

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )  
 )  
STATE OF SOUTH CAROLINA )  
 )  
vs )  
 )  
CECIL HEYWARD DEMPSEY, )  
 )  
APPLICANT . )  
\_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

1997GS-38-1138

ORDER

FILED IN 1997  
WINNIE B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC  
2019 JAN 31 A 11: 19

This matter comes before the Court by way of the Applicant's Application for Forensic DNA Testing pursuant to Section 17-28-10 et seq. of the South Carolina Code of Laws.

Defendant was convicted after a jury trial on April 21, 1998 for the offense of Criminal Sexual Conduct with a Minor in the First Degree.

The Access to Justice Post Conviction DNA Testing Act (Section 17-28-10 et seq.) authorizes the application by convicted defendants for forensic DNA testing that may affect their conviction. The Act describes the form and content of the defendant's application as well as the procedure by which the testing is to be conducted.

1 In addition, the Act requires that the applicant specifically articulate the basis for his request for "additional" testing, noting that the applicant must make a reasonable attempt to identify the physical evidence that should be tested and the specific testing sought.

2 The Act requires that the applicant explain why the identity of the applicant was or should have been a significant issue during the original proceedings.

3 The Act also requires that the applicant explain why material to be tested was not previously subjected to testing or why additional testing would provide a substantially more probative result.

1/3 *tw*

ATTEST: TRUE COPY  
*Winnie B. Clark*  
CLERK OF COURT  
ORANGEBURG, SC

4 Finally, the Act requires that the applicant explain why, if the testing were to produce exculpatory results, the results will constitute new evidence that would change the results of the applicant's conviction.

A hearing was held in this matter on November 14, 2013. Present for the hearing was the Applicant, Cecil Heyward Dempsey, arguing pro se, and Senior Assistant Solicitor Harrison Bell, representing the State of South Carolina.

5 The court heard presentations from both sides. The applicant argued that after the trial, it was discovered that he had Hepatitis C. He further argued that the victim was tested and found not to have any sexually transmitted diseases and that Hepatitis C is a sexually transmitted disease. Therefore, this was exculpatory evidence warranting post conviction DNA testing. NS

7 The State countered by arguing that there was no evidence produced at trial that would warrant DNA testing. "No samples were taken from the victim and that identity was not an issue" at trial. YES

8 After due deliberation, review of the memoranda, "case law," exhibits, and arguments of the parties, and after giving Applicant an opportunity to respond to the Court's ruling, the Court denies the applicants Petition for Forensic DNA Testing pursuant to 17-28-10, et. seq. of the South Carolina Code of Laws, 1976, as amended.

9 1/2 The Court finds that the Act cited contemplates testing "biological material" which the Court interprets as tangible physical evidence containing biological material, collected as part of the investigation of, and with clear ties to, the crime. Therefore, the Court finds that the Act does not apply to the situation that the Applicant argues, in that what he seeks to be tested was not collected as part of the investigation with clear ties to the crime. Further, collecting blood from a

10 victim, fifteen years after the crime, would be an undue violation of his privacy.

11 The Court also finds that Applicant has failed to show that testing the DNA of the victim  
and the Applicant will produce "exculpatory results". Assuming, arguendo, that the victim tested  
12 positive for Hepatitis C, the Applicant has produced no medical evidence that Hepatitis C would  
have been transferred during the rapes. He has also not produced any documentation showing  
13 that he was infected with Hepatitis C at the time of the criminal sexual conduct. In fact, he  
testified that he had no such documentation. Due to the lack of such evidence, Applicant has  
failed to carry his burden of proof under the Act that the new evidence would "probably change  
the result of the applicant's conviction or adjudication if a new trial is granted . . ." 17-28-90,  
South Carolina Code of Laws.

Therefore, for the forgoing reasons, this Court denies Applicants petition for Forensic  
DNA testing.

**IT IS SO ORDERED.**



Edgar W. Dickson  
Circuit Court Judge  
First Judicial Circuit

January 30, 2014  
Orangeburg, South Carolina

A 4

58  
Patient's Name

# CHRONIC CHILD SEXUAL ABUSE PROTOCOL

(LABORATORY SPECIMENS)

## FEMALE

## MALE

Date & Hour of Collection \_\_\_\_\_

Date & Hour of Collection 6-18-97

	Means of Collection	Final Check	
		Yes	No
Oral	GC culture	<input type="checkbox"/>	<input type="checkbox"/>
	Chlamydia culture	<input type="checkbox"/>	<input type="checkbox"/>
Vaginal	Wet prep for trichomonas vaginalis	<input type="checkbox"/>	<input type="checkbox"/>
	Chlamydia culture	<input type="checkbox"/>	<input type="checkbox"/>
	GC culture	<input type="checkbox"/>	<input type="checkbox"/>
	Gram stain for gonorrhea	<input type="checkbox"/>	<input type="checkbox"/>
	Herpes culture	<input type="checkbox"/>	<input type="checkbox"/>
Rectal	Chlamydia culture	<input type="checkbox"/>	<input type="checkbox"/>
	GC culture	<input type="checkbox"/>	<input type="checkbox"/>
Urine	Urinalysis	<input type="checkbox"/>	<input type="checkbox"/>
	Urine for C&S	<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy test tube	<input type="checkbox"/>	<input type="checkbox"/>
Blood	VDRL	<input type="checkbox"/>	<input type="checkbox"/>
	HIV	<input type="checkbox"/>	<input type="checkbox"/>

	Means of Collection	Final Check	
		Yes	No
Oral	GC culture	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chlamydia culture	<input type="checkbox"/>	<input type="checkbox"/>
Urethral	GC culture	<input type="checkbox"/>	<input type="checkbox"/>
	Chlamydia culture	<input type="checkbox"/>	<input type="checkbox"/>
	Gram stain for gonorrhea	<input type="checkbox"/>	<input type="checkbox"/>
	Wet prep for trichomonas vaginalis	<input type="checkbox"/>	<input type="checkbox"/>
	Herpes culture	<input type="checkbox"/>	<input type="checkbox"/>
Rectal	GC culture	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Chlamydia culture	<input type="checkbox"/>	<input type="checkbox"/>
Urine	Urinalysis	<input type="checkbox"/>	<input type="checkbox"/>
	Urine for C&S	<input type="checkbox"/>	<input type="checkbox"/>
Blood	VDRL	<input type="checkbox"/>	<input type="checkbox"/>
	HIV	<input type="checkbox"/>	<input type="checkbox"/>

\_\_\_\_\_, M D  
Examining Physician

S. L. Baker, M D  
Examining Physician

Was any treatment given?  Yes  No

Explain \_\_\_\_\_

Physician's Summary Pt's exam is normal. He does not rule in or out a history of sexual trauma.

This patient referred to Physician pm  
Counselor recommended

Date and Time \_\_\_\_\_  
Date and Time \_\_\_\_\_

6-18-97  
Date

S. L. Baker  
Physician's Signature

CROSS - BARBARA WALTERS BY MR. MEETZE

CROSS-EXAMINATION OF BARBARA WALTERS

BY MR. MEETZE:

1 Q. DETECTIVE WALTERS, HOW LONG HAVE YOU BEEN CERTIFIED  
2 AS A LAW ENFORCEMENT OFFICER?

3 A. ALMOST THIRTEEN YEARS.

4 Q. AND YOU DON'T ONLY INVESTIGATE THESE TYPES OF  
5 CASES, ISN'T THAT RIGHT?

6 A. THAT'S CORRECT. I'VE SPECIALIZED IN CHILD ABUSE  
7 AND SEXUAL ASSAULT, AND DOMESTIC VIOLENCE.

8 Q. OKAY. AND THAT'S A CRIME OF VIOLENCE, IS IT NOT?

9 A. YES, IT IS.

10 Q. OKAY. AND THAT'S WHAT WE'RE TALKING ABOUT HERE  
11 TODAY, ISN'T THAT RIGHT? WE'RE TALKING ABOUT A  
12 RAPE?

13 A. THAT'S CORRECT.

14 Q. OKAY. AND TRAY, WHEN HE FOUND OUT ABOUT THESE,  
15 THIS WARRANT, HE TURNED HIMSELF IN TO YOU, DIDN'T  
16 HE?

17 A. I THINK I SENT WORD TO HIM TO COME IN OR I WAS  
18 COMING TO GET HIM, AND HE CAME IN.

19 Q. HE DIDN'T GIVE YOU ANY PROBLEMS, THOUGH?

20 A. NO, NO PROBLEMS.

21 Q. ISN'T IT ALSO, ISN'T IT TRUE, DETECTIVE WALTERS,  
22 THAT YOU, THAT HE ASKED YOU IF HE COULD TAKE A LIE  
23 DETECTOR TEST OR GIVE SOME DNA, AND YOU TOLD HIM  
24  
25

CROSS - BARBARA WALTERS BY MR. MEETZE

111

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IT WAS TOO LATE FOR THAT?

SOLICITOR MURPHY: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

THE COURT: SUSTAINED.

Q. AND ISN'T IT TRUE THAT DR. BAKER CALLED YOU AFTER THE EXAMINATION WAS DONE ON MICHAEL?

A. DID SHE CALL ME?

Q. TO LET YOU KNOW OF THE FINDINGS? THAT WAS DONE PRIOR TO YOU TAKING MICHAEL'S STATEMENT, ISN'T THAT RIGHT?

A. YES, I BELIEVE THAT'S RIGHT, I'LL CHECK.

Q. AND SHE CALLED YOU AND TOLD YOU ABOUT HER EXAMINATION ---

A. YES.

Q. --- AND THEN THAT'S WHEN YOU WENT AHEAD AND SCHEDULED THE APPOINTMENT TO TAKE HIS STATEMENT?

A. THAT'S RIGHT.

Q. AND YOU KNEW AFTER YOUR CONVERSATION WITH HER THAT THERE WAS NO PHYSICAL EVIDENCE OF ANY TRAUMA, PERIOD, ISN'T THAT RIGHT?

A. THAT'S CORRECT.

MR. MEETZE: NO OTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

SOLICITOR MURPHY: NO, SIR.

LAZER BUNU FURMA B PENJAJA \* 1800 831 8388

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF ORANGEBURG ) INDICTMENT NO. : 97GS38-1138

STATE OF SOUTH CAROLINA, )  
-versus- )  
HEYWARD C. DEMPSEY, )  
Defendant. )

ORDER

RECEIVED  
JUL 1 1998  
CLERK OF COURT  
JUL 1 1998

This matter come before me upon motion of Christopher J. Murphy, Assistant Solicitor for the First Judicial Circuit, for an Order requiring the above-captioned convicted offender to be tested for Hepatitis B and all sexually transmitted diseases including Human Immunodeficiency Virus (HIV), the virus that causes Acquired Immunodeficiency Syndrome (AIDS).

It appears that the Defendant, Heyward C. Dempsey, was convicted on April 21, 1998 for a crime involving sexual battery as defined in Section 16-3-651 or sexual conduct as defined in Section 16-3-800. Further it appears that the conduct resulted in the possible exposure of the victim to blood or vaginal or seminal fluids of the convicted offender.

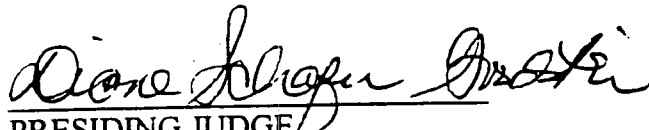
I find the tests required by the Assistant Solicitor, Christopher J. Murphy are reasonable specifically, that these procedures are required by 16-3-740 of the South Carolina Code of Law (1976), as amended (1994) and will not threaten the safety or health of the defendant. that they pose only minor intrusion upon the individual's dignitary interests in personal privacy and bodily integrity, and, therefore. will not constitute a violation of his Fourth Amendment rights.

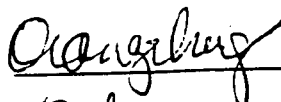
OVER

I further order that the test be administered by the local public health authority or the medical professional at the prison where the convicted offender is imprisoned. The result of tests must be reported to the South Carolina Department of Health and Environmental Control and to the Solicitor who ordered the test. The Solicitor shall notify the victim and the convicted offender of the test results.

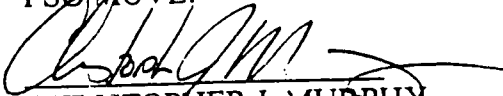
THEREFORE, IT IS SO ORDERED, under the authority of 16-3-740, South Carolina Code of Law, as amended (1988), that the defendant, Heyward C. Dempsey, submit to having said procedure being performed by the local public health authority or the medical professional at the prison where the convicted offender is imprisoned.

IT IS SO ORDERED.

  
 PRESIDING JUDGE  
 FIRST JUDICIAL CIRCUIT

, South Carolina  
 Art. 6, 1998

I SO MOVE:

  
 CHRISTOPHER J. MURPHY  
 ASSISTANT SOLICITOR  
 FIRST JUDICIAL CIRCUIT

# Questions and Answers about Hepatitis C

## ***What is Hepatitis C?***

Hepatitis C is a liver disease caused by the hepatitis C virus (HCV), which is found in the blood of persons who have this disease. HCV is spread by contact with the blood of an infected person.

## ***Is there a vaccine for the prevention of HCV infection?***

No.

## ***Who should get tested for Hepatitis C?***

- persons who ever injected illegal drugs, including those who injected once or a few times many years ago
- persons who were treated for clotting problems with a blood product made before 1987 when more advanced methods for manufacturing the products were developed
- persons who were notified that they received blood from a donor who later tested positive for hepatitis C
- persons who received a blood transfusion or solid organ transplant before July 1992 when better testing of blood donors became available
- long-term hemodialysis patients
- persons who have signs or symptoms of liver disease (e.g., abnormal liver enzyme tests)
- children born to HCV-positive women

## ***How could a person have gotten hepatitis C?***

HCV is spread primarily by direct contact with human blood. For example, you may have gotten infected with HCV if:

- you ever injected street drugs, as the needles and/or other drug "works" used to prepare or inject the drug(s) may have had someone else's blood that contained HCV on them.
- you received blood, blood products, or solid organs from a donor whose blood contained HCV.
- you were ever on long-term kidney dialysis as you may have unknowingly shared supplies/equipment that had someone else's blood on them.
- you were ever a healthcare worker and had frequent contact with blood on the job, especially accidental needlesticks.
- your mother had hepatitis C at the time she gave birth to you. During the birth her blood may have gotten into your body.
- you ever had sex with a person infected with HCV.
- you lived with someone who was infected with HCV and shared items such as razors or toothbrushes that might have had his/her blood on them.

3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Division of Health Services  
Lab Reports

CONFIDENTIAL  
CLIA #42 D0050606

LABORATORY REPORT  
BUREAU OF LABORATORIES - DHEC

CONFIDENTIAL  
(803) 935-7000

501211  
NAME: DEMPSEY, RICHARD PAT ID NONE  
BIRTH: 10/03/57 SEX: M RACE: W

PRINT DATE: 02/26/99

0010 132

SPEC NO: W021988 FOR: ?  
LOC ID: 00134171  
SPEC TYP: BLOOD  
COLL-DT: 02/24/99  
RECV-DT: 02/25/99  
RESULT

CPI NO - TEST NAME -  
86791 P14 HIV ANTIBODY  
NON-REACTIVE

DHEC Laboratory, 8231 Parklane Rd., Columbia, SC

3/2/99  
2

3

18 Jul 00  
13:58:16  
PAGE 1

R.C.I. LABORATORY CX7 5N5859  
9344 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210  
DIRECTOR: M. DAVIS 896-2000

NAME: DEMPSEY, HEYWARD	SAMPLE ID:
PATIENT ID: 134171	SAMPLE TYPE: Serum
AGE:	DOCTOR: AYERS
DATE OF BIRTH:	DRAW DATE/TIME: Jul 18 00 5:15
SEX: M	RUN DATE/TIME: Jul 18 00 13:48
LOCATION: LOI	SEC/DUP/REP: 3/2
PAT. COMMENT:	
SAMPLE COMMENT: FAST/NON-FAST NOT STATED	
INST CODES:	

CHEMISTRY	RESULTS	UNITS	REFERENCE RANGE	REMARKS
AST	51	IU/L	10 - 42	HIGH

*34*  
*J. W.*

*GA*  
8038963351

SOUTH CAROLINA

COUNTY OF

GENERAL SESSIONS

HEWARD Cecil DEMPSEY 134171

Name of applicant and Inmate number (if applicable)

OR

IN THE INTEREST OF

Juvenile

v.

State of South Carolina

STATE of south Carolina

) IN THE COURT OF (Select one)  
)  GENERAL SESSIONS  
)  FAMILY COURT  
) JUDICIAL CIRCUIT

) APPLICATION FOR  
) FORENSIC DNA TESTING

) ORIGINAL INDICTMENT NO.

97 -GS-38-1138

OR

) ORIGINAL PETITION NO.

-JU-

2007 FEB 12 PM 1:45  
10

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 continue an 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 end 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 or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

1. Identify the proceedings in which the applicant was convicted or adjudicated:

IN A "JURY TRIAL" IN Orangeburg County  
April 21 1988 C 5 C first 16-3-655

2. Give the date of the entry of the judgment and sentence: April 21 1998 I WAS  
found Guilt on The Alleged Victim's "word only" and sentenced to 30 YEARS  
and current place of incarceration: MAC DOUGALL Conn Inst <sup>TO thirty years</sup>

3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:

(a) SEE ATTACHMENT PLEASE

(b) \_\_\_\_\_

(c) \_\_\_\_\_

4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested: A SWAB of my Mouth My Blood AND A

SWAB WAS SWEATED IN MY PRISIT THE TESTING HAS BEEN "DONE" ↓  
OCT 1998 ↓

Identify the specific type of DNA testing being sought: ↓

THE D N A TESTING WAS "DONE" BUT WAS NOT DISCLOSED TO  
THE COURT SEE CODE OF LAW 17-28-100(A) OR 17-28-90(A)

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity:

I OFFERED MY D N A TO THE DETECTIVE MARCH 23 1987 SHE  
REFUSED IT OCT 7 1998 BY COURT ORDER TESTING ME FOR ANY  
AND ALL SEXUALLY TRANSMITTED DISEASES COME I AM AND  
HAVE BEEN POSITIVE FOR HEPATITIS (C) ITS NEW EVIDENCE AND ITS  
EXCULPATORY ↓

6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested DNA test would provide a substantially more probative result:

THE D N A TESTING WAS "DONE" AND THE EXCULPATORY

EVIDENCE WAS AND HAS BEEN "CONCEALED" FROM THIS COURT BECAUSE IT PROVES MY ACTUAL INNOCENCE

BECAUSE THE ALLEGED VICTIM WOULD OF BEEN EXPOSED TO MY HEP-C  
SEE ATTACHMENT FOR LINE 6 & 7 PLEASE

- 7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching:

Hepatitis C is a sexually transmitted disease! The victim that made it exculpatory would of BEEN EXPOSED TO MY BLOOD AND SEMINAL FLUIDS VICTIM STATED HE WAS sodomized 224 TIMES AND HIS TEST CAME BACK "NORMAL"

- 8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

- 9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:

- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
- (b) The Court may assess the cost of any DNA testing against me;
- (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
- (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

Howard Cecil Dempsey 134171  
Print Applicant Name

Howard Cecil Dempsey 134171  
Signature of Applicant

STATE OF SOUTH CAROLINA

)  
)  
)

VERIFICATION

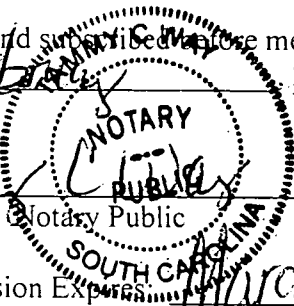
County of

I Howard Cecil Dempsey, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

Howard Cecil Dempsey  
Signature of Applicant

SWORN to and subscribed before me this 13<sup>th</sup>  
day of February, 2013

[Signature] (L.S.)  
Notary Public



My Commission Expires March 9, 2014

2013 FEB 19 PM 5:46

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

I, Hayward Cecil Dempsy, 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.

Hayward Cecil Dempsy  
Signature of Applicant

SWORN to and subscribed before me this 13<sup>th</sup>  
day of February, 2013

[Signature] (L.S.)  
Notary Public

My Commission Expires April 9, 2014

~~REBERT~~ ~~DR~~ ~~JAMES~~ ~~ZABER~~ ~~ELDTH~~ ~~.BAKER~~ ~~BY~~ ~~MURPHY~~ 151

1 DIRECT EXAMINATION OF DR. ELIZABETH L.H. BAKER

2 BY SOLICITOR MURPHY:

3 Q. DR. BAKER, WHERE ARE YOU EMPLOYED?

4 A. CHILDREN'S MEDICAL ASSESSMENT CENTER IN CHARLESTON.

5 Q. WHAT ARE YOUR DUTIES THERE?

6 A. I'M THE EXECUTIVE DIRECTOR, AND I'M ALSO A  
7 PEDIATRICIAN, AND I DO, I PROVIDE MEDICAL SERVICES  
8 FOR ABUSED CHILDREN.

9 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED AT THE  
10 ASSESSMENT CENTER?

11 A. SINCE IT OPENED IN JULY OF NINETY-SIX.

12 Q. BRIEFLY TELL THE JURY ABOUT YOUR EDUCATIONAL  
13 BACKGROUND.

14 A. I RECEIVED A BS DEGREE IN BIOLOGY FROM THE  
15 UNIVERSITY OF SOUTH CAROLINA, AND THAT WAS IN  
16 NINETEEN EIGHTY-TWO. THEN I COMPLETED MY DOCTOR  
17 OF MEDICINE IN NINETEEN EIGHTY-SIX FROM THE  
18 UNIVERSITY OF SOUTH CAROLINA SCHOOL OF MEDICINE.  
19 I WENT TO GREENVILLE MEMORIAL HOSPITAL AND DID A  
20 ROTATING, OR A GENERAL INTERNSHIP YEAR, AND THEN  
21 CAME BACK TO COLUMBIA AND FINISHED A PEDIATRIC  
22 RESIDENCY AT RICHLAND MEMORIAL HOSPITAL.

23 Q. ARE YOU BOARD CERTIFIED?

24 A. YES, I AM ~~I'M BOARD CERTIFIED IN PEDIATRICS AND~~  
25 FORENSIC MEDICINE. ↙ ↘

REBERECT DRJAMESZEBERELDTH.BAKSRLBYMBBHHYMURPHY 155

1 DO HAVE A SPECIAL INSTRUMENT, CALLED A COLPOSCOPE,  
 2 AND THIS IS, IT'S LIKE A MAGNIFYING GLASS ON A  
 3 STAND ABOUT THIS BIG, AND YOU CAN SEE THE ANAL AND  
 4 GENITAL AREA WITH SOME MAGNIFICATION, BUT YOU'RE  
 5 AT ARM'S LENGTH. IT'S GOT A LIGHT SOURCE THAT  
 6 DOESN'T GIVE OFF ANY HEAT. AND THAT'S HOOKED UP  
 7 TO A MEDICAL MONITOR THAT IS THEN CONNECTED TO A  
 8 GRAPHIC VIDEO PRINTER. SO, I DID THE PHYSICAL EXAM  
 9 FROM HEAD TO TOE, USING THE COLPOSCOPE FOR THE ANAL  
 10 AND THE GENITAL EXAM. I ALSO TOOK GRAPHIC VIDEO  
 11 PRINTS OF THE ANAL AND THE GENITAL EXAM, WHICH WAS  
 12 RECORDED OFF THE COLPOSCOPE, AND THEN I DID ANAL  
 13 AND ORAL CULTURES FOR GONORRHEA.

14 Q. DID YOUR EXAMINATION -- WHAT WERE THE RESULTS OF  
 15 YOUR EXAMINATION, DID YOU FIND ANY SIGNS OF  
 16 PHYSICAL TRAUMA?

17 A. NO, HIS EXAM WAS NORMAL.

18 Q. DR. BAKER -- SO, THERE WERE NO SIGNS OF TRAUMA?

19 A. CORRECT.

20 Q. IS IT UNUSUAL THAT YOU WOULD FIND A VICTIM OF  
 21 SEXUAL ABUSE NO SIGNS OF TRAUMA WHEN WE'RE TALKING  
 22 ABOUT ANAL INTERCOURSE?






23 A. WHEN YOU'RE TALKING ABOUT ANAL PENETRATION, IT IS  
 24 UNUSUAL TO FIND EVIDENCE OF TRAUMA, ESPECIALLY IF  
 25 IT'S BEEN MORE THAN THREE DAYS FROM THE TIME THAT

LA 58100017000A

1996 T (99) - 1988  
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- 1 PARTS IN YOUR BUTT?
- 2 A. YES, SIR.
- 3 Q. HOW MANY TIMES DID HE DO THAT?
- 4 A. A BUNCH.
- 5 Q. DO YOU REMEMBER WHEN WAS THE FIRST TIME THAT TRAY
- 6 HURT YOU? DO YOU REMEMBER THE DATE?
- 7 A. NO, SIR.
- 8 Q. DO YOU REMEMBER WHAT MONTH OR YEAR IT OCCURRED?
- 9 A. NO, SIR.
- 10 Q. DO YOU RECALL IF IT WAS BEFORE CHRISTMAS OR AFTER
- 11 CHRISTMAS OF DECEMBER OF NINETEEN NINETY-SIX?
- 12 A. IT WAS A LITTLE BIT BEFORE CHRISTMAS, AND IT WENT ↙
- 13 ON UNTIL AFTER CHRISTMAS THE NEXT YEAR. ↙
- 14 Q. AND IT CONTINUED ON THROUGHOUT THE YEAR? ↙
- 15 A. YES, SIR. ↙
- 16 Q. ↙ HOW MANY TIMES WOULD THIS OCCUR IN A WEEK?
- 17 A. ↙ FOUR TIMES, ALMOST EVERY DAY. ↙
- 18 Q. DID TRAY DEMPSEY EVER MAKE YOU PERFORM ORAL SEX ON
- 19 HIM?
- 20 A. I DON'T UNDERSTAND.
- 21 Q. DID HE MAKE YOU SUCK HIS THING?
- 22 A. YES, SIR.
- 23 Q. HOW MANY TIMES DID HE MAKE YOU DO THAT?
- 24 A. LIKE, TEN OR MORE.
- 25 Q. WHERE WOULD THIS HAPPEN?

- 1 WHAT WAS HE DOING WHEN HE ASKED YOU, "YOU KNOW YOU  
2 LIKE IT," WHAT WAS HE DOING TO YOU?
- 3 A. STICKING HIS PRIVATE UP MY BUTT.
- 4 Q. HOW WOULD THAT HAPPEN, WHAT POSITION WOULD YOU GET  
5 IN?
- 6 A. ON MY SIDE.
- 7 Q. YOU'D BE ON YOUR SIDE?
- 8 A. YES, SIR.
- 9 Q. HOW WAS TRAY LAYING?
- 10 A. ON HIS SIDE, TOO.
- 11 Q. DID, DID AT ANYTIME DID YOU EVER FEEL ANYTHING ON  
12 HIS PRIVATE PARTS, LIKE GREASE OR ANY TYPE OF  
13  LUBRICANT?
- 14 A. NO, SIR.
- 15 Q. DO YOU KNOW IF HE EVER USED, DID YOU EVER SEE HIM  
16  PUT VASELINE ON IT?
- 17 A.  NO, SIR.
- 18 Q. HOW DID THAT MAKE YOU FEEL WHEN THAT, WHEN THAT  
19 WOULD HAPPEN?
- 20 A. SAD.
- 21 Q. DID IT HURT?
- 22 A. YES, SIR.
- 23 Q. DID IT EVER MAKE YOUR, DID IT EVER CAUSE AN INJURY   
24 TO YOUR BUTT? 
- 25 A. SOMETIME.

DIRECT - M██████████ J██████████ BY SOL. MURPHY

77

1 Q. WHAT WOULD YOU DO? ↙

2 A. IT WOULD MAKE IT RAW, MY BUTT.

3 Q. DID YOU EVER TRY TO PUT ANYTHING DOWN THERE TO STOP  
4 IT FROM BEING RAW? ↙

5 A. YES, SIR.

6 Q. HOW WOULD YOU DO THAT?

7 A. PUT TOILET PAPER ON IT.

8 Q. YOU'D STUFF TOILET PAPER IN YOUR UNDERWEAR?

9 A. YES, SIR.

10 Q. M██████████, WHEN TRAY WOULD DO THIS TO YOU, OR WHEN  
11 HE WOULD HAVE YOU PERFORM ORAL SEX ON HIM, DID YOU  
12 EVER SEE ANYTHING COME OUT OF HIS PRIVATE PARTS?

13 A. YES, SIR.

14 Q. WHAT DID YOU SEE COME OUT? ↙

15 A. GREEN GOO AND STUFF. ↙

16 Q. DID THIS COME OUT ---

17 THE COURT: EXCUSE ME, COUNSELLOR,  
18 YOU KEEP REFERRING TO TRAY. WHO IS TRAY? YOU'VE NOT  
19 IDENTIFIED HIM YET.

20 SOLICITOR MURPHY: I'M SORRY, YOUR  
21 HONOR.

22 Q. DOES THE DEFENDANT, HEYWARD DEMPSEY, ALSO GO BY THE  
23 NICKNAME OF TRAY?

24 A. YES, SIR.

25 Q. WHAT, WHEN HE WOULD DO THESE SEXUAL ACTS TO YOU,



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

December 04, 2014

Heyward Cecil Dempsey, 00134171  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville SC 29472

Re: Heyward Cecil Dempsey v. State of South Carolina  
Appellate Case No. 2014-000333

Dear Counsel:

Upon reviewing your Notice of Appeal the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

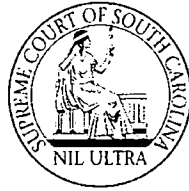
Proof of service showing that all parties have been served.

Copy of order/judgment that you are appealing.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

cc: Alan McCrory Wilson, Esquire  
Robert Michael Dudek, Esquire  
Donald J. Zelenka, Esquire



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

[www.sccourts.org](http://www.sccourts.org)

December 04, 2014

Heyward Cecil Dempsey, 00134171  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville SC 29472

Mr. Donald J. Zelenka, Esquire  
PO Box 11549  
Columbia SC 29211-1549

Re: Heyward Cecil Dempsey v. State of South Carolina  
Appellate Case No. 2014-000333

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 247 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

Heyward Cecil Dempsey, 00134171

# The Supreme Court of South Carolina

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000333

Lower Court Case No. 1997-GS-38-001138

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## ORDER

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Pursuant to Rules 204(a) and 247(b) of the South Carolina Appellate Court Rules, this case is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY



CLERK

Columbia, South Carolina  
February 26, 2014

cc: Mr. Heyward Cecil Dempsey, 00134171  
Salley W. Elliott, Esquire  
The Honorable Jenny Kitchings



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

January 29, 2015

✓  
Mr. Robert Michael Dudek, Esquire  
PO Box 11589  
Columbia SC 29211

Heyward Cecil Dempsey, 00134171  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville SC 29472

Re: Heyward Cecil Dempsey v. State of South Carolina  
Appellate Case No. 2014-000333

Dear Counsel and Mr. Dempsey:

At this time the Court is requesting a status update on the ordering of your transcript and for correcting the below mentioned deficiencies in this case. The status update is due within ten days of the date of this letter, or the Court will take further action, including dismissal of the appeal.

- Proof of service showing that all parties have been served.
- Copy of order/judgment that you are appealing.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Alan McCrory Wilson, Esquire  
Donald J. Zelenka, Esquire

# The South Carolina Court of Appeals

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000333

Orangeburg County  
Trial Court Case No. 1997GS3801138

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## ORDER

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Appellant has failed to provide a copy of the order on appeal and failed to provide a proof of timely service on the respondent, as required by Rule 247(b) of the South Carolina Appellate Court Rules (SCACR), and this Court's letter dated January 29, 2015. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
Donald J. Zelenka, Esquire  
Heyward Cecil Dempsey, 00134171

**FILED**

2/13/15

# The South Carolina Court of Appeals

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000333

Orangeburg County  
Trial Court Case No. 1997GS3801138

---

## ORDER

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The request for an extension to provide the documents required by this Court's order of April 3, 2015 is granted and extended until April 30, 2015. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 ([www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01)), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY *V. Claire Allen, Deputy*  
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
Donald J. Zelenka, Esquire  
Heyward Cecil Dempsey, 00134171

**FILED**

*April 20, 2015*

# The South Carolina Court of Appeals

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

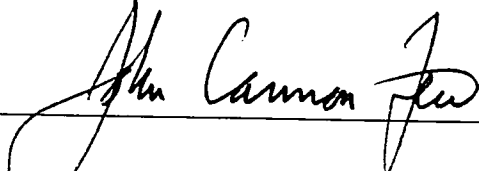
Appellate Case No. 2014-000333


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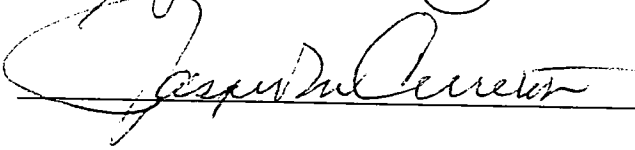
## ORDER

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This appeal was dismissed due to Appellant's failure to provide a copy of the order on appeal and failure to provide proof of timely service of the notice of appeal on Respondent. Appellant filed a several documents, which this Court construed together as a petition to rehear the dismissal of this appeal. Although Appellant provided a copy of the order on appeal, Appellant has failed to provide proof he *timely* served Respondent with the notice of appeal pursuant to Rule 203 of the South Carolina Appellate Court Rules. Accordingly, after careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. The petition for rehearing is denied.<sup>1</sup>

  
\_\_\_\_\_ C.J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ A.J.

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<sup>1</sup> Because rehearing has been denied, this Court declines to act on Appellant's "Request for Disclosure."

**FILED**  
6/4/15

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm](http://www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Robert Michael Dudek, Esquire

# The Supreme Court of South Carolina

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001396

Trial Court Case No. 1997GS3801138

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## ORDER

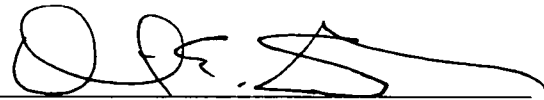
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Petitioner has filed a notice of appeal seeking review of the decision of South Carolina Court of Appeals in this case.<sup>1</sup> Since a decision of the Court of Appeals is reviewed by serving and filing a petition for a writ of certiorari under Rule 242 of the South Carolina Appellate Court Rules, this notice of appeal has been construed as a petition for a writ of certiorari.

Based on petitioner's failure to serve and file a petition for a writ of certiorari and an appendix containing the content specified by Rule 242(d) and (e), SCACR, this matter is dismissed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

June 30, 2015

cc: Alan McCrory Wilson, Esquire  
Donald J. Zelenka, Esquire  
Mr. Heyward Cecil Dempsey, 00134171  
The Honorable Jenny Abbott Kitchings  
The Honorable Winnifa Brown-Clark

<sup>1</sup> Before the Court of Appeals, the Appellate Case Number 2014-000333.