24 what the whole family just seized upon since she's
25 recanted.

1 THE COURT: It did happen. Your client's admitted it
2 happened. He's pled guilty to that.

3 MR. ANDERSON: Yes, sir.

4 THE COURT: Why should I accept an 11-and-a-half-year
5 sentence on something --

6 MR. ANDERSON: The issue we have, Judge.

7 THE COURT: Sir?

8 MR. ANDERSON: The issues we have, Your Honor, with the
9 girl recanting. It was an issue there. We had an issue
10 with the evidence where all the evidence that was taken by
11 the police department, the officer that took that in never
12 wrote down the panties.

13 THE COURT: Well, we discussed that in chambers last
14 week --

15 MR. ANDERSON: Yes, sir

16 THE COURT: -- about that.

17 MR. ANDERSON: And I know, Your Honor, was going to
18 let the underwear into evidence assuming the witness
19 testified to the chain and that's a proper ruling based
20 upon the case law, Judge. I'm not doubting that but --

21 THE COURT: Also it goes to the weight and not the
22 admissibility.

23 MR. ANDERSON: But it could be an appealing jury issue
24 if we had jurors that had some distrust issues. The DNA
25 expert from SLED no longer works at SLED.

1 THE COURT: I agree.

2 MR. ANDERSON: He's available. So, plus the whole
3 unpleasantness of the trial and the girl -- she's a sweet
4 girl, Judge. She's doing great. I think that,
5 ironically, by her recanting, it's just made it even more
6 difficult for her to be in this position.

7 And I'm sure she's telling Ms. Brisbin what
8 Ms. Brisbin needs to hear. And she's telling us what we
9 want to hear. But it's made this more difficult.

10 And my client over the course of representing him,
11 he's got a wonderful family. His mom and his sister are
12 in the courtroom and they love him. They don't support
13 this, but they support him. They also love the girl very
14 much.

15 But I met with probably 20 members of his family. We
16 had some witnesses about the timing. And there was a very
17 limited window of opportunity. We couldn't prove that
18 there was no window of opportunity but the window was
19 very, very, very brief.

20 And that was another issue as well. My client had
21 said he was buying a cell phone. So law enforcement went
22 to that store and found the video where he was in there
23 buying a cell phone. And that narrowed the window even
24 more.

25 So we had a lot of issues.

1 The DNA is bad. We did consult with a DNA expert who,
2 you know, reviewed all the documentation and really was no
3 help to us.

4 But, you know it's just bad. It's a bad case.

5 THE COURT: All right, sir. Anything you want to tell
6 me?

7 THE DEFENDANT: No, sir.

8 THE COURT: Ms. Schisler, anything you want to tell
9 me?

10 MS. SCHISLER: Thank you, Your Honor.

11 Because I represent the victim, all I want for her
12 closure from her father to not only acknowledge it,
13 apologize, but to get the support of the family back.
14 This child has been totally alienated by many of the
15 family members. She has nowhere to go. And she's scared,
16 and she's not getting the support that she should.

17 THE COURT: Well, obviously I can't order that.

18 MS. SCHISLER: No, but you -- could you please ask for
19 a letter in his own handwriting to be written as an
20 apology to her, so that she has some sort of closure for
21 something that she can go back and read again and again
22 and again so that she can go forward with her life and
23 have some sort of perception for her life and that justice
24 has been done?

25 THE COURT: Thank you.

1 MS. SCHISLER: Thank you. Mr. Jackson, you've heard
2 the guardian ad litem. I can't make you do that. I
3 certainly request that. May help your daughter, I don't
4 know. I can't make you do it. I suggest you do it, but I
5 can't make you do that.

6 Anything else you want to tell me?

7 THE DEFENDANT: No, sir.

8 THE COURT: SENTENCE OF THE COURT IS YOU BE COMMITTED
9 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
10 11-AND-A-HALF YEARS. Good luck to you.

11 THE DEFENDANT: Thank you, sir.

12 MR. ANDERSON: Thank you, Your Honor.

13 END OF PROCEEDINGS: 1:05 P.M.

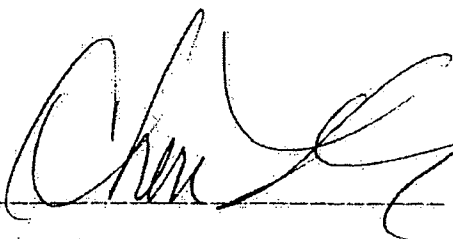
14 * * * *

1
2 CERTIFICATE OF REPORTER

3 I, Cheri L. Young, Registered Professional Reporter,
4 and Official Court Reporter for the State of South
5 Carolina, do hereby certify that the foregoing transcript
6 of proceedings heard on Monday, May 23, 2011, in Aiken,
7 South Carolina, was reported by me using machine shorthand
8 and realtime computer-aided translation and is a true,
9 accurate and complete transcript of the proceedings had
10 and evidence introduced in the hearing of the matter.

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

13 I have hereunto set my hand this Friday, the 16th day
14 of March, 2012.

15
16
17 

18 Cheri L. Young, RPR
19 Official Court Reporter
20
21
22
23
24
25

Judge SAK set by
on 2/14/21
Type and Amount 06-08-2410
Name of Surety 20,000

PRELIMINARY HEARING held by _____

Judge _____
on _____
Defendant's Attorney _____
Decision _____

DISPOSITION below

Judge _____
on _____
by _____ (Indicate jury trial, bench trial, plea, not pros, etc.)
Disposition _____
Sentence _____

AUTORS

WITNESSES

Name: _____ Address: _____ Telephone: _____

Name: _____ Address: _____ Telephone: _____

Name: _____ Address: _____ Telephone: _____

Name: _____ Address: _____ Telephone: _____

Name: _____ Address: _____ Telephone: _____

CODEFENDANTS

WITNESSES

New Ellenton Police Department

W Cook

Law Enforcement Case #: 10-000381-04

DOCKET NO. 2010GS0201523

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2010

THE STATE

VS.

RUSSELL BERNARD JACKSON

ARREST WARRANT NUMBER
FILED September 9, 2010
MO20213

[Signature]
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: September 9, 2010

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 0397

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE

§ 16-03-0655(3)

J. STROM THURMOND, SOLICITOR

INTENTIONALLY

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
)

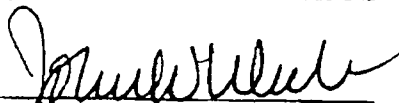
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE

§ 16-03-0655(3)

At a Court of General Sessions, convened on September 13, 2010, the Grand Jurors of Aiken County present upon their oath:

That RUSSELL BERNARD JACKSON did in Aiken County, on or about April 5, 2010, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon [REDACTED] a minor who was fifteen (15) years of age at the time of the incident, and the Defendant was older than the victim or was in a position of familial, custodial, or official authority to coerce the victim to submit. All in violation of Section 16-3-655(3) 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.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
STATE

VS.
Russell Bernard Jackson

AKA:
Race: 2 Sex: M Age: 36
DOB: 08-17-1974 SS#: [REDACTED]
Address: 601 VALLEY DRIVE
City, State, Zip: NEW ELLENTON, SC 29809
DL# 008117281 SID# SC00965208

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 16 years of age - Second degree

In violation of § 16-03-0655(3) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bruce R. Smith 6863 Russell Jackson PA Anderson 64131
Solicitor 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 11.5 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2985 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§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 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 2.90

TOTAL \$ 132.90

Clerk of Court/Deputy Clerk Yedostah Rell

Court Reporter: Cheri Young
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS0201523

A/V#: M020213

Date of Offense: 4/5/2010

S.C. Code §: 16-03-0655(3)

CDR Code #: 0397

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS Guilty

(CSC w/minor 1st or Lawd Act)

Defendant Waives Presentment to Grand Jury.

☐ Recommendation by the State.

☐ Recommendation by the State.

☐ Recommendation by the State.

☐ Recommendation by the State.

☐ Recommendation by the State.

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☐ Recommendation by the State.

FORM 5

STATE OF SOUTH CAROLINA)

County of AIKEN)Russell Jackson #216302)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR
POST-CONVICTION RELIEF

2012 case 00321
2010 case 16000
Filed 2-7-12
Clerk of Court
Deputy Clerk
Trial Judge
Trial Atty.
Court Reporter
Sec: PCR Petitioner
General Sessions
Appointed Atty.

INSTRUCTIONS - READ CAREFULLY

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

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst. P.O. Box 205, 136 Wilborn Ave., Ridgeville, SC, 29472
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-020-1523 (crim. sexual conduct w/minor) 2nd)

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) May 23, 2011, (11 years, 6 months)
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty plea of guilty
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
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) counsel did not file an appeal

- (b) _____
(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
(b) denial of due process
(c) involuntary guilty plea, counsel erroneous advise
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) counsel failed to investigate, counsel's performance
(b) and advise was objectively unreasonable.
(c) Applicant reverse the right to amend this application
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
- 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?

first filing of PCR

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) first filing of PCR
 - (b) _____
 - (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? n/a
 - (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? no
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. Andy Anderson, Esq.
211 York St. NE, Aiken, SC. 29801
 - ii. _____
 - iii. same as above
 - (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. n/sa
 - iii. sentencing

19. State clearly the relief you seek in filing this application:
vacate sentence and conviction and remand for new trial,
or whatever relief this Court deems just and appropriate

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Russell Jackson, 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.

Russell Jackson

SWORN to and subscribed before me this 2ND
day of February, 2012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Russell Jackson, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

Russell Jackson
Applicant

SWORN or affirmed to and subscribed before me this
2ND day of February, 2018.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Due Process Violations; and
3. Involuntary Guilty Plea.

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385,

140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v.

State, 305 S.E.2d 247.

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 30, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2012-CP-02-0321
	)	
RUSSELL JACKSON, 216302,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Bradley A. Brodie, Esquire
Smith Massey Brodie Guynn & Mayes, PA
Post Office Box 519
Aiken, SC 29802-0519

DATED this 31st day of May, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Russell Jackson, #216302,)
Applicant,)

2012-CP-02-0321

v.)

**AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF**

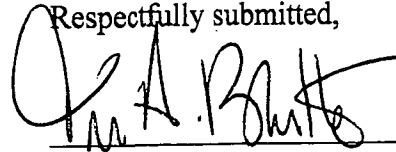
State of South Carolina,)
Respondent.)

Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire,
amends his Application for Post Conviction Relief filed on February 7, 2012, by adding
the following specific allegations to his original allegation of ineffective assistance of
counsel and involuntary guilty plea:

1. Ineffective assistance of counsel for failing to advise Applicant that he needed to attend the preliminary hearing, failing to review the preliminary hearing transcript with Applicant in a timely manner, and failing to utilize the information elicited at the preliminary hearing to develop a defense.
2. Ineffective assistance of counsel for failing to utilize an expert (clinical child family therapist specializing in trauma and abuse) to meet with and evaluate the evidence, Applicant, witnesses and victim and to assist with preparation of a defense for trial and/or offer mitigation at the plea hearing.
3. Ineffective assistance of counsel for failing to develop a viable defense despite having available witnesses and a victim that had recanted. Ineffective assistance of counsel for failing to conduct an independent investigation.
4. Ineffective assistance of counsel regarding the DNA evidence:
 - a. Failing to inform Applicant of matters related to the DNA evidence;
 - b. Failing to move to suppress the DNA evidence;
 - c. Agreeing at the plea with the court's off the record assessment of the admissibility of the DNA evidence; and
 - d. Failing to clarify the State's interpretation of the DNA evidence during the plea hearing.

5. Ineffective assistance of counsel for failing to properly prepare for a trial and for failing to honor Applicant's request for a continuance, which resulted in an involuntary guilty plea.
6. Ineffective assistance of counsel for failing to advise Applicant that he would be required to register as sex offender as a result of his plea.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211

May ~~22~~ 2013
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Russell Jackson, #216302,)
Applicant,)

2012-CP-02-0321

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I hand delivered this 24th day of May 2013, a copy of an Amendment to Application for Post Conviction Relief, to Dave Spencer of the Attorney General's Office, at:

Office of the Attorney General
Att: Dave Spencer, Sr. Ast. AG
1000 Assembly Street
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

May 26, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Russell Jackson, #216302,)
Applicant,)

2012-CP-02-0321

v.)

**ORDER FOR SUBSTITUTION
OF COUNSEL**

State of South Carolina,)
Respondent.)

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on February 7, 2012. For good cause shown in the Motion for Substitution of Counsel, this Court orders that Tricia A. Blanchette, Esquire, is substituted as counsel for the Applicant in place of Bradley L. Boni, Esquire.

AND IT IS SO ORDERED.

April 9, 2013

M. A. Early, III
Honorable Doyet A. Early, III
Administrative Judge, 2nd Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

APR 15 2013

Liz Godard
C.C.C.P. & G. A., Aiken County, S.C.
Deputy Clerk

FILED 4.15.13
Liz Godard
C.C.C.P. & G.S.
Deputy Clerk 8:35

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Aiken)

3
4 Docket No: 2012-CP-02-0321

5
6 Russell Jackson,)
Applicant,)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent.)

11
12 July 11, 2013
13 Aiken, South Carolina

14
15 B E F O R E:

16 The Honorable R. Ferrell Cothran, Jr. Judge.
17

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

19 Tricia A. Blanchette, Esquire
20 Attorney for the Applicant

21 David Spencer, Assistant Attorney General
22 Attorney for the Respondent

23
24 Brenda J. Sigwald, Circuit Court Reporter
To the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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1 MR. SPENCER: Thank you, Your Honor. The next case
2 I would call would be Russell Jackson v. The State of South
3 Carolina, 2012-CP-02-321. My name is David Spencer with
4 the Attorney General's Office. This is a PCR application
5 that was filed in February of 2012. Mr. Jackson is
6 represented by Ms. Tricia Blanchette, who is here today.
7 He was indicted for Criminal Sexual Conduct with a Minor in
8 the Second Degree and he was represented by Mr. Andy
9 Anderson, who is here today. He pled guilty and was
10 indicted before Judge Early and Judge Early sentenced him
11 to 11 and a half years imprisonment.

12 We do not feel the conviction or sentence -- Your
13 Honor, that -- that would be the procedural background. I
14 don't know if Ms. Blanchette has any preliminary matters to
15 bring up or not, but I will let her present her case.

16 THE COURT: Okay.

17 MS. BLANCHETTE: Thank you, Your Honor. My name is
18 Tricia Blanchette and I'm here on behalf of Russell
19 Jackson. It is my understanding you have a copy of our
20 detailed amendment in your packet.

21 THE COURT: I do.

22 MS. BLANCHETTE: Okay. And if the Court would like
23 for me to go over those, I can, but it's my understanding
24 you have that copy, so I want waste time if you'd like me
25 just go ahead and call my first witness?

William Green - Direct Examination by Ms. Blanchette

1 THE COURT: That will be good. I want you to call
2 your first witness.

3 MS. BLANCHETTE: Okay. You have these. You have
4 copies of the William Green to the stand.

5 THE COURT: Okay.

6 THE CLERK: Please place your left hand on the
7 Bible and raise your right.

8 WILLIAM GREEN

9 having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box and
11 state your full name for the Court.

12 THE WITNESS: William Arthur Green.

13 DIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q And, Mr. Green, where do you currently reside?

16 A [REDACTED]

17 Q Okay. And how is it that you know Russell Jackson?

18 A He's my brother-in-law and my friend.

19 Q Okay. And if I can take you back to the morning of
20 April 5th, 2010; do you remember that morning?

21 A Yes, ma'am.

22 Q Okay. And on that morning, did you make contact
23 with Russell or the occupants at his house?

24 A Not Russell, but I did with his kids.

25 Q Okay. And tell me about what happened that

William Green - Direct Examination by Ms. Blanchette

1 morning.

2 A My mother, which is their grandmother, called and
3 asked them did they have anything to eat or did they want
4 anything to eat and they stated that yeah. She said she
5 was cooking and did they want anything to eat and they said
6 yeah and wanted me to bring it over. So I left to take it
7 to them and when I got over there, then they done changed
8 his mind and said he wasn't hungry and they wanted to come
9 with -- well actually Rocky wanted to come back with me,
10 but Denzel didn't want to go. And ~~the Victim~~ which is their
11 sister, told Denzel to go ahead and go too; she was going
12 in the bathroom, so she told us to go ahead and take Denzel
13 too. So I waited for Denzel to put his clothes on. When
14 he got his clothes on, I left.

15 Q Okay. And do you know approximately what time of
16 the morning that would have been?

17 A It was between 10:30 and 10:40 that morning.

18 Q Okay. And just so the Court -- you know, just so
19 he knows who these people are that you're talking about.
20 Who are Denzel -- and did you say Rakeem?

21 A Yes. Those are my nephews. Those my nephew.

22 Q Okay. And those would be Russell's sons?

23 A Yes. ~~the Victim's~~

24 Q And ~~the Victim's~~ brothers; is that correct?

25 A Correct.

William Green - Direct Examination by Ms. Blanchette

1 Q Okay. And is [REDACTED], in fact, the victim in this
2 case?

3 A Correct.

4 Q Okay. So you got there you said around 10:30,
5 10:45; is that correct?

6 A That's correct.

7 Q And you were going to bring them breakfast and then
8 bring the boys back to their grandmother's home?

9 A Just Rakeem. Denzel wasn't going to come and then
10 she told me to bring him back too.

11 Q Okay. And you said you did see [REDACTED] ^{the Victim} at that
12 time; is that correct?

13 A Yes.

14 Q And what was she doing?

15 A She was going in the bathroom.

16 Q Okay. Do you think she had her clothes and what
17 she had with her when she went into the bathroom?

18 A She had clothes on her arm going into the -- into
19 the bathroom.

20 Q Okay. And were you a regularly in their house; was
21 that normal for you to be over at their house?

22 A Yes, ma'am. ^{the Victim}

23 Q And had you seen [REDACTED] going to the bathroom to
24 take a shower before?

25 A Yes.

William Green - Direct Examination by Ms. Blanchette

1 Q Did she typically take her clothes with her to the
2 bathroom?

3 A Well, sometimes she would and sometimes she would
4 come out of the bathroom in a towel and go in her room.

5 Q Okay. But that day you specifically saw her with
6 her clothes?

7 A Yes.

8 Q Okay. Why is that such a vivid memory to you; did
9 you speak with anybody this after it happened?

10 A Well, ^{the victim} -- like I said, I was going to leave
11 Denzel there and like when she was going in the bathroom,
12 she opened the bathroom door and told me to go ahead and
13 take him with me.

14 Q Okay. And was she going to call you when she was
15 ready to come over to her grandmother's also?

16 A Correct.

17 Q Okay. Now when you left the house, did you pass
18 anyone that you knew as you were leaving the house?

19 A Yes, I passed Michael Patterson.

20 Q Okay. And you were driving when you passed him?
21 Can you explain that please.

22 A Yes, I was driving south on Main Street to my --
23 toward my house and I passed Michael Patterson right at
24 Carolina Barbecue.

25 Q Okay. And so he was going towards their home as

William Green - Cross-Examination by Mr. Spencer

1 you were leaving; is that correct?

2 A That's correct. Yes, ma'am.

3 Q Okay. Now, did you ever have the opportunity to
4 speak with Mr. Andy Anderson on Russell's behalf?

5 A Yes.

6 Q The attorney?

7 A Yes.

8 Q And did you tell Mr. Anderson essentially what
9 you've told us today?

10 A Correct.

11 Q And were you willing to be called as a witness at
12 trial?

13 A Yes.

14 Q Okay. And you were prepared to do that; you had no
15 reservations whatsoever?

16 A That's correct.

17 Q Okay. Did you have any concerns after talking with
18 Mr. Anderson?

19 A No.

20 MS. BLANCHETTE: Your Honor, I'd like to just beg
21 the Court's indulgence one moment.

22 Your Honor, I have no further questions at this
23 time.

24 **CROSS-EXAMINATION**

25 **BY MR. SPENCER:**

William Green - Cross-Examination by Mr. Spencer

1 Q Mr. Green, now who is Michael Patterson?
2 A He's my cousin.
3 Q Okay. And you said you saw him driving as you were
4 passing Carolina Barbecue?
5 A Yes, sir.
6 Q About how far away is that from your home?
7 A From Russell's house?
8 Q From Russell's house?
9 A A mile at the most.
10 Q A mile?
11 A Yeah, about a mile.
12 Q Okay. And this is out in New --
13 A New Ellenton.
14 Q New Ellenton.
15 Where does, where does Michael Patterson live?
16 A [REDACTED] which is behind Carolina
17 Barbecue.
18 Q Behind Carolina Barbecue, okay. Had you spoken
19 with Mr. Patterson that morning?
20 A Did I speak with him?
21 Q Yeah.
22 A No, I didn't speak him.
23 Q Okay.
24 A I just passed along the way and waved at him and he
25 waved at me.

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 Q All right. And so you didn't know where Mr.
2 Patterson was going?

3 A At that particular time, no.

4 MR. SPENCER: I have no further questions.

5 MS. BLANCHETTE: Nothing on redirect, Your Honor.

6 I call Michael Anthony Patterson to the stand.

7 MICHAEL ANTHONY PATTERSON

8 having been duly sworn, testified as follows:

9 THE CLERK: Please have a seat in the witness box
10 and state your full name for the Court.

11 THE WITNESS: Michael Anthony Patterson.

12 DIRECT EXAMINATION.

13 BY MS. BLANCHETTE:

14 Q And Mr. Patterson, where do you currently reside?

15 A [REDACTED]

16 Q And how is it you know Russell Jackson?

17 A He is a real close friend of mine. Kind of like
18 family.

19 Q Okay. And do you know his three children?

20 A Yes.

21 Q Okay. And what are their names?

22 A Rakeem, Denzel and [REDACTED]

23 Q And [REDACTED] was the victim in this case; is that
24 correct?

25 A Yes.

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 Q Okay. Now on the morning -- do you recall the
2 morning of April 5th, 2010?

3 A Yes, I do.

4 Q Okay. And on that morning, did you receive a phone
5 call from Russell's household?

6 A Yes, I did.

7 Q Okay. And who called you?

8 A [REDACTED] The Victim.

9 Q Okay. And what was that conversation about.

10 MR. SPENCER: Your Honor, I object to hearsay.

11 BY MS. BLANCHETTE:

12 Q As a result of?

13 MS. BLANCHETTE: I'm sorry, I'll let you rule.

14 THE COURT: I sustain the objection. Go ahead.

15 BY MS. BLANCHETTE:

16 Q As a result of that conversation, what did you do?

17 A I got in my car at approximately 11:01 and
18 proceeded to go north on Whiskey Road and I seen my cousin,
19 Ted, passing by Carolina Barbecue and when I waved at him,
20 I got to the Exxon station and I got a twelve-pack of beer
21 and went over to Russell Jackson's house.

22 Q All right. And who had called and requested that
23 you obtain that beer and stop by the Exxon station?

24 A [REDACTED] The Victim.

25 Q Okay. And you say that you were driving and passed

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 Ted; would that be the last witness that I just called?

2 A Yes, ma'am.

3 Q Okay. Do you know his full name?

4 A William Alfred Green.

5 Q Okay.

6 MS. BLANCHETTE: And just to make sure, is the
7 Court able to hear all this okay?

8 THE COURT: Yes.

9 BY MS. BLANCHETTE:

10 Q So you stopped at the Exxon and you passed him as
11 you were driving and then you arrived at their home; is
12 that correct.

13 A I made one stop at the Exxon right down the road
14 from his house.

15 Q Okay. When you arrived at their home, did you see
16 [REDACTED] the Victim?

17 A Yes, I did.

18 Q How did she appear?

19 A She was -- appeared to look good. She was sitting
20 by the computer because I heard it while I put the beer in
21 the refrigerator.

22 Q Okay. And did you guys talk or laugh or do
23 anything?

24 A Actually when I walked past the refrigerator, I
25 think she was on the phone at the time and I talked with

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 her dad, Russell Jackson. And right after that, we left
2 and went to pick his daddy up. Then we came back to his
3 home and sat down, me, him, his father, and ~~the Victim~~. And
4 she tried to fix his phone, but -- on the computer, trying
5 to get the minutes on his phone and couldn't do it. So I
6 ended up having to take him to Aiken to the Alltel and get
7 it done. And when we got back, we stopped by his house and
8 grabbed something and we was gone for the rest of the day.

9 Q So you were with Mr. Jackson from about 11:00 a.m.
10 on for the rest of the day; is that correct?

11 A Until about 7:00 that evening.

12 Q Okay. And do you remember where you all went
13 originally to get that phone?

14 A Alltel.

15 Q Okay.

16 A It's a phone card.

17 Q All right. So you went to go get a phone card?

18 A Yeah.

19 Q Okay. And the victim didn't ask -- or ~~the Victim~~
20 didn't activate that phone right, so you had to go to the
21 AT&T store in another city, correct?

22 A That's correct.

23 Q Okay. Now you know Mr. Russell Jackson very well;
24 is that correct?

25 A Yes. Yes.

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 Q Do you feel that you would have noticed that
2 something was off such as if an assault had occurred when
3 you arrived at the home?

4 A Yes, I would.

5 Q And when you were with him all day?

6 A Yes.

7 Q Okay. What is your relationship with ^{the Victim} [REDACTED] did
8 you all -- were you at a level where she would be
9 comfortable to confide in you?

10 A Yes, I'm her first cousin.

11 Q Okay. Would you have been willing to get her
12 grandmother to assist her if you thought that she needed
13 that?

14 A Yes, of course.

15 Q Did she ever indicate to you that anything was
16 wrong that day?

17 A No.

18 Q And you said that you were contacted and arrived at
19 the house at around 11:00 a.m.; is that correct?

20 A That is correct.

21 Q And are you aware of the fact that this allegedly
22 took place somewhere between 11:30 and 12:30 that day?

23 A Yes.

24 Q Okay. And you were with Mr. Russell Jackson during
25 that time period; is that correct?

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 A Yes.

2 Q Did you ever witness him assaulting his daughter in
3 any way?

4 A Never.

5 Q Were you familiar with the house setup; do you know
6 how many bathrooms they share?

7 A Yes.

8 Q How many?

9 A One.

10 Q Okay. And had you ever seen ^{the Victim} [REDACTED] go into the
11 bathroom to take a shower?

12 A A couple of times.

13 Q Okay. Do you know if she typically had her clothes
14 with her or would she come out in a towel or undressed?

15 A When I seen her she had her clothes with her.

16 Q Okay. And did you see her come out of the shower
17 that day or was she already out of the shower?

18 A She was already out of the shower.

19 Q Now, was Mr. Russell Jackson with you when he
20 decided he needed to go talk to the police department that
21 night?

22 A Yes.

23 Q Okay. And what all had you been doing that night?
24 The two of you?

25 A All we was just riding around. We stopped at a

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 couple of places and had some drinks, beers, and just stood
2 around. We didn't do much.

3 Q Okay. Did you speak to his attorney, Andy
4 Anderson?

5 A Yes, I did.

6 Q And you explained how you were with Mr. Jackson
7 that entire day and how you had seen him and ^{the victim} [REDACTED] at the
8 house together?

9 A Yes.

10 Q And did you explain to him how you saw Ted passing
11 as you were coming to the house?

12 A Yes, I did.

13 Q Okay. Did you provide him with any phone records
14 that you had?

15 A Yes.

16 Q Okay.

17 MS. BLANCHETTE: Your Honor, if I may approach the
18 witness?

19 THE COURT: Yes.

20 MR. SPENCER: Your Honor, I'm going to be objecting
21 to these phone records because they're -- they're just not
22 authenticated.

23 MS. BLANCHETTE: Your Honor, my purpose of
24 introducing this is for this PCR matter to show, one, this
25 is something he gave Mr. Anderson and information he

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 provided him. Mr. Anderson could have further called up --
2 got a subpoena and gotten the proper phone records. But
3 I'm just introducing it to show that this is something this
4 witness provided to Mr. Anderson.

5 MR. SPENCER: I mean, Your Honor, I guess, they
6 would have to prove further -- the question is, did they
7 subpoena phone records themselves and we have phone records
8 here today that, you know, could be authenticated or at
9 least have a chance to be authenticated. But I object to
10 it being put into the idea that these phone calls actually
11 being made.

12 THE COURT: Okay. And so I will allow them simply
13 because this is what he said, but they won't come in as far
14 as being authentic. The phone records are calls they made,
15 assuming this is the document he gave to the lawyer and then
16 whatever the lawyer did with them...

17 MS. BLANCHETTE: Thank you, Your Honor.

18 MR. SPENCER: So essentially if I understand your
19 ruling, Your Honor, it's for the limited purpose of notice
20 of --

21 THE COURT: Right. And this is what he claims he
22 gave to the defense attorney. And it doesn't, itself prove
23 that those calls were made -- whatever is on those
24 documents. You know there's some other records that can be
25 self authenticated, but that's a different story.

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 MS. BLANCHETTE: Thank you, Your Honor.

2 MR. SPENCER: Yes, sir, Your Honor.

3 BY MR. BLANCHETTE:

4 Q Can you identify that? What it appears to be?

5 A My phone records.

6 Q Okay.

7 A My phone records.

8 MS. BLANCHETTE: Your Honor, at this time, I'd move
9 this as Applicant's No. 1.

10 THE COURT: Okay. And it's in evidence subject to
11 my ruling and the State's objection.

12 MR. SPENCER: Thank you, Your Honor.

13 (WHEREUPON Applicant's Exhibit No. 1 was entered
14 into evidence.)

15 MS. BLANCHETTE: Your Honor, would you like a copy?

16 THE COURT: Yeah. It doesn't matter.

17 MS. BLANCHETTE: I have one for you.

18 BY MS. BLANCHETTE:

19 Q And, Mr. Jackson -- I'm sorry, not Mr. Jackson.
20 Why did you pull this phone record and what information on
21 it did you explain to the attorney?

22 A I pulled it because the time frame he said that
23 Russell Jackson did this crime --

24 MR. SPENCER: And Your Honor, just for the sake of
25 protecting the record, I just have a continuing objection

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 to any discussions -- publication of the contents too.

2 THE COURT: She asked him why he gave it to him.

3 I'm going to let him explain why he gave them to him.

4 MR. SPENCER: Thank you, Your Honor. And if I
5 could just have a continuing objection.

6 THE COURT: I understand.

7 MR. SPENCER: Thank you.

8 THE WITNESS: The reason I pulled this is because
9 the time frame that they said he did it; I said he couldn't
10 have possibly did it because he was with me the whole time.

11 BY MS. BLANCHETTE:

12 Q Okay. And does this demonstrate the phone call
13 that you got from his house to come on over that day?

14 A Yes.

15 Q Okay. And what time does it indicate that phone
16 call was made at?

17 A 11:01 a.m.

18 Q Okay. And you provided that information along with
19 this record to Mr. Anderson; is that correct?

20 A Yes.

21 Q I'll take that back.

22 MS. BLANCHETTE: Your Honor, if I can just beg the
23 Court's indulgence one moment.

24 THE COURT: Okay.

25 BY MS. BLANCHETTE:

Michael Anthony Patterson - Direct Examination by Ms. Blanchette

1 Q And it's -- you've already allude to the fact that
2 you met with Mr. Anderson; is that correct?

3 A Yes.

4 Q And you told him everything you've told us today;
5 is that correct?

6 A Yes.

7 Q Okay. And did he ask you if you were willing to
8 testify at trial?

9 A Yes.

10 Q And what was your response?

11 A Yes.

12 Q Okay. And after talking with Mr. Anderson did you
13 convey concerns you had to Mr. Jackson; or did you have any
14 concerns?

15 A Yes.

16 Q And what were those?

17 A It seemed more like he was being a prosecutor than
18 a lawyer to him. So I didn't -- I didn't -- I didn't like
19 the way he was doing things.

20 Q Okay. You expressed those concerns to Mr. Jackson?

21 A Yes.

22 Q Okay.

23 MR. SPENCER: Your Honor, I object to the last
24 question; that was hearsay. And ask that the answer be
25 stricken.

Michael Anthony Patterson - Cross-Examination by Mr. Spencer

1 MS. BLANCHETTE: Your Honor, I can respond, I'm
2 just not sure which question he's objecting to.

3 THE COURT: You're not --

4 MR. SPENCER: The last question was what he --
5 well, I guess --

6 THE COURT: Did you express those concerns with Mr.
7 Anderson --

8 MR. SPENCER: Your Honor, I'll withdraw the
9 objection. I didn't think it through. I'm sorry about
10 that.

11 MS. BLANCHETTE: Your Honor, I have no further
12 questions of this witness.

13 THE COURT: All right. Any questions?

14 MR. SPENCER: Yes, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. SPENCER:

17 Q You said you made it over to Russell's residence
18 around 11:00?

19 A Yes.

20 Q And it could have been later than 11:00, right?

21 A It could have been.

22 Q It could have been as late as 11:15?

23 A No. It was 11:07 actually.

24 Q 11:07, why, how do you know it was 11:07?

25 A Because I looked at my phone when I was in the

Michael Anthony Patterson - Cross-Examination by Mr. Spencer

1 Exxon Station.

2 Q And it was 11:07 according to your phone --

3 A Yes.

4 Q -- when you were in the Exxon station?

5 A Yes.

6 Q So you weren't --

7 A When I was in the Exxon Station it was 11:05 in the
8 Exxon station. So it was 11:07 -- around 11:07 when I got
9 to his home.

10 Q Okay. So you're --

11 A I was only less than two minutes from his home.

12 Q So while you were buying beer in the Exxon station
13 it was about 11:05?

14 A Yes.

15 Q Okay. According to your phone?

16 A Yes.

17 Q All right. And then you left there and you got
18 to -- got to Russell's house however long it took you to
19 get from the Exxon station to the --

20 A Yes.

21 Q Okay. However long it took you to come out of that
22 Exxon station, to get in the car, and then get over to the
23 residence?

24 A Yes.

25 Q Okay. So you don't know if it was 11:07 when you

Michael Anthony Patterson - Cross-Examination by Mr. Spencer

1 got there; you're just guessing it was about 11:07?

2 A I know it was before 11:15.

3 Q So you -- well there again, you didn't look at your
4 watch when you got over there, so you're just -- you're
5 just -- even then you're estimating it must have been
6 before 11:15; is that fair to say?

7 A Yes.

8 Q Okay. All right. And a phone call at 11:01, are
9 you saying that's the phone call that ^{the Victim} [REDACTED] made to you?

10 A Yes.

11 Q Okay. And then you're saying 11:01 based on -- on
12 those records that -- those phone records that you had?

13 A Yes.

14 Q That were just admitted in evidence?

15 A Yes.

16 Q Okay. So that's their time is 11:01?

17 A Well, what happened was when I seen ^{the Victim} [REDACTED] crying
18 that evening, I went back to look at my phone because they
19 had told me what time it was supposed to be, around 11:30.
20 They said about 11:30 and I said that couldn't have
21 happened. I pulled my phone up -- not that day, the next
22 day. That's when I pulled my phone up. But I didn't pull
23 the records up until I talked with Mr. Anderson.

24 Q And you just printed those records off your phone?

25 A No, I printed them off my computer.

Michael Anthony Patterson - Cross-Examination by Mr. Spencer

1 Q You printed them off your computer?

2 A Yes.

3 Q Okay. Now, can you get to the house -- you got to
4 the house and you were with Russell pretty much the whole
5 time, right; it was you and Russell, right?

6 A Yes.

7 Q Okay. So ^{the Victim} [REDACTED] would have had to -- and let me
8 understand this. You're -- you're Russell's
9 brother-in-law; is that -- that was Mr. Green; what's your
10 relationship to Russell?

11 A He's like -- he's like my cousin.

12 Q He's your cousin, okay. You and him are good
13 friends, right?

14 A Right.

15 Q And you do stuff together a lot?

16 A Right.

17 Q Okay. And actually this day, you and him were just
18 hanging out all day pretty much?

19 A Yes.

20 Q Okay. And so you're -- you're good friends with
21 him, right?

22 A Yes.

23 Q And so -- and you were pretty much with him the
24 whole time once you get to the house, right?

25 MS. BLANCHETTE: Your Honor, I would object. This

Michael Anthony Patterson - Cross-Examination by Mr. Spencer

1 has been asked and answered.

2 MR. SPENCER: This is cross examination. This
3 is -- she asked it; I haven't --

4 THE COURT: I'll let you.

5 MR. SPENCER: Thank you.

6 BY MR. SPENCER:

7 Q And then you guys left and you came back, right?

8 A We went and picked his father up and then we came
9 back.

10 Q You came back a little bit. What time was that
11 roughly?

12 A Probably about 12:30.

13 Q 12:30, okay. Do you recall -- did you bring back a
14 drink for ^{the victim} [REDACTED]?

15 A Not at that time, no. Also we went to, we went to
16 Dollar General.

17 Q All right.

18 A And I can't recall -- he bought her a drink.

19 Q You brought her back a drink then right?

20 A Yes.

21 Q And he was trying to have her set up a cell phone?

22 A Yes.

23 Q Whose cell phone was it?

24 A It was his cell phone.

25 Q So he bought a new cell phone?

Michael Anthony Patterson - Cross-Examination by Mr. Spencer

- 1 A He didn't buy a cell phone; he buy a cell phone
2 card.
- 3 Q He bought a cell phone card and she was going to
4 help him set it up?
- 5 A Right.
- 6 Q And she got on the computer to do it?
- 7 A Yes.
- 8 Q Okay. And then you guys left?
- 9 A Yes.
- 10 Q And --
- 11 A Because she couldn't do it -- get it done.
- 12 Q Right.
- 13 A And then we left.
- 14 Q All right. And then -- and then you did come back
15 to the trailer, right?
- 16 A It was a house.
- 17 Q Or excuse me, house.
- 18 A Yes, we did come back to the house after we got the
19 Alltel card.
- 20 Q Okay.
- 21 A We came back to the house. He went inside and
22 grabbed something real quick and we drove down to his uncle
23 house.
- 24 Q Okay. And did you come back that day after that?
- 25 A No.

Michael Anthony Patterson - Redirect Examination by Ms. Blanchette

1 Q Now, and as a matter of fact, Mr. Jackson didn't
2 come back to the house that day after that happened?

3 A No.

4 MR. SPENCER: I have no further questions?

5 MS. BLANCHETTE: Very briefly, Your Honor. Just
6 one matter, Your Honor, I have a copy of the Preliminary
7 Hearing Transcript that was going to show to him. I don't
8 know if we're going to put it in the record at this time
9 or -- I know that it wasn't in Your Honor's packet.

10 MR. SPENCER: Okay. We didn't put it in the
11 record.

12 THE COURT: You did. I got a transcript from the
13 preliminary hearing in my packet.

14 MR. SPENCER: Okay. I must have done that and
15 forgot I did it.

16 MS. BLANCHETTE: And I will not put it in. I don't
17 want to have a double copy in the record, Your Honor.

18 THE COURT: Okay.

19 **REDIRECT EXAMINATION**

20 BY MS. BLANCHETTE:

21 Q I'm going to show you here a copy of the
22 Preliminary Hearing Transcript. And I'm on page 5. And
23 this is during the testimony of Captain Cook. In here he
24 explains, looking at line 4 through 5, that he went to the
25 Dollar General Store and what he could find the video

Michael Anthony Patterson - Redirect Examination by Ms. Blanchette

1 showed that the defendant had been there at 11:15 and was
2 there until 11:30. Is that the Dollar Store that you went
3 to with him that day?

4 A That's correct.

5 Q Okay. And that is the time frame that you remember
6 being there was from about 11:15 to 11:30?

7 A Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, if I could beg the
9 Court's indulgence one moment.

10 I have no further questions, Your Honor.

11 THE COURT: You have any questions?

12 MR. SPENCER: Real quick, Your Honor.

13 THE COURT: I was going to ask a question. What
14 did you do with the twelve pack of beer? What happened
15 with the twelve pack of beer?

16 THE WITNESS: Well, I put it in the refrigerator.

17 THE COURT: But ^{the Victim} [REDACTED] was the one that asked you
18 to bring it.

19 THE WITNESS: For him.

20 THE COURT: Okay. You didn't say that.

21 **RECROSS-EXAMINATION**

22 BY MR. SPENCER:

23 Q Maybe I misunderstood the testimony. Dollar
24 General is where he bought her a drink right?

25 A Yes.

[REDACTED] - Direct Examination by Ms. Blanchette

1 Q Okay. And that was between 11:15 and 11:30?

2 A It might have been out -- it might have been at the
3 Exxon; he was at both of them. We went to the Dollar
4 Store -- the Exxon and the Dollar General is right beside
5 each other. We stopped by the Dollar General first and
6 then we went to the Exxon. And he might have bought it
7 from there, but he did buy the drink.

8 Q So you don't remember for sure, but the next time
9 you went back to the house, he had bought her a drink?

10 A When he and I went back to the house, he had the
11 drink.

12 Q Okay. Thank you.

13 THE COURT: You may step down.

14 MS. BLANCHETTE: Your Honor, I'd call [REDACTED]
15 to the stand.

The Victim

16 [REDACTED]
17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat in the witness box. State
19 your name for the record, please.

20 THE WITNESS: [REDACTED]

21 DIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q And where do you currently reside?

24 A [REDACTED] South Carolina.

25 THE COURT REPORTER: You need to speak up.

1 THE COURT: [REDACTED]

2 New Ellenton, South Carolina.

3 BY MS. BLANCHETTE:

4 Q And are you related to Russell Jackson?

5 A Yes.

6 Q Okay. And how are you related to him?

7 A He's my father.

8 Q Okay. And the two witnesses that have been up here
9 already today, I'll start with -- let me get his proper
10 name, Michael Anthony Patterson; how is it that you know
11 him?

12 A He's my cousin.

13 Q Okay. And William Green; how is that you know him?

14 A He's my uncle.

15 Q Okay. Let me take you back and -- wait just a
16 second, let me ask you another question. Even though Mr.
17 Jackson is your father, you're here today to tell the
18 truth; is that correct?

19 A Yes, ma'am.

20 Q Okay. And did I serve a subpoena on you or are you
21 here under your own free will?

22 A I'm here under my own free will?

23 Q Okay. And is it true that you're in fact the
24 victim in this case?

25 A Yes.

[REDACTED] - Direct Examination by Ms. Blanchette

1 Q Okay. How old were you when all of this took
2 place?

3 A 15.

4 Q And how old are you now?

5 A 19.

6 Q Okay. Let me take you back to the time starting
7 April 5th, 2010.

8 A Okay.

9 Q What was going on? Were you in school at that time
10 or were you on some type of break?

11 A We were out for Spring Break -- out for Spring
12 Break.

13 Q Okay. And I'm just going to tell you, sometimes my
14 questions can be long, but let me finish so we're not
15 talking at the same time for the Court Reporter, okay.

16 Now, you were on Spring Break. Were you enjoying
17 your Spring Break or were there other things going on in
18 your life?

19 A There were other things going on.

20 Q Okay. Would you please elaborate?

21 A Okay. We had -- before we got out for Spring
22 Break, we had just got our report cards and I had 2 F's.
23 So I couldn't do anything. I had to sit in the house for
24 Spring Break.

25 Q And who was the one that made sure that you stayed

[REDACTED] - Direct Examination by Ms. Blanchette

1 in the house during Spring Break?

2 A My momma was at work so my father did.

3 Q Okay. And as a result of those bad grades and
4 being discipline, did you lose any other privileges?

5 A Cell phone, TV, couldn't get on the computer,
6 couldn't go anywhere.

7 Q Okay. And did you have friends at that time that
8 you wanted to be hanging out with?

9 A Yes, ma'am.

10 Q Did you have a boyfriend at that time?

11 A Yes.

12 Q And what was your father's advice or what
13 information had he given you about his position on your
14 boyfriend?

15 A He didn't like him.

16 Q Okay. And you weren't able to see that boyfriend
17 over Spring Break, correct?

18 A Yes.

19 Q Okay. Now, let me take you back specifically to
20 the morning of April 5th, of 2010. You heard William Green
21 testify that he brought over breakfast or he was bringing
22 breakfast and picking up your brothers. Do you remember
23 when he arrived?

24 A Yes.

25 Q Okay. Just kind of go through that morning and

[REDACTED] - Direct Examination by Ms. Blanchette

1 tell us what you remember.

2 A Okay. I was in the bed and my brother came in with
3 the phone and asked me was I home because my grandmother
4 was on the phone. She asked me had we ate anything and I
5 told her, yeah and William came, well William, Uncle Ted
6 came over and he brought breakfast and my brother, Rakeem,
7 left with him. When they were pulling off, I yelled
8 outside before I went in to get in the tub that Denzel was
9 going. So he pulled back up and he waited until Denzel put
10 on his clothes and then Denzel left.

11 Q Okay. And as they were leaving, you said you were
12 going into the tub; is that correct?

13 A Yes, when they were -- when he pulled up, I was
14 getting in the tub. Denzel said he wasn't going; he was
15 going to stay, but then I told Denzel to go ahead. So I
16 yelled outside and told Ted to wait.

17 Q Okay. And he came back and waited for Denzel?

18 A Yeah, he came back inside and he waited until
19 Denzel put on his clothes and everything and then they
20 left.

21 Q Okay. And you said you were going into the tub to
22 take a shower I assume?

23 A Yes.

24 Q Okay. How many bathrooms do you have in your house
25 that you share with your mother and father and two

1 brothers?

2 A One.

3 Q Does that allow for a lot of privacy?

4 A No.

5 Q Okay. Do you typically -- did you have a routine
6 of bringing your clothes in with you? Or do you typically
7 get dressed in your bedroom?

8 A When I'm home by myself, I just take my towel, but
9 if people are there, I take my clothes.

10 Q Okay. Do you remember specifically what you did
11 that day?

12 A I took my clothes in the bathroom.

13 Q Okay. When you got in the bathroom, do you
14 remember where you put your clothes?

15 A On the sink.

16 Q Okay. Had anyone been in the bathroom immediately
17 before you went in the bathroom?

18 A My father was in there and he took a shower before
19 I was.

20 Q All right. So your father had been the one
21 immediately in the bathroom before you?

22 A Yes.

23 Q Okay. Do you recall -- once you got out of the
24 shower, did you make any phone calls for your father to get
25 in touch with anyone?

[REDACTED] - Direct Examination by Ms. Blanchette

1 A I called Tony and told him that my father wanted
2 him to pick him up and get him a case of beer.

3 Q Okay. And that was after you got out of the
4 shower; is that correct?

5 A Yes.

6 Q Okay. Now, do you remember how soon -- when he
7 arrived, was it shortly after that phone call?

8 A It was shortly after, about five minutes.

9 Q Okay. And what was your relationship with Tony;
10 was he somebody that you could confide in and tell him
11 something was wrong?

12 A Yes, ma'am.

13 Q Okay. Do you think he would have been able to tell
14 if something was wrong with you? Does he know you that
15 well?

16 A Yes, ma'am.

17 Q Okay. Now, in the State's case and at your
18 father's plea, they alleged that he sexually assaulted you
19 at a time period between you came out of the bathroom and
20 when Tony arrived. Did that happen?

21 A No, ma'am.

22 Q Okay. Is today the first time you've said that did
23 not happen?

24 A No, ma'am.

25 Q Okay. And we'll get into that a little bit

1 further, but I just wanted to ask you that question to
2 start.

3 Now, your day progressed. Tell me what happened
4 after Tony arrived?

5 A When Tony arrived, him and my father left. They
6 went to the store -- they said they was going to the store
7 and they'd be right back. I called my dad and I told him
8 that I wanted some Skittles and a drink from the store and
9 they brought it back. When they came back, he wanted me to
10 hook his phone up. He wanted to put minutes on it and
11 tried to do it on the computer and I couldn't do it. He
12 got mad and they left and they said they would be back, but
13 they never came back.

14 Q Okay. And then were you at the house the rest of
15 the day by yourself?

16 A Yes, ma'am.

17 Q If you were sexually assaulted by your father, was
18 there someone you could have called to say, Hey, I need
19 some help?

20 A I probably would have called the police.

21 Q Okay. Were there other family members in the
22 vicinity too that you could have called?

23 A Yes, my uncle stays right across the road, up the
24 street; the next street over.

25 Q Okay. And you stayed home the rest of the day by

1 yourself?

2 A Yes, ma'am.

3 Q And then your mother arrives home; is that correct?

4 A Yes, ma'am.

5 Q What happened when your mother arrived home?

6 A When she got home, she went in her room and she
7 took off her clothes and whatever. And she was sitting on
8 the couch and we were watching TV, and I told her that I
9 didn't feel right. And she was like, What's wrong? And I
10 was like, I just don't feel right; can you take me to the
11 doctor. And she said okay. So when we got to Aiken, I
12 told her that my father had molested me.

13 Q Okay. Did you first go to a clinic? Is that where
14 you guys first went to?

15 A Yes, ma'am.

16 Q And what was going on at the clinic?

17 A They weren't open.

18 Q Okay. So as a result, you had to go on into Aiken?

19 A Yes.

20 Q And as you were driving to Aiken, or once you were
21 at the hospital -- when did you tell this to your mother?

22 A When we went to the clinic and they weren't open, I
23 told her when we were sitting in the parking lot.

24 Q Now, [REDACTED] it's just a question I have to ask.

25 A Okay.



- Direct Examination by Ms. Blanchette

1 Q If this didn't happen, why did you tell your mother
2 this happened?

3 A Because I was mad.

4 Q Because you were what? I'm sorry.

5 A Mad.

6 Q Okay. And you said this because you thought that
7 it would -- what would -- what impact would it have on your
8 father.

9 A I was -- I wanted to hurt him because he didn't let
10 me do what I wanted to.

11 Q Okay. And in your mind, you thought that that
12 would be a fair exchange?

13 A Yes, ma'am.

14 Q Okay. Now, you told your mother and you went to
15 the hospital and they did an exam. You don't have to give
16 us the graphic details, and I'm sorry, I know it's
17 something you don't want to relive. But what do you
18 remember happening at the hospital?

19 A When she told them, they took me in a room and took
20 my clothes off. They started doing a little kit thingy,
21 then Officer Cook and Alecia came and they took my
22 statement.

23 Q Okay. And that's while you were at the hospital,
24 just moments after you'd disclosed to your mother; is that
25 correct?

[REDACTED] - Direct Examination by Ms. Blanchette

1 A Yes, ma'am.

2 Q Okay. Did you have a chance to talk with your
3 mother or any other adult before you gave that statement?

4 A No.

5 Q And if you can take us back, was this all going
6 kind of fast for you? Or in slow motion? Or did you even
7 realize what was happening there that day?

8 A No, ma'am.

9 Q Okay. If you explain was it going slow or fast?

10 A I didn't know what was happening.

11 Q Okay.

12 A I was just going with it.

13 Q Okay. Things were outside of your control at that
14 point; is that correct?

15 A Yes, ma'am.

16 Q Okay. Do you remember them taking your panties and
17 your clothing from you?

18 A Yes, ma'am.

19 Q Okay.

20 A They put them in a bag.

21 Q Okay. And they put your panties in a bag along
22 with your other clothes; is that correct?

23 A Yes, ma'am.

24 Q Now, after you went to the hospital, what happens
25 next?

[REDACTED] - Direct Examination by Ms. Blanchette

1 A Well, they took my clothes, they gave me some sweat
2 pants and a sweat shirt to put on and then we left there
3 and we went home.

4 Q Okay. And without saying what she said, what was
5 your mother's reaction to what you told her?

6 A She was shocked. She was angry. She was crying.

7 Q Who was she angry at?

8 A She was angry at my dad.

9 Q All right. Did she ever express to you that she
10 was upset with you?

11 A No, ma'am.

12 Q Okay. At that time, did you feel that you had the
13 support of your mother?

14 A Yes, ma'am.

15 Q What arrangements were made for you that night; did
16 you go home and sleep at your house or what happened?

17 A The police came there when we got home and they
18 didn't want me to stay there. They wanted me to choose a
19 family member's house to go to and I chose to go to my
20 grandmother's.

21 Q Okay. So you chose to go to your grandmother's; is
22 that correct?

23 A Yes, ma'am.

24 Q Now, do you know if your father was still in the
25 home at that time?

[REDACTED] Direct Examination by Ms. Blanchette

1 A No, ma'am. After I left, I never went back.

2 Q Okay. So you don't know what was going on at the
3 house?

4 A No, ma'am.

5 Q Okay. And that was your own decision to go to your
6 grandmother's house; is that correct?

7 A Yes, ma'am.

8 Q Now, you don't have to give me specific dates, but
9 do you remember who you talked to next?

10 A After I left my mom's house?

11 Q Yeah, who did you talk to? Was it someone from the
12 police department? Did you talk to the solicitor?

13 A I didn't talk to the police department after they
14 came to the house. A few days later I went to the Advocate
15 Center.

16 Q Okay.

17 A And they said that they were going to record me and
18 just tell them what happened that day.

19 Q Okay. And do you remember that interview?

20 A No, ma'am.

21 Q Okay. And have you ever seen a copy of that
22 interview?

23 A No, ma'am.

24 Q Okay. Do you remember during the course of that
25 interview having an emotional breakdown?

[REDACTED] - Direct Examination by Ms. Blanchette

- 1 A Yes, ma'am.
- 2 Q Do you remember why you broke down?
- 3 A Because I knew what I was doing was wrong and it
4 was hurting my family.
- 5 Q Okay. Now, after you had that interview, what
6 happened next?
- 7 A After I had that interview, a few days later,
8 probably the next week, I told my mom to take me to Ms.
9 Brisbin's.
- 10 Q Okay. And who was she?
- 11 A I think she was the prosecutor that was going to go
12 against my daddy.
- 13 Q Okay. And you asked your mother to take you to her
14 office; is that correct?
- 15 A Yes.
- 16 Q Okay. And was that in this courthouse?
- 17 A Yes, ma'am.
- 18 Q Okay. And why did you want to go meet with her?
- 19 A Because I wanted to tell her that it didn't happen.
- 20 Q Okay. Did you ever convey to the Solicitor who
21 prosecuted your father that this did not happen?
- 22 A Yes, ma'am.
- 23 Q Okay. When you conveyed that to her, did they
24 provide anyone for you to speak with about that?
- 25 A A Guardian ad Litem and her name was Ms. Joan --

[REDACTED] - Direct Examination by Ms. Blanchette

1 Ms. Jane.

2 Q Okay. What a -- anyone that is a therapist or
3 anyone that specializes in this, were they ever provided to
4 you?

5 A Yes, ma'am, they sent me to a therapist, but I told
6 them that I didn't want to talk to him.

7 Q Okay. Now did the solicitor bring anybody into a
8 meeting with you and say, please tell this person; or did
9 she bring in a person that interviewed you or did you just
10 talk with the solicitor?

11 A I talked with the solicitor and then a lady came
12 out to the house but she was with DSS.

13 Q Okay. Do you remember who all you told this did
14 not happen?

15 A I told Ms. Brisbin, the DSS lady, Ms. Jane and my
16 father's attorney, Mr. --

17 Q You told Mr. Anderson?

18 A Anderson, yes.

19 Q Okay. Tell me about that. What was your -- how
20 did you meet with Mr. Anderson? How did that come about?

21 A My mom took me to his office. He had wanted to
22 talk to me.

23 Q Okay. And did your -- were you able to drive at
24 that time?

25 A No, ma'am.

[REDACTED] - Direct Examination by Ms. Blanchette

1 Q Okay. So your mom was your mode of transportation;
2 is that correct?

3 A Yes, ma'am.

4 Q Do you recall what you told Mr. Anderson?

5 A I told him that it didn't happen, that I had lied.

6 Q Okay. Did he offer to provide you any type of
7 person that specializes in therapy or trauma or abuse for
8 you to speak with about that?

9 A No, ma'am.

10 Q If he would have offered that, would you have been
11 willing to speak with someone like that?

12 A No, ma'am.

13 Q Okay. Now, tell -- kind of take me through the
14 meeting with him, what all happened?

15 A At first he talked to my mom, then he called me in
16 and he wanted to talk to me by myself. He said he just
17 wanted to know what happened that day. He just wanted to
18 get the details of it and I told him that I had lied on my
19 daddy because I was angry and that it didn't happen.

20 Q Now, what were you told -- or let me rephrase that.
21 When you conveyed to the Solicitor that this didn't happen
22 and it was a lie, was it your understanding that this case
23 wasn't going to go forward and your father was going to
24 have to go to trial?

25 A When I told her that it didn't happen, I thought

[REDACTED] Direct Examination by Ms. Blanchette

1 that it wouldn't have to go to trial, but she told me that
2 I was lying.

3 MR. SPENCER: Objection, hearsay.

4 MS. BLANCHETTE: I can rephrase that.

5 THE COURT: Okay.

6 BY MS. BLANCHETTE:

7 Q [REDACTED] please tell us what your understanding was
8 about what was going to happen with the case after you
9 talked to her. You can't tell me what she told you.

10 A Okay.

11 Q But what did you understand was going to happen?

12 A Okay. After I talked to her and I told her it
13 didn't happen, we were going to have to go to trial.

14 Q Okay. Did you convey to her whether or not you'd
15 be a willing participant? Whether you wanted to be called
16 as a witness at that trial?

17 A I told her that I wasn't going because it didn't
18 happen.

19 Q All right. And if you would have been called as a
20 witness at that trial, what would you have said?

21 A I would have told her that it didn't happen.

22 Q Okay. Now let me jump forward to May 21st, 2011,
23 which was the day your father entered his plea. Did you
24 get any type of notice? Did anyone make sure that you were
25 at the courthouse that day?

[REDACTED] - Direct Examination by Ms. Blanchette

1 A No, ma'am.

2 Q How did you find out about the plea?

3 A When I got home, my mother called me and told me
4 that Ms. Brisbin told me to call her. I called her office
5 and she told me that my father had pleaded.

6 MR. SPENCER: Your Honor, I object to -- I think
7 we're about to get into some hearsay.

8 THE COURT: She just said that she told me my
9 father had pleaded and --

10 MR. SPENCER: Okay.

11 THE COURT: Go ahead.

12 THE WITNESS: Okay. I called Ms. Brisbin and she
13 told me that my father had -- my father had pleaded guilty.

14 BY MS. BLANCHETTE:

15 Q Okay. And what was your reaction to that?

16 A I was shocked and then after she told me that, I
17 just hung up the phone.

18 Q Okay. Now, recently have you had the opportunity
19 to meet with Amy Allen Cook?

20 A Yes, ma'am.

21 Q Okay. And you met with her to talk about this
22 case; is that correct?

23 A Yes, ma'am.

24 Q Okay. And she was hired by your father to assist
25 with this case; is that right?

[REDACTED] - Direct Examination by Ms. Blanchette

1 A Yes, ma'am.

2 Q And did you sit down and go over with her
3 everything that we talked about today?

4 A Yes, ma'am.

5 Q Okay. And is it your understanding that she's a
6 therapist and she specializes in working with children like
7 you when they have suffered a trauma or abuse?

8 A Yes, ma'am.

9 Q Okay. Now, if someone like Ms. Cook had been
10 offered to assist you and bringing you to talk to at the
11 time of trial, do you think that would have been helpful?

12 A Yes, ma'am.

13 Q Okay. And do you feel like you needed someone to
14 assist you in making sure the truth got out?

15 MR. SPENCER: Your Honor, I object, that's not
16 relevant.

17 It may be relevant as to whether or not Mr.
18 Anderson gave as a prep to interview her, but it's not
19 relevant.

20 MS. BLANCHETTE: Your Honor, If I need to strike
21 for the record -- Ms. Cook is not a forensic interviewer
22 and in our memo, we made that clear. So I don't know if
23 that --

24 MR. SPENCER: I use that term loosely.

25 THE COURT: Okay. Go ahead. And, finish this

[REDACTED] - Cross-Examination by Mr. Spencer

1 section -- and I understand.

2 MS. BLANCHETTE: I was finished.

3 THE COURT: Okay.

4 MS. BLANCHETTE: I was finished. That was my
5 last --

6 THE COURT: Okay.

7 MS. BLANCHETTE: I need to beg the Court's
8 indulgence one moment.

9 THE COURT: Okay.

10 BY MS. BLANCHETTE:

11 Q [REDACTED] understanding that you were the victim in
12 this case and I appreciate you being here today; is there
13 anything else that you'd like to tell the Court that I
14 failed asked you?

15 A No, ma'am.

16 MR. SPENCER: Your Honor --

17 MS. BLANCHETTE: I have no further questions?

18 THE COURT: Okay.

19 Cross?

20 **CROSS-EXAMINATION**

21 BY MR. SPENCER:

22 Q Now, I want to fist ask, how many times did you
23 meet with Ms. Brisbin?

24 A About three or four.

25 Q Three or four times?

[REDACTED] Cross-Examination by Mr. Spencer

1 A Yes.

2 Q Okay. I understand your testimony just a moment
3 ago that the first time you met with her, you told her that
4 Mr. Jackson didn't do it?

5 A Yes.

6 Q But you met with her subsequent times and you did
7 tell her that Mr. Jackson did have sex with you, right?

8 A That's incorrect.

9 Q That's incorrect?

10 A Yes.

11 Q So -- so if during the guilty plea hearing Ms.
12 Brisbin said that you had told her it -- it had happened,
13 you're saying now that would be incorrect?

14 A Yes.

15 Q Now, you told your mother Mr. Jackson, your father,
16 had raped you?

17 A Yes.

18 Q And she took you, and you'd already been to the
19 clinic and the clinic was closed at this point, right?

20 A Yes.

21 Q You didn't tell her originally why you wanted to go
22 to the clinic, did you?

23 A No.

24 Q Okay. Or did you tell her it was because you were
25 having some itching?

[REDACTED] - Cross-Examination by Mr. Spencer

- 1 A I told her that I didn't feel right.
- 2 Q You told her you didn't feel right. Okay. Now,
- 3 didn't -- Mr. Patterson had been at the house, right?
- 4 A Yes.
- 5 Q And you didn't tell Mr. Patterson you didn't feel
- 6 right?
- 7 A No, I didn't.
- 8 Q All right. Because that would have been a delicate
- 9 issue to talk with men about, right?
- 10 A No, not really.
- 11 Q No? Well, you didn't tell him?
- 12 A No, I didn't tell him. I just didn't tell him. I
- 13 told my mom.
- 14 Q You told your mom?
- 15 A Yes.
- 16 Q Okay. And the clinic was closed, right?
- 17 A Yes.
- 18 Q And you still wanted to go somewhere, right?
- 19 A Yes.
- 20 Q So then you go to, then you go to the emergency
- 21 room?
- 22 A Yes.
- 23 Q But before that, you tell her why?
- 24 A Before did I tell her why?
- 25 Q Yeah, when did you tell her? Was it before you

[REDACTED] - Cross-Examination by Mr. Spencer

1 went to the emergency room or after you went to the
2 emergency room that you told your mom that Mr. -- that your
3 father had raped you?

4 A I told her while we was sitting at the clinic.

5 Q While sitting at the clinic?

6 A Yes.

7 Q And then she takes you over to the ER?

8 A Yes.

9 Q Okay. And then you talk with the nurse, right?

10 A Yes.

11 Q And she gives you an exam?

12 A Yes.

13 Q And you told her that Mr. Jackson had raped you?

14 A Yes.

15 Q So that's the second time that you told somebody
16 that he raped you?

17 A Yes.

18 Q Okay. And then a few days later -- and you also
19 told the police officer -- did you say Officer Cook?

20 A Yeah, he came and took a statement.

21 Q And you told him that Mr. Jackson had raped you?

22 A Yes.

23 Q Okay. And then a few days later, you went to the
24 Advocacy Center?

25 A Yes.

[REDACTED] - Cross-Examination by Mr. Spencer

- 1 Q Do you remember how many days later?
- 2 A It was April the 8th.
- 3 Q Okay. So it was like three days later?
- 4 A Yes.
- 5 Q Okay. And you were interviewed by a lady, right?
- 6 A Yes.
- 7 Q Do you recall her name?
- 8 A No, sir.
- 9 Q But you were interviewed by a lady, right?
- 10 A Yes.
- 11 Q And she asked you to tell her what happened, right?
- 12 A Yes.
- 13 Q And you told her that Mr. Jackson, your father, had
- 14 raped you?
- 15 A Yes.
- 16 Q And specifically what you had said that you were
- 17 taking a shower and Mr. Jackson came in and you had gone to
- 18 your bedroom and Mr. Jackson came in and basically pushed
- 19 you over on the bed and had sex with you, right?
- 20 A Yes.
- 21 Q And you yelled for him to stop?
- 22 A Yes.
- 23 Q And now this is the fourth person that you've told
- 24 that your father had raped you?
- 25 A Yes.

[REDACTED] - Cross-Examination by Mr. Spencer

- 1 Q And this is several days later, right?
- 2 A Yes, three days later.
- 3 Q And it was being videotaped, right?
- 4 A Yes.
- 5 Q And during this interview, you're not crying,
- 6 right?
- 7 A During the interview I wasn't. After she left.
- 8 Q And then she left?
- 9 A Yes.
- 10 Q All right. And there was, there was no one there
- 11 in the room with you, right?
- 12 A No.
- 13 Q And you broke down and cried?
- 14 A Uh-huh (affirmative response).
- 15 Q You started weeping?
- 16 A Yes.
- 17 Q You had to go pick up a -- get Kleenex for
- 18 yourself?
- 19 A Yes.
- 20 Q And then she comes back, right?
- 21 A Yes.
- 22 Q At that point, did you say I just made all that up?
- 23 A I didn't say anything..
- 24 Q You didn't say anything. You didn't say I've made
- 25 this all up; I'm feeling bad about it now; I'm feeling

[REDACTED] - Cross-Examination by Mr. Spencer

1 guilty so can we just disregard what I said before?

2 A I didn't say anything.

3 Q You didn't say anything like that?

4 A No.

5 Q So you didn't go back to -- to your house, right,
6 you went to your grandmother's house?

7 A I went to my house to get my clothes and things.

8 Q And after that, you never went -- you didn't go
9 back to your house?

10 A When I was getting my clothes and things the police
11 came and asked me did I have somewhere else to stay.

12 Q Okay.

13 A And I wanted to go to my grandmother's house.

14 Q And so this whole time you were staying with your
15 grandmother after that?

16 A Yes.

17 Q All right. When you found out that Mr. Jackson had
18 pled guilty, did you find out how long a prison sentence he
19 received?

20 A No, she just told me that he pleaded guilty.

21 Q But did you realize he was going to prison?

22 A At that time, yes.

23 Q And this is your father, right?

24 A Yes.

25 Q And regardless of issues about the computer, about

[REDACTED] - Cross-Examination by Mr. Spencer

1 the boyfriend who you didn't get to see, whatever, this is
2 your father; this is someone you love, right?

3 A Yes.

4 Q And someone you love just went to prison, right?

5 A Yes.

6 Q And you're not even living at that house anymore,
7 right?

8 A Yes.

9 Q Do you realize how long Mr. Jackson's serving a
10 prison sentence now?

11 A Yes.

12 Q You would like for him to get out of prison, right?

13 A Yes.

14 Q How did this affect your mother?

15 A It hurt her.

16 Q It hurt her, right?

17 A Yes.

18 Q Does she want Mr. Jackson to be in prison?

19 A No.

20 Q What was your dad doing for a living at the time?

21 A He was taking care of us while my mom worked. He
22 was taking care of us while my mom worked.

23 THE COURT REPORTER: What was that?

24 THE WITNESS: He was taking care of us while my mom
25 worked.

[REDACTED] - Cross-Examination by Mr. Spencer

1 THE COURT: I'm sorry, I didn't hear you.

2 THE WITNESS: He was taking care of us while my mom
3 worked.

4 THE COURT: Okay.

5 BY MR. SPENCER:

6 Q Was he doing anything at the time to make some more
7 money?

8 MS. BLANCHETTE: Your Honor, I object to that on
9 the relevancy grounds.

10 MS. SPENCER: I think it's relevant to the domestic
11 situation that was upset by the revelation of the rape.

12 MS. BLANCHETTE: Your Honor, I also object to --
13 that it being something that is beyond her personal
14 knowledge. I think it calls for speculation on her part.

15 THE COURT: She can tell whether her daddy worked
16 at the time, besides at home.

17 I'll allow that.

18 MR. SPENCER: All right.

19 BY MR. SPENCER:

20 Q Are you aware of any other way he was making money?

21 A No.

22 MR. SPENCER: I beg the Court's indulgence.

23 THE COURT: Okay.

24 MR. SPENCER: Your Honor, I have no further
25 questions.

1 MS. BLANCHETTE: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q Now, the State went through a number of people that
5 was told that this happened. Did you also tell some of
6 those same people that it didn't happen?

7 A I told my mom it didn't happen. I told Mr. Brisbin
8 it didn't happen.

9 Q And did you also tell your father's attorney this
10 didn't happen?

11 A Yes.

12 Q Okay. What, if anything, did any of those people
13 do to assist you in making sure your story -- that this
14 didn't happen -- come to light or making sure that story be
15 told?

16 A My mom, she just wanted the truth to get out so she
17 took me to Ms. Brisbin and Ms. Brisbin and Mr. Anderson
18 didn't do nothing.

19 Q And how old were you then at this time?

20 A 15.

21 Q Did you do have anything else to do, yourself, at
22 that time to say this didn't happen; I don't what this to
23 go forward?

24 A No.

25 Q Okay. And the State was also asking you about the

[REDACTED] - Cross-Examination by Mr. Spencer

1 impact this has had on your family. Have you recently had
2 a child yourself?

3 A Yes.

4 Q Okay. And did you have a little girl or a little
5 boy?

6 A A little girl.

7 Q Okay. And obviously you would want your father to
8 be a part of your life and her life; is that correct?

9 A Yes.

10 Q Okay. And you understand that you've alleged that
11 your father -- as the state has said over and over again,
12 rape, but I would rather use the word sexually assaulted
13 you. Would you have any hesitation in allowing your father
14 to be around your little girl?

15 A No.

16 MS. BLANCHETTE: Your Honor, I have no further
17 questions.

18 THE COURT: Okay.

19 MR. SPENCER: Nothing further.

20 THE COURT: You can step down.

21 MS. BLANCHETTE: Your Honor, I would call Christy
22 Green to the stand?

23 THE COURT: Okay.

24 MS. BLANCHETTE: And, Your Honor, if I may, [REDACTED]
25 may be subject to recall if I could just put that on the

1 record.

2 MR. SPENCER: Your Honor, may we approach on a
3 scheduling matter?

4 THE COURT: Sure.

5 (WHEREUPON there was a bench conference out of the
6 hearing of the court reporter.)

7 MR. SPENCER: (On the phone with Ms. Brisbin. He
8 is giving her a telephone number to call the courtroom to
9 testify.)

10 Judge, she was on the road, so she's going to call
11 back when she pulls over.

12 THE COURT: Okay.

13 MS. BLANCHETTE: Your Honor, my expert just stepped
14 out and I wanted her to be present during this testimony.
15 She should be back in just a moment. She was going to grab
16 something out of her car that I needed because we thought
17 we were going to have a witness she didn't need to be
18 present for. Can we take a short break now or just be at
19 ease until she walks back in the door.

20 THE COURT: Okay. And then -- she wants to be
21 present when the prosecutor testifies?

22 MS. BLANCHETTE: No, the next witness I was calling
23 Christy Green. I wanted her present during that testimony.

24 THE COURT: We're waiting on -- who are we waiting
25 on?

1 MR. SPENCER: Brenda was just going to pull over
2 and call us back.

3 MS. BLANCHETTE: I was just trying to keep things
4 moving.

5 THE COURT: We'll wait on Brenda to call back.
6 (WHEREUPON there was talk of scheduling.)

7 MR. SPENCER: I appreciate everyone's patience.

8 THE COURT: We -- I will lose my court reporter at
9 one o'clock.

10 MR. SPENCER: Judge, as I understood, we have
11 another one coming, don't we?

12 THE COURT REPORTER: Yes.

13 MR. SPENCER: So we just need to --

14 THE COURT: We're going to break for lunch at 1:00
15 and we're going to start back at 2:00 or 2:30.

16 MR. SPENCER: Whichever Your Honor wants is fine
17 with me; 2:00 or 2:30. I mean we'll have the rest of the
18 day, so I think --

19 MS. BLANCHETTE: You don't have the Forest case?

20 MR. SPENCER: The Forest case fell out.

21 MS. BLANCHETTE: Oh, okay. I thought you had
22 another case this afternoon.

23 (WHEREUPON a brief recess was observed.)

24 THE COURT: Is she on the phone?

25 THE CLERK: But the applicant has stepped out, Your

1 Honor.

2 THE COURT: We got a speaker phone?

3 THE CLERK: Ms. Brisbin, are you able to hear?

4 MS. BRISBIN: Yes.

5 THE COURT: Okay. As soon as we get -- I
6 apologize. We got you on the phone and then we were in
7 chambers. As soon as I get my applicant back in here,
8 we'll go. And you can send the Solicitor your cell phone
9 bill.

10 MS. BLANCHETTE: Did you hear that, Brenda?

11 MS. BRISBIN: I'm having a little difficulty
12 hearing the Judge. I can hear you fine.

13 THE COURT: All right. I'll speak up louder. It's
14 really not important you hear me, I just need to hear you.

15 MS. BRISBIN: Okay. Can you hear me.

16 THE COURT: I can. You're doing great.

17 MS. BRISBIN: Great. I've got traffic in the
18 background. I'm parked by the highway.

19 THE COURT: Okay.

20 MR. SPENCER: Brenda, you can hear me, can't you?

21 MS. BRISBIN: Yes, I can.

22 MR. SPENCER: Okay. And thanks, I'm sorry, Brenda,
23 we've got you on hold here.

24 MS. BRISBIN: That's okay.

25 THE COURT: That's why I was trying to say you need

Brenda Brisbin - Direct Examination by Mr. Spencer via Telephone

1 to turn the bill him for your minutes.

2 MS. BRISBIN: (Laughter.)

3 THE COURT: All right. Brenda, first we'll swear
4 you in and they're going to start asking you some
5 questions.

6 MS. BRISBIN: Okay.

7 BRENDA BRISBIN,
8 having been duly sworn, testified as follows via telephone:

9 THE CLERK: Please state your full name for the
10 Court.

11 MS. BRISBIN: Brenda Robertson Brisbin.

12 **DIRECT EXAMINATION**

13 BY MR. SPENCER:

14 Q Ms. Brisbin, were you a prosecutor, excuse me,
15 assistant solicitor with the Second Circuit Solicitor's
16 Office?

17 A Yes, I was for twelve years.

18 Q All right. And do you recall the case of State v.
19 Russell Jackson?

20 A Yes, I do.

21 Q And were you the prosecutor in that case?

22 A I was.

23 Q Okay. And do you recall the victim in this -- in
24 that case, Ms. [REDACTED]?

25 A Yes.

Brenda Brisbin - Direct Examination by Mr. Spencer via Telephone

1 Q Okay. And did you have several meetings with [REDACTED]
2 [REDACTED] the victim?

3 A I did.

4 Q Okay. And if you could tell me what your
5 recollection of those meetings is?

6 A I was -- I've reviewed my notes from that file and
7 I did take quite a few notes. When I met with her, she
8 told me that on Wednesday, April 5th, 2010, that her
9 father, Russell Jackson, pushed her over on the bed and
10 stuck his penis in her, in her vagina; I clarified that.
11 She said that she was yelling for him to stop.

12 Afterwards he made her call his friend, Tony, to
13 tell him to come pick him up because he wanted to go buy a
14 new telephone, which she did. She said that she was
15 crying. She put her on her clothes. When her mother got
16 home about 3 p.m. she told her mother what had happened and
17 her mother took her to the emergency room to have a rape
18 kit.

19 She also told me that that day her father rubbed
20 his penis against her leg and face and touched her vagina
21 with his hand. That he had slipped his hand up her shorts
22 and touched her the outside of her vagina.

23 Her mother then came into our office and insisted
24 that this never happened and that she knew that it would
25 not prove -- that someone had told her that the DNA didn't

Brenda Brisbin - Direct Examination by Mr. Spencer via Telephone

1 match. I explained to her mother that that was not true
2 that the DNA actually did match, except there was an
3 insufficient quantity of semen to do all -- to complete the
4 analysis to call it a match, but they were consistent with
5 her father's penis and it was one her panties and that
6 there was no other explanation the DNA fits and, therefore,
7 that the DNA did not lie and, therefore, I believed her
8 daughter. Her mother refused to believe it. She still
9 insisted that it didn't happen and she had gotten back with
10 Shakela's father and she didn't want to believe it.

11 Q All right. Did ^{the victim} [REDACTED] ever tell you it didn't
12 happen?

13 A She came back later with kind of -- and kind of
14 apologized after she -- her mother said she recanted and
15 she was -- at that point, she was very quiet and didn't
16 want to talk about it.

17 Q Well, can the mother --

18 A She didn't come right out and say whether it
19 happened or not at that point.

20 Q Okay. The mother said she recanted?

21 A The mother said she recanted.

22 Q But --

23 A Told me she recanted.

24 Q Okay. But, ^{the victim} [REDACTED] herself, wouldn't tell you
25 what happened or didn't happen?

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1 A After that first meeting that she told me details
2 that did happen, the follow up meeting -- and I don't
3 remember how much later it was -- but at the follow up
4 meeting where her mother insisted she recanted. She was
5 just very quiet and wouldn't really talk about it.

6 Q Okay. And just real basic questions, practically,
7 what's required for you in order to go ahead and prosecute
8 a case?

9 A I have to have sufficient evidence, that's credible
10 evidence, on which to base the prosecution, and if I have a
11 recantation, which in this case, according to her mother at
12 least she recanted, I could still go forward because it's
13 not unusual in sexual abuse cases, particularly when it's a
14 relative that's charged and when the family is pressuring
15 the child to take it back, which I believe was probably for
16 close to a year.

17 I could still go forward, particularly if I have
18 DNA evidence, because that's pretty hard to overcome. And
19 in the case that's what happened. He clearly decided to
20 plead guilty.

21 Q All right. And -- and you've answered my next
22 question which was, was there was enough evidence.

23 MR. SPENCER: I beg the Court's indulgence.

24 THE COURT: Okay.

25 THE WITNESS: There was plenty of evidence. There

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 was semen, which was consistent with Mr. Jackson's DNA and
2 I believe it was statistically one in 23 million. And it
3 would be -- that he could be included and there was no
4 other explanation, reasonable explanation, for his DNA
5 being on her panties. But it was very harmful evidence
6 that supported what she had stated initially.

7 And she had also had a video-taped forensic
8 interview in which she was consistent with what she told
9 me.

10 BY MR. SPENCER:

11 Q All right. Thank you. I think that's all the
12 questions I have. Ms. Blanchette I suspect will have some
13 questions for you. Thank you very much, Ms. Brisbin.

14 A You're welcome.

CROSS-EXAMINATION

15
16 BY MS. BLANCHETTE:

17 Q Thank you very much, Ms. Brisbin. This is Tricia
18 Blanchette, I represent the applicant.

19 Can you hear me okay?

20 A Yes.

21 Q Okay. Now, let me just ask you about some of the
22 things you stated on direct examination. And I can't show
23 you this since you're not here, but would you -- in the
24 Preliminary Hearing Transcript, there the officer indicates
25 that ^{the victim} [REDACTED] had recanted to the chief of police. Were you

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 aware of that?

2 A I can't recall. I know she had recanted to her,
3 her mother. That's the only -- the only one I specifically
4 remember.

5 Q But if that is in the record, you wouldn't dispute
6 the record; is that correct?

7 A No, certainly not.

8 Q Okay. And then at the plea, Mr. Anderson goes on
9 about how the victim had recanted to him twice; were you
10 aware of that?

11 A Yes.

12 Q Okay. What is your typical procedure in cases
13 revolving recantation?

14 A I'm sorry? I couldn't hear you.

15 Q What is your typical procedure in cases involving
16 recantation?

17 A I talk with the victim and try to find out if she
18 did really recant and if she'd want to stick with that
19 recantation or if she's going to change and say that it did
20 happen, which often happens.

21 Q Do you recall having --

22 A If --

23 Q Oh, go ahead.

24 A I'm sorry. If there is no other evidence to
25 support the charge, then I would have to dismiss the

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 charge, but that was not the case here.

2 Q Okay. And let me just ask you, if you speak to a
3 victim and they do recant, then do you bring in another
4 professional that's qualified in that area to assess the
5 victim?

6 A No.

7 Q Okay.

8 A There's no one, there's no magic person who can do
9 a polygraph by talking to the child and deciding whether or
10 not they're telling the truth and it wouldn't be admissible
11 in court if they could.

12 Q So that's just a determination that you make on
13 your own?

14 A The determination I make is based on whether or not
15 there's other evidence to support the charge.

16 Q Okay. Let's talk about the other evidence in this
17 case. Isn't it true that you had obtained a Dollar General
18 video that showed Mr. Jackson there between 11:15 and
19 11:30, which is the precise time that Shakela Green said
20 this occurred?

21 A If I remember correctly, that was exactly matching
22 what she told me, which was that he had gone to the store
23 immediately after it happened to buy a telephone, which he
24 actually purchased and brought back and told her to show
25 him to how activate it, which she did.

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 Q And since you're not here, I can't show you this,
2 but would you dispute that the police report says that this
3 happened between 11:30 and 12:30 and then the hospital
4 report also indicates that this supposedly happened between
5 11:30 and 12 o'clock?

6 A I don't recall the time period, but I believe that
7 it was within an hour of the time that he was seen at the
8 store, which would be consistent with what she had told me.

9 Q Speaking of other evidence, did you talk to any of
10 the witnesses that were in the home that day?

11 A Not that I recall.

12 Q Okay. Did you check --

13 A I don't think there were any other witnesses at the
14 home at the time it happened, but I can't recall for sure.

15 Q Okay. Did you talk to anybody that was in the home
16 immediately before it allegedly happened or immediately
17 after?

18 A Not that I recall.

19 Q Did you go to the home to see if the version of
20 events that ^{the victim} [REDACTED] gave were possible?

21 A No, I very rarely go to the home myself.

22 Q Do you know if a search warrant was done at the
23 home to obtain evidence?

24 A I don't recall.

25 Q Now, if you could just -- and you said in your

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 direct testimony that DNA never lies; so that's the sole
2 evidence that you were basing your conclusions upon?

3 A I was basing it on the forensic evidence, which was
4 very credible in my opinion and consistent with what she
5 told me. And I considered what she told me very credible
6 because of the emotional demeanor that she exhibited and
7 the details that she gave and that in addition to the
8 physical evidence, which was the panties with the DNA as
9 well as there was some semen; there was a conflict that
10 there was some semen in the vagina, just wasn't a quantity
11 for analysis.

12 Q Would you agree that there was a normal exam done
13 as far -- as far as the sexual assault exam in this case?
14 That the findings were normal?

15 A I don't recall, but that would certainly not be a
16 surprise. There are almost always are. 95 percent of
17 sexual pelvic exams are normal.

18 Q And what are you basing that statistic upon?

19 A Expert witnesses that had testified in the past or
20 me.

21 Q And so that is information not from your own
22 personal knowledge; is that correct?

23 A That is correct.

24 Q Now, I can't show you this, I'll read it to you and
25 please let me know if I need to repeat it.

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 MR. SPENCER: Your Honor, if I may -- just lodge an
2 objection. I understand we had some discussion as to
3 whether there was evidence to go forward and prosecute.
4 However, the purpose of this hearing is whether to figure
5 out if Mr. Anderson is in effective. So I think this line
6 of questioning has kind of lost its relevance.

7 THE COURT: I don't know where she's going with it.

8 MS. BLANCHETTE: I have one more question about the
9 DNA just based upon her statements about the DNA in direct
10 examination.

11 THE COURT: Go ahead.

12 MS. BLANCHETTE: Okay.

13 BY MS. BLANCHETTE:

14 Q The actual report reads that the DNA obtained from
15 the sperm fraction of Item 2.1, which was the panties, is a
16 mixture of at least 2 individuals. ^{The Victim} [REDACTED] and
17 Russell Jackson cannot be excluded as possible contributors
18 to this mixture. The probability of randomly selecting an
19 unrelated individual, who could have contributed to this
20 mixture is approximately one in 23 million. First, you do
21 agree that they were related; is that correct?

22 A Yes, he was the biological father if I recall.

23 Q Okay. And would you also agree that it wasn't a
24 case where there was a match; it was a case where there
25 was, no -- he could not excluded based upon the reading of

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 that report?

2 A I've done many, many of these cases where it was
3 the exact same wording in the lab report and the DNA
4 experts have explained it to me that that does not mean
5 it's not a match. Actually the alleles -- if you look at
6 the chart, the alleles are consistent with those with those
7 of Mr. Jackson. They just don't have sufficient quantity
8 to call it a match because SLED has requirements for a
9 certain number of loci to be tested in order to call it a
10 match. And if they don't have a sufficient quantity to
11 test all of those loci, they may just say that the
12 defendant cannot be excluded. That does not mean it's not
13 a match. It simply means that there's sufficient quantity
14 to technically call it a match. It is mostly consistent
15 with Mr. Jackson's DNA.

16 Q And you're making that assumption based on your
17 experience?

18 A I'm -- based on twelve years of doing those cases
19 and having DNA experts testifying and explaining what that
20 means.

21 Q Do you recall having a chambers meeting regarding a
22 chain of custody for that evidence?

23 A I don't specifically recall that meeting, no. I
24 remember some discussions with Mr. Anderson about chain of
25 custody and my opinion was that the panties were not an

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 issue because the panties were identified by the victim and
2 there's no other reasonable explanation for Mr. Jackson's
3 semen being on her panties other than to speculate that
4 someone took Mr. Jackson's DNA and placed it on his
5 daughter's panties. So there's no chain of custody issue
6 in my opinion.

7 Q What category would you put the actual DNA sample
8 into; I know that the panties you're saying were easily
9 recognizable and could have been identified --

10 MR. SPENCER: Your Honor, I'd have the same
11 objection I had before. We're here for ineffective
12 assistance of counsel.

13 THE COURT: That's true.

14 MS. BLANCHETTE: Your Honor, one of our allegations
15 is that he failed to make the proper motions regarding the
16 DNA evidence and specifically the handling of the chain of
17 custody. I was just trying to get into what information
18 she had regarding the chain in this case. I mean I was
19 going to ask her to clarify on point because she said it
20 was fungible versus non-fungible.

21 THE COURT: All right. You can proceed as far as
22 the chain is concerned.

23 MS. BLANCHETTE: Okay.

24 BY MS. BLANCHETTE:

25 Q Now, the panties -- it is true -- those are readily

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 identifiable, but wouldn't you also have to have the DNA
2 itself be admissible and get a ruling from the Court on
3 that?

4 A Well that has never been an issue as far a
5 prosecuting other crimes. I had a dress in another case
6 that sat in the home -- the victim's home for a year and
7 the DNA was tested and the victim identified that dress as
8 being the item of clothing she was wearing when she had sex
9 with this person. And the semen was tested a year after
10 this happened and it was -- it did match the defendant and
11 it was never questioned. I don't believe that DNA, there's
12 a chain issue when the DNA is on an item of clothing that's
13 identified by the victim.

14 Q But you do agree that you had to prove the chain as
15 far as practicable for the handling of it by law
16 enforcement and SLED in testing the DNA; is that correct?

17 A Well, I would have had to prove that you have the
18 chain in that case.

19 Q Ms. Brisbin, you -- and correct me if I'm wrong --
20 but you are saying that the victim never recanted to you in
21 this case?

22 A I do not know specifically whether or not she
23 recanted to me. So I can't say absolutely. But I think
24 that she was -- just refused to talk about it after that
25 first meeting when she told me it happened, I remember her

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 calling back another time because her mother was insisting
2 that she recanted and I remember her sitting in my office
3 just crying and being very quiet and not wanting to talk
4 about it. But I can't say for sure that she recanted to
5 me. I honestly don't remember for sure.

6 Q Do you ever remember explaining to her the
7 implications of a perjury charge or giving a false police
8 report?

9 A Not that I recall.

10 MS. BLANCHETTE: Your Honor, if I could just beg
11 the Court's indulgence for one moment.

12 (WHEREUPON there was a pause in the proceedings.)

13 BY MS. BLANCHETTE:

14 Q Ms. Brisbin, since you're not here, I'm just going
15 to read your portion of the plea transcript.

16 MS. BLANCHETTE: Let me first show it to the State
17 thought.

18 BY MS. BLANCHETTE:

19 Q On page 5 of the plea transcript, and I'm beginning
20 at line 10 and you stated, it was a one time incident
21 according to the victim and the victim had recanted several
22 times and really did not want to testify. And it was only
23 because of that we agreed to something less than 20 years.
24 Are you explaining something differently today or I'd just
25 like to give you the opportunity to respond to your words

Brenda Brisbin - Cross-Examination by Ms. Blanchette via Telephone

1 in the plea transcript.

2 A Well I said -- what you just said, I said that she
3 had she had recanted several times. That doesn't say that
4 she recanted several times to me. I wasn't aware that she
5 had recanted several times.

6 Q And you also said in your direct though, that there
7 was another incident, but here you're saying this was a one
8 time incident; do you know which one is correct?

9 A I'm confused about what you're saying. I said it
10 was a one time incident when?

11 Q At the plea you said it was a one time incident and
12 during your direct testimony, you gave information on
13 another incident; was it just a one time incident or were
14 you prosecuting him on two incidents?

15 A Okay. The other incident that I just mentioned
16 that she told me about was not intercourse, it was -- it
17 would have been a lewd act.

18 Q And he was not prosecuted for that; is that
19 correct?

20 A That is correct.

21 Q Okay.

22 MS. BLANCHETTE: One moment, Your Honor.

23 (WHEREUPON there was a pause in the proceedings.)

24 MS. BLANCHETTE: I have no further questions on
25 cross.

Christy Green - Direct Examination by Ms. Blanchette

1 MR. SPENCER: I have nothing further.

2 THE COURT: Okay. Thank you.

3 MR. SPENCER: Thank's Brenda. I appreciate it.

4 MS. BRISBIN: You're welcome. Goodbye.

5 THE COURT: Now, we need to go back --

6 MR. SPENCER: Thank you, Judge, and thank you, Ms.

7 Blanchette for taking her out of order.

8 THE COURT: Okay.

9 MS. BLANCHETTE: I would call Christy Green to the
10 stand. I believe she was not sworn in, correct?

11 THE WITNESS: No.

12 MS. BLANCHETTE: Okay.

13 CHRISTY GREEN,

14 having been duly sworn, testified as follows:

15 THE CLERK: Please have a seat in the witness box
16 and state your full name for the Court.

17 THE WITNESS: Christy Green.

18 **DIRECT EXAMINATION**

19 BY MS. BLANCHETTE:

20 Q Can you tell me please where you currently reside?

21 A [REDACTED]

22 Q And Ms. Green, how is that you know Russell
23 Jackson?

24 A We've been together since I was 14 years old.

25 Q Okay. And how many children do you have together?

Christy Green - Direct Examination by Ms. Blanchette

1 A Three; one miscarriage.

2 Q Okay. And what are those children's names?

3 A [REDACTED] Rakeem, Denzel.

4 Q Okay. Let me take you back to April 5th, 2010. Do
5 you recall coming home from work that day?

6 A Yes, ma'am, about 3:45.

7 Q All right. You got home at 3:45. Take me through
8 the events that unfolded from there.

9 A When I got home at 3:45, I came in. I went in the
10 room and took my clothes off, got comfortable, started to
11 the -- in the living room to the couch. Sat to the end
12 table; she told me she wanted to talk to me. And I said
13 what you want to talk to me about. And she said I don't
14 feel right. I said well what you mean you don't feel
15 right. She said my bottom don't feel right when I go to
16 the bathroom it hurt a little bit and she say it's bleeding
17 a little bit.

18 So I then asked her to go to the restroom and show
19 me what she was talking about. So she went in the bathroom
20 and she wiped with tissue and I said well -- and she showed
21 me the tissue and I said well, I don't see any blood. I
22 said you sure nobody hadn't been doing anything to you and
23 she still insisted that I take her to the doctor. So we
24 went to South Aiken, Souths ide Med Center on the South
25 side of Aiken; they were closed. She came back to the car

Christy Green - Direct Examination by Ms. Blanchette

1 and she explained to me that her daddy had molested her.

2 And at that point, I just lost it.

3 ~~XXXXXX~~ me a minute to get settled down and I then
4 went straight on the ER. I had called my sister-in-law at
5 that point to meet us there because I just didn't know what
6 to do. And when we got to the emergency room, I went up to
7 the front desk and I told the -- where you sign in at -- I
8 told her that my daughter had said her daddy had just raped
9 her earlier between 11:00 and 11:30 that day and they took
10 her straight back.

11 Q Let me stop you there. The sister-in-law that came
12 to meet with you, who was that?

13 A Sholanda Drayton.

14 Q Okay. And when you said you lost it when your
15 daughter told you that, were you upset with her; what was
16 your reaction?

17 A No, I wasn't upset with her. I was just in shock
18 that this had happened, you know what to do. I can't
19 believe me and him been together this many years and this
20 has happened; I just didn't know what to do.

21 Q Okay. So you proceeded to the hospital?

22 A Yes, ma'am.

23 Q When they took her back what happened next?

24 A Okay. They went and examined her. The local
25 police department was called. It was Officer -- Chief

Christy Green - Direct Examination by Ms. Blanchette

1 Parks and Officer Cook, they arrived and she was examining
2 her.

3 She had a kit, it was like a beige kit and it was a
4 brown paper bag like you get from the grocery store, but
5 there wasn't a label on the outside of the bag. She --
6 everything she examined -- she swabbed ~~the victim's~~ ^{the victim's} mouth, she
7 swabbed under her fingernails, toenails, inside her vagina.
8 Everything she swabbed went into a kit and then after that,
9 her clothing and she couldn't have taken -- they had to get
10 all her clothing. So she took all her clothing off. They
11 let her keep her shoes. The panties, the shirt, the bra,
12 everything went in the brown bag.

13 When the local police department came in she wrote
14 a statement to them. They took the evidence. They left.
15 The next day -- after we leave the hospital and got home,
16 the next day, Officer Spires -- Officer Spires showed up at
17 my house about 2:30 that evening and he stated to me that
18 he had arrived back from Columbia dropping the evidence off
19 and we had an appointment --

20 MR. SPENCER: Objection, Your Honor, I move to
21 strike the hearsay about dropping evidence off.

22 THE COURT: Okay. I'll -- go ahead.

23 BY MS. BLANCHETTE:

24 Q Ms. Green, so you said you were meeting with an
25 Officer Spires; is that correct?

Christy Green - Direct Examination by Ms. Blanchette

1 A Yeah, he came to my house.

2 Q Okay. And you can't tell me what he said, but what
3 information did you understand that was supplied to you?

4 A The evidence had been dropped off in Columbia.

5 MR. SPENCER: Your Honor, that's just trying to
6 backdoor hearsay.

7 THE COURT: Well --

8 THE WITNESS: We had an appointment at April the
9 8th -- on April the 8th, 2010 to Victim's Advocate. And me
10 and my brother, William, and ^{the victim} [REDACTED] went. At that point,
11 after that day, after the video, she said she did a video
12 and they talked with her. When we got back that evening,
13 there was a couple more family members at my mother's
14 house. She stated it didn't happen. She wanted to go to
15 Brisbin. I --

16 BY MS. BLANCHETTE:

17 Q And let me stop you there. Up to that point, had
18 you been doing everything that either the police or the
19 State told you you needed to do?

20 A Yes, ma'am, I did. Yes, ma'am, I did?

21 Q After she told you it didn't happen, what happened
22 next?

23 A When she told -- when she recanted her story that
24 it didn't happen to me, at that point, I investigated a
25 little myself.

Christy Green - Direct Examination by Ms. Blanchette

1 Q Okay. And did you -- was there a specific part
2 about her story about her saying that, you know, she came
3 out in a towel, did that cause you to question the story
4 when she starting looking at it?

5 A Yes, because she always goes in the bathroom with
6 her clothing.

7 Q Okay. So did you make arrangements to bring her to
8 the solicitor to tell her what your daughter had told you,
9 that this didn't happen?

10 A Yes, ma'am.

11 Q Okay. Were you in on the meeting or did you wait
12 outside?

13 A I waited outside until ^{the victim} [REDACTED] talked to her and
14 then she came back and got me and we both was in there.

15 Q Okay. So you met with the solicitor yourself that
16 day too?

17 A Yes, ma'am.

18 Q Did she at any point ask you whether or not Russell
19 was her biological father?

20 A Yes, she did.

21 Q Okay. And what did you tell her?

22 A At that point, I was kind of confused. I told her
23 yeah, yeah -- she say I have the DNA and I said well, he is
24 her real father.

25 Q Okay. When you told her that, did she convey any

Christy Green - Direct Examination by Ms. Blanchette

1 concerns about the case?

2 MR. SPENCER: Your Honor, I have to object.

3 THE COURT: I sustain the objection.

4 MS. BLANCHETTE: I would like to withdraw that
5 question.

6 THE COURT: Okay.

7 BY MS. BLANCHETTE:

8 Q After meeting with the Solicitor, what happened
9 next?

10 A We met with her. ^{the Victim} [REDACTED] told her it didn't happen
11 and I was in there.

12 MR. SPENCER: Your Honor, this is while she's --

13 THE WITNESS: Here at --

14 MR. SPENCER: This is the solicitor, ^{the Victim} [REDACTED] and
15 the witness; I withdraw my objection. That's fine.

16 THE COURT: That's my understanding.

17 MS. BLANCHETTE: Right. You --

18 THE WITNESS: All three of us was there and there
19 was another young lady; I don't know her name. I don't
20 know if she was something with Ms. Brisbin, but it was four
21 of us in the room.

22 BY MS. BLANCHETTE:

23 Q Okay.

24 A She was demonstrating to me about the report, which
25 was the DNA testing was --

Christy Green - Direct Examination by Ms. Blanchette

1 Q And let me stop you there. You heard her testimony
2 or she just testified that you told her that the DNA didn't
3 match. Did you ever make that statement to her?

4 A I don't know nothing about no DNA.

5 Q Okay.

6 A Until she explained it to me that day.

7 Q So she was the one that explained DNA to you?

8 A Exactly.

9 Q Okay. And did she explain it to you that it was a
10 match?

11 A Yes, ma'am.

12 Q Okay. Did you ever have any knowledge that it
13 wasn't a match?

14 A Yeah.

15 Q Okay. Where did you get that from?

16 MR. SPENCER: Your Honor, I object. That's not of
17 her own knowledge.

18 THE COURT: Well --

19 MS. BLANCHETTE: As in she asked --

20 THE COURT: I understand she asked her if she had
21 knowledge and then she asked where you got it from. She
22 can ask where she got it from.

23 BY MS. BLANCHETTE:

24 Q How did you have that knowledge? That is wasn't a
25 match?

Christy Green - Direct Examination by Ms. Blanchette

1 A The day that the results was read to me, we had to
2 go to the New Ellenton Police Department. I think it was
3 June of 2010. Officer Chief Parks called and told me to
4 meet him --

5 MR. SPENCER: Your Honor, I object; that's hearsay.

6 THE COURT: He just told them to meet him that day.

7 MR. SPENCER: And really, Your Honor, her
8 understanding of the DNA isn't an issue.

9 THE COURT: I understand it's not an issue.

10 MS. BLANCHETTE: I believe it is, Your Honor, his
11 witness just said that she said the DNA wasn't a match. I
12 think she has a right to respond to what was discussed with
13 her.

14 MR. SPENCER: Your Honor, she denied it; you know,
15 she's allowed to do that and I think that's pretty much the
16 end of it.

17 THE COURT: I understand. We'll finish this -- I
18 don't know that it makes a whole lot of difference in the
19 whole scheme of things. God ahead.

20 MS. BLANCHETTE: So she can continue?

21 THE COURT: Yeah. Go ahead and continue.

22 THE WITNESS: Me and ^{the victim} had gone to the police
23 department; the results was read to us. The vagina DNA was
24 not a match, but it was his DNA on her panties.

25 BY MS. BLANCHETTE:

Christy Green - Direct Examination by Ms. Blanchette

1 Q Now you said you're not an expert in DNA, but was
2 there any explanation that you could think of as to how
3 something like that could happen?

4 A Yes, ma'am.

5 Q In your home?

6 A Yes, ma'am, I was just wondering how one could be a
7 match and one couldn't.

8 Q Okay. That was what you were wondering?

9 A Yes, ma'am.

10 Q Now, when you brought your daughter to the
11 solicitor to tell her that it did not happen, what steps
12 did anyone, including the solicitor, take to give your
13 daughter the opportunity to say that this did not happen?
14 Did they provide her a counselor? Did they bring her in to
15 speak to a Judge? What happened?

16 A No, ma'am. She was either going to tell the truth
17 or be charged with perjury or false information to an
18 officer.

19 MR. SPENCER: Your Honor -- I mean I don't know
20 where she's getting that information. It sounds like
21 that's hearsay.

22 THE COURT: You can ask her who told her that.

23 MR. BLANCHETTE: I can ask her who told her that?

24 THE COURT: Yeah.

25 THE WITNESS: Ms. Brisbin stated that that day.

Christy Green - Direct Examination by Ms. Blanchette

1 THE COURT: Okay.

2 THE WITNESS: The next day, the DSS attorney,
3 Amanda Whittle, she was at my mother house.

4 BY MS. BLANCHETTE:

5 Q You can go ahead Ms. Green and tell us that, I'm
6 sorry.

7 A She was at my mother house and what was said, I
8 don't know because I wasn't outside.

9 Q Okay. And so based upon your personal experience
10 dealing with these individuals, when your daughter said
11 this didn't happen, did anyone come to her aid and assist
12 her in determining whether or not it did, in fact, happen?
13 Was there anyone there to assess that for you all?

14 A Her Guardian ad Litem was, Ms. Joan.

15 Q Okay. But as far as those conversations, you
16 weren't a part of it; is that correct?

17 A No, ma'am.

18 Q Okay. Let's jump forward here. Your husband
19 retained Andy Anderson; is that correct?

20 A Uh-huh (affirmative response).

21 Q Did you ever meet with Mr. Anderson?

22 A Several times.

23 Q Okay. Was that with Russell that you met with him?

24 A Yes, ma'am.

25 Q Okay. And were you willing to cooperate in

Christy Green - Direct Examination by Ms. Blanchette

1 providing Mr. Anderson anything that he needed to help with
2 the defense of your husband?

3 A Yes, ma'am.

4 Q Okay. Now, at the same time, were you being
5 supportive of your daughter? Because there's been some
6 insinuation by the State, and I think in Ms. Brisbin's
7 testimony, that you were not supporting your daughter?

8 A I was -- I have always been supportive of my
9 daughter.

10 Q Okay. Now, when you met with Mr. Anderson, what
11 took place; what were those meetings about?

12 A The first meeting we went in he was gathering all
13 our information. Me and my brother, Anthony -- Michael,
14 and Russell was together. He got all our information and
15 that day, I told him what had happened at the hospital with
16 the -- evidence-wise. How the bagging went. What went
17 what. And we left that day. The next meeting Russell had
18 because he had quite a few meetings, the next meeting he
19 had, we was supposed to pay \$500 to a DNA expert. We, as
20 in our own minds, were thinking it was going to be a
21 retest, but it was only a reading off of the paperwork
22 stating I guess that this information is correct.

23 Q Okay. And so you paid that \$500?

24 A Yes, ma'am.

25 Q Okay. Now did you ever provide Mr. Anderson any

Christy Green - Direct Examination by Ms. Blanchette

1 records or ask him to look at anything specifically
2 regarding the timeline from that day?

3 A The phone records. I had a phone with Atlantic
4 Broadband.

5 Q Okay.

6 A And I pulled my phone records. I called Atlantic
7 Broadband and had them to print out my records.

8 Q Okay. Now, Ms. Green, let me hand you this. Can
9 you identify what this appears to be for the record?

10 A Yeah, this is my phone records.

11 Q Okay. And these are the records that you pulled?

12 MR. SPENCER: Your Honor, I have the same objection
13 as I had before on the previous phone records. They're
14 just -- it's not probative; it's not self-authenticating
15 proof.

16 MS. BLANCHETTE: And to save time, I would agree to
17 admitting it for the limited purpose of being the phone
18 records.

19 THE COURT: My understanding these are the records
20 she gave to his attorney?

21 MS. BLANCHETTE: Yes.

22 THE COURT: Okay. Since she gave them to him.
23 I'll admit it. But as far as whether they're accurate or
24 not --

25 MR. SPENCER: Thank you, Your Honor.

Christy Green - Direct Examination by Ms. Blanchette

1 THE COURT: At least he had that in his file.

2 MS. BLANCHETTE: That's my exact point.

3 So I'd move that in as Applicant's No. 2.

4 THE COURT: Okay.

5 (WHEREUPON Applicant's Exhibit No. 2 was entered
6 into evidence.)

7 BY MS. BLANCHETTE:

8 Q And, Ms. Green, if you could just explain why you
9 pulled these records.

10 A Because at this point, I was investigating myself.

11 Q Okay. And what information did you bring out to
12 him on this phone record?

13 A The time frame -- it couldn't have happen?

14 Q Okay. And why? Based upon what in that record?

15 A On this record at eleven o'clock or 11:01 she
16 called Mr. Michael Patterson --

17 MR. SPENCER: Your Honor, just that same -- I just
18 want to make sure I've got this objection continuing too.

19 THE COURT: Okay. Your objection is there and --
20 at lease the fact that she called -- it's not admissible as
21 far as I'm concerned as to accuracy.

22 MS. BLANCHETTE: Right, I'm just asking what
23 information she gave to the attorney based upon this
24 record.

25 THE COURT: All right. Go ahead.

Christy Green - Direct Examination by Ms. Blanchette

1 THE WITNESS: Because at eleven, 11:01 she called
2 Michael Patterson. Right after she called Michael
3 Patterson, she hung up and directly called the 439, the
4 9631 number and talked for 5:55 seconds, which is her
5 boyfriend, Cody Jones.

6 BY MS. BLANCHETTE:

7 Q Okay.

8 A So that would put her in the timeframe of being on
9 the phone when Michael arrived.

10 Q And you made this clear to Mr. Anderson?

11 A Yes, ma'am.

12 MS. BLANCHETTE: Your Honor, would you like a copy?

13 THE COURT: All right.

14 BY MS. BLANCHETTE:

15 Q Now, let's jump forward to the week before Mr.
16 Jackson pled. Did you get another call from Mr. Anderson
17 or was there some reason why you went into his office about
18 the week before?

19 A Yes, ma'am, I was going over Russell's test results
20 and that we had gotten from Mr. Anderson and I saw a couple
21 of things on there that need to be pointed out to him. So
22 that Friday, we went to his office.

23 Q Okay. And did you request a complete copy of his
24 file?

25 A Yes.

Christy Green - Direct Examination by Ms. Blanchette

1 Q Okay. And why did you request that?

2 A So I could get him more help.

3 Q Okay. Did Mr. Anderson inform you at that time
4 that Russell was -- his trial was approaching?

5 A Yes, that Monday.

6 Q Okay. So this was a week before he was supposed to
7 go to trial on Monday?

8 A Yes, ma'am.

9 Q Why at that point were you trying to get him more
10 help?

11 A I didn't want Mr. -- Russell to plead. I wanted
12 Mr. Anderson to fight.

13 Q Okay. Did he tell you -- were you part of any
14 conversations or did he give you any information about the
15 way -- a plea versus a trial? What was your understanding
16 regarding those? Was he leaning one way or another or
17 trying to get you all to lean one way or another?

18 A He was leaning one way and trying to get us to lean
19 the way of Russell pleading guilty. That was the only one
20 way.

21 Q And what way were you all leaning?

22 A Not pleading guilty.

23 Q Okay. Now, did anything else happen that Friday,
24 that weekend before the plea, that you'd like -- that you
25 recall?

Christy Green - Direct Examination by Ms. Blanchette

1 A Well, after that Friday, we had a meeting with him
2 on that Sunday. And we -- that's when he went over all the
3 paperwork with us again. But he kept talking plea, kept
4 talking plea. Then on that Monday, the May 23rd, 2011, I
5 called him that morning and he had been trying to get in
6 touch with the guy that did the testing in Columbia at
7 SLED.

8 MR. SPENCER: I think we're getting into hearsay.

9 THE COURT: Okay. Go ahead.

10 MS. BLANCHETTE: Okay. She can go ahead?

11 THE COURT: Yeah. I understand it's a situation
12 where she's trying to talk him out of pleading.

13 THE WITNESS: The guy had quit.

14 BY MS. BLANCHETTE:

15 Q So he informed you that the SLED agent was no
16 longer with SLED?

17 MR. SPENCER: Your Honor, I object --

18 THE WITNESS: Yes, ma'am.

19 MR. SPENCER: -- that's not something of her
20 knowledge. That's hearsay.

21 THE COURT: Okay. I'll sustain that objection.

22 BY MS. BLANCHETTE:

23 Q So you called Mr. Anderson that Monday morning?

24 A Yes, ma'am.

25 Q Okay. Based upon that conversation, what did you

Christy Green - Direct Examination by Ms. Blanchette

1 understand was going to be happening that day?

2 A Russell had no option but plead and he wanted him
3 there at the courthouse in one hour.

4 Q Okay.

5 A Once we hung up the phone.

6 Q So you all met on Friday and this is what you
7 recall Sunday?

8 A Uh-huh (affirmative response).

9 Q And then Monday you called Mr. Anderson and he said
10 you need to have Russell at the courthouse in one hour?

11 A Yeah.

12 Q Okay. And you were actively involved in trying to
13 get Mr. Anderson to prepare a defense and giving him
14 information to use; is that correct?

15 A Yes, ma'am.

16 Q Okay. Now, did you attend the plea hearing with
17 Mr. Jackson?

18 A No.

19 Q Why not?

20 A He was doing something that I didn't want; he was
21 going in pleading and I wasn't with it.

22 Q Do you have any personal knowledge of your daughter
23 receiving notice that Mr. Jackson was going to be pleading
24 that day?

25 A No, ma'am.

Christy Green - Direct Examination by Ms. Blanchette

1 Q Okay.

2 MS. BLANCHETTE: I beg the Court's indulgence one
3 moment.

4 THE COURT: Okay.

5 (WHEREUPON there was a pause in the proceedings.)

6 BY MS. BLANCHETTE:

7 Q Ms. Green, you testified the meeting with Mr.
8 Anderson several times and being actively involved; is
9 there anything else that you asked him to do in this case
10 or that you anticipated that he was going to do to prepare
11 for trial that he failed to do?

12 A Yes, there was one thing; I asked him was he -- he
13 kept stating to us that he was not ready --

14 MR. SPENCER: Your Honor, that's --

15 THE WITNESS: He was not ready for trial.

16 MR. SPENCER: -- that's hearsay, Your Honor. I'd
17 move to strike that.

18 THE COURT: I'll agree.

19 BY MS. BLANCHETTE:

20 Q Ms. Green, based upon your meetings with Mr.
21 Anderson, did it appear that he was prepared for trial?

22 A No.

23 Q Is there anything else that you asked him to do to
24 prepare for trial that he failed to do?

25 A Not that I can recall.

Christy Green - Cross-Examination by Mr. Spencer

1 MS. BLANCHETTE: Your Honor, I have no further
2 questions.

3 THE COURT: Okay.

4 **CROSS-EXAMINATION**

5 BY MR. SPENCER:

6 Q Ms. Green, Now, I understand it's your opinion that
7 Mr. Jackson shouldn't plead guilty; is that right?

8 A It was my opinion? Yes.

9 Q But you understand it was Mr. Jackson's decision --
10 it was up to him to decide whether or not he wanted to
11 plead guilty, right?

12 A I reckon. It was kind of like he didn't have an
13 option.

14 Q Were you present at that guilty plea proceeding?

15 A No.

16 MR. SPENCER: I have no further questions.

17 THE COURT: Okay.

18 MS. BLANCHETTE: Nothing further, Your Honor.

19 THE COURT: Okay. You can step down.

20 MS. BLANCHETTE: Your Honor, I recall Gaye Allen
21 Cook to the stand.

22 GAYE ALLEN COOK,

23 having been duly sworn, testified as follows:

24 THE CLERK: Please have a seat in the witness box.

25 State your full name for the record.

Gaye Allen Cook - Direct Examination by Ms. Blanchette

1 THE WITNESS: Gaye Allen Cook.

2 **DIRECT EXAMINATION**

3 BY MS. BLANCHETTE:

4 Q And Ms. Cook, what is your occupation?

5 A I'm a Clinical Children and Family Therapist
6 specializing in trauma and abuse.

7 Q Okay. And you've heard there term thrown around a
8 little bit today of forensic interview and forensic
9 interviewer. Is that something that you do as part of your
10 occupation? Or is that a title that you carry? Could you
11 explain that to me.

12 A I do carry that title. Previously I did those when
13 I worked in a Child Advocacy Center. I was employed by the
14 Durant Children's Center in Florence and I was a forensic
15 interviewer there. Now I'm in my own practice and I
16 primarily do therapy, consultation, expert testimony, those
17 things. Once in a while, maybe once every six months, I
18 may get called upon by the Court to do a forensic
19 interview, but that's not primarily my occupation at this
20 point.

21 MS. BLANCHETTE: Your Honor, I'm going to move to
22 qualify her as an expert in the area of Clinical Child and
23 Family Therapist, specializing in trauma and abuse. I can
24 go through her extensive education background and
25 experience, but in the sake of saving time, I just wanted

Gaye Allen Cook - Direct Examination by Ms. Blanchette

1 to get a feel of whether or not that was necessary.

2 MR. SPENCER: I'm going to make her do it.

3 THE COURT: Okay.

4 BY MS. BLANCHETTE:

5 Q Ms. Cook, do you have a copy of your curriculum
6 vitae there in front of you or do you need a copy to refer
7 to?

8 A I've got one, thank you.

9 Q Could you please explain to me your education
10 experience?

11 A I have a Bachelor's in Early Childhood Education.
12 I have a Master's in Clinical Counseling. I have
13 post-graduate studies in trauma and abuse. I'm currently
14 listed on the expert witness list -- excuse me -- for the
15 University of South Carolina in the field of trauma and
16 abuse. I currently act as a supervisor in the State of
17 South Carolina for the accepted model for trauma and abuse,
18 which is trauma-focused cognitive-behavioral therapy.

19 I was just recognized this year in February of a
20 Duke Endowment for my efforts in trauma and abuse work. I
21 currently hold a license to practice counseling in the
22 State of South Carolina; previously licensed in the State
23 of North Carolina. I have forensic interview training and
24 I have advanced forensic interview training. And I'm
25 currently working on my Doctorate Degree. I've taken a

Gaye Allen Cook - Direct Examination by Ms. Blanchette

1 short break because I just had a child, but I've got about
2 a year left to finish that.

3 Q And could you just touch on your employment
4 experience for me.

5 A Sure. As I said, I was currently or previously
6 employed by the Durant Children's Center. I did therapy
7 there and also did forensic interviews. Currently I
8 practice in my own private practice, Therapy Works, Inc.,
9 in Florence. And prior to that, I practiced in North
10 Carolina. I practiced in a mental health center and I also
11 practiced in a private practice.

12 Q And, Ms. Cook, have you been qualified as an expert
13 in family and criminal courts in the State of South
14 Carolina?

15 A I have. I've also been qualified in civil and
16 federal court.

17 Q I'm sorry. And were you recently qualified this
18 year as an expert in this area in any post conviction
19 relief proceedings in Lexington County in front of Judge
20 Lawton?

21 A I was.

22 Q Okay. In your capacity that you've worked in these
23 cases and been qualified as an expert, have you ever dealt
24 with issues of recantation and parental coaching?

25 A I have.

Gaye Allen Cook - Voir Dire Examination by Mr. Spencer

1 Q Do you know approximately how many times you've
2 been qualified as an expert in this field?

3 A For a specific court or --

4 Q Just in the State of South Carolina, how many times
5 have you been qualified as an expert?

6 A Well, I'd probably say 150 at least.

7 Q Okay. And do you have any specific experience in
8 Clarendon County?

9 A I've done work in Clarendon County. I've testified
10 in criminal and family court there.

11 Q And do you have any recollection of being qualified
12 as an expert by Judge Cochran who is here with us today?

13 A I do.

14 MS. BLANCHETTE: Your Honor, I don't have any
15 further questions. That may be time for the State's
16 questions.

17 MR. SPENCER: I do want to do voir dire.

18 **VOIR DIRE EXAMINATION**

19 **BY MR. SPENCER:**

20 Q What's the area of expertise again? What --

21 A I've been qualified in numerous areas.

22 Q Right. And let me start out with I don't think
23 forensic interviewing is a bad word at all. I think it's a
24 good thing. Have you testified as a forensic -- been
25 qualified as a forensic interviewer?

Gaye Allen Cook - Voir Dire Examination by Mr. Spencer

1 A Yes. Yes, sir.

2 Q All right.

3 MR. BLANCHETTE: And just to clarify, going back,
4 that would be a Clinical Child Family Therapist
5 specializing in trauma and abuse as her expertise.

6 THE COURT: You're not offering her --

7 MR. SPENCER: I'm sorry, Your Honor.

8 THE COURT: She's not testifying as a forensic
9 interviewer?

10 MS. BLANCHETTE: No, she is not.

11 THE WITNESS: No, sir.

12 THE COURT: Okay.

13 MR. SPENCER: I beg the Court's indulgence. I'm
14 sorry.

15 (WHEREUPON there was a pause in the proceedings.)

16 BY MR. SPENCER:

17 Q Whenever you're ready, ma'am?

18 A I am. Thank you.

19 Q Okay. As I understand why you're being asked to be
20 qualified -- or what is being asked is that you be
21 qualified in the area of Clinical Child Family Therapist
22 Specialist in trauma and abuse; could you define that?

23 A I guess for me it's pretty self-explanatory. I
24 practice as a therapist. I do child and family work. I
25 currently am qualified in the State of South Carolina as an

Gaye Allen Cook - Voir Dire Examination by Mr. Spencer

1 expert in trauma and abuse. I diagnose that. I treat
2 that. I offer consultation. I've done so many times for
3 the state, for defense, in lots of child sexual abuse
4 cases. As for my day-to-day activities in the office, I
5 treat many, many children, probably 25 to 30 a week in a
6 typical week who have been through trauma and abuse. I use
7 the state approved model, which I'm also a supervisor in
8 and travel the nation teaching that model.

9 Q Okay. And you mentioned part of your experience is
10 interviewing victims of child abuse or forensic
11 interviewing victims?

12 A I've done forensic interviews. I don't want to
13 call what I do interviews. I do treatment.

14 Q You do interviews and treatment?

15 A I don't do interviews primarily anymore. I may do
16 one once or twice a year. I don't, my office is not set up
17 with video cameras and that type of thing, so I don't do
18 forensic interviews on a daily basis, not currently in my
19 practice. I do treatment diagnosis.

20 Q You mentioned you had some forensic interviewing
21 training; where was that training?

22 A That was Finding Words in Columbia and then I did
23 the advanced training through the Dee Norton Low Country
24 Children's Center down in Charleston.

25 Q Okay. Did you ever do any of the training at that

Gaye Allen Cook - Voir Dire Examination by Mr. Spencer

1 center and hospital?

2 A I actually taught there one fall in a conference
3 they were doing, but I've not ever been trained there.

4 Q What did you teach there?

5 A I've been a trauma focused kind of behavioral
6 therapy.

7 Q How about that center in Minnesota?

8 A I never have been out there, no, sir.

9 Q Okay.

10 A I've done things online, read articles and stuff,
11 but --

12 Q How about the RATAC method? Have you been trained
13 in the RATAC method?

14 A Yes, sir, that's the whole protocol you're taught
15 through Finding Words.

16 Q And is that exactly the same thing as Finding
17 Words?

18 A It is.

19 Q All right. Is that interviewing that you do? Is
20 that peer reviewed?

21 A When I did forensic interviews, yes.

22 Q It was?

23 A Yes, it was peer reviewed, yes, sir.

24 Q Okay. In terms of the treatment, because as I
25 understand now, there's two parts here; there's the

Gaye Allen Cook - Voir Dire Examination by Mr. Spencer

1 interview and there's the treating aspect and you're more
2 focused on the treating aspect?

3 A Correct.

4 Q Okay. In terms of the treating aspect, I mean, is
5 there anything there that's peer reviewed?

6 A I have several colleagues in Florence and the Pee
7 Dee area and we review if necessary. I have consultations
8 that I can do with other therapists if necessary. I
9 provide those for other therapists if they need them.

10 Q So if there's something particular you need help
11 with, you might concur with another person that does the
12 same thing you do?

13 A That's correct and I also act as a supervisor for
14 the State of South Carolina. So I have trained many, many
15 therapists who practice the trauma focused cognitive
16 behavioral therapy.

17 MR. SPENCER: Beg the Court's indulgence. I just
18 want to confer with opposing counsel for a bit?

19 THE COURT: Okay.

20 (WHEREUPON there was a pause in the proceedings.)

21 MR. SPENCER: Your Honor, I think I'm done with my
22 voir dire, Your Honor. I have no objection -- I just want
23 to kind of rephrase -- I was seeking -- I think we've
24 agreed to kind of rephrase or simplify the area of
25 expertise is child abuse --

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 MR. BLANCHETTE: It's my understanding that she's
2 going to be recognized as an expert in trauma and abuse and
3 I just put children in there because that's what we're
4 dealing with -- a family therapist in this case.

5 MR. SPENCER: And that sounds roughly equivalent to
6 something the state's been qualifying -- at least in some
7 places, an area called child abuse assessment, which
8 ultimately the Supreme Court is going to listen to me on
9 another hearing to say, yes, that's about her area of
10 expertise. With that understanding, at this point, I don't
11 have any objections to her qualifications.

12 THE COURT: Okay. I so find that she's an expert
13 in the field of child abuse and assessment and we'll run
14 that by the Court of Appeals.

15 MR. SPENCER: Thank you, Your Honor.

16 **CONTINUED DIRECT EXAMINATION**

17 BY MS. BLANCHETTE:

18 Q And you're working on your doctorate, so it's not
19 doctor yet; is that correct?

20 A It's not completed yet.

21 Q Okay. Now, could you just explain briefly what you
22 did in this case; how did you get involved in this case?
23 In Mr. Jackson's case?

24 A I was contacted by you, Ms. Blanchette, to review
25 some documents to see if I was willing to be a part of this

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 case. I reviewed the forensic interview, DVD of the child,
2 and then you had sent me a transcript from the plea and
3 after reviewing those, I agreed to come on board. So I was
4 hired by the family of Mr. Russell Jackson to be considered
5 the expert in this case.

6 I went to Columbia on March 2nd to meet with the
7 victim in this case. I interviewed her, talked with her,
8 heard the details, basically the same thing that she shared
9 here today and then on May the 8th, I went to the
10 Correctional Facility and met Mr. Jackson, talked with him,
11 found out kind of his side of the story, what was going on
12 and now I'm here today to testify.

13 Q And do you typically -- is there a percentage of
14 cases do you usually work with the state or -- the
15 prosecuting agency or do you usually work with the defense
16 in these cases?

17 A Typically my career has been more state oriented,
18 more prosecution oriented. I'd say over maybe about the
19 past year and a half, I've been called upon by some defense
20 attorneys to review documents and take a look at interviews
21 to see if they were done properly, that kind of thing.

22 Q And let me go back to your meeting with Victim
23 What was your assessment based upon that interview?

24 A Well, basically, like I said, she --

25 MR. SPENCER: Your Honor, and I just want to make

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 And if it gets to where you think she's crossed the line,
2 you object and I'll deal with it. But we'll go from there
3 and see what happens.

4 MR. SPENCER: Thank you.

5 BY MS. BLANCHETTE:

6 Q Ms. Cook, let me rephrase the question that I'm
7 asking you. After meeting with ^{the Victim} [REDACTED] what
8 assessment were you able to make and provide to me for
9 preparation of my case or would have been able to provide
10 to the defense attorney?

11 A That she was clear that the statements that she
12 made were not true; that she was angry with her father; and
13 that once she decided that she was strong enough to go and
14 tell the truth, she went and told that she had lied. So I
15 guess if you want to use the word recantation, she recanted
16 the statements that she had made.

17 Q Have you dealt with recantation in your career?

18 A Yes.

19 Q How so?

20 A I have treated children who have recanted. I have
21 done forensic interviews of children that have recanted. I
22 have testified on behalf of those children. It is not
23 atypical for a teenage girl to recant. To be honest with
24 you, in my practice, I often expect it, especially if that
25 child has made allegations following some type of

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 sure, I mean -- the issue we have -- - of course, Your
2 Honor is probably aware of CROMA, Your Honor is familiar
3 with this issue. I -- I'm concerned about any sort of
4 bolstering -- first of all a bolstering situation,
5 bolstering recantation, but nonetheless, I just want to
6 make sure we're not headed down a road vouching for a
7 person she interviewed.

8 MS. BLANCHETTE: And, Your Honor, if you'd like for
9 me to respond, I'm going into what were her findings and
10 then if she would have been retained in this capacity would
11 she have conveyed those to trial counsel to help prepare
12 for this trial.

13 MR. SPENCER: And I guess in this -- I mean I'm
14 anticipating what would be -- the findings would be that
15 the victim or this person has recanted her former
16 statements and that she did convey that. And I think
17 anything beyond that would be getting close to kind of a
18 bolstering situation.

19 THE COURT: Well, the only way I know is just to
20 proceed and then if you think she's bolstering, I'll make
21 that decision. I understand.

22 MR. SPENCER: It's just kind of hard to keep
23 from -- I'm not sure when we're getting to that point.

24 THE COURT: I'm not either, but I'm not a jury
25 either. It's a bigger danger if it's in front of a jury.

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 discipline by a parent figure.

2 Q Okay. And that is information that you could have
3 provided to defense counsel if he would have contacted you
4 to consult with you in your expertise; is that correct?

5 A Yes.

6 Q Okay. Now have you also been contacted by
7 solicitors or the prosecuting agency in this case when they
8 run into victim recantation?

9 A Yes.

10 Q And how is that you became involved in those cases?

11 A It's pretty typical in my area, which is the Pee
12 Dee Area of South Carolina. I have a very positive working
13 relationship with solicitors and it's more often than not
14 that they'll pick up the phone and call me when they're
15 dealing with a child or teenager who is recanting. And
16 what I mean by pick up the phone and call me is, they will
17 call and explain to me what's going on. Oftentimes they'll
18 have me meet with that victim. There have been numerous
19 occasions when I've actually met with the victim and the
20 solicitor to assist the solicitor in processing what the
21 child's saying and kind of knowing if it's a recantation or
22 if the child has been coached, if the child has been
23 promised anything, which often does happen in these cases.
24 Q Okay. And what was your reaction to the fact that
25 once she recanted, that did not happen?

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 A I'll just say I was surprised because that's not
2 the process that -- that I typically am a part of.

3 Q Okay. Now you said you also met with Russell
4 Jackson. What assessment did you make following your
5 interview with him?

6 A Well, in just speaking with him, holding fast that
7 he didn't do this, that this was not true, that he was in
8 prison for something that he -- he didn't do.

9 Q And what information could you have provided to his
10 defense attorney as a result of that meeting, based upon
11 your expertise?

12 A I don't know that there would have been a whole lot
13 I could have provided as far as Mr. Jackson goes. There
14 would have been much information I could have provided
15 about the child victim.

16 Q Okay. And if defence counsel had of contacted you,
17 would you have been willing to assist him in this case?

18 A Yes.

19 Q Okay. So this is a case you would have readily
20 accepted?

21 A Yes, this would have been a case that I probably
22 would have gotten excited about accepting because
23 recantation is something that I've done for quite some
24 time.

25 Q Okay. And when you say excited about accepting,

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 that means you would have signed on with the defense to
2 help prepare his defense?

3 A Yes.

4 Q Okay. Would you have been willing to testify at
5 trial if that was necessary?

6 A Yes.

7 Q Okay. And you would have been willing to testify
8 in the area of expertise which you've qualified today; is
9 that correct?

10 A Yes.

11 Q Okay. And would you have been willing to testify
12 in mitigation at a plea hearing?

13 A Yes.

14 MS. BLANCHETTE: Your Honor, if I could just beg
15 the Court's indulgence for one moment.

16 THE COURT: Okay.

17 (WHEREUPON there was a pause in the proceedings.)

18 BY MS. BLANCHETTE: ^{the Victim}

19 Q In your meeting with [REDACTED], did you go over with
20 her the importance of telling the truth and what the truth
21 means?

22 MR. SPENCER: Your Honor, right there that's
23 Croma's (phonetic). I don't understand why Croma's does
24 it. I would argue against it. And I'm probably going to
25 be arguing it. But Croma's says that's one of the things

Gaye Allen Cook - Continued Direct Examination by Ms. Blanchette

1 you can't do is the truth promise. We do that with
2 codefendants and we did that when she was qualified on the
3 stand, but we can't do that check with children. And I
4 don't understand, but that's what the Supreme Court's given
5 us.

6 THE COURT: And isn't he correct on that point?

7 MS. BLANCHETTE: He -- You know, we all have our
8 circumstances with Croma. I have a lot of issues that I'd
9 like to go into because I think we all know and understand,
10 but Croma's says as of right now -- maybe if I rephrase the
11 question.

12 THE COURT: Okay.

13 MS. BLANCHETTE: I will rephrase if the Court will
14 allow it? For Ms. Cook. She's read Croma's a few times.

15 BY MS. BLANCHETTE:

16 Q When you did your interview with Ms. Green, you
17 used tools that are in your area of expertise to insure
18 that you felt that she was telling the truth; is that
19 correct?

20 A Correct.

21 Q And that information you would have given to
22 defense counsel to assist him in this case?

23 A Yes.

24 Q Okay. So you could have helped him evaluate what
25 she was saying essentially?

Gaye Allen Cook - Cross-Examination by Mr. Spencer

1 A Yes.

2 MS. BLANCHETTE: Your Honor, I have no further
3 questions.

4 THE COURT: Okay.

5 **CROSS-EXAMINATION**

6 BY MR. SPENCER:

7 Q Have you had a chance to read Croma's yourself?

8 A I have.

9 Q Isn't it proper for an independent individual,
10 whether you call it forensic interviewing, child abuse
11 assessment, is it proper for the interviewer when they
12 testify at trial to indicate whether or not they believe
13 the victim?

14 A My opinion would be that would be proper.

15 Q But Croma's says otherwise, right?

16 MS. BLANCHETTE: Your Honor, she's not an attorney.
17 I think this falls outside of her area of expertise. She
18 answered based upon her expertise.

19 MR. SPENCER: I understand.

20 THE COURT: I understand. You could ask her --

21 BY MR. SPENCER:

22 Q There's another part of Croma I wanted to ask
23 about. Are you supposed to be a human lie detector?

24 A Definitely not.

25 Q The methods we talked about before a little bit,

Gaye Allen Cook - Cross-Examination by Mr. Spencer

1 the RATAC method, what does that stand for?

2 A That's the protocol that's used in forensic ^{the Victim}
3 interviewing. That's not the protocol I used with [REDACTED],
4 but it does stand for the R is for rapport building.

5 Q Okay.

6 A The A is anatomical naming, labeling.

7 Q Right?

8 A The T is touch inquiry.

9 Q Okay.

10 A The A is abuse scenario. And the C is closure.

11 Q Why didn't you use RATAC method when you were
12 meeting with Ms. Green; if I may ask?

13 A Because I wasn't called upon to do a forensic
14 interview. It was not videotaped. It was not a forensic
15 interview.

16 THE COURT was there a forensic interview done in
17 this case?

18 MR. SPENCER: Yes, Your Honor.

19 BY MR. SPENCER:

20 Q And you actually had the opportunity to review that
21 forensic interview; is that correct?

22 A I did.

23 MR. SPENCER: And, Your Honor, now is as good a
24 time as any, I want to move the interview into evidence?

25 MS. BLANCHETTE: Your Honor, I would object on

Gaye Allen Cook - Cross-Examination by Mr. Spencer

1 several grounds. Obviously, authentication. I would like
2 her to establish where this copy came from. Secondly, if
3 he has specific questions on it, I'd ask that it be shown
4 so that the witness can answer those questions properly.
5 And probably relevance, but I think I might lose on that
6 ground.

7 THE COURT: Okay. Well, you lose on the ground of
8 y'all have shown it.

9 MS. BLANCHETTE: Exactly.

10 THE COURT: On the other issues, you plan on --

11 MR. SPENCER: I can put it in through someone else
12 probably.

13 THE COURT: Well, I didn't know if you were going
14 to ask her something about it. Whether there was anything
15 that helped her in her opinion.

16 MR. SPENCER: Right. If I may -- well, I guess I
17 can keep on going and see --

18 MS. BLANCHETTE: I have no objections to questions
19 regarding it because she's seen it. I just have an
20 objection to it coming in through this witness.

21 THE COURT: Okay.

22 MR. SPENCER: Now, if she's reviewed it, then I can
23 authenticate it, but --

24 THE COURT: Well, I assume she's used something,
25 I'm sure -- assuming the copy she viewed is the only copy

Gaye Allen Cook - Cross-Examination by Mr. Spencer

1 that exists --

2 MS. BLANCHETTE: Right. I don't know where this
3 copy came from, but I provided her a copy. So...

4 MR. SPENCER: I mean I just got it out of the
5 solicitor's file. I mean that's -- it's a copy made out of
6 the one in the solicitor's file. That's all it is.

7 Your Honor, we can just keep going.

8 THE COURT: All right. Go ahead.

9 BY MR. SPENCER:

10 Q What would be the purpose of using the RATAC
11 method? What's the purpose of using the RATAC method?

12 A The RATAC method is used when you do a true
13 forensic interview. An interview cannot be considered as a
14 true forensic interview unless it's video recorded.

15 Q Okay. And this was not video recorded?

16 A No, sir. No, sir.

17 Q It was not asked to be video recorded?

18 A No, sir, and typically when you do a forensic
19 interview, the person that refers that child -- be it law
20 enforcement, DSS, whomever -- is typically seated in
21 another room where they can hear what the child is saying
22 so they -- when the forensic interviewer leaves the room,
23 they can confer with the people that referred for the
24 interview so they can say you didn't ask this or could you
25 go back and ask this or I need clarification. So I

Gaye Allen Cook - Cross-Examination by Mr. Spencer

1 obviously did not do any of those things.

2 Q But then in reference to, getting back to RATAAC,
3 it's also a methodology of doing an interview, isn't it?

4 A It is.

5 Q And the purpose of that is for one thing to -- to
6 not have the interview be suggested where the interviewer
7 is suggesting to the interviewee what to say?

8 A Exactly. And the whole purpose of RATAAC is to just
9 give the interviewer a format that's used so across the
10 state when people are questioned about it, it can be the
11 same format that's used. And it also is a format that's
12 used to obviously enlist the child to answer questions that
13 are non-leading in hopes of gaining information if there is
14 an abuse scenario.

15 Q And that's important because you can end up with
16 false reports of abuse --

17 A Definitely.

18 Q -- if you don't follow that methodology?

19 A Correct. Correct.

20 Q How old was the victim, [REDACTED] when you
21 interviewed her?

22 A I interviewed her just a couple of months ago, so,
23 I think she testified that she's 19, so she hasn't had a
24 birthday. It was March 2nd of this year that I interviewed
25 her.

1 MR. SPENCER: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 (WHEREUPON there was a pause in the proceedings.)

4 MR. SPENCER: Your Honor, I have no further
5 questions.

6 THE COURT: Okay.

7 MS. BLANCHETTE: I have nothing further, Your
8 Honor.

9 THE COURT: Okay. That's it.

10 THE WITNESS: Thank you.

11 THE COURT: Is it okay she be excused?

12 MS. BLANCHETTE: Not from us.

13 MR. SPENCER: I have no objections, Your Honor.

14 THE COURT: All right. We've got ten and a half
15 minutes with this court reporter. Outside of that, she's
16 gone, so if y'all have got somebody you can get up and down
17 in ten minutes?

18 MS. BLANCHETTE: I do -- we couldn't direct and
19 cross examination. I would say unless --

20 MR. SPENCER: I don't think we can do anything in
21 less than ten minutes, Your Honor.

22 MS. BLANCHETTE: I would hate to keep her over, so
23 I would agree with that.

24 THE COURT: So what time we want to have these
25 people back -- well I may -- obviously, if I get a court

1 reporter here --

2 THE COURT REPORTER: You've got one scheduled.
3 I've just got to let her know what time to be here.

4 THE COURT: Has she got to come from Spartanburg?

5 THE COURT REPORTER: No, she's coming from Aiken.

6 THE COURT: Oh. So y'all want to start back at
7 2:00 or 2:15?

8 MR. SPENCER: Anytime.

9 MS. BLANCHETTE: You give me a time and I will be
10 here.

11 MR. SPENCER: That's fine with me.

12 THE COURT: Since I don't have a jury can y'all be
13 back -- eat lunch and get back here at 2:00.

14 MS. BLANCHETTE: I don't know --

15 THE COURT: We'll try to start back at 2:00 if we
16 have a court reporter.

17 (WHEREUPON Court was in recess for lunch. This is
18 the end of the hearing for the morning. The remainder of
19 this hearing was reported by another reporter.

20

21 * * * * * END OF TRANSCRIPT * * * * *

22

23

24

25

1 State of South Carolina)

2 County of Aiken)

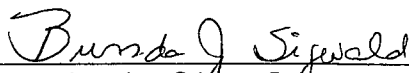
Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 11th day of July 2013.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 16th day of November, 2014.

19
20
21 

22 Brenda J. Sigwald,
23 Court Reporter and Notary Public
24 For the State of South Carolina
25 My commission expires
January 4, 2020.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2012-CP-02-00321

3
4 RUSSELL JACKSON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9
10 Post Conviction Relief Hearing

11 Heard on Thursday, July 11, 2013

12 Aiken, South Carolina

13
14 BEFORE:

15 THE HONORABLE R. FERRELL COTHRAN, JR.

16
17
18 APPEARANCES:

19 Counsel on Behalf of the Applicant:
Tricia A. Blanchette, Esq.

20 Counsel on Behalf of the Respondent, State of SC:
21 David Spencer, Esq.

22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 5232
25 Aiken, SC 29803-5232

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1 ON THURSDAY, JULY 11, 2013 AT 2:16 P.M.:

2 THE COURT: Okay. Ready now?

3 MS. BLANCHETTE: Yes, Your Honor, I'm prepared to
4 resume the Applicant's case --

5 MR. SPENCER: Your Honor, before we do that --

6 MS. BLANCHETTE: -- yes, I am.

7 MR. SPENCER: And, Your Honor, we reached an
8 agreement on the forensic interview. I can as an officer
9 of the Court vouch that there was only one CD, DVD,
10 whatever you would call it, of the forensic interview in
11 the prosecutor's file.

12 Stephanie Powers had pulled the file for me.
13 Stephanie Powers with the solicitor's office pulled the
14 file for me and made a copy for me which was sitting in
15 the file. When I looked at it there's another copy that I
16 had the -- another Stephanie, another legal assistant down
17 there, make for me that I've actually reviewed but they're
18 copies of the same lone DVD in the file.

19 And I just gave my other copy to Ms. Blanchette and
20 I believe Ms. Blanchette is in agreement that we can put
21 this in as an exhibit.

22 THE COURT: Do you agree with that?

23 MS. BLANCHETTE: Your Honor, I do agree with that.
24 The only thing is, if for some reason I pop this in my
25 computer tomorrow morning and it's not the same interview

MARATHESISIA JACKSON - DIRECT

1 that I've reviewed, I just ask that I can preserve the
2 right to raise that issue to the Court.

3 MR. SPENCER: Absolutely. I'm in agreement with
4 that.

5 THE COURT: Okay. And it's in without objection.

6 MR. SPENCER: All right. Thank you.

7 (Respondent's Exhibit No. 1, CD containing forensic
8 interview, received into evidence.)

9 MS. BLANCHETTE: Your Honor, I'm prepared to call
10 my next witness, Marathesisia Jackson.

11 MARATHESISIA JACKSON, having been duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Please have a seat in the witness box
14 and state your full name for the Court.

15 THE WITNESS: Full name is Marathesisia Renee
16 Jackson. M-A-R-A-T-H-E-S-I-S-A.

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. And, Ms. Jackson, is there a name that you commonly
20 go by besides your given first name?

21 A. It is.

22 Q. Okay. What is that?

23 A. TJ.

24 Q. Okay. Do you mind if I call you TJ?

25 A. Not at all.

MARATHESISIA JACKSON - DIRECT

1 Q. Okay. Perfect. TJ, how is it that you know
2 Mr. Jackson, Mr. Russell Jackson?

3 A. He's my brother.

4 Q. Okay. And is he your older or younger brother?

5 A. Younger, by nine months.

6 Q. Now you've heard all the testimony today, and you
7 understand that we're here about an incident that
8 allegedly took place between his daughter, ^{the victim} [REDACTED], and
9 himself on April 5th, 2010?

10 A. Yes.

11 Q. How is it that you found out about that incident?

12 A. The day of the incident I had just arrived home
13 from work. I had not even gotten out of my car yet. My
14 kids were out in the yard with their father playing and I
15 received a phone call from Christy. And she told me that
16 she was at the hospital, and I asked her why. And she
17 said that ^{the victim} [REDACTED] had said that her father had assaulted her
18 sexually.

19 I did not get out of my car. I told my family I
20 had to go. And I left home and went immediately to the
21 hospital.

22 Q. Okay. And after that time, just explain to me, did
23 you have any interaction with the victim, [REDACTED]?

24 A. Yes.

25 Q. And what -- did you talk with her? What happened?

MARATHESISA JACKSON - DIRECT

1 A. I never talked to her about the actual incident. I
2 had a lot of interaction with ^{the Victim} [REDACTED] because she played
3 high school ball with my daughter. So we would do a lot
4 of riding back and forth, you know, to the games, from the
5 games, whatnot.

6 The only -- I asked her twice about the incident.
7 The first time was after we left a meeting with Andy. And
8 I left Andy's office and went to her home. And I called
9 her outside and we sat in the car.

10 And I said, you know, "I never asked you did he do
11 it, never questioned you about it," I said, "but I need to
12 hear from your own mouth because, you know, I have small
13 children. And I need to know what I need to do to protect
14 my kids." I said, "I don't believe he did it, but I need
15 you to tell me if he did it or not. I don't want you to
16 tell me what you think I want to hear. I need you to tell
17 me the truth."

18 Q. And at that time did she confirm it happened or did
19 she deny it happened?

20 A. She said, "Auntie, I swear he did not do it."

21 Q. And what was the second time that you addressed the
22 incident with her?

23 A. The second time was actually at a meeting at Andy's
24 office. It was Andy, her guardian ad litem, her, and
25 myself. They had just left, I think, Ms. Brisby's

MARATHESISIA JACKSON - DIRECT

1 (verbatim) office, went from Ms. Brisby's to Andy's. And
2 it was the four of us there and then she stopped talking.
3 And I said, "Are you okay?" And she said, "No." And I
4 said, "Do you want to talk to me alone." So Andy and the
5 guardian ad litem excused themselves. It was just she and
6 I in the office.

7 Q. Okay. And, again, you had the opportunity to
8 confront her as to whether or not this happened; is that
9 correct?

10 A. That would have been the second time, yes.

11 Q. Okay. You said the name Andy a couple of times.
12 You're referring to Mr. Anderson; is that correct?

13 A. Yes.

14 Q. Okay. And you're familiar with your brother's
15 attorney. Did you meet with him on a regular basis or how
16 is it that you're so familiar with him at his office?

17 A. You know, we met on several occasions. I mean,
18 every time that my brother was there, I was there. There
19 was one or two incidents where there were other family
20 members present where my brother was not but I was there.
21 And during the preliminary hearing I was there, but my
22 brother was not.

23 Q. Okay. And explain to me -- you said you attended
24 the preliminary hearing. Why were you at the preliminary
25 hearing?

MARATHESISA JACKSON - DIRECT

1 A. I was there in support of my brother. I assumed
2 that he would be there. He had told me that he would be
3 there. But after I arrived at the facility and I called
4 him, he said that he was going to try to make it but that,
5 you know, he was told by his attorney that it was just a
6 preliminary --

7 MR. SPENCER: Your Honor, I object to the hearsay.
8 Move to strike that.

9 THE COURT: Okay. I'll sustain that.

10 BY MS. BLANCHETTE:

11 Q. Ms. Jackson, you sat in and listened to the
12 preliminary hearing; is that correct?

13 A. Uh-huh.

14 Q. And you heard testimony about how your niece had
15 recanted; is that correct?

16 A. Yes.

17 Q. And after the preliminary hearing did you convey to
18 your brother that there was some issues in the case he
19 needed to discuss with his attorney?

20 A. Absolutely, yes, yes.

21 Q. Okay.

22 A. Yes.

23 Q. And you were aware of those issues because you had
24 sat in the preliminary hearing yourself?

25 A. Uh-huh, uh-huh.

MARATHESISA JACKSON - DIRECT

1 Q. How many times do you think you met with
2 Mr. Anderson?

3 A. Approximately 10 times, something.

4 Q. So you were regularly meeting with him; is that
5 correct?

6 A. Uh-huh.

7 Q. And you had interaction with him at times that your
8 brother wasn't present?

9 A. Correct.

10 Q. Okay. You've alluded to a family meeting. Could
11 you explain what that was?

12 A. The family meeting was just to, you know, let Andy,
13 you know, see the support from his family because
14 throughout, you know, the duration of what was going on in
15 the investigation, it was mostly my brother, Christy, my
16 mom, and myself with the exception of the two relatives of
17 Christy's that were there once or twice.

18 But I had asked my family to come. It was the
19 last, the final meeting before the trial. And I had asked
20 my family to be there to show support, you know, for my
21 brother and let Andy know that he comes from a strong
22 family background. And, you know, for some of the family
23 members to sort of speak of the character for my brother
24 because even though he had, you know, a record, nobody in
25 the family believed that he could do something like this.

MARATHESISA JACKSON - DIRECT

1 Q. And during that meeting did you also provide the
2 witnesses and some of those witnesses that have testified
3 here today to speak to Mr. Anderson?

4 A. During that meeting?

5 Q. Yes. Or was that another meeting?

6 A. That was another meeting, yeah.

7 Q. Okay. So you brought witnesses too at another time
8 to Mr. Anderson's?

9 A. They came with Christy.

10 Q. Okay.

11 A. The ones that were at the family meeting is nobody
12 that was a witness per se in this incident.

13 Q. And do you remember about, approximately how much
14 before the plea that took place or when that took place?

15 A. About a week.

16 Q. Okay.

17 A. Or the weekend of.

18 Q. Okay. And you have indicated that you met with
19 Mr. Anderson a number of times. I'm not asking you what
20 Mr. Anderson said to you, but based upon those meetings in
21 your discussion about your brother's case, what was your
22 understanding as to whether or not he thought your brother
23 was guilty of this crime?

24 MR. SPENCER: Your Honor, I object. I think, I
25 mean, this is -- that's hearsay. Trying to backdoor

MARATHESISA JACKSON - DIRECT

1 hearsay.

2 MS. BLANCHETTE: I'm not trying to backdoor
3 hearsay. I think she has personal knowledge based upon
4 her at least 10 meetings with him what his position was
5 about the case.

6 MR. SPENCER: You know, it's Mr. Anderson's
7 communicating his position with --

8 THE COURT: She --

9 MR. SPENCER: A non-client.

10 THE COURT: I'm sorry.

11 MR. SPENCER: I'm sorry.

12 THE COURT: Asking her what his, Mr. Anderson's
13 position was about the case is one thing. Asking her what
14 he believed about his guilt or innocence is totally
15 something else.

16 You know, his -- I think if she's had a
17 conversation even technically it's hearsay and I assume
18 he's going to testify, she can ask about his strategies or
19 what his position was in the case or whether he believed
20 his guilt or innocence.

21 MS. BLANCHETTE: Then I'll rephrase my question to
22 how the Court phrased it.

23 Q. Ms. Jackson, did you understand what his position
24 was on the case as far as his strategy with your brother's
25 case?

MARATHESISA JACKSON - DIRECT

1 A. I didn't think he was prepared for the case.

2 Q. Okay. And, why?

3 A. He said that my brother acted like he was guilty.

4 MR. SPENCER: Your Honor, I object.

5 THE COURT: All right. I sustain that.

6 BY MS. BLANCHETTE:

7 Q. What caused you, what specific things that he did,
8 not what he said, but what specific things that he did
9 during your interaction with him caused you to be
10 concerned about his level of preparation in this case?

11 A. Well, none of the documentation that, you know,
12 Christy provided to him was really looked over. He didn't
13 call those people in and discuss with them, you know, the
14 records that they, they -- that he had in his possession.

15
16 He -- my brother continued to ask him to come down
17 to the home to look at the house.

18 MR. SPENCER: Your Honor, I object to that hearsay,
19 what the brother said.

20 THE WITNESS: My God.

21 MR. SPENCER: Your Honor, I just don't see the
22 relevance because I don't think Ms. Jackson is a lawyer. I
23 mean, the issue is going to be what the client thought
24 should have been done and what Mr. Anderson did.

25 THE COURT: And that's true to me. If she has some

MARATHESISA JACKSON - DIRECT

1 information based on her knowledge of what she's observed
2 and what her interaction is is one thing but, you know --

3 MS. BLANCHETTE: And, Your Honor, that's what I'm
4 trying to ask. Based upon those 10 meetings that they had
5 and attending the preliminary hearing what concerns did
6 she have.

7 THE COURT: Well ask about what concerns she had
8 and not concerns he had.

9 THE WITNESS: My concern was I heard, I heard him
10 say that my brother -- he told me specifically --

11 MR. SPENCER: Your Honor --

12 THE WITNESS: -- that my --

13 MR. SPENCER: -- I object to what the brother said.

14 THE WITNESS: No, the attorney told me. Not my
15 brother.

16 MR. SPENCER: Same objection.

17 THE COURT: I don't know. That's still hearsay.

18 THE WITNESS: Okay.

19 MS. BLANCHETTE: I'll move on, Your Honor. I'll
20 come back to this in another way. How about that?

21 Q. Were you part of the family that was trying to seek
22 another attorney the weekend before this case was going to
23 be called? Were you involved in that at all?

24 A. Not specifically. I know that they were trying to
25 do that.

MARATHESISA JACKSON - DIRECT

1 Q. Okay. But you didn't call any other attorneys
2 yourself?

3 A. I did not, no.

4 Q. Okay. Did you know -- when did you get notice that
5 your brother was going to be entering a guilty plea?

6 A. The day before.

7 Q. Okay. So that would be the Sunday before?

8 A. The Sunday before.

9 Q. Okay. Based upon everything you had seen, heard
10 and known about this case with your interactions with your
11 brother and with Mr. Anderson, what was your advice to
12 your brother?

13 MR. SPENCER: Your Honor, I object. Relevance. I
14 mean --

15 MS. BLANCHETTE: Your Honor, one major issue is the
16 voluntariness of this guilty plea. And this is a family
17 member he spoke to before entering the guilty plea.

18 THE COURT: All right. I'll allow it. I'd like to
19 know what advice.

20 THE WITNESS: Can you repeat the question, please?

21 BY MS. BLANCHETTE:

22 Q. Essentially my question was: What advice did you
23 give to your brother about entering the guilty plea?

24 A. I told my brother to do what he thought was best
25 for him because he didn't think that he was being

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1 represented fairly.

2 Q. Did you share those concerns with your brother?

3 Did you also have those concerns yourself?

4 A. I had those concerns but it wasn't my choice to
5 tell him that. It was solely up to him and I think that
6 he made the wrong choice.

7 Q. Were you worried that if your brother proceeded to
8 trial he'd be proceeding to trial with an attorney that
9 was not prepared?

10 A. Absolutely.

11 Q. Now, Ms. Jackson, this issue kind of hits close to
12 home for you; is that correct?

13 A. Uh-huh.

14 Q. And why is that?

15 A. Because I'm a victim as well.

16 Q. Okay. And in this instance did you do everything
17 you could to support your niece as a result of that?

18 A. Everything I could. Turning my back on my niece
19 would be like turning my back on my brother because I know
20 he loves his children. And I didn't want her to feel like
21 she didn't have anybody that she could turn to.

22 So, I mean, as far as emotional support, if she
23 needed somebody to talk to, she knew I was there. She
24 could have picked up the phone and called me at any time
25 whether she chose to or not.

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1 Q. And in a typical PCR case I wouldn't be asking a
2 family member about a lot of interaction with the
3 attorney, but you had a lot of interaction with the
4 attorney in this case; is that correct?

5 A. Uh-huh.

6 Q. Would you say that you had even more interaction
7 with Mr. Anderson than your brother did?

8 A. Uh-huh.

9 Q. And if you could just say yes or no.

10 A. Yes.

11 Q. Okay. Do you have any idea why that is? Did you
12 regularly call him or what caused that to happen where you
13 were the one having the regular interaction with him?

14 A. He would call me.

15 Q. Okay.

16 A. I would be the go-to person to get the family
17 together or make sure everybody was on schedule to meet at
18 his office. If there was one -- you know, particular
19 people that he wanted there that could not be there I was
20 still there.

21 Q. Okay. And were you ready, willing and able to do
22 anything Mr. Anderson asked to assist in your brother's
23 defense?

24 A. Absolutely.

25 MS. BLANCHETTE: Your Honor, beg the Court's

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1 indulgence one moment.

2 I have no further questions of this witness.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MR. SPENCER:

6 Q. Mrs. Jackson, do you have a law degree?

7 A. No.

8 Q. Have you ever tried a case before?

9 A. No.

10 Q. Have you ever prepared to try a case before --

11 A. This is --

12 Q. -- as an attorney?

13 A. No.

14 Q. If I may ask, what do you do for a living?

15 A. I work as a sales associate and an account
16 representative at an industrial facility for recreational
17 vehicles.

18 Q. Okay. Have you ever worked in a legal office?

19 A. No.

20 Q. Do you have any experience personally with the
21 criminal justice system?

22 A. No, no, unless you call it, like, watching it on
23 TV.

24 MR. SPENCER: I have no further questions. Thank
25 you.

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1 THE COURT: Okay.

2 MS. BLANCHETTE: I have nothing in response to
3 that, Your Honor.

4 THE COURT: Okay. Thank you. You can step down.

5 MS. BLANCHETTE: Your Honor, I'll call Russell
6 Jackson to the stand.

7 RUSSELL BERNARD JACKSON, having been duly sworn,
8 was examined and testified as follows:

9 THE CLERK: Have a seat in the witness box. State
10 your full name for the Court.

11 THE APPLICANT: Russell Bernard Jackson.

12 DIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q. Mr. Jackson, where are you currently incarcerated?

15 A. Allendale Correctional Facilities.

16 Q. Okay. And what is the term of years that you're
17 currently serving?

18 A. Eleven years, six months.

19 Q. Okay. And we are here today on the PCR application
20 that's been docketed at 2012-CP-02-0321. And you are the
21 Applicant that filed that application; is that correct?

22 A. Yes, ma'am.

23 Q. And, Mr. Jackson, very importantly, you understand
24 you're not serving the maximum sentence for the charge in
25 which you plead guilty; is that correct?

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1 A. Yes, ma'am.

2 Q. We have had many lengthy meetings where I've
3 explained to you the risk of doing the PCR?

4 A. Yes, ma'am.

5 Q. And knowing that you still want to go forward
6 today?

7 A. Yes, ma'am.

8 Q. Okay. And as a result, what are you asking this
9 Court to give you in the form of relief?

10 A. I ask that the sentence be vacated or the Court do
11 what they see fit.

12 Q. Now, Mr. Jackson, I know you have a strong voice.
13 So if you could just speak up a little bit like I am and
14 project your voice to the best of your ability so that we
15 can all hear you. Okay?

16 A. Yes, ma'am.

17 Q. Let's go back to the very beginning. This incident
18 allegedly occurred on April 5th, 2010. Did you talk to
19 the police -- well, actually let me just -- I'm sorry.

20 When the incident allegedly occurred on April 5th,
21 2010, take me through your day. What do you remember from
22 that day?

23 A. The whole day?

24 Q. Yes. Please.

25 A. Okay. I got up at four o'clock a.m., which I

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1 usually do every morning because I have to get Christy up
2 for work. She left the house, like, 4:30, 4:40. I laid
3 down to watch television for a while. I dozed back off. I
4 got up that morning, watched television for a little
5 while. Went in the restroom, masturbated, and then I went
6 and took a shower.

7 By that time my kids' grandmother had called and
8 asked was the kids home. And so I -- Denzel had just came
9 in the room with me and I told him, I said, "Your
10 grandmama phone. She wants to know if you want something
11 to eat." So he went in and asked ^{the victim} [REDACTED] if she wanted
12 something to eat. And she said yeah. So grandmother sent
13 Ted to the house to bring the food.

14 So, when he brought the food, they was -- Denzel
15 was -- Denzel and Rakeem was leaving the house with Ted.
16 Kela told Ted that she was going to call her -- call him
17 after she got out the tub. So, they left.

18 When she came out of the bathroom, I hollered
19 around. I said, "Denzel (verbatim), you got the phone
20 around there. She like, "Yes, sir." I say, "You going to
21 call Tony and tell Tony to come on and pick me up and we
22 can go." And that's what she did. She called Tony and he
23 came.

24 And when he came I went to the store to get, to buy
25 another phone. I went to the Dollar General. I purchased

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1 another phone.

the Victim

2 By that time [REDACTED] called my phone and told me to
3 bring her some Skittles and something to drink. So I
4 walked over to the Exxon and got the drink and the
5 Skittles. Took that back to the house.

6 We went to New Ellenton looking for my father.
7 Then we got back, my dad was at the house waiting on us.

8 Q. Let me stop you there because I have a couple of
9 questions for you.

10 When your daughter came out of the shower you asked
11 her to call whom?

12 A. Tony. Michael Patterson.

13 Q. Okay. Michael Patterson. And did you specifically
14 request that she ask him to bring something?

15 A. Yes. I told her, "Tell him to bring some beer."

16 Q. Okay.

17 A. Because I didn't have a car at the time, so.

18 Q. Okay. So we're at the point where you came back to
19 the house; is that correct?

20 A. Yes. After we -- after -- well, he came with the
21 beer. We went to the store. Then we came back to the
22 house.

23 Q. Okay. And for the remainder of the day, who were
24 you with?

25 A. Michael Patterson.

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1 Q. Okay. Did you guys do some drinking that day?

2 A. Yes.

3 Q. A lot of drinking?

4 A. Yes, ma'am.

5 Q. Okay. And you're hanging out with him drinking,
6 and what happens?

7 A. We just rode around for a little while. Me, him
8 and my father. So we went to Aiken, after I asked **the victim**
9 to program the phone for me. She couldn't program it.
10 She had signed up for an account for 100-some dollars
11 which was -- I didn't want to pay that because I already
12 had a cell phone that I was already paying too much for.
13 So that account was too much so me and Mike and my father
14 went to Aiken to get the phone reprogrammed.

15 Q. Okay.

16 A. So when we came back we stopped by the Advance Auto
17 Parts. I'm, like, I might as well work on my truck
18 today. So we went to Advance, and we was going back to my
19 uncle house. We never went back to my house.

20 Q. That's when you proceeded to hang out and drink for
21 the rest of the evening; is that correct?

22 A. Yes.

23 Q. And at some time was it brought to your attention
24 that you needed to go to the police department?

25 A. That was later that night. Actually, I had -- I

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1 stopped by my grandmama's house and she asked me, she
2 said, "Where your kids at?" I said, "Well, the boys with
3 their grandmother and ^{the Victim} [REDACTED] she be home." She said, "No,
4 ^{the Victim's} [REDACTED] not home." I said, "Well, she been to the house
5 all day," I said, "She better be to the house because
6 she's on punishment."

7 She said, "Well, ^{the Victim's} [REDACTED] at the hospital. ^{The Victim} [REDACTED] said
8 that you raped her." I said, "Oh, grandmama," I said,
9 "They be playing too much."

10 So we went on back to work on the truck. So by
11 that time the police called my phone and they said they
12 wanted to talk to me. I was, like, "For what?" They said
13 that she had told them that this all had happened.

14 Q. Okay. And so did you voluntarily go up to the
15 police department at that time?

16 A. Yes, ma'am. The first time I went they wasn't
17 there so I left a note on the door. I left. They call me
18 back. I said, "Well, I just left from up there." They
19 said, "We got your note." I said, "Okay, I'm on my way
20 back around."

21 So I went back around to the police department and
22 I gave a statement.

23 Q. Did they also take a DNA swab from you at that
24 point?

25 A. Yes, ma'am.

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1 Q. Okay. Did they do any type of waiver of rights or
2 explain to you that that swab needed to be taken
3 voluntarily?

4 A. No, ma'am.

5 Q. Okay. Did they tell you that you had a right to an
6 attorney before you gave them a statement?

7 A. No, ma'am.

8 Q. Okay. And they actually admitted at your
9 preliminary hearing that they did not do any type of
10 waiver with you; is that correct?

11 A. Yes, ma'am.

12 Q. Okay. Now, you're at the police station. Why did
13 you voluntarily go up there, Mr. Jackson?

14 A. Because I didn't do -- I didn't do what they was
15 saying I did. I didn't do anything wrong.

16 Q. Okay. Now, that's April 5th, 2010, correct?

17 A. Yes, ma'am.

18 Q. Now were you -- when were you formally charged?
19 When did this become a bigger issue?

20 A. Like, I think, like, like, June, if I'm not
21 mistaken.

22 Q. Okay. So sometime later you were charged; is that
23 correct?

24 A. Yes.

25 Q. It wasn't that same day?

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1 A. No, it was, like, a month later.

2 Q. Okay. At that point did you realize you needed to
3 retain the services of an attorney?

4 A. Yes, ma'am.

5 Q. And who did you retain?

6 A. Andy Anderson.

7 Q. Okay. So in June of 2010 you were arrested. What
8 happened, did you get bond or did you stay in jail?

9 A. I turned myself in and I made bond right the same
10 day.

11 Q. Okay. Did Mr. Anderson assist you with the bond or
12 did you do that yourself?

13 A. He assisted.

14 Q. So after the bond hearing approximately how many
15 times do you think you met with Mr. Anderson?

16 A. Probably six or seven.

17 Q. Okay. Did you tell Mr. Anderson everything you
18 just told us here today?

19 A. Yes, ma'am.

20 Q. Okay. Did you even get into more detail with
21 Mr. Anderson than you did today?

22 A. Yes, ma'am. I told him everything.

23 Q. Okay. Did you tell him all the people that you
24 were with, the people that he needed to talk to, those
25 type of things?

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1 A. Yes, ma'am.

2 Q. Okay. Now, let's look at your preliminary
3 hearing. It's my understanding you have a copy of it up
4 there; is that correct?

5 A. Yes, ma'am.

6 Q. So if you could look at the transcript of your
7 preliminary hearing. You've heard testimony from your
8 sister that she was present but you were not. Why were
9 you not there, Mr. Jackson?

10 A. First of all, Andy told me that I didn't have to be
11 present for the prelim but I was going to make it anyway.
12 So I tried to get a ride. My ride didn't show up.

13 By that time my sister called me. And she, like,
14 "Well, they already did your prelim." I'm, like, "Well,
15 Andy told me I didn't have to be there anyway."

16 And that was it.

17 Q. Okay. Did you have the opportunity to review the
18 transcript though before you pled? You had an opportunity
19 to read through this transcript and point things out to
20 Mr. Anderson?

21 A. Yes, ma'am. The weekend before that's when I read
22 the transcript. I got my rule five from Andy on that
23 Friday.

24 Q. And when you say the weekend before, that would be
25 the weekend before your plea?

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1 A. Yes, ma'am.

2 Q. Okay. Now one issue that I'd like to talk to you
3 about is the timing. Let's look at page five here of the
4 preliminary hearing transcript. The top of the page they
5 indicate that they had a video of you in the Dollar
6 General somewhere between 11:15 and 11:30?

7 A. Yes, ma'am.

8 Q. And that's a video that Mr. Anderson had; is that
9 correct?

10 A. New Ellenton Police Department had it. Went and
11 looked at the video; yes, ma'am.

12 Q. Okay. Now, there are a number of other pieces of
13 documentation from your case which address the time
14 frame. And let me -- just one second here (showing
15 document to defense counsel).

16 MS. BLANCHETTE: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, ma'am.

19 BY MS. BLANCHETTE:

20 Q. Can you identify what that appears to be for the
21 record?

22 A. Let's see. The incident report.

23 Q. Okay. And this is the incident report from your
24 case; is that correct?

25 A. Yes, ma'am.

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1 Q. Okay. And how many pages is that?

2 A. Two.

3 MS. BLANCHETTE: Your Honor, at this time I would
4 move this as Applicant's Number Three.

5 MR. SPENCER: No objection, Your Honor.

6 THE COURT: Okay. It's in without objection.

7 (Applicant's Exhibit No. 3, incident report,
8 received into evidence.)

9 MS. BLANCHETTE: Your Honor, would you like a copy?

10 THE COURT: I'll look at that.

11 BY MS. BLANCHETTE:

12 Q. Mr. Jackson, if you could turn to what's actually
13 marked as page one but it's the second page and look at
14 the second paragraph. What time does it allege or that it
15 says that your daughter said this happened? It's the
16 second paragraph, first sentence.

17 A. At, between 11:30 and 12:30 p.m.

18 Q. Okay.

19 A. From a.m. to p.m.

20 Q. And then I'll hand you this. And can you identify
21 this for the record, please?

22 A. Yes, ma'am. This is a sexual assault examination
23 protocol.

24 Q. And who does it say the name is on this?

25 A. The Victim.
[REDACTED]

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1 Q. Okay. And this is a six-page document; is that
2 correct?

3 A. Yes, ma'am.

4 MS. BLANCHETTE: Your Honor, at this time I move
5 this in as Applicant's Number Four.

6 MR. SPENCER: No objection, Your Honor.

7 THE COURT: Okay. In without objection.

8 (Applicant's Exhibit No. 4, sexual assault
9 examination protocol, received into evidence.)

10 BY MS. BLANCHETTE:

11 Q. And if you could turn to the second page of this
12 document. Right in the middle it says assault history.
13 And what does it say as far as the time of the assault?

14 A. 11:30 to 12 P.M.

15 Q. Okay. So the weekend before your plea you have the
16 preliminary hearing transcript that acknowledges the fact
17 that there's a video showing you at the Dollar Store
18 (verbatim) between 11:15 and 11:30. You also receive a
19 copy of your file from your attorney and it contained
20 these two documents in it?

21 A. Yes, ma'am.

22 Q. Okay: And did you see an issue with the timing in
23 this case?

24 A. Yes, ma'am. I had -- actually I had a friend to go
25 over the whole thing for me that Friday and point

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1 everything that was wrong in my case because Andy didn't
2 really explain it to me.

3 And so that Sunday, that's when I called Andy and
4 me and Ms. Green went to Andy's office to point all of
5 this out to him.

6 Q. And that is the weekend before --

7 A. Yes, ma'am.

8 Q. -- you entered your plea; is that correct?

9 A. Yes, ma'am.

10 Q. So these aren't things that you and Mr. Anderson
11 discussed well ahead of your plea?

12 A. No, ma'am.

13 Q. And he had your case for over, or just
14 approximately a year before you pled; is that correct?

15 A. Yes, ma'am.

16 Q. Okay. If you could look back at that preliminary
17 hearing transcript. If you could look on page seven,
18 please. And on page seven, I'll give you a line number.
19 If you could look at line 39.

20 A. Uh-huh.

21 Q. How long does the officer say that your daughter
22 said this incident took place?

23 A. She just said it was, like, 15 to 20 minutes.

24 Q. Okay. That she gave a window of, like, 15 to 20
25 minutes; is that correct?

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1 A. Yes, ma'am.

2 Q. Okay. When you pointed out these issues to your
3 attorney, what did he indicate to you as far as your
4 defense was going to be?

5 A. The only thing Mr. Anderson said was, "They have
6 your DNA." He didn't say anything about anything else.
7 He was just talking about pleading guilty.

8 Q. Okay. Now if you could also look back at that exam
9 protocol that I gave you. And if you could turn to page
10 five of six. There it indicates normal exam.

11 Is that something that you and Mr. Anderson talked
12 about prior to your plea? The very bottom of the page the
13 words say normal exam.

14 A. And what was the question?

15 Q. Did Mr. Anderson discuss with you the fact that
16 your daughter had been found to have a normal exam --

17 A. Oh, no, ma'am.

18 Q. -- at the hospital?

19 A. We didn't discuss it.

20 Q. Okay. If you could turn to page 13 of your
21 preliminary hearing transcript. Beginning about line 27,
22 your attorney's asking about evidence they used. And he
23 asked if they got cell phone records or anybody's records
24 and they indicate they did not.

25 Did your attorney look into getting any cell phone

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1 records or any type of phone records?

2 A. We told Andy about the phone records because my
3 daughter had called me during the time this incident
4 allegedly happened. And me and Ms. Christy Green went and
5 got all the phone records from the phone company.

6 Q. Okay. And then on page 13 there they also admit
7 that they didn't take any evidence from your home. Was
8 that an issue you brought up to Mr. Anderson?

9 A. Yes, ma'am, because if the incident happened at the
10 home, I feel like somebody should have come and
11 investigate. No one investigated anything.

12 Q. Okay. And then if you could flip back to -- and
13 you don't have to -- I think the Court has the record.
14 They discussed the forensic interview in there on page
15 six, and that was -- at the time of the preliminary
16 hearing the forensic interview had already been
17 completed.

18 When, if at all, did you sit down and go over that
19 forensic interview with Mr. Anderson?

20 A. Forensic interview. The forensic interview, we
21 didn't never go over it because, first, the, the New
22 Ellenton -- when he went, supposed to go over all the
23 panty cuttings or whatever, they couldn't be found. So
24 then he was --

25 Q. Let me stop you there, and I may have confused you

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1 with my question. The forensic interview is the DVD that
2 the State just introduced of your daughter.

3 A. Oh. I didn't see it.

4 Q. Okay. So you didn't review that with
5 Mr. Anderson?

6 A. No, ma'am.

7 Q. Okay. Did -- at the preliminary hearing and,
8 again, I'll just put the page number on the record. On
9 page seven Captain Cook admits that they hadn't
10 interviewed any of the individuals that were in the home
11 that day, the individuals you were supposedly with. Is
12 that something you asked your attorney to do?

13 A. Yes, ma'am.

14 Q. Okay. And did most of those individuals in fact
15 talk to him?

16 A. Yes, ma'am.

17 Q. And after those individuals talked with him, were
18 you concerned about the level of preparation that
19 Mr. Anderson was utilizing in your case?

20 A. Yes.

21 Q. Did you feel that he was properly preparing your
22 case?

23 A. When they talked to Mr. Anderson, each, Michael and
24 William both came to me and was, like, "If that's your
25 attorney you're going to jail". So evidently they didn't

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1 like what he was saying.

2 Q. Were there any other witnesses or any other
3 evidence, and let's not get into the DNA yet but any other
4 witnesses or evidence that you asked him to look into that
5 he failed to do on your behalf?

6 A. I asked him to look into the whole incident because
7 to me it didn't seem like he was really doing nothing.

8 Q. Now, were you aware of the fact that your daughter
9 had recanted to Mr. Anderson and several other people?

10 A. Yes, ma'am.

11 Q. Okay. Did you discuss that with him?

12 A. Yes, ma'am.

13 Q. Okay. And as part of your PCR, we utilized an
14 expert here today, Gaye Allen Cook, and she talked to you
15 and your daughter; is that correct?

16 A. Yes, ma'am.

17 Q. Did Mr. Anderson ever propose to you obtaining an
18 expert to assist in the manner that she did?

19 A. No, ma'am.

20 Q. Did he ever ask you if you didn't mind being
21 evaluated or speaking with someone?

22 A. No, ma'am.

23 Q. Did he ever talk about having your daughter
24 evaluated or having her speak with someone?

25 A. No, ma'am.

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1 Q. Did he ever talk with you about recantation and the
2 possible defenses that that could open up if you went to
3 trial?

4 A. No, ma'am.

5 Q. Now, did you talk about looking into what your
6 daughter's motive might be in this case? Is that
7 something you brought up to Mr. Anderson?

8 A. Yes, ma'am.

9 Q. What did you tell him?

10 A. I told him my daughter had wrote Christy, wrote her
11 mother a letter about she wanted a boyfriend and I wasn't
12 having that. So I showed Andy the letter, but he never
13 did mention, say anything about it.

14 Q. Okay. And had you punished -- I think you said
15 earlier you punished your daughter. Explain what that
16 meant. What was going on with that?

17 A. She wasn't doing right in school so everything get
18 taken away. No TV. No going out or all that.

19 Q. Mr. Jackson, did you approve of her boyfriend at
20 that time?

21 A. No, ma'am.

22 Q. This may seem ridiculous to you, so let me couch it
23 in those terms. But what was your reason for not --
24 strike all of that.

25 What was your motivation or reason for not liking

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1 her boyfriend? Did it have anything to do with the fact
2 that you had a sexual relationship with your daughter?

3 A. No, ma'am. No, I didn't -- she didn't -- she
4 didn't -- the guy that she was wanting to see, she -- I
5 didn't like her seeing him because I was hearing all kind
6 of things about the boy, that he be totting guns, smoking
7 drugs, and all that there. And she didn't need that. She
8 was still young and needed to finish school.

9 MR. SPENCER: Your Honor ... (conferring with
10 Ms. Blanchette).

11 MS. BLANCHETTE: I'm free to resume where I was?

12 THE COURT: Yes, ma'am.

13 MS. BLANCHETTE: Thank you, Your Honor.

14 Q. Mr. Jackson, I believe I was asking you that you
15 had explained to Mr. Anderson that your daughter would
16 have a motive, or a reason to make up these allegations?

17 A. Yes, ma'am.

18 Q. Okay. And, Mr. Jackson, are these allegations made
19 up?

20 A. Yes, ma'am.

21 Q. Okay.

22 A. They made up because she, she, like, she wrote the
23 letter that I gave Andy. Show where she wanted me out of
24 the house because she wanted a boyfriend. I didn't feel
25 like she was old enough to have a boyfriend at the time.

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1 And the boy that she liked that I had already caught him
2 sneaking to my house. So definitely he didn't need to be
3 with her anyway. And then I heard rumors about him doing
4 other things on the street that I didn't like.

5 Q. Okay. So based upon all of that and her grades,
6 that she was on punishment at that time; is that correct?

7 A. Yes.

8 Q. Okay. Now you touched on the DNA evidence. Let's
9 talk a little bit about that. If you could turn to page
10 four of the preliminary hearing. They explain there that
11 they asked you for a DNA sample and he indicates that you
12 voluntarily gave it to them. I'm looking at line 19.

13 A. Uh-huh.

14 Q. And then he goes on to explain that they had sent
15 your sample along with your daughter's to SLED and they
16 had received a report.

17 Is that your understanding of what happened?

18 A. Yes, ma'am.

19 Q. Okay. And then if you could turn to page 12 of the
20 preliminary hearing transcript. If you could look and
21 I'll just have you kind of review that page starting at
22 line seven through the end of the page. And then I'm
23 going to ask you some questions about it.

24 A. (Complying.)

25 Q. And there, the officer indicates that no semen was

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1 found was his understanding, correct?

2 A. Yes, ma'am.

3 Q. And he also admits that the underwear that they
4 tested, your daughter had been wearing those all day and
5 they just took those from her; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. And then I'm going to have you flip back one
8 more point in the preliminary hearing transcript. If you
9 could look at page, the bottom of page eight. They
10 indicate that they asked if you would voluntarily give a
11 DNA sample and they said that you did that; is that
12 correct?

13 A. Yes, ma'am.

14 Q. And they're specifically asked: Did you all do any
15 kind of waiver of rights form with him? And they
16 indicated they did not do a waiver of rights form with
17 you.

18 A. That's correct.

19 Q. Okay. And you were not under arrest. That was the
20 night that you voluntarily went in; is that correct?

21 A. Yes, ma'am.

22 Q. Mr. Jackson, why would you voluntarily give them a
23 sample of your DNA at that point?

24 A. Because I didn't, I didn't see why I shouldn't give
25 them one. I had been straight forward with them when they

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1 called and told me what happened. I was, like, I know I
2 didn't do this so I ain't got nothing to hide.

3 Q. Okay. Did you have anyone there to advise you of
4 implications of what could arise as a result of you giving
5 that sample?

6 A. No, ma'am. I mean, like I say, me and Michael we
7 had been drinking. When they called me, I was, like,
8 well, know I didn't do this so I'm going to handle this
9 now.

10 Q. Okay. Are you saying that you were intoxicated at
11 the time?

12 A. I had been drinking, yes.

13 Q. Okay. So at the time that you originally spoke to
14 them and they took this DNA sample without an attorney
15 present and without doing a waiver of rights, you were
16 intoxicated; is that correct?

17 A. Yes, ma'am.

18 Q. Did you talk with Mr. Anderson about the DNA?

19 A. Yes, ma'am.

20 Q. What did you talk about?

21 A. We talked about they -- where they found it at.
22 And I was, like, well how did they -- if they got my DNA,
23 how did they get it. I want to know how they got it
24 because I know I didn't do this. So the only thing he
25 said was in the seat of her panties. I'm like, well, how

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1 did it get there because I know me and her didn't do
2 anything.

3 So I explained to him everything I did that day and
4 I told him. I said, "Well, if she took her clothes in the
5 restroom," I said, "evidently she had to set her clothes
6 on the sink or whatever," stuff like that there because no
7 one never came out and investigated anything anyway.

8 Q. Did you all talk about the chain of custody in
9 layman's terms who handled the evidence and if there was a
10 issue with the handling of the evidence?

11 A. No, not really. I didn't hear anything, talk about
12 the chain of custody really until me and Christy went to
13 his office.

14 Q. Okay. And at that time what did you find out? Was
15 there a problem with these panties and this evidence?

16 A. Yes. At first Andy went to go, was supposed to go
17 check the underwear. And they was missing for three and a
18 half months. SLED kept saying New Ellenton Police
19 Department had it. New Ellenton kept saying SLED had it.
20 So we couldn't find it. So we left that alone.

21 And then, like, some months later whenever, like, a
22 week before I was time -- the weekend before I went to
23 court is when we started back talking about it and show
24 where everybody just mishandled the evidence.

25 Q. Okay. And did he tell that you was an issue he was

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1 going to raise to the Court?

2 A. No, not really. He said he was going to talk to
3 the Judge about it but I don't know if he talked to the
4 Judge about anything because I wasn't there.

5 Q. Okay. Did he inform you if anyone who handled the
6 evidence was no longer working, such as was the SLED agent
7 still working there?

8 A. Yeah, the SLED agent that did the testing, he
9 wasn't working there anymore.

10 Q. Okay. Now this is all coming up the weekend
11 before; is that correct?

12 A. Yes, ma'am.

13 Q. Did at any other time he talk with you about
14 getting a DNA expert?

15 A. We talked about when I actually gave Andy \$500 to
16 get a DNA expert which I never seen one. And the only
17 thing Andy said was, "Well, I talked to a DNA expert and
18 he said it's a match." I'm like, "Well, how did he say
19 it's a match?" "Well, basically he read the same
20 paperwork."

21 Q. Okay. So that's all that he informed you regarding
22 that expert?

23 A. Yes, ma'am.

24 Q. Okay. Now were there any other plea offers in your
25 case or just the offer in which you pled?

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1 A. No, ma'am. It was an offer for 15 years.

2 Q. Okay. And why did you reject that offer?

3 A. Because I didn't do it.

4 Q. Okay. Well, the catch here though is you ended up
5 pleading guilty; is that right?

6 A. Yes, ma'am.

7 Q. Okay. How did you get notice that you were going
8 to court that day?

9 A. That Friday Mr. Anderson -- when me and Christy
10 went to talk to Mr. Anderson, Mr. Anderson informed me
11 that, "Come Monday morning you're going to jail whether
12 you plead guilty or take a trial."

13 Q. And why -- did he explain to you why you'd be going
14 to jail if you took a trial?

15 A. He was -- he just said, "You're going to jail
16 whether you take a trial or plead guilty," because he
17 wasn't ready for trial.

18 Q. Okay. And he specifically told you he wasn't
19 ready?

20 A. Yes, ma'am. He told me that Friday. Then that
21 Monday he told me he wasn't ready for trial. Me and my
22 mother and my sister were standing out there. And he told
23 me then that he wasn't ready for trial.

24 So I asked Mr. Anderson, I said, "Well, ask for a
25 continuance." He said, "With this Judge you can't get a

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1 continuance. I said, "But I'm not pleading guilty, I'll
2 plead no contest." He said, "Well, you got to go ahead
3 and plead guilty."

4 And he had been talking to my mom. My mom and my
5 sister went ahead and talked me into pleading guilty even
6 though I didn't want to.

7 Q. Okay. Now you said you didn't want to. Did you
8 feel that the only option you had was to plead guilty
9 because your attorney was not prepared?

10 A. Yes, ma'am, because I wanted to take a trial.

11 Q. Okay. And why did you want to take it to trial?

12 A. Because I wasn't guilty.

13 Q. Okay. And you specifically asked him for a
14 continuance; is that correct?

15 A. Yes, ma'am. And my mother and my sister was
16 standing right beside me.

17 Q. And you have a copy of the plea transcript there in
18 front of you; is that correct?

19 A. Yes, ma'am.

20 Q. Okay. On page five they indicate it's a negotiated
21 plea for 11 and a half years. That means you knew you
22 were getting 11 and a half years. You agree with that,
23 you knew you were going to get 11 and a half years?

24 A. Yes, ma'am.

25 Q. On page six it says that you'll be required to

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1 register as a sex offender. Is that something
2 Mr. Anderson explained to you prior to your plea?

3 A. No. We didn't -- we didn't talk about the sex
4 offender thing.

5 Q. Okay. If you had, would that have changed your
6 decision in this case?

7 A. Yes, ma'am.

8 Q. Why?

9 A. Because I have kids. I know once you register as a
10 sex offender you can't be around kids. And I love kids.
11 I have been helping with baseball, football, stuff like
12 that. So I love kids. Why would I just give away my
13 life? That's a life sentence, basically.

14 Q. So if that would have been explained to you, you
15 would have continued to refuse to accept this plea; is
16 that correct?

17 A. Yes, ma'am.

18 Q. Okay. Now also in the plea, if you can turn to
19 page 14, they talk about the fact that they had had a
20 chambers meeting about the DNA. And they admit that the
21 SLED agent was no longer there. And the Court said that
22 he was going to allow it in.

23 The Court is saying he was going to allow in the
24 DNA, would that have changed your desire to go to trial?
25 Would you have still wanted to go to trial?

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1 A. Excuse me? Say that --

2 Q. On page 14 they indicate they have a chambers
3 meeting where they discuss the DNA evidence and the issues
4 with the chain. They don't say what they were, but they
5 do say that the SLED agent was no longer working at SLED.
6 And the Judge indicates he was going to allow that DNA
7 evidence in if you went to trial.

8 Is that the reason you chose not to go to trial was
9 because of the DNA or were there other reasons?

10 A. That's really part of the reason because I feel
11 like, okay, if you're going to allow that then I'm getting
12 railroaded regardless.

13 Q. Okay. But were there other reasons beyond that DNA
14 or was it just solely the DNA? Did you have other reasons
15 related to Mr. Anderson?

16 A. No, that's what I say, Mr. Anderson wasn't ready.
17 He wasn't ready to put up a fight.

18 Q. Okay.

19 A. He just kept saying, "Plead guilty".

20 Q. Now, you have reviewed the plea transcript? I gave
21 you a copy of it.

22 A. Yes, ma'am.

23 Q. In there, and the State may go over it in more
24 detail, the Judge thoroughly asked you if you are in fact
25 guilty, if you're doing this voluntarily.

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1 By way of your application we have alleged that
2 this was an involuntary guilty plea as a result of
3 Mr. Anderson's ineffective assistance. Was your plea that
4 day voluntary?

5 A. No, ma'am.

6 Q. Why was it involuntary?

7 A. It wasn't voluntary because I feel like I was
8 pressured into pleading guilty. I didn't have a choice.

9 Q. If your attorney would have been properly prepared,
10 would you have gone to trial?

11 A. Yes, ma'am. Without a doubt.

12 Q. Okay. Now, the other question I have to ask you is
13 this: There the Judge makes it clear that you are under
14 oath, much like you are here with the Judge today and you
15 say you are guilty.

16 Today you're saying you're not guilty. Why should
17 this Judge believe you when you told Judge Early something
18 else?

19 A. Because then I, I was facing 20 years as opposed to
20 not getting anything. I'm, like, well, I didn't do it.
21 I'll go ahead and take this 11 because they -- Andy, I
22 feel like he was working with the solicitor basically.
23 So, I might as well just go ahead and take the 11 and just
24 let it be done. I didn't have nobody to fight for me.

25 Q. Now, Mr. Jackson, you're not saying though that you

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1 just make up whatever the truth is when it's convenient?

2 A. No.

3 Q. Okay. You understood the serious nature of that
4 proceeding, but was that what your attorney advised you
5 you need to say and that you needed to take that plea?

6 A. Yes, that's exactly what he did. He advised me to
7 take it --

8 Q. Okay.

9 A. -- because he wasn't ready.

10 Q. And had you told him the story that you conveyed
11 here in court today, that you did not do this?

12 A. Yes, ma'am. Over and over.

13 Q. Mr. Jackson, are you telling the truth today?

14 A. Yes, ma'am.

15 Q. Okay. Mr. Jackson, we met a number of times.
16 You've worked very diligently on your own case. Are there
17 any allegations that you would like to testify to that I
18 have failed to ask you about today?

19 A. No, ma'am.

20 MS. BLANCHETTE: Your Honor, if I could beg the
21 Court's indulgence for one moment.

22 (Pause.)

23 Q. Mr. Jackson, could you turn to page 12 of your
24 plea, please?

25 A. Got it.

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1 Q. There does the solicitor go through your prior
2 convictions?

3 A. Yes, ma'am.

4 Q. Okay. And could you just read through those?

5 A. Assault and battery high and aggravated nature in
6 '94. Possession with intent to distribute crack cocaine
7 in '94.

8 Resisting arrest in 2001.

9 Violation of ABC law in '99.

10 Possession of crack cocaine in 2001. Fraudulent
11 check, 2001.

12 Failure to stop for a blue light and resisting
13 arrest, criminal domestic violence in 2003.

14 And receiving stolen goods in 2006.

15 Q. And you and your attorney did not object to that
16 being your prior record at that time; is that correct?

17 A. No, ma'am.

18 Q. And you would agree with the record as it is there
19 today?

20 A. No, not really because two charges on here really
21 that's not mine. I had just put in for stolen identity.

22 Q. Okay.

23 A. And someone had been getting charges in my name.

24 Q. Okay. But as far as the drug charges, do you agree
25 that those are your charges?

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1 A. Yes, ma'am.

2 Q. And if I could just approach for one minute, I
3 believe I did not have you -- could you identify that for
4 the record, please? What is this?

5 A. Forensic services report.

6 Q. Okay. And this is a --

7 A. Laboratory report.

8 Q. -- four-page report from SLED; is that correct?

9 A. Yes, ma'am.

10 MS. BLANCHETTE: Your Honor, at this time I'd move
11 this as Applicant's Number Five.

12 THE COURT: What's the State say?

13 MS. BLANCHETTE: What was that, I'm sorry.

14 THE COURT: I was asking whether he objected to
15 that coming into evidence.

16 MR. SPENCER: That's the SLED report?

17 MS. BLANCHETTE: Yes.

18 MR. SPENCER: No, I don't have an objection to that.

19 THE COURT: Okay. It's in without objection.

20 (Applicant's Exhibit No. 5, SLED report, received
21 into evidence.)

22 BY MS. BLANCHETTE:

23 Q. Did you go over the SLED report with Mr. Anderson?

24 A. Yes, ma'am.

25 Q. And if you could turn to page three of this report.

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1 And there they give the results; is that correct?

2 A. Yes, ma'am.

3 Q. And if you could just compare that to page 11 of

4 your plea for me. If you could turn to page 11 in your

5 plea. And specifically if you could look at lines 15

6 through 22 on page 11. Eleven, lines 15 through 22.

7 A. Okay. Yes, ma'am.

8 Q. And there, does the solicitor indicate that you

9 were a match as far as the DNA was concerned?

10 A. Could you -- you're saying --

11 Q. On page 11, lines 15 through 22, does the solicitor

12 use the word that you matched?

13 A. I'm in the preliminary hearing.

14 Q. Okay. I'm sorry. Wrong transcript. The plea,

15 page 11.

16 A. Okay. Where on the page are you at?

17 Q. Page 11, lines 15 through 22 where the --

18 A. Okay. Got page 11.

19 Q. -- solicitor summarizes the DNA evidence.

20 A. Okay. Yes, ma'am.

21 Q. And you've had a chance to look at that and compare

22 that to what the results actually say?

23 A. Yes, ma'am.

24 Q. And just in your basic reading of it, does it

25 appear to be the same or does the solicitor kind of add

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1 her own spin to it?

2 A. The solicitor adds her own say to it. The
3 solicitor say it's a positive match in her report -- in
4 the thing right here.

5 Q. Did Mr. Anderson object to that or clarify that at
6 all?

7 A. No, ma'am. Mr. Anderson didn't object to anything,
8 you know, in trial (verbatim).

9 MS. BLANCHETTE: Your Honor, I have no further
10 questions.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. SPENCER:

14 Q. Mr. Jackson, I want to see if I understood what
15 you're saying. You mentioned that Mr. Anderson had talked
16 to you about seeing the Judge about something about the
17 DNA evidence?

18 A. Yes, sir.

19 Q. And then when you found out that the DNA evidence
20 was coming in, that's when you felt like you were going to
21 get railroaded if you went to trial?

22 A. Basically because he wasn't trying to fight to
23 throw it out because it was a, chain of custody had been
24 broken. I showed him all of that.

25 Q. And if that DNA evidence came in, that was going to

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1 be bad for your case, right?

2 A. Yes, because they didn't never prove how it came,
3 where it came from. No one investigated the incident.

4 Q. So you don't think the DNA evidence is significant?

5 A. No, not really, no.

6 Q. Oh, okay. So it doesn't matter if it comes in
7 because it's not significant?

8 A. Like I say, I know I didn't do it, so.

9 Q. You can't have it both ways. Either the evidence
10 is really bad evidence that comes in and you feel like
11 you're being railroaded or it doesn't matter. Which is
12 it?

13 A. Evidence, yes.

14 Q. It mattered, right?

15 A. Yeah.

16 Q. It was bad evidence, right?

17 A. Yes.

18 Q. And if Mr. Anderson couldn't get that out, that
19 would be bad evidence to be presented at trial, right?

20 A. Yes.

21 Q. And so, that was part of your decision to plead
22 guilty, right?

23 A. No. Part of my decision to plead guilty because he
24 wasn't trying to fight for me.

25 Q. Did you understand whose decision it was whether

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1 this DNA evidence comes in? It wasn't Mr. Anderson's
2 decision, was it?

3 A. Yes, to the best of my knowledge. I'm not a lawyer
4 so I thought he had control over most of the stuff.

5 Q. Did you understand it would be the Judge's decision
6 whether the DNA evidence comes in?

7 A. Yes, I found that out. Yes.

8 Q. You found that out?

9 A. Yes, sir.

10 Q. Did you understand that that, you know, it's the
11 Judge that decides which evidence comes in and doesn't
12 come in?

13 A. Yes.

14 Q. You knew that already before you pled guilty?

15 A. Yes.

16 Q. I mean, you have a substantial criminal record
17 here. You understand --

18 A. That don't mean --

19 Q. -- evidence?

20 A. Yes, sir.

21 Q. And you understood if that DNA evidence came in,
22 that was bad?

23 A. Yes, sir.

24 Q. Right?

25 A. (Nods head.)

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1 Q. And if you knew that there was bad evidence coming
2 in against you that was, they were going to use to try and
3 prove you guilty that you could get convicted, right?

4 A. Yes, but at the same time they have to convict me
5 without doubt, a reasonable doubt.

6 Q. You understood that before you pled guilty that
7 they had to prove their case by a reasonable doubt?

8 A. Yes.

9 Q. And you were worried if you went to trial that you
10 were going to get a much worse sentence than 11 and a half
11 years, right?

12 A. No. Like I said, I was -- I was ready to go to
13 trial --

14 Q. Okay.

15 A. -- with the DNA evidence. I'm ready to go to trial
16 now.

17 Q. You understood you were facing 20 years
18 imprisonment?

19 A. Yes, sir.

20 Q. And you were afraid if you went to trial you might
21 get up to 20 years imprisonment?

22 A. No, sir. I wasn't afraid of that.

23 Q. Okay. I'm confused here. You weren't afraid to go
24 to trial?

25 A. No, sir. I wanted to go to trial.

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1 Q. You wanted -- when did you tell --

2 A. I told --

3 Q. When did you tell Judge Early you wanted to go to
4 trial?

5 A. I told Mr. Anderson I wanted to go to trial.

6 Q. You told Mr. Anderson but who's doing the time
7 here? It's not Mr. Anderson, right?

8 A. Yes.

9 Q. Mr. Anderson's not going to do any prison time, is
10 he?

11 A. You're right.

12 Q. You're the one doing time?

13 A. Uh-huh.

14 Q. And you're the one telling Judge Early you don't
15 want to go to trial, right?

16 A. No, sir.

17 Q. You're the one -- didn't Judge Early tell you you
18 had a right to a jury trial?

19 A. Yes, sir.

20 Q. Didn't you tell him you wanted to plead guilty?

21 A. Yes, sir. I did tell him that.

22 Q. Well, at what point did you tell Judge Early, "I
23 don't want to plead guilty, I want to go to trial"?

24 A. At no point.

25 Q. At no point because you were afraid if you got

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1 convicted you'd get up to 20 years?

2 A. I wanted to take a jury trial.

3 Q. But you didn't tell Judge Early that. How is he
4 supposed to --

5 A. I told my attorney I wanted to take a jury trial.
6 That's who was representing me.

7 Q. But, excuse me, Mr. Anderson -- I don't know where
8 he is in the courtroom. Mr. Anderson isn't the one who
9 was going to be doing the prison time, right?

10 A. Yes, sir.

11 Q. Mr. Anderson isn't the one who was going to say --
12 was going to order you to go to prison for 11 and a half
13 years, was he?

14 A. No, sir.

15 Q. The only person who could send you to prison for 11
16 and a half years was Judge Early, right?

17 A. Yes, sir.

18 Q. And that's what you were asking Judge Early to do;
19 is that correct?

20 A. No, sir. That's not what I was asking him to do.

21 Q. You were telling Judge Early you wanted to plead
22 guilty; is that correct?

23 A. I said it but I didn't mean it, no.

24 Q. Well, how is Judge Early supposed to know what you
25 mean and don't mean?

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1 A. (No response.)

2 Q. I'm sorry. I didn't hear the answer.

3 A. I kept telling my attorney that I wanted to go to
4 trial.

5 Q. But this conversation is between you and Judge
6 Early.

7 A. No.

8 Q. At what point did you tell Judge Early you wanted a
9 trial?

10 A. At the time I wasn't -- in the courtroom, my mind
11 wasn't on the procedure right there.

12 Q. You were about to go to prison for 11 and a half
13 years and your mind's not paying attention?

14 A. My mind was on I'm making a big mistake to pleading
15 guilty to something I didn't do.

16 Q. So you thought this was all a big mistake?

17 A. Yes.

18 Q. At what point did you tell Judge Early "This was a
19 big mistake"?

20 A. I didn't.

21 Q. You didn't. That's right. And you --

22 A. I did what I was advised by my attorney to do.

23 Q. Do you remember Judge Early asking you if you
24 understood the questions?

25 A. Yes, sir.

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1 Q. And you told him you did, right?

2 A. Yes, sir.

3 Q. Do you remember Judge Early asking you if you
4 understood that you were going to have to register on a
5 sex offender registry?

6 A. Yes, sir. That was after the -- about the end of
7 the trial (verbatim), yeah.

8 Q. Do you remember Judge Anderson asking -- excuse me,
9 Judge Early asking Mr. Anderson if he had advised you of
10 the sex offender registry?

11 A. Yes, sir.

12 Q. And Mr. Anderson said that he did, right?

13 A. Mr. Anderson also said he was going to represent me
14 which he didn't. Right?

15 Q. Let's back up. We'll get back to that.

16 Mr. Anderson did though tell Judge Early that he advised
17 you that --

18 A. Yes, he did say that, yes.

19 Q. Now how come after Mr. --

20 MS. BLANCHETTE: Your Honor, if I may just, I don't
21 believe this is an objection but if the State could point
22 that out in the transcript. Are you on page six? I'm
23 trying to follow along where the Judge asked.

24 MR. SPENCER: Sure. On page four that's when
25 Mr. Anderson was asked by Judge Early if he advised

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1 Mr. Jackson of sex offender registry.

2 MS. BLANCHETTE: Thank you. I was just trying to
3 find it on page six where he had asked the Applicant.

4 MR. SPENCER: And then pages six and seven, six
5 over to seven is where Judge Early asked Mr. Jackson
6 directly about it.

7 Q. And then on page 9, if you can turn to page 9. And
8 that's where Judge Early had asked if you understood the
9 questions, right?

10 A. Yes, sir.

11 Q. Okay. And you said you understood all of his
12 questions, right?

13 A. Yes, sir.

14 Q. That was the time you could have said, "Judge
15 Early, I didn't know about the sex offender registry
16 stuff, can you explain that to me," right?

17 A. Uh-huh.

18 Q. Did you tell Judge Early that?

19 A. No, sir.

20 Q. Did you tell Judge Early, you know, "I don't want
21 to plead guilty anymore because I didn't know I was going
22 to have to be on the sex offender registry. And I want to
23 be around my daughter and I want to be around my
24 granddaughter." Did you say that?

25 A. No, sir. I didn't have a granddaughter.

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1 Q. Did you say anything about the sex offender
2 registry?

3 A. No, sir.

4 Q. And is Judge Early supposed to read your mind about
5 that?

6 A. No, sir.

7 Q. Now you said that you were not satisfied with what
8 Mr. Anderson was doing for you and you felt you had to
9 plead guilty because he wasn't prepared for trial. Is
10 that my understanding of your testimony?

11 A. Yes, sir.

12 Q. Okay. If you could turn to page 10. Hold on a
13 second. I'm sorry.

14 Turn to page eight. And I'm letting you read this
15 to yourself. Starting on page eight, line 23, if you
16 could just read to yourself. You don't have to read it
17 aloud. Line 23 through line 14 on page 19 -- no, on page
18 nine and let me know when you're done.

19 A. (Complying.)

20 Q. So Judge Early asked you if you were happy with
21 Mr. Anderson's services and you told him you were, right?

22 A. Yes, sir.

23 Q. He asked you if there was anything further that you
24 wanted Mr. Anderson to do that he hadn't done, right?

25 A. Yes, sir.

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1 Q. And you told him there wasn't anything more, right?

2 A. Yes, sir.

3 Q. He asked you a number of questions to make sure you
4 were satisfied with Mr. Anderson's representation, right?

5 A. Yes, sir.

6 Q. And you didn't do one thing, you didn't say one
7 thing to indicate that you weren't happy with
8 Mr. Anderson's representation.

9 A. Yes, sir.

10 Q. Now, and you understood the whole time during this
11 plea the end result was you were going to get an
12 11-and-a-half-year prison sentence, right?

13 A. Yes, sir.

14 Q. And based on your testimony today, are you saying
15 that all these things that you said were lies?

16 A. What I'm saying is I pleaded guilty because I felt
17 like I had no other choice.

18 Q. Were you happy with your attorney?

19 A. No.

20 Q. Did you tell -- you told Judge Early --

21 A. No.

22 Q. -- you were happy with your attorney though, right?

23 A. Yes.

24 Q. That's a lie, right?

25 A. I guess, yes.

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1 Q. That's a lie, isn't it?

2 MS. BLANCHETTE: Your Honor, I believe that
3 question has been asked and answered.

4 MR. SPENCER: I guess, yeah, so, I mean, I just
5 want to make sure.

6 Q. Yes or no, is that a lie?

7 A. Yes, it's a lie.

8 Q. So you were lying to Judge Early to go to prison
9 for 11 and a half years, right?

10 A. I was doing what the lawyer told me to do. He told
11 me to just answer yes to whatever the man tell me to
12 answer so that's what I did.

13 Q. So whatever he asked. So when Judge Early asked
14 you if you were under the influence of any alcoholic
15 beverages, drugs, or prescription medications, based on
16 Mr. Anderson's advice you were supposed to say yes, sir,
17 right?

18 A. If he would have told me that, yeah.

19 Q. Did he tell you how to answer that question?

20 A. He told me to, whatever he ask you just say yes.

21 Q. Whatever he says no matter what the question was,
22 or did he tell you to tell the truth during the guilty
23 plea hearing?

24 A. No, he didn't tell me to tell no truth during the
25 guilty plea hearing.

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1 Q. Did he just tell you to answer the Judge's
2 questions?

3 A. Yes. He said just say yes.

4 Q. To everything?

5 A. Yes.

6 Q. What specifically did he tell you to say yes to?

7 A. He said, "When you get in front of him," he said
8 "you got to say yes to what the Judge asks you. Do you
9 think you can handle it?" I said, "Yes, I got it."

10 Q. Here -- this is where I'm getting confused. The
11 Judge says, "Are you today under" -- if you can go to page
12 nine.

13 And Judge Early asked you: Are you today under the
14 influence of any alcoholic beverages, drugs, or
15 prescription medications? And your answer to that is: No,
16 sir.

17 A. Uh-huh.

18 Q. Was that per Mr. Anderson's instructions?

19 A. Tell me to go along with the Judge. That's what I
20 did. I said no, because I wasn't.

21 Q. Okay. That's different. You said to go along with
22 the Judge.

23 A. Yes. Just answer his -- yes, to whatever he asks
24 you.

25 Q. Answer yes-no to whatever he asks you?

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1 A. Yes.

2 Q. Okay. So you're changing your testimony. It
3 wasn't yes to everything, it was yes or no based on the
4 question?

5 A. Yes-no question, yes.

6 Q. Did Mr. Anderson tell you to lie?

7 A. Wasn't nothing to lie about it. I wasn't going to
8 trial. I was taking a plea.

9 Q. What do you mean there was nothing to lie about?
10 He asked you if you were happy with Mr. Anderson and you
11 said yes. Either that's the truth or that's a lie. I
12 want to understand because you're going back and forth, is
13 that the truth or is that a lie?

14 A. No, I'm not -- I'm not -- I wasn't happy with him
15 at all.

16 Q. So that was a lie?

17 A. Yes.

18 Q. Okay. And you were lying to go to prison for 11
19 and a half years, right?

20 A. No.

21 Q. But today you're going -- your goal in this is to
22 get a new trial, right?

23 A. Yes.

24 Q. And you're hoping you'll get acquitted, right?

25 A. I want a fair trial.

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1 Q. You want to get acquitted; is that right?

2 A. I want a fair trial.

3 Q. You want a fair trial and get convicted?

4 A. I want a fair trial.

5 Q. Do you want a fair trial and get convicted or do
6 you want a fair trial and get acquitted?

7 A. I want to get acquitted.

8 Q. Okay. Thank you. So you're trying -- so this is
9 the first step in hopefully getting to an acquittal,
10 right?

11 A. Yes.

12 Q. And you want -- you're lying to Judge Early to go
13 to prison but you want Judge Cothran to believe you today?

14 A. I was telling Judge Early what Mr. Anderson told me
15 to tell the Judge. Basically I was doing what I was
16 instructed by my lawyer to do.

17 Q. Mr. Anderson asked you to lie?

18 A. Basically he tell me, he said, "When you get in
19 there just answer the Judge questions yes or no." So he
20 asked me and that's what I did.

21 Q. Okay. Here's the big one because you said you
22 haven't done this, you didn't do this, right?

23 A. No.

24 Q. Okay. On page 10, if you could turn to page 10?

25 A. Which paper?

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1 Q. Plea transcript. All right. Judge Early asked
2 you: You're pleading guilty because you are guilty. What
3 was your response to that?

4 A. I said yes.

5 Q. And then he asked you: You're pleading guilty
6 because you had a sexual relationship with a minor. What
7 was your answer to that?

8 A. I said yes.

9 Q. Okay. So, I mean, this is straight forward. This
10 is obvious, right, either you're lying to Judge Cothran
11 today or you were lying to Judge Early then. Which is it?

12 A. On this transcript I was just doing what the
13 attorney advised me to do. So evidently I was lying to
14 Judge Early.

15 Q. You were lying to Judge Early to avoid a 20-year
16 sentence, right?

17 A. No, because I wasn't being properly represented.

18 Q. You thought you weren't properly being
19 represented. So you're going to get railroaded at trial,
20 you're going to get convicted, and you're going to get 20
21 years, right? Is that what your testimony is today?

22 A. Excuse me?

23 Q. You thought you weren't going to get a fair trial
24 so you're pleading guilty so you could avoid a 20-year
25 sentence, right?

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1 A. The man had told me I was going to jail regardless
2 whether I pled guilty or took it to trial that day. So I
3 said, "Let's c'mon and get it over with then."

4 Q. Do you realize you were facing up to 20 years?

5 A. Yes.

6 Q. And you realize the plea negotiations got you on --
7 you would only have to do 11 and a half years, right?

8 A. That's on the negotiation, yeah.

9 MR. SPENCER: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 MR. SPENCER: Your Honor, I have no further
13 questions.

14 THE COURT: Okay.

15 MS. BLANCHETTE: Very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. BLANCHETTE:

18 Q. Mr. Jackson, through a series of questions the
19 State asked you repeatedly which Judge you were lying to.
20 So my question to you is: Were you simply acting under
21 the advice of the attorney that you had retained to
22 represent you and to provide you with legal advice?

23 A. Yes, ma'am. That's what I was trying to explain to
24 him, the gentleman just now.

25 Q. And when you told that attorney that you had

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1 retained and that you were relying upon for your legal
2 advice and for your representation in this case that you
3 wanted to go to trial, did he say, "Yes, I'm ready to go.
4 Let's go now, Mr. Jackson, I'm ready to defend you"?

5 A. No, ma'am.

6 Q. What was conveyed to you as far as his level of
7 preparation for you to go to trial on that day?

8 A. He told me he wasn't ready for trial and the
9 solicitor wasn't ready for trial.

10 Q. What did you ask him to do then?

11 A. I asked him to ask for a continuance.

12 Q. You never said, "Well if you're not ready for trial
13 let's go in and lie to Judge Early and I'll take 11 and a
14 half years?"

15 A. No, ma'am.

16 Q. That was not your intent. You wanted to go to
17 trial; is that right?

18 A. Yes, ma'am.

19 Q. Okay. Did you know or did your attorney advise you
20 that you have the opportunity to tell Judge Early, "I am
21 not satisfied and I would like a continuance in this
22 case"?

23 A. No, ma'am. He told me that Judge Early do not
24 grant continuance.

25 Q. And the person that you knew that would have to ask

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1 for that continuance was whom? Was it yourself or was it
2 Mr. Anderson?

3 A. Mr. Anderson.

4 Q. Okay. And at any point in this record did he ask
5 for a continuance?

6 A. No, ma'am.

7 Q. Okay. And just going back briefly to some
8 questions the State asked you about the DNA evidence. Did
9 Mr. Anderson explain to you that Judge Early didn't make a
10 ruling regarding the admissibility of the evidence but if
11 you did go to trial Mr. Anderson could make an argument as
12 to the weight that the jury should give that evidence,
13 that he still could go into the fact that it could
14 possibly have been mishandled or --

15 MR. SPENCER: Your Honor, I object to the leading.

16 MS. BLANCHETTE: I don't think I was leading. I
17 think I'm just explaining my question.

18 THE COURT: You were leading but I'll let you do
19 it.

20 BY MS. BLANCHETTE:

21 Q. Did he advise you of that?

22 THE COURT: It won't affect my decision.

23 THE APPLICANT: No, ma'am.

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions.

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1 THE COURT: Okay

2 MR. SPENCER: Your Honor, I have no further
3 questions, Your Honor.

4 THE COURT: All right. You can come down.

5 MS. BLANCHETTE: I would call Andy Anderson to the
6 stand as our last witness.

7 PAUL ANDREW ANDERSON, having been duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Please have a seat in the witness box
10 and state your full name for the Court.

11 THE WITNESS: Paul Andrew Anderson.

12 DIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q. And, Mr. Anderson, do you currently practice law?

15 A. Yes, ma'am.

16 Q. Okay. And where is your practice located?

17 A. 211 York Street.

18 Q. Okay. You had the opportunity to represent Russell
19 Jackson on the charge we've been discussing today; is that
20 correct?

21 A. Yes, ma'am.

22 Q. Do you know approximately how many times you met
23 with him and his family in preparing this case?

24 A. You know, I was going through my notes, over 10
25 with him, probably over 10 with the family, probably over

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1 20 additional phone calls, at least.

2 Q. Okay. And during that time did you go over the
3 facts with him and specifically this issue, I won't go
4 over it in great detail unless you want me to, about the
5 timing as to whether it was enough time for this to have
6 occurred and the inconsistency with the time that his
7 daughter said?

8 A. We sure did. We spent a lot of time on it and
9 there was a window of about 15 or 20 minutes.

10 Q. So you agreed with the State's position on that?

11 A. Yeah.

12 Q. Did you speak with potential witnesses and
13 specifically the witnesses that were called today?

14 A. Yes.

15 Q. Did you prepare to utilize those witnesses at
16 trial?

17 A. I think so. I mean, the two guys that testified
18 today were very nice. Their stories were very similar to
19 what they said today. I went out to New Ellenton, went to
20 the house, went, drove by the store, tried to do a timing
21 thing, tried to verify what they said. And I think they
22 would have been good witnesses. They're nice guys.

23 Q. Did you go over the reports, the forensic
24 interview, the video of the forensic interview, the police
25 report, the exam, did you go over all of those items that

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1 we've introduced into the record today?

2 A. I think with Russell it's more of a general thing.
3 I don't think that we ever sat down in detail to go over
4 the stuff.

5 Q. Okay.

6 A. Just in general and, I'll tell you, it was not --
7 frankly, you could sum up everything that was relevant
8 down to, you know, a paragraph probably. While it was a
9 tough case, it was an arduous case, the facts and issues
10 were pretty simple.

11 Q. And what did you find to be the simple facts or
12 issues in this case?

13 A. Well, you know, I did not believe -- I don't want
14 to say anything bad about the young lady since she's
15 sitting here. She's a sweet young lady. I didn't believe
16 she was raped, but there was about a 20-minute window
17 where something could have happened.

18 And she says it did. Then she recanted. Then she
19 un-recants. Then she recants. And she had a guardian
20 that really liked her who felt like she was getting
21 manipulated by everybody.

22 And my fear -- I mean, it's simply this. There's
23 this DNA evidence that I can't keep out. And there's no
24 telling what this girl's going to say.

25 And that's what, that's what -- I did think he

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1 should plead.

2 Q. Did you ever utilize an expert like someone that
3 worked in the capacity of Gaye Allen Cook to help you
4 evaluate what both Mr. Jackson and ^{the Victim} [REDACTED] were saying?

5 A. No, it never entered my mind till sitting here
6 today. She was a great witness. I mean, I don't know
7 what she would have lended to the case. She wouldn't have
8 hurt anything.

9 I thought that -- I thought that it was entirely
10 possible that -- well, I just didn't know what the girl
11 would say in court and then you've got the DNA evidence.
12 And, frankly, I didn't think -- you just don't know how
13 it's going to go over in front of a jury.

14 Sitting here today in this dark courtroom with just
15 a nice, nice accommodating Judge is so different than
16 having a jury trial.

17 And that's why I had so many family meetings with
18 everybody and his family is so incredibly nice and
19 supportive and they didn't want to believe he did it. And
20 I wanted them to understand that there's bad evidence here
21 and that you can't control it. Once you go into a jury
22 trial you can't control the outcome.

23 And I really put my heart and soul into doing the
24 best I could for him. And I know they all hate me, and
25 that bothers me, but I felt like he should plead guilty.

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1 And if that's grounds for a PCR then I think one
2 should be granted because I did encourage him to plead. I
3 didn't tell him to plead, but I encouraged him to because
4 I thought the trial would go bad and he'd get 20 years.

5 Q. Did he tell you specifically he did not do this?

6 A. He did.

7 Q. And you advised him to plead guilty; is that
8 correct?

9 A. I did.

10 Q. And you just heard the State question him about was
11 he lying to Judge Early and why did he lie to Judge Early,
12 why did he say he was guilty.

13 Did he do that because you advised him to tell
14 Judge Early he was guilty?

15 A. I certainly didn't advise him to lie, you know. I
16 believe -- I mean, I guess it doesn't matter about what I
17 believe about the truth. What matters is what does the
18 evidence show. So, it would certainly -- I wouldn't have
19 been surprised if the plea, if the plea colloquy had
20 fallen through.

21 I mean, Russell was quite anxious there at the last
22 minute. He really was. And we had a tense last week.

23 His wife was quite mad at me, and frustrated and worried.

24 I still think the plea was the right thing to do.

25 But he clearly now wishes he hadn't pled guilty. I

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1 honestly think the deal we got him was a good deal, but
2 you never know what's going to happen at trial until you
3 go to trial.

4 Q. But you do agree that he told you he was not guilty
5 and you sat there in court and heard him tell the Judge he
6 was guilty; is that correct?

7 A. Well, yeah, but the problem with that is in doing
8 these kind of cases very few defendants admit that they
9 did it. If he did it, that's a horrible thing. It's
10 embarrassing. They don't admit it. Very, very few of my
11 clients have ever admitted doing it.

12 Q. So wouldn't it have been useful for you to use
13 someone in Gaye Allen Cook's capacity to help you make a
14 determination if you run into that problem regularly in
15 your practice, so that you could know what an expert in
16 that field thought so you could better advise him about if
17 he needed to say he was guilty to Judge Early or not?

18 A. I don't know. It's a good question. I don't
19 know. That's something I will ponder. It wouldn't hurt.

20 Q. Now also going back. The preliminary hearing which
21 you've already heard testimony that Russell was not
22 present, that happened August 18th, 2010. The plea didn't
23 take place until May 2011.

24 And in that preliminary hearing it's just riddled
25 with all these issues, the recantation, you know, about

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1 the DNA evidence. All of this is exposed at that time.
2 What did you do between then and May 23rd to prepare a
3 defense regarding those issues?

4 A. I thought I did a good job at the prelim.

5 Q. Right. The issues were exposed at the prelim and
6 so you knew about all these problems. You asked a number
7 of probing questions to expose the problems with the
8 State's case so you knew about those in August 2010.

9 What steps did you then take to build a defense
10 based upon that information you ascertained in the prelim?

11 A. Well, I probably ad nauseam met with everybody too
12 many times. I met with TJ. She's telling the truth in
13 that she did take the lead. Russell kind of took an
14 avoidance attitude kind of thing. And I deal with TJ
15 mostly and his mom. And they're both sweet ladies. And,
16 you know, just talking to them and, I guess, trying to
17 weed out the facts and boil it down.

18 And, again, when you do that it comes down to what
19 I said, there's this DNA evidence and, you know...

20 Q. Now specifically in the prelim and I've already
21 mentioned on page eight and nine they say that they did
22 not do any type of waiver with Mr. Jackson nor was he
23 under arrest when they took the DNA swab. Did you file
24 any type of motion or make any argument under the
25 pertinent case law that that swab should have been

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1 suppressed and therefore the DNA evidence was not
2 admissible?

3 A. I did not.

4 Q. Okay. Is that a motion that you would typically
5 consider filing?

6 A. I don't know. Practicing criminal defense is a
7 little different than in here today.

8 If I had -- let's just say I got that thrown out.
9 That would have -- Judge Early would have ordered it
10 anyway. I never thought about trying to suppress it but I
11 think it would have been ordered anyway.

12 Q. And I agree. The Schmerber basis is not a tough
13 basis to meet, but that was never met in this case; is
14 that correct? You never made the State actually get the
15 order and follow the proper procedure if you would have
16 suppressed that original swab?

17 A. I did not.

18 Q. Okay. And isn't it true that, like you keep
19 saying, the trial is very different and a guilty plea is
20 very different than what we're experiencing here today,
21 but you have to make objections and those have to be
22 preserved on the record for Mr. Jackson to be able to
23 raise those in a subsequent proceeding such as a direct
24 appeal; is that correct?

25 A. Well, I guess. I mean, a negotiated plea, in my

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1 mind I'm thinking we're doing the right thing. I thought
2 I did, you know, got him a good deal. So it really
3 doesn't matter.

4 We actually had to try to convince Judge Early to
5 take the plea.

6 Q. And when you say that -- is a copy of the plea
7 transcript still up there?

8 A. So I'm not going to object to something in that.
9 Maybe I should have if I'm, you know -- since it was
10 negotiated, I didn't object to anything in the plea.

11 Q. But you all did have a chambers meeting; is that
12 correct?

13 A. Yes, ma'am.

14 Q. I was just going to show you page three here where
15 you guys start kind of loosely talking about the chambers
16 meeting.

17 A. Right.

18 Q. Do you remember what was discussed in that chambers
19 meeting, what were your issues with the case?

20 A. I do. We discovered an issue working on the case.
21 The underpants were apparently put in the rape kit, is the
22 only thing we could figure. So, there's no specific
23 documentation of the underpants but then the underpants
24 get, you know, they're at SLED with everything else and
25 they're tested and the semen is in the underpants and they

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1 cut them up and whatnot.

2 And then interestingly I wanted to go look at the
3 underpants to see where the semen was on the underpants.
4 I thought that was relevant. And I go to New Ellenton to
5 look at the underpants and they're not there. And I
6 remember being excited. And I called, hell, I probably
7 called TJ. They don't have the underpants. And I was
8 excited.

9 Turned out they were still at SLED and they ended
10 up getting shipped to New Ellenton. But there was an
11 issue -- that was an issue. I don't really think it was a
12 legal issue. I think it's what you said, it goes to the
13 weight of the evidence.

14 And I actually did explain that to them, that it
15 goes to the weight of the evidence, but explaining things
16 like that to your client and his family is kind of hard
17 because they don't do this on a regular basis.

18 But what happened was the chemist told me that he
19 would let a bunch of stuff build up in his lab because it
20 was a pain for him to go back and forth to the evidence
21 locker. And so after he tested the stuff it sat in his
22 lab for an extended period of time and then he took it
23 back to the evidence box so they were convinced that that
24 was a problem too.

25 And, I mean, it really wasn't a problem legally

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1 but, you know, a jury may have thought that was bad. So
2 that was the issue with the evidence chain.

3 So we go in the back, we talked to Judge Early.
4 And I forget what case we were looking at but he said,
5 basically, I'm not going to exclude it. You know, you can
6 argue there's problems with it but I'm going to let it
7 into evidence.

8 And that wasn't good.

9 Q. Now, are you familiar with State versus Hatcher?

10 A. Is that the case I'm talking about?

11 Q. Well, State versus Hatcher -- do you mind if I give
12 him a brief explanation?

13 THE COURT: No.

14 MS. BLANCHETTE: Okay.

15 Q. State versus Hatcher was first decided in the Court
16 of appeals and that was helpful to those of us on the
17 defense side. They decided the evidence should be the
18 suppressed in that case. It was a very similar scenario
19 where evidence sat at SLED, they couldn't account for
20 where it was. Very similar handling to what you said.

21 Then the Supreme Court decided to hear the case and
22 they issued their opinion in March of 2011. And they
23 clarified that they're essentially going back to the
24 standard that was set in State versus Carter, that they
25 were overruling Chisholm and going back to what I like to

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1 call the Carter standard.

2 But in making that decision and overruling the
3 Court of Appeals in determining that that evidence was
4 admissible, they made it clear still that where the
5 substance analyzed passed through several hands the
6 evidence must not leave it to conjecture as to who had it
7 and what was done with it.

8 And wasn't that the problem in your case? They
9 couldn't really prove who had it and what specifically was
10 done with it as far as the documentation was concerned.
11 It may have sat around at places without being documented
12 and --

13 A. I mean, I don't know the answer. It is Hatcher
14 that is in my file.

15 Q. Okay.

16 A. I mean, I thought it was an issue. It certainly
17 was an issue.

18 Q. Okay. But yet you said on the record in the plea
19 on page 14 that you agreed with the Judge's ruling
20 regarding the chain.

21 A. I think the way that case -- I mean, I'm going to
22 hurt you on this, but if you want me to answer.

23 Q. Yeah, I want to hear your honest answer.

24 A. I think that -- I think the underpants got in the
25 rape kit and Detroit Spires seemed to be a credible

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1 witness, drove the stuff to SLED. It was all got there
2 together. And it was -- it was there and it got tested
3 with the other stuff. It was looked at with the other
4 stuff. I mean, I think the Judge would have let it into
5 evidence.

6 Q. Okay. So you agreed with, based on what the State
7 was telling you their evidence was --

8 A. Sure.

9 Q. -- as far as chain?

10 A. I'm no appellate lawyer. I'm no judge. I think
11 the Judge would have let it in and once that DNA is in, I
12 didn't think Russell's story was great. I didn't think a
13 jury would believe Russell's story. And I thought that
14 was a good way to resolve his case. So, that's where we
15 went.

16 And I did recommend the plea. And I did because --
17 I recommended it because I thought it was the right thing
18 to do.

19 Q. Speaking about the DNA evidence, and you have the
20 plea there in front of you, the solicitor gives her
21 summary of the DNA evidence, and I believe it's on page
22 12. I'm sorry, page 11. She summarizes what -- kind of
23 gives her spin on the DNA evidence.

24 Did you think it was appropriate at that point to
25 clarify exactly what the report indicated versus what the

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1 solicitor summarized?

2 A. I don't know that I understand the difference --
3 you know, what they told me was this: There was semen in
4 the girl's vagina, that the sample wasn't big enough to be
5 conclusive. But there was semen in the underpants and it
6 was consistent with the Defendant's DNA. And that's my
7 understanding of it.

8 I never really tried to -- I didn't analyze the
9 wording of it.

10 Q. You argued at the preliminary hearing you were
11 asked a bunch of questions about the fact that she had
12 continued to wear those panties from 11 a.m. to whenever
13 she went to the hospital.

14 Is that an argument you explored in your trial
15 preparation?

16 A. Well, I certainly thought it was odd. You know, my
17 instincts told me this was going to be a plea. So, I
18 mean, trial preparation -- I don't know.

19 Q. So, would it be fair for me to say that this was a
20 case that you geared towards a guilty plea more so than a
21 trial?

22 A. I don't know. I can't say that either. You know,
23 we spent so much time talking about the case and going
24 over and over and over and around the facts and the issues
25 that maybe I just assumed it was going to be a plea. I

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1 don't know that we ever really said one way or the other.

2 I can't remember until things started getting late in the
3 day ever really making a per se plan. I don't remember.

4 Q. Okay. Do you remember Mr. Jackson asking you to
5 get it continued because he wanted to go to trial?

6 A. I don't remember that. But I know it was the last
7 minute buyer's remorse that we see so often. He was
8 not -- he was anxious. He was quite anxious about the
9 plea.

10 Q. Was your trial date that Monday or was it going to
11 start on Tuesday; do you recall?

12 A. I don't remember.

13 Q. Okay. Do you know if the victim had been notified,
14 if she was going to testify for the State, for the
15 defense, what her position was?

16 A. I don't remember.

17 Q. Okay. Would that be a key part of the case knowing
18 what the victim's position was as far as whether or not
19 this happened?

20 A. Well, the guardian told me she was back on board.

21 Q. So that was your understanding?

22 A. Yes, ma'am.

23 Q. Do you know if the victim was present at the plea?

24 A. I don't think she was. I don't know.

25 Q. Is there any reason you didn't use, and I don't

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1 want to beat a dead horse but someone like Gaye Allen Cook
2 to testify in mitigation? I know it was a negotiated plea
3 but you said it was kind of on the fence, it was rocky at
4 times?

5 A. No. I mean, sitting here today, yeah, I mean, it
6 wouldn't hurt anything. It might have helped. It might
7 not have helped. She was a good witness today.

8 Again this case was so weird because it was really
9 did he -- he didn't -- there's no question, I don't
10 believe he raped his daughter, but his DNA was inside of
11 her underpants. And so it comes down to how did it get
12 there.

13 There's -- the only explanation he had was what you
14 heard. He masturbated in the bathroom. The girl goes in
15 to take a shower. She puts her underpants down and it
16 must have got put down on the semen and then that's how it
17 got there. Now the semen in her vagina -- I don't think
18 that would have come into evidence so I don't know that
19 that was relevant.

20 But for that story to get to a jury, I mean, I
21 guess he would have -- I just don't think that would have
22 played well. And I could be wrong, but that's what came
23 down to me and that's, I recommended that he plead.

24 Q. And he was providing the answers to Judge Early
25 based upon your advice; you would agree with that?

P ANDREW ANDERSON - CROSS

1 A. Well, I certainly didn't tell him to lie.

2 Q. But you did tell him to agree to the plea?

3 A. I don't remember what I told him. Normally what I
4 tell clients is that you're going to have to answer these
5 questions that the Judge is going to ask you.

6 Q. Do you recall advising him about having to register
7 on the sex offender registry and the consequences of that?

8 A. Specifically, no. I'm positive I did but I don't
9 remember when. That's pretty basic stuff. Certainly in
10 all the meetings we had, showing the statutes, I know it
11 came up. I can't say specifically when.

12 Q. I know a lot of public defenders offices use this.
13 You may not because you're a private attorney, but do you
14 have any kind of checklist or anything you go over with
15 someone before they're ready to take a plea?

16 A. I do not.

17 MS. BLANCHETTE: Your Honor, if I could beg the
18 Court's indulgence one moment. (Pause.)

19 Your Honor, I have no further questions.

20 THE COURT: Okay.

21 MR. SPENCER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SPENCER:

24 Q. Mr. Anderson, I just want to first start with the
25 sex offender registry issue. If you had told Judge Early

P ANDREW ANDERSON - CROSS

1 at the guilty plea that you had advised Mr. Jackson about
2 the sex offender registry, I mean, that would have been
3 truthful, right?

4 A. Yeah, I mean, I know I did. I just don't remember
5 when or where. I mean, that's basic stuff.

6 Q. And in terms of the chain issue, would you attempt
7 to challenge that had the case gone to trial?

8 A. Of course.

9 Q. But was there a break in the chain as to when -- as
10 to not knowing which person had it?

11 A. Well, I mean, you had to assume it was the same
12 officer and it was with everything else. But there's
13 nothing that said that. So, like I said, there's no
14 underpants going on paper but underpants, you know,
15 getting it back, getting examined.

16 Q. And this wasn't like drugs I mean, this was an item
17 of clothing, right?

18 A. Yes. And I did finally get to see them and when
19 they got to New Ellenton I went and looked at them, took
20 pictures of them. So they did exist.

21 Q. And the victim identified them as her underwear.
22 That's not a fungible item. That would be admissible?

23 A. Yes, I mean, I would think.

24 Q. And your understanding is that -- let me rephrase
25 that.

P ANDREW ANDERSON - CROSS

1 I think you testified you weren't quite sure when
2 the trial was going -- would have been held?

3 A. I don't remember.

4 Q. Was it, it was pretty close to the time the case
5 was going to get called?

6 A. You know, I honestly don't remember because if we
7 hadn't done the plea, I don't know if it would have gone
8 then or not. I really don't know.

9 Q. You just don't remember now?

10 A. I think I was more concerned about losing the deal
11 but I can't remember for sure.

12 Q. Whose decision was it to plead guilty?

13 A. Well, it was Russell's decision but -- it was
14 Russell's decision but he relied upon my input greatly. I
15 recommended that he plead.

16 Q. If he had chosen a trial, would you have gone to
17 trial?

18 A. Yes, sir.

19 Q. Did you ever tell him you weren't prepared to go to
20 trial?

21 A. You know, they're saying that. I don't remember.
22 And I can honestly say you're never 100 percent prepared
23 for trial, ever.

24 You know, sitting here today with all of them upset
25 with me and whatnot, I think we did the right thing but

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1 I wish we had just tried the case, you know. But it
2 wouldn't have been that hard a trial.

3 Q. If you weren't prepared for trial, would you have
4 moved for a continuance?

5 A. Yeah, I would have. I don't know if Judge Early
6 would have granted it, but, yes.

7 Q. In terms of the DNA evidence what did you do in
8 terms of looking at the DNA evidence in this case?

9 A. We did hire a DNA expert who reviewed everything
10 and, you know, basically said it looked right. So we
11 didn't hire an actual DNA chemist to go perform another
12 DNA analysis. He just reviewed all the documentation.

13 Q. All right. Now, in terms of utilizing a forensic
14 interviewer, expert in child abuse assessment, or anything
15 along those lines, would she be able -- would she be
16 allowed at trial to testify whether or not she believed
17 the victim?

18 A. Back then she might have been.

19 Q. Would that have opened the door to the State's
20 forensic interviewer saying that she believed the victim?

21 A. My fear was that -- well, I didn't know what the
22 young lady was going to say in court. But the forensic
23 interview was a good interview. Mary Ellen Simons does a
24 good job. I thought she did a good job. So, it was just
25 my judgment.

P ANDREW ANDERSON - CROSS

1 I did not believe the girl was raped. There was no
2 physical injury to the girl. I don't know -- I mean, it
3 wouldn't hurt to get somebody else to look at stuff. I
4 don't know if it would have helped or not.

5 Q. And you mentioned you had an opportunity to look at
6 the forensic interview?

7 A. Sure, yeah.

8 Q. And if that forensic interview was admitted into
9 evidence, do you think it's likely the jury would have
10 found it compelling?

11 A. It wouldn't have helped. But, again, you never
12 know. You never know what a jury's going to do until you
13 go try the case and you see what they do. I've been
14 surprised many a time with a jury.

15 But the interview was good. They had the DNA
16 evidence. The girl recants. Certainly, certainly that
17 was an issue. But that's how we got a deal, you know, 11
18 and a half years on this is a long time, but it's a good
19 deal with these charges.

20 Q. And that's a reason to plead guilty, isn't it, to
21 try and avoid the risk of going to trial?

22 A. Well, it is. It is, yes.

23 Q. And were you trying to give the best advice you can
24 give?

25 A. I was. I really truly cared. I tried. I wanted

P ANDREW ANDERSON - CROSS

1 to do well. I liked the family very much. I liked
2 Russell. I spent more time with the family than him.
3 They're nice, good people. I wanted to do the best I
4 could. I really did.

5 Q. How long have you been practicing law?

6 A. I don't know. It all runs together. Since 1991.

7 Q. And have you tried CSC cases before?

8 A. I have.

9 Q. Have you tried a good number of them?

10 A. I've tried -- I tried two in the other courtroom.
11 I tried one downstairs in DSS. Well, I've tried more than
12 one downstairs in DSS. And I've handled, I don't know how
13 many, probably over a hundred of these type cases.

14 Q. And just in terms of trying cases not necessarily
15 these kind but any kind of cases, have you tried -- how
16 many cases would you say you've tried?

17 A. Wow. Oh gosh. Probably -- I'm going to say
18 probably, probably over 200.

19 Q. And if Mr. Jackson wanted a trial would you have
20 gone to trial?

21 A. I would have gone to trial.

22 Q. And you would have done the best job you can?

23 A. I would have.

24 That's the thing, you know, you fight for
25 somebody. You hear it and it's such a hard job defending

P ANDREW ANDERSON - REDIRECT

1 somebody in these kind of cases. I thought it was a good
2 deal. I didn't want to lose the deal and I thought it was
3 the right thing for him to do to plead.

4 So sometimes the best way to represent somebody
5 isn't to fight and be all aggressive. It's to be kind of
6 a peacemaker, a deal maker. So, you know, I wasn't out
7 there being a jerk to other people. Sometimes your client
8 wants to see you being a jerk to other people.

9 MR. SPENCER: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 MR. SPENCER: Thank you for your patience. Your
13 Honor, I just wanted do make sure I hit everything.

14 Your Honor, I have no further questions.

15 MS. BLANCHETTE: Very briefly Your Honor,

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. Mr. Anderson, do you still have a copy of the plea
20 transcript? I just want to point out a few things to
21 you. If you could turn to page seven, please, and
22 beginning on line 13. There Judge Early says: Obviously
23 if you want a trial we got a jury ready, willing, and able
24 to come in.

25 Does that sound like you were going to have

P ANDREW ANDERSON - REDIRECT

1 additional time to prepare for trial?

2 A. That does not.

3 Q. Okay. And did you have any witnesses there under
4 subpoena and did you know the victim's position when Judge
5 Early said that?

6 A. Did I know the victim's position? I didn't know
7 the victim's position really at any time.

8 Q. Okay.

9 A. Even when I was talking to her, I didn't really
10 know her position.

11 I didn't have her there. I don't know what would
12 have happened if we didn't do the plea. I really don't.

13 Q. Okay. And just something you said on cross made me
14 think. Isn't it true you could have used someone in Gaye
15 Allen Cook's capacity possibly as a negotiation tool to
16 maybe get this plea down further or to show the State that
17 you were serious about going to trial?

18 A. You know, I had cases with Ms. Brisbin. She knew
19 I'd go to trial. Okay. I mean, we all know prosecutors
20 have lawyers they know won't go to trial. Okay. Brenda
21 knew that I would go to trial.

22 And, honestly, what I tried to do -- and maybe it
23 would have been more effective if I had somebody like
24 Ms. Cook, but the girl was being torn in so many
25 directions and she was such a sweet girl that I was trying

P ANDREW ANDERSON - RECROSS

1 to get Ms. Brisbin to, with the guardian ad litem's help
2 if we could have closure for the entire family is work it
3 out where if Russell would apologize to the girl, and then
4 the family would get off her back and he'd get less time.
5 And I really was trying to do that. I thought that was a
6 nice, clever way of getting that done. Maybe I could have
7 done that better with the help of a forensic expert.

8 Q. Now you said in your testimony that this was a good
9 deal but you nor I nor anyone in this courtroom but
10 Mr. Jackson has to serve those 11 and a half years and has
11 to go on the sex registry; is that correct?

12 A. That's correct. And that's serious stuff.

13 MS. BLANCHETTE: Your Honor, I have no other
14 questions.

15 THE COURT: Okay.

16 RECROSS-EXAMINATION

17 BY MR. SPENCER:

18 Q. If you went to trial, could you have guaranteed
19 Mr. Jackson an acquittal?

20 A. You never know what a jury's going to do. We might
21 have won it. I thought the plea was the best angle, but
22 you never know what a jury's going to do.

23 Q. But you couldn't promise him one way or the other?

24 A. I couldn't promise him one way or the other.

25 MR. SPENCER: Thank you. I have no further

P ANDREW ANDERSON - RECROSS

1 questions.

2 THE COURT: Thank you. You can come down.

3 THE WITNESS: Thank you, Judge.

4 MS. BLANCHETTE: Your Honor, we appreciate your
5 patience and that concludes the Applicant's case. I do
6 have a couple cases that I've already provided the cites
7 to the cases, some that I referred to today, some I
8 haven't but they go to the issue in our amendment.

9 I think our amendment was very clear. I think we
10 have tediously gone over everything today but if Your
11 Honor has any questions I'd be happy to answer those at
12 this time. I assume you would not like further argument
13 from me, but I'd be happy to provide it if you like it.

14 THE COURT: No, I thank both counsel. I think you
15 both have done a very good job representing your clients.
16 I appreciate the way you conducted yourself. I don't have
17 any questions of either one of you. I'll be glad if any
18 of you tell me you have cases that would help me and my
19 law clerk, so we don't have to look them all up.

20 MS. BLANCHETTE: Yes, I do have several cases.

21 THE COURT: Well, before we get any further, is the
22 State offering any testimony?

23 MR. SPENCER: No, I don't have any evidence to
24 present.

25 THE COURT: Okay.

P ANDREW ANDERSON - RECROSS

1 MS. BLANCHETTE: Just a side note, I assume the
2 State's going to hand up or submit Whetsel to the Court as
3 one of their standard guilty plea cases. In response I've
4 included Kraddick and I just wanted to make sure that you
5 knew that that case was being submitted in response to
6 Whetsel.

7 I'd like to make the specific clarification that
8 this isn't a case where my client said he was guilty and
9 he was doing the plea to get the best deal and planned to
10 plead guilty again which is what you see in a lot of these
11 guilty plea cases where they don't meet their burden.
12 This is clearly a case where he says he's not guilty and
13 would have gone to trial.

14 THE COURT: Okay.

15 MR. SPENCER: I will hand up Whetsel.

16 THE COURT: Okay.

17 MR. SPENCER: Your Honor, just to be clear because
18 I'm not sure -- Whetsel, there's a few things discussed
19 but what I focused on in Whetsel and the reason I used
20 Whetsel, it's pre-Strickland. It's the only thing I would
21 use Whetsel for is the idea that Strickland said we can't
22 look at these things in hindsight, we got to look at the
23 time. Whetsel is consistent with that and the fact and
24 the idea that you just don't know what's going to happen.
25 You can have a hearing on this. You can move to suppress

P ANDREW ANDERSON - RECROSS

1 this and you can call these witnesses, challenge this
2 evidence but at the end of the day you don't know what the
3 result's going to be, and the result's uncertain when
4 these decisions are being made and I think that's highly
5 applicable to this case.

6 THE COURT: Okay. Thank y'all. I will read all of
7 these materials and get back to y'all as soon as I can.

8 MS. BLANCHETTE: Appreciate that, Your Honor.

9 MR. SPENCER: Thank you, Your Honor.

10 END OF CASE: 4:18 P.M.

11 ***

12 CERTIFICATE OF REPORTER

13 STATE OF SOUTH CAROLINA)

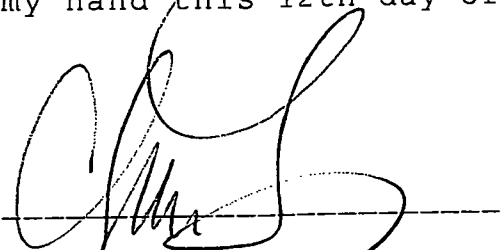
14 COUNTY OF AIKEN)

15
16 I, Cheri L. Young, Registered Professional Reporter
17 and Official Court Reporter for the State of South
18 Carolina, Second Circuit-At Large, do hereby certify that
19 the foregoing proceedings were written stenographically by
20 me using computer-aided translation; further, that the
21 foregoing is a true, accurate and complete record, to the
22 best of my skill and ability, of all the proceedings had
23 and evidence introduced in the hearing of the captioned
24 case, relative to appeal, in the Court of Common Pleas for
25 Aiken County, on the 11th day of July, 2013.

P ANDREW ANDERSON - RECROSS

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

3 I have hereunder set my hand this 12th day of
4 December, 2014.

5
6 

7 Cheri L. Young, RPR
8 Official Court Reporter
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4/05/10 9:19 AM 215-805-1745

Outgoing used on 18

Tip
(F) T-Mobile to T-Mobile call
Minutes used when you call another T-Mobile customer on your T-Mobile phone. More specifically, minutes

used on directly dialed calls between T-Mobile phones on the T-Mobile USA network. (Calls to VoiceMail and other T-Mobile service numbers are not included.)

4/05/10 10:18 AM 803-508-1576

Outgoing 1

4/05/10 11:01 AM 803-443-7110

Incoming 1

4/05/10 11:11 AM 803-292-7074

Outgoing 1

(F) Help
Tip

(F) T-Mobile to T-Mobile call
Minutes used when you call another T-Mobile customer on your T-Mobile phone. More specifically, minutes

All times listed are in GMT

Start Time	Stop Time	Call from	Call to	Duration in Seconds
2010-04-05 01:01:30	2010-04-05 01:05:08	8034437110	8036522059	206
2010-04-05 01:21:50	2010-04-05 01:22:02	8034437110	8032571267	9
2010-04-05 01:26:25	2010-04-05 01:27:27	8034437110	8032571267	53
2010-04-05 01:32:13	2010-04-05 01:32:47	8034437110	8035089169	26
2010-04-05 01:40:58	2010-04-05 01:42:12	8035089169	8034437110	62
2010-04-05 13:08:03	2010-04-05 13:08:46	8034437110	8032213999	8
2010-04-05 14:07:08	2010-04-05 14:08:04	8032935136	8034437110	47
2010-04-05 14:20:28	2010-04-05 14:21:25	8036523524	8034437110	49
2010-04-05 15:00:25	2010-04-05 15:00:46	8034437110	8034399631	0
2010-04-05 15:00:55	2010-04-05 15:01:42	8034437110	8039793536	32
2010-04-05 15:01:54	2010-04-05 15:11:24	8034437110	8034399631	555
2010-04-05 15:15:04	2010-04-05 15:15:26	8034437110	8035081576	9
2010-04-05 15:38:29	2010-04-05 15:38:52	8034437110	8009019878	21
2010-04-05 15:40:57	2010-04-05 15:43:52	8034437110	8003310500	170
2010-04-05 15:47:31	2010-04-05 15:48:12	8034437110	8036528535	0
2010-04-05 15:48:42	2010-04-05 15:49:54	8034437110	8036521734	57
2010-04-05 15:59:51	2010-04-05 16:00:00	8034437110	8034431798	6
2010-04-05 16:19:30	2010-04-05 16:19:51	8034437110	8034399631	0
2010-04-05 16:23:38	2010-04-05 16:24:08	8034437110	8034399631	0
2010-04-05 16:44:25	2010-04-05 16:50:23	8034437110	8004321000	353
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2010-04-05 17:34:51	2010-04-05 17:35:25	8032573778	8034437110	9
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2010-04-05 18:44:37	2010-04-05 18:45:03	8035089169	8034437110	2
2010-04-05 18:47:36	2010-04-05 18:48:10	8035081576	8034437110	28
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2010-04-05 21:04:06	2010-04-05 21:04:35	8032573778	8034437110	4
2010-04-05 21:18:42	2010-04-05 21:18:47	8034437110	0864236245	5
2010-04-05 21:18:18	2010-04-05 21:18:47	8032573778	8034437110	5

Willow
 Reggie
 Reggie
 Kari
 Kari
 Pep
 Tyrone Cell
 Boyfriend Cell
 Michael
 Boyfriend Cell
 ATX
 ATX
 Uncle
 Uncle
 Boyfriend Cell
 Boyfriend Cell
 Boyfriend
 Boyfriend
 House phone
 Russell
 Russell
 Boyfriend
 House phone
 Kel
 House phone

Russell

NEW ELLENTON POLICE/MUNICIPAL COURT
INCIDENT REPORT

CASE NUMBER

NCIC

10-000831-04

INQ. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 36B - RAPE - STATUTORY		☒ YES ☐ NO	☐ YES ☐ NO	20		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
[REDACTED]				29809		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	
04/05/2010	1130		04/05/2010	1230	DISP. DATE	DISP. TIME
				04/05/2010		1730
				TIME ARRIVED		DEPART. TIME
				1750		2015
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
GREEN, KIRSTIE S		PA		☒ SOU	B	F
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
[REDACTED]		NEW ELLENTON		SC	[REDACTED]	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
JUVENILE VICTIM				☒ SOU	B	F
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	AGE	ETH.
					15	N
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
[REDACTED]		NEW ELLENTON		SC	29809	
VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -						
VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK.						
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED						
J - This Jurisdiction S - State O - Out of State U - Unknown						
SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE		SEX	AGE	ETH.
JACKSON, RUSSELL BERNARD		B		M	35	N
FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH		HEIGHT	WEIGHT	HAIR
		09/17/1974		5-7	165	BLK
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
[REDACTED]		NEW ELLENTON		SC	29809	
SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE		TOTAL # ARRESTED 1		04/05/2010 1130		06/09/2010 0825

IN THE ABOVE DATE AND TIME R/O WAS DISPATCHED TO AIKEN E.R. TO REPORTED SEXUAL ASSAULT.

NARRATIVE

P TYPE (GROUP)		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
R Burned					
O Count/Forged				TOTAL VALUE	
P Dest./Damaged					
E Recovered					
R Seized					
T Stolen					
Y Unknown					
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE	
☒ YES ☐ NO		☒ YES ☐ NO		☐ ADM. CLOSED	
REASON FOR EXCEPTIONAL CLEARANCE:		1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION	
3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY	
REPORTING OFFICER(S)		DATE		UNIT NUMBER	
CAPT. WILLIAM COOK		04/05/2010		201	
CHIEF ALESIA PARKS		04/05/2010		200	
FOLLOW-UP INVESTIGATION OFFICER		DATE		UNIT NUMBER	
☒ YES ☐ NO CAPT. WILLIAM COOK		04/05/2010		201	

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 10-000831-04

Officer: 2001 COOK, WILLIAM

Date Entered/Changed: 06/09/2010

Reviewer:

Review Date:

DETAILED STATEMENT OF INVESTIGATION: ON APRIL 5, 2010 AT OR ABOUT 1730hrs R/O (CAPT. COOK) OF NEW ELLENTON POLICE RESPONDED TO AIKEN REGIONAL MEDICAL CENTER E.R. FOR AN REPORTED SEXUAL ASSAULT ON A JUVENILE. R/O MET WITH CHIEF PARKS AT THE E.R. AND WENT INSIDE THE E.R. TO MEET WITH THE JUVENILE AND HER MOTHER. R/O AND CHIEF PARKS MET WITH THE JUVENILE AND HER MOTHER (KRISTIE GREEN). THE MOTHER STATED SHE GOT HOME FROM WORK AND WAS SETTING DOWN SMOKING A CIGARETTE WATCHING T.V. WHEN THE JUVENILE CAME INTO THE ROOM AND TURNED THE T.V. OFF AND STATED SHE NEEDED TO GO TO THE CLINIC. THE MOTHER ASKED THE JUVENILE WHY SHE NEEDED TO GO TO THE CLINIC. THE JUVENILE TOLD THE MOTHER SHE WAS BLEEDING AND IT BURN WHEN SHE URINATE. THE MOTHER ADVISED THE JUVENILE THAT SHE JUST HAD HER PERIOD AND SOMETIME YOU MAY BLEED A LITTLE AFTER. THE JUVENILE INSISTED ON GOING. THE MOTHER CHANGED CLOTHS AND TOOK THE JUVENILE TO THE MEDICAL CENTRE ON THE SOUTH SIDE OF AIKEN. WHEN THEY ARRIVED THEY FOUND THE CENTRE WAS CLOSED. THERE WAS A SIGN ADVISING THE MAIN OFFICE WAS OPEN. AT THIS TIME THE JUVENILE TOLD HER MOTHER WHAT HAPPEN. THE MOTHER TOOK THE JUVENILE TO THE E.R. AT A.R.M.C.

R/O TALKED TO THE JUVENILE WHO STATED THAT BETWEEN 1130am AND 1230pm SHE WAS TAKING A SHOWER AT HER HOME AT 420 FLORIDA AVE IN THE CITY OF NEW ELLENTON ON APRIL 5, 2010. WHEN SHE GOT OUT OF THE SHOWER SHE WENT TO HER ROOM AND WAS DRYING OFF WHEN HER FATHER (RUSSELL JACKSON) THE SUSPECT FOLLOWED HER INTO THE BEDROOM. HE CAME UP BEHIND HER PUT HIS HANDS AROUND HER BENDED HER OVER AND PUT HIS PENIS IN HER VAGINA. AFTER THE SUSPECT WALKED OUT OF THE ROOM. THE JUVENILE GOT DRESSED AND WAITED AT HOME ALONE, THE SUSPECT LEFT THE HOUSE. AFTER WAITING ON THE NURSE TO DO THE EXAMINATION CHIEF PARKS ADVISED THE NURSE THAT WE WANT TO TALK TO THE JUVENILE ALONE. THE NURSE ADVISED THE MOTHER SHE NEEDED TO STEP OUT FOR AWHILE. AFTER MAKING SURE THE JUVENILE KNEW HOW SERIOUS CHARGES WERE SHE WAS ASKED TO TELL WHAT HAPPEN AGAIN. THE JUVENILE STATED SHE TOOK A SHOWER AND WENT INTO HER ROOM AND WAS DRYING OFF AND HEARD THE DOOR OPEN THAT WAS LOCKED. THEN THE DOOR TO HER ROOM OPEN AND THE SUSPECT CAME IN BEHIND HER PUT HIS HANDS AROUND HER. HE THEN BEND HER OFF THE BED AND INSERTED HIS PENIS INTO HER VAGINA.

R/O ASKED THE JUVENILE IF SHE SEEN HIS FACE? SHE STATED NO. ASKED IF HE SAID ANYTHING? SHE STATED NO. R/O ASKED IF SHE TURNED AROUND AND LOOKED AT HIM? SHE STATED NO. R/O ASKED HOW DID YOU KNOW IT WAS THE SUSPECT IF SHE DID NOT SEE HIM. SHE STATED SHE KNEW THE DOOR WAS LOCKED AND HE WAS THE ONLY ONE WHO HAD A KEY SHE SAW HIS REFLECTION IN THE MIRRORS. SHE HAD ONE ON HER HEAD-BOARD AND ONE ON THE WALL BESIDE HER BED R/O ASKED THE JUVENILE IF SHE PULLED AWAY? SHE STATED NO. SHE ADVISED SHE TOLD HIM NOT TO DO THAT.

THE JUVENILE STATED THAT IN SOMETIME IN OCTOBER 2009 SHE WAS ASLEEP WHEN SHE WOKE UP FEELING SOMETHING RUBBING HER LEG. SHE SAW THE SUSPECT HAD HIS PENIS ON HER LEG AND HE STARTED TO PLAYING HER VAGINA.

THE NURSE TURNED THE SEXUAL ASSAULT KIT OVER TO R/O AND A BAG WITH THE JUVENILE'S CLOTHES IN SIDE THAT SHE PUT ON AFTER ASSAULT. R/O SECURED THE KIT AND CLOTHING FOR EVIDENCE.

R/O CALLED THE SUSPECT AND ASKED HIM TO MEET AT N.E.P.D. SO HE COULD TELL HIS SIDE. R/O TALKED TO THE SUSPECT WHO STATED HE DID NOT DO WHAT THE JUVENILE HAD STATED. HE WAS NOT HOME FOR ANY TIME ALONE WITH THE JUVENILE. THAT HIS SONS WERE THERE AND HIS FRIEND TONY WAS THERE AND THEY LEFT TOGETHER. HE WENT TO THE DOLLAR GENERAL TO GET A PHONE AND SOME ITEMS FOR THE JUVENILE. WHEN HE RETURN HOME THE JUVENILE WAS ON THE STEPS WHEN HE GOT HOME. THE SUSPECT WAS ASKED FOR A D.N.A. SAMPLE. THE SUSPECT GAVE A D.N.A. SAMPLE WHICH WAS SECURED BY R/O. THE SUSPECT WAS TOLD NOT GO AROUND THE JUVENILE OR MAKE ANY CONTACT IN ANY WAY.

R/O WILL HAVE THE SEXUAL ASSAULT KIT, THE CLOTHING, AND THE D.N.A. SAMPLE TRANSPORT TO S.L.E.D FOR EXAMINATION. R/O ADVISED D.S.S. WORKER AMY KOSH OF THIS INCIDENT AND THAT THE SUSPECT WAS TOLD NOT TO HAVE ANY CONTACT WITH THE JUVENILE.

ON APRIL 5, 2010 THE SUSPECT (RUSSEL JACKSON) CAME TO THE OFFICE AND TALK TO R/O (CAPT. COOK) AND CHIEF PARKS. THE SUSPECT STATED HE DID NOT DO ANYTHING TO THE VICTIM. HE ADVISED HE TALKED TO HER THAT MORNING AND HAD HER CALL TONY (A FRIEND OF HIS) TO COME TO THE HOUSE AND GET HIM AND BRING SOME BEER. TONY CAME TO THE HOUSE WITH THE BEER. THEY DRANK A BEER AND LEFT TO GO TO THE DOLLAR GENERAL STORE TO GET A CELL PHONE. HE GOT THE CELL PHONE AND RETURNED HOME TO GET THE PHONE TURNED ON THROUGH HIS COMPUTER AT HOME. HE HAD THE VICTIM TO TRY AND GET THE PHONE ACTIVATED. THE VICTIM FAILED TO GET THE PHONE ON THROUGH THE COMPUTER. THE SUSPECT HAD TONY TAKE HIM TO A.T.&T. IN AIKEN TO GET THE PHONE TURNED ON. AFTER HE RETURNED HOME AND FOUND HIS DOG OUTSIDE THE FENCE. HE PUT THE DOG BACK INTO THE FENCE AND TALKED TO THE VICTIM. HE LEFT THE HOUSE. HE DID NOT RETURN HOME AT ALL.

THE SUSPECT WAS ASKED FOR A DNA SAMPLE. THE SUSPECT WAS HANDLED THE SWAB. THE SUSPECT TOOK THE SWAB AND GIVE A DNA SAMPLE FREELY.

ON APRIL 29, 2010 R/O WENT TO THE DOLLAR GENERAL AND ASKED IF THEY COULD TELL IF THEY HAD A TAPE OF SOMEONE BUYING A CELL PHONE ON APRIL 5, 2010. THE MANAGER TOOK R/O TO THE OFFICE AND SHOWED THE TAPE FOR APRIL 5. THE TAPE SHOWED THE SUSPECT BUYING THE PHONE AT OR ABOUT 1125. IT ALSO SHOWED HIM ENTERING THE STORE ABOUT 1115. THE SUSPECT WAS WITH A B/M THIS COULD HAVE BEEN TONY.

ON APRIL 8, 2010 AT 1PM RO (M. FRANTZ) ESCORTED KRISTI GREEN AND HER DAUGHTER TO THE CHILD ADVOCACY CENTER. UPON ARRIVAL RO DID OBSERVE THE INTERVIEW WITH MS GREEN'S DAUGHTER FROM A SEPARATE ROOM VIA A MONITOR. THE INTERVIEW WAS RECORDED AND A COPY OF IT HAS BEEN HANDED OVER TO CAPT. COOK. NOTHING FURTHER TO REPORT.

ON APRIL 6, 2010 R/O (CPL. SPIRES) TRANSPORTED SLED SEXUAL ASSAULT EVIDENCE COLLECTION KIT COLLECTED FROM JUVENILE VICTIME AND DNA SWABS FROM SUBJECT RUSSELL JACKSON TO SLED FOR DNA TESTING. R/O HAS NOTHING FURTHER AT THIS TIME.

ON APRIL 8, 2010 AT 1PM RO (M. FRANTZ) ESCORTED KRISTI GREEN AND HER DAUGHTER TO THE CHILD ADVOCACY CENTER. UPON ARRIVAL RO DID OBSERVE THE INTERVIEW WITH MS GREEN'S DAUGHTER FROM A SEPARATE ROOM VIA A MONITOR. THE INTERVIEW WAS RECORDED AND A COPY OF IT HAS BEEN HANDED OVER TO CAPT. COOK. NOTHING FURTHER TO REPORT.

ON JUNE 2, 2010 R/O RECEIVED THE D.N.A. ANALYSIS FROM S.C.L.E.D. WHICH SHOWED A POSITIVE MATCH FOR THE SPERM OF THE SUSPECT IN THIS CASE. 1 IN 23 MILLION.

South Carolina Law Enforcement Division
Sexual Assault Examination Protocol

Patient information

Name of Hospital: Aiken Regional Medical Center Date: 4/5/10 Time admitted: 1649

• Name: [REDACTED]
• Age: 15 yrs Gender: M(F) Ethnicity: African American
• Home address: [REDACTED]
• Date of Birth: [REDACTED] Marital status: Single
• Parent or Guardian: Kristie Green

Law Enforcement:

• Agency: New Ellenton City Police Case Number: 10000831-04
• Forensic Exam Requested: ☒ Yes ☐ No If no, describe: _____
• Reporting Officer: CPT COOK Time: 1912
• Investigator: CPT COOK Time: 1912

Advocacy: *if indicated

• Rape crisis advocate: CAP Notified: 1910 Arrival: _____
• Other: _____ Notified: _____ Arrived: _____
• Interpreter: _____

Persons present during collection of history:

☐ Advocate ☒ Family ☐ Law Enforcement ☐ Other: _____ ☐ NA

Persons present during medical exam:

☐ Advocate ☒ Family ☐ Other: _____

Pertinent medical history:

• LMP 4-2-10 Normal ☒ Yes ☐ No G Ø P Ø
• Any recent (60 days) anal-genital injuries, surgeries, diagnostic procedures or medical treatment that may affect the interpretation of current physical findings?
☐ Yes ☒ No If Yes, describe: _____
• Any other pertinent medical conditions or injuries that may affect the interpretation of current physical findings?
☐ Yes ☒ No If Yes, describe: _____
• Current medications: ☒ None: _____

Pertinent pre and post assault related history:

	No	Yes	Date
• Consensual intercourse within 7 days?	☒	☐	_____
• Oral	☒	☐	_____
• Vaginal	☒	☐	_____
• Anal	☒	☐	_____
• If yes, was a condom used?	☒	☐	_____
• Other type of contraception used?	☒	☐	Describe: _____

Medications, Social Drugs or Alcohol:

Ingestion of alcohol/drugs by patient: ☒ No ☐ Yes ☐ Unsure
• If yes, ☐ Alcohol ☐ Drugs Time: _____ Date: _____
Describe: _____

• If yes ☐ Voluntary ☐ Forced ☐ Coerced ☐ Suspected

• Any voluntary use of alcohol 12 hours prior to assault? ☒ No ☐ Yes
• Any voluntary use of drugs 96 hours prior to assault? ☒ No ☐ Yes
• Any voluntary use of alcohol or drugs between time of assault and forensic exam? ☒ No ☐ Yes

South Carolina Law Enforcement Division Sexual Assault Examination Protocol

Patient information

Post assault hygiene/activity:

- Urinated
- Defecated
- Genital or body wipes
- Douched
- Removed tampon/diaphragm
- Brushed teeth
- Mouthwash
- Bath/shower/wash
- Ate or drank
- Vomited
- Changed clothing
- Smoked

No	Yes
☒	☐
☒	☐
☐	☒
☒	☐
☒	☐
☐	☒
☒	☐
☒	☐
☐	☒
☒	☐
☒	☐
☒	☐

Describe:

Dry tissue

Chicken - Gatorade

Assault History:

- Date of assault 4-5-110 Time of assault 11:30 am - 12:00 pm
- Location of assault Home in victim bedroom
- Any witnesses see the assault? ☐ Yes ☒ No If yes, identify: _____

History of assault per patient:

Patient states she took a shower and went from bathroom to bedroom. Her father followed her into her bedroom and bent her over the bed. He then inserted his penis into her vagina.

Assailants Name	Age	Gender	Ethnicity	Relationship
#1 <u>Russell B. Jackson</u>	<u>35</u>	<u>M</u>	<u>African American</u>	<u>Father</u>
#2				
#3				
#4				

Method(s) employed by assailant(s):

- Weapons
- Threatened
- Injuries inflicted
- Types of weapons
- Physical blows
- Grabbing/holding/pinching
- Physical restraints
- Strangulation
- Burns
- Verbal threats of harm
- Other methods

No	Yes
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐
☒	☐

If yes, describe:

South Carolina Law Enforcement Division Sexual Assault Examination Protocol

Patient information

Were any injuries inflicted upon the assailant during the assault? ☒ No ☐ Yes
If yes, describe: _____

Is assailant known: to have STD ☒ No ☐ Yes If yes, describe: _____

• Had a vasectomy: ☒ No ☐ Yes

Was sterile: ☐ No ☐ Yes

• Alcohol/drug use by assailant ☐ No ☒ Yes ☐ Unsure

Time 2000 Date 4/4/10

If yes, ☐ Alcohol ☐ Drugs Describe: _____

Contacts Described By Patient

Penetration of vagina by:

*if more than one assailant, identify number

	No	Yes	Attempted	Unsure
Penis	☐	☒	☐	☐
Finger	☒	☐	☐	☐
Object	☒	☐	☐	☐

Describe: _____

Penetration of anus by:

	No	Yes	Attempted	Unsure
Penis	☒	☐	☐	☐
Finger	☒	☐	☐	☐
Object	☒	☐	☐	☐

Describe: _____

Oral copulation of genitals:

	No	Yes	Attempted	Unsure
Of patient	☒	☐	☐	☐
Of assailant	☒	☐	☐	☐

Describe: _____

Non-genital acts:

	No	Yes	Attempted	Unsure
Licking	☒	☐	☐	☐
Kissing	☒	☐	☐	☐
Suction injury	☒	☐	☐	☐
Biting	☒	☐	☐	☐
Fondle	☒	☐	☐	☐

Describe: _____

Other acts:

	No	Yes	Attempted	Unsure
Other	☒	☐	☐	☐
Masturbation	☒	☒	☐	☐
Photographs	☒	☐	☐	☐

Describe: _____

Did ejaculation occur:

	No	Yes	Unsure
☐ Mouth	☒	☐	☐
☐ Vagina	☒	☐	☐
☐ Anus	☒	☐	☐
☐ Body	☒	☐	☐
☐ Clothing	☒	☐	☐
☐ Bedding	☒	☐	☐
☐ Other	☐	☐	☒

Describe: _____

VB
Grabbed towel and wiped

Contraception or lubricant used:

	No	Yes	Unsure
Foam used	☒	☐	☐
ly used	☒	☐	☐
Lubricant	☒	☐	☐
Condom used	☒	☐	☐

Describe type/brand if known: _____

South Carolina Law Enforcement Division
Sexual Assault Examination Protocol

Patient information

General Physical Examination

Describe general physical appearance: relaxed, well dressed

Describe general demeanor: ☒ Quiet ☐ Tearful ☐ Trembling ☐ Anxious ☐ Controlled ☐ Angry ☐ Sobbing ☐ Tense
• Response to questions: ☒ Briefly ☐ Reluctantly ☐ Readily
• Eye contact: ☒ Good ☐ Poor
• Describe: _____

c/o Non-genital injury, pain and/or bleeding? ☒ No ☐ Yes, describe _____
c/o Anal-genital injury, pain and/or bleeding? ☐ No ☒ Yes, describe pt states pain to vaginal area

Genital Examination-Females:

- Exam position used: ☐ Supine ☐ Lithotomy ☐ Lateral ☐ Knee-chest
- Exam methods for genital examination: ☐ Water lubricated speculum ☐ Foley catheter ☐ Toluidine Blue Dye ☐ Colposcope ☐ UV light (Woods light) ☐ Positive ☐ Negative *show location on diagram on page 5
- Presence of sperm: vaginal wet prep: ☐ Motile ☐ Non-motile ☐ None visualized

Genital Examination-Males:

- Circumcised? ☐ Yes ☐ No
- Exam position used: ☐ Supine ☐ Lithotomy ☐ Lateral ☐ Other (describe) _____
- Exam methods for genital examination: ☐ Toluidine Blue Dye ☐ Coloscope ☐ UV light

Strangulation Assessment*: ☒ NA *Note patient history

- Object used on neck: ☐ One hand ☐ Two hands ☐ Forearm ☐ Other _____
- How long was the patient strangled? _____ How many times? _____
- Any loss of consciousness? ☐ Yes ☐ No
- Throat hoarseness? ☐ Yes ☐ No
- Voice at time of exam: _____

Drug Facilitated Sexual Assault Assessment*: ☒ NA *Note patient history

- Orientation: ☐ Oriented x 3 ☐ Disoriented; describe _____
- Ability to recall events: ☐ Well ☐ No memory ☐ Lapses of memory loss
- Patient's speech: ☐ Clear ☐ Garbled
- Patient's gait: ☐ Steady ☐ Unsteady; describe: _____
- History of nausea: ☐ Yes ☐ No Vomiting: ☐ Yes ☐ No times? _____
- Other concerning symptoms or assessments: _____

Lab tests performed:

- ☐ Pregnancy ☐ Positive ☐ Negative ☒ NA
- ☐ Wet prep/KOH prep
- ☐ Urinalysis
- ☐ Gonorrhea Culture site _____
- ☐ Chlamydia Culture site _____
- ☐ RPR, syphilis
- ☐ HIV
- ☐ Other _____

Radiological studies: _____

Surgical procedure required: ☐ No ☐ Yes, describe _____

South Carolina Law Enforcement Division Sexual Assault Examination Protocol

Patient information

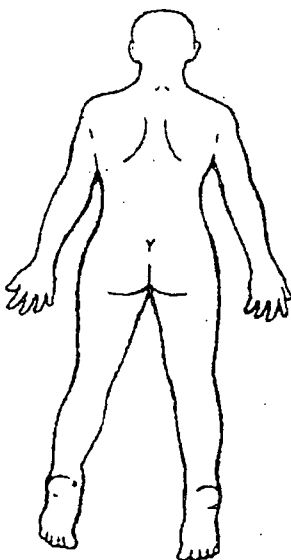
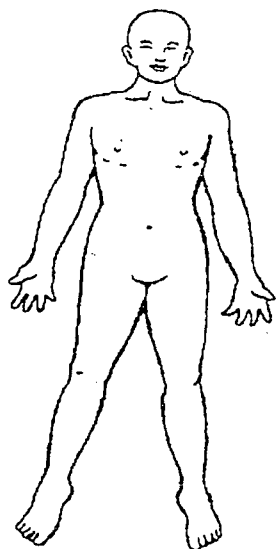
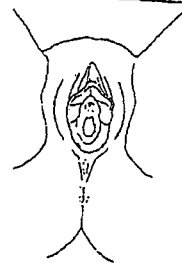


Diagram G



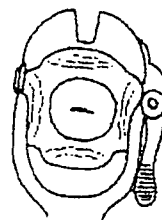
Normal

Diagram H



Normal

Diagram I



Normal

Diagram C

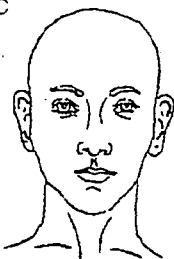


Diagram D

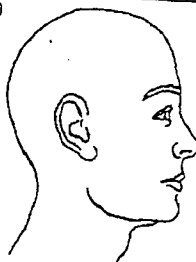
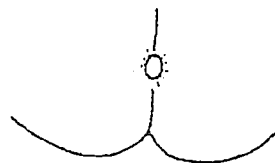


Diagram J



Normal

Diagram E

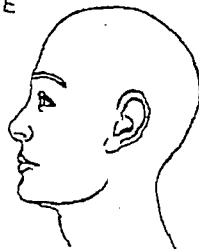
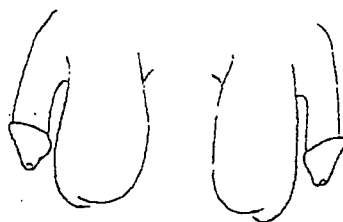
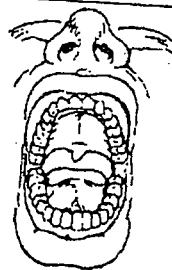


Diagram F



Location #	Description	Location #	Description
	Normal Exam		

South Carolina Law Enforcement Division Sexual Assault Examination Protocol

Patient information

Evidence Collected

Clothing collected: describe clothing ☐ NA ☐ Changed clothes ☐ Bathed

☒ Shirt blue short

☒ Pants blue jeans

☒ Underwear Green/blue underwear

☒ Bra black bra

☐ Jacket

☒ Belt black

☒ Shoes light gray shoes - K Brown

☐ Other

☒ Debris sheet

DNA Evidence Collected:

Miscellaneous materials

Lick/kiss/suck/bite mark

Oral swab and smear

Fingernail scraping/cuttings

Known DNA/Buccal swab

Combed pubic hairs

Vaginal swab and smear

Rectal swab and smear

Suspected body fluid

No

Yes

Describe

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Toxicology Evidence Collected:

Blood/gray top

Urine

Vomit

Other

No

Yes

Describe

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Photography:

Colposcope

35mm camera

Digital pictures

No

Yes

*Photographs stored with forensic chart

☒

☐

Magnification

☒

☐

of pictures

☒

☐

of pictures

Medications administered:

Gonorrhea prophylaxis:

Chlamydia prophylaxis:

Pregnancy prevention:

Tetanus toxoid:

Other meds:

Rocaphin 250 mg

Bithromide 250 mg

None

Uro

☐ NA

☐ NA

☐ NA

☐ NA

☐ NA

Discharge Information:

• Time: 1915

Discharged to: Kristie Green, Mother

• Accompanied by: Kristie Green

• Admitted to Hospital: ☒ No ☐ Yes/Room Number

• Consults: ☐ NA ☐ Yes

Admitting MD

Follow-Up:

• Medical:

• Counselor:

Date:

Date:

Signature of Officer receiving Evidence:

• Signature:

• Agency:

Time: 1915

• Evidence Released:

☒ SLED kit

☒ Clothing

☐ Urine

☐ Other

Signature of SANE/MD

Revised June 2008

SCA1050

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Capt. W.P. Cook
New Ellenton Police Department
PO Box 471 200 Main St
New Ellenton, SC 29809-1331

DNA ANALYSIS
May 24, 2010
SLED LAB: L10-03644
Your Case No: 1000083104
Incident Date: 4/5/2010
[V] [REDACTED]
[S] Russell Jackson

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	Sexual Assault Evidence Collection kit from [REDACTED] the victim.		
1.1	Buccal swabs from [REDACTED] the victim.	1.1	See DNA analysis.
1.2	Smears - vaginal, oral, and rectal	1.2	No analysis performed.
1.3	Vaginal swabs	1.3	Semen indicated. See DNA analysis.
1.4	Oral swabs	1.4	No semen identified.
1.5	Rectal swabs	1.5	No semen identified.
1.6	Suspected body fluid - suspected semen	1.6	No semen identified.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

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May 24, 2010

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Items Submitted:

- 1.7 Miscellaneous body fluid -
endocervical swabs
- 1.8 Fingernail scrapings
- 1.8.1 Left hand
- 1.8.2 Right hand
- 1.9 Pubic hair combings
- 2 Panties
- 2.1 Cutting from panties
- 2.2 Possible hair collected from panties
- 3 Buccal swabs from Russell Jackson

Results of Examinations:

- 1.7 No semen identified.
- 1.8.1 See DNA analysis.
- 1.8.2 See DNA analysis.
- 1.9 No hairs found.
- 2.1 Semen identified. Blood indicated.
See DNA analysis.
- 2.2 See DNA analysis.
- 3 See DNA analysis.

DNA ANALYSISITEMS ANALYZED:

- 1.1 Buccal swabs from [REDACTED] the Victim.
- 3 Buccal swabs from Russell Jackson
- 1.3 Vaginal swabs
- 1.8.1 Fingernail scrapings from left hand
- 1.8.2 Fingernail scrapings from right hand
- 2.1 Cutting from panties
- 2.2 Possible hair collected from panties

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



SLED LAB No. L10-03644
May 24, 2010

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RESULTS

The DNA obtained from the sperm fraction of item 2.1 is a mixture of at least two individuals. [REDACTED] and Russell Jackson cannot be excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 23 million.

The Victim

The DNA obtained from the sperm fraction of item 1.3 is a mixture of at least two individuals. The DNA profile developed from the major contributor is consistent with the DNA profile of [REDACTED]. The partial DNA profile developed from the minor contributor is insufficient for reliable interpretation. The Victim.

The DNA profile developed from item 1.8.1 is consistent with the DNA profile of [REDACTED] the Victim.

The partial DNA profile developed from item 1.8.2 is consistent with the DNA profile of [REDACTED] the Victim.

No human DNA was obtained from item 2.2.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Note: Item 2 was examined by DNA Evidence Processing Technician, Jozetta A. Blair.

Jasper E. Humbert
Jasper E. Humbert
Forensic Scientist

5/23 PC Brenda -

Humbert 608-5797

Common 2 hole stuff -

by HK return



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SLED LAB No. L10-03644
May 24, 2010

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Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
1.1 Shakela Green	13,14	28,30	10	10,12	18	7,9	12	10,11	17,19	13,2,14,2	15,17	8,11	12,20	12,13	23,25	X
3 Russell Jackson	14,15	30,31,2	10,11	10	17,18	8,9	12	10,11	17	12,2,14,2	15,17	6,11	17,20	12,13	23,27	XY
1.1F Vaginal	13,14	28,30	10	10,12	18	7,9	12	10,11	17,19	13,2,14,2	15,17	8,11	12,20	12,13	23,25	X
1.1M Vaginal	13,14 (15)	28,30 (31,2)	10	10,12	17,18	7,8 9	12	10,11	17,19	(12,2) 13,2 14,2	15,17	(6),8 11	12,20	12,13	23,25	X
1.8.1 Left hand fingernail scrappings	13,14	28,30	10	(10),12	18	7,9	12	10,11	17,19	13,2,14,2	(15),17	8,11	(12,20)	(12),13	(23,25)	X
1.8.2 Right hand fingernail scrappings	(15)	-	10	-	(18)	-	-	-	(17,19)	(14,2)	(17)	-	-	(12)	-	(X)
2.1F Cutting from panties	13,14	28,30	10	10,12	18	7,9	12	(10),11	(19)	13,2,14,2	15,17	8,11	12,20	12,13	23,25	X
2.1M Cutting from panties	13,14 15	28,30 31,2	10,11	10,12	17,18	7,8 9	12	10,11	17,19	12,2,13,2 14,2	15,17	6,8 11	12,17 20	12,13	23,25 (26),27	XY

() = alleles between 75 and 149 rfu

- = no results

Bold = major contributor



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



August 16, 2013
VIA MAIL & EMAIL

LAW OFFICE OF TRICIA A. BLANCHETTE

Honorable R. Ferrell Cothran, Jr.
Presiding Judge, 3rd Judicial Circuit
16 North Brooks Street
Manning, SC 29102

RE: Russell Jackson v. State, Docket No. 2012-CP-02-0321

Dear Judge Cothran:

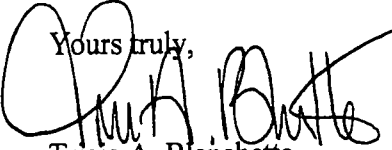
Today, I received and reviewed the proposed Order submitted in the above referenced case. Since I was not provided a copy of this Order to review prior to its submission, I felt it was necessary to write to you regarding some major concerns I had with it. Also, pursuant to Marlar v. State, 375 SC. 407, 653 S.E.2d 266 (2007), I understand that I have an obligation to bring such matters to your attention prior to filing a Rule 59, SCRCP, Motion. Therefore, I will briefly state my concerns, and I will be happy to elaborate if requested.

1. The Order fails to mention any of the exhibits that were admitted by Applicant. Also, as a minor matter, the names of several witnesses are misspelled.
2. The Order indicates that Gaye Allen-Cook was qualified as an expert in Child Abuse Assessment. I recall that I specifically indicated that I was not qualifying her as a "forensic interviewer" and she was qualified in the area of "trauma and abuse" as a clinical child and family therapist (as stated in the Amendment). Furthermore, the portion of the Order discussing her testimony errantly focuses on the questions asked by the State during cross-examination regarding forensic interviewing and the RATAC method, which as the Order states is not relevant to this case. The Order fails to address the testimony elicited on direct that was relevant to Applicant's claim, and is also fails to address counsel's admission that he should have utilized her services.
3. The Order fails to address the witnesses called in support of the claim of failure to investigate and failure to develop a viable defense.
4. The Order repeatedly states that Applicant admitted that he lied to the Court, which I submit is erroneous interpretation of my client's testimony that is not supported by the record.



LAW OFFICE OF TRICIA A. BLANCHETTE

I appreciate your consideration of my above listed concerns, and please contact me if you need any additional information.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Dave Spencer, Assistant Deputy Attorney General
Russell Jackson

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

)
)
) 2012-CP-02-0321
)

Russell Jackson, #216302;

)
)
) Applicant,
)

ORDER OF DISMISSAL.

)
)
) v.
)

)
)
) State of South Carolina,
)

)
)
) Respondent.
)
_____)

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 7, 2012. The State made its return on May 30, 2012. A hearing into the matter was convened at the Aiken County Courthouse on July 11, 2013. Applicant was present and represented by Tricia Blanchette, Esquire. The State was represented by David Spencer of the Office of the South Carolina Attorney General.

This Court heard testimony from Applicant and his counsel, Paul Andrew Anderson, Esquire. This Court also heard testimony from William Greene, Michael Patterson, Shaquila Green (Victim), Christy Green (Mother), Mattissa Jackson, and Gaye Allen-Cook. Ms. Cook was qualified as an expert in Child Abuse Assessment by agreement of the parties. Additionally, the State presented testimony from Brenda Brisbin, Esquire, who was the prosecutor in this case. Several exhibits were admitted into evidence, including a video recording of Victim's forensic interview. This Court also had before it the pleadings of both parties, the transcript of Applicant's preliminary hearing and guilty plea hearing, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections.

Page 1 of 11

8/26/13
[Signature]
C.C.P. & G.S.
[Signature]
Deputy Clerk

to orders of commitment from the Aiken County Clerk of Court. Applicant was indicted during the September 2010 term of the Aiken County Grand Jury Criminal Sexual Conduct with a Minor – Second Degree (2010-GS-02-01523). Applicant was represented by P. Andrew Anderson, Esquire. On May 23, 2011, Applicant pled guilty as indicted pursuant to a negotiated plea deal before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to eleven and a half years imprisonment. Applicant did not appeal his conviction and sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would

have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roschoro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, an applicant must show a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would insist on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Preliminary Hearing

Applicant alleges counsel was ineffective because he did not ensure that Applicant attended the preliminary hearing, failed to review the preliminary hearing transcript with Applicant, and failed to utilize the information gained from the preliminary hearing. Counsel testified he felt the preliminary hearing was very useful in exposing the State's weaknesses in its case and further, Counsel developed defenses based on these weaknesses. In particular, the testifying officer admitted at the preliminary hearing that the victim recanted and there was a short time for the incident to occur. Further, counsel testified he went over the evidence with

Applicant. Counsel had a copy of the preliminary hearing transcript in his file. This Court finds Counsel's testimony on this claim highly credible. This Court finds Applicant's testimony to lack credibility.

This Court finds counsel's performance was not deficient. Counsel ensured the preliminary hearing was productive and utilized the hearing to determine weaknesses in the State's case, which were shared with Applicant. Applicant's attendance was unnecessary, especially considering that the hearing was transcribed. Further, this Court finds Applicant was not prejudiced by the alleged deficiency. Applicant's failure to attend or his supposed lack of knowledge as to what occurred at the preliminary hearing does not rise to the level of prejudice. In the instant case, the State's strengths and weaknesses were known to Applicant and he chose to plead guilty to minimize the severity of his punishment. This allegation is denied.

Failure to utilize expert

Applicant presented an expert in Child Abuse Assessment at the PCR hearing and alleges plea counsel was ineffective for failing to utilize such an expert. This Court finds the witness is truly qualified to be an expert in this field, with extensive training and experience. Further, this Court notes her considerable experience in Finding Words and RATAC, which has widespread acceptance around the country as a means to avoid suggestive interviewing techniques by law enforcement. The importance of such expertise in interviewing victims of tender years is certainly critical.¹ However, Victim was not of tender years at the time of the offense, but was fifteen years old. Nor does this Court see any evidence of coercive or suggestive interviewing

¹ See State v. Michaels, 642 A.2d 1372, 1379 (N.J. 1994) ("a sufficient consensus exists within the academic, professional, and law enforcement communities, confirmed in varying degrees by courts, to warrant the conclusion that the use of coercive or highly suggestive interrogation techniques can create a significant risk that the interrogation itself will distort the child's recollection of events, thereby undermining the reliability of the statements and subsequent testimony concerning such events.").

techniques by the State's forensic interviewer. The expert witness testified that when she interviewed Victim, she was nineteen years old. Further, the expert testified she did not perform a true forensic interview of Victim because she was not asked to do so. Applicant did not suggest the expert should have been used at trial, but instead argues plea counsel could have used the expert to prepare for trial. No evidence was presented that the forensic interviewer utilized by the State failed to utilize proper interview techniques or that the interview was suggestive.

Nonetheless, Applicant asserts that Cook could have helped counsel prepare the case and could have interviewed both Victim and Applicant. Cook also testified that she could have provided counseling to Victim. Cook testified briefly about recantation and testified that Victim recanted her accusations to Cook.

This Court finds that counsel's performance was not deficient in this regard. Counsel testified the State's forensic interview was clean and their forensic interviewer did a good job. This Court finds counsel would not need an expert to determine Victim had recanted. Further, this Court notes that it was uncertain how Victim would testify at trial. Even if a defense expert came to the conclusion that Victim was truthful in her recantation, this Court finds the utility of that information is limited, because the ultimate question is whether the jury would believe the testimony of Victim, assuming she did recant at trial. Counsel felt it was uncertain which way Victim would testify at trial.

Further, this Court does not find Applicant was prejudiced. The expert's testimony does not alter the fact that Counsel was ready for trial and Applicant made an intelligent choice to plead guilty after a review of the strengths and weaknesses in the State's case. This Court further finds that Cook's assistance would not alter the outcome if a trial was held. The Fourth Circuit has recognized that determining prejudice is an objective inquiry depending "on the likely

outcome of a trial had the defendant not pleaded guilty." Meyer v. Banker, 506 F.3d 358, 369 (4th Cir. 2007). This Court finds that Cook's testimony at trial or her assistance in preparing for trial would not have affected the likely result of a trial.

Further, Victim testified at the PCR hearing. She claimed she was not abused and she made the incident up because she was mad at Applicant. This Court finds her testimony was not truthful in regards to whether the abuse occurred. This Court notes that Applicant and Victim presented testimony that the same day Victim apparently decided to make a false allegation of abuse against Applicant, Applicant masturbated and ejaculated on a towel. Victim happened to place her clothes, including her underwear, on the towel. This was their explanation as to how Applicant's DNA ended up in her underwear. Counsel did not feel the jury would have believed this story. This Court agrees. This Court finds it highly coincidental that an accidental transfer of DNA occurred the same day Victim claims she made a false claim of abuse. Further, Victim claimed she recanted to the prosecutor, Ms. Brisbin, and never admitted the abuse occurred. In contrast, Ms. Brisbin testified Applicant did admit the abuse occurred and Ms. Brisbin does not recall Victim recanting her claim, but does recall Victim's mother pressuring Victim and challenging Ms. Brisbin's view of the DNA results, claiming the results absolved Applicant because it was not a match. In fact, the results indicated a one in twenty-three million chance that the DNA was not Applicant, which falls below SLED's standard for calling the DNA a match. But the results are still consistent with Applicant's DNA and still damaging evidence against Applicant that likely would have led to conviction. This Court finds Ms. Brisbin's recollection of her interview with Victim credible. This Court does not find Victim's recantation to be credible and believes it was the result of family pressure. This Court finds this allegation must be denied.

Failure to develop a viable defense

Applicant alleges counsel was ineffective for failure to develop a viable defense with available witnesses and the fact Victim recanted. Counsel testified otherwise. Counsel, as mentioned before, was well aware that Victim recanted, but at other times was claiming the abuse did happen. The situation appeared volatile in that regard. Counsel also testified he interviewed both William Greene and Michael Patterson, and his understanding from the interviews was they would have testified to nearly the same time frames they testified to at the PCR hearing. Counsel stated it was a short time frame when the abuse would have occurred, but the abuse could have occurred within that short time frame. This Court finds incredulous the assertion that counsel did not diligently pursue and prepare defenses in this regard. The simple matter is Applicant had a difficult choice in deciding whether to assert these defenses at trial or instead, minimize the risk of punishment by pleading guilty.

Counsel's performance was not deficient. Further, this Court finds Applicant was not prejudiced by the purported deficiency, as he was well aware of the time frames, the recantation, and the State's evidence. This Court finds Applicant's testimony that he would not have pled guilty but for counsel's alleged deficiency to lack credibility. This allegation is denied.

DNA evidence

Applicant alleges counsel was ineffective for failure to investigate the DNA evidence, for failure to move to suppress DNA evidence, for agreeing with the trial court's off-record assessment of the admissibility of DNA evidence, and for failing to clarify the State's interpretation of evidence at the guilty plea.

As to the latter of those allegations, this Court is cognizant of the fact that this was a negotiated plea and simply finds that there was no need for counsel to object at the plea, as the

question was simply whether the plea court would accept the plea, which is what Applicant wanted at the time of the plea. Counsel testified he utilized a DNA expert who determined the DNA evidence appeared reliable. Counsel testified he would have moved to suppress DNA evidence, but did not believe the evidence would be kept out at trial. This Court finds counsel's investigation of the DNA evidence was diligent and did not fall below professional norms. This Court further finds Applicant failed to show prejudice. Any issues regarding DNA would have gone to weight, not admissibility of DNA evidence, and the DNA evidence was certainly damaging. Applicant pled guilty with eyes wide open in this regard. Further, this Court finds Applicant failed to present any evidence undermining the DNA expert's findings. This Court finds Applicant failed to prove either prong of Strickland and denies this allegation.

Involuntary plea

Applicant alleges counsel should have moved for continuance and was not prepared for trial. Counsel, whose testimony this Court will reiterate, finds highly credible, testified he was prepared for trial and it would not be a hard case to try.² Counsel testified he has tried many cases, particularly child sex abuse cases. Counsel did not believe a continuance would be granted. Counsel testified that regardless of Victim's testimony, the DNA evidence would be damaging and his expectation was Applicant likely would be found guilty as charged and the court would have sentenced Applicant to the full twenty years imprisonment. Therefore, his advice was for Applicant to plead guilty. However, he clarified it was Applicant's decision to

² This Court is aware counsel testified at the PCR hearing, at times, that it would be easier to have tried the case, or that he should have just tried the case. This Court believes this was just a hindsight observation by counsel, and probably just out of frustration with the family that is now so quick to second guess his judgment. This Court takes this testimony with a grain of salt. This Court makes its observations by eliminating the distorting effects of hindsight in determining whether or not counsel exercised reasonable professional judgment at the time of the plea.

plead guilty.³

In Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997), the circuit court found that Satterwhite's plea was involuntary because Satterwhite believed his counsel was not prepared for trial. Id., 325 S.C. at 258, 481 S.E.2d at 711. Our state supreme court reversed, noting that at the plea, Satterwhite was satisfied with counsel's services. The Supreme Court found that Satterwhite's "*belief* that counsel was unprepared for trial [when Satterwhite pled guilty] is not evidence that counsel was, in fact, not prepared." Id., 325 S.C. at 259, 481 S.E.2d at 712 (Emphasis in original).

This Court finds counsel was certainly prepared for trial, notwithstanding Applicant or his family's alleged beliefs to the contrary. This Court does not doubt that had Applicant chosen to proceed to trial, counsel would have ensured Applicant received a fair trial. However, counsel would not be capable of ensuring a favorable verdict and his advice to Applicant was reasonable. This Court is reminded by a useful passage from our state supreme court's case law found in Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981):

the decision to plead guilty before the evidence is in frequently involves making of difficult judgments. All the pertinent facts normally cannot be known unless witnesses are examined and cross-examined in court. Even then the truth will often be in dispute. In the face of unavoidable uncertainty, the defendant and his counsel must make their best judgment as to the weight of the State's case. . . .

at 298, 277 S.E.2d at 892-93 (quotations and citations omitted). After having listened to

³ Applicant suggests that Counsel should not have let him plead guilty because Applicant had previously told Counsel he was innocent and only admitted his guilt the day of the plea. Tr. p. 10, lines 7-9 (Applicant advising the plea court that he is pleading guilty because he is guilty). Apparently he suggests that Counsel should share in the responsibility for what he now asserts is a mistruth. This Court disagrees that Counsel's representation occasions a reason for Applicant to give untruthful answers to the plea court. See Wolfe v. State, 326 S.C.158, 165, 485 S.E.2d 367, 370-71 (1997)(Counsel's advice that questions were routine was not an invitation to answer the plea court's questions untruthfully).

extensive evidence and testimony presented at the PCR hearing, this Court concludes most, if not all, of the evidence was known at the time of trial and Applicant merely chose to plead guilty to avoid uncertainty. This is the proper reason for pleading guilty. Applicant and his family's apprehension about the case and counsel does not amount to ineffective assistance of counsel, because counsel proved himself to be a capable, experienced attorney who diligently investigated the facts and law of the case and made a reasonable determination as to the likely result of trial. Applicant and his family's apprehension about the outcome of the trial was warranted. This Court believes that after a fair trial and despite the best efforts of counsel, Applicant would have been convicted. However, their apprehension concerning the quality of counsel's representation was unfounded and did not render the plea involuntary. Satterwhite.

Failure to advise about sex offender registry requirements

This last allegation underscores Applicant's complete lack of credibility. Counsel advised the plea court he advised Applicant that Applicant would be required to register as a sex offender. Tr. p. 4. Further, Applicant advised the plea court that he understood he would be required to register as a sex offender. Tr. pp. 6-7. At the PCR hearing, Applicant complained to this Court that he did not understand that he would be required to register for the sex offender registry. This Court does not find it acceptable to lie to any court, but believes Applicant was untruthful to this Court rather than to the plea court. This frivolous allegation is denied. This Court also notes that Applicant's willingness to lie to a court is truly a complete failure of evidence. Applicant should have come to court to tell the truth and not to make this Court sort out his truths and untruths after the fact. There is no merit to his claims in this Application.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any

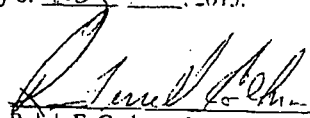
constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

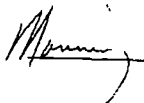
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of Dec, 2013.


Ralph F. Cothran, Jr.
Presiding Judge
Second Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Russell Jackson, #216302,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-02-0321

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 12725

Columbia, SC 29211

phone: 803-988-0008 fax: 803-988-8070

e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:

David Spencer, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion Pursuant to Rule 59(a) & (e)

Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 18, 2013

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date: COPY

CLERK'S VERIFICATION

ORIGINAL FILED

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

OCT 21 2013
AIKEN COUNTY
CLERK OF COURT

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	DOCKET NO.: 2012-CP-20-0321
	)	
RUSSELL JACKSON, 216302,	)	
Applicant,	)	NOTICE OF MOTION AND MOTION
v.	)	FOR REHEARING PURSUANT TO
	)	RULE 59(a), SCRCP, AND/OR MOTION
STATE OF SOUTH CAROLINA,	)	TO ALTER OR AMEND PURSUANT TO
Respondent,	)	RULE 59(e), SCRCP
	)	

COMES NOW Applicant, through his undersigned attorney, and requests the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amendment of the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on February 7, 2012. The State made its Return on May 30, 2012. An evidentiary hearing was held at the Aiken County Courthouse in front of the Honorable R. Ferrell Cothran, Jr., on July 11, 2013. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by David Spencer, Senior Assistant Attorney General.

On August 26, 2013, the Honorable R. Ferrell Cothran, Jr., issued an Order of Dismissal, which was filed on August 29, 2013. Applicant's counsel did not receive a copy of the signed Order prior to filing. After finding an entry on the Aiken County Clerk of Court's online records that the Order had been filed, Applicant's counsel contacted David Spencer. As a result, Mr. Spencer received a signed and filed copy of the Order from the Aiken County Clerk of Court's Office and served a copy, via mail, on

C O P Y
ORIGINAL FILED

OCT 21 2013
AIKEN COUNTY
CLERK OF COURT

Applicant's counsel. Applicant, through counsel, received written notice of the entry of the Order on October 10, 2013.

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant would further request that this Court review the evidentiary hearing transcript, reconsider the standing Order of Dismissal and rehear Applicant's case pursuant to Rule 59(a), SCRPC.

As to the specific issues raised in the Amendment, Applicant would ask this Court to consider the following:

1. As to Issue #2: "Ineffective assistance of counsel for failing to utilize an expert (clinical child family therapist specializing in trauma and abuse) to meet with and evaluate the evidence, Applicant, witnesses and victim and to assist with preparation of a defense for trial and/or offer mitigation at the plea hearing," which is addressed on page 4-6 of the standing Order, Applicant would submit:
 - a. Gaye Allen-Cook was offered as an expert in her capacity as a clinical child family therapist specializing in trauma and abuse. The Order improperly limits her expertise and the assistance she could have

offered in the instant case as it states she is an “expert in Child Abuse Assessment.”

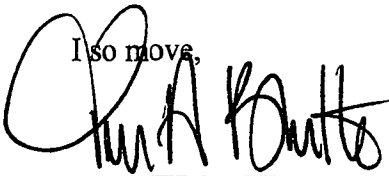
- b. The Order fails to address Andy Anderson’s candid admission that he should have utilized someone in Gaye Allen-Cook’s capacity to assist with the case and his assessment that she would have been helpful in preparing the case. The Order also fails to address his failure to utilize her testimony as mitigation at the plea hearing.
- c. The Order fails to address the victim’s testimony that she would have been willing to speak with and work with Gaye Allen-Cook on her father’s behalf.
- d. The Order finds the victim and her recantation not credible, but the Order fails to address Gaye Allen-Cook’s testimony regarding her assessment of the victim in the forensic interview and in their interview.
- e. The Order includes a detailed discussion of the RATAC method and Finding Words, which appears to be irrelevant since Applicant did not allege that the forensic interview was improperly conducted nor anything regarding the roles of forensic interviewing in criminal prosecutions. Applicant submits that this detailed discussion regarding the forensic interviewing process is not in line with Applicant’s allegations and is generated from the State’s cross-examination on the topic.

2. As to Issue #3, "Ineffective assistance of counsel for failing to develop a viable defense despite having available witnesses and a victim that had recanted. Ineffective assistance of counsel for failing to conduct an independent investigation," which appears on page 7 of the Order, Applicant submits that the Order fails to address the testimony elicited regarding counsel's failure to conduct an independent investigation.

As to the entire Order, Applicant submits that the standing Order does not completely or accurately reflect the testimony and evidence presented at the evidentiary hearing. Therefore, Applicant would respectfully request that this Court review the evidentiary hearing transcript before entering a final ruling. Specifically, Applicant submits that the Order errantly excuses and/or overlooks plea counsel's testimony that Applicant had told him that he was not guilty but he allowed him to tell the plea court that he was guilty. Applicant submits that this Court's finding that Applicant lied to the plea court must be considered in light of plea counsel's testimony on the matter.

For the above stated reasons, Applicant would respectfully request that this Court reconsider the Order of Dismissal, obtain and review the evidentiary hearing transcript, and hold a motion hearing to ensure that all the testimony and arguments are fully addressed by this Court prior to appeal. Applicant would specifically move before this Court to direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

October 9, 2013
Columbia, SC

I so move,


Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Russell Jackson, #216302,)
Applicant,)

2012-CP-02-0321

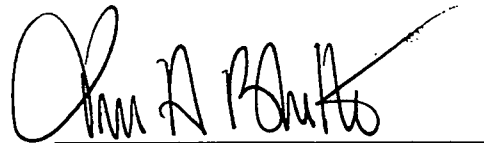
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I hand delivered this 18th day of October 2013, a copy of a Motion Pursuant to Rule 59 (a) & (e), SCRCF, to David Spencer of the Attorney General's Office, at:

Office of the Attorney General
ATT: David Spencer, Sr. Ast. AG
1000 Assembly Street
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

October 18, 2013

C O P Y
ORIGINAL FILED

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UP 100
AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2012-CP-02-0321

Russell Jackson, #216302,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER DENYING
MOTION TO ALTER
OR AMEND JUDGMENT**

This matter is before this Court by way of a motion to alter or amend judgment pursuant to Rule 59(e), SCRPC. Applicant filed his application for post-conviction relief (PCR) on February 7, 2012. The State made its return on May 30, 2012. A hearing into the matter was convened at the Aiken County Courthouse on July 11, 2013. Applicant was present and represented by Tricia Blanchette, Esquire. The State was represented by David Spencer of the Office of the South Carolina Attorney General.

Following the hearing, this Court denied relief by order dated October 18, 2013. Applicant's counsel was given the opportunity to confer with the State's attorney to ensure that all issues raised at the hearing were reflected in the order. This Court finds that there is no need for this Court to alter or amend its judgment. This Court will address the arguments now raised in Applicant's Rule 59(e) motion:

(1) Applicant makes several arguments in regards to his claim that counsel should have utilized the services of an expert in child abuse assessment. These are divided into sub-arguments, further addressed below:

(a) At the hearing, the parties agreed to qualify Applicant's witness, Ms. Gaye Allen-Cook, as an expert in child abuse assessment. Applicant complains that the order improperly limits her expertise. This Court disagrees. This Court finds that Ms. Cook is well-qualified in child and family therapy and in matters pertaining to trauma and abuse. This Court notes her experience with Finding Words and the RATAC protocol, which is nationally recognized.

Further, Applicant complains that this Court improperly limited its view on the assistance she could have provided Counsel. In this regard, Applicant simply did not meet his burden of proof. This Court was impressed with Ms. Cook's qualifications, but there was little to no substance provided to this Court as to how she could have assisted the defense. Further, ultimately Applicant knows whether or not the victim was telling the truth about the assault, and therefore, her services failed to provide any important information for Applicant on whether or not to plead guilty. The Applicant's motion is conclusory on this point.

(b) Applicant alleges that the order fails to address Counsel's "candid" admission that Ms. Cook could have assisted the defense. Counsel's testimony on this point was that it would not have hurt to employ the expert. This Court notes counsel was willing to second guess his decisions in hindsight, but also provided candid testimony on his contemporaneous strategy and advice in this case, which this Court found highly probative. Brown v. Ormoski, 503 F.3d 1006, 1013 (9th Cir. 2007) (finding counsel's trial strategy reasonable even though counsel indicated he might have done things different in hindsight: "[w]e do not judge counsel's actions through the twenty-twenty lens of hindsight"). In contrast, Counsel's testimony where he might have waived in some of his decisions in hindsight is unhelpful because it is the wrong test. See Gentry v. Sinclair, 576 F.Supp.2d 1130, 1154 n.38 (W.D. Wash. 2008) (finding "counsel's

of how someone like Ms. Cook could have affected the outcome – Applicant’s decision to plead guilty. This Court was simply trying to consider potential benefits of such an expert, although it must conclude that there were none in the instant case.

(2) Applicant complains about this Court’s analysis of issue #3, in which Applicant complains counsel failed to develop a viable defense. This Court simply finds counsel’s testimony credible on this point. Counsel was prepared for trial and would have asserted the defenses available, including the recantation of the victim. Counsel could not guarantee Applicant a favorable verdict, and therefore Applicant had to make the difficult decision between trial and pleading guilty. Applicant made this decision with eyes wide open.

This Court strongly disagrees with Applicant’s assertion that the order is in variance with the testimony presented. Applicant merely wants this Court to adopt his view of the facts, but this Court declines to do so. For instance, this Court will not accept the absurd accidental transfer of semen testimony that appears to have been orchestrated between Applicant and his victim. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a), SCRPC.

IT IS THEREFORE ORDERED:

1. That Applicant’s motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this _____ day of _____, 2014.

Ralph F. Cothran, Jr.
Presiding Judge
Second Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

)
) IN THE COURT OF COMMON PLEAS
)

Russell Jackson, 216302

Applicant,

vs.

The State of South Carolina,

Respondent.

ORDER
C/A NO. 2012-CP-02-0321

This matter is before the Court pursuant to Rule 59 (e) SCRPC. The Applicant seeks an Order of this Court amending or altering its Order of August 26, 2013.

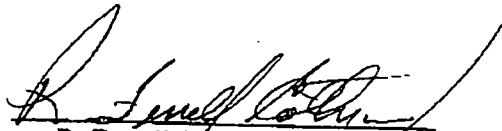
Pursuant to Rule 59 (f) SCRPC, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Applicant, this Court has determined that its original Order dated August 26, 2013 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: June 26, 2014

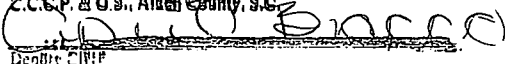

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

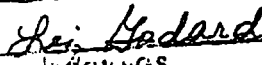
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

30 day of June 2014


Liz Godard
C.C.P. & G.S., Aiken County, S.C.


Liz Godard
Deputy Clerk

30 June 2014

Liz Godard
Deputy Clerk
12:25pm