

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

R. Knox McMahon, Circuit Court Judge

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S.C. Supreme Court

JOSEPH J. MAGNI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002362

APPENDIX

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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

2010-GS-02-01095, 2010-GS-02-01096,
2010-GS-02-01097, 2010-GS-02-01098,
2010-GS-02-01099, 2010-GS-02-01100,
2010-GS-02-01101, 2010-GS-02-01102,
& 2010-GS-40-09465

6 STATE OF SOUTH CAROLINA,

7 -vs-

TRANSCRIPT OF RECORD

8 JOSEPH JAY MAGNI, JR.,
9 Defendant.

11 HEARD ON MONDAY, APRIL 18, 2011
& TUESDAY, APRIL 19, 2011

12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14 AND A JURY

15 APPEARANCES:

16 Counsel on behalf of the State:

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON MONDAY, APRIL 18, 2011 AT 2:00 P.M.:

2 THE COURT: All right. Solicitor?

3 MS. BRISBIN: Your Honor, this is a -- we're
4 starting with a Lyle motion. This is State versus Joseph
5 J. Magni, Jr., Indictment Numbers 2010-GS-02-1095 through
6 1102. And he is charged with criminal sexual conduct with
7 a minor in the second degree and lewd act on a minor.

8 And the Lyle motion is for the admission of
9 evidence --

10 THE COURT: Whose motion is it?

11 MS. BRISBIN: Pardon me?

12 THE COURT: Whose motion is it?

13 MS. BRISBIN: It's the State's motion.

14 THE COURT: Have you filed a motion and they have
15 a copy of it?

16 MS. BRISBIN: I'm passing it up to you right now.

17 THE COURT: Do have a memo or anything for me to
18 look at?

19 MS. BRISBIN: I do have case law that goes with
20 it that I'll also pass up.

21 THE COURT: All right. Be glad to hear from you.

22 MS. BRISBIN: Your Honor, the evidence that the
23 State seeks to admit under Lyle and Rule 404-B of the
24 Rules of Evidence is in regard to incidents of similar
25 sexual assaults that occurred on the same victim with this

1 Defendant in Richland County, South Carolina, where the
2 victim had moved shortly after the incidents that occurred
3 in Aiken County.

4 The initial incidents in Aiken County occurred at
5 the school where the victim was a student. She was 14
6 years old.

7 THE COURT: Is this the victim right here?

8 MS. BRISBIN: Yes, sir. She was a student at
9 Leavelle McCampbell.

10 THE COURT: Is the Defendant here?

11 MR. KENDRICK: Right here, Your Honor.

12 THE COURT: Okay.

13 MS. BRISBIN: And the Defendant was her eighth
14 grade history teacher at the time. When those incidents
15 occurred primarily at the school and also occurred, one
16 incident occurred at the cinema, the theatre at the Aiken
17 Mall, in the Aiken Mall area.

18 The incidents in Richland County occurred
19 starting the following, the same month actually. The
20 victim was still 14. The Defendant was 28. He had his
21 28th birthday during that time period.

22 The incidents continued, sexual batteries
23 continued from, starting in May of 2009 in Aiken County
24 and continuing through June the 5th of 2009, in Aiken
25 County. And then after the victim moved to Columbia, to

1 Richland County where the father lived, to live with him,
2 in June of 2009, the incidents continued in Richland
3 County shortly thereafter. And that happened from June
4 25th through August 15th of 2009 in Richland County.

5 And the case law supports --

6 THE COURT: Have the Richland County cases, has
7 he been indicted for those?

8 MS. BRISBIN: In Richland County, Your Honor.

9 THE COURT: But no disposition?

10 MS. BRISBIN: That's correct. And in fact the
11 solicitor on that case is planning to be here tomorrow to
12 assist in this trial but, of course, his case there would
13 have to be heard there in another, in a separate trial.
14 We're seeking to --

15 THE COURT: So you want to use the alleged --

16 MS. BRISBIN: Continuing illicit acts. Yes, Your
17 Honor.

18 THE COURT: -- illicit acts under rule or under
19 404-B?

20 MS. BRISBIN: Yes, sir.

21 THE COURT: Evidence of other wrongs to show,
22 what?

23 MS. BRISBIN: To show a continuing course of
24 conduct or continuing illicit sexual behavior with the
25 same victim and Defendant over a period of time which is

1 supported by all the cases that I handed up to you that go
2 back as far as 1955 and are as recent as 2009 in which the
3 Court has found that continuing illicit intercourse on the
4 victim by the Defendant is admissible.

5 THE COURT: Which case is that?

6 MS. BRISBIN: That's State V. McClellan. And
7 also in State V. Weaverling in 1999, the Court upheld the
8 admission of evidence of prior uncharged bad acts
9 committed by the --

10 THE COURT: These are prior?

11 MS. BRISBIN: These are subsequent. However,
12 both -- there's case law on both that says both prior or
13 subsequent illicit acts that are similar in nature can be
14 admitted under the common scheme or plan.

15 THE COURT: Where is the case that says
16 subsequent acts?

17 MS. BRISBIN: That is Whitener, I believe. It
18 says, where the Court held the common scheme exception to
19 the Lyle rule was generally applied in cases involving
20 sexual crimes where evidence of acts prior and subsequent
21 to the act charged in the indictment is held admissible as
22 tending to show continued illicit intercourse between the
23 same parties.

24 THE COURT: What's the name of that case?

25 MS. BRISBIN: State V. Whitener.

1 THE COURT: You didn't hand me that one.

2 MS. BRISBIN: Oh.

3 THE COURT: I got McClellan, Mathis, Clasby.

4 MS. BRISBIN: I can send someone to pull that
5 one, your Honor. I do have the cite if you'd like me to
6 give you that now.

7 THE COURT: No, ma'am. What's the cite, please?

8 MS. BRISBIN: 89 Southeast Second 701.

9 THE COURT: All right.

10 MS. BRISBIN: That's 1955.

11 THE COURT: Let's continue. Go ahead.

12 MS. BRISBIN: That's 1955. I think that's why I
13 didn't pull that one, it's so far back, but cases since
14 then have upheld that ruling that both subsequent and
15 prior bad acts are admissible as long as it's the same
16 illicit conduct with the same victim under similar
17 circumstances. And it can even be over a period of
18 several years.

19 In this case, the victim was still 14 years old.
20 It happened, it was continual from -- the Aiken County
21 incidents stopped in June. The Richland County incidents
22 started in June.

23 THE COURT: So not a whole lot of time had
24 elapsed.

25 MS. BRISBIN: Not at all, Your Honor.

1 THE COURT: Tell me in that Whitener case where
2 you're looking.

3 MS. BRISBIN: I can -- I can quote it, but I
4 don't have it with me. Let me see.

5 Also appears to be quoted in Weaverling at 711.
6 If you wanted to look in Weaverling at 711, I'm not sure
7 if the numbers are going to be correct, or if that's the
8 ...

9 Your Honor, if you'd look in McClellan. On page
10 three of your copy, one, two, three, the fourth paragraph
11 down, it quotes State V. Whitener. And it includes both
12 acts prior and subsequent to the act charged.

13 THE COURT: All right. Anything else?

14 MS. BRISBIN: Also the evidence that Richland
15 County -- the Richland County evidence is where the Aiken
16 County evidence came, because the Richland County evidence
17 was reported first.

18 And the investigator from Richland County who
19 investigated the case there contacted Aiken County
20 Sheriff's Office to report that the victim had also
21 disclosed similar incidents in Aiken County.

22 That's how the case began.

23 And the investigator is present from Richland
24 County as well as the investigator from Aiken County, Your
25 Honor, if you should need to hear from them.

1 THE COURT: All right. Defense? Gentlemen?

2 MR. KENDRICK: Thank you, Your Honor. Josh
3 Kendrick on behalf of the Defendant, Joe Magni.

4 Your Honor, I don't disagree with the State's
5 argument that subsequent acts can be used under 404-B, but
6 I think where I'd ask Your Honor to focus is three areas.
7 Number one, obviously they've got to -- I'm sorry. It
8 might just be two, Your Honor.

9 The first one is despite, whether the allegations
10 involved the same two parties there needs to be some
11 similarities. I've read a number of prior-bad-act cases,
12 but rather than give them all to you, I think it's
13 basically summed up well.

14 And I've got State V. Edwards, Your Honor. And
15 I'll be glad to hand you up a copy. It's my only copy.
16 And I apologize. I was in a hurry this morning, but I can
17 just read what it says.

18 In that case they are referring back to Mathis,
19 the case the State just gave you. And what it says is,
20 the three prior incidents of misconduct show the same
21 illicit conduct and -- over the course of this nine-month
22 period. The sentence before that in Edwards says that,
23 all these assaults were attempted in the same manner and
24 under similar circumstances.

25 What it seems like we have here, Your Honor, are

1 the similarity they brought up is that it seems to involve
2 the same two people.

3 THE COURT: Well, that's pretty similar, isn't
4 it?

5 MR. KENDRICK: Absolutely not, Your Honor. All
6 that shows is that the same two people were involved. In
7 other words, one person accused somebody else of
8 something.

9 The facts that give rise to each allegation, the
10 facts that surround it are what have to be similar.
11 That's what gives the Court some comfort in letting in
12 unproven conduct.

13 THE COURT: Well, how are these acts allegedly
14 different?

15 MR. KENDRICK: Well, Your Honor, they haven't put
16 any testimony up on that. And I think the allegations, I
17 think they have to prove -- well, I know they have to
18 prove by clear and convincing evidence that these other
19 allegations happened.

20 So we need to hear from, not just the
21 investigator but I think the victim who accuses him would
22 have to testify as to what happened.

23 Then, we'd have to determine if those
24 circumstances are similar to what they brought in here.

25 You know, I can run through my problem with it,

1 Your Honor, but I think the State's got the burden of
2 proof. They're wanting to put in uncharged conduct which
3 while all these cases allow them to do that -- again,
4 aside from the fact this is still an exception to the
5 rules of evidence. So in other words, it's not a
6 situation where we're always going to allow it.

7 We have to meet an exception. We have to look
8 very carefully at what they do. They can't come up here
9 and say, Your Honor, we got incident one, two and three,
10 we have incident A, B, and C.

11 THE COURT: Let me see your Edwards case, please.

12 MR. KENDRICK: And the case I'm passing up, Your
13 Honor, is the right-hand column, the highlighted portion,
14 particularly the language about similar circumstances.

15 THE COURT: Well, citing Mathis, it simply says
16 that they have to show that the conduct both before and
17 after the act shows continued illicit intercourse between
18 the same parties.

19 Ms. Brisbin, is that what you're going to be able
20 to show if you make a proffer, that it was continuous? I
21 mean, I assume anything that was between these two is
22 illicit, but continued intercourse?

23 MS. BRISBIN: It was an escalating pattern of
24 behavior. It started out with oral and digital sexual
25 batteries in Aiken County and it progressed to oral and

1 digital as well as sexual intercourse in Richland County.

2 And the case law also says that --

3 THE COURT: I just asked you what you plan to
4 show from Columbia and Richland County.

5 MS. BRISBIN: Yes, Your Honor.

6 THE COURT: Intercourse as well as digital
7 penetration as well as oral?

8 MS. BRISBIN: Yes, Your Honor.

9 THE COURT: And in Aiken it was allegedly oral
10 sex and digital penetration?

11 MS. BRISBIN: Yes, sir.

12 THE COURT: Okay.

13 MS. BRISBIN: And there's also case law that says
14 an established pattern of escalating abuse is admissible
15 under common scheme when it's the same victim. And that's
16 in Clasby on page three. Excuse me. Page two.

17 Here's Whitener, the 1955 case. We just got it
18 run off.

19 THE COURT: All right. Keep going. Hand that
20 back to me. I'm listening.

21 MR. KENDRICK: Your Honor, you want me to keep on
22 going, Your Honor?

23 THE COURT: If you want to.

24 MR. KENDRICK: Your Honor, I think at this point,
25 I mean, I'd keep talking but, again, I don't disagree with

1 what the State's, what cases they've given you other than,
2 you know -- again, what we end up with in all these cases
3 is that you need more than just some type of similarity,
4 you know, it's a close degree, logical relevance.

5 I think at this point the State's just merely
6 telling you what everyone is accused of. I think we need
7 to put a proffer of evidence up before we can make a real
8 argument on this.

9 The degree of similarity is the critical concern,
10 and whether we can bring uncharged conduct in that he's
11 not on trial for, and that he hasn't been put on trial
12 for, into a case that he is on trial for.

13 So at this point, what our request would be is
14 that we proceed to whatever evidence the State has. And,
15 I mean, my argument I don't think would change but I'm
16 just kind of arguing in general --

17 THE COURT: You want her to do a proffer here
18 today instead of doing it tomorrow?

19 MR. KENDRICK: She can do it tomorrow, Your
20 Honor. But I guess my point is, I don't need to tell you
21 what the 404-B case law says. I think the State has
22 provided almost every case that I've read.

23 And, again, the case I gave you kind of boils it
24 down to what we found is that they have to prove by clear
25 and convincing evidence a close degree of similarity.

1 Obviously, I know what the allegations are but
2 that's very different than what the proof is. There is a
3 standard of proof, as the rules of evidence says. If we
4 want to do the proffer tomorrow, it makes no difference to
5 me. I would just ask Your Honor to withhold a ruling
6 until such time as the proffer's been taken.

7 THE COURT: This is more like a motion in
8 limine. I don't ever make a ruling on evidence until we
9 see what's going to happen during the trial of the case.

10 If what she's telling me is correct, more likely
11 than not it will come in. If it's not similar, then I
12 will have to make a ruling then. I can't rule one way or
13 the other today until I know what's going to be in the
14 trial of the case. I can listen to a proffer and if it's
15 the same thing tomorrow as I hear today, then obviously I
16 can pre-judge it some, but it's like we had a week-long
17 trial last week. We had beau coups of motions in limine.
18 I said, fellows, this is what I'm probably going to do but
19 I don't know if they'll -- a lot of times they'll change
20 their story when they get up there. It gets off to one
21 side or the other.

22 And until I hear it during the trial of the case,
23 I can't, I can't rule on it. I can tell you what I'd
24 probably do, but I don't know what's going to happen in a
25 trial of a case.

1 MR. KENDRICK: I guess what I'd request then,
2 Your Honor, is that we refrain from them mentioning the
3 404-B allegations in opening argument until it comes time
4 where a witness is going to testify. And then at that
5 point, I don't know that we need to keep arguing today,
6 but --

7 THE COURT: That's normally the way I do it.
8 When I have motion in limine I say, until I'm able to rule
9 on it, don't mention it in front of the jury.

10 MR. KENDRICK: I would certainly have no problem
11 with that procedure, Your Honor. Like I say, I don't need
12 to keep talking about the case law.

13 THE COURT: Ms. Brisbin?

14 MS. BRISBIN: I would agree with that, Your
15 Honor.

16 THE COURT: We're all on the same boat, going
17 down the same stream. All right.

18 Here's the way we'll do it. When you make your
19 opening statements tomorrow, Ms. Brisbin, you can talk
20 about all the allegations in the indictments here in Aiken
21 County.

22 And, but before we get into that or those actions
23 or alleged actions in Richland County, just come to a
24 stop. Tell me that's where we are. We'll send the jury
25 out. We'll do a proffer. You can cross-examine and if I

1 find that it's within the case law, we'll allow it. If I
2 find that it's not within the case law and/or the rules, I
3 can then make a 403 analysis between probative and
4 prejudicial. Then we'll make a decision on -- I'll make a
5 decision on the admissibility of it.

6 So we're all on the same page with that?

7 MR. KENDRICK: Yes, Your Honor.

8 MS. BRISBIN: Yes, Your Honor.

9 THE COURT: Anything else we can do to move it
10 along? Who's here from Columbia?

11 UNIDENTIFIED SPEAKER: I am.

12 MS. BRISBIN: We would ask, he needs to pick up
13 his kids from school, if he could be excused.

14 THE COURT: Very well.

15 UNIDENTIFIED SPEAKER: Thank you.

16 MS. BRISBIN: Thank you. We have another motion.
17 The State has another --

18 THE COURT: Hold on a second. He's asking y'all
19 something.

20 (Pause.)

21 MS. BRISBIN: The State's other motion is to
22 suppress evidence of a civil lawsuit which was filed on
23 behalf of the victim under the name Jane Doe by her
24 guardian ad litem, Mary Doe, versus Aiken County School
25 District.

1 And it was that lawsuit, the evidence in that --
2 the contents of that file were sealed by the Court.
3 However, the defense made a motion to allow the defense to
4 view that file. And Your Honor granted that motion and
5 the defense tells me that they are planning to raise the
6 issue of the civil lawsuit in this criminal trial.

7 And the State moves to suppress that evidence
8 because it is totally irrelevant to the criminal charges,
9 the issue of whether or not the Defendant is guilty in the
10 criminal case.

11 The civil action is based on allegations that the
12 school district was negligent in supervising the
13 Defendant, I believe, if I understand it correctly, and in
14 his role as a teacher at that school.

15 And the State's position is that that's totally
16 irrelevant to whether or not the Defendant is guilty of
17 sexually assaulting the victim in this case. And it would
18 be prejudicial to the State and completely without
19 relevance.

20 THE COURT: Do you have any case law to support
21 that position?

22 MS. BRISBIN: I don't have any case law on this
23 issue, Your Honor. I'm not aware that there is any case
24 law on this issue. It's pretty specific.

25 THE COURT: I bet you have some, don't you?

1 MR. KENDRICK: I do, Your Honor.

2 THE COURT: Absolutely.

3 MR. KENDRICK: Your Honor, I'll pass up State V.
4 McFarlane, 279 SC 327 1983 Supreme Court, and North
5 Greenville College versus Sherman Construction. It's a
6 1978 case from the Supreme Court.

7 Both of those say that pending litigation is
8 proper as evidence of bias when there's litigation pending
9 between the parties or the witnesses, whatever the case
10 may be.

11 I will, I guess, draw your attention first to,
12 we'll start with the North Greenville College versus
13 Sherman Construction. On the copy I gave you, Your Honor
14 --

15 THE COURT: Hold on one second. Who's got a copy
16 of the complaint in the civil action?

17 MR. KENDRICK: Your Honor, we don't have a copy
18 but we were allowed to look at it under your order, but
19 it's sealed.

20 THE COURT: In this courtroom?

21 MR. KENDRICK: They got it downstairs, so we
22 didn't make a copy.

23 THE COURT: That wouldn't have been a good idea.

24 MR. KENDRICK: They didn't like us to even look
25 at it, so we didn't want to break any rules.

1 MS. BRISBIN: Your Honor, I asked to make a copy
2 and they told me I couldn't.

3 MR. KENDRICK: But I could tell you very briefly,
4 Your Honor, what -- I can tell you what we're going to do,
5 actually.

6 THE COURT: Well, tell me about it.

7 MR. KENDRICK: I mean, it's not a surprise.

8 Ms. Brisbin really describes the complaint. It
9 is a lawsuit brought on behalf of the victim in this case
10 by, I think, first her mother, but they had to remove her
11 mother as the guardian because I guess her mother as the
12 principal of the school had a conflict under Rule 17. So
13 now I believe it's her father who is the guardian for the
14 litigation purposes.

15 It's a lawsuit alleging negligent supervision
16 against the school district. But it is directly related
17 to the allegations made against Mr. Magni. Obviously
18 Mr. Magni's -- whether, I guess, probably -- he's not
19 named as a party, but he's mentioned throughout the
20 complaint. And clearly the actions that Mr. Magni took or
21 didn't take will directly affect the resolution of this
22 lawsuit.

23 It's a clear issue of bias, Your Honor.

24 We don't mean to put it in in our case in chief.
25 We're going to cross-examine the witness about it. And I

1 think the cases that we've handed up, number one, stand
2 for the proposition which is generally accepted in all
3 cases that we have pretty wide latitude on cross-
4 examination, but past or pending litigation between the
5 witness and the party against whom the witness is
6 testifying is commonly admissible to demonstrate bias.

7 So in this case what you've got is a witness.
8 And while the litigation didn't name Mr. Magni, I don't
9 know why that is. I didn't talk to the Plaintiff's
10 lawyers because I assume they wouldn't talk to me about a
11 sealed case, but my guess from civil practice would be
12 that they went after the defendant with the big pockets.

13 In any event, what Mr. Magni did or didn't do is
14 going to affect the outcome of this case. In other words,
15 if he had never assaulted her, you're not going to win any
16 money on a negligent supervision case. If he did, they
17 will. And that's --

18 THE COURT: Well, tell me how you're going to do
19 it because in this case your client is not a party to the
20 civil litigation. He's the subject of a civil litigation.

21 MR. KENDRICK: Correct.

22 THE COURT: The case you gave me says, evidence
23 of past or pending litigation between the witness and the
24 party against whom the witness is testifying is less
25 commonly admissible to demonstrate bias. That's

1 elementary law.

2 This case is not quite like that because on
3 behalf of the young lady, her father has brought a case
4 against the school for allegedly not doing their homework
5 in hiring your client, i.e., had they done proper homework
6 they wouldn't have hired him, therefore she wouldn't have
7 been subjected to his alleged physical sexual abuse.

8 MS. BRISBIN: Your Honor --

9 THE COURT: So, to make that leap.

10 MR. KENDRICK: Bias, Your Honor, wouldn't
11 necessarily be the witness's bias towards my client. It's
12 just general bias in testifying. In other words, is there
13 any reason why she --

14 THE COURT: I'm not saying that. The case you
15 handed me says, evidence of past or pending litigation
16 between the witness and the party against whom the witness
17 is testifying. Do we have that here?

18 MR. KENDRICK: Your Honor, I agree that reading
19 it as narrowly as possible, it doesn't go in my favor but,
20 again, I think what we're not paying attention to is the
21 fact that bias would involve any reason the witness might
22 have to testify, and any influence on that testimony.

23 So when you have litigation pending -- because my
24 client's not a named party doesn't change the theory of
25 what these cases are saying, which is that litigation

1 gives the witness the reason to testify.

2 And that's certainly something we're entitled to
3 explore on cross-examination.

4 THE COURT: Who would you cross on that?

5 MR. KENDRICK: We'd cross-examine the victim.

6 THE COURT: Her parents have brought a lawsuit on
7 her behalf for hiring, negligently hiring your client.

8 MR. KENDRICK: Yes, sir.

9 MS. BRISBIN: Your Honor, her father does not --

10 THE COURT: Ma'am. Ms. Brisbin, please.

11 MS. BRISBIN: I'm trying to correct --

12 THE COURT: Go ahead, sir.

13 MR. KENDRICK: It's more, Your Honor, than just
14 negligent hiring. It's a negligent supervision case.

15 So I make the distinction because it's not just
16 the hiring but it's the activities that they allege took
17 place. And I think the simplest way to state it is, what
18 I was saying, if he didn't do any of this stuff, then the
19 school can't possibly be liable for negligent
20 supervision.

21 They're only liable for negligent supervision if
22 the acts alleged in the complaint took place. Obviously
23 if this case gets -- if there's a guilty verdict in this
24 case, that's absolutely admissible in the civil case.

25 THE COURT: Ms. Brisbin, are you finished? I'm

1 sorry. Are you finished? Ms. Brisbin.

2 MS. BRISBIN: The father did not file the
3 complaint, Your Honor. The mother initially filed it
4 under the name Mary Doe and the child referred to as Jane
5 Doe on her behalf.

6 That was changed. And my understanding is that
7 the bank is actually the named guardian in the new
8 lawsuit, although I haven't seen that. I don't even know
9 if it's been --

10 THE COURT: But it's on behalf of the victim.

11 MS. BRISBIN: It's on behalf of the victim listed
12 as Jane Doe in the pleadings.

13 We have not seen the pleadings that are, I guess,
14 have been made recently, in the last week. All we saw was
15 what the defense saw when we reviewed that initial
16 complaint.

17 THE COURT: Well, the complaint's being brought
18 up as we speak.

19 MS. BRISBIN: And the victim in this case is a
20 child. And I don't believe that it would be appropriate
21 to be cross-examining her on a civil lawsuit that was made
22 on her behalf as a child, because it's totally irrelevant
23 to whether or not -- whether somebody else on her behalf
24 filed a civil lawsuit claiming negligence on the part of
25 this teacher has nothing to do with whether or not he's

1 guilty of having sex with a 14 year old.

2 THE COURT: I understand that. He's not going to
3 whether he's guilty or not guilty. He's going to using it
4 for showing bias, i.e., for the jury when they determine
5 credibility of the witnesses.

6 MS. BRISBIN: But the witness is a child and she
7 did not file the lawsuit, the civil lawsuit. It was filed
8 on her behalf as a child.

9 THE COURT: All right. I'm going to have to
10 contemplate that.

11 MR. KENDRICK: Okay.

12 THE COURT: Please, likewise, don't mention it in
13 the opening until I have a chance to hear the proffer and
14 make a ruling.

15 MR. KENDRICK: Yes, sir, Your Honor. Can I just
16 add one thing in response directly to what Ms. Brisbin
17 just said?

18 THE COURT: Sure.

19 MR. KENDRICK: I don't know if this is that
20 relevant, but I think in the process of correcting why
21 there's a guardian there was 17-D-Two motion made at some
22 point which basically is when a guardian has a conflict of
23 interest, which her mother was an employee of the school
24 board. You know, I don't know that that would have
25 anything to do with this, but I just brought it up by way

1 of background.

2 But, again, regardless of who brought the
3 lawsuit, under the Rules of Civil Procedure, she's the
4 beneficiary of it. So the lawsuit was brought very
5 shortly after the arrest was made, within a month or two.

6 So that's kind of our issue that, you know, we
7 don't argue that the lawsuit may not be relevant to guilt
8 or innocence. It's relevant to her reason for bringing
9 this up, especially if you look at the timing of the
10 complaint. And his arrest was October 8th, if I remember
11 correctly, in Richland County, and then some weeks later
12 in Aiken County.

13 So, but we won't talk about it, obviously, until
14 the appropriate time.

15 THE COURT: Well, even the case you're handing up
16 says it should be done in the manner I said; excuse the
17 jury, do a proffer and then I can consider it. Of course,
18 you know, that can cut both ways.

19 MR. KENDRICK: We know. We know.

20 THE COURT: It's sealed. How do I get in?

21 THE CLERK: You can go ahead and open it up.

22 THE COURT: You're giving me permission?

23 THE CLERK: They said they'd re-seal it.

24 THE COURT: Let the record reflect, please, Madam
25 Court Reporter, that the clerk's office has handed me the

1 civil action of 11-CP-02-00528. It was Jane Doe by her
2 guardian ad litem, Mary Doe, and by her parents.

3 Now it's the substitute, Palmetto Bank. Consent
4 order to substitute Palmetto Bank as GAL, that was on
5 March 28, 2011.

6 And for the record, it has been sealed. And I am
7 going to open it with instructions that after tomorrow's
8 case we'll seal it back.

9 Ma'am, how about opening that for me --

10 THE CLERK: (Complying.)

11 THE COURT: -- so I don't tear it all up.

12 Anything else, ladies and gentlemen?

13 MS. BRISBIN: I don't have any further motions.

14 THE COURT: Ms. Brisbin, if you could over the
15 evening, these two cases are pretty much on point, see if
16 you can find something to support your position.

17 MS. BRISBIN: Yes, sir.

18 THE COURT: Anything else that we need to do
19 before tomorrow?

20 MR. KENDRICK: Your Honor, we have two evidence
21 issues to raise for the record. Obviously, I don't have a
22 written motion and I apologize.

23 THE COURT: That's all right. As long as
24 Ms. Brisbin has notice of it.

25 MR. KENDRICK: She does. I told her what we're

1 bringing up.

2 Your Honor, the first one, I'll be very candid
3 with the Court, it doesn't appear to be any case law on
4 point one way or the other. I'll give you a brief factual
5 background of our motion.

6 There's some DNA evidence in this case which Your
7 Honor heard a Schmerber hearing on, probably eight months
8 ago.

9 THE COURT: This is the case we had set for trial
10 and a dress showed up, I'm not going to say on the eve of
11 trial but just shortly before trial. We continued the
12 case until the DNA could be --

13 MR. KENDRICK: Right.

14 THE COURT: -- analyzed on the dress.

15 MR. KENDRICK: Right. Your Honor, I guess our
16 issue is that the case was set for trial in June of last
17 year.

18 THE COURT: That's correct.

19 MR. KENDRICK: About as close to the eve of trial
20 as we could get. I think Thursday afternoon we got an
21 e-mail from the solicitor saying that a dress had arisen.

22 I guess, putting the different dates together, it
23 sounds like from what the State intends to show that on
24 May 26 would have been when the DNA was deposited on the
25 dress, at least under their theory.

1 That would be May 26th of 2009. So then the
2 dress shows up in June of 2010. We anticipate --

3 THE COURT: Thirteen months later.

4 MR. KENDRICK: Correct, Your Honor.

5 We anticipate and have, you know, unfortunately
6 not been able to stipulate to the chain of custody because
7 we feel like the chain of custody on this dress is a very
8 big issue especially backwards from when the government
9 took possession of it.

10 Previous to when the government took possession
11 of it, we basically have evidence that it's been sitting
12 somewhere under someone's control, we don't really know or
13 have any way to verify, for 13 months. The chain of
14 custody case law really all just kind of goes on about the
15 government chain of custody.

16 But, the theory behind that, Your Honor, is that
17 obviously physical evidence, if we can track where it's
18 been, we can give it some kind of reliability.

19 In this case we have a 13-month hole where we
20 can't track where the dress has been. And that -- you
21 know, if Your Honor were to consider this case and the
22 State were to come in and say I, the solicitor, took
23 possession in June and then we were not able to track who
24 had possession of the dress for 13 months, I think even
25 our Supreme Court might have a problem with that under

1 their chain of custody case law, which is fairly loose to
2 say the least but --

3 THE COURT: Careful now.

4 MR. KENDRICK: Well, I forget they're going --
5 well, I hope they won't read this, but in the event they
6 do read this, I don't mean that to say that, you know,
7 it's not well-thought-out case law. That should cover me.

8 THE COURT: Let the record reflect that he's
9 really laughing when he's saying that.

10 MR. KENDRICK: Your Honor, I think that the point
11 is that I agree that the Supreme Court has repeatedly said
12 that you don't have to prove a perfect chain of custody,
13 just have to prove a chain of custody.

14 What that means is, I would always take the
15 position, it really lies in your discretion.

16 In this case, Your Honor, you know, I don't know
17 that I have to prove ultimately some specific prejudice if
18 I can just call a question on the reliability.

19 And I think in this case we -- again, I don't
20 know why -- I mean, this is a situation where we have
21 several police interviews with the victim and her family.
22 We have several bond hearings in which her family showed
23 up to.

24 We were set, I think June may have been the first
25 time we were set for trial. I can't really remember but,

1 I mean, I was ready to go. Just had to drive on down here
2 on Monday. So --

3 THE COURT: And your question is, why does the
4 dress show up at the last minute?

5 MR. KENDRICK: I think it's a very compelling
6 question, Your Honor. And I think it's one that, in a
7 case of this magnitude with this evidence really, you
8 know, I think we'll see as things progress, but I think
9 the State would agree that this is the most powerful piece
10 of evidence they have. And, it's just --

11 THE COURT: Well, are you moving to make them
12 establish a, quote, chain of custody, unquote, before
13 we -- I mean, like in any criminal case you got to
14 establish a chain of custody before it's introduced into
15 the trial?

16 MR. KENDRICK: I guess I would ask first that we
17 suppress the dress, but then if you deny that I would ask
18 ask that, yes, they have to prove a chain of custody.

19 THE COURT: What reason would I suppress it,
20 other than just showing up at the last minute?

21 MR. KENDRICK: General unreliability, Your Honor,
22 that for 13 months we have a case pending and then the day
23 before trial or two days before trial, oh, by the way,
24 I've got some critical evidence I've never told anybody
25 about.

1 THE COURT: You got any case law that says that?

2 MR. KENDRICK: I'll just go on the rules of
3 evidence, requirement of some reliability.

4 THE COURT: Sure, sure, sure.

5 When they get ready to introduce it tomorrow, you
6 may cross-examine her and make all the objections you want
7 to but I can't rule it out now until I see how it's
8 developing. But I certainly see your point.

9 MR. KENDRICK: And I guess my concern, Your
10 Honor, is if, because of the -- how intertwined that
11 evidence is with this particular case, if they were to
12 kind of go through and then we all said that's pretty
13 unreliable, we'd probably have to start over again, which
14 I hate to do.

15 As long as I've protected the record, you know,
16 that we've objected to the dress, we'll continue to object
17 to it, you know, I understand what Your Honor just said.

18 THE COURT: I can't make a ruling now. It may
19 very well be that come tomorrow --

20 MR. KENDRICK: Okay. And I think, Your Honor --

21 THE COURT: I don't know what's going to come up.

22 MR. KENDRICK: Right. I guess on the same line,
23 and I think you'll make the same ruling so I'll be real
24 quick so we don't have to waste too much time.

25 THE COURT: You're not wasting time.

1 MR. KENDRICK: There -- thank you. There are
2 some pictures of telephone text messages that were taken,
3 the best we can tell, right around the time Richland
4 County first responded on this case which was the end of
5 September, 2009.

6 Those pictures are pictures that are from my
7 client allegedly to her. And they have a name and a link
8 to a phone number that we would concede the phone number
9 is registered to him.

10 This is, again, another general objection, Your
11 Honor, that we may need to address as we go on. That --
12 all we have are, I guess, two or three text messages from
13 him, but we clearly have a high volume of text messages
14 going back and forth.

15 There's two issues. The phone records I have
16 don't reflect any text messages sent, a time, the three on
17 the phone, which I don't have an explanation for. And,
18 second of all, what they're effectively doing is
19 introducing a statement of our Defendant but they're not
20 introducing all of it.

21 All you have are these kind of -- this is a
22 message sent by him to her, but we don't have anything
23 that she may have sent or anything sent in response,
24 anything he may have sent as part of a prior
25 conversation.

1 It would be the same as if we took an
2 interrogation by a defendant and sat down and said, we're
3 just going to read one line he said, but we're not going
4 to introduce anything he was asked or anything he said
5 before and after which, of course, would be improper
6 there. We'd have to introduce the whole thing.

7 So it's our position that the State shouldn't be
8 allowed to bring up the actual content of text messages if
9 they only have very limited amounts. We're talking about
10 hundreds of text messages and they have three. So we're
11 clearly missing --

12 THE COURT: How do you know there are hundreds of
13 text messages?

14 MR. KENDRICK: Because I have phone records, Your
15 Honor, and I'm not going to deny that there are text
16 messages back and forth between these two parties for a
17 period of time. Hundreds, my co-counsel --

18 THE COURT: Numerous.

19 MR. KENDRICK: -- mentions my tendency to
20 exaggerate, but there's a lot. There's more than three.

21 THE COURT: Well, you know what, if she tries to
22 put those three in, you could put those hundreds in if you
23 want to.

24 MR. KENDRICK: Well, we don't have the other
25 ones.

1 THE COURT: Sir?

2 MR. KENDRICK: We don't have the other text
3 messages.

4 THE COURT: I thought you just said you had
5 hundreds.

6 MR. KENDRICK: I've got the record that shows
7 they were sent.

8 THE COURT: I see.

9 MR. KENDRICK: The government has the record that
10 shows they were sent or received. And the way they work
11 is you can see the incoming/outgoing and the fact that it
12 was a text message. The phone company keeps track of
13 that.

14 What they do not keep track of is the actual
15 content. So I agree with Your Honor, that that's what I
16 should be able to do, but in this case can't do because we
17 don't have them.

18 THE COURT: How did they get the three? The
19 victim allegedly took a picture of it or somebody on her
20 behalf?

21 MR. KENDRICK: I believe the police allegedly
22 took pictures when they gave the phone back. So, I don't
23 know if they're going --

24 THE COURT: Okay. I understand what you're
25 saying. We'll have to deal with it as it's developed.

1 MR. KENDRICK: Your Honor, I have -- if you give
2 me one second, I also have one other question to ask. And
3 I just brought this this morning.

4 THE COURT: I would be careful trying to get those
5 hundreds in, or saying there were hundreds there.

6 MR. KENDRICK: Here's -- Your Honor, and not, not
7 to ruin all the suspense in the trial but I don't know
8 that -- I mean, I don't know we can keep out the contact
9 between the two. And I don't want to get all the way into
10 my defense.

11 THE COURT: Sure.

12 MR. KENDRICK: That may not matter.

13 One other issue, Your Honor, I don't know this is
14 available information, but we have a private investigator
15 who has been helping us on this case. We would like to
16 have him show pictures of the interior of this school
17 which is somewhat material to our defense.

18 I'd rather not explain it in open court, but I'd
19 be happy to tell Your Honor ex parte why. I have a
20 proposed order I've written that simply allows him access
21 to the school in the event that they say, no, you can't
22 come in here which is kind of my guess what they would
23 say.

24 THE COURT: You want him to go out there and take
25 pictures this afternoon of the school?

1 MR. WHITLARK: Or tomorrow.

2 MR. KENDRICK: Where all of this occurred. Your
3 Honor, the allegations the State has brought forth is that
4 most of this occurred inside the school. In other words,
5 on the premises of the school.

6 THE COURT: And you want access to the school to
7 be able to take some photographs?

8 MR. KENDRICK: Right. And the photographs would
9 very simply show, Your Honor, where certain places are
10 located that we would assume the State or the victim will
11 have to be referring to during the course of the trial.

12 THE COURT: Have we got the investigator from the
13 sheriff's department here? You just can ride out there
14 with him, do it this afternoon.

15 MR. KENDRICK: My investigator probably wouldn't
16 be able to do it until tomorrow morning, but if we could
17 get in touch --

18 MS. BRISBIN: Investigator Blevins is going be in
19 Pickens on another case tomorrow morning.

20 MR. KENDRICK: I'm sorry. We do have a camera
21 with us, and we can do it this afternoon.

22 THE COURT: Are you available?

23 INVESTIGATOR BLEVINS: Yes, sir.

24 MR. KENDRICK: So I assume we don't really need
25 to --

1 THE COURT: Get out there and they won't let you,
2 I'm going to be here.

3 MR. KENDRICK: All right. If I could beg the
4 Court's indulgence just to make sure.

5 (Defense counsel conferring.)

6 MR. KENDRICK: We're ready to pick a jury, Your
7 Honor.

8 THE COURT: Well, we can't do that until
9 tomorrow.

10 MR. KENDRICK: I mean, obviously the next step,
11 we're ready.

12 THE COURT: I don't have any jurors here, just
13 defense counsel and bailiffs. We have the jury here at
14 9:30 in the morning and they'll be ready to go at 10.
15 I'll generally qualify them and then I'll qualify them for
16 this particular case and we'll draw the jury tomorrow and
17 start right off the bat.

18 The investigator's here. It's 2:45. That gives
19 y'all time to run out there and take some shots. Let me
20 see y'all in chambers before we break, just for a few
21 minutes.

22 MR. KENDRICK: Yes, sir.

23 END OF DAY'S PROCEEDINGS IN THIS CASE: 2:45 P.M.

24 * * * * *

25 ON TUESDAY, APRIL 19, 2011 AT 10:45 A.M.:

1 THE COURT: You may call your first case,
2 Solicitor.

3 MS. BRISBIN: Thank you, Your Honor. The State
4 calls Joseph J. Magni, Jr.

5 THE COURT: All right. Hold on one second.

6 (Pause.)

7 THE COURT: Five and 10. All right. Madam
8 Solicitor, call your case.

9 MS. BRISBIN: The State calls the State of South
10 Carolina versus Joseph J. Magni, Jr., Indictment Numbers
11 2010-GS-02-1095, 1096, 1097, 1098, 1099, 1100, 1101 and
12 1102.

13 THE COURT: Please tell me what they're for.

14 MS. BRISBIN: They're for four counts of criminal
15 sexual conduct with a minor in the second degree and four
16 counts of lewd act on a child.

17 THE COURT: Mr. Kendrick and Mr. Whitlark, are
18 you ready to proceed?

19 MR. WHITLARK: Ready, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury
21 panel, we're about to begin the trial. The State has
22 called the State of South Carolina versus Joseph J.
23 Magni -- M-A-G-N-I. Is that the correct pronunciation?

24 MR. WHITLARK: Yes, sir.

25 THE COURT: -- Jr. First of all, let me remind

1 you that you're still under oath. I have to ask you some
2 questions about this particular case.

3 Mr. Magni has been indicted by the Aiken County
4 Grand Jury on eight separate indictments. Four
5 indictments for criminal sexual conduct with a minor in
6 the second degree, and four indictments for lewd act upon
7 a child.

8 Now, ladies and gentlemen, to each these
9 indictments Mr. Magni has pled not guilty.

10 The indictment is not evidence in the case. It's
11 simply the manner in which this case is brought into this
12 courtroom.

13 The State of South Carolina has the burden of
14 proving his guilt on each indictment, separate and apart
15 from the others, to you beyond a reasonable doubt. So
16 please do not infer anything from the fact that he's been
17 indicted. This is simply the process by which he's
18 brought into the courtroom.

19 But I have to ask you a few questions about
20 this. So please listen carefully as we go through these
21 qualifying questions as to this particular case.

22 Mr. Magni, would you please stand for me and face
23 the jury panel?

24 THE DEFENDANT: (Complies.)

25 THE COURT: Thank you. You may have a seat.

1 Ladies and gentlemen, is anybody on the jury
2 panel related by blood or marriage to Mr. Magni, Jr., or
3 have you ever had a close personal or social relationship
4 with him? If so, please stand.

5 (No response.)

6 The alleged victim in the case is Ms. Remy
7 Barnwell. That's R-E-M-Y, Barnwell. Ms. Barnwell, would
8 you please stand and face the jury panel?

9 THE VICTIM: (Complies.)

10 THE COURT: Thank you. You may be seated.

11 Any member of the jury panel related by blood or
12 marriage or do you now or have you in the past had a close
13 personal or social relationship with Ms. Barnwell? If so,
14 please stand.

15 (No response.)

16 Ladies and gentlemen, I'm going to read a list of
17 potential witnesses in the trial of this case. Not to say
18 that they will all be called, but these are potential
19 witnesses. And I will ask the same question after I read
20 the list - are you related by blood or marriage now or in
21 the past? or, do you now or have you in the past had a
22 close personal or social relationship?

23 The witnesses, potential witnesses are:

24 Investigator Joshua Mauldin of the -- that's the Richland,
25 not Richmond?

1 MS. BRISBIN: Yes, sir.

2 THE COURT: Richland. Columbia, South Carolina,
3 Sheriff's Office; Investigator Chris Johnson, Aiken County
4 Sheriff's Office; Lieutenant Clay Adams, Aiken County
5 Sheriff's Office; Lieutenant Vicky Gaskins, Aiken County;
6 Melanie Moody, Aiken County Sheriff's Office; Gerald
7 Turner, Aiken County Sheriff's Office; Investigator David
8 Blevins, Aiken County Sheriff's Office; Verona Gibson with
9 SLED; Doris Yarbrough with SLED; Sheree Brown with SLED.
10 SLED is State Law Enforcement Division. Patricia Crooks,
11 SLED; Amy Stephens, SLED; Catherine Leisy, L-E-I-S-Y,
12 SLED; Jessica Adams, in the courtroom; Brad Watson; and
13 Jacqueline Barnwell.

14 Ms. Barnwell. Thank you.

15 Anybody related by blood or marriage or have a
16 close personal or social relationship now or in the past
17 with any of these particular witnesses?

18 Yes, sir. Your name? Please stand if it applies
19 to any of you.

20 THE JUROR: Juror 32, Ernest Bussell. I worked
21 with most all of the ones with Aiken County Sheriff's
22 Department.

23 THE COURT: You were formerly employed with Aiken
24 County Sheriff's Office?

25 THE JUROR: Yes, sir.

1 THE COURT: Give me your name, sir.

2 THE JUROR: Juror nine, Dennis Atkins.

3 THE COURT: Please remain standing. You're
4 former sheriff's office, aren't you?

5 THE JUROR: No, sir. I worked with Aiken Public
6 Safety.

7 THE COURT: Aiken Public Safety?

8 THE JUROR: Yes, sir.

9 THE JUROR: Juror 168, Shirley Sligh.

10 THE COURT: Hold on one second. And your number,
11 please?

12 THE JUROR: Number nine.

13 THE COURT: Sir, in the blue shirt.

14 THE JUROR: Juror 90, Daniel Johnson. I was a
15 reserve deputy for Aiken County.

16 THE COURT: Thank you. Ma'am? Please remain
17 standing. Everybody.

18 THE JUROR: 168, Shirley Sligh. I also worked
19 for Aiken County Sheriff's Office. I worked as a
20 receptionist.

21 THE COURT: Ma'am, do you work for them now?

22 THE JUROR: No. I'm disabled.

23 THE COURT: You worked for them in the past.
24 Sir, you worked for them in the past?

25 THE JUROR: Past.

1 THE COURT: Sir, past?

2 THE JUROR: Retired.

3 THE COURT: And I know you're past.

4 THE JUROR: (Nods head.)

5 THE COURT: All right. The fact, ma'am, and
6 gentlemen, the fact that y'all at one time were employed
7 by the Aiken County Sheriff's Office -- well, let me ask
8 this question.

9 Ms. Brisbin, were any of these people with the
10 sheriff's office during the time this case was
11 investigated? When did you retire, sir?

12 THE JUROR: I left public safety maybe two and a
13 half years ago.

14 MS. BRISBIN: No, sir.

15 THE JUROR: '06.

16 THE COURT: '06?

17 THE JUROR: Yes, sir.

18 THE JUROR: Probably '08.

19 THE JUROR: 1999.

20 MS. BRISBIN: No, sir.

21 THE COURT: All right. The fact, ma'am, and
22 gentlemen, that y'all at one time worked with the Aiken
23 County Sheriff's Office and know some of the officers who
24 may testify in the case, would that keep you from being a
25 fair and impartial juror, trying this case solely based on

1 the evidence that you hear in the courtroom?

2 Sir, give me your name, again, and number.

3 THE JUROR: Juror nine, Dennis Atkins. I can be
4 fair and impartial, sir.

5 THE COURT: Thank you. You may be seated. Sir,
6 give me your name and number again.

7 THE JUROR: Juror 32, Ernest Bussell. I probably
8 could.

9 THE COURT: I need to know for sure.

10 THE JUROR: No.

11 THE COURT: You could not be fair?

12 THE JUROR: (Shakes head.)

13 THE COURT: What's your number?

14 THE JUROR: Thirty-two.

15 THE COURT: Have a seat. Take him out. Sir?

16 THE JUROR: Ninety, Daniel Johnson. I probably
17 could.

18 THE COURT: I need to know for sure. What
19 number?

20 THE JUROR: Ninety. Yes, sir.

21 THE COURT: All right. Remove him, please.
22 Ma'am?

23 THE JUROR: 168, Shirley Sligh. Yes, I could.

24 THE COURT: You could?

25 THE JUROR: (Nods head.)

1 THE COURT: All right. Thank you. Take those
2 other two in the middle out.

3 THE CLERK: Yes, sir.

4 THE COURT: Anybody else? Ladies and gentlemen,
5 the lawyers in this case, the State will be represented by
6 Ms. Brenda Brisbin. Are you going to help?

7 MS. ARTHUR RUSHTON: Yes, sir.

8 THE COURT: Ms. Arthur.

9 The Defendant is represented by Mr. Josh Kendrick
10 of the Richland County Bar and Mr. Mark Whitlark of the
11 Richland County Bar and Mr. Chris Leonard of the Richland
12 County Bar. Y'all may be seated.

13 MS. BRISBIN: Your Honor, the State's also going
14 to be assisted by Margaret Bodman with Richland County.

15 MS. BODMAN: (Stands.)

16 THE COURT: Ms. Bodman, good morning. Y'all may
17 be seated.

18 Any member of the jury panel now presently or in
19 the past have had legal services performed for you by any
20 of the six lawyers? If so, please stand.

21 Ms. Arthur's new name is Rushton. She's
22 married. I apologize. She was Ms. Arthur last year.
23 She's Ms. Rushton this -- has is been a year?

24 MS. RUSHTON: Couple years.

25 THE COURT: Flies by when you're happily

1 married. Two years for her. Had services performed by
2 any of the six lawyers?

3 (No response.)

4 Any member of the jury panel related by blood or
5 marriage or do you now or have you in the past had a close
6 personal or social relationship with any of the lawyers?

7 If so, please stand.

8 (No response.)

9 Any member of the jury panel have a -- you or a
10 family member employed by the Aiken County Sheriff's
11 Department, Richland County, that's Columbia, or SLED?
12 Please stand. Other than those who have already stood.

13 (No response.)

14 Any member of jury panel have a relative or
15 family member employed by the Aiken County Solicitor's
16 Office?

17 (No response.)

18 Any member of the jury panel, you or a family
19 member, employed by Aiken County School District?

20 Yes, ma'am?

21 THE JUROR: Juror 113, Jennifer Mathis. My
22 sister is a group counselor for North Augusta School.

23 THE COURT: Okay. May be some testimony -- well,
24 there will be testimony that these allegations allegedly
25 occurred in a public school.

1 The fact that you have a sister in the public
2 school, would that keep you from being fair and
3 impartial?

4 THE JUROR: No.

5 THE COURT: Thank you. You may be seated. Sir,
6 in the checked shirt.

7 THE JUROR: 166. My wife's a substitute teacher
8 for Allendale County, Middle School and Elementary.

9 THE COURT: The fact that your wife had something
10 to do with a school setting, would that in any way
11 preclude or keep you from being fair and impartial?

12 THE JUROR: No, I can be fair.

13 THE COURT: Thank you. Ma'am, your name?

14 THE JUROR: My name is Paige Blount, juror 18.
15 And my sister works for Greendale Elementary in Aiken
16 County.

17 THE COURT: Would that in any way keep you or
18 preclude you from being fair and impartial?

19 THE JUROR: No, sir.

20 THE COURT: Sir? Number and name?

21 THE JUROR: Juror number seven, Michael Anzalone.
22 My sister works for Chukker Creek Elementary, history
23 teacher.

24 THE COURT: And would that keep you from being
25 fair and impartial?

1 THE JUROR: Yes, sir.

2 THE COURT: Why?

3 THE JUROR: Oh. I mean, no, sir. I can be fair.

4 THE COURT: I thought so. Sir, in the stripe.

5 THE JUROR: John Rozsnyai, Juror 162. My wife
6 works for Mossy Creek Elementary as a fifth grade
7 teacher.

8 THE COURT: Would that keep you from being you
9 from being fair and impartial? You can be fair and
10 impartial, can't you?

11 THE JUROR: I can be fair and impartial.

12 THE COURT: Thank you. Sir, in the blue?

13 THE JUROR: Juror number 87, Murphy Inabinet. My
14 sister-in-law was a teacher for Aiken County Public
15 Schools.

16 THE COURT: And would that preclude or keep you
17 from being fair and impartial?

18 THE JUROR: No, sir.

19 THE COURT: Thank you. Ms. Ross?

20 THE JUROR: Juror 158, Joyce Ross. I formerly
21 taught in North Augusta Elementary, a long time ago.

22 THE COURT: I appreciate you staying with us. I
23 admire you. I'm not going to tell them that you're older
24 than I am.

25 THE JUROR: You are correct.

1 THE COURT: I think it's great. Thank you.
2 Would that preclude or keep you from being fair and
3 impartial, Ms. Ross?

4 THE JUROR: Not at all.

5 THE COURT: Thank you. Sir, in the blue?

6 THE JUROR: Juror 195, Jeremy Widener. My
7 sister's a teacher at Aiken County.

8 THE COURT: Would that preclude you from being
9 fair and impartial?

10 THE JUROR: No, sir. It would not.

11 THE COURT: Last but not least, sir?

12 THE JUROR: Juror number 29, Philip Burnett. My
13 sister-in-law works at Kennedy Middle School as a
14 receptionist-like girl, lady. And that doesn't have
15 anything to do with me being fair.

16 THE COURT: Thank you. You may be seated.
17 Ms. Brisbin, what school was this?

18 MS. BRISBIN: Leavelle McCampbell Middle School.

19 THE COURT: Nobody was from there?

20 MS. BRISBIN: No.

21 MR. KENDRICK: Your Honor, before you go on, the
22 defense does have some potential witnesses. I don't know
23 if we're going to call them or not.

24 THE COURT: Well, you should have given me the
25 witness list. Hand them up here.

1 MR. KENDRICK: Your Honor, I just have a
2 handwritten list. Your Honor, I don't normally turn in a
3 list. I never have.

4 THE COURT: Well, how can I voir dire the jury if
5 I don't know who your witnesses are? C'mon. Don't make
6 me mad to start off with.

7 Hey, I know him. I'm just fussing at him. He's
8 a good, seasoned lawyer. He just forgot to get it done
9 this morning. He's trying.

10 I tell you what. Why don't you just read them
11 out for me? These are potential witnesses. If you would
12 please listen. If anybody's related by blood or marriage
13 or now or in the past had a close personal or social
14 relationship.

15 Mr. Kendrick?

16 MR. KENDRICK: Thank you. Ladies and gentlemen,
17 David Byrd, private investigator from Columbia, South
18 Carolina; Andrew Banister; Marsha Peacock; David Crosby;
19 and Lauren Hutto are all employees of Leavelle McCampbell
20 Middle School. Our last witness may be anyone employed by
21 the Regal Cinema Theatre in downtown Aiken. I don't know
22 specific names, could be a manager or some employee
23 there. So anyone from that theatre.

24 THE COURT: Thank you. Any member of the jury
25 panel related by blood or marriage or have a close family,

1 social or personal relationship with any of the potential
2 witnesses he just called?

3 (No response.)

4 Thank you.

5 Ladies and gentlemen, as I said earlier the facts
6 in these indictments -- or the allegations in these
7 indictments is absolutely simply allegations.

8 But I must tell you what's alleged because I need
9 to ask you if you know anything about the case. Basically
10 it's alleged in all these indictments that here in Aiken
11 County in June, sometime in June, and time between May and
12 June in the year 2009, it is alleged alleged that the
13 Defendant, Mr. Magni, Jr., committed a sexual battery upon
14 Ms. Minor who at that time was 14 years of age. And it
15 is further alleged that he committed lewd acts upon her.

16 So my question is: Does any member of the jury
17 panel, have you heard anything about this case? Read
18 anything in the newspapers? Seen anything on TV? Anyone
19 discuss it with you? Have you heard rumors in the
20 neighborhood or community? Know anything at all about the
21 trial of alleged facts in this case? If so, please stand.

22 (No response.)

23 Ladies and gentlemen, one of my main jobs as a
24 judge, and I try cases all over the state, from Cherokee
25 County down to Beaufort, I have to ensure, whether it's a

1 civil trial or a criminal trial, that all parties receive
2 a fair trial.

3 And what that means is when I select a jury or
4 when we select a jury that we have to have jurors who can
5 perform this task. Your task is that you are,
6 collectively, 12 of you collectively acting as one, you
7 are the finders of the facts in the case.

8 We take testimony from the witness stand,
9 relevant exhibits are introduced in the trial of the case.
10 And in 99.9 percent of all the cases I've ever tried,
11 there will be different versions of the facts or different
12 facts all together. One person saying one thing, one
13 person saying another.

14 It is your job as jurors to determine what the
15 true facts are from the evidence. And I'll explain that
16 more to you as we get going. And you take those true
17 facts because you're the finders or the judges of the
18 facts, and you apply it to the law as I give it to you.
19 I'm the judge of the law in the case. My position makes
20 me the judge of the law in the case. So I tell you what
21 the law is. You tell me what the facts are. You apply
22 your facts to the law and you're in a position to render a
23 verdict.

24 Now my question to you: Do I have any member of
25 the jury panel who is unable to perform that task, to sit

1 and listen to the testimony and determine the credibility
2 or believability of the witnesses and then apply those
3 true facts to the law? So does anybody have a religious
4 belief, political belief, personal belief, any kind of
5 belief that would keep you from performing that duty? I
6 need to know it now, and I'll be glad to discuss it with
7 you in private.

8 Not -- all right. Ma'am, let me see you,
9 please. I need to see you up here, both of you. Anybody
10 else who doesn't think they can perform that civic duty?
11 And it won't get you out of serving but...

12 THE JUROR: Juror 136, Julie Padgett.

13 (Juror conferring privately with the Judge.)

14 THE COURT: Your name?

15 THE JUROR: Charlene Engebretson.

16 (Juror conferring privately with the Judge.)

17 THE COURT: Fifty-nine is excused from the trial
18 of this case. Have a seat back there, please.

19 Anyone else? Any reason whatsoever you cannot be
20 fair and impartial to the Defendant and to the State,
21 please let me know now.

22 (No response.)

23 Any additional questions by the State?

24 MS. BRISBIN: No, Your Honor.

25 THE COURT: Any additional questions by the

1 defense?

2 MR. KENDRICK: No, sir, Your Honor.

3 THE COURT: All right. Ladies and gentlemen,
4 last week we had a civil case. And in a civil trial at
5 this time the clerks would randomly pick 20 names and put
6 them on a piece of paper. The Plaintiff has four strikes,
7 the Defendant has four strikes. Twenty less eight is 12.
8 That's how we draw it in a civil case.

9 In a criminal case we do it a little different.
10 The names are randomly selected, but they're selected one
11 at a time. As your name is called, you come down and
12 stand right here between the two tables.

13 And the State has five strikes. They can strike
14 you for basically any reason or no reason at all, within
15 certain legal boundaries.

16 Do you agree, Ms. Brisbin?

17 MS. BRISBIN: Yes, sir.

18 THE COURT: And the Defendant has 10 strikes in
19 this particular case. So they get to strike within the
20 rules but basically any reason they want to within the
21 rules. They know what I'm talking about.

22 So as your name is called, please come forward
23 and we will go through the process until we have 12 jurors
24 and two alternates. All right.

25 Ready, Madam Solicitor from Columbia, your name

1 again, please?

2 MS. BODMAN: Margaret Bodman, B-O-D-M-A-N.

3 THE COURT: We've gone through almost a year
4 now. We've become modern. We have a computer. Names
5 will be randomly selected out of the computer.

6 The last -- I've been over here 36 years
7 practicing law and trying cases and judging. We used to
8 have a steel box, like a cigar box, just put everybody's
9 name in and shake it, draw them out one at a time. But
10 we've gotten a little more modern.

11 (Pause.)

12 THE COURT: As your name is called, please come
13 forward.

14 THE CLERK: When I call your name, please come
15 forward and face the attorneys.

16 Juror number 165, Artis Seawright (black male).
17 What say you for the State?

18 THE COURT: No. Just look at these lawyers for
19 me, Mr. Seawright.

20 MS. BRISBIN: Please excuse Mr. Seawright from
21 this trial.

22 THE CLERK: Please return to your seat,
23 Mr. Seawright. Juror number 162, John Rozsnyai (white
24 male). What say you for the State?

25 MS. BRISBIN: Please present Mr. Rozsnyai.

1 MR. WHITLARK: Please excuse this juror, Your
2 Honor.

3 THE CLERK: Please return to your seat. Juror
4 number 35, Kelli Cagle (white female). What say you for
5 the State?

6 MS. BRISBIN: Please present Ms. Cagle.

7 THE CLERK: What say you for defense?

8 MR. WHITLARK: Please excuse this juror, Your
9 Honor.

10 THE CLERK: Please return to your seat. Juror
11 number 12, Kathleen Barnes (white female). What say you
12 for the State?

13 MS. BRISBIN: Please present Ms. Barnes.

14 MR. WHITLARK: Please seat this juror, Your
15 Honor.

16 THE COURT: All right. Ms. Barnes, now you get
17 to come over here with us. Thank you, ma'am.

18 THE CLERK: Juror number 41, Melissa Chavous
19 (white female). What say you for the State?

20 MS. BRISBIN: Please present Ms. Chavous.

21 MR. WHITLARK: Please seat this juror, Your
22 Honor.

23 THE COURT: Ms. Chavous, please have a seat and
24 my bailiff will watch the step right there. Thank you.

25 THE CLERK: Juror number 158, Joyce Ross (white

1 female). What say you for the State?

2 MS. BRISBIN: Please present Ms. Ross.

3 MR. WHITLARK: Please excuse this juror, Your
4 Honor.

5 THE COURT: Thank you, Ms. Ross.

6 THE CLERK: Juror number 27, Matthew Bugg (white
7 male). What say you for the State?

8 MS. BRISBIN: Please present Mr. Bugg.

9 MR. WHITLARK: Yes, Your Honor. Please seat this
10 juror.

11 THE CLERK: Have a seat in the jury box.

12 Juror number 80, Marilyn Hensley (white female).
13 What say you for the State?

14 MS. BRISBIN: Please present Ms. Hensley.

15 MR. WHITLARK: Please excuse the juror, Your
16 Honor.

17 THE CLERK: Please return to your seat.

18 Juror number 47, Kristi Crowder (white female).
19 What say you for the State?

20 MS. BRISBIN: Please present Ms. Crowder.

21 THE CLERK: What say you for the defense?

22 MR. WHITLARK: Please excuse this juror, Your
23 Honor.

24 THE COURT: Please return to your seat.

25 THE CLERK: The State has exhausted one strike,

1 defense five.

2 Juror number 189, Rebecca Waldrup (white female).

3 What say you for the State?

4 MS. BRISBIN: Please present Ms. Waldrup.

5 THE CLERK: What say you for the defense?

6 MR. WHITLARK: Yes. Please seat this juror, Your
7 Honor.

8 THE CLERK: Have a seat in the jury box. Juror
9 number 92, Bruce Jones (white male). What say you for the
10 State?

11 MS. BRISBIN: Please present Mr. Jones.

12 THE CLERK: What say you for the defense?

13 MR. WHITLARK: Please excuse this juror, Your
14 Honor.

15 THE CLERK: You can return to your seat. Juror
16 number 55, Tara Divine (black female).

17 THE COURT: Come on up, Ms. Divine. Thank you.

18 THE CLERK: What say you for the State?

19 MS. BRISBIN: Please present Ms. Divine.

20 THE CLERK: What say you for the defense?

21 MR. WHITLARK: Please seat this juror, Your
22 Honor.

23 THE CLERK: You can have a seat in the jury box.

24 Juror number 197, Dorothy Wood (white female).

25 What say you for the State?

1 MS. BRISBIN: Please present Ms. Wood.

2 THE CLERK: What say you for the defense?

3 MR. WHITLARK: Please excuse the juror, Your
4 Honor.

5 THE CLERK: Return to your seat.

6 THE COURT: Ladies and perhaps gentlemen, when
7 you come forward, if you've got a purse, just bring it so
8 you don't have to go back.

9 All right. Go ahead.

10 THE CLERK: Juror number 156, Darryl Robinson
11 (black male). What say you for the State?

12 MS. BRISBIN: Please present Mr. Robinson.

13 THE CLERK: What say you for the defense?

14 MR. WHITLARK: Please excuse this juror, Your
15 Honor.

16 THE CLERK: You may return to your seat. State
17 has exhausted one strike, defense eight.

18 Juror number 87, Murphy Inabinet (white male).
19 What say you for the State?

20 MS. BRISBIN: Please present Mr. Inabinet.

21 MR. WHITLARK: Yes. Please seat the juror, Your
22 Honor.

23 THE CLERK: You may have a seat in the jury box.
24 Juror number five, Gary Amerine (white male). What say
25 you for the State?

1 MS. BRISBIN: Please present Mr. Amerine.

2 MR. WHITLARK: Yes, Your Honor. Please seat the
3 juror.

4 THE CLERK: Have a seat in the jury box. Juror
5 number 198, Ralph Woodward (white male). What say you for
6 the State?

7 MS. BRISBIN: Please present Mr. Woodward.

8 MR. WHITLARK: Yes, Your Honor. Please seat this
9 juror.

10 THE CLERK: Have a seat in the jury box. Juror
11 number 104, Stephanie Leopard (white female). What say
12 you for the State?

13 MS. BRISBIN: Please present Ms. Leopard.

14 MR. WHITLARK: Yes, Your Honor. Please seat this
15 juror.

16 THE CLERK: Have a seat in the jury box. Juror
17 number 141, Ronald Patterson (white male). What say you
18 for the State?

19 MS. BRISBIN: Please present Mr. Patterson.

20 THE CLERK: What say you for the defense?

21 MR. WHITLARK: Yes, Your Honor. Please seat
22 Mr. Patterson.

23 THE CLERK: Have a seat in the jury box. Juror
24 number 113, Jennifer Mathis (white female). What say you
25 for the State?

1 MS. BRISBIN: Please present Ms. Mathis.

2 THE CLERK: What say you for the defense?

3 MR. WHITLARK: Yes. Please present this juror,
4 Your Honor.

5 THE CLERK: Have a seat in the jury box. Number
6 153, Kimberly Register (white female). What say you for
7 the State?

8 MS. BRISBIN: Please present Ms. Register.

9 THE CLERK: What say you for the defense?

10 MR. WHITLARK: Please excuse this juror, Your
11 Honor.

12 THE CLERK: You may return to your seat. Juror
13 number 192, Sybil Washington (black female). What say you
14 for the State?

15 MS. BRISBIN: Please present Ms. Washington.

16 MR. WHITLARK: Please excuse the juror, Your
17 Honor.

18 THE CLERK: You may return to your seat. State
19 has exhausted one strike, defense 10. Juror number 21,
20 Brian Bridges (white male). What say you for the State?

21 MS. BRISBIN: Please present Mr. Bridges.

22 THE CLERK: What say you for defense?

23 MR. WHITLARK: Please seat this juror, Your
24 Honor.

25 THE CLERK: You may have a seat in the jury box.

1 THE COURT: Two alternates. Two strikes and one
2 each, for each alternate.

3 THE CLERK: First alternate, juror number 88,
4 Eboney Ingram (black female). What say you for the
5 State?

6 MS. BRISBIN: Please present Ms. Ingram.

7 THE CLERK: What say you for the defense?

8 MR. WHITLARK: Please excuse Ms. Ingram.

9 THE CLERK: You may return to your seat. Juror
10 number 82 --

11 THE COURT: Hold on one second.

12 (Pause.)

13 THE COURT: Go ahead. Eighty-two, Ms. Hileman.

14 THE CLERK: Michelle Hileman (white female).
15 What say you for the State?

16 MS. BRISBIN: Please present Ms. Hileman.

17 MR. WHITLARK: Yes, Your Honor. Please seat the
18 juror.

19 THE COURT: Have a seat for me. All right. Two
20 and one again.

21 THE CLERK: This is for alternate two. Juror
22 number 129, Jacquelyn Murphy (white female).

23 THE COURT: Ma'am, do you need to be excused?
24 Hold on. Just everybody hold on one second. Go right
25 with Mr. George.

1 (Juror exits courtroom.)

2 THE CLERK: What say you for the State?

3 MS. BRISBIN: Please present Ms. Murphy.

4 THE CLERK: What say you for the defense?

5 MR. WHITLARK: Please excuse this juror, Your
6 Honor.

7 THE CLERK: You may return to your seat. Juror
8 number 140 -- I'm sorry. Juror number 43, Michael Collins
9 (white male). What say you for the State?

10 MS. BRISBIN: Please present Mr. Collins.

11 MR. WHITLARK: Yes. Please seat this juror.

12 THE CLERK: That would be the second alternate.

13 THE COURT: Any motions by the State in
14 connection with selection of the jury?

15 MS. BRISBIN: No, Your Honor.

16 THE COURT: By the Defendant?

17 MR. WHITLARK: None from the Defendant.

18 THE COURT: All right. Ladies and gentlemen,
19 those of you who were not drawn, I'm going to release you
20 now for the balance of the day. You should have a call-
21 back number on your, where?

22 THE CLERK: On the sheet.

23 THE COURT: On the sheets that you were given.
24 Please call back after, after six o'clock this afternoon
25 to see what the instructions are for tomorrow. Thank

1 you. Everyone else please remain seated. My jurors are
2 excused to go.

3 (Jury panel exits courtroom at 11:25 a.m.)

4 THE COURT: All right. Ladies and gentlemen,
5 while they're filing out, I'm going to let you go back
6 here with Mert to the jury room. Bathrooms and all back
7 there. We're going to take about five minutes. And as
8 soon as y'all stretched your legs and used the restrooms,
9 we'll come back and get started.

10 Mert, let me know.

11 Ma'am, when everybody finishes the restroom in
12 there, knock on the door so we'll know when you're ready.

13 THE JUROR: Okay.

14 THE COURT: Thank you.

15 (Jury exits courtroom at 11:28 a.m.)

16 THE COURT: All right. Ms. Brisbin, defense
17 counsel, what we're going to do is take a little quick
18 five-minute bathroom break. We'll come back, we'll swear
19 the jury in and I'll give them my little opening remarks.
20 We'll go through opening statements and we'll see where we
21 are at that time.

22 MS. BRISBIN: Yes, sir.

23 THE COURT: Thank you.

24 (Thereupon, a break was taken at 11:30 a.m. At
25 11:52 a.m., the trial resumed as follows:)

1 THE COURT: Mr. Kendrick, are you ready to
2 proceed?

3 MR. KENDRICK: Your Honor, with -- we're -- I
4 believe so. We're not ready to enter a plea right this
5 second.

6 THE COURT: We either got to fish or cut bait,
7 gentlemen.

8 MR. KENDRICK: I understand, Your Honor. My
9 understanding was that I thought you said we were going to
10 let the jury go to lunch.

11 THE COURT: I am, but I got court personnel.
12 Y'all want to come back at 1:15 and do it?

13 MR. WHITLARK: Yes, sir. Yes, we will, Your
14 Honor.

15 THE COURT: Hold on. He's talking right now.
16 Everybody get on the same page. Would that be better?

17 MR. KENDRICK: Your Honor, that would. And I
18 apologize.

19 THE COURT: You don't have to apologize.

20 MR. KENDRICK: Okay.

21 THE COURT: All right. How long have you been
22 practicing law?

23 MR. KENDRICK: Nine years, Your Honor.

24 THE COURT: Nine years. I've been through
25 everything that you're going through. I know what you're

1 going through.

2 We'll come back at -- let's start back at 1:15.
3 And we either do it or we don't. And the jury's coming
4 back at two. So that gives us plenty of time for
5 everybody to have input into the situation and go from
6 there.

7 MR. KENDRICK: Thank you, Judge.

8 THE COURT: We'll stand at ease until 1:15.

9 (Thereupon the luncheon recess was taken at
10 11:53 a.m. The trial resumed at 1:15 p.m., as follows:)

11 THE COURT: All right. Mr. Kendrick, where are
12 we?

13 MR. KENDRICK: We've reached an agreement, Your
14 Honor. We're signing the sentencing sheets and my
15 client's ready to enter a plea.

16 THE COURT: As I understand from discussion with
17 y'all in chambers that your client is going to plead to
18 all four indictments for lewd act and all four indictments
19 for criminal sexual conduct in the second degree, as well
20 as a criminal sexual conduct out of Richland County?

21 MR. KENDRICK: Correct, Your Honor. And he
22 signed the waiver of jurisdiction to do that.

23 THE COURT: And that there was a recommendation
24 by the State that it all run concurrent. I think that's
25 the only recommendation on the table.

1 MR. KENDRICK: That's correct.

2 MS. BRISBIN: That's correct.

3 THE COURT: Does everybody understand? Where's
4 the Solicitor?

5 MR. THURMOND: Right here, Judge.

6 THE COURT: Is that your understanding?

7 MR. THURMOND: Yes, sir.

8 THE COURT: All right. Come forward. You got
9 the sentence sheets?

10 THE CLERK: I'm getting them ready now, Your
11 Honor.

12 (Defendant placed under oath.)

13 THE COURT: All right. Mr. Kendrick,
14 Mr. Whitlark, y'all represent the Defendant, Joseph J.
15 Magni, Jr.; is that correct?

16 MR. KENDRICK: Yes, sir.

17 MR. WHITLARK: Yes, sir.

18 THE COURT: All right. There are four
19 indictments for lewd act upon a child. Have you advised
20 your client on each of those that it carries up to 15
21 years in the Department of Corrections?

22 MR. KENDRICK: Yes, sir.

23 MR. WHITLARK: Yes, sir.

24 THE COURT: It also requires a mandatory GPS upon
25 release.

1 MR. WHITLARK: Yes, sir.

2 THE COURT: And it also requires registration on
3 the sex offender registry.

4 MR. WHITLARK: Yes, sir.

5 THE COURT: And the various conditions of that
6 registration with, the restrictions that would apply to
7 it. Have y'all been over that with him?

8 MR. KENDRICK: Yes, sir.

9 MR. WHITLARK: Yes, Your Honor.

10 THE COURT: And obviously that's four indictments
11 for that offense. And the indictments, as we earlier
12 called them, 2010-1102, 1101, 1100 and 1099. Also there
13 are three -- strike that.

14 There are four indictments out of Aiken County
15 for criminal sexual conduct with a minor in the second
16 degree. That's indictments 10-1098, 1097, 1096, and
17 1095.

18 Gentlemen, have you advised your client that
19 these, strike that, that this offense carries up to or
20 some -- a minimum 20-year sentence in the Department of
21 Corrections?

22 MR. WHITLARK: Yes, sir.

23 MR. KENDRICK: Carries up to 20 years, Your
24 Honor.

25 THE COURT: Up to 20 years?

1 MR. KENDRICK: Yes, sir.

2 THE COURT: Does it carry -- is it up to 20?

3 MS. BRISBIN: Yes, sir.

4 MS. BODMAN: Zero to 20.

5 THE COURT: Zero to 20. It is classified as most
6 serious. Have you advised your client that a
7 classification of most serious means that he now has one
8 strike under our enhancement laws. And I assume this
9 would just be one strike since it was out of the series of
10 events that occurred shortly together?

11 MS. BRISBIN: Yes, sir.

12 THE COURT: That he now has one strike and what
13 that means?

14 MR. KENDRICK: Yes, sir, Your Honor.

15 MR. WHITLARK: Yes, Your Honor.

16 THE COURT: Have you further advised him that
17 criminal sexual conduct with a minor in the second degree
18 is what we call a no-parole sentence?

19 MR. KENDRICK: Yes, sir.

20 THE COURT: That he will do 85 percent of
21 whatever sentence I impose upon him?

22 MR. KENDRICK: Yes, Your Honor.

23 MR. WHITLARK: Yes, sir.

24 THE COURT: That he will likewise be required to
25 register under that offense as well as the lewd act and it

1 carries the same conditions as the registration under the
2 lewd act. I mean, it's just one registration, obviously,
3 but it's the same thing.

4 MR. KENDRICK: Yes, sir.

5 MR. WHITLARK: Yes, sir.

6 THE COURT: That when he is released under this
7 type of sentence that he'll be released to a community
8 supervision program?

9 MR. KENDRICK: Yes, sir.

10 THE COURT: And did I say that it's an 85-percent
11 sentence?

12 MR. KENDRICK: You did, Your Honor.

13 THE COURT: So whatever sentence I impose he will
14 have to do 85 percent before he's eligible for release; is
15 that correct, gentlemen?

16 MR. WHITLARK: Yes, sir, Your Honor.

17 MR. KENDRICK: Yes, sir.

18 THE COURT: And y'all agree with me that the only
19 recommendation by the State is that these will all run
20 concurrent; is that correct?

21 MR. KENDRICK: Yes, sir, Your Honor.

22 MR. WHITLARK: Yes, Your Honor.

23 THE COURT: In addition to those eight
24 indictments, he stands before me on an indictment out of
25 Richland County, Indictment 2010-GS-40-9465, an indictment

1 for criminal sexual conduct second degree, likewise
2 carrying 20, likewise classified as most serious.

3 And these are classified as violent as well; are
4 they not?

5 MS. BODMAN: Yes, sir.

6 THE COURT: All right. Let's put, check the
7 violent portion on the Aiken County ones, please.

8 (Documents handed back to solicitors.)

9 THE COURT: Now as to the Columbia -- strike
10 that. As to the Richland County indictments, have you
11 advised your client that he has the absolute right from a
12 jurisdictional and/or venue standpoint to have these
13 matters heard in Richland County?

14 MR. KENDRICK: Yes, sir.

15 MR. WHITLARK: Yes, sir, Your Honor.

16 THE COURT: And I assume he wishes to waive that
17 right?

18 MR. KENDRICK: He does, Your Honor.

19 THE COURT: And, likewise, the Richland
20 indictment is most serious, violent, and 85 percent along
21 with the other information we went over with the Aiken
22 County cases; is that correct?

23 MR. KENDRICK: That's correct, Your Honor.

24 THE COURT: I forgot to mention that under the
25 criminal sexual conduct second degree it's also classified

1 as violent. May have some bearing on where he's housed
2 and some conditions that may be imposed upon him in the
3 Department of Corrections. Y'all have advised him of
4 that?

5 MR. KENDRICK: That's correct, Your Honor.

6 THE COURT: Now as to all nine indictments, have
7 you advised him of his right to trial by jury? Obviously
8 we got a jury drawn. I assume you've gone over with him
9 his right to trial by jury?

10 MR. KENDRICK: Yes, we have.

11 MR. WHITLARK: Yes, sir.

12 THE COURT: And, gentlemen, how does he wish to
13 plead after discussing all of that with him as to each of
14 the nine indictments?

15 MR. KENDRICK: Guilty, Your Honor.

16 THE COURT: And, gentlemen, y'all have been on
17 this case for a while and have had an opportunity to
18 review all the evidence and research the law.

19 Are y'all of the opinion that he is making the
20 correct decision?

21 MR. KENDRICK: He is, Your Honor.

22 MR. WHITLARK: Yes, Your Honor.

23 THE COURT: All right. Mr. Magni, good
24 afternoon.

25 There are four indictments in Aiken County for

1 what we call lewd act upon a child. Each one of those
2 indictments could carry up to 15 years in the Department
3 of Corrections. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: There are also four indictments from
6 Aiken County for criminal sexual conduct with a minor.
7 Those carry up to 20 years in the Department of
8 Corrections. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Your lawyers say you wish to plead
11 guilty. By pleading guilty you would be required to
12 register as a sex offender on the sex offender registry as
13 to all of these indictments. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: That it would require mandatory GPS
16 monitoring when you are released for the balance of your
17 life. And that being on the sex offender registry will
18 impose upon you a number of conditions about where you
19 live, how close you can live to certain things.

20 I mean, I'm not going to go through the whole
21 list, but are you aware of that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Criminal sexual conduct cases are all
24 classified as most serious which means you now have one
25 strike under our enhancement laws which means that once

1 you are released from incarceration that you would have
2 one strike and if you became involved in criminal activity
3 that was classified as most serious one more time, that
4 you would be subjecting yourself to the possibility of
5 life in prison without the possibility of parole. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Or, if you became involved in
9 criminal activity that was classified as serious two more
10 times combined with the most serious that you have now,
11 that, once again, you would subjecting yourself to the
12 possibility of life in prison without parole. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that under criminal
16 sexual conduct second degree with a minor that is what we
17 classify as a no-parole sentence which means that you will
18 serve 85 percent of whatever sentence I impose?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That you will be released from a
21 community supervision program once you are released from
22 incarceration?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: As to the Richland County indictment,
25 obviously it's a criminal sexual conduct second. It's

1 also zero to 20, most serious, violent, requires
2 registration.

3 Do you understand all of that on the Richland
4 County case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: More importantly, on the Richland
7 County case you have the absolute right to have the matter
8 heard in Richland County by what we call jurisdictional
9 aspects or venue aspects.

10 Do you wish to waive or give up that and enter
11 the Richland County plea here today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that the only
14 recommendation being made by the State is that I give
15 concurrent sentences which means they all run at the same
16 time?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But I do not have to follow the
19 recommendation of the State.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: But I'll be fair with you. If I see
24 that I can't follow the recommendation, I will tell you
25 and you can discuss your options with your lawyer. Fair

1 enough?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. Magni, understanding
4 what you're charged with, the possible sentence on each
5 one, the fact that they are classified as most serious and
6 violent, they are no parole and 85 percent sentences, how
7 do you wish to plead, not guilty or guilty?

8 THE DEFENDANT: Guilty, Your Honor.

9 THE COURT: Sir, when you enter a plea of guilty
10 you will give up your constitutional right to remain
11 silent. You will have to admit to me the allegations in
12 these various indictments. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You will further give up your right
15 to trial by jury. Obviously we have a jury drawn, ready,
16 willing and able to start at two o'clock. But if you
17 enter this plea of guilty, you'll give up your right to
18 have your case heard by a jury. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If we had a jury trial, obviously you
21 would have the right through your competent lawyers to
22 cross-examine every witness who testified against you
23 including the victim.

24 You would have the right then to present your own
25 defense by calling your own witnesses, introducing

1 relevant exhibits, and testifying in your own defense. If
2 you exercised your constitutional right to remain silent,
3 then I would tell the jury they could not hold the fact
4 that you did not testify against you in any manner
5 whatsoever. And, in fact, I would instruct them that they
6 could not even consider the fact that you did not testify
7 when they deliberated your guilt or innocence.

8 You would be presumed to be innocent throughout
9 the trial. And the State of South Carolina would have to
10 prove your guilt beyond a reasonable doubt to a jury of 12
11 people. And in order for the jury to convict you, all 12
12 people would have to unanimously agree that you were in
13 fact guilty. And even if you were convicted you would
14 still have the right to an appeal.

15 Do you understand your rights to trial by jury?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Understanding those rights, do you
18 still wish to plead guilty or do you want me to get the
19 jury ready to go at two o'clock?

20 THE DEFENDANT: I'm going to plead guilty, sir.

21 THE COURT: Other than the recommendation, has
22 anybody promised you anything, held out any hope of reward
23 or threatened you in any manner in order to make you plead
24 guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you satisfied with your lawyers?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Kendrick and Mr. Whitlark?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: In your opinion, do you believe that
6 they've had enough time to spend with you and enough time
7 to research the law and enough time to investigate the
8 facts so they can properly represent and defend you here
9 today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is there anything else you want them
12 to do for you today before we move forward other than
13 speak up on your behalf?

14 THE DEFENDANT: No, sir.

15 THE COURT: I'm going to ask you again. Are you
16 totally and completely satisfied with their services as
17 your lawyer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you today, sir, under the
20 influence of any alcoholic beverages?

21 THE DEFENDANT: No, sir.

22 THE COURT: Drugs?

23 THE DEFENDANT: No, sir.

24 THE COURT: Medications?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you today, sir, aware of any
2 mental, nervous or emotional condition which would keep
3 you from understanding these proceedings?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you understood all my
6 questions?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions you want to
9 ask me before we proceed?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you pleading guilty to all nine
12 indictments of your own free will and accord?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: As to the lewd act upon a child, did
15 you, sir, here in Aiken County on or about June 5, June 3,
16 between May 18 and June 2, and on or about May 16 of the
17 year 2009 at which time you were, attempted or did commit
18 lewd or lascivious acts upon one Minor , a child
19 under the age of 16, with the intent of arousing,
20 appealing to or gratifying the lusts, passions and sexual
21 desires of you or the child?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You're pleading guilty to those four
24 indictments because you did commit a lewd act upon young

25 Minor

?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: As to the five indictments for
3 criminal sexual conduct with a minor in the second degree,
4 did you, sir, here in Aiken County on or about June 5,
5 2009, June 3, 2009, May 18, or between May 18 and June 2
6 of 2009, and May 16, 2009, commit a sexual battery upon
7 the minor, Minor ?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And as to the Columbia indictment,
10 did you on or about June 25, strike that, between June 25
11 and August 15, 2009, engage in sexual battery with the
12 young girl, Ms. Minor ?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Who is, who was 14 years at the
15 time?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you pleading guilty to all nine
18 indictments because you are, in fact, guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Pleading guilty to all nine
21 indictments because you have violated the laws of the
22 State of South Carolina?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Pleading guilty to all nine
25 indictments because you are, in fact, guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. I find your decision
3 to plead guilty to all nine indictments to be freely,
4 voluntarily and intelligently made. You've had the
5 representation of competent lawyers in Mr. Kendrick and
6 Mr. Whitlark with whom you tell me you're very satisfied
7 and I'll accept your plea.

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

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Let's start with the
14 Aiken County cases first, and then we'll go to the
15 Richland County cases.

16 MS. BRISBIN: Thank you, Your Honor.

17 In the 2008-2009 school year, Mr. Magni was a
18 history teacher at Leavelle McCampbell Middle School.

19 Minor was a student in his history class. She was
20 13 when the year started. She turned 14 in January of
21 2009.

22 These incidents occurred between May 16th and
23 June 5th of 2009, the Aiken County incidents.

24 In September of 2009, Minor stepmother found
25 that her cell phone records showed that there had been

1 hundreds of text messages and phone calls to, back and
2 forth between Minor and what turned out to be Mr. Magni's
3 phone number.

4 She confronted Minor and she admitted that they
5 had been having an ongoing sexual relationship. She
6 reported this to law enforcement in Richland County at the
7 time where Minor was living with her father at that point.

8 Minor disclosed that they had had digital and oral
9 penetration beginning May 16th of 2009, when she was 14
10 and Mr. Magni was 27. And that this had happened on
11 several occasions every week from that time period through
12 June 5th, in Aiken County.

13 Most of the time it would happen at the school
14 where he was a teacher and she was a student. And she
15 would meet him after-school hours at the school. And they
16 would engage in sexual activity in his classroom or in the
17 teachers' lounge, twice, and in the computer room -- or
18 the copy room one time during that time period.

19 It also happened on May 16th at a movie theatre
20 in Aiken County. That was the first incident of actual
21 sexual activity between them.

22 In June, Minor moved to Columbia to Richland
23 County to live with her father. And that's where the
24 Richland County incidents occurred. And Ms. Bodman can
25 talk about that.

1 We did find that in addition to the extensive
2 phone records, there was DNA evidence in that Minor had put
3 a dress away at her house after the incident on May 26th
4 which also happened at school in Aiken County. And when
5 she left it at her home in Aiken County, she didn't want
6 to wear it again. She put it out of her mind.

7 And then a year, about a year later when we were
8 proceeding to go to trial she remembered the dress and
9 brought it to law enforcement. And it had a very obvious
10 stain all over the front of the dress.

11 Law enforcement sent the dress to SLED for DNA
12 analysis and four of the cuttings from the dress were a
13 match to Mr. Magni's DNA. And the statistics were one in
14 130,000,000,000,000 (one in 130 trillion) chances that a
15 random person, unrelated person would have that DNA that
16 matched.

17 THE COURT: Ms. Brisbin, you mentioned one time
18 in the movie theatre, but all the other times were at
19 school?

20 MS. BRISBIN: Yes, sir.

21 THE COURT: Where in the school?

22 MS. BRISBIN: In Mr. Magni's classroom and most
23 of the time, one time in the copy room and twice in the
24 teachers' lounge. It was always after-school hours so the
25 students, other students would not be around or at least

1 not, not always. Sometimes they would be, for various
2 activities.

3 THE COURT: Any prior record?

4 MS. BRISBIN: No, Your Honor.

5 THE COURT: Anything else you want to tell me?

6 MS. BRISBIN: The, I believe the victim --

7 THE COURT: Hold on a second.

8 (Defendant conferring with counsel.)

9 MS. BRISBIN: He did promise her that he loved
10 her and that he was going to marry her, and she indicated
11 that that was why she did what she did.

12 And I believe her family, some of her family
13 members would like to address the Court at the appropriate
14 time.

15 THE COURT: How many? How many --

16 MS. BRISBIN: Pardon me?

17 THE COURT: -- minutes of phone records did you
18 have?

19 MS. BRISBIN: Oh, my gosh. I didn't even count
20 them. There were times when they would be talking on the
21 phone for hours, at three a.m., four a.m., and texting all
22 night long, day after -- every day.

23 It was just unbelievable. I counted one day
24 there were 120-some texts between them, in just one day.
25 And it was like that most days, from April of 2009 to

1 September of 2009 when her stepmother noticed the records.

2 THE COURT: And he was arrested in Richland
3 County?

4 MS. BRISBIN: Initially, yes, sir. And they
5 notified Aiken County Sheriff's Office. And then Aiken
6 County arrested him on our charges.

7 THE COURT: Ms. Bodman?

8 MS. BODMAN: Your Honor, basically after
9 establishing this relationship in Aiken County in the
10 summer of 2009, the victim then moved to Richland County
11 to spend the summer with her father.

12 Around -- basically he would come visit her. He
13 would call her, he would get off work and drive to
14 Richland County.

15 THE COURT: From Aiken?

16 MS. BODMAN: From Aiken, or from where he was
17 living, from where he was living. I think he had moved at
18 that point.

19 MS. BRISBIN: (Nods head.)

20 MS. BODMAN: He would arrive sometime around 3:30
21 in the morning. And he would basically call her and say
22 that he was down the road. She would sneak out of the
23 house and then he would drive down the road to, from the
24 father's house and they would park.

25 She indicates that on June 25th of 2009, was the

1 first time that they had penile-vaginal intercourse. She
2 said that it started out oral sex and digital
3 penetration. And then he put on a condom and she said,
4 no, I want to wait until I'm married. And he said, don't
5 worry about it. I'm going to marry you.

6 So that was the first instance of penile-vaginal
7 penetration. Again on August 9th, he did the same thing.
8 Came to visit her and she snuck out. A third time on
9 August 15th of 2009, was the last time that they had
10 physical contact, and they engaged in oral sex and digital
11 penetration.

12 Apparently when she snuck out that night, I guess
13 after she was gone for a while the dogs started barking.
14 And her stepmother noticed that she was missing. And so
15 called her on the phone and said, where are you. And so
16 that stopped anything further than the oral sex and the
17 digital penetration from occurring at that point.

18 So now her stepmother is suspicious of what is
19 happening, that she's, you know, out in the early morning
20 hours. They got the phone records and were looking at all
21 of these numerous calls and text messages. And basically
22 her sister called the Defendant's number to try to figure
23 out who this person was.

24 And the person answered, this is Joe. So that's
25 when they confronted the victim and said, who is Joe. And

1 that's when she detailed everything that had been
2 happening, both in Aiken County and Richland County.

3 THE COURT: Anything else?

4 MS. BODMAN: No, sir.

5 THE COURT: All right. Gentlemen? Which one?

6 MR. KENDRICK: I think Mr. Whitlark's going to go
7 first, Your Honor, if that's okay.

8 THE COURT: Mr. Whitlark?

9 MR. WHITLARK: May it please the Court, Your
10 Honor.

11 THE COURT: Sure.

12 MR. WHITLARK: Your Honor, I was called into the
13 case late in the representation because we were going to
14 try this case. And I got know Joe Magni.

15 Joe Magni's a 28-year-old graduate of USC. He
16 has an honorable discharge from the United States Navy.
17 He was married, got divorced. He has a four-year old
18 daughter.

19 All of these things, Your Honor, stemmed from
20 about April of 2009 when he went in and had major surgery
21 done at the Veterans Hospital and began to take the
22 narcotics that he was taking. And all of this began by
23 him calling up the principal at the school to say that he
24 would not be coming in to work because of these injuries
25 -- because of his pain and his rehabilitation.

1 And Ms. Barnwell admittedly said she got the
2 number off the phone and started to talk to him. And
3 during that time he was -- things started to snowball on
4 him.

5 THE COURT: Go back a little bit. He called into
6 the school?

7 MR. WHITLARK: He was a teacher at the school.

8 THE COURT: And called into the school?

9 MR. WHITLARK: After his surgery to say that he
10 was not going to be coming in.

11 THE COURT: Then how did the young lady get his
12 number?

13 MR. WHITLARK: She took it off her mom's phone.
14 She went and got it off there. I believe she --

15 THE COURT: Mom was the principal?

16 MR. WHITLARK: Yes, sir.

17 THE COURT: Go ahead.

18 MR. WHITLARK: And then from there, Your Honor,
19 they began to speak. And he had, you know, he -- as I
20 said, he was on some very strong narcotics. He was in a
21 pain situation, nine out of 10, with the surgery he had
22 had.

23 And he made a poor and terrible judgment to
24 continue with these communications. Things snowballed on
25 him and this was a five month, I believe about a five-

1 month period of time that all of these things occurred.

2 And Mr. Magni made some major mistakes. And I've
3 talked to him about this, Your Honor. And he's told me
4 that he is sorry, that he has thought himself -- he has a
5 daughter and that this would disturb him and he's thought
6 and reflected on it.

7 And, Your Honor, he has shown true remorse to
8 me. And he has told me he knows what he was doing was
9 wrong. He wishes he could change it, but he can't.

10 And he's here today, Your Honor, to apologize and
11 to take his punishment as he knows he must.

12 But, Your Honor, he's got no record. He's had
13 good service to the United States Navy. He was a teacher
14 and a football coach. And based on everything you look
15 at, other than this he was good man. He was a family
16 man.

17 Oh. I forgot to tell Your Honor.

18 His divorce was right then, about May of 2009,
19 about a month after this began. So he was -- he had an
20 operation, he was taking heavy narcotics. He was in a
21 divorce proceeding that was a pretty nasty situation with
22 his ex-wife. He has a four-year old daughter. And he
23 emotionally was in a very stupefied condition, and that's
24 how it got started.

25 Then, of course, he made the poor judgment and

1 did the wrong thing.

2 THE COURT: In 2009 it started, in April, you
3 say?

4 MR. WHITLARK: Yes, sir.

5 THE COURT: How long had he been a schoolteacher
6 at that time?

7 MR. WHITLARK: I believe that was his first year
8 there at the school.

9 THE COURT: How about teacher in general?

10 MR. KENDRICK: First year.

11 MR. WHITLARK: That was his first year, first
12 year of teaching.

13 THE COURT: I didn't mean to interrupt.

14 MR. WHITLARK: No, sir. That's fine.

15 Anyway, Your Honor, he was so sorry for this but
16 it just got away from him. The events carried him and it
17 wasn't but a five-month period of time. And he's sorry,
18 Your Honor.

19 I would ask the Court to please consider the fact
20 that he has no record, good service to this country and
21 other than this, Your Honor, he's lived an exemplary
22 life. And the circumstances, while it doesn't excuse
23 this, of him being in surgery on some of the most powerful
24 pain narcotics made, and going through a divorce
25 proceeding put him in what I believe was a confused state

1 of mind, vulnerable and making just terrible judgments.

2 THE COURT: That might be the case if it were one
3 time and he's all messed up on the drugs, but it just --

4 MR. WHITLARK: Yes.

5 THE COURT: -- it's chronic. I mean, hours and
6 hours and hours. Sounds like, to me, it was a puppy-love
7 thing with him. He's 12 or 13 years older, but he was
8 acting like the same thing.

9 MR. WHITLARK: Yes, sir.

10 THE COURT: That's not acceptable behavior for
11 someone who is trusted by society and by the State when
12 they license him to be a teacher. You can't take
13 advantage of these kids.

14 MR. WHITLARK: Yes, sir, Your Honor.

15 THE COURT: I don't know that I can buy that
16 narcotics from his surgery is any excuse or reason for
17 this type of deliberate behavior for so long.

18 MR. WHITLARK: No, sir.

19 THE COURT: But I understand he has no record. I
20 understand he served his country.

21 MR. WHITLARK: Yes, sir.

22 THE COURT: Anything else?

23 MR. WHITLARK: Yes, sir, Your Honor. Just to
24 close out, to explain that thing to you one more time.

25 He said that the thing that -- he let himself get

1 initiated into it, and that's why I mentioned all of
2 that. He admits that he did a wrong thing and clearly did
3 a wrong thing after that.

4 I'd ask the Court to please consider all of these
5 things for the fact that he does have a four-year old
6 daughter. He's been remarried now. And other than these
7 terrible mistakes he's made here and what he's done here,
8 I'm asking the Court to please consider giving this man
9 some, a second chance and some mercy here. Thank you,
10 Your Honor.

11 THE COURT: Mr. Kendrick?

12 MR. KENDRICK: Thank you, Your Honor. I'll just
13 follow up very briefly.

14 THE COURT: No, sir. You don't have to be brief
15 with me. Do what you need to do.

16 MR. KENDRICK: Certainly, Your Honor.

17 Your Honor, I represented Mr. Magni since before
18 he was arrested on these charges. He came in to me as
19 soon as he was contacted by Richland County Law
20 Enforcement.

21 I've spent a lot of time with him, as Your Honor
22 knows, just getting ready for this week. We've spent
23 hours and hours talking about this situation.

24 I agree with what Mr. Whitlark says. This was
25 terrible judgment. And, Your Honor, I agree to some

1 degree with what you said, that it almost appears to have
2 been a little puppy love. And that is, like you said,
3 absolutely unacceptable. I wish I had an explanation for
4 it. There isn't one.

5 And nothing we say, obviously, is meant to excuse
6 his behavior. But, of course, when someone comes in front
7 of the Court and pleads guilty, it's a very, I guess,
8 difficult decision. I think this has been one of the more
9 difficult decisions I've had to reach with a client.

10 He's made some terrible decisions, Your Honor. I
11 think that today is the first time he has the ability to
12 show this Court and our justice system that he wants to
13 make the right decision.

14 But even in his personal life, as Mr. Whitlark
15 alluded to, going back over the past year, he's working
16 hard at a job that he's become very successful at.

17 THE COURT: What's he doing?

18 MR. KENDRICK: He's a manager of a Jiffy Lube,
19 Your Honor, and I believe he was in line to be even higher
20 than that, I believe a district manager. Obviously we
21 know that that won't be possible based on what's going
22 on.

23 He met a lady that he's married to now who's
24 been, you know, supportive of him in this situation.
25 That's who he's been communicating with most of the

1 morning to talk about this. I've met her, you know.

2 She's a pleasant woman.

3 And his decision making, Your Honor, is turning
4 around. He's trying to improve his life. And I say that
5 because I think that there are obviously two goals in any
6 sentence, which is retribution and rehabilitation.

7 I don't know that Mr. Magni needs a lot of
8 rehabilitation, Your Honor. I think that he has shown us
9 that this is a period of his life where he made terrible
10 decisions and he's done a good job making a positive
11 progression out of this time period.

12 But we would be unrealistic to come in this
13 courtroom and not expect retribution for the exact reason
14 that Your Honor just said, that as a teacher this isn't
15 something that can happen. And he stands before you, Your
16 Honor, knowing that he's going to prison.

17 And in representing hundreds if not thousands of
18 people charged with crimes, there's nothing tougher than
19 someone walking up here and saying, yes, sir, yes, Your
20 Honor, and pleading guilty when he knows for a fact that
21 he is going to go to jail at the end of this proceeding.

22 So what I would ask you, Your Honor, is to temper
23 that message you have to send him with some mercy. And
24 agree that, because he has not put us through this trial
25 which, Your Honor, on the bench and in practice has to

1 know, that these trials are the worst thing in the world
2 in the courtroom. They're emotionally draining. There's
3 not a witness or a lawyer or, I would imagine, even a
4 judge who doesn't carry some burden having to go through
5 this process.

6 And Mr. Magni comes here knowing, because we've
7 been realistic with him, knowing he goes to jail as soon
8 as the proceedings are over. He hasn't elected to put us
9 all through that.

10 And I'd ask that he get some consideration for
11 that. And I'd ask Your Honor to consider a sentence as
12 low as you're willing to do.

13 And I would offer you the fact that when you have
14 someone with no prior record, when you have somebody who
15 has been contributing to society, that this isn't a guy
16 who's in and out of the revolving door of jail, the isn't
17 somebody who'll will say, oh, I'll do this time standing
18 on my head.

19 This is somebody that's going to take this time
20 and this guilty plea and the brand that he has on him very
21 difficult. It's going to be hard on him.

22 I'd ask you to temper the fact that he comes in
23 here and admits what he's done and allow that to affect
24 your sentence and give him the lowest sentence Your Honor
25 feels comfortable with, because I do think that any

1 sentence you give him, whether it's a couple of years or
2 more, will be a very, very long time for him and for his
3 family.

4 I believe he wants to address you at the
5 appropriate time. I don't know if that would be last or
6 now.

7 THE DEFENDANT: Your Honor, I made some
8 mistakes. I knew that sitting, sitting in jail in October
9 of 2009 was the toughest thing I ever went through. It
10 made me realize the kind of person I should be. And I
11 feel like I'm moving towards that.

12 I'm trying to be a better father. I'm trying to
13 be a better husband. And I know what I did was wrong. I
14 do. I wish I could go back and change it. I wish I could
15 have gotten on the phone and called her mom right away and
16 said, hey, she's calling me. Tell her to stop.

17 But I didn't. I let it go. And that was poor
18 judgment on me.

19 And all I can say is I have tried for the past
20 year and a half to just make myself better and not, you
21 know, get into trouble. I mean, I don't. I never really
22 did get in trouble before that.

23 And I know that once -- once this happened, I
24 knew that I needed to stay on the straight and narrow.
25 And that's what I have been, and I just -- I know that I

1 would never do anything like this again. I know that.

2 THE COURT: Anything else?

3 THE DEFENDANT: No, sir.

4 THE COURT: I'm sorry, too.

5 THE DEFENDANT: I'm more than sorry. I never
6 regretted anything more in my life and I've done some
7 stupid things.

8 THE COURT: Well, it's more than stupid. We all
9 do stupid things. But, you know, you got a child four
10 years old.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Most of us in here have children. We
13 send them to school. We entrust them for six, seven,
14 eight hours a day with you teachers.

15 I had two old rough boys, but I have two little
16 grand daughters and I can't imagine some schoolteacher
17 acting like they're a student instead of a teacher. It's
18 hard to comprehend.

19 Mom wants to speak?

20 MS. BRISBIN: I believe so.

21 THE MOTHER: Yes.

22 THE COURT: Yes, ma'am.

23 THE MOTHER: Your Honor, thank you.

24 THE COURT: Your name, please?

25 MS. J. BARNWELL: My name is Jacqueline

1 Barnwell. I'm Minor mother.

2 THE COURT: And I understand you're the principal
3 of the school --

4 MS. J. BARNWELL: Yes.

5 THE COURT: -- where he was teaching?

6 MS. J. BARNWELL: I was the principal at the
7 school.

8 THE COURT: Still are?

9 MS. J. BARNWELL: No. I'm at a different middle
10 school now. In October of 2009 was when I discovered what
11 had happened to my daughter, and that was probably the
12 most difficult moment of my life.

13 My daughter's life has been changed forever. I
14 raised her to trust adults, to respect your teachers, to
15 respect people in power, and to do the right thing.

16 Mr. Magni, we interviewed him and he presented
17 himself beautifully. He was a retired person in the
18 military. And I noticed about two months into his
19 teaching tenure that there were problems. I called him
20 in. I coached him. I got other teachers to help him with
21 his classroom management. His teaching -- he was a new
22 teacher. I provided support to him.

23 There was an incident where Mr. Magni went on to
24 make a poor decision where he was in -- after a basketball
25 game, our assistant principal unlocked the door and he was

1 in the locker room adjusting his trousers and zipping his
2 zipper. And he was reprimanded for that. And there were
3 two female students in that office with him. We
4 reprimanded Mr. Magni at that time.

5 I had no idea -- this was in January of 2009. We
6 had no idea that this was a continuing problem. We
7 reprimanded him. We wrote a letter. We continued to
8 coach him.

9 Female teachers came to me and complained of his
10 sexual harassment, making sexual advances and comments
11 towards the teachers, two teachers in particular.

12 So, certainly we began to lose faith in his
13 credibility as a teacher. We put him on an improvement
14 plan. He was not recommended to teach for the following
15 year, and we did not offer him a contract in April of that
16 year.

17 During all of this time, I had no idea that any
18 of this was going on with any child, let alone my
19 daughter. My daughter was, after school she would be in
20 extracurricular activities like her cheer leading or, and
21 her beta club. We noticed that on two occasions he was
22 hanging around. And he had been spoken to about that.

23 I have to say that I think his words are kind but
24 I don't believe a word he's saying because he showed me a
25 pattern over and over and over of his contempt for law and

1 order and respect.

2 And this is just another example, Your Honor, of
3 what I see with Mr. Magni, in my experience as an employer
4 and not as a mother.

5 But as a mother, I want to say my daughter's life
6 has been changed forever. She receives therapy and
7 counseling. She's a strong young lady but this should not
8 have happened to anybody's child. I trusted my child to
9 be taken care of and it did not happen with this
10 individual.

11 THE COURT: It's hard enough raising children
12 today, you know. You worry about what they see on TV.
13 You worry about what they do when they leave the house,
14 afternoons, and with their peers. You worry about what
15 they do when they get old enough to start dating, but you
16 shouldn't have to worry about when you send them to
17 school --

18 MS. J. BARNWELL: Absolutely.

19 THE COURT: -- sexual conduct with the teachers.

20 MS. J. BARNWELL: Absolutely.

21 THE COURT: Thank you.

22 MS. J. BARNWELL: Thank you.

23 MS. BRISBIN: Your Honor, her father's also
24 here. I believe he may want to say something, to address
25 the Court.

1 THE COURT: Yes, sir.

2 THE FATHER: Thank you, Your Honor.

3 THE COURT: Good afternoon. If you would just
4 give us your name for the record.

5 MR. BARNWELL: Shawn Barnwell is my name.

6 THE COURT: Mr. Barnwell.

7 MR. BARNWELL: Your Honor, just a little about my
8 daughter.

9 Just now she's 16 years old. She is, easy to
10 say, the apple of my eye. She's a very gifted, very
11 gifted young lady, a very trusting young lady.

12 She is a final or semi-finalist for the South
13 Carolina Governor's School for Science and Mathematics.
14 That decision will be handed down in the next few weeks,
15 the beginning of May.

16 I say all of this to say that she's always been
17 very focused, and not only a joy to be around but just a
18 joy to watch learn and grow.

19 And her mother is correct. She has been
20 irrevocably broken by this. There are things that this
21 incident, this long-standing incident has caused that will
22 never be changed, never be righted.

23 Given that, she is a strong young lady. She is
24 in therapy. I am hoping that all of that and distance
25 from this incident will help her not to -- my apologies,

1 but not that you're broken but to make you whole, if you
2 know what I mean, to move you beyond this, take you out of
3 this darkness.

4 It's very difficult to stand before you, to stand
5 in the company of this gentleman. Yes, he is a father --

6 THE COURT: Direct your attention to me.

7 MR. BARNWELL: I'm sorry. That's probably a good
8 idea.

9 THE COURT: It is.

10 MR. BARNWELL: As a father, it's a very, very
11 difficult thing to live with, knowing that someone has
12 violated your child, someone has taken innocence away,
13 someone has used trust as a weapon, someone in authority.

14 You know, it used to be you could go to sleep
15 with your doors open at night. We can't do that anymore.
16 You know, you can't even send your children to school.
17 You can't send them to school.

18 It's a tough place to be.

19 Beyond what happens here today, Your Honor. I do
20 trust that you'll send a message today that this sort of
21 behavior will not be tolerated in our community because
22 it's happening everywhere, everywhere in this state.
23 There's not a week that goes by that I don't hear about a
24 student somewhere being assaulted by someone in authority,
25 whether it's a teacher or a coach or a boy scout troop

1 leader or what have you. It's very difficult to deal
2 with.

3 So I put my faith and my trust in you. Thank
4 you.

5 THE COURT: Thank you. Anybody else from the
6 victim? She doesn't want to speak?

7 THE VICTIM: (Shakes head.)

8 THE COURT: These are always, for a judge, the
9 most difficult type of cases. We have a man standing here
10 before me. He has absolutely no prior record for criminal
11 involvement, educated.

12 And we have a sweet, innocent, young girl who
13 goes to school. And he allows this situation not only
14 to -- I mean, I can see it starting, but instead of
15 starting and nipping it in the bud, he has cultivated and
16 fertilized it. And just absolutely, sounds like,
17 encouraged it. He goes to Columbia to visit her, gets her
18 out at night and keeps going on and on. Continues to
19 escalate instead of maybe, phone calls and talking. My
20 goodness what's going on, I need to quit this.

21 It's terrible. Send your children to school and
22 this ends up.

23 Obviously my duty is to punish. My duty is to
24 make sure I do send a message to the community, to other
25 teachers who want to become involved with children. We

1 can't tolerate this in our community. I'm charged under
2 my responsibilities to protect the public and, more
3 particularly, small children.

4 But I do take into consideration the fact he's,
5 as I said, no prior record. He has, by admitting his
6 guilt, eliminated the necessity of this young lady to have
7 to come in here and testify before a jury and the
8 community.

9 But I just find his conduct deplorable.

10 AS TO INDICTMENTS 10-GS-2-1102, 1101, 1100, AND
11 1099, ALL INDICTMENTS FOR LEWD ACT UPON A CHILD, THE
12 SENTENCE OF THIS COURT IS THAT YOU BE COMMITTED TO THE
13 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 12 YEARS.

14 AS TO INDICTMENTS 10-1098, 1095, 1096 AND 1097,
15 INDICTMENTS FOR CRIMINAL SEXUAL CONDUCT IN THE SECOND
16 DEGREE WITH A MINOR, AND THE RICHLAND COUNTY INDICTMENT OF
17 10-GS-40-9465, THE SENTENCE OF THE COURT IS THAT YOU BE
18 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
19 PERIOD OF 12 YEARS. You'll have to do 85 of the 12
20 years. THEY'LL ALL RUN CONCURRENT. Good luck to you.

21 MR. WHITLARK: Thank you, Your Honor.

22 MR. KENDRICK: Thank you, Your Honor.

23 MS. BODMAN: Thank you, Your Honor.

24 MS. BRISBIN: Thank you.

25 THE COURT: All right. Everybody remain seated.

1 Ms. Brisbin, I'm not sure if they want -- I'm getting
2 ready to address the jury. Do they want to stay while I
3 do that or would y'all like to leave?

4 MS. BRISBIN: They're going to leave, Your Honor.

5 MR. BARNWELL: Thank you, Your Honor.

6 END OF CASE: 2:10 P.M.

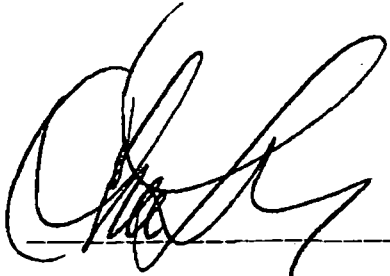
7 CERTIFICATE OF REPORTER

8 I, Cheri L. Young, Registered Professional Reporter,
9 and Official Court Reporter for the State of South
10 Carolina, do hereby certify that the foregoing transcript
11 of proceedings heard on Monday, April 18, 2011 and
12 Tuesday, April 19, 2011, in Aiken, South Carolina, was
13 reported by me using machine shorthand and realtime
14 computer-aided translation and is a true, accurate and
15 complete transcript of the proceedings had and evidence
16 introduced in the hearing of the matter.

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

19 I have hereunto set my hand this Saturday, the 20th
20 day of August, 2011.

21
22
23
24
25



Cheri L. Young, RPR
Official Court Reporter

M035091, M05230, M05227, M05228
M035092, M05231, M05232, M05233

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF AIKENJOSEPH JAY MAGNI, JR.
Full name and prison number (if any) of Applicant.

345848

v.

State of South Carolina

JOSEPH JAY MAGNI, JR.
345848

INSTRUCTIONS - READ CAREFULLY

IN THE COURT

APPLICATION FOR 7/5, 20 11

POST-CONVICTION RELIEF County 30

Deputy Clerk: Joshua Rodrick
Trial Judge: DA Early
Trial Ady.: Joshua Rodrick
Court Reporter: Cheri Young
Sec. PCR Petitioner: Joshua Rodrick
General Sessions: Joshua Rodrick
Appointed Atty.: Joshua Rodrick
Solicitor: Joshua Rodrick
Atty. Gen.: Joshua Rodrick

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 KIRKLAND
2. Name and location of Court which imposed sentence AIKEN, GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) CSC, 2ND DEGREE
 - (b) LEWD ACT ON A MINOR
 - (c) ---
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/27/11
 - (b) ---

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ~~_____~~ X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) DID NOT KNOW I COULD 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) _____
(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
(b) _____
(c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
ii. _____
iii. _____
iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
ii. _____
iii. _____
iv. _____

(c) the disposition thereof:

- i. _____
ii. _____
iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
- 15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) _____
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:

Revised 3/2003

- (a) your arraignment and plea? YES
(b) your trial, if any? ____
(c) your sentencing? YES
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ____
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ____

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. JOSEPH KENDRICK

ii. ____

iii. ____

- (b) the proceedings at which each such attorney represented you:

i. ____

ii. ____

iii. ____

19. State clearly the relief you seek in filing this application:

CONVICTION REVERSED & NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

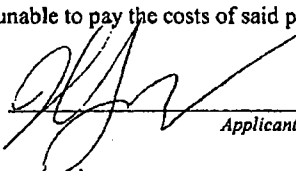
SWORN to and subscribed before me this 24
day of JUNE, 2011.
[Signature] (L.S.)
Notary Public

My Commission Expires 2/20/17

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

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

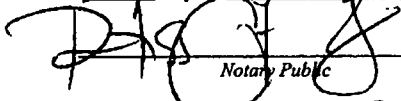
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

24 day of JUNE, 2011.



Notary Public

My Commission Expires: 2/20/17

MASELLA LAW FIRM, P.A.

Reply to Columbia Office

ROBERT M.P. MASELLA
A.B. LINCOLN G.P.A.

S. PRENTISS COUNTS

REYNOLDS H. BLANKENSHIP, JR.

June 29, 2011

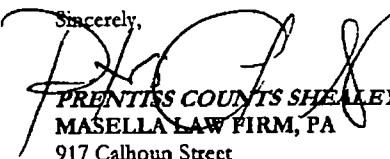
917 CALHOUN STREET
COLUMBIA, SC 29201
(803) 745-89001045 WEST CHURCH STREET
RICHMOND, SC 29372
(803) 893-4403FAXES
(803) 745-0645The Honorable Liz Goddard
Aiken County Clerk of Court
P.O. Box 582
Aiken, South Carolina 29802RE: *Magni v. State*
11-CP-02-

Dear Clerk:

Enclosed please find the original Post Conviction Relief Application for Joseph J. Magni, Jr..

Please contact me if you have any questions or concerns.

Sincerely,


PRENTISS COUNTS SHEALEY
MASELLA LAW FIRM, PA917 Calhoun Street
Columbia, SC 29201

cc: Joseph J. Magni, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Joseph J. Magni, Jr., #345848,

2011-CP-02-1473

Applicant,

RETURN
(Counsel Retained)

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed July 5, 2011, the Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's orders of commitment. Applicant was true bill indicted at the June 2010 term of the Aiken County Grand Jury for four (4) counts of Criminal Sexual Conduct with a Minor – Second Degree (2010-GS-02-1095/1096/1097/1098) and four (4) counts of Lewd Act Upon a Child (2010-GS-02-1099/1100/1101/1102). Applicant was represented by Joshua Kendrick, Esquire, on the charges. On April 18, 2011, Applicant appeared before the Honorable Doyet A. Early, III where he pled guilty to all eight (8) indictments from Aiken County, as well as to one indictment for Criminal Sexual Conduct with a Minor – Second Degree from Richland County (2010-GS-40-9465). Applicant was sentenced to twelve (12) years imprisonment on each charge, all sentences to run concurrent. Applicant did not appeal his plea or sentences.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR 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.

Applicant has alleged he received ineffective assistance of plea counsel. 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).

V.

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

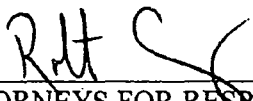
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 21, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2011-CP-02-1473
	)	
JOSEPH J. MAGNI, JR., 345848,	)	
	)	
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:

**Prentiss Counts Shealey, Esquire
Masella Law Firm
917 Calhoun St
Columbia, SC 29201-2307**

DATED this 21st day of September, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

M 035091, M 015230, M 015227, M 015228
M 035092, M 015231, M 015232
M 015233

2011 CP-02-01473
2010 GS-02-1095-1102

119

FORM 5

Filed 8-17-2012

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Joseph Jay Magni, Jr., SCDC# 345848
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

CCCP & GS, Aiken County
Trial Judge: DAVID L. PLEAS
Trial Judge: DAVID L. PLEAS
Court Reporter: CHEN YOUNG
Sec. PCR Petitioner: General Sessions
Solicitor: Atty. Gen.
Appointed Atty.

AMENDED
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Four (4) counts of CSC with a Minor - Second Degree, Case Numbers 2010-GS-02-1095/1096/1097/1098
 - (b) Four (4) counts of Lewd Act Upon a Child, Case Numbers 2010-GS-02-1099/1100/1101/1102
 - (c) _____

Revised 3/2003

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 19, 2011
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Was unaware of right to 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) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel was unprepared for trial and told me that if I did not plead guilty I would definitely be found guilty and spend the rest of my life in prison. Trial counsel did not research case law to support an argument that the dress of the accuser, which allegedly contained my DNA, should have been suppressed. Trial counsel did not meet with me to prepare to testify at trial. Trial counsel did not attempt to speak with a witness, the bar manager named Lee at The Saloon in Five Points in Columbia, who would have provided me with an alibi for one of the times when the accuser alleged I was with her. Trial counsel did not attempt to speak with other witnesses, David Crosby, Allison Brown, Amber O'Connor (or Banister), who were employees of the school and who would have testified to the accuser's relevant behavior and credibility. Trial counsel did not consider the argument that when the Applicant was allegedly having sexual contact with the accuser, he was suffering from MRSA and/or recovering from surgery for MRSA in the area of his genitals. The sutures from the surgery would have been relevant to challenge the credibility of the accuser.

(b) If trial counsel had been prepared for trial and not advised me that I had to plead guilty, I would not have pleaded guilty but rather would have gone to trial.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes, this is an Amended Application for PCR.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes, this is an Amended Application for PCR.

(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

Revised 3/2003

application:

(a) the specific nature thereof:

- i. This is an Amended Application for PCR. The original Application did not include specific facts in support.

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Aiken County Court of Common Pleas

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Pending

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. None

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?

Yes

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

- (a) which grounds have been presented:
- i. The original Application contained a general allegation of ineffective assistance of counsel.
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
- i. This PCR action.
 - 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) _____
 - (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? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Joshua Snow Kendrick, P.O. Box 886, Columbia, SC 29202
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentencing
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of RICHLAND)

I, Joseph Magni, through my wife and attorney-in-fact, Alyssa Magni, 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.

Alyssa Magni

SWORN to and subscribed before me this August
day of 15, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires: October 3, 2021

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Joseph Jay Magni, Jr.,)

C/A No. 2011-CP-02-1473

Applicant,)

vs.)

CERTIFICATE OF SERVICE

State of South Carolina,)

Respondent.)

Undersigned counsel for Applicant hereby certifies that on this date he has served Applicant's Amended Application for Post-Conviction Relief by first-class U.S. mail, postage paid, on the following:

Megan E. Harrigan
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211



Robert M.P. Masella
 Attorney for Applicant

Columbia, South Carolina

This 16 day of August 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2011-CP-02-1473
	)	
Joseph Jay Magni, Jr., #345848,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims

- and amendments to his prior application for post-conviction relief filed July 5, 2011:

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) Involuntary guilty plea.

11. State concisely and in the same order the facts which support each of the grounds set in (10):

- (a) "Did not interview witnesses for my case."
- (b) "Did not argue the validity of the DNA correctly."
- (c) "Did not have me evaluated by a medical professional."
- (d) "Did not meet with me in a timely manner to retrieve text messages from my phone sent by the accuser apologizing and admitting she 'cried wolf.'"
- (e) Failure to investigate Applicant's prior surgery and medical treatment.
- (f) Failure to challenge victim's statement.
- (g) "He (attorney) did tell me that my charges did not carry a minimum and he would try for probation."

(h) "He (attorney) did yell at me in the courtroom during a recess saying I had to plead guilty."

(i) "He (attorney) did tell me that the judge was going to ask certain questions about his performance and that I had to tell him I was happy with my counsel and that the plea was completely my own free will."

(j) "He (attorney) told me outside the courtroom that the judge believed me to be guilty and if I went to trial, I would go to prison for a very long time."

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1331 Park Street
Columbia, SC 29201
Phone: (803) 608-5543
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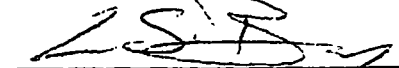
Columbia, South Carolina
December 20, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2011-CP-02-1473
	)	
Joseph J. Magni, Jr., #345848,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE BY MAIL
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 1331 Park Street
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 December 20, 2013

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas
3
4 Docket No. 2012-CP-02-01473
5
6 Joseph Jay Magni, Jr.,)
7 Applicant,)
8 vs.) Transcript of Record
9)
10 State of South Carolina,)
Respondent.)

11
12 August 1m 2014
13 Aiken, South Carolina
14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.
17

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

19 Mr. Lance Boozer, Esquire
20 Attorney for the Applicant

21 Daniel Gourley, Assistant Attorney General
22 Attorney for the Respondent
23

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

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. Mr. Gourley?

2 MR. GOURLEY: Yes, Your Honor. This is Joseph
3 Magni versus the State of South Carolina, Docket No.
4 2011-CP-02-1473. He's currently incarcerated with the
5 South Carolina Department of Corrections pursuant to Orders
6 of Commitment from the Aiken County Clerk of Court. He was
7 true-bill indicted at the June of 2010 term by the Aiken
8 County Grand Jury for four counts of criminal sexual
9 conduct with a minor, second degree; and four counts of
10 lewd act upon a child. He was represented by Mr. Joshua
11 Kendrick, Mr. Marcus Whitlark, and Christopher Leonard.

12 On April 18th, he pled guilty to all eight
13 indictments from Aiken County. He was also indicted, Your
14 Honor, on a Richland County charge for CSC with a minor in
15 the second degree as well. He pled guilty to that on April
16 18th as well. He was sentenced to 12 years in imprisonment
17 on each of the charges, with all those charges to run
18 concurrent. He did not appeal his plea or sentence.

19 He subsequently filed an application for post
20 conviction relief on July 5th, 2011, alleging he was being
21 held in custody unlawfully based on ineffective assistance
22 of counsel. He filed an amended application on December
23 the 20th, 2013 alleging additional complaint of ineffective
24 assistance of counsel and an involuntary guilty plea.

25 The State filed its' return on September 21st,

1 2011. And he's represented in this matter by Mr. Lance
2 Boozer.

3 THE COURT: All right. Let me ask you a couple of
4 questions, Mr. Gourley?

5 MR. GOURLEY: Yes, Your Honor.

6 THE COURT: Lewd act, what does that carry?

7 MR. GOURLEY: Your Honor, I believe it carries up
8 to 20 -- 15 years for lewd act.

9 THE COURT: 15 years, do you agree with that, Mr.
10 Boozer?

11 MR. BOOZER: I believe that's A correct statement,
12 Your Honor.

13 THE COURT: And criminal sexual conduct with a
14 Minor in the second degree; what does that carry?

15 MR. GOURLEY: 20 years, Your Honor.

16 THE COURT: 20 years. He pled -- this was a guilty
17 plea?

18 MR. GOURLEY: Yes, Your Honor.

19 THE COURT: A guilty plea. So he pled guilty to
20 four criminal sexual conduct with a minor, second degree
21 that occurred allegedly in Aiken County, four lewd acts in
22 Aiken County and criminal sexual conduct with a minor
23 second degree out of Richland County?

24 MR. GOURLEY: Yes, Your Honor.

25 THE COURT: And received a 12 year sentence.

1 MR. GOURLEY: Yes, Your Honor.

2 THE COURT: And that 12 year sentence is on each
3 indictment; is -- all of them are concurrent?

4 MR. GOURLEY: Yes, Your Honor.

5 THE COURT: All right. Thank you. Thank you very
6 much.

7 Mr. Boozer, I'm sure you've explained to your
8 client the -- and I'm sure he may know himself the confines
9 of parameters of a post conviction relief?

10 MR. BOOZER: Your Honor, yes, sir. We've had this
11 discussion at length. Mr. Magni also has family here and
12 I'm sure he discussed with his family the potential
13 exposure and the Court has picked up on the potential
14 exposure he faces should he be successful. I've explained
15 that multiple, multiple times, Judge, to Mr. Magni, to his
16 family as well; and it's my understanding he does wish to
17 proceed knowing that and we certainly have that on the
18 record, Your Honor.

19 THE COURT: All right. Mr. Magni, would you stand
20 for me please.

21 Madam Clerk, would you place Mr. Magni under oath?

22 JOSEPH J. MAGNI, JR.,

23 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

24 THE COURT: Now, tell me your full name, please.

25 THE APPLICANT: Joseph J. Magni, Jr.

1 THE COURT: And how old are you, Mr. Magni?

2 THE APPLICANT: 33.

3 THE COURT: How much education do you have?

4 THE APPLICANT: A Bachelor's Degree in History from
5 the University of South Carolina.

6 THE COURT: A Bachelor's Degree in History from
7 USC?

8 THE APPLICANT: Yes, sir.

9 THE COURT: Any advanced degrees beyond that?

10 THE APPLICANT: No, sir.

11 THE COURT: Prior to your incarceration, what was
12 your occupation?

13 THE APPLICANT: Just prior to, I was a store
14 manager at Jiffy Lube in Columbia.

15 THE COURT: Okay. And I do this with individuals
16 generally, and I'm sure with your educational level you
17 understand this. As I understand it, and you correct me if
18 I have a misunderstanding, you pled guilty to four counts
19 of criminal sexual conduct with a minor, second degree out
20 of Aiken County, one count of criminal sexual conduct with
21 a minor second degree out of Richland County, but that plea
22 was taken in Aiken; is that correct?

23 MR. GOURLEY: It was, Your Honor.

24 THE COURT: And then four counts of lewd act. And
25 you received a 12 year sentence on each to run concurrent;

1 is that correct.

2 THE APPLICANT: Yes, sir.

3 THE COURT: And you understand on a PCR, if you are
4 successful on your PCR -- in other words, if I was to grant
5 your PCR -- and I haven't heard it yet -- but if I was to
6 grant your PCR, then the only relief that I can give an
7 applicant is a new trial --

8 THE APPLICANT: Yes, sir.

9 THE COURT: -- and go back to square one, so to
10 speak?

11 THE APPLICANT: Yes, sir.

12 THE COURT: You understand that?

13 THE APPLICANT: Yes, sir.

14 THE COURT: And the State could then try you.

15 There can still be plea bargainings and such. I mean it
16 doesn't foreclose that, but you would potentially have a
17 potential maximum of 160 years by my math?

18 THE APPLICANT: Yes, sir.

19 THE COURT: You understand that?

20 THE APPLICANT: Yes, sir.

21 THE COURT: In other words, you could have 20 years
22 on each CSC with a minor count; that would be five times
23 20, that'd be 100 years; and then 15 years on each lewd act
24 with be 60 years. So technically you could receive those
25 sentences on the second degree and you would receive -- you

Joseph J. Magni - Direct Examination by Mr. Boozer

1 could receive a sentence of as I said up to 160 years; you
2 understand that?

3 THE APPLICANT: Yes, sir.

4 THE COURT: Knowing that, you want to go forward
5 today?

6 THE APPLICANT: Yes, sir.

7 THE COURT: All right. Thank you. Thank you very
8 much.

9 Mr. Boozer?

10 MR. BOOZER: Thank you, Your Honor, may it please
11 the Court. Judge, we would first call, Mr. Magni to the
12 stand.

13 THE COURT: All right. You can come around and be
14 sworn for us please.

15 JOSEPH J. MAGNI, JR.,

16 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

17 THE CLERK: Have a seat and state your name for the
18 record?

19 THE WITNESS: My name is Joseph J. Magni, Jr.

20 MR. BOOZER: Your Honor, permission to move over
21 this way to the podium.

22 THE COURT: Yes, sir.

23 MR. BOOZER: Thank you.

24 **DIRECT EXAMINATION**

25 BY MR. BOOZER:

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Q All right, Mr. Magni, you just heard the Court ask
2 you a number of questions and, and you're clear that you're
3 currently serving a 12 year sentence; is that correct?

4 A Very clear, yes.

5 Q And you understand that if you are successful today
6 that you could potentially face more time?

7 A Very clear.

8 Q Okay. And you, you do want to proceed?

9 A Yes.

10 Q And I've explained this to you during our meetings?

11 A Yes, you have.

12 Q Okay, Mr. Magni. Now, you filed an application for
13 PCR and you've got quite a number of allegations; is that
14 correct, sir?

15 A Yes.

16 Q Who were you initially represented by?

17 A In the PCR?

18 Q No, sir, in your trial or what ultimately lead to a
19 plea?

20 A Mr. Josh Kendrick.

21 Q Okay. Did you have any other lawyers assisting on
22 the case?

23 A I had one, I remember his name was I think Chris
24 and then Marc Whitlark --

25 Q Okay.

Joseph J. Magni - Direct Examination by Mr. Boozer

- 1 A -- was taken on later.
- 2 Q All right. Initially -- you ultimately pled
- 3 guilty, but it didn't start out as a plea --
- 4 A No, it did not.
- 5 Q -- in court that day?
- 6 A No, it did not.
- 7 Q How did it start out?
- 8 A Well, we picked a jury and we were, I thought we
- 9 were going to go to trial. But after the jury was told to
- 10 go to a lunch break, we went outside and that's when Mr.
- 11 Kendrick told me that the Judge said that he believed of me
- 12 that I was guilty and that I had to plead guilty or I'd go
- 13 to jail for a very long time.
- 14 Q Okay. We'll get to that in just a second. But
- 15 initially you were there to go to trial and ultimately
- 16 after a jury was picked and then there were some motions
- 17 made, you ended up pleading guilty?
- 18 A I don't know if there were any motions made, I just
- 19 know that I picked a jury, it came out and was told I had
- 20 to plea and I pled.
- 21 Q Did you have an offer, a plea offer prior to the
- 22 trial date?
- 23 A Early on I believe there was an offer of 10 years.
- 24 Q Okay. And did you reject that offer?
- 25 A Yes.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Q Why did you reject it?

2 A Because I was ready to go to trial.

3 Q Okay.

4 A I was ready to prove myself innocent.

5 Q And that was your position, that you were innocent
6 of these allegations?

7 A Yes, sir.

8 Q Okay. Now as I've indicated, you filed an
9 application for PCR. You've got quite a few allegations
10 that you've alleged, and I'd like to go through those with
11 you. I want to make sure we have all of those and then
12 we'll get into each of those individually.

13 You've got first that you're alleging that your
14 attorneys did not interview witnesses for your case.
15 You're alleging they did not argue the validity of DNA
16 correctly. You're alleging they did not have evaluated by
17 a medical professional. You're also alleging they didn't
18 meet with you in a timely manner to retrieve some text
19 messages from your phone sent by what you call the accuser
20 apologizing and admitting she "cried wolf."

21 You've also got failure to investigate your prior
22 surgery and medical treatment, failure to challenge the
23 victim's statement. Your attorney didn't tell you or did
24 tell you that your charges did not carry a minimum and he
25 was going to try for probation. You also got it that you

Joseph J. Magni - Direct Examination by Mr. Boozer

1 did tell or your attorney did tell you that the Judge was
2 going to ask certain questions about his performance and
3 that you had to tell him that you were happy with your
4 lawyer and that your plea was your own free will; that's
5 another allegation?

6 A Yes.

7 Q You've also got that your attorney told you outside
8 the courtroom that the Judge that day believed you to be
9 guilty and if you went to trial you would go to prison for
10 a very long time?

11 A Yes.

12 Q And you've also alleged that your guilty plea was
13 involuntary; is that correct?

14 A Yes.

15 Q And those are your allegations through your
16 application that you previously filed?

17 A Yes.

18 Q Okay. Now let's go -- let's go through these.
19 You're saying that he didn't -- your lawyer, and we're
20 referring to Mr. Kendrick -- didn't interview witnesses for
21 your case. Who -- who did you want Mr. Kendrick to
22 interview?

23 A They were teachers from the Leavelle McCampbell;
24 one's name was Amber Bannister, another's name was Marsha
25 Peacock, Tiffany Hobson, and I wish I could remember Coach

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Crosby's first name, but I don't.

2 Q Who were these people?

3 A They were teachers at Leavelle McCampbell.

4 Q Did you discuss with Mr. Kendrick these witnesses?

5 A Yes, those were witnesses for Aiken County.

6 Q Okay. And what did you discuss with Mr. Kendrick
7 about those witnesses?

8 A The witnesses from Aiken County could have
9 testified that they had never seen me and my accuser alone
10 anywhere in the school and most of her statement was
11 involved in being at school.

12 Q Now, is this where you worked; you worked at the
13 school?

14 A Yes.

15 Q Okay. So these were coworkers?

16 A Yes.

17 Q Do you know if Mr. Kendrick interviewed those
18 witnesses?

19 A I assume that that didn't happen because I never
20 saw them at the courthouse on the day of the trial.

21 Q Did you, did you see any statements that he may
22 have taken from those witnesses?

23 A No.

24 Q And are you certain that you asked him to interview
25 those witnesses?

Joseph J. Magni - Direct Examination by Mr. Boozer

1 A Yes, I gave him the phone numbers and everything
2 out of my cell phone I had at the time.

3 Q Were they with you the day of trial; were those
4 witnesses in the courtroom at the day of trial?

5 A No.

6 Q Were they ever subpoenaed?

7 A No, they were not.

8 Q Okay. And going to your second allegation, what
9 did you want Mr. Kendrick to argue or what did you want Mr.
10 Kendrick to do with regard to DNA that was related to your
11 case?

12 A Well in the -- in the pre-trial motions he argued
13 chain of custody because the time it took for them to
14 acquire the DNA and the judge asked him if he had any case
15 law to back it up and he said he did not and after looking
16 at the evidence, I saw that he should have argued that her
17 DNA was not on the article of clothing that was supposed to
18 be hers, but it was my DNA and the DNA of another female,
19 not related to the victim.

20 Q Did -- did you have the discussion of the DNA
21 evidence with Mr. Kendrick prior to trial?

22 A Not that part. He just told -- basically what he
23 told me is they have your DNA; that was -- that was it.

24 Q Okay. Looking back now, you -- you wish that that
25 would have been an angle you would have pursued?

Joseph J. Magni - Direct Examination by Mr. Boozer

1 A I -- I believe it should have been pursued and I
2 think that would have been suppressed and that was his main
3 focusing point on me; they have your DNA, they have your
4 DNA. And the way he basically said it was DNA's infallible
5 in, I guess the Court's eyes.

6 Q Okay. Let's move on to your, to your next
7 allegation which is you wanted Mr. Kendrick to have you
8 evaluated by a medical professional?

9 A Uh-huh (affirmative response).

10 Q Tell the Court what your allegation is regarding
11 that?

12 A Well, he never had me evaluated by a forensic
13 pathologist and -- and I was told that they, I guess
14 determine whether or not somebody is a pedophile and I know
15 that this person would not have labeled me as that. He
16 talked about it with me for I think during the course of
17 one day, but it never happened and I -- I don't know why.
18 I guess it was because I was planning on going to trial the
19 whole time and not pleading.

20 Q Did -- did y'all have discussion -- and I'm sorry,
21 I may have misheard you, did y'all -- did you say that
22 y'all did have a discussion regarding seeking that type of
23 advisement or --

24 A Yes, we did, but it kind of -- it kind of fell off
25 at the time. I hadn't -- I wasn't able to pay him the full

Joseph J. Magni - Direct Examination by Mr. Boozer

1 amount of money. He had gotten a part of the money and
2 that was it. There was -- I mean I couldn't have afforded
3 to get evaluated by one I guess.

4 Q So are you saying --

5 A At the time.

6 Q -- at the time this would have required you paying
7 more money in addition to your attorney's fees --

8 A Yes, sir.

9 Q -- to secure this person?

10 A Yes.

11 Q All right. You've got an allegation about some
12 text messages in which you allege the accuser of
13 apologizing and admitted she cried wolf. Tell me what your
14 allegation involves -- is involving with those text
15 messages?

16 A I'd told him about the -- the texts that came. I
17 was texting after I was arrested and bonded out of Aiken
18 County and a couple of days, maybe weeks or months later, I
19 was sent text messages from a phone number I didn't know
20 and it was saying I'm sorry and -- and I wish I could take
21 it all back and it -- one of them. And I asked -- I was
22 like, sorry for what? Who is this? And the person said I
23 can take it all back and people cried wolf. And I told him
24 about that -- and I told him about it repeatedly -- and it
25 was my phone for 30 days and then it, I guess after 30 days

Joseph J. Magni - Direct Examination by Mr. Boozer

1 they delete, and I wasn't able to get it to him so he could
2 have his investigator get copies of it. And I think that
3 it would have discredited statement to the police even
4 more.

5 Q Did you ask Mr. Kendrick to investigate that text
6 message?

7 A Yes, repeatedly.

8 Q What was his response?

9 A I'm busy.

10 Q Okay.

11 A He said I can't meet with you today; how about next
12 week. And I would call; I can't be with you today.

13 Q How did that in turn prejudice you?

14 A I -- I mean, to me that would have shown that she
15 was lying the whole time. He said it wasn't relevant, but
16 I felt that it was very relevant because it would -- it
17 would say that she's a liar.

18 Q Okay. You're alleging he didn't meet with you in a
19 timely manner?

20 A Yes, because then they were deleted off the phone.

21 Q Okay. So -- and I'm not, what I'm hearing you say
22 is you asked him to investigate some text messages?

23 A Uh-huh (affirmative response).

24 Q By the time he got back to you, those messages were
25 then deleted?

Joseph J. Magni - Direct Examination by Mr. Boozer

1 A It was back and forth; I was saying, How about, you
2 know, can I come see you tomorrow and he'd say no, but
3 yeah, that's what happened. He just pushed on, pushed and
4 pushed.

5 Q Okay. You've also got an allegation involving your
6 prior surgery; that you had a medical condition. If you
7 could please explain to the Court what your allegation is
8 involving that, those particulars?

9 A The -- in the -- in the statement from the victim,
10 they asked her if I had any tattoos or scarrings or any
11 other markings and -- and in the statement she said no, but
12 he had surgery on his hip. I didn't. I had MRSA. I had
13 emergency surgery done and it was right above my private
14 area and there was a hole afterwards for an extended period
15 of time and it was actually -- I was, I had to stay with my
16 parents for a month before I could go back to work. And
17 the allegations that were brought up came -- they were --
18 she dated them some two weeks after I came back to work and
19 I still had a hole in that area, but she said that I didn't
20 have any scars or any other markings on my body. But I
21 told all my students that I had surgery on my hip. I
22 didn't want to tell them where I had surgery and why I was
23 walking funny and it's -- the scar is still there today. I
24 guess it's about two inches long, but it -- it will never
25 go away.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Q What relevancy -- you may have touched on it -- did
2 that have to your case or your defense?

3 A He -- well he never addressed the inconsistency in
4 her statement to -- to the Solicitor or to the Judge or
5 anybody. That, if somebody's saying that they could, they
6 saw you with no clothes on, somebody with a hole right, you
7 know, in that area would be very noticeable.

8 Q Did y'all discuss that at all prior to your plea?

9 A Yes, it just -- it was never brought up.

10 Q Well, what was his response to that?

11 A It's kind of a, it wasn't really a response; it was
12 just brushing me off at -- just brushing me off.

13 Q Do you feel he should have investigated that more?

14 A Very much so.

15 Q Okay. Now your -- you have another allegation that
16 refers to challenges Mr. Kendrick should have made
17 regarding the victim's statements; is that what you're
18 referring to?

19 A That was -- that -- yeah, it was a combination of
20 those two. He also didn't talk to the surgeon who
21 performed the surgery and could have told him about certain
22 side effects of that type of surgery, possible nerve damage
23 and all of that.

24 Q Okay. So those two were tied in together?

25 A Yes, they are tied in together.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Q All right. Is that all you have regarding that
2 issue?

3 A Yes.

4 Q Okay. You've also got that your lawyer told you
5 that these charges didn't carry a minimum and he would try
6 for probation. Explain to the Court your allegation.

7 A He, Mr. Kendrick, told me that he was a good friend
8 of Strom Thurmond, the head Solicitor, and he was going to
9 try for probation because my charges didn't -- didn't carry
10 the minimum and I believed him. I had never set foot in a
11 jail cell prior to that. I just didn't know.

12 Q Okay. Were you under the impression that you were
13 going to get probation?

14 A I was under the impression that that's what --
15 that's what he was going for and I was okay with that
16 because I already had a good job and I had a wife and --
17 and wouldn't have had to go to jail, but the only reason I
18 even went along with it was it was just not a non-stop
19 barrage from him telling me I had to plea.

20 Q Okay. Did you receive a 10-year offer before or
21 after you were told you would get probation or may get
22 probation?

23 A Before -- it was way before. I think I had just, I
24 want to say I had just bonded out and the solicitor told
25 him that.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Q Do you have any other issues with regard to that
2 specific allegation that you'd like to bring to the Court's
3 attention?

4 A Yes. When -- when I agreed to plea, first it was
5 one charge and they went and talked to the family and they,
6 they said they didn't want that and it was two and then it
7 was all the charges and when we were sitting in the
8 courtroom, I told him, I said I don't want to plead guilty
9 and I didn't know what to do. And he started yelling at me
10 telling me that I had to plead; I had to go through with it
11 and it -- it -- I mean it kind of -- it put me almost in a
12 state of shock, like I can't -- I didn't know what to do
13 and I just -- I just trusted him.

14 Q Okay. What -- you say you thought you were only
15 pleading to one charge; why did you have that impression?

16 A Well, that's what he told me in the beginning, it
17 was going to be one and then -- and that was outside of the
18 courtroom and he walked, he walked away from me and he came
19 back and said well now it has to be two, and I said okay
20 and then he walked away and came back and said now it has
21 to be all of them and I -- I said -- I said, Why. And he
22 told me it didn't matter if I pled to one or pled to all of
23 them; it still -- it didn't matter.

24 Q Was it going to be that you were going to get 12
25 years on one or 12 on all of them?

Joseph J. Magni - Direct Examination by Mr. Boozer

1 A No, he didn't, I didn't plead to 12.

2 Q Or excuse me, 12 years on one or --

3 A Yes.

4 Q I'm not saying twelve, there were twelve charges;
5 I'm saying you would get 12 years on one and you, or get 12
6 years on all the charges that were there together.

7 A Well, he never told me about the twelve. He just
8 told me it didn't matter and all of them carried zero, zero
9 to -- all of them didn't have a minimum and that's what he
10 was trying to get across.

11 Q Where -- where do you allege that Mr. Kendrick
12 yelled at you?

13 A In the courtroom during -- I guess it was during
14 the recess. I was sitting down and I don't even think the
15 judge was sitting at his -- in his chair.

16 Q Okay. What is your allegation that he told you at
17 that point?

18 A He -- he told me I had to. He just told me I had
19 to.

20 Q Okay. Now -- and I think this goes to your next
21 allegation, which is you relate Mr. Kendrick told you the
22 judge -- to tell the judge you were happy with him and your
23 plea was under your own free will?

24 A Uh-huh (affirmative response).

25 Q So this is going into the plea?

Joseph J. Magni - Direct Examination by Mr. Boozer

1 A Yes.

2 Q What's your allegation regarding that?

3 A Well, he told me that if -- he told me that if the
4 judge didn't -- first, if the judge didn't believe my plea,
5 that he wouldn't accept it and I would go to trial and I
6 would lose. He told me I had to answer certain questions
7 from the judge like how he did and -- and -- and am I aware
8 of everything and -- and he said I had to answer everything
9 correctly, I guess.

10 Q Okay. You've seen that there is a guilty plea
11 transcript of -- of your plea and in that plea the judge
12 does ask you those questions and you respond affirmatively
13 that you understood what you were doing that day and that
14 you were guilty of those charges; is that correct?

15 A Yes.

16 Q Okay. Why did you answer the questions the way you
17 did that day that you pled?

18 A Because my lawyer told me if I didn't we would go
19 to trial that day and I would lose and I would go to prison
20 a long time, a very long time.

21 Q You also allege that Mr. Kendrick told you the
22 judge believed you to be guilty and -- and if you went to
23 trial and get to prison like you said just now, for a long
24 time. Explain -- explain that in a little more detail
25 please.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 A He told me -- like I said when we picked the jury,
2 we went outside because the jury went on break to go eat
3 lunch and that's when he told me, he said, The judge says
4 you're guilty; and he said; I don't want to see you go to
5 jail for a long time and that's what's going to happen if
6 you don't plead. And that's -- I -- I -- that's kind of
7 when I, not really lost it, but kind of started -- I was
8 really confused.

9 Q Well, and that's the question, why did you want to
10 plead guilty; what is it that caused you to make that
11 decision?

12 A I was forced to plea. I was forced to plea because
13 he told me that he -- that he said the judge said I was
14 guilty; he said that he didn't have any defense to the DNA,
15 said he didn't have any defense and that kind of -- if I
16 would have known that I could have fired him and asked for
17 a continuance to get a lawyer that could -- that would have
18 been a suitable lawyer for that type of case then I would
19 have done that, but like I said, I -- I was very ignorant
20 of the law.

21 Q Well, you were going to trial that day. What was
22 your defense?

23 A Everything that I kind of was -- I talked about.
24 He said -- I don't even know if he was going to have me get
25 on the stand, but honestly, it feels like nothing because

Joseph J. Magni - Direct Examination by Mr. Boozer

1 they were going to say that -- that I wish -- I really wish
2 I could remember everything about it. I honestly can't
3 because it's been so long ago. It's been three-and-a-half
4 years almost since we went. But it was going to be nobody
5 had ever seen us together and -- but I -- I looked around
6 and I saw no witnesses were here to testify to any of that
7 fact.

8 Q Did you, did you discuss your defenses prior to
9 going to trial?

10 A Yes, they told me over and over again we had to --
11 he said you have to come up with something for the DNA. We
12 got to figure something out.

13 Q Who's they?

14 A My two lawyers, sorry.

15 Q Mr. Kendrick and Mr. Whitlark?

16 A Yes.

17 Q Did y'all discuss you testifying at trial?

18 A Yes, they said I -- it was up in the air I guess.
19 Honestly, it feels like the whole thing was just set for me
20 to not even go to trial. I feel like they didn't, you
21 could tell that they weren't prepared at all.

22 Q Well, let's get to that. How many times did you
23 meet with Mr. Kendrick prior to your plea?

24 A A few. It was most -- and at the very beginning,
25 the biggest reason why I was going up there was to give him

Joseph J. Magni - Direct Examination by Mr. Boozer

1 money; that was my main thing. That was in the beginning.

2 Q Were you out of jail at that point?

3 A Yes. Yes, I was, I was in Aiken County for about
4 30 days and got out just before Thanksgiving in 2009.

5 Q Do you have an idea of how many times you may have
6 met with him?

7 A After -- prior to it was pretty -- it was about
8 once maybe a month and that was to go up there and -- and
9 give him money and then after I gave him the -- the
10 \$20,000, it wasn't much at all. I mean maybe two or three
11 times. I know right before we went to trial, they talked
12 with me at his office the day before, I believe.

13 Q How long from the point you first retained Mr.
14 Kendrick until your plea date, how was he your lawyer?

15 A The whole time. Who, Mr. Kendrick?

16 Q Mr. Kendrick.

17 A The whole time.

18 Q How long is that whole time from when you retained
19 him?

20 A I retained him in September of 2009 and the -- I --
21 we came here I believe it was April, sometime in April of
22 2011. So about a year and a half.

23 Q All right. In those meetings over that year and a
24 half, did he show you the State's evidence that they had?

25 A He -- he said there was a video, but I never saw

Joseph J. Magni - Direct Examination by Mr. Boozer

1 it -- of like a video statement of the accuser. But I -- I
2 never saw it and there was some of the evidence that he
3 showed me, but it was -- when it came -- when they -- when
4 my DNA was found on a piece of clothing, it kind of, I
5 guess it kind of went down hill from there.

6 Q All right. And how late in the game did that
7 occur?

8 A That occurred in June, June of 2010 we were
9 supposed to go back. We were supposed to go to trial and
10 he called me and told me that they had, they wanted me to
11 do a DNA swab and that -- and then it came back I guess
12 later on that month. So about 10 months before trial.

13 Q Did you feel that Mr. Kendrick was prepared to try
14 your case that day?

15 A Not at all.

16 Q How about Mr. Whitlark; how did he come into the
17 picture?

18 A He came in when Mr. Kendrick, when I gave him the
19 money, the \$20,000 check, he said he'll pay himself and
20 also Mr. Whitlark. He gave him \$7500 to come on as
21 co-counsel and that happened in October of 2010 I believe,
22 maybe a little earlier, October or September.

23 Q Did you meet with Mr. Whitlark as well at your
24 meetings?

25 A He was there afterwards.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Q Well, was he actively involved in your case or was
2 it more Mr. Kendrick?

3 A He would be there, he was there once or twice. I
4 mean I talked with him, but it was mainly, it was, he said
5 it was Mr. Kendrick's case; he was just the second chair.

6 Q Now, is it your position that you want a trial in
7 this case?

8 A Yes.

9 Q Okay. On those charges that you pled guilty to?

10 A Yes.

11 Q Is there anything else from your application you,
12 that you filed that we've not been over or that we've not
13 covered that you wish to add to the record?

14 A After -- after I was put into the holding cell, I
15 went to Aiken County and I was put in isolation for 10 days
16 following my plea and I wasn't able to ask for
17 reconsideration or an appeal and a new trial or even
18 withdraw my plea. And Mr. Kendrick never told me that
19 afterwards. He never came and talked to me when I -- after
20 I pled. That was the last I've heard from him and he also
21 told my parents when they went to the courthouse to pick up
22 my wife's car, they asked him what they could do and he
23 told them there was nothing that could be done; that it was
24 over and -- but he didn't mention that I might file a PCR.

25 Q Okay. So you wanted, you were in isolation for 10

Joseph J. Magni - Direct Examination by Mr. Boozer

1 days following the plea for what reason?

2 A When I got to Aiken County Detention Center, they
3 asked me if I was okay and I told them no. I said I didn't
4 get to tell my wife goodbye. I didn't get to talk to
5 anybody and I was in a state of shock and they put me in a
6 holding cell and fed me some kind of drug trying to keep me
7 quiet. I don't know, but I believe I went to sleep for 10
8 days basically.

9 Q Why were you in such a state of shock?

10 A Because of the stress of being forced to plea to
11 something I didn't do, but I pled because I felt that I was
12 able to trust my lawyer about that and he was going to, he
13 was going to help me get probation or not, you know, 12
14 years.

15 Q Okay. And in these days had you been -- I guess
16 what -- in your testimony you said if you had been lucid
17 you would have asked or had Mr. Kendrick come to see you
18 and asked for reconsideration to be filed with the Court?

19 A If I would have known anything about any of that I
20 would have, but I had no idea and he never came to talk to
21 me.

22 Q Is there anything else?

23 A Yes. I just have one short thing left to tell the
24 judge if it's okay with him. And this won't take long.

25 Your Honor, thank you for giving me the opportunity

Joseph J. Magni - Direct Examination by Mr. Boozer

1 to come to Court today to clear my name. I have the utmost
2 confidence in going to trial with all of the evidence and
3 with a lawyer suitable to my case. I know that I will not
4 be found guilty. I allowed Mr. Kendrick to manipulate me
5 and force me into pleading guilty and this will not happen
6 again if I'm given a chance. He told me that it didn't
7 matter if I was guilty or innocent, proving it in court is
8 what mattered.

9 I now have the proof of my innocence and I'm ready
10 for a jury to decide my fate. I've been preparing for this
11 since my family told me about PCR's in 2011. My time that
12 I've been incarcerated hasn't been wasted like a lot of
13 people. I helped 51 men in Kershaw Correctional
14 Institution earn their GED. While I was there I took a
15 plumbing and carpentry trade and I got my Work Keys
16 Certificate.

17 Most important is -- is my faith. I was able to
18 reconnect with God through the teachings of his son. In
19 hindsight, I have grown tremendously and I know everything
20 happens for a reason, but I do not belong in prison. I
21 came there, my eyes were opened. I know I helped a lot of
22 people become better men and even though it's kind of
23 funny, my incarceration was a blessing because of
24 everything I got to see and -- and experience, but I don't
25 belong.

Joseph J. Magni - Direct Examination by Mr. Boozer

1 Your Honor, I seek relief granted so I can continue
2 to seek justice. I need the opportunity to prove my
3 innocence. I have a daughter who needs me. If I knew in
4 2009 or 2011 what I know now, I wouldn't be here before you
5 today. I would've found another attorney and -- that
6 specialized in my case. I was truly ignorant of the law
7 and I did not know my rights. I would've fired Mr.
8 Kendrick in April of 2011 and asked for a continuance if I
9 knew I could have. I didn't have a record before this and
10 I won't have a record after if I'm given the chance. And
11 my family has helped me through this and without them I
12 don't know where I would be today. They believe in me and
13 I pray you believe in me enough to grant me relief so I can
14 get back to the long road of justice. Thank you for your
15 time, sir.

16 THE COURT: Thank you.

17 MR. BOOZER: Your Honor, there's one more question
18 I didn't cover.

19 BY MR. BOOZER:

20 Q Your allegations are directed at both Mr. Kendrick
21 and Mr. Whitlark?

22 A Yes.

23 Q Okay.

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

Joseph J. Magni - Cross-Examination by Mr. Gourley

1 THE COURT: Thank you. Thank you, Mr. Boozer.
2 Mr. Gourley.

3 CROSS-EXAMINATION

4 BY MR. GOURLEY:

5 Q Mr. Magni, how many -- how many times did you meet
6 with Mr. Kendrick and Mr. Whitlark prior to your plea?

7 A I told you, it was a few times.

8 Q A few times, you don't have a rough number?

9 A After -- after -- after I paid them the money it
10 was very few, but before it was -- it was kind of regular
11 going there and paying the money.

12 Q So more than five, less than five?

13 A I don't know.

14 Q Okay. Do you recall going over the discovery
15 material?

16 A Some of it.

17 Q Okay. Did you ever -- so you said you gave your
18 attorneys a bunch of names, Amber Bannister, Marsha
19 Peacock, I can't read my writing, Ms. Hobston?

20 A Hobson.

21 Q And Coach -- what was his last name?

22 A Crosby.

23 Q Crosby.

24 A That was in Aiken County.

25 Q Aiken County. Okay. And you told your attorney to

Joseph J. Magni - Cross-Examination by Mr. Gourley

1 investigate those witnesses?

2 A Yes.

3 Q Are they here today to testify?

4 A No.

5 Q Do you recall waiving your constitutional rights
6 during your guilty plea?

7 A Yes, I do.

8 Q You also waived your -- the right to have your
9 Richland County charge done in Aiken County, right?

10 A Yes.

11 Q And the judge advised you that CSC second carried
12 up to 20 years and lewd act carried up to 15 years?

13 A Yes.

14 Q And you told the plea judge that you understood
15 that?

16 A Yes.

17 Q Okay. And you told the plea judge that you were
18 satisfied with your attorney's services, right?

19 A I was told to, yes.

20 Q You were told to and you also told him that you had
21 enough -- that your attorneys had enough time to research
22 and investigate, right?

23 A I was told that, yes.

24 Q Okay. So when you were answering these questions,
25 you were lying to the judge?

Joseph J. Magni - Cross-Examination by Mr. Gourley

- 1 A I was told to tell him what I needed to tell him.
- 2 Q And you told a lie?
- 3 A I told him what I needed to tell him.
- 4 Q And it was a lie. Was it the truth?
- 5 A It was what I was told to say.
- 6 Q Okay. So when you told the judge that no one was
- 7 promising you or threatening you -- you, to get you to
- 8 plead guilty, that was a lie?
- 9 A I guess that --
- 10 Q It was something that you were told to tell the
- 11 judge?
- 12 A It was something I was told.
- 13 Q Okay. And when you told the judge that you weren't
- 14 under any medication or suffering from any mental, nervous
- 15 or emotional condition; that was something you were told to
- 16 tell the judge.
- 17 A I was told as well.
- 18 Q You told the judge you wished to plead guilty,
- 19 correct?
- 20 A After being told, yes.
- 21 Q Okay. And you told the judge that you were indeed
- 22 guilty, right?
- 23 A I'm not here for that.
- 24 Q But you told the judge that you were indeed guilty?
- 25 A That's -- after I was told to, yes.

Joseph J. Magni - Cross-Examination by Mr. Gourley

- 1 Q Okay. But you're not guilty?
- 2 A No.
- 3 Q So you lied?
- 4 A Again, I was told to do what I had to do.
- 5 Q You told the judge that you were pleading guilty of
- 6 your own free will, right?
- 7 A I was -- that was what I was told to do.
- 8 Q You recall the State reading off the factual
- 9 context of what they were going to prove at trial, correct?
- 10 A I don't understand what you said.
- 11 Q The State read off their factual context of what
- 12 they were prepared to prove at trial, right? Or what they
- 13 alleged that you done?
- 14 A Oh, the allegations?
- 15 Q The allegations.
- 16 A Yes, I remember them saying that.
- 17 Q Okay. And you didn't object to any of those,
- 18 right?
- 19 A I was told to keep my mouth shut.
- 20 Q Okay. You apologized to the victim though, didn't
- 21 you?
- 22 A After the judge asked me shouldn't I say I'm sorry.
- 23 Q Okay. And you told the plea judge that you knew
- 24 what you did was wrong, correct?
- 25 A Yes, I was told to.

Joseph J. Magni - Cross-Examination by Mr. Gourley

1 Q Okay. And you're saying that your attorney should
2 have got you a jam-up forensic pathologist?

3 A I think that's what they're called.

4 Q Okay. Have you been evaluated since?

5 A No, I've been incarcerated and so there's no money
6 to do anything.

7 Q These text messages was from a phone number that
8 you didn't recognize?

9 A Yes.

10 Q And you had it on your phone for about 30 days?

11 A It was on the phone for 30 days and then they were
12 deleted.

13 Q Okay. You didn't have any pictures of those or try
14 to save them in any way whatsoever?

15 A No, he just kept telling me well, we'll wait; we'll
16 wait.

17 Q But you had them in your possession?

18 A Uh-huh (affirmative response).

19 Q And you didn't try to take a photo or do anything
20 with it to preserve it?

21 A Again, I did what my lawyer asked me to do.

22 Q Okay.

23 A I trusted him.

24 Q And so you don't have those text messages here
25 today though, obviously?

Joseph J. Magni - Cross-Examination by Mr. Gourley

1 A No, I don't.

2 Q Okay.

3 MR. GOURLEY: I beg the Court's indulgence, Your
4 Honor.

5 THE COURT: Yes, sir.

6 BY MR. GOURLEY:

7 Q Regarding the DNA evidence, your DNA was found on a
8 dress, right?

9 A Yes.

10 Q Okay. And then it was something that came up right
11 before trial?

12 A Yes.

13 Q And then your attorney argued that this dress has
14 sat around for 13 months and then suddenly popped up right
15 before you were to go to trial, right?

16 A Yes.

17 Q And the chain of custody wasn't there essentially,
18 right?

19 A And the judge asked him if he had any case law and
20 he shook his head.

21 Q The judge never ruled on the motion though, did he?

22 A No, he didn't. He said he wouldn't rule on it and
23 he said he would wait until trial.

24 Q Okay.

25 A And then I was put under the impression that it was

Joseph J. Magni - Cross-Examination by Mr. Gourley

1 admissible.

2 Q Okay. Did anybody tell you it was admissible?

3 A No, he kept telling me we don't have any defense
4 for the DNA so you don't have to tell somebody that
5 something is admissible when you tell them that you don't
6 have any defense for it. That's kind of saying it without
7 saying it.

8 Q Okay. You said or you stated that your attorney
9 was going to get probation for you?

10 A He was going to try because he knew the head
11 solicitor and they were really good friends.

12 Q Okay. But he never promised that you would get
13 probation?

14 A No.

15 Q So if I understand your testimony, correctly, you
16 pled guilty to avoid going to trial and facing potentially
17 160 years, right?

18 A Yes.

19 Q All right. So you pled to get the benefit of the
20 bargain of the 12 year -- or potential 12 year sentence,
21 correct?

22 A No.

23 Q Well, you pled guilty to get a potential
24 probation --

25 A At the time I pled and got a 12 year sentence. I

Joseph J. Magni - Cross-Examination by Mr. Gourley

1 did not plea bargain to get a 12 year sentence.

2 Q Okay. So what was your intention about pleading
3 guilty?

4 A Having -- getting to go right back home.

5 Q And you just didn't want to go to trial and face
6 160 years, right? At that time?

7 A After I was told that he had no defense, then yes.

8 Q Okay.

9 A I didn't know that I could get rid of him and get
10 somebody else.

11 Q All right. No further questions. Thank you.

12 THE COURT: Redirect, Mr. Boozer?

13 MR. BOOZER: No, Your Honor.

14 THE COURT: Thank you and thank you very much.

15 THE APPLICANT: Thank you, sir.

16 THE COURT: All right. You may call your next
17 witness.

18 MR. BOOZER: There are no other witnesses on behalf
19 of the applicant, Your Honor.

20 THE COURT: Thank you. Thank you very much.

21 Mr. Gourley?

22 MR. GOURLEY: Yes, Your Honor, we call Mr. Whitlark
23 to the stand, please.

24 THE COURT: All right. If you'd come around and be
25 sworn for me please.

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 JAMES MARCUS WHITLARK,

2 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

3 THE CLERK: Have a seat and state your name for the
4 record.

5 THE WITNESS: My name is James Marcus Whitlark.

6 DIRECT EXAMINATION

7 BY MR. GOURLEY:

8 Q Mr. Whitlark, how long have you been practicing
9 law?

10 A Thirty years.

11 Q Okay. And you were retained in this case?

12 A I was.

13 Q Do you recall how many meetings you had with the
14 applicant prior to his plea?

15 A I was thinking about it when he was testifying, so
16 probably somewhere between eight and ten meetings.

17 Q And just generally, what was your involvement in
18 this case?

19 A I was called in later in the case by Mr. Kendrick,
20 a good friend of mine, and a lawyer I respect very much --
21 called me in and said we're going to have a tough time on a
22 trial here and we wondered if you have any ideas about this
23 and we'd like to retain you to -- to help us try it and I
24 said okay.

25 Q So you were retained to take this case to trial?

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 A Yes.

2 Q Okay. What was y'all's trial strategy?

3 A Well, we were -- we were just going to cast
4 aspersions upon the scientific proof and basically tell --
5 say that the witnesses were, made it up -- that she had
6 made, that she made this whole thing up and was enamored
7 with her teacher and read more into it than was really
8 there. Of course, somewhere along in there -- and I was
9 thinking about it when I heard the testimony a minute ago,
10 the confirmation of the DNA evidence came up there and
11 then --

12 THE WITNESS: And we waive our attorney/client
13 privileges?

14 THE COURT: Yes, sir. He waived it when he wanted
15 the PCR.

16 THE WITNESS: Yes, sir. I've just got a natural
17 inclination to say that, Your Honor.

18 But we then hired a DNA expert who confirmed that
19 the -- the findings of the State, okay?

20 BY MR. GOURLEY:

21 Q Uh-huh (affirmative response)?

22 A So that presented a very large problem for us.

23 Q Uh-huh (affirmative response).

24 A And it was looked at from every angle on that and
25 that was going to be a major problem in the case there plus

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 the text messages we had read. But basically our strategy
2 was going to be to just say well that's not true or
3 you're -- actually it could mean something else. These are
4 all nuances. You wait to here what's said on the stand and
5 decide that.

6 Q So essentially an attempt to poke holes in the
7 State's case?

8 A Yes, and to say that they can't prove it. You know
9 it would have to be beyond a reasonable doubt.

10 Q Regarding -- regarding the dress with the
11 applicant's DNA on it; was that the victim's dress or
12 alleged victim's dress?

13 A Yeah, it was.

14 Q Okay. No question about that?

15 A Not according to the information I looked at, it
16 was -- it was her dress. We had it examined, of course.

17 Q Right. And y'all argued chain of custody with the
18 dress, right?

19 A Naturally. You do that in that circumstance every
20 time.

21 Q Okay. And the judge hadn't ruled on that motion
22 yet?

23 A No, but the discussions -- it was briefed out and
24 we had discussed the legalities of -- or technicalities of
25 it and although the judge had not ruled upon it, you know,

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 I've been doing this for a while, he did give an
2 inclination as to what he, what his feeling was about it.

3 Q Uh-huh (affirmative response).

4 A And this was all in the spirit of the possible, and
5 that's when it turned into, I said well maybe we better
6 start thinking about negotiating something here.

7 Q Right. Did he ever give you any leads or witnesses
8 to investigate?

9 A I'm sorry?

10 Q Did he ever give you any leads or witnesses to
11 investigate?

12 A The ones he mentioned.

13 Q Okay.

14 A You know, basically it was going to be negative
15 inference testimony. Did you ever see him making out with
16 a little girl; did you ever see them in the car together;
17 they would have to say no.

18 Q Correct.

19 A But I mean, they were under subpoena by the way.
20 You know the State puts their case up first.

21 Q Right. So y'all were prepared to call those as
22 witnesses if you proceeded to trial?

23 A Oh, absolutely.

24 Q Prior to this plea, did y'all review his
25 constitutional rights?

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 A Oh, yes. That was in great detail. It was
2 discussed in great detail with him all the things that we
3 all know about and that's the -- you know, that he was
4 waiving his right to a jury trial to confront the witnesses
5 against him; they didn't have to testify and they couldn't
6 comment on it. And that basically we would be allowed to
7 cross examine all their witnesses and he didn't even have
8 to testify.

9 Q Right.

10 A And also discussed the possible penalties. He's
11 right about that.

12 Q Right.

13 A And I'm sorry, I miscalculated. The judge said
14 160; I thought it was 180 years in this case.

15 Q Right.

16 THE COURT: It might be my Catholic math.

17 MR. GOURLEY: Yes, sir.

18 THE WITNESS: Yes, sir. Well, Your Honor, I think
19 you did it right though after I looked back at it. I think
20 it was 160 years.

21 BY MR. GOURLEY:

22 Q Did he ever tell -- or did Mr. Mangi ever tell you
23 if he didn't understand something or have any questions
24 about what he was doing when he was pleading guilty?

25 A Not in those words.

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 Q Okay.

2 A And we were busy then and we were -- we were
3 furiously discussing all these things with him. You know
4 these things happen. It happens like that when you get up
5 and you pick your jury.

6 Q Right.

7 A Things start moving a little faster and something
8 that looked like something before you got to the courthouse
9 can change very rapidly upon the choosing of a jury and
10 then the presentation in Court and that's what happened
11 here, but everything was explained to him and you know, I,
12 I do agree with what Mr. Mangi said, he did not want to
13 plead guilty. That was clear.

14 Q But y'all didn't tell him what to say, did you?

15 A We told him what the Court would ask him, but he
16 was pleading guilty because he was guilty, but he was
17 waiving his right to confront the witnesses, to be presumed
18 innocent until proven -- all those things we discussed very
19 specifically with him.

20 Q Okay. But again, you didn't specifically tell him
21 to lie to the judge or the plea judge during colloquy?

22 A No. No, I don't do that.

23 Q Okay. This was an open-ended plea, no
24 recommendation or negotiation? A straight up plea?

25 A Well, as I said, we, we had extensive negotiations

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 after we got to the courthouse and some of the other --
2 there was a few things that came up. Number one, the
3 matter of the threat of the number of years had been
4 discussed with him long before we got to Court that day.

5 Q Right.

6 A Obviously, he knew it was of the extremely serious
7 charges against him and that he was facing a multitude of
8 time on this thing, depending on how it fell in front of a
9 jury.

10 Q Right.

11 A And so, you know, these things, as I said, they
12 take on a -- they start moving a little faster when you get
13 up and you get into chambers pretrial and you start
14 discussing some of the issues with the judge that's going
15 to be presiding.

16 Q Right.

17 A And the solicitor basically, you kind of lay out
18 your hand there for the judge just to give him an idea
19 what's going on there so -- but, you know, it was at that
20 point that, you know, some of the, some of these
21 presumptions on our part, maybe you might want to call it,
22 but I've been doing this a long time and it was very clear
23 to me what was going to happen.

24 Q Okay.

25 A So...

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 Q Okay. And whose decision was it to plead guilty?

2 A I'm sorry?

3 Q Whose decision was it to plead guilty?

4 A It was Mr. Magni's decision.

5 Q Did --

6 MR. GOURLEY: I beg the Court's indulgence, Your
7 Honor.

8 BY MR. GOURLEY:

9 Q Were y'all prepared to have him evaluated by a
10 forensic psychologist or did y'all look into that?

11 A You know we may have discussed that, there may have
12 been -- we were discussing a multitude of things regarding
13 the defense in this case and I don't think we left any
14 stone unturned, I can say that much. But as far as having
15 him examined by a forensic pathologist, you know, we may
16 have discussed having a psychiatrist examine him.

17 Q Right.

18 A But I think we decided against that at a certain
19 point.

20 THE COURT: And he -- he -- let me ask a question,
21 Mr. Gourley.

22 MR. GOURLEY: Yes, sir.

23 THE COURT: Mr. Magni said a forensic psychologist?

24 MR. GOURLEY: Yes, sir.

25 THE COURT: You going into the medical issue?

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 MR. GOURLEY: Yes, sir.

2 THE COURT: And he also indicated that it would
3 determine that he would not have the characteristics of a
4 pedophile.

5 MR. GOURLEY: Right.

6 THE COURT: And that would be the forensic --

7 MR. GOURLEY: Psychologist.

8 THE COURT: Or the psychiatrist one.

9 MR. GOURLEY: Psychiatrist.

10 THE COURT: I don't think he used that term. So
11 you're just talking about medical examinations.

12 MR. GOURLEY: Yes, sir.

13 THE COURT: I just want to make sure I was
14 tracking.

15 MR. GOURLEY: Yes, sir, I apologize, Judge.

16 THE COURT: That's fine.

17 BY MR. GOURLEY:

18 Q And in regards to the pedophilia aspect of it?

19 A As I said, we discussed from A to Z on this case.

20 Q Yes, sir.

21 A And I -- you know, I want to point something out
22 about this. Mr. Kendrick did not come get me to do a plea.

23 Q Yes, sir.

24 A I try cases.

25 Q Yes, sir.

James Marcus Whitlark - Direct Examination by Mr. Gourley

1 A And we prepared to go to Court and we were very --
2 we were very adequately prepared for this case.

3 Q Okay.

4 A But we don't make the facts, okay?

5 Q Were you aware of any sort of text messages from
6 the victim stating that she was falsely accusing Mr. Mangi?

7 A No, that's news to me. I know nothing about that.

8 Q And y'all did subpoena phone records though, right?

9 A I saw a -- a large quantity of text messages in
10 this case back and forth between Mr. Mangi and the alleged
11 victim.

12 Q And then I believe, I'm not sure if it was -- I
13 believe it was in your mitigation, you discussed the fact
14 that Mr. Mangi was -- had just recently had surgery and was
15 on heavy painkillers and so on and so forth that somehow
16 affected his decision making in this context?

17 A Well, like I said, he came to us to get a defense
18 and we have to think of everything. You know, and of
19 course, even though you may not believe that somebody is
20 not mentally competent. Of course, when you're looking at
21 them you got to, maybe that's something you can use.

22 Q Right.

23 A So it was discussed.

24 Q Okay. Did you see any basis to challenge the
25 victim's statement?

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 A No.

2 Q Had you proceeded to trial obviously you would have
3 attempted to impeach the victim's statement?

4 A Absolutely. I -- well you call into question these
5 things. It's your job and when you cross-examine it's to
6 point out the weaknesses, the fallacies and things that
7 haven't been considered by the witness and at that time,
8 you make them consider them and it raises a reasonable
9 doubt about things.

10 Q Okay. Did you ever tell the applicant that he
11 would receive probation?

12 A No.

13 Q It's not your typical practice to promise your
14 clients a certain sentence?

15 A The only thing we promise our clients is we'll do
16 the best we can do.

17 Q Yes, sir. You didn't force Mr. Mangi to plead
18 guilty, did you?

19 A No.

20 MR. GOURLEY: Your Honor, I have no other questions
21 of Mr. Whitlark.

22 THE COURT: Mr. Boozer?

23 MR. BOOZER: Just briefly, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BOOZER:

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 Q Mr. Whitlark, give me the dynamics of who was kind
2 of the first chair and second chair in this case; would
3 that have been -- would you have been second chair for this
4 case at trial?

5 A If that means would I have been sitting in the
6 chair next to him, yeah.

7 Q Sure. Were you at all the meetings with Mr.
8 Kendrick and Mr. Mangi?

9 A From the time that I was retained on the case, I
10 believe I was. And there were many meetings.

11 Q All right. You had discussed a dress that appeared
12 at the ninth hour, the eleventh hour, and it was alleged
13 that his DNA was on that dress?

14 A Well --

15 Q Or --

16 A -- the results from the scientific tests I saw from
17 two different laboratories were pretty conclusive that it
18 was.

19 Q Do you recall also there was another woman's DNA on
20 that dress that was not the victim's?

21 A I do not recall that.

22 Q Is it possible that there -- there was another
23 person's DNA on that dress that was not either the victims
24 or Mr. Mangi's?

25 A I'm not trying to be a smart Alec, but anything's

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 possible.

2 Q Sure. If -- if that were the case, if there were
3 another set of DNA on there, would that have made for
4 another maybe motion on reliability of that dress that
5 could have been brought before the Court?

6 A Anything that casts aspersions on the certainty or
7 not of the resulting tests certainly would have had an
8 impact on it.

9 Q Do you recall any discussion with Mr. Kendrick or
10 Mr. Mangi about there being another person's DNA on that
11 dress?

12 A It's hard for me to remember exactly, but I will
13 say this. There was some mention, I think, of a used
14 condom that was allegedly in the car that we needed to look
15 into that. And the -- and I believe Mr. Mangi also
16 mentioned -- well you might want to go talk to this, a
17 stripper, and there was something about a used condom. At
18 that point, and with the uncertainty with which as I recall
19 what he was telling us, it sounded, it was shaky to me and
20 I, you know, I didn't actually didn't know whether or not
21 it would be a good thing to pull, to bring up in front a
22 jury. I remember it loosely, but I'm not, Mr. Kendrick ran
23 this case and he did a very, very thorough and professional
24 job.

25 Q And getting back, just to put that kind of together

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 so I understand it. Was the theory, if there was another
2 person's DNA on the dress he asked y'all to investigate, I
3 guess the condom that he had used with another person,
4 that's how we've got another DNA getting on that dress that
5 didn't belong to the victim?

6 A This was brought up and I don't know the exact date
7 of it. I know it was close to trial. I know we were
8 getting prepared, we were getting our ducks and we were
9 ready to go and Mr. Mangi mentioned this, or something like
10 that. I don't know exactly what the specifics were. But
11 I -- we were set to go with what our planned defense was
12 and so I didn't personally go investigate this, no.

13 Q Do you know if Mr. Kendrick did?

14 A I don't know. I don't recall. It, you know, it --
15 I'm sure he would have discussed it with me if there was
16 any -- any substance to the situation.

17 Q You had made mention that he didn't want to plead
18 guilty. Can you elaborate on that?

19 A Nobody wants to plead guilty.

20 Q When he -- when you mentioned earlier he didn't
21 want to plead guilty, you certainly heard his testimony
22 today?

23 A I did.

24 Q Did he want to go to trial and not plead guilty?

25 A You're asking me to tell you what somebody else is

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 thinking. I was busy at the time getting ready. You know
2 we were picking jurors and stuff and there was a lot of
3 stuff going on. We weren't just sitting around having a
4 leisurely talk. I think Mr. Mangi wanted to be found -- he
5 just wanted it to go away and be found innocent or say
6 look, you know, me and the victim like each other and stuff
7 like that. He made a comment to me about discussing his
8 future with this girl with her father. This was that day
9 and you know, I didn't need to hear that to be frank with
10 you because, you know, I'm going in there saying this man
11 is not guilty; they can't prove it and they're wrong about
12 this and I don't like to have the wind taken out of my
13 sails by going, you know, well you know, maybe I'm going to
14 go talk to her to get married when she turns eighteen or
15 something like that. And I mean, you know, I don't want to
16 hear that when I'm getting ready to go in here and cast
17 aspersion on the State and on a bunch of law enforcement
18 officials on a 14 year old girl.

19 So I remember that specifically and I, you know, I
20 think in Joe Mangi's mind, I don't think he's done anything
21 wrong here and you know, I don't judge people. I, you
22 know, I judge what our chances in Court are and what they
23 can prove, okay. But I've seen this before where people,
24 they just can't accept the fact that they've done something
25 wrong and they don't think they have and they have a

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 different value system about them; and -- but of course, we
2 have to deal with the harsh reality about what the statutes
3 say and our laws.

4 Q Do you recall any sort of maybe -- maybe
5 characterize it as a heated discussion or anything like
6 that to have Mr. Magni plea?

7 A Any good trial is going to be like that and yeah,
8 Mr. Kendrick is a heated -- and he's a very good trial
9 lawyer and he is heated. He is an emotional fellow when
10 he's fired up and that's who you want defending you and
11 yes, there were some heated discussions with this.
12 Sometimes lawyers, we get a little overbearing with things
13 because we know what's going to happen or we know what the
14 truth is. No matter what they're thinking and it gets
15 frustrating and I believe, the only thing I remember about
16 when I think of that meeting, me and Mr. Kendrick, we're
17 going, he just doesn't understand what's getting ready to
18 happen. So that's the only thing I remember about that.

19 Q Going back to the expert that was brought up
20 earlier. Would have cost more money to have engaged an
21 expert over and above what he had paid for retainer for
22 representation?

23 A I don't know what the details of that were, what
24 that was with him.

25 Q Would that have been something more so with Mr.

James Marcus Whitlark - Cross-Examination by Mr. Boozer

1 Kendrick's arrangement that he probably would have known?

2 A Yeah, you better ask him about that. I don't know.

3 MR. BOOZER: Court's indulgence, Your Honor?

4 THE COURT: Certainly.

5 MR. BOOZER: Your Honor, that's all the questions I
6 have for Mr. Whitlark.

7 THE COURT: Redirect?

8 MR. GOURLEY: Your Honor, I don't have any
9 additional questions.

10 THE COURT: Thank you. Thank you very much.

11 THE WITNESS: Thank you, Your Honor. Good to see
12 you, too, Judge.

13 MR. GOURLEY: Your Honor, I'd ask that Mr. Whitlark
14 be excused from his subpoena.

15 THE COURT: All right. Yes, sir, you may be
16 excused.

17 All right. You may call your next witness.

18 MR. GOURLEY: Yes, Your Honor, we call Mr. Joshua
19 Kendrick to the stand, please.

20 THE COURT: All right. Mr. Kendrick, come around
21 for us, please.

22 THE CLERK: I need to swear you in first.

23 JOSHUA KENDRICK,

24 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

25 THE CLERK: Have a seat and state your name for the

Joshua Kendrick - Direct Examination by Mr. Gourley

1 record.

2 THE WITNESS: Josh Kendrick.

3 DIRECT EXAMINATION

4 BY MR. GOURLEY:

5 Q Mr. Kendrick, how long have you been practicing
6 law?

7 A Twelve, thirteen years -- twelve years, around
8 there.

9 Q And you were retained in this case?

10 A I was.

11 Q And how many times did you meet with Mr. Mangi
12 prior to his court hearing?

13 A I don't remember, but it was a lot.

14 Q Did you file Rule 5, Brady motions?

15 A What's that?

16 Q Did you file Rule 5 and Brady motions?

17 A I did.

18 Q Did you review that evidence with Mr. Mangi?

19 A I did.

20 Q Okay. Did y'all discuss his version of the facts?

21 A I mean, to the extent he just said I didn't do it.
22 It didn't really happen, but we had an alternate story.

23 Q Okay. He give you any type of witnesses to look
24 into?

25 A The ones that he -- that he mentioned, I think

Joshua Kendrick - Direct Examination by Mr. Gourley

1 those people were under subpoena, but they obviously
2 weren't there the first day of trial. I remember reading
3 their names because Judge Early got mad at me; I didn't
4 have a witness list and I handwrote one at the last minute
5 and he yelled at me and then he apologized to the jury and
6 me for making me look bad, but those were the names on that
7 list.

8 Q Did y'all discuss the elements of the charges that
9 the State had to prove?

10 A We did that early on because I was retained on this
11 case before -- before he was charged with anything.

12 Q Okay.

13 A So I met with both Aiken County and Richland County
14 prior to him being arrested and, you know, I explained to
15 him what their options were and what I was trying to do
16 to -- without cooperating also see if I could cool them
17 down a little bit.

18 Q Okay. And can you describe the State's evidence in
19 this case?

20 A They -- well, they had a statement from the girl
21 and he's right, there was a video of her. It was an ARC
22 interview. I don't know if he ever watched it. He may not
23 have. It wasn't, the value of it was -- I thought he did
24 watch it because I was able to evaluate kind of how she
25 would come across as a witness. I don't think the video

Joshua Kendrick - Direct Examination by Mr. Gourley

1 would have been admissible. They had phone records that
2 showed contacts between the two of them over a time period
3 that unfortunately was a little bit more extensive than we
4 could even imagine. I think that, I think that's really
5 all they had the first time around. When we were going to
6 trial, we kind of had a -- the phone records were a
7 problem, but you know, we had a little bit of an
8 explanation for them and it was more of a he said/she said
9 case at that point.

10 When we were getting ready to go to trial, the
11 solicitor called me and told me about the dress, which kind
12 of brought DNA into the mix, that there was another piece
13 of the puzzle. So they also had text messages, I'm sorry,
14 from -- they had pictures of her phone when her dad had
15 called the police of text messages allegedly from him and
16 they were somewhat -- somewhat damaging.

17 Q The dress with the DNA, was there a second female
18 DNA on this dress to your recollection?

19 A I don't -- yes. I don't know if it was a second
20 female. When I looked at the SLED reports getting ready
21 for this, there was some kind of mixture there.

22 Q Right.

23 A And it was -- and what they did was excluded the
24 girl and her mother as a contributor to that.

25 Q Okay.

Joshua Kendrick - Direct Examination by Mr. Gourley

1 A My expert didn't really have a good explanation for
2 it. He had a couple of different options, none of which
3 were particularly helpful. Mr. Whitlark's wrong about that
4 thing about the condom. I think he's misremembering the
5 timing of that.

6 Q Okay.

7 A That came up after trial.

8 Q Okay. Would you characterize the State's evidence
9 as overwhelming?

10 A It was overwhelming, I thought, before -- before
11 the DNA.

12 Q Okay.

13 A The DNA made it worse. It basically, the phone
14 records and the text messages they had just didn't, it was
15 too much. The jury was going to -- was going to like that
16 and my explanations for it were falling flat.

17 Q Okay. Prior to this plea, did y'all review the --
18 his constitutional rights?

19 A I just told him what Judge Early was going to tell
20 him. I knew he was kind of upset and I explained to him --
21 and what -- what he said is probably mischaracterized, but
22 it's probably not entirely inaccurate. I just explained
23 that if the judge didn't believe or if he didn't answer
24 these questions correctly we weren't going to plea; we were
25 going to go to trial.

Joshua Kendrick - Direct Examination by Mr. Gourley

1 Q Right.

2 A I didn't care. I was here and I was ready for the
3 trial. So you know, at that point, it was about him; it
4 wasn't about me. I don't get anything out of a plea.

5 Q You didn't force him to plea?

6 A No.

7 Q Did you ever tell him how to answer the questions
8 during the colloquy?

9 A No, I mean -- I'm sure I told him what the
10 consequences of each answer would be, but again, it didn't
11 make a huge difference to me because I was already ready
12 for the trial.

13 Q Right. Whose decision was it to plead guilty?

14 A It was Mr. Mangi's.

15 Q And y'all were prepared for trial, correct?

16 A We were very ready for trial. I mean I don't know
17 why Mr. Mangi didn't remember, but in the weeks leading up
18 to trial, we sat in my conference room with him for -- I
19 mean I think he had to get off work for a significant
20 amount of time and Mr. Whitlark and I -- I mean, we would
21 go in and out. So if one of us had to go do something else
22 on another case, the other one would stay there and, I
23 mean, we spent hours. And then my current law partner,
24 Chris Leonard, I don't remember if he was a lawyer then or
25 not. He may have just been my law clerk, but he was also

Joshua Kendrick - Direct Examination by Mr. Gourley

1 there the whole time.

2 Q Regarding the chain of custody with the dress, you
3 had made a motion to suppress that, right?

4 A Right.

5 Q And Judge Early hadn't ruled on it yet?

6 A No. And he's right about that exchange. I
7 couldn't find any case law that said that that period of
8 time, that I won, and you know, the judge asked me and I
9 said no, but that doesn't mean it's not right.

10 Q Right.

11 A There obviously wasn't a case that said I was wrong
12 either.

13 Q And you researched that?

14 A I mean -- yeah, a long time ago.

15 THE COURT: And your -- the argument is from the
16 time from when the events allegedly occurred to when the
17 dress goes into police custody, Mr. Kendrick?

18 THE WITNESS: That was roughly a year. So my
19 argument was that that's just too long for that to be
20 reliable evidence. I think the State's counter, if I
21 remember correctly, was hairs. As long as somebody says --

22 THE COURT: Weight versus admissibility.

23 THE WITNESS: And I think those were probably the
24 words I was going to hear when it got to a point in time,
25 unfortunately.

Joshua Kendrick - Direct Examination by Mr. Gourley

1 THE COURT: Is that -- that's the argument you were
2 making on that at that time?

3 THE WITNESS: And we would have -- we would have
4 made that into a huge issue at trial. Whether that would
5 have ultimately gotten us anywhere, I can guess.

6 BY MR. GOURLEY:

7 Q Did you look into whether or not -- did you
8 consider getting a forensic psychologist to examine him?

9 A And I heard him say -- this is how that
10 conversation came up. He's right. I got referred this
11 case by another lawyer and he brought me some of the money
12 and then he ran out of money.

13 Q Right.

14 A Then he came into a bunch of money. I think it had
15 to do with getting married. So he brought me all this
16 money and I told him, you know, you've paid me off.

17 Q Uh-huh (affirmative response).

18 A Why don't we spend the rest of this money on
19 mitigation? They've got this great case against you, but
20 we can get you, now we can put the big doctors on it.

21 Q Yeah.

22 A We'll get you evaluated. I think that Judge
23 Early -- well I don't that it was Judge Early, before trial
24 we probably could have -- not that there's anything wrong
25 with Judge Early, but we would have had our option. So

Joshua Kendrick - Direct Examination by Mr. Gourley

1 whatever Judge we were going to go in front of, I think we
2 could have brought all this in to say, Look, we could make
3 a better story for the plea. He didn't want to do that.
4 We went through, and we sat in my office for a long time
5 that afternoon and I laid out for him all the evidence that
6 they had, what he was looking at if he got convicted and I
7 what I thought I could do if he would, if he wanted to go
8 the mitigation route instead of that and he said I do not
9 want to do that; I'm not going to plead guilty. And he
10 gave me the reason for that and I -- I put that aside. I
11 am not going to put up a doctor in a trial to testify about
12 an evaluation of my client. That's insane.

13 Q So it would be trial strategy?

14 A I mean -- basic trial strategy.

15 Q Did he ever tell you about any sort of text
16 messages or anything like that?

17 A He did and I pulled the invoices while he was up
18 here. He called me about that. I want to say it was March
19 or April, but probably March. I specifically remember
20 talking to him because it was very late at night. I was at
21 a wedding out of town at the time.

22 Q Uh-huh (affirmative response).

23 A And I called him back because he called me over and
24 over and over; I had my phone with me. He told me about
25 the text messages. So let's say it was March. In May I

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1 had my investigator dump his phone, so you know, the
2 problem I ran into there was he's probably right that he
3 couldn't meet me. I won't agree with him that that was all
4 my fault. I actually paid for that because he didn't have
5 any money at the time. That was before he came in with the
6 money. So I wrote my investigator the check. I got it
7 back down the road, but --

8 Q Yeah.

9 A -- but on May the 10th, my investigator pulled
10 everything off of his phone and what a lot of people don't
11 realize is you can delete your text messages and they're
12 still on your phone. And my guy has the same equipment
13 that the Richland County Sheriff's Department has for doing
14 a forensic dump of the cell phones. So he brought me a
15 disk with every single thing that had been on that phone.
16 I couldn't find those text messages.

17 Q It's your opinion that those text messages do not
18 exist?

19 A No. No, I mean that is not my opinion.

20 Q Right.

21 A I don't have an opinion. I did my investigation
22 and didn't find those text messages. There certainly could
23 be another explanation for why they weren't there.

24 Q Okay.

25 THE COURT: Let me make sure I'm tracking the time.

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1 It was dumped -- the data dumped is May?

2 THE WITNESS: May 2010.

3 THE COURT: And he -- he -- Mr. Mangi called you in
4 March?

5 THE WITNESS: To give him the benefit, it was
6 probably March. Earlier possibly.

7 THE COURT: The data dumped information that
8 preceded March?

9 THE WITNESS: Yeah, but it's a computer so you know
10 it's a -- it's a chip in the computer which means that I
11 don't -- I would not be comfortable saying that there was
12 nothing missing under any circumstances, but he may be
13 right that those messages were sent. I just didn't find
14 them and I found a lot of text messages. There was pages
15 and pages. I couldn't print it out.

16 THE COURT: I'm not asking you that. I'm just
17 asking --

18 THE WITNESS: Yes, sir.

19 THE COURT: -- date-wise there were text messages
20 that were done that were dated prior to March 1st; that's
21 all I'm asking.

22 THE WITNESS: I think there were because there were
23 just so many. There were hundreds of pages. So I think
24 so.

25 THE COURT: Okay.

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1 THE WITNESS: But I don't know for sure because I
2 don't have that anymore.

3 THE COURT: And you -- your -- your man has the
4 same equipment that Richland County Sheriff's Department
5 has?

6 THE WITNESS: Yes, it's CDF Corporation, which is
7 a --

8 THE COURT: He doesn't have to have a search
9 warrant.

10 THE WITNESS: Not if it's my client. I don't ask
11 too many questions, but no, he voluntarily brought to me.

12 BY MR. GOURLEY:

13 Q Regarding Mr. Mangi's prior surgery and how that
14 could potentially impact the case; did you look into that?

15 A Yes, but not to the extent that he talked about
16 today. We asked for medical records on the VA Hospital and
17 then we did a good bit of -- a good bit of research on
18 whatever this wound back thing was. In all honestly, I
19 didn't think that was a good route to go. I think Mr.
20 Whitlark for a while did and did think we should put more
21 time into it, but he and Chris looked into it. I was never
22 convinced that -- basically what he wanted to prove was
23 that he couldn't have had a sexual encounter with someone
24 and you know, I didn't, I did a lot of research and I
25 didn't hire anyone. So it was just me reading about it on

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1 the internet and medical texts. I never found anything
2 that said that was a side effect though.

3 Q Okay. Did you attempt to challenge or were you
4 prepared to challenge the victim's statement?

5 A Yeah, I mean that -- you know, and Mr. Mangi knows
6 that. Mr. Whitlark and I have tried cases before. We were
7 going to challenge it line by line. She was the whole case
8 and obviously we had put all kinds of thought into the fact
9 that it was a younger girl. Of course, she was not as
10 young now as she had been then.

11 Q Right.

12 A And we were going to challenge every single detail
13 that we could find any kind of inconsistency including that
14 medical evidence and ask her if she was aware of his scar
15 and different things like that.

16 Q Okay. Did you ever tell him that you would -- that
17 he would get probation to get him to plea?

18 A Not this last time right before he pled. I'm sure
19 that when we talked about it before, because there wasn't a
20 mandatory minimum on any of his charges. So that first
21 conversation when I talked about the -- the pathologist,
22 I'm sorry the psychiatrist -- if I remember correctly, I
23 told him I thought I could get him somewhere non-violent
24 maybe you know 5'ish, short time.

25 Q Right.

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1 A But obviously he's still on the registry, still a
2 felon. This time coming in, I knew the judge wasn't going
3 to give him probation. I thought I had told him I was
4 going to try to get around 7 or 8, which is what I thought
5 was realistic. You know, Early went high, but he could
6 have gone a lot higher. So looking back, I think we came
7 out okay. Not great.

8 Q Okay. Did you ever tell Mr. Mangi how to answer
9 Judge Early's questions?

10 A Yeah -- not -- I didn't tell him he had to answer
11 any particular way. I just explained to him that if he
12 said no and the answer to get a plea was yes, then we were
13 going to go to trial. Again, I didn't have any interest in
14 trial or a plea. Given the choice, I would have rather
15 tried the case, but that's not in his best interest.

16 Q Did you tell Mr. Mangi that the judge had already
17 determined his guilt?

18 A No, I think what I told him is Judge Early was
19 probably going to pop him with a pretty good sentence if we
20 lost. I think I could probably say that about any Judge.
21 You know, this was a high profile case. It was all in the
22 newspaper, it was on the tail end of this happening with
23 about 3 different teachers in Aiken County. You know,
24 Judge Early is an Aiken County Judge. I mean, he -- and
25 this was going to have to be taken care of if we went to

Joshua Kendrick - Cross-Examination by Mr. Boozer

1 trial and it was -- the trial was going to be unpleasant.

2 We were going to have to go after a lot of people. So I --

3 I think I rightfully told him that if we lost he was going

4 to get a huge sentence.

5 Q Regarding an appeal, did you discuss his appellant
6 rights?

7 A Probably not. I don't know what we -- I get it
8 that everyone should, but you can't appeal from a guilty
9 plea. I mean there's nothing to appeal.

10 Q There was no objections made?

11 A No, I mean I told his family that if they wanted a
12 PCR, I mean that would be fine and here we are, so...

13 Q And in your opinion there was no basis for an
14 appeal?

15 A No, we waived everything by pleading guilty.

16 Q Thank you, Mr. Kendrick.

17 MR. GOURLEY: Your Honor, I have no other
18 questions.

19 THE COURT: Thank you, Mr. Gourley.

20 Mr. Boozer.

21 MR. BOOZER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BOOZER:

24 Q Mr. Kendrick, how you doing?

25 A Good. How are you?

Joshua Kendrick - Cross-Examination by Mr. Boozer

1 Q I'm fine. All right. So we were talking about
2 some witnesses here that have been thrown about and you
3 indicated they were under subpoena?

4 A I think they were. I'm not going to swear to you
5 they were. I remember reading them out I thought at the
6 jury selection.

7 Q You heard what Mr. Whitlark said about those, those
8 folks, I think. Is that your memory of what those folks
9 would have testified to or ---

10 A Yeah, what he wanted us to do was call these
11 teachers to say that they never saw him and her alone. You
12 know, depending on how the trial played out, I think we
13 were ready to do that, but I think that might have had some
14 limited value.

15 Q But they may have been under subpoena; you're just
16 not sure?

17 A I don't know. Whoever's names I read out at -- at
18 the jury selection was who I had subpoenas for and if I had
19 wanted to subpoena them, Judge Early was already mad at me
20 so he would have gotten over it if I had brought up some
21 new witnesses.

22 Q Did you -- do you know if you discussed with Mr?
23 Mangi those witnesses prior to the trial?

24 A I remember some of those names; I don't remember
25 all the names he said when he was up here, but that doesn't

Joshua Kendrick - Cross-Examination by Mr. Boozer

1 mean I didn't discuss them with him. Again, he's --

2 he's -- I didn't know how helpful that would be.

3 Q As far as looking into having him evaluated by some
4 sort of medical professional as he's alleged today, would
5 that have added on to the cost of your retainer?

6 A I had money in the trust account, but I sent it
7 back to his wife at the end of the case. So -- and like I
8 said, at one point, I -- I paid -- I hate to say it, I
9 don't want this to get out, but I pay experts all the time.
10 It's about winning. So no, it wasn't a financial issue at
11 all.

12 Q So you're saying that the money was already there?

13 A I don't remember how much, but yeah, I mean I never
14 got a quote on it, but I don't -- I mean, you know, I had
15 the medical records, I don't know that I would have even
16 had to hire anybody.

17 Q Did you ever tell him or maybe inform him that it
18 may cost more to engage an outside expert?

19 A I mean it always -- yeah, I'm sure I did. I mean
20 I'm sure I told him that we could, we could spend as much
21 money as he has in trial.

22 Q Going back to the text messages as His Honor was
23 questioning. You did a dump of the phone sometime maybe in
24 May?

25 A It was May the 10th.

Joshua Kendrick - Cross-Examination by Mr. Boozer

1 Q May 10th of 20 --

2 A 2010.

3 Q 2010. Okay. Your recollection is that Mr. Mangi
4 had asked for that sometime back in March?

5 A It was March or April, but I think March is
6 probably more accurate.

7 Q And do you know, did you actually, when you did the
8 dump in May, did it actually show the -- the actual text or
9 just that there was an outgoing and incoming text?

10 A I read texts back and forth, hundreds of them. I
11 read the actual texts.

12 Q Okay. In those texts, did you find any where there
13 was an apology or an insinuation that the victim was being
14 untruthful about the statements?

15 A I don't remember that because we never used them
16 and that would have obviously been very good evidence.

17 Q Do you know if you've heard Mr. Mangi discuss what
18 was, I guess, an undisclosed or blocked number that it
19 wasn't who he thought it was from, but he didn't have a
20 number that showed up on the screen. Do you remember
21 reading any of those texts or discussing that with Mr.
22 Mangi?

23 A I don't remember him sending a block. I don't
24 think you can text somebody from a blocked number. I think
25 it was a number he didn't recognize. I don't think I ever

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1 had the number because I have an investigator that can find
2 anybody anywhere for any phone number, so I would have
3 known who sent the text message if I had known the number.

4 Q Do you know when those texts would have occurred?

5 A I mean when he -- I mean he told me one night in
6 March.

7 Q Okay. Is it possible that the delay in between the
8 March and May when it was dumped that those could have been
9 lost and gone or whatnot?

10 A Anything's possible.

11 Q Okay. But that is a possibility?

12 A Sure.

13 Q Okay. Do you think that those texts, going to just
14 the realm of possibilities, that that's a possibility that
15 they were not there and that that would have assisted Mr.
16 Mangi?

17 A It would have.

18 Q And have -- you've touched on this already a little
19 bit, but I'll go ahead and get into it. The prior surgery
20 that he had, was there any -- did you think or discuss with
21 Mr. Mangi about that being a legit defense for him at
22 trial?

23 A Two questions. And, yes, I discussed it. No, I
24 did not think it was legit.

25 Q What was his position on that as your client, did

Joshua Kendrick - Cross-Examination by Mr. Boozer

1 he want you to pursue that and you said we're not going to
2 do that or do you know how that came about?

3 A Yeah, he wanted to pursue it and we got his medical
4 records from the VA Hospital and went over them and did the
5 research and there was never a definitive answer that what
6 had happened to him was going to prevent him from having
7 sex, but it was obviously something we could try to bring
8 up to cross the victim, but not -- not that it wouldn't
9 have created a possibility.

10 Q And also you heard his allegation regarding that
11 you would try for probation. Was that a discussion y'all
12 had?

13 A Again, not -- not now -- not before the plea when
14 we were already picked the jury, but I'm sure we talked
15 about that earlier because I've never not tried for
16 probation. I'm sure it drives the judges crazy, but I
17 always ask for probation in any guilty plea.

18 Q In your mind and you've indicated you've had a lot
19 of contact with Mr. Mangi, through your representation, do
20 you think that he was under the impression that he would be
21 getting probation at any time?

22 A Not at the end. I mean he couldn't have been.

23 Q Was he under the impression of that before, I mean
24 in the middle or the beginning?

25 A No, when we got the first plea deal, I told him I

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1 wouldn't do that because it was negotiated and that's when
2 we had the conversation about trying to do mitigation. But
3 I don't think I said probation though; this was just a
4 tough case to get probation on. I wouldn't have had a
5 problem asking for it early on in the process because we
6 would have had a lot more options.

7 Q Okay. Talking about negotiating sentence, was that
8 the 10 year sentence that we were referring to earlier?

9 A That was the very first plea offer I got.

10 Q Was 10?

11 A Was 10, negotiated.

12 Q What was his position on that?

13 A He didn't want it.

14 Q Okay. Was his position on this that he did not do
15 this?

16 A That was -- well, I guess.

17 Q I'll ask you another question that we've certainly
18 touched on at length. Did you ever yell, did you yell at
19 Mr. Mangi trying to get to plead guilty?

20 A Again, too many questions in there. Yeah, I mean
21 yell is a relative term. I was sitting right there in
22 those chairs and even if there was no one in here, there
23 were people in here so I wasn't screaming at him at the top
24 of my lung, but I was pretty -- I'm sure I was pretty
25 irritated with him as we got down to trial. Just no matter

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1 what happened, no matter how bad it got, it was just like
2 he was blind to the evidence. And I'll be honest with you,
3 our hopes were resting on he said God would take care of
4 him and you know, I don't think that's the case. So yeah,
5 I was pretty ticked off as we got to the end, it seemed
6 like he didn't want to go to trial; he didn't want to
7 plead; he didn't want anything and I'm with him, you know,
8 don't want anything to happen. So I got mad at him. I
9 remember we were sitting in that chair and I think I
10 probably was pretty, pretty harsh with him and I told him,
11 you know, you got to make a decision; you need to quit
12 crying and you need to, I'm sure I did tell him, you need
13 to plead guilty to this.

14 You know, and I -- and I don't take the position
15 you guys take that privilege is just busted. But I had a
16 problem with him swearing he was innocent about this based
17 on all that he had told me.

18 Q All right. Moving on to the DNA that has been
19 discussed. Do you recall there being an issue of another
20 person's DNA on this alleged dress that all of a sudden
21 appeared for you guys?

22 A I think so. I didn't remember as clearly until I
23 looked at it, but what I do remember is that we hired a guy
24 out of Philadelphia who was the head something in
25 Pennsylvania for years and years and now is a big innocence

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1 project guy. He called me and said there's some issues
2 here. But the way he framed it is because he had the
3 report and he actually tested everything, but the way he
4 framed it was these are issues for cross. He said you
5 don't have exoneration, everything is consistent with their
6 story, but you can, you know he basically said here's what
7 I think you ought to do and he said I'm not going to send
8 you a report on this.

9 And the State knew that -- I mean, I think Mr.
10 Whitlark mentioned this earlier, the State knew we had that
11 expert and they said where is your report and I said we
12 never got a report. I don't have the report.

13 Q Was the victim's DNA on the dress although even
14 though it was alleged to be her dress; do you know?

15 A I don't think -- not in the -- not in the part they
16 tested, but I don't know. I don't think they tested the
17 whole, I don't know what they tested for that. I didn't
18 get the whole dress.

19 Q But his DNA was on it?

20 A His DNA was on it.

21 Q Was he able to explain to you why that was the
22 case?

23 A No.

24 Q Do you recall any sort of discussion about what we
25 heard earlier from Mr. Whitlark with a condom and another

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1 female?

2 A Mr. Whitlark is mistaken about that. That didn't
3 happen unless they had a conversation I didn't know about.
4 I had that conversation with one of his PCR attorneys after
5 trial.

6 Q Okay. So you never had a discussion with him about
7 another female and how it got on the dress prior to the
8 trial?

9 A I mean I had an expert that we had paid. You know,
10 if that was the case we would have gone after it.

11 Q With having another person's DNA on that dress, was
12 there any reason for you to argue that in kind of a
13 suppressive-motion-type setting or versus the chain of
14 custody?

15 A I don't think it would have had anything to do with
16 the suppression of it. I think it would have been
17 something to cross-examine their people on, you know. I
18 don't know we were going to use it, but you know, we were
19 going to have to try to fit it into punching holes in the
20 State's theory and that was one of the things we could do.

21 Q Heading into trial, what was the defense strategy
22 for Mr. Mangi?

23 A He didn't do it; that she had -- had falsely
24 accused him, that they had a relationship as friends; that
25 she took it too far; that it never turned sexual.

Joshua Kendrick - Cross-Examination by Mr. Boozer

1 Q And did you discuss with him him testifying at
2 trial and telling his version of this; did y'all get that
3 far?

4 A I think you probably said exactly right. You know,
5 obviously if he wants to testify, he can testify, I can't
6 stop him, but as far as my advice, my position is the same
7 in every case I've ever tried. That's a decision we want
8 to make in the middle of the trial as we see how things are
9 going. And I've never had a judge not give me -- I mean
10 almost as much time as I might want to go talk to my client
11 about where we're at. So I think we -- we had hammered him
12 on his story. We had grilled him on every facet of his
13 story. Mr. Whitlark had cross-examined him about his story
14 to the extent I think he got upset, but we explained to him
15 that, you know, we're not going to come close to what the
16 solicitor is going to do.

17 Q Also going to his allegation of him being in some
18 sort of confinement for 10 days after his plea. Do you
19 recall having any sort of discussion with them?

20 A No, and I agree with that. I didn't talk to him.

21 Q Had he asked or do you think there's a basis for
22 him to file some sort of grievance in arranging the
23 sentence or --

24 A No.

25 MR. BOOZER: The Court's indulgence, Your Honor?

1 THE COURT: Sure.

2 MR. BOOZER: Your Honor, I have no further
3 questions.

4 MR. GOURLEY: I have nothing further, Your Honor.

5 THE COURT: Thank you. Thank you very much, Mr.
6 Kendrick.

7 THE WITNESS: Thank you, Judge.

8 MR. GOURLEY: No objection, Your Honor.

9 THE COURT: You may be excused.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Other witnesses, Mr.
12 Gourley.

13 MR. GOURLEY: No further witnesses, Your Honor.

14 THE COURT: Reply, Mr. Boozer?

15 MR. BOOZER: No witnesses, Your Honor.

16 THE COURT: All right. Well, with that being said,
17 30 days for proposed orders?

18 MR. BOOZER: Yes, sir.

19 MR. GOURLEY: Yes, sir, Your Honor.

20 THE COURT: Thank you. Thank you very much. Good
21 luck to you, Mr. Mangi.

22

23

24 * * * * * END OF TRANSCRIPT * * * * *

25

1 State of South Carolina)
2 County of Aiken) Certificate of Reporter

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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 1st day of August, 2014.

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 19th day of January, 2015.

19
20
21
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Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4; 2020

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Joseph J. Magni, #345848,)

Case No. 2011-CP-02-1473

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

10-9-14
L. J. Goddard
J.C.P. & S.
Anita Knoepfle
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 5, 2011. Respondent made its return on September 21, 2011. An evidentiary hearing into the matter was convened on August 1, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's orders of commitment. Applicant was true bill indicted at the June 2010 term of the Aiken County Grand Jury for four (4) counts of Criminal Sexual Conduct with a Minor – Second Degree (2010-GS-02-1095/1096/1097/1098) and four (4) counts of Lewd Act Upon a Child (2010-GS-02-1099/1100/1101/1102). Applicant was represented by Joshua Kendrick, Esquire, on the charges. On April 18, 2011, Applicant appeared before the Honorable Doyet A. Early, III where he pled guilty to all eight (8) indictments from Aiken County, as well as to one indictment for Criminal Sexual Conduct with a Minor – Second Degree from Richland County (2010-GS-

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40-9465). Applicant was sentenced to twelve (12) years imprisonment on each charge, all sentences to run concurrently. Applicant did not appeal his plea or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel.

Applicant filed an amended application on December 20, 2013, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel

- a. "Did not interview witnesses for my case."
- b. "Did not argue the validity of the DNA correctly."
- c. "Did not have me evaluated by a medical professional."
- d. "Did not meet with me in a timely manner to retrieve text messages from my phone sent by the accuser apologizing and admitting she 'cried wolf.'"
- e. "Failure to investigate Applicant's prior surgery and medical treatment."
- f. "Failure to challenge victim's statement."
- g. "He (attorney) did tell me that my charges did not carry a minimum and he would try for probation."
- h. "He (attorney) did yell at me in the courtroom during a recess saying I had to plead guilty."
- i. "He (attorney) did tell me that the judge was going to ask certain questions about his performance and that I had to tell him I was happy with my counsel and that the plea was completely my own free will."
- j. "He (attorney) told me outside the courtroom that the judge believed me to be guilty and if I went to trial, I would go to prison for a very long time."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from J. Marcus Whitlark, Esquire. (hereinafter "Counsel Whitlark") and Joshua Kendrick, Esquire (hereinafter "Counsel Kendrick"). This Court also had before it a copy of the

guilty plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

During the evidentiary hearing Applicant testified on his own behalf. Applicant stated he was represented by Counsel Kendrick, Counsel Whitlark, and Christopher Leonard, Esquire (hereinafter "Counsel Leonard"). Applicant stated he met with his counsels a few times prior to his plea. Applicant recalled reviewing the discovery material with counsels. Applicant stated he provided counsels with the names of various witnesses including, Amber Bannister, Marsha Peacock, Tippy Hopston, and Coach Crosby. Applicant stated that he did not know whether counsels interviewed these witnesses or subpoenaed them for his trial. Applicant stated that the witnesses would have testified that they had never seen him with the Victim. Applicant stated these witnesses were not present at the post-conviction relief hearing.

Applicant argued that counsels were ineffective for failing to properly argue against the admission of the DNA evidence. Specifically, Applicant stated counsels should have argued Victim's DNA was not found on the dress instead of a chain of custody argument.¹ Applicant stated counsels should have provided case law to the judge during the course of the suppression hearing. Applicant further argued that counsels were ineffective for failing to retrieve text messages sent to him from an unknown number apologizing and admitting she cried wolf. Applicant explained that he received these messages, informed Counsel Kendrick of them and Counsel Kendrick failed to make sure they were properly preserved. Applicant explained that the messages were automatically deleted thirty days after they were sent. Applicant stated he made no attempts to secure the messages himself. Applicant stated the messages would have been able to discredit the Victim during the course of trial.

¹ This Court notes that the transcript of the suppression hearing reveals that Applicant's DNA was located on a dress belonging to the Victim. (Pl. tr. p. 26-31).

Applicant stated counsels should have had him interviewed by a forensic psychologist. Applicant stated he did not meet the criteria for a pedophile and felt that an examination would show that he was not pedophile. Applicant stated that counsels told him he did not have enough money to pay for the proper examiner. Applicant stated he has not been evaluated by a forensic psychologist. Applicant further stated he had recently had surgery on his hip and near his private area in an effort to remove MRSA. Applicant stated the surgery left a noticeable scar. Applicant stated that Victim never mentioned a scar in her statement. Applicant stated counsels would have been able to impeach Victim with her inconsistencies if they had investigated this information.

Applicant stated that counsels told him the charges he was facing did not carry a minimum sentence and they would request probation. Applicant stated he was under the impression that if he pled guilty he would receive probation. However, Applicant recalled that the judge advised him that lewd act with a minor carried up to fifteen years and criminal sexual conduct with a minor—second degree carried up to twenty years.

Applicant stated his counsels forced him into pleading guilty. Applicant stated his counsels were yelling at him to plead guilty and he was in a state of shock the entire time. Applicant further stated he felt forced to plead guilty because the judge had told counsels that it was his opinion that Applicant was guilty. However, Applicant recalled telling the plea judge that no one was promising or threatening him in order to get him to plead guilty. Applicant further recalled telling the judge that he was pleading guilty of his own free will.

Applicant stated counsels had not prepared any type of defense and were not prepared for trial. Applicant stated he was arrested in September 2009 and was proceeding to trial in April 2011. Applicant stated Counsel Whitlark was brought on as a second chair in October 2010.



Applicant stated a year and a half is not sufficient time to prepare for trial. However, Applicant recalled telling the judge that he was satisfied with counsels' services and that they had enough time to research, investigate, and meet with him. Applicant further recalled waiving his constitutional rights during the guilty plea and telling the judge that he was indeed guilty. Applicant recalled apologizing to the Victim and telling the judge that he knew what he did was wrong. Applicant stated that he was told how to answer the questions during the guilty plea and only pled guilty to avoid a harsher sentence.

Following Applicant's testimony, Counsel Whitlark was called to testify. Counsel Whitlark stated that he has been practicing law for thirty-seven years. Counsel Whitlark stated he was retained as a second chair to help prepare and participate during trial. Counsel Whitlark explained that he met with Applicant eight or ten times prior to the plea. Counsel Whitlark stated their initial trial strategy was to cast a doubt on the accusations and argue that the Victim made everything up. Counsel Whitlark explained that there were no witnesses to any of the incidents and it was a "he said she said" case.

Counsel Whitlark stated that Applicant's DNA was found on the Victim's dress. Counsel Whitlark explained that they had their own expert conduct an independent analysis on the DNA and test results confirmed that it was Applicant's DNA. Counsel Whitlark stated they attempted to argue that the proper chain of custody could not be established and the DNA evidence should be suppressed. Counsel Whitlark stated that the judge was going to rule on the motion to suppress during the course of trial.

Counsel Whitlark stated that they did not see any basis to challenge the Victim's statement. However, Counsel Whitlark stated they were prepared to point out the inconsistencies within her statement; including the fact that she failed to identify any scarring Applicant would



have had on his body. Counsel Whitlark stated in his opinion, they left no stone unturned during their representation of Applicant. Counsel Whitlark stated they had discussions about proceeding to trial and the possible ramifications. Counsel Whitlark stated they felt there was a strong likelihood of Applicant being found guilty had they proceeded to trial and Applicant understood the risks.

Counsel Whitlark stated they discussed the plea offers and it was Applicant's decision whether or not to plead guilty. Counsel Whitlark stated no one ever wants to plead guilty and Applicant was no different. Counsel Whitlark explained that Applicant wanted to be found innocent and the charges to simply go away. Counsel Whitlark stated that in Applicant's mind he did not do anything wrong and he could not accept that his actions were illegal. Counsel Whitlark stated Applicant wanted to talk with Victim's father and discuss his future with Victim. Counsel Whitlark stated that he never forced Applicant to plead guilty nor did he promise him that he would receive a certain sentence.

Following Counsel Whitlark testimony, Counsel Kendrick was called to testify. Counsel Kendrick stated he was retained to represent Applicant and met with him numerous times prior to his plea. Counsel Kendrick stated Applicant denied his guilt. Counsel Kendrick stated that he filed for and reviewed the discovery material with Applicant. Counsel Kendrick stated Applicant gave him numerous witnesses to interview. Counsel Kendrick stated the witnesses were subpoenaed and prepared to testify if they proceeded to trial. Counsel Kendrick explained that the witnesses were not present during the first day of trial, because they knew they weren't going to be needed until the second day of trial. Counsel Kendrick stated the witnesses were going to testify that they never saw Applicant and Victim alone. Counsel Kendrick stated they discussed

the various elements of the charges. Counsel Kendrick stated that they reviewed Applicant's constitutional rights.

Counsel Kendrick stated that he was prepared for trial. Counsel Kendrick stated he, Counsel Whitlark, and Counsel Leonard spent hours in their conference room discussing the case, going over the evidence, and possible trial strategies. Counsel Kendrick explained that they attempted to suppress the DNA evidence found on the Victim's dress because there was a thirteen month time span that it was in the possession of the Victim's family. Counsel Kendrick stated his argument to the court was that the evidence was not reliable given that lapse of time. Counsel Kendrick stated that he researched the case law and could not find anything to support his position as to why the evidence should be suppressed.

Counsel Kendrick stated that he discussed having Applicant evaluated by a forensic psychologist in order to provide some additional mitigation evidence if they chose to plea. Counsel Kendrick stated the reason why Applicant was not evaluated was not due to monetary concerns. Counsel Kendrick stated that Applicant had a trust account and had they needed an expert he could have paid for the expert. Counsel Kendrick stated on some occasions he has paid for an expert himself. Counsel Kendrick stated it is all about "winning." Counsel Kendrick stated Applicant was adamant that he did not want to plead guilty at that time. Therefore, they did not proceed with the evaluation.

Counsel Kendrick stated Applicant did inform him that he had received various texts from a random number apologizing. Counsel Kendrick stated he could not recall specifically when Applicant discussed the texts or why it was not looked into immediately. However, Counsel Kendrick stated he had his investigator conduct a memory dump of Applicant's cell phone to retrieve any and all text messages. Counsel Kendrick explained that even text messages



that were deleted would be retrieved. Counsel Kendrick stated that they did not find any text messages that were similar in nature to the ones Applicant alleged existed.

Counsel Kendrick stated they were prepared to challenge the Victim's statement. Counsel Kendrick stated they were going to challenge the Victim's statement "line by line." Counsel Kendrick stated they had investigated into Applicant's medical history and were prepared to argue that Victim failed to mention his surgical scars in her statement. Counsel Kendrick opined that it was a "good route to go."

Counsel Kendrick stated that it was Applicant's decision to plead guilty and that he did not force him to plead. Counsel Kendrick stated that he never promised Applicant that he would receive probation. Counsel Kendrick stated that Applicant was well aware that the plea judge was not going to give him probation. Counsel Kendrick stated that he did not tell Applicant to answer the plea judge's questions a certain way. Counsel Kendrick stated that the plea judge did not determine his guilt or innocence and he did not tell Applicant that the plea judge thought he was guilty. Counsel stated that the State had originally offered a ten year plea deal, however Applicant refused the offer and asserted that he was innocent. Counsel Kendrick stated that he was irritated with Applicant because Applicant refused to acknowledge the evidence against him. Counsel Kendrick stated Applicant was hoping that God would take care of everything.

Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that Applicant's DNA evidence was found on Victim's dress.

Counsel Kendrick stated that he could not recall whether he advised Applicant of his right to appeal. Counsel Kendrick stated there were no objections made during the plea and there was no basis to file an appeal.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Counsel Whitlark's and Counsel Kendrick's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

Ineffective assistance of counsel for failing to interview witnesses.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to interview various witnesses to be without merit. Applicant stated he provided counsels with the names of various witnesses including, Amber Bannister, Marsha Peacock, Tippy Hopston, and Coach Crosby. Applicant stated that he did not know whether counsels interviewed these witnesses or subpoenaed them for his trial. Counsel Kendrick stated the witnesses were subpoenaed and prepared to testify if they proceeded to trial. Counsel Kendrick explained that the witnesses were not present during the first day of trial, because they knew they weren't going to be needed until the second day of trial. Counsel Kendrick stated the witnesses were going to state that they never saw Applicant and Victim alone. This Court notes that

Applicant failed to provide testimony from any of the named witnesses. An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Additionally, Applicant can show no prejudice as there was clear evidence of overwhelming guilt. This Court notes Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that Applicant's DNA evidence was found on Victim's dress. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsels' competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective assistance of counsel for failing to argue the validity of the DNA correctly.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to properly argue the validity of the DNA to be without merit. Counsel Whitlark stated that Applicant's DNA was found on the Victim's dress. Counsel Whitlark explained that they had their own expert conduct an independent analysis on the DNA and test results confirmed that it was Applicant's DNA. Counsel Whitlark stated they attempted to argue that the proper chain of custody could not be established and the DNA evidence should be suppressed. Counsel Whitlark stated that the judge was going to rule on the motion to suppress during the course of trial. Additionally, Counsel Kendrick explained that they attempted to suppress the DNA evidence found on the Victim's dress because there was a thirteen month time span that it was in the possession of the Victim's family. Counsel Kendrick stated he argued the evidence was not reliable given the lapse of time. Counsel Kendrick stated that he researched the case law and could not find anything to support his position as to why the evidence should be suppressed. This Court finds counsels representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, Applicant can show no prejudice as there was clear evidence of overwhelming guilt. This Court notes Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that



Applicant's DNA evidence was found on Victim's dress. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsels' competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

*Ineffective assistance of counsel for failing to have Applicant
evaluated by a medical professional.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to have him medically evaluated to be without merit. Counsel Kendrick stated that he discussed having Applicant evaluated by a forensic psychologist in order to provide some additional mitigation evidence if he chose to plead guilty. Counsel Kendrick stated the reason



why Applicant was not evaluated was not due to monetary concerns. Counsel Kendrick stated that Applicant had a trust account and had they needed an expert he could have paid for the expert. Counsel Kendrick stated on some occasions he has paid for an expert himself. Counsel Kendrick stated it is all about "winning." Counsel Kendrick stated Applicant was adamant that he did not want to plead guilty at that time. Therefore, they did not proceed with the evaluation. This Court finds counsel's representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to produce any reports or expert testimony regarding an evaluation of Applicant. See Dempsev v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

Furthermore, Applicant can show no prejudice as there was clear evidence of overwhelming guilt. This Court notes Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that Applicant's DNA evidence was found on Victim's dress. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsel's competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.



Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective assistance of counsel for failing to meet with Applicant in a timely manner to retrieve text messages from my phone sent by the accuser apologizing and admitting she cried wolf.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to retrieve text messages from his phone to be without merit. Counsel Kendrick stated Applicant did inform him that he had received various texts from a random number apologizing. Counsel Kendrick stated he could not recall specifically when Applicant discussed the texts or why it was not looked into immediately. However, Counsel Kendrick stated he had his investigator conduct a memory dump of Applicant's cell phone to retrieve any and all text messages. Counsel Kendrick explained that even text messages that were deleted would be retrieved. Counsel Kendrick stated that they did not find any text messages that were similar in nature to the ones Applicant alleged existed. Furthermore, Applicant stated he made no attempt to preserve the text messages himself. This Court notes that Applicant failed to provide any proof that these text messages actually existed. See Palacio v. State, 333 S.C. 506, 513, 511

S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). Additionally, this Court finds counsels representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385

Furthermore, Applicant can show no prejudice as there was clear evidence of overwhelming guilt. This Court notes Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that Applicant's DNA evidence was found on Victim's dress. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsels' competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

*Ineffective assistance of counsel for failing to investigate
Applicant's prior surgery and medical treatment.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to investigate his prior surgery and medical treatment is meritless. Counsel Kendrick stated they had investigated into Applicant's medical history and were prepared to argue that Victim failed to mention his surgical scars in her statement. Counsel Kendrick opined that it was a "good route to go." Counsel Whitlark stated they were prepared to point out the inconsistencies within her statement; including the fact that she failed to identify any scarring Applicant would have had on his body. Counsel Whitlark stated in his opinion, they left no stone unturned during their representation of Applicant. This Court finds counsels representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court notes Applicant failed to present any evidence to show how additional preparations would have had any effect on Applicant's decision to plead guilty outside of his bare assertion. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Furthermore, Applicant can show no prejudice as there was clear evidence of overwhelming guilt. This Court notes Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that

Applicant's DNA evidence was found on Victim's dress. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsels' competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective assistance of counsel for failing to challenge victim's statement.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to challenge the victim's statement is meritless. This Court notes that Applicant waived his right to a jury trial. The plea court determined that Applicant knowingly and voluntarily pled guilty, therefore the plea waives any non-jurisdictional defects and defenses,



including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). Therefore, any claim that counsels were ineffective for failing challenge the Victim's statement was waived when Applicant freely and voluntarily pled guilty.

Regardless, Counsel Whitlark stated that they did not see any basis to challenge the Victim's statement. However, Counsel Whitlark stated they were prepared to point out the inconsistencies within her statement; including the fact that she failed to identify any scarring Applicant would have had on his body. Counsel Kendrick stated they were prepared to challenge the Victim's statement. Counsel Kendrick stated they were going to challenge the Victim's statement "line by line." Counsel Kendrick stated they had investigated into Applicant's medical history and were prepared to argue that Victim failed to mention his surgical scars in her statement. Counsel Kendrick opined that it was a "good route to go." Based on the foregoing, this Court finds counsels were prepared to challenge the Victim's statement had Applicant chose to proceed to trial. This Court finds counsels representation of Applicant well within the bounds of "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, Applicant can show no prejudice as there was clear evidence of overwhelming guilt. This Court notes Counsel Kendrick stated the State had a video statement of the Victim. Counsel Kendrick further stated the State had numerous cell phone records showing extensive text messages between Applicant and Victim. Counsel Kendrick stated that Applicant's DNA evidence was found on Victim's dress. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt

negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Additionally, this Court notes Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsels' competent performance. Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary guilty plea for advising applicant that he would receive probation.

This Court finds Applicant's claim that his plea was involuntary due to counsels' failure to properly advise of his sentencing to be without merit. Counsel Kendrick stated that it was Applicant's decision to plead guilty and that he did not force him to plead. Counsel Kendrick stated that he never promised Applicant that he would receive probation. Counsel Kendrick stated that Applicant was well aware that the plea judge was not going to give him probation. This Court finds that his counsels' performances were reasonable and effective. This Court notes, Applicant was advised of the potential sentences and acknowledged on the record that he



was facing a significant amount of time. (Pl t. p. 72-73). Furthermore, Applicant entered a guilty plea based on a favorable plea offer from the State that was secured after counsels' competent performance. Cf. Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary guilty plea.²

This Court finds Applicant's allegation that his plea was involuntary due to counsels' coercion, requirement that he answer the plea courts question a certain way, and threat that he would receive a harsher sentence if he proceeded to trial to be without merit. Counsel Whitlark

² This Court address Applicant's allegation h, i, and j as one claim of Involuntary guilty plea.

stated they discussed the plea offers and it was Applicant's decision whether or not to plead guilty. Counsel Whitlark stated no one ever wants to plead guilty and Applicant was no different. Counsel Whitlark explained that Applicant wanted to be found innocent and the charges to simply go away. Counsel Whitlark stated that in Applicant's mind he did not do anything wrong and he could not accept that his actions were illegal. Counsel Whitlark stated Applicant wanted to talk with Victim's father and discuss his future with Victim. Counsel Whitlark stated that he never forced Applicant to plead guilty nor did he promise that him that he would receive a certain sentence. Counsel Kendrick stated that it was Applicant's decision to plead guilty and that he did not force him to plead. Counsel Kendrick stated that he never promised Applicant that he would receive probation. Counsel Kendrick stated that Applicant was well aware that the plea judge was not going to give him probation. Counsel Kendrick stated that he did not tell Applicant to answer the plea judge's questions a certain way. Counsel Kendrick stated that the plea judge does not determine his guilt or innocent and he did not tell Applicant that the plea judge thought he was guilty. Counsel Kendrick stated that he was irritated with Applicant because Applicant refused to acknowledge the evidence against him. Counsel Kendrick stated Applicant was hoping that God would take care of everything.

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)



(citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both counsels and the plea judge. The record reflects the Applicant at his plea proceeding told the court that he wished to plead guilty. (Pl. tr. p. 76). The record also reflects that the Applicant told the Court that he had not been promised or threatened by anyone to get him to plead guilty. (Pl tr. p. 77). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (Pl tr. p. 81).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsels failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that his counsels committed either errors or omissions in his representation of the Applicant. This Court

also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performances.

The Court concludes the Applicant has not met his burden of proving his counsels failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[signature to follow]

CONCLUSION

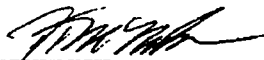
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 3 day of OCT, 2014.



R. KNOX MCMAHON
Presiding Judge
Second Judicial Circuit


_____, South Carolina

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 09-060708

DOCKET NO. 2010GS0201095The State of South CarolinaCounty of AikenARREST WARRANT NUMBER

BRB

M035091

June 17, 2010

D. Blevins
Aiken County Sheriff
Aiken CountyACTION OF GRAND JURY

True Bill

COURT OF GENERAL SESSIONSJUNE TERM 2010THE STATE

vs.

JOSEPH JAY MAGNI JR.CDR #: 0396Indictment forCRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE§ 16-03-0655(2)J. STROM THURMOND, SOLICITORForeperson of Grand Jury
Date: June 17, 2010VERDICTForeperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of Aiken County present upon their oath:

That JOSEPH JAY MAGNI JR. did in Aiken County on or about May 16, 2009, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon Minor a minor who was fourteen (14) years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Elizabeth B. Hunt
for J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 09-060708

BRB

ARREST WARRANT NUMBER

M015230

June 17, 2010

David Blevins
(David Blevins, Sheriff)
 David Blevins

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
 Date: June 17, 2010

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2010GS0201096

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

VS.

JOSEPH JAY MAGNI JR.

CDR #: 0396

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
 MINOR- SECOND DEGREE

§ 16-03-0655(2)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

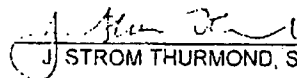
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of Aiken County present upon their oath:

That JOSEPH JAY MAGNI JR. did in Aiken County on or between May 18, 2009 and June 2, 2009, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon Minor a minor who was fourteen (14) years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (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)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of
Aiken County present upon their oath:

That JOSEPH JAY MAGNI JR. did in Aiken County on or about June 3, 2009,
commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in
that the Defendant did commit a sexual battery upon Minor a minor who was
fourteen (14) years of age at the time of the incident. All in violation of §16-3-655 of the
Code of Laws of South Carolina (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)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR- SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of Aiken County present upon their oath:

That JOSEPH JAY MAGNI JR. did in Aiken County on or about June 5, 2009, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery upon Minor _____ a minor who was fourteen (14) years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STROM THURMOND, SOLICITOR

 WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 09-060708

BRB

ARREST WARRANT NUMBER

M035092

 RECEIVED June 17 2010
David Blevins
 DEPUTY CLERK

ACTION OF GRAND JURY

Tice Bill
 Foreperson of Grand Jury
 Date: June 17, 2010

VERDICT

 Foreperson of Petit Jury
 Date:
DOCKET NO. 2010GS0201099

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

VS.

JOSEPH JAY MAGNI JR.

CDR #: 2468

Indictment for

LEWD ACT UPON CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

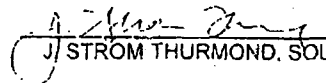
INDICTMENT FOR
LEWD ACT UPON CHILD

§ 16-15-0140

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of Aiken County present upon their oath:

That JOSEPH JAY MAGNI JR., being over the age of fourteen (14) years, did in Aiken County on or about May 16, 2009, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Minor a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (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

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 09-060708

DOCKET NO. 2010GS0201100

The State of South Carolina

County of Aiken

ARREST WARRANT NUMBER

BRB

M015231

FILED June 17, 2010

D. Stedford
Deputy Clerk
15 Howard St. (Court House)ACTION OF GRAND JURY

Tae Bill

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

vs.

JOSEPH JAY MAGNI JR.

CDR #: 2468

Indictment for

VERDICT

LEWD ACT UPON CHILD

§ 16-15-0140

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

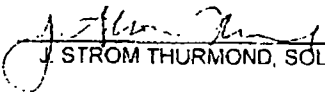
STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
LEWD ACT UPON CHILD
§ 16-15-0140

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of Aiken County present upon their oath:

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 09-060708

BFB

ARREST WARRANT NUMBERM015232 *June 17, 2010**Richard*
(Sgt. 1st Class, Aiken County)
*Shirley L. Lister*ACTION OF GRAND JURY*True Bill**W. R.*
Foreperson of Grand Jury
Date: June 17, 2010VERDICT

LEWD ACT UPON CHILD

§ 16-15-0140

Foreperson of Petit Jury
Date:DOCKET NO. 2010GS0201101

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE
VS.

JOSEPH JAY MAGNI JR.

CDR #: 2468

Indictment for

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

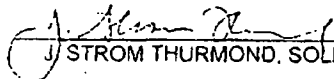
INDICTMENT FOR
LEWD ACT UPON CHILD

§ 16-15-0140

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 09-060708

DOCKET NO. 2010GS0201102

The State of South Carolina

County of Aiken

ARREST WARRANT NUMBER

BRB

M015233 *June 17, 2010**David Blevins*
(Aiken County Sheriff)
(Strom Thurmond)
*(County Clerk)*ACTION OF GRAND JURY*True Bill*COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

vs.

JOSEPH JAY MAGNI JR.

CDR #: 2468

Indictment for

LEWD ACT UPON CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR*David Blevins*
Foreperson of Grand Jury
Date: June 17, 2010VERDICTForeperson of Petit Jury
Date:

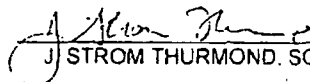
STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
LEWD ACT UPON CHILD
§ 16-15-0140

At a Court of General Sessions, convened on June 21, 2010, the Grand Jurors of Aiken County present upon their oath:

That JOSEPH JAY MAGNI JR., being over the age of fourteen (14) years, did in Aiken County on or about June 5, 2009, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Minor a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (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