

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

RECEIVED
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SC SUPREME COURT

ROBERT S. HORTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001608

APPENDIX

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1 wanted you to see, we want you see the whole thing, not some
2 of 'em.

3 You heard the testimony of his dad that took the stand
4 and said for twenty years they've gone to the beach in the
5 same time period and in particular as relates to October since
6 Ms. Reese want to I'm not even sure October, okay. Thursday,
7 Friday, Saturday, Sunday, weekends. Renee Horton was --
8 woulda been there with her kids or as they were traveling,
9 from **Minor** testimony, they were goin' to see her
10 grandmother, nowhere around Robert Horton. Thursday, Friday,
11 Saturday, Sunday, that's the weekends, they woulda been gone
12 durin' that time period, not Monday, Tuesday, Wednesday,
13 Thursday as they would like for you to believe if it wasn't in
14 August but again, as Ms. McMillan would have told you it
15 woulda been a time period in which you relate certain events
16 with others, woulda been guaranteed that that **Minor** would've
17 gone on a event in August when the grandparents wouldn't a be
18 gone. They would go do the same thing that the family knows
19 they do every single year, that beach same time period every
20 year, not in August, consider that. Make sure you watch the
21 video you listen **Minor** sayin' felt, thinkin' about knowin'
22 there hadn't been any problems in the past, things that any
23 mother may not wanna confront, she knows her daughter has been
24 subject to some things or fantasy, consider that, they allude
25 to that, not a normal situation, not kinda help that **Minor**

CLOSING ARGUMENTS

1 coulda been receiving bein' homeschooled and they did the best
2 that she know, maybe it wasn't the type a help that **Minor**
3 ultimately needed and I submit to you it's definitely not the
4 kinda help that that she needed if she was having some kinda
5 things in which she couldn't distinguish between a dream and
6 what's real, as I close, I feel like that it really happened,
7 a final disclosure in regards to this matter, I feel. Ladies
8 and gentlemen, consider that in deliberations. You'll have
9 all the evidence back there, you've heard the things we
10 presented durin' the course of this case and I simply say
11 recognize that Robert Horton is facin' very serious charges.
12 Robert Horton has told you what happened in regards to the DNA
13 evidence that they chose to present, not other things that
14 coulda been discovered throughout the home 'cause again no one
15 else was there to see if law enforcement went through the
16 house. Was there test in the other rooms? oh, well, there's
17 nothin' on the floor here. Testin' in this room? oh, well
18 nothin' there, well for sure somethin' over here, rush to
19 judgment, rush to prosecute, rush to have a man face very life
20 altering charges here today before you, easiest charges to
21 bring against a man. Judge is gonna instruct you on the law
22 conclusion a this case, make sure you pay very close attention
23 when the judge tells you about reasonable doubt. Thank you
24 for your time, indeed thank you for your service and I would
25 request that you pay very close attention to all the evidence,

CLOSING ARGUMENTS

1 I would ask that you will come back at conclusion of your
2 deliberations with a verdict none other than not guilty.

3 THE COURT: Ms. Reese.

4 MS. REESE: Please the Court. When I was in high school,
5 my parents had close friends and, uh, the husband died about
6 40-years-old, I remembered when it happened my mom and dad
7 wanted to run right over to them to the house and see her,
8 make sure she was okay, and we walked into the house and this
9 lady sat in a highchair in the kitchen and she just did
10 nothing, she just sat there. She wasn't crying, she wasn't
11 talking, she just sat and all this chaos was happening around
12 her and I remember thinking she should be crying. She should
13 be screaming, she should be upset and she just sat there
14 quietly. A lady from our church walked up to her and said,
15 Look, you're gonna have to pick out what he's gonna wear, and
16 she looked at her and said, I will not because then it's real.
17 **Minor** said to you, I never wrote about this in my journal
18 'cause I didn't want it to be real. You see, when adults have
19 those emotions and those experiences in something like that,
20 that's okay with us, we accept that but when children have
21 those emotions we question them 'cause it doesn't make sense
22 to us but **Minor** is not able intellectually to express
23 something like that to you that she hasn't experienced.

24 My father I told you was basketball coach and as a child
25 he was not around a lot, he was recruiting, he was doin' all

CLOSING ARGUMENTS

1 kinds a things, I never got to see him much so when he would
2 come to see me or when when I would get to see him, I would,
3 uh, do things with him, he would always bring a puzzle for me
4 to put together. I loved doing those puzzles and I got to be
5 better at 'em and better at 'em and when I got older he
6 decided that he instead a bringing me a box he would bring a
7 puzzle in plastic bag and I didn't have the box so I didn't
8 know what it was but I loved doing it 'cause I got to see the
9 picture kind of form in front a me and as I got to be a
10 prosecutor what I realized is these cases are like that too.
11 Not one person has a piece to the puzzle. Children do not
12 disclose sexual abuse right away as a rule, they keep it
13 quiet, they keep the secret, especially when they will care
14 about and love the people around them and people don't do this
15 in front of witnesses so we never have just one person with
16 the piece of the puzzle so ya have to look at all the
17 witnesses and you have to say, Well what piece of this puzzle
18 are they bringing to me, so let's look first at **Minor** Now
19 wasn't **Minor** havin' fun? Who wouldn't wanna be **Minor** She
20 got abused for a year and a half, she finally discloses and
21 people start question it. Are you dreamin', are you dreamin',
22 did you dream this, what's goin' on, are you lyin', are you
23 tellin' the truth, constant questioning. She goes and she has
24 to talk a person she's never seen before and knows about
25 sexual abuse then she has to talk to me, in the end after

CLOSING ARGUMENTS

1 waiting three years for DNA testing and for her to go to
2 counseling she gets to come in here and she gets to tell you
3 people that she's never seen before about the worst thing that
4 ever happened to her. She gets to be asked questions like,
5 Are you dreaming, do you have problems with fantasy, do you
6 want a boyfriend. Why would she make this up and why would
7 she lie about it, for three years maintain the story, it is a
8 wonder any child ever reports this. You can tell right away
9 when you look at **Minor** she's much younger, much younger than
10 her biological age. She's simple, she's naive and in the way
11 she answers questions if you'll notice sh -- as long as the
12 question was clear to her, as long as there was a one part
13 question, she can answer it fine. I had problems because I
14 would ask her two part questions and I would realize she's
15 she's not tracking. When the defense got up here, they would
16 ask her two part questions and she would answer the second
17 part a the question, not the first part: You're here today
18 blah, blah, blah, blah, blah, 'cause you know why you're here
19 aren't you and she would say yes. She is very simple and I
20 mean she has some significant learning disabilities so you
21 have to understand that going into **Minor** She's
22 homeschooled, she's been homeschooled since the sixth grade,
23 the home she's living in was new, the defendant's parents own
24 the property. She talks about her homeschool schedule and she
25 talks about nap time. She's in her room, Samantha's in the

CLOSING ARGUMENTS

1 living room, Josiah's in his bedroom alone. The defendant
2 hadn't been working for a while and sometime and she can't
3 remember exactly when but she knew it was before January of
4 2008, he started having her rub his lo -- rub his legs with
5 lotion, with lotion they kept in the bedroom. What did you
6 hear from the defendant? Well, you know when I was so sick I
7 got to be pampered and you notice he said they pampered me.
8 She says he would start makin' his hand go up and I would
9 force it to stay down. There are certain things that have a
10 ring of truth to them, there certain things that children say
11 that have to be about experience, they're not things you can
12 watch, they're things that you have to experience and the idea
13 that I am she says, Well I was rubbin' his legs with lotion
14 and he kept makin' my hand go higher and I had to force my
15 hand down, that's not something you observe, that's an
16 experience, it has a ring of truth to it. She said the
17 defendant was doing yard work that morning, she said he got
18 outta the shower and he came out in a towel, that was unusual.
19 She said she too -- he took her back to his bedroom, now this
20 was the day she said she remembers because her mother had
21 taken her two siblings to the doctor, okay, and he says, Do
22 you trust me. Ring of truth. She said he could make his
23 private part do tricks, that she saw everything and then he
24 showed her how his private part would do tricks and moved it
25 back and forth. She said then he made me rub his private and

CLOSING ARGUMENTS

1 he took my clothes off and he licked me and rubbed me and he
2 told me not to tell. She didn't have to lick that time, that
3 was the first time and she remembers it's in January of 2008
4 because she remembers her mom looked at her calendar because
5 her mom was questioning her and realized that that happened in
6 January of 2008 so she's sure about that. She said then it
7 started happening more and then I would have to lick him. She
8 says it happened in three places, the first place the kitchen,
9 night sugars. I would go in, there was just rubbing in there.
10 If I could get to be first then Samantha would be behind me
11 and I could run to my room and she would follow it wouldn't
12 happen. Ring of truth. I had to hurry up and be first but
13 sometimes he would make me wait. She talks about having to go
14 back to the defendant's bedroom one night and she says Josiah
15 woke me up and I went and got mom and mom went in his room
16 with him and then defendant came and got me. I had to lick
17 that night and it was the first night that something came out
18 and it came out in my mouth and I threw it up on the bed. The
19 ring of truth. I threw it up on the bed. She says that those
20 were the two times that she remembers and remember when she
21 talks about in the video the master bathroom, the entrance to
22 the master bathroom, that's also in the bedroom, okay, because
23 the bedroom in these pictures you'll see the bedroom and the
24 master bathroom are in the same room, the entrance to the
25 master bathroom is the same. She says it happened in her

CLOSING ARGUMENTS

1 bedroom at nap time, it happened on her bed and one time it
2 happened in the closet. She said when stuff would come out in
3 her mouth she would run for mouthwash. She didn't think he
4 knew that she was running for mouthwash but then in the closet
5 he didn't make it go in her mouth, he made it go in the carpet
6 and he said, So you don't have to run for mouthwash, and
7 that's when she knew he knew that she had been doing that,
8 that's the ring of truth. It didn't go in her mouth, it went
9 in the carpet, that's what she testified to. She said
10 sometimes he would block her door with his body so if Samantha
11 tried to come in she wouldn't be able to get in the door. She
12 said there were no locks on the door. The defendant offered
13 pictures of these doors. There no locks on these doors,
14 there's a lotta testimony about that. She said there were no
15 locks on the doors, he would block his body.

16 She talked about Carowinds and she says she thinks it was
17 in August because she had just gone up to the youth group and
18 it was a youth trip to Carowinds and her grandmother and
19 grandfather were at the beach. She said that he had to take
20 her to the church and on the way they went by that house and
21 in the spare bedroom he did this again and this time stuff
22 came out but it went on his leg and ran down his leg. She
23 reported it in May of 2009, she said it went on a year and a
24 half and the reason she reported was because he told her the
25 Saturday before, I'm going to treat you like an adult, she

CLOSING ARGUMENTS

1 knew what that meant by him. She said that she wrote the note
2 the day before, she put it in her momma's binder and then she
3 gave it to mom or gave an email to her mom. You'll see this
4 (indicating) letter, this is the letter **Minor** wrote, "This is
5 hard to say but I think that Rob wants to have sex with me
6 because he said next time he wants to. I don't know how to
7 say no. He licks and rubs on my "Lucy" and I have to do it to
8 him, I don't want to do it, help me to say no, **Minor** Please
9 do not say anything to Robert." Ring of truth. Notice in
10 this letter that she never says, He's doing this to me, I
11 wanna go live with daddy, he's doing this to me, let's move
12 out, let's leave Rob. She takes responsibility, Help me say
13 no. She doesn't want anything to change, she just wants it to
14 stop. She said he would leave her pretty much alone when she
15 had her period. She said her dad stopped seein' her around
16 January of 2008, she was asked that. She didn't really know
17 exactly what porn was. You'll notice when he asked her about
18 porn she said I've seen it and he said, What's porn, and she
19 said, Well I really don't know, it's people, but they made it
20 seem like she was the one looking at it and what did she say?
21 She said, Well I was at the computer one day and it popped up
22 and I went and got mom. She was asked repeatedly, Could this
23 be a dream, could this be a dream, she said, I don't doubt
24 myself. Did you ever walk in and see the defendant standing
25 in your closet facing away? No, I didn't.

CLOSING ARGUMENTS

1 Stephanie Horton had testified and you know she's very
2 effective because she really doesn't take one side. She loves
3 her daughter, she protects her daughter but at the same time
4 she's very reasonable in her answers. She tells you the same
5 thing about the school, about her homeschool, she tells you
6 the same thing about the house. She says that he worked, she
7 may have controlled the money, but he controlled whether there
8 was money. Minor said the lotion started sometime before
9 January of 2008 and what Stephanie Horton tells you is he had
10 surgery in November 2007, November 5th of 2007. For two
11 months he had a recovery period and by January of 2008 he was
12 healed. How would Minor be able to know those dates? He
13 could have sex in January of 2008 according to Stephanie
14 Horton. How would Minor know January of 2008? She talks
15 about nap time, she talks about how the day of the disclosure
16 that the two locked arms, she said, but we went out to eat and
17 I told her act like nothin' happened, and why not, she'd been
18 doin' it for a year and a half, that's what she does. She
19 said from that (indicating) stand, That's what I do, I just
20 pretended it didn't happen. This is not a woman who's
21 coaching her, she didn't want it to be real, the mom didn't
22 want it to be real. She let him live in the house for days.
23 She questioned her, she checked her calendar, problem was it
24 all checked out. She didn't report to law enforcement. She
25 tells her mom it happened in the same place that she told you

CLOSING ARGUMENTS

1 it happened. There's a confrontation, the defendant says, I'm
2 sorry if I wronged you, I'm sick and I need help, but mom says
3 she thought he was talkin' about the porn. How would the porn
4 have wronged Minor He tells her, If you cooperate then I'm
5 not gonna be able to afford to support you. She says they
6 weren't intimate, she says his preferred sex was oral sex,
7 that's the only relationship they had. How would Minor know
8 that? How would Minor know that that's what he preferred
9 unless she'd experienced that herself. Minor was active in
10 church and then we hear about this chat room confession where
11 she's calling it a chat room and she first says no and then
12 when and not too long after that she's crying hysterically,
13 Mom, I lied, I'm so sorry I lied. That's Minor that's who
14 she is. He was in the yard, he was on the computer but he did
15 not walk with a cane in January 2008.

16 Megan Burrell gets a report from the Children's Advocacy
17 Center, it's not a report that comes to her initially and what
18 she does is she gets the report and what does she learn? she
19 learns that Minor said that something happened in her closet,
20 the child's closet, so she immediately gets the search warrant
21 and buccal swab, that's her job. You know why they didn't
22 test anywhere else? because if you go to his bedroom test for
23 DNA, guess what, his DNA's gonna be there, it's not gonna mean
24 anything so why would the police go in and spend all that
25 money to test in a bedroom where you know his DNA's gonna be

CLOSING ARGUMENTS

1 there. The place that it matters is in her closet with her
2 toys 'cause his DNA had no business bein' there and that's why
3 they tested it there. They talk to mom and they said look,
4 she asked, If I get a divorce, what's the situation, the
5 officer says, Look, either one of you is entitled to the
6 money, either one of you can take the money outta the account,
7 and accordin' to **Minor** he took the money out of the account,
8 that's what her mom told her.

9 Chris Durham took the swab, David Hogsed said he goes in
10 and he looks in the closet. Now we showed pictures, this
11 (indicating) is the closet area, this (indicating) is **Minor**
12 room and Do -- and David Hogsed testified as you walk into
13 this room and you look at this closet; you don't realize how
14 big it is until you go around the corner of the closet and
15 there's a space that opens up inside the closet. You can see
16 where he cut the carpet cutting here (indicating), you see the
17 children's toys in this closet, their toys all over this
18 closet. He says that when he comes in he immediately looks
19 and he cannot see anything with the naked eye, you can't see
20 that something's there with the naked eye so he test, looks
21 for, used a blue light, I can't remember the name for it, it
22 glows, puts the scales down and he does a presumptive test for
23 semen and there is semen and instead of just taking a swab he
24 makes an entire cutting of the carpet. Now there a lotta
25 people that we had to call to make sure that you understood

CLOSING ARGUMENTS

1 the evidence wasn't tampered with, I know that was boring but
2 that's something we have to do before we can get evidence in
3 and those people just there to say yes it was sealed when I
4 got it and I sent it on.

5 Dr. Henderson was here to testify that she did a physical
6 examination on Minor and that it was normal, that her hymen
7 was in tact but with oral sex and some limited de -- uh,
8 digital penetration that it would be normal so there wasn't
9 any expectation that there would be any injuries in this case
10 because of the report.

11 Lynn McMillan testified and Lynn is a forensic examiner
12 with the Children's Advocacy Center and you will have these
13 tapes (indicating) back here, look at whether or not there's
14 suggestibility on these tapes: Minor tell me why we're here.
15 She talks about partial disclosure and she said partial
16 disclosure's very common with children. A partial disclosure
17 where a child doesn't tell you everything at first, she tells
18 you pieces and sometimes she may test the waters to see how
19 you're gonna react. Partial disclosure is like, I will use an
20 example of a vacation, if I go on vacation and somebody asks
21 me, What did you do on vacation, I might say, Oh, we ate at
22 this best restaurant, it was wonderful. If somebody asks me
23 the next day, What did you do on vacation, and I said, We went
24 to a baseball game, nobody's gonna accuse me of lyin', they're
25 both true but your memory works in that way. You remember

CLOSING ARGUMENTS

1 pieces and parts of things. In partial disclosures children
2 say what's in their memory at that moment. Family dynamics
3 matter about children disclosing and why they hold onto things
4 and especially if they're close to people they won't tell
5 right away. **Minor** said, That's what I did, I just pretended
6 it didn't happen. Now we want her to have some affect, we
7 want her to get up there and cry, it's horrible, it's
8 terrible, we want her to be upset but here's the thing: If
9 you're in a car wreck, you're gonna react to it, you're gonna
10 be upset, you're gonna be shaken, you're gonna be traumatized
11 and you're gonna seem traumatized but **Minor** had lived that
12 train wreck every day for a year and a half, every day. When
13 you experience something over and over and over and over
14 again, you don't have much affect anymore, it makes her
15 actually more believable. Kids don't remember things in
16 chronological order naturally necessarily. Everybody who has
17 a child knows that if a child's gonna lie, they're gonna tell
18 it to you in a chronological order: Well first I did this,
19 first I did this, first I did this and if you try to break it
20 up for 'em and switch it around you can't do it. Look at the
21 way **Minor** talks on that tape, one thing leads to another,
22 it's the way we think, it's tumbling thoughts, Oh, well it
23 came out this time and I spit it out and then there was
24 another time in the closet and then there was another time,
25 all of her information's consistent but her thoughts tumble as

CLOSING ARGUMENTS

1 one thing reminds her of something else, it makes her
2 believable. He did something wrong but I didn't know it was
3 wrong. Ring a truth. She does cry about her father. You
4 know what, she's been sexually abused for eighteen months,
5 she's had to move out of her house, she's lost her friends,
6 what better time to have a dad. She says he wanted to have
7 adult relations and I knew I needed to tell because I know
8 what that wa -- that is, I've seen the Titanic. Ring of
9 truth. I know what that is 'cause I I've seen Titanic. Last
10 time the Saturday before she didn't really like it but she
11 didn't have the courage to say no. Ring a truth. Something
12 came out and I went running for mash -- mouthwash, then in the
13 closet he just put it in carpet, he said, This way you don't
14 have to run for mouthwash. She talks about spitting in the
15 sink, she talks about rinsing her mouth out, she talks about
16 it happening the Saturday before she reported. She talks
17 about how times where her period were different. She said I
18 had to lick when it was in my mouth but I didn't really do it,
19 I didn't wanna lick so I rubbed when it was in my mouth so I
20 didn't have to lick and she even shows the interviewer how she
21 does that when it's in her mouth instead of licking on it when
22 it's in her mouth, she rubs so she doesn't have to lick, that
23 is not something a child can make up. She talks about Joey
24 getting up, she talks about the whole thing that happened that
25 night. She talks about how she threw up in the bed, threw it

CLOSING ARGUMENTS

1 up in the bed. She talks about January 2008, she talks about
2 the doctor, she talks about the tile, she talks about the room
3 on that video, she talks about how he made his his penis do
4 tricks, how he licked her but she didn't have to lick him and
5 that's important too. She doesn't have the same sequence
6 event and story for each time. Children who lie do that, well
7 I had to, I had to do this and this, sometimes something comes
8 out, sometimes it doesn't, sometimes she has to lick,
9 sometimes she doesn't, sometimes it's just rubbing, it's a
10 different story for different situations, that's reasonable,
11 that makes her believable. She said he told her she might get
12 her own room but she was scared about that because she knew
13 then he'd do it more. She said he said wanted adult
14 relations. Mom said he was doin' oral sex. She didn't even
15 know at what was going on, she didn't know what to call it,
16 her mom had to tell her it was oral sex and what she heard was
17 sex and keep in mind on the tape Lynn ask her several times
18 did any thing go in your private, she says no but when she
19 changes it to hand she said yes so think about that for a
20 concrete child who's developmentally different things going in
21 your private may be different than your hand or your finger.
22 Mom thinks I'm dreaming but she believes me and then she says
23 if it's dreams, seemed real to me which is I think maybe her
24 little, in her mind if it's a dream well it seemed real, then
25 she says, I told her to give me a lie test, I told her to give

CLOSING ARGUMENTS

1 me a lie test and you can see it unfolding, mom's questioning
2 her and questioning her, questioning did this happen, did this
3 happen and she finally says give me a lie test. He says, I
4 don't wanna lose my family. Mom's open-minded, she's not
5 really taking sides, Are you lyin' about this **Minor** No, I'm
6 positive this happened she says. In the second interview,
7 and this is important 'bout the whole thing, I wanna live with
8 daddy, he says to her or she says or Lynn asks her, Have you
9 done anything about daddy, and what does she say? I would like
10 to talk to mom about it but you know what, there's so much
11 goin' on I'm not gonna mess with it, so not, I've told and now
12 I get to go live with daddy, what she says on that video is,
13 But mom's goin' through so much right now I'm not gonna mess
14 with seein' daddy so it's kinda crazy that her whole reason
15 according to the defense is to see daddy but then as soon as
16 she reports and realizes how much her mom's going through, she
17 decides to let it drop and not not push the issue. She talks
18 about the Pare -- Carowinds trip and she says she remembers it
19 because she thinks it was August because it was that time she
20 had just gone into youth, they had a Carowinds trip and her
21 grandparents were at the beach. She said it happened in the
22 spare bedroom when she moved into the youth group, stuff came
23 out and ran down his legs, she has different facts on this
24 one, and what they did is they called, the defense called the
25 defendant's father to say, uh, couldn't a been August, could

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1 not have been August because I was in the beach in October.
2 Says he was gone from the 9th to the 13th. Look at Case --
3 Minor journal, you'll have these back there. On the 7th of
4 October Minor writes about goin' to Carowinds, "I cannot wait
5 for Saturday it is Carowinds and tomorrow is the youth," then
6 you go to Saturday and she's written, "It was this day," the
7 very week he was at the beach just like she's told you all
8 along. Child can't lie like that, that's not a lie. She had
9 the date mixed up but it matches the date that they put into
10 evidence. Then she asked the question, she stops the
11 interview and she says, I've got some questions I just gotta
12 ask, am I still a virgin, could I be pregnant from this, she
13 says she couldn't sleep last night thinking of this. Ring of
14 truth. If you'll watch those interviews, this child corrects
15 this interviewer, she tells her on several occasions, That's
16 not a good enough picture of closet, I need to see another
17 picture of closet, no, that's not right, no, that's not what I
18 says. This chi -- this child corrects her: In the closet it
19 went into the carpet, not it came it went in my mouth, it went
20 into the carpet, he put it in the carpet so I didn't have to
21 go for mouthwash. All this stuff about there's supposed to be
22 oral DNA in all of this, it went into the carpet, that's what
23 she testified to. She says I'm positive it did happen, I knew
24 he would lose his family. Is that a crazy thing for her to
25 say? He's sexually abusing her, isn't it reasonable that she

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1 said, I thought about this, I knew he was gonna lose his
2 family, I just didn't know it was gonna be so soon but she
3 doesn't say, I want to change names, what she says is, I hate
4 it for my brother and sister, I hate it for the new baby, I'm
5 worried because this is my mom, this would be her third
6 divorce, we've been back and forth to Nana's so much, my
7 sister's not even named Horton and now the other two babies
8 are gonna have a different name, I'd like for them all to have
9 it, she's got the weight of the world on her shoulders, she's
10 not doing this so that the children can change names, she's
11 thinking about how much her disclosure has hurt her mother and
12 hurt her children and how this has broken up the family, she
13 is taking responsibility again, I did this and I hope it all
14 works out, I hate it for my brother, I hate it for my sister,
15 I hate that the new baby isn't gonna see his father, she
16 thinks this is her fault. She said you never see seen him do
17 anything to his private but just fix. She said she doesn't go
18 to church anymore because her -- he goes to that church and
19 she can't be there so she's lost her friends at church. She
20 says she's lost friends when she had to move up to Gray Court.
21 What has she lost? What has she gained? Catherine Leisy
22 says it's his DNA in that closet, 1 in 10 quadrillion. One in
23 ten quadrillion, there's no doubt, no doubt that's his DNA.

24 Now there's some character witnesses who were called for
25 the defense and let's face it they said his reputation in the

CLOSING ARGUMENTS

1 community is he would never do this, you know what, you could
2 never abuse a child if your reputation in the community wasn't
3 sure 'cause you wouldn't have access to the child. Anybody
4 who's ever abused a child had a reputation that they wouldn't
5 do it, otherwise they wouldn't have been given a child.

6 Defendant said he was doing yard work any time of the
7 year so when **Minor** said he was doin' it in January 2008, that
8 was right. He said he had surgery in 2007 in November but we
9 learned he had outpatient surgery. He's now a forklift
10 operator. I don't know if you noticed but he has a really
11 nice yard, he's worked really hard at this yard, so this is a
12 man who wants to tell you he's not physically able to do these
13 things to **Minor** but he's worked in that yard. She's
14 homeschooled, he's a part of that decision. She has mono
15 during the time period when he says he is restricted to the
16 home and she's restricted to the home, these two were never
17 alone but mom has two kids have to grocery shoppin', have to
18 pay bills, they have to go to the bank, who's doing that, and
19 they're not leaving a 2-year-old and a 7-year-old in that
20 house for two people who are bedridden according to him to
21 keep, those those two people were alone constantly. January
22 of 2008 he has no stitches just scabs. He says he can't abuse
23 **Minor** but he talks about how he lifted her to take her to the
24 hospital. He goes back to work 2009, I'm sorry 2008, look at
25 what **Minor** writes in her journal, "Daddy has gone back to

CLOSING ARGUMENTS

1 work, that is fun and cool, see ya tomorrow." She's happy
2 he's goin' back to work, he's not home with her. It's fun
3 that he's gone back to work. Once she's isolated she goes
4 into this homeschool setting and then she gets mono for three
5 months and then her dad stops visiting. What did the
6 defendant say yesterday? well she couldn't have a lotta germs
7 in the house. All of a sudden nobody can explain it but the
8 dad who's been around for a long long time drops outta the
9 picture. The reason it starts in January 2008 is because
10 **Minor** is finally isolated, who is she gonna tell now?

11 He admits that he starts back having oral sex with his
12 wife and he admits that oral sex is his primary interest, he
13 starts that back in February. As far as lotion on the legs,
14 he admits to that at least with his wife. Said he slipped
15 into the habit of looking at porn. He talks about pop-ups
16 which is consistent with what **Minor** said that one time she
17 saw the pornography it was a pop-up and remember we don't know
18 exactly what she saw. She tells Lynn, Lynn doesn't ask her
19 about porn, Lynn McMillan does not ask her about porn, she
20 doesn't say, Have you seen porn, she says have ya ask her,
21 Have you seen two people having sex together on pictures and
22 she says no. When the defense attorney asked her about porn,
23 she said she's seen that, we don't know what that picture was.
24 She is so concrete, that coulda been anything that popped up,
25 as long as it wasn't two people having sex, both of those are

CLOSING ARGUMENTS

1 consistent answers, but you remember she can't define porn,
2 she can't define it. He said if she did something she would
3 tell on herself and feel guilty about it. Three years and she
4 still maintains the same story. He tells you he was watching
5 pornography when he masturbated, he went to the bathroom, he
6 heard a commotion, you heard that, you've heard all about it,
7 he was wipin' it up when Minor came in, and then he has a
8 moment where the mask fell off a little bit, he looked at his
9 attorney and he said, You are 13-years-old, you don't let
10 someone take your pants off and your panties off, you say no,
11 you're not 5 or 6. That was the man Minor knew.

12 He described twice for you a time when Minor was
13 watchin' children and mom's somewhere else. He described
14 twice for you times when he was alone with Minor he even
15 confirms in January of 2008 he remembers when mom took the
16 kids to the doctor, he remembers 'cause it was the first time
17 too. He talks about letting her be at, uh, well having her in
18 the home when he's in that closet, they were the only two
19 there that time too and then he says, I was scared I could
20 lose my job or get my name in the paper for doin' this for
21 somebody, what he says actually he didn't admit to anything,
22 what he says is, I was scared I could get my name in the paper
23 or lose my job and his attorney says, Well shouldn't that
24 happen to somebody who did this, and his response was, If it
25 was proven then maybe, maybe somebody who abuses children

CLOSING ARGUMENTS

1 should get their name in the paper and lose their job, maybe,
2 that was his answer. He diagnosed **Minor** as bipolar after she
3 told. Porn in the house included rape and lesbian rape. He
4 repeatedly told his wife, Don't report this, I can't
5 financially support you, he he, Well yeah, that might happen,
6 that's true. He introduced the idea of a dream, he told his
7 wife keep goin' with this might have to sell your car.

8 Sexual battery is penetration however slight into the
9 vaginal or anal openings of a child. We didn't spend a lotta
10 time proving digital penetration because we believe it's been
11 clear from what she says, it doesn't matter 'cause a sexual
12 battery you have penetration, however slight, or oral sex,
13 either one of those, you only have to have one, and you're
14 gonna hear the terms "fellatio" and "cunnilingus". Fellatio
15 means oral sex on the male, cunnilingus means oral sex on a
16 female but to prove sexual battery we have to prove basically
17 that he performed or had her perform oral sex on him, that's
18 what we have to prove and we have to prove two incidents of
19 that and we've proved several: Carowinds trip, first time in
20 the bedroom, the time in the closet, the time in the bed the
21 night Josiah woke up, we only have to prove that two of those
22 happened.

23 Now when I was a child my brother would come in and and
24 as far as puzzles go he didn't like me doin' 'em too much or
25 maybe he was just a little mischievous and he would grab

CLOSING ARGUMENTS

1 pieces and hide them and so I would be frantic tryin' to
2 figure out what this puzzle was and I'd be missing pieces, he
3 loved to do that to me and that's kinda like working the
4 defendant in this case. This is what I call "let's make a
5 deal". There was a show that used to be on called "Let's Make
6 a Deal" where you would go some game show and when I was
7 little people would choose what was either behind Door Number
8 1, Door Number 2 or Door Number 3, this is like that, let's
9 make a deal defense. If you don't like behind what's on Door
10 Number 1 then we have other doors, let's choose Door Number 2.
11 Behind Door Number 1 we have she's dreaming defense, she's
12 dreaming. She's special needs, she's dreaming. It could be a
13 dream. She writes, Mother says could this be a dream, could
14 it, I think I need to take you to a counselor, and what does
15 she write for that counselor? I think it really happened.
16 She's asked over and over and over again, does she ever say
17 no? She says, I think it really happened, it's her way of
18 expressing, what else can she tell people and let's face it,
19 folks, she did not dream that semen in that closet, didn't
20 happen. The journal, chat room, look at these (indicating)
21 journals, they talk about daddy about three times, they talk
22 about boyfriends about three times and guess what, every need
23 she has, every need to belong is not gonna be suspended
24 because he's sexually abusing her. What did she say in this
25 journal? She talked about little girl things in this journal

CLOSING ARGUMENTS

1 and she said, I didn't write it down 'cause I didn't want it
2 to be real. She compartmentalizes. Also, if you look at
3 these journal, they're not just her private thoughts,
4 obviously the defendant had access to these journals but so
5 did her mother. In these journals there is a writing
6 narrative between her and her mom about a guinea pig.. She
7 wants a hamster or guinea pig and mom writes back, I think you
8 can have one, she says, When can we go, so people have access
9 to these journals and they were constantly goin' back and
10 forth. Mama told me we were havin' sex, she writes that in
11 one of the journals. We learn about Minor [REDACTED] in a chat
12 room, crying to her mom, Please forgive me I lied. Behind
13 Door Number 3: If I want my daddy. You've seen the letter,
14 doesn't make sense. She doesn't have her daddy today, does
15 not make sense, she just wants it to stop. I can't get out
16 around the house well enough? Folks, he had sex with his wife
17 in that house, whether it was oral sex or not he conceived two
18 children in that house so don't come here and tell me that you
19 can't get away with sexual abusing your daughter in the house.
20 I'm disabled, I couldn't have oral sex. Talks about his yard
21 work, a lotta yard work, is this the man who cannot perform
22 the acts he's accused of? Look at that yard, and apparently
23 got, he was well enough to go running through the house
24 masturbating, didn't have a cane that day. Pornography.
25 Other than the one picture Minor [REDACTED] never had the information

CLOSING ARGUMENTS

1 she would have needed to be able to make this up. You cannot
2 explain, there's no way to explain how she would know how it
3 feels to have something come out into her mouth and throw it
4 up, even if she stood and watched she would not know that.

5 Course my favorite defense is the masturbation on the
6 move defense. That's my favorite. He's in, he's masturbating
7 on the computer, he stands up and he hears something. He
8 hears something in the house and rather than zipping himself
9 up he decides to face whatever danger lurks outside with his
10 penis in his hand. He walks into his child's room among her
11 toys and he decides he has to just let it go and even the way
12 he shows that on the picture, there's no way for **Minor** to
13 have seen anything. Absurd, it is absurd and ridiculous.

14 And the last defense is like I said before respectable
15 people don't even do it. He's a Sunday schoolteacher, he
16 would not have had access to these children if that was not
17 true. **Minor** was vulnerable, she was special needs child,
18 first with the homeschooling, now her father drops outta the
19 picture, now she's isolated. He has outpatient surgery
20 November but he's recovered in January. **Minor** did not know
21 that he was medically cleared to have sex but she new that's
22 when it started in January. He likes oral sex, again
23 somethin' **Minor** couldn't have known when she reported this
24 and it progresses from lotion on the legs which he admits that
25 he likes in the journals. **Minor** doesn't tell so he decides,

JURY CHARGE

1 Okay, let's start licking and rubbing. First it's just
2 licking her then it becomes licking and rubbing both and then
3 things go into her mouth. She still doesn't tell so now it's
4 time for adult relations and that's where she drew the line.
5 Help me say no, not the words of a liar. This child does not
6 have intellectual ability to maintain this story for three
7 years over and over consistently every time, she doesn't have
8 the ability to do this but you know what, you don't have to
9 have a good memory you're telling the truth. When you're 13
10 you don't let a grown man take your panties down.

11 I told you about my father, he wasn't always at home but
12 you know what, I could trust him, I could trust him and
13 unfortunately **Minor** is gonna live an entire lifetime without
14 those moments. She had one father abandon her and another to
15 sexually abused her, that's the man she loved and trusted and
16 he had a choice at that time in her life, he could be that man
17 that loved and nurtured her or he could sexually abuse her and
18 then call her a liar and either choice was gonna affect her
19 life forever, either choice he made was gonna make a
20 difference to her and he chose and he left her with questions:
21 Am I pregnant, am I still a virgin. You can't change his
22 choice but you can do something about it 'cause she's not in
23 his hands anymore, she's in yours.

24 THE COURT: Madam forelady and ladies and gentlemen, you
25 of course have heard and seen all the evidence and now the

JURY CHARGE

1 final summations of the lawyers so I'm gonna instruct you on
2 the law that's applicable, will the -- then be asked to go
3 back and begin with jury deliberations and, uh, through that
4 process you'll examine the evidence, decide the facts, apply
5 the law and arrive at a fair and just decision in the case.
6 Uh, it is your exclusive duty to determine what the facts are,
7 you do that through your own common sense, examination and
8 evaluation of all the testimony and other evidence received
9 during the course of the trial. You twelve jurors alone will
10 decide what weight, value and effect to give to any particular
11 witness's testimony or other evidence in the case, again your
12 sole objective is to simply reach the truth in the matter and
13 by doing that, uh, you will have fulfilled your obligations as
14 jurors and that is to simply give both the State and the
15 defendant a fair and impartial trial.

16 Now in this case as you know the State through the
17 prosecutor has accused the defendant of having committed the
18 crime of criminal sexual conduct with a minor in the second
19 degree, there are two separate indictments, they're alleging
20 two separate and distinct events for which you will be called
21 upon to, uh, make two separate and distinct decisions or
22 verdicts and you'll indicate those verdicts on the back of the
23 indictments, madam forelady. As I told you, these indictments
24 set forth the charge but they're not evidence of anything,
25 they're not proof of anything, uh, they will be in the jury

JURY CHARGE

1 room because it's going to be on the back of each of these
2 indictments that you will indicate the jury's unanimous
3 decision as it relates to that particular charge. Now as I
4 say there are two separate charges, uh, for which you are to,
5 uh, make your determination as to the two separate verdicts
6 and those verdicts may be the same, they may be different,
7 that'll depend upon your determination of fact and in your
8 application of law as I will have provided it to you.

9 Now as to the allegation set forth in the indictment as
10 to each of the charges, the defendant has entered a plea of
11 not guilty, that plea of not guilty has placed upon the State
12 the burden of proving the allegations that they have set forth
13 in each of those indictments. The burden of proving each of
14 the essential elements that constitute the crime alleged in
15 the indictment and therefore, the burden is upon the State to
16 establish the defendant's guilt to the satisfaction of you
17 twelve jurors beyond a reasonable doubt before a verdict of
18 guilty could be returned as to a particular charge. Uh, the
19 burden is never upon a defendant to prove that he or she is
20 not guilty or to prove that he or she is innocent because in
21 some cases that might not be possible, the burden is always
22 upon the State because they brought the charge against the
23 defendant to establish his guilt beyond a reasonable doubt.

24 It is a vital, important and cardinal rule of law that
25 every defendant in a criminal trial and it does not matter how

JURY CHARGE

1 serious the offense might be for which that person stands
2 charged, a defendant shall always be presumed innocent of the
3 charge and that presumption of innocence remains with any
4 defendant as it does with this defendant from the time that he
5 is placed under arrest and throughout the course of the
6 criminal process and even throughout the course of the actual
7 trial in the case, that presumption of innocence will be with
8 Mr. Horton even as you go back to begin with your
9 deliberations, uh, after I instruct you on the law. Uh, that
10 presumption of innocence will be with him in that jury room
11 and it'll be with him forever unless you twelve jurors
12 determine that he's no longer entitled to the presumption of
13 innocence; in other words, after you've carefully considered
14 all of the evidence in the case and from that evidence you
15 decide the facts and after deciding those facts you've applied
16 the law that I will have provided if you twelve jurors
17 unanimously determine that his guilt has been proven as to a
18 charge beyond a reasonable doubt then he's no longer entitled
19 to that presumption of innocence but it's only if, unless and
20 until you are satisfied of his guilt beyond a reasonable doubt
21 that the presumption of innocence would no longer be
22 applicable.

23 Now while the State does have the burden of proving a
24 defendant's guilt beyond a reasonable doubt, that doesn't mean
25 that the State has to prove his guilt beyond all doubt or

JURY CHARGE

1 beyond any possible doubt but it does require the State to
2 prove his guilt to your satisfaction beyond a reasonable
3 doubt. The term "reasonable doubt" should be given its plain
4 and ordinary meaning. A reasonable doubt is the kind of doubt
5 that would cause a reasonable person to hesitate to act upon
6 the information provided and a defendant is entitled to any
7 reasonable doubt that arises from the evidence or a lack of
8 evidence in the case and if upon any factual issue essential
9 to a finding of a verdict of guilty you have some reasonable
10 doubt as to how that issue should be resolved, you must
11 resolve that doubt, uh, in favor of the defendant and
12 therefore if upon your consideration of the whole case you
13 have a reasonable doubt as to his guilt, you must resolve that
14 doubt in his favor and return a verdict of not guilty as to
15 that particular charge, and at the same time after you've
16 considered all the evidence and decided the facts and applied
17 the law if you have no reasonable doubt as to his guilt then
18 it would be your corresponding duty to find him guilty of any
19 charge that has been proven to your satisfaction beyond a
20 reasonable doubt. Same law that provides that you are the
21 facts also provides that I am the judge of the law and that
22 simply means that nobody's gonna tell you how to arrive at
23 your determination of fact in this case, you do that as I've
24 already stated through the exercise of good judgment and
25 common sense, conscientiously apply it to the testimony and

JURY CHARGE

1 evidence received durin' the course of the trial, uh, you
2 must, however, under your oath as a juror accept the law as I
3 provide it to ya as being the law that you are to apply in the
4 case' in other words, you're never to concern yourself with
5 what you thought the law was before you came to serve as a
6 juror this week or what you think the law ought to be. Under
7 your oath as a juror you must simply accept the law as I
8 provide it to ya as being the law that you are to apply in the
9 case and then you simply take that law and you apply it to
10 facts as you twelve jurors determine those facts to be, uh,
11 after your careful and common sense examination of the
12 evidence in the case.

13 Now because you are the sole judges of the facts in this
14 case you are therefore necessarily the sole judges of the
15 credibility or the believability of each witness that has
16 testified durin' the course of the trial. Uh, there are
17 several factors which you should consider in arriving at at
18 your assessment as to a witness's credibility and I'm going to
19 list those factors for you. Uh, you should consider the
20 demeanor of the witness, that is how the witness appeared to
21 you as the witness testified from the witness stand, was the
22 witness straightforward in responding to questions or was the
23 witness hesitant or evasive in responding to questions that
24 were put to the witness; in other words, did the witness
25 appear to you to be telling the truth and to have knowledge of

JURY CHARGE

1 the fact to which that witness has testified. You should also
2 consider whether or not the testimony of a witness is
3 consistent or is it inconsistent, uh, with that witness's own
4 testimony or with other witness's testimony as well as whether
5 it's consistent or consistent with other statements made by
6 that particular witness whether in court or outside of court.
7 Uh, you should also consider, uh, how the witness co -- came
8 to know the facts to which a witness has testified; in other
9 words, what was that witness's opportunity and ability to
10 perceive the existence of th -- of those facts to which
11 they've testified and then then what is that witness's ability
12 to be able to come come into court and to accurately recollect
13 to you as to what they have previously seen or heard or felt
14 for that matter. You should also consider any bias or
15 prejudice or interest that a witness might have with regard to
16 the case; in other words, do you find some reason that a
17 particular witness would come into court will testify one way
18 or another to help or hurt one side or the other and you may
19 consider any interest that a witness might have in the outcome
20 of the case if you determine that a witness does have such an
21 interest and you find that that interest would bear upon that
22 particular witness's, uh, credibility and you should also
23 consider, uh, whether or not the testimony of a witness is
24 strengthened or is it weakened by other testimony or other
25 evidence received, uh, durin' the course of the trial.

JURY CHARGE

1 Now because you are the sole judges of the facts and
2 because you are the judges of the credibility of each witness
3 in this case, uh, you are permitted to believe as much or as
4 little of what a witness has testified to as you deem is
5 appropriate and therefore you may believe everything that a
6 witness testified to, you may choose to believe none of it,
7 you may believe some portion of a witness's testimony and
8 reject some other portion of that same witness's testimony,
9 you may believe one witness as opposed to several or several
10 as opposed to one but whatever your good judgment and common
11 sense tells you is the most believable and credible testimony,
12 uh, is the testimony you should accept and you should reject
13 any testimony or other evidence that you find not to be
14 credible or believable, again, your sole objective is to
15 simply reach the truth in the matter and by doing that you
16 will have fulfilled your obligations as jurors in this case.

17 Now defendant is charged with criminal sexual conduct
18 with a minor in the second degree, that's the statutory
19 offense and that just means that it's been codified by the
20 legislature, uh, and you'll see these blue volumes behind me.
21 Uh, every year the legislature meets from January to June and
22 durin' the course of that session they pass a number of laws
23 and rules and regulations that govern our conduct in a, in a
24 variety of ways, uh, some of those statutes are criminal
25 statutes or criminal penalty statutes which just means that

JURY CHARGE

1 the legislature, uh, passes a law that prohibits us from
2 engaging in particular types of conduct and where we are found
3 to engaged in that conduct in violation of that statute then
4 it subjects that person to some form punishment or penalty but
5 please understand that you are never to be concerned with
6 punishment or penalty, you're never to be concerned with any
7 consequence of your decision, your sole obligation and duty is
8 to determine in a fair impartial manner whether or not
9 someone's guilt has been proven beyond a reasonable doubt and
10 if he has then your verdict's guilty, if he has not then your
11 verdict is not guilty and you make that determination without
12 taking into consideration any punishment, penalty or
13 consequence of your decision.

14 Uh, Section 16-3-655 of the Code of Laws is the, uh,
15 section of law that the State contends the defendant has
16 violated by committing the crime of criminal sexual conduct
17 with a minor in the second degree, uh, that, uh, code section
18 provides that a person is guilty of criminal sexual conduct
19 with a minor in the second degree if the actor engages in
20 sexual battery with the victim who is 14 years of age or less
21 but who is at least 11 years of age. Section 16-3-651 of the
22 Code of Laws provides certain definitions for various terms
23 that are contained in the criminal sexual conduct statute and
24 the term "actor", uh, is defined as a person accused of
25 criminal sexual conduct and in this case that would be Robert

JURY CHARGE

1 Stephen Horton. "Victim" is defined as a person alleged to
2 have been subjected to criminal sexual conduct and in this
3 case that would be Minor [REDACTED]. Sexual battery is defined
4 as sexual intercourse, cunnilingus, fellatio, anal intercourse
5 or any intrusion, however slight, of any part of a person's
6 body or of any object into the genital or anal openings of
7 another person's body except when accomplished for medically
8 recognized streat -- uh, treatment or diagnostic purposes.
9 Fellatio is defined as oral stimulation of the male genitalia,
10 cunnilingus is defined as the oral stimulation of the female
11 genitalia and therefore based upon the language of the statute
12 where a violation of this section is alleged as it is in this
13 case there are two essential elements which must be
14 established beyond a reasonable doubt before the defendant
15 could be found guilty of criminal sexual conduct with a minor
16 in the first -- in the second degree; first, it must be proven
17 that the defendant Robert Stephen Horton did engage in a
18 sexual battery as that term has been defined, uh, with Minor [REDACTED]
19 [REDACTED]; secondly, it must be proven that at the time of the
20 commission of any sexual battery the victim Minor [REDACTED] was
21 14 years of age or less but was at least 11 years of age. You
22 are further instructed that consent is not an issue in the
23 trial of this case or in any case of criminal sexual conduct
24 involving a minor child under the age of 16 years. Under the
25 law of this state a child under the age of 16 years is not

JURY CHARGE

1 legally capable of voluntarily consenting to a sexual battery
2 which is committed by an adult and while the law does not
3 require that the testimony of a minor child claimed to have
4 been the victim of criminal sexual conduct be corroborated,
5 the law does require that the two elements I have just
6 explained to you be proven beyond a reasonable doubt and time
7 is not an essential element of the crime of criminal sexual
8 conduct with a minor in the second degree but the State must
9 prove those two elements that I have, uh, described for ya.

10 Uh, there are two separate and distinct charges set forth
11 in two separate, uh, indictments as I've indicated and they
12 allege two separate and distinct events. You must render two
13 separate and distinct verdicts. Your verdicts may be the
14 same, they may be different, as I say that will depend upon
15 your determination of fact and then your application of the
16 law as I'll have provided it to you.

17 Uh, madam forelady, as I've indicated, uh, any decision
18 the jury reaches must be unanimous, I'll ask that you indicate
19 those, uh, decisions on the back of the indictment. You'll
20 see, uh, on the back of the indictment in the lower left hand
21 corner there's the word "verdict", it's beneath that word that
22 you will indicate the jury's decision whatever it is as to
23 each of the separate indictments. There are two potential
24 verdict forms, those potential verdict forms are guilty and
25 not guilty so whichever that decision is insert it in the

JURY CHARGE

1 space provided, sign your name as the foreperson, you're the
2 only juror that needs to sign the verdict form and also
3 there's a place for you to insert the appropriate date.

4 Now durin' the course of your deliberations you're gonna
5 have all the exhibits which have been, uh, introduced into
6 evidence in the jury room with you which will include the
7 videotapes and you'll have a computer that you can play those,
8 uh, disks on but that's all the evidence that's gonna be
9 introduced in the trial of this case and sometimes jurors go
10 back and they begin their deliberations, they they have a
11 question about the evidence or what a witness testified to or
12 sometimes they even wonder if if there's some other piece of
13 evidence that they can have, does it exist, could it be, uh,
14 brought to you for your benefit, understand that now that
15 you're goin' back to begin deliberations no additional
16 evidence may be introduced or received, even if it did exist,
17 you cannot have it, evidence is closed, uh, and you're going
18 back to begin deliberations. Uh, if you have a question about
19 a witness's testimony, uh, that can be answered by having that
20 testimony replayed in its entirety or in some part, uh, I can
21 bring you back into the courtroom for the court reporter to
22 replay a witness's testimony in in its entirety or in just
23 some portion that's all you need. I do not have transcripts
24 of the witness's testimony but I'm happy to bring you back
25 into the courtroom if you desire to have some witness's

JURY CHARGE

1 testimony replayed. I am not, however, uh, permitted to ever
2 comment upon the facts of the matter or the evidence or answer
3 questions that relate to issues of fact that only you, uh, are
4 permitted to decide. If, however, you have a question about
5 the law that is applicable, I am permitted to answer those
6 questions and I can always give you a re-instruction into what
7 I've provided you or I can give you an additional explanation
8 or clarification if you need such in your applying the law to
9 the facts, uh, as you determine them to be. I don't know if
10 we have smokers on the jury, if we do, uh, you can smoke but
11 you can't smoke in the jury room, you have to go outside to
12 accomplish that purpose so anybody needs to smoke let the
13 bailiff know, they'll take those outside to accomplish that,
14 you are, however, instructed that deliberations must stop and
15 they can only resume when all twelve jurors are present so
16 that all may, uh, participate. Your lunch, uh, I know has
17 been ordered, it perhaps is here now, if not it should be here
18 shortly, uh, you can, uh, eat lunch while you deliberate or
19 not stop -- start deliberating until you've had your lunch,
20 I'll leave it up to you, that's just within your own
21 discretion.

22 Uh, madam forelady, if at any time you need to address
23 some question or comment to me, if you'll write it on a piece
24 of paper, give it to the bailiff, he'll provide that to me and
25 I'll address those issues accordingly as the need might arise.

JURY CHARGE

1 Uh, once you and your fellow jurors have reached your
2 decisions, uh, you'll in -- you'll indicate those decisions on
3 the back of indictments as I've indicated but you and you you
4 notify the bailiff, knock on the door, tell him you've reached
5 a verdict but you hold on to the verdict form but don't give
6 those to the bailiff, I'll receive those from you after you
7 have come back into the courtroom and been seated as you are
8 now. I think that covers everything but if it doesn't one of
9 these lawyers will remind me that I neglected to tell you
10 somethin', if that's the case, I'll bring you back to, uh,
11 provide you further instruction. If I don't need to bring you
12 back for any reason, I'll simply send word by way of the
13 bailiff that you can begin with your deliberations, in that
14 event he'll bring to the jury room all the exhibits which have
15 been introduced and to you, madam forelady, he'll also bring
16 indictments which will serve as the verdict form.

17 Now Mr. McCarty is the remaining alternate juror, uh, the
18 original twelve are apparently able to to serve and to
19 deliberate so that's gonna conclude your service in the trial
20 of this case so you won't need to stay any longer. Uh, I know
21 you ordered lunch and if it's here it'll be given to you, you
22 can take it with you or you can stay and and, uh, eat lunch,
23 I'll leave it up to you, you simply can't be now, uh, with
24 the, uh, primary twelve jurors because they're going back to
25 deliberate, we can make arrangements for you to have a place

MOTIONS AND MATTERS

1 to eat lunch if you'd like.

2 Alright, I'll ask the twelve primary jurors please go to
3 your jury room but do not begin deliberations until I send you
4 word to do so. Mr. McCarty, let me just have you stay
5 right ---

6 JUROR NUMBER 116: Okay.

7 THE COURT: --- now 'cause I gotta tell you somethin'
8 else.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Uh, Mr. McCarty, this is gonna be the last
12 case that's goin' to require, uh, the jury's participation
13 this week so you're gonna be excused now for the balance of
14 the week, you won't need to call back or report back any
15 further. Uh, you'll receive a pay voucher for your service
16 this week, it'll be mailed to you at the address that appears
17 on the juror summons unless you provide the clerk with a
18 different address so if that address is not your, uh, correct
19 address, let the clerk know before ya leave so that they'll
20 have your correct address and you'll receive your pay voucher
21 at that, uh, location. Uh, as I say you can stay if you want
22 to, uh, you don't have to. If you're curious about the
23 verdict, you can stay with us if you'd like, you just have a
24 seat in the back. You don't wanna stay, you're welcome to be
25 excused, uh, but since you've ordered lunch I hope you'll wait

MOTIONS AND MATTERS

1 and if you wanna stay, ya eat it here, you don't wanna stay be
2 sure you take it with you, okay, ---

3 JUROR NUMBER 116: Okay.

4 THE COURT: --- but thank you again for your
5 participation.

6 JUROR NUMBER 116: Okay.

7 THE COURT: You'll go with the bailiff he'll, uh, let you
8 know what you need to do.

9 (Whereupon, the alternate juror left the courtroom.)

10 THE COURT: Are there any exceptions taken to the
11 instruction or request for additions to the instruction by the
12 State?

13 MS. REESE: None from the State.

14 THE COURT: By the defendant?

15 MR. BROWN: None Your Honor.

16 THE COURT: Alright, let me ask ya'll to verify all the
17 exhibits, please.

18 (Whereupon, the attorneys complied.)

19 (Whereupon, a discussion was held off the record.)

20 THE COURT: Uh, all the exhibits are accounted for?

21 MS. REESE: Yes, Your Honor.

22 THE COURT: Alright, well send 'em back, tell the jury to
23 begin deliberations, notify us when they conclude. We'll
24 we'll be at ease while the jury is deliberating.

25 (Whereupon, the jury began deliberations at 12:55 p.m.)

MOTIONS AND MATTERS

1 THE COURT: Let me see ya'll just a minute.

2 (Whereupon, a bench conference was held off the record.)

3 THE COURT: Is everybody here?

4 MS. REESE: Yes, Your Honor.

5 THE COURT: Okay, bring the jury in.

6 (The following takes place in the presence of the jury.)

7 THE COURT: Uh, madam forelady, I have your, uh, inquiry
8 that you've sent by written note. Uh, you've asked me to
9 clarify the indictments and the two counts and why there are
10 two charges and if each charge is the same as the other. Uh,
11 you have two separate indictments, each of those indictments
12 alleges a violation of the same statute which is 16-3-655.
13 Each of the indictments allege that the defendant did commit a
14 violation of that statute by engaging in a sexual battery with
15 a victim who was at least 14 years of age or less but older
16 than 11 years of age, uh, and they allege that those, uh,
17 violations of the statute occurred between January of 2008 and
18 May of 2009, I I I'm studyin' that from recollection, I don't
19 have the indictments, but the allegations in the indictment
20 are identical, they each allege a violation of 16-3-655;
21 however, the State is alleging two different events, two
22 separate violations of the statute. Now you don't have to
23 specify in your verdict a particular date for the violation
24 but in order for the defendant to be found guilty of a
25 violation of the statute on a particular indictment, the State

MOTIONS AND MATTERS

1 would have to prove beyond a reasonable doubt that the
2 defendant engaged in a sexual battery with the victim who was
3 14 years of age or less but who was at least 11 years of age.
4 In order to find the defendant guilty on both indictments, the
5 State would have to prove two separate violations, two
6 separate events, two separate, uh, commissions of a sexual
7 battery against the victim. One event will not sustain a
8 conviction on two indictments, there must be two separate and
9 distinct events because there are two separate and distinct
10 indictments or charges. Uh, a sexual battery as I previously
11 stated is defined in the statute as sexual intercourse,
12 cunnilingus, fellatio, anal intercourse or any intrusion,
13 however slight, of any part of a person's body or of any
14 object into the geni -- excuse me, the genital or anal
15 openings of another person's body except when accomplished for
16 medically recognized treatment, fellatio being defined as oral
17 stimulation of the male genitalia and cunnilingus being
18 defined as oral stimulation of the female genitalia. In order
19 for the defendant to be found guilty on either of the
20 indictments, the State would have to prove that he engaged in
21 a sexual battery as defined by the statute with the victim
22 who's named in the indictment and as I say there are two
23 separate charges, two separate events must be proven beyond a
24 reasonable doubt before the defendant could be found guilty,
25 uh, as to both indictments but the defendant could not be

MOTIONS AND MATTERS

1 found guilty of either indictment unless the State has proven
2 that he committed a sexual battery or engaged in a sexual
3 battery, uh, with the victim, uh, as alleged in those separate
4 indictments and it must be proven, uh, beyond a reasonable
5 doubt.

6 And the last inquiry that related to, uh, your question
7 about the law, again you say, Do we need to have the dates, as
8 I say you do not have to specify a particular date in your
9 decision, the verdicts are, verdict forms are guilty and not
10 guilty whichever that may be. Uh, in order to return a
11 verdict of guilty as to a particular indictment, you do not
12 have to specify a date that any sexual battery did occur but
13 you must find that it did occur between the dates that are
14 alleged in the indictment, okay.

15 JURY FOREPERSON: Yes, sir, thank you.

16 THE COURT: Uh, now I've tried to answer the questions as
17 best that I can, I may have done a good job and I may not have
18 but if if you need additional clarification, please feel free
19 to tell me that that I didn't clarify it well enough for ya,
20 just let me know, I'll be happy to try to explain it in a
21 different fashion, okay. Alright, please retire to your jury
22 room, continue with your deliberations.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Are there any exceptions taken to that

MOTIONS AND MATTERS

1 additional instruction by the State?

2 MS. REESE: None from the State.

3 THE COURT: The defendant?

4 MR. BROWN: No, Your Honor.

5 THE COURT: Alright.

6 (Notes from the jury marked Court's Exhibit No. 1 and 2
7 for identification.)

8 (Whereupon, a recess was taken.)

9 THE COURT: Alright, I need to see Ms. Reese and
10 Mr. Brown.

11 (Whereupon, a discussion was held off the record.)

12 THE COURT: We'll continue to be at ease while the jury
13 is deliberating.

14 (Note from the jury marked Court's Exhibit No. 3 for
15 identification.)

16 (Whereupon, a recess was taken.)

17 THE COURT: Be seated. Alright, uh, bring the jury in,
18 please.

19 (The following takes place in the presence of the jury.)

20 THE COURT: Uh, Madam forelady, I have your note wherein
21 you have indicated, uh, if I understand this correctly and you
22 correct me if I'm mistaken, uh, you've indicated that you and
23 your fellow jurors have reached a unanimous decision as to one
24 of the charges?

25 JURY FOREPERSON: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: You have not reached a unanimous decision as
2 to the second indictment?

3 JURY FOREPERSON: No.

4 THE COURT: Uh, do you and your fellow jurors believe
5 that any further deliberations as to that particular
6 indictment will result in a unanimous decision?

7 JURY FOREPERSON: No, sir.

8 THE COURT: Do you and your fellow jurors, uh, are you in
9 the position that you believe that as to that particular
10 indictment you are hopelessly deadlocked?

11 JURY FOREPERSON: Yes, sir.

12 THE COURT: Is there any juror that disagrees with the
13 foreperson's assessment as to the jury's position on the
14 second indictment wherein an -- a decision has not been
15 reached?

16 (No response.)

17 THE COURT: Alright, I have no one indicating
18 differently, uh, so what I'm gonna ask the jury to do if
19 you'll go back to your jury room, have you completed the, uh,
20 verdict form on the indictment to which the jury has reached a
21 decision?

22 JURY FOREPERSON: No.

23 THE COURT: Alright, if you'll please go back to your
24 jury room and if you'll complete the verdict form as to the
25 charge for which you have reached a unanimous decision and

MOTIONS AND MATTERS

1 then I'll, uh, have you brought back shortly, okay.

2 JURY FOREPERSON: Okay, thank you.

3 THE COURT: Uh, you let us know when you've completed
4 that.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Uh, are there any exceptions taken to my
8 inquiring as to the panel?

9 MS. REESE: None, Your Honor.

10 MR. BROWN: No, Your Honor.

11 (Pause.)

12 (Whereupon, a discussion was held off the record.)

13 (Note from the jury marked Court's Exhibit No. 4 for
14 identification.)

15 (The following takes place in the presence of the jury.)

16 THE COURT: Uh, madam forelady, have you and your fellow
17 jurors reached a unanimous decision as to one of the
18 indictments?

19 JURY FOREPERSON: Yes, sir.

20 THE COURT: Have you indicated that decision as requested
21 on the back?

22 JURY FOREPERSON: Yes, sir.

23 THE COURT: Have you signed your name as the foreperson
24 and dated it?

25 JURY FOREPERSON: Yes, sir.

VERDICT

1 THE COURT: If you'll, do you have both the forms
2 there?

3 JURY FOREPERSON: I do, I've only ---

4 THE COURT: Good.

5 JURY FOREPERSON: --- signed and dated one where ---

6 THE COURT: And that's the one that you you and your
7 fellow jurors ---

8 JURY FOREPERSON: The verdict, ---

9 THE COURT: --- reached a verdict on?

10 JURY FOREPERSON: --- yes, sir.

11 THE COURT: If you'll please hand both a those up by way
12 of the bailiff.

13 JURY FOREPERSON: Okay.

14 (Whereupon, the documents were handed to the Court.)

15 THE COURT: May publish the verdict.

16 THE CLERK: State of South Carolina Indictment Number
17 2009-GS-42-3879 State vs. Robert Stephen Horton indictment for
18 criminal sexual conduct with a minor second degree the verdict
19 is guilty of criminal sexual conduct with a minor second
20 degree, this is signed and dated by the foreperson. Ladies
21 and gentlemen of the jury, if this is your verdict and still
22 your verdict please raise your right hand. So say you all.

23 THE COURT: Alright, all jurors have responded in the
24 affirmative. Does the defendant wish to have the jury polled?

25 MR. BROWN: No, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Alright, ladies and gentlemen, thank you for
2 your participation as jurors in the case, I know it's been a
3 difficult decision that you're called upon to perform, uh, and
4 your duties you've carried out, uh, commendably so we do thank
5 you for that participation. Uh, you're not gonna need to
6 report back any further, uh, this week so this is the last
7 case that will require your participation. You will be paid
8 for your, uh, service by the way of a pay voucher that will be
9 mailed to you at the address that appears on your juror
10 summons. Uh, if you've had a change of address or that
11 address is not your current address, be sure you let the clerk
12 know before you leave if you have not already done so so that
13 you'll be certain to receive that pay voucher, again, I thank
14 you for your participation, have a good weekend.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Uh, the jury reached a decision on Indictment
18 2009-3879, as to Indictment 2009-3878 is there any objection
19 by either side to, uh, the granting of a mistrial?

20 MS. REESE: None from the State, Your Honor.

21 MR. BROWN: Not from the defense, Your Honor.

22 THE COURT: Okay.

23 THE BAILIFF: They've cleared the ha -- hall.

24 THE COURT: Thank you.

25 (Pause.)

MOTIONS AND MATTERS

1 THE COURT: Alright, is there anything further to
2 consider prior to the imposition of sentence?

3 MS. REESE: No, Your Honor, nothing from the State.
4 We ---

5 THE COURT: Mr. Brown?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: Ya'll can stand right there if you prefer.

8 MR. BROWN: Yes, sir. Yes, sir.

9 THE COURT: Alright, Mr. Brown, be glad to hear from ya.

10 MR. BROWN: May it please the Court, Your Honor. Courts
11 have her -- the Court has heard about the life of Mr. Robert
12 Horton, Jr., Court knows underly -- underlyin' allegations
13 involved and from the outset of this case, Your Honor, and
14 with my comin' to know Mr. Horton over a period of these last
15 three years. Course these are very serious allegations, he
16 has maintained his innocence and one of the resounding things
17 that he's shared with me consistently and I know the
18 prosecution is well aware of is the fact that he simply wanted
19 to be a provider for his family, states that he loves his
20 family, obviously he loves his wife and he loved his children,
21 both his biological as well as stepchildren. Uh, Your Honor,
22 uh, you you've heard, uh, through the course of his own
23 testimony his rendition of the, some of the underlying facts,
24 uh, that ultimately have proved to be dispositive at least as
25 to one count. Uh, we had a chance to talk over the course of

MOTIONS AND MATTERS

1 the last few days durin' the course of this trial, I've talked
2 to him as I have from the outset about the realities of a
3 potential plea even if it was a the the sort of an *Alford* plea
4 and what that entails, uh, he has stated consistently that he
5 will not be in that position and for this, Your Honor, he
6 presents himself before this court as a lifelong resident of
7 this community, person with no criminal background. As you've
8 heard he does have a debil -- debilitating, uh, surgery that
9 ultimately over the time his sciatic nerve has continued to
10 cause him problems to the point where, uh, he presents himself
11 here today, Your Honor. Uh, he has maintained employment
12 throughout this time period, uh, he has shared the the bulk of
13 his earnings on behalf of his family. He's been supported by
14 his mother and father, again family home has been primary
15 residence for Mr. Horton, while, uh, the other residence and
16 of course came into play some of the facts involved has been
17 rented out and is being under-rented to the value that his
18 father still has to help him pay on that home while he's still
19 sending monies to support his family, Your Honor. Mr. Horton
20 is a hardworking gentleman, uh, you've heard his background in
21 terms of his involvement with the church and of course his
22 presentation that he'd like to present to the Court would
23 still be one of a man who, uh, says that he has not done the
24 things in which he's accused of. Uh, I know that his sister
25 would like to speak on behalf of the collective family, his

MOTIONS AND MATTERS

1 brother had joined the family earlier portion over the week
2 but he did have to return to the State of Virginia, she would
3 like to come up at the proper time and address the Court as
4 relates to other issues involving the family, Your Honor.

5 THE COURT: Okay, be glad to hear from her.

6 THE BAILIFF: Make sure you state your name for the
7 record.

8 MS. THRIFT: My name is Susan Horton Thrift, I am
9 Robert's older, uh, sister and, uh, I would like to
10 respectfully ask that you would consider leniency. I ask this
11 for my parents, not myself, not my brother, not my other
12 brothers. My parents have opened their home when this
13 started, they opened their home to Robert and as my daddy said
14 earlier he's he's done for Robert what he would've done for
15 any of us whether it be this type of situation,
16 health-related, anything. My daddy's worked all his life for
17 his family and he's supported Robert over the last three
18 years. My daddy's 76-years-old, my mother is 74 and this is
19 obviously hard on them as you can see now and it's going to
20 get harder. I don't know if their health will survive this
21 and I just ask that you consider, if you will, leniency based
22 on that and as a tax paying citizen of Spartanburg County, I I
23 am grateful for this system and that we have this here but I
24 also just ask you to please consider it. Thank you.

25 THE COURT: Alright, thank you, ma'am.

SENTENCE

1 THE DEFENDANT: I maintain my innocence since the start.
2 I followed every instruction I was given from the time I was
3 to turn myself in to the times to be in court. I've relied on
4 my God and I will continue to do so. I deny these charges, I
5 deny they were committed. I stand by what I stated earlier: I
6 grew up want to be my daddy, that's all I wanted to be. I've
7 got a 5-year-old son who doesn't remember me, I've got a
8 2-year-old son who's never seen me, I would like to see 'em
9 one day. I would like to be with my parents in their final
10 few years, I disagree but respect the jury's decision and I
11 ask for leniency.

12 THE COURT: On do -- on Indictment 2009-3879 the
13 indictment for criminal sexual conduct with a minor in the
14 second degree wherein you have been found guilty by the jury
15 of that offense, the sentence of the Court is you, Robert
16 Stephen Horton, be confined to the South Carolina Department
17 of Corrections for a period of 18 years. Mr. Horton, you have
18 a right to appeal the verdict of the jury and the sentence of
19 the Court, you must file any notice of your intention to
20 appeal those decisions within ten days of today's date.
21 Mr. Brown will assist you with that advice.

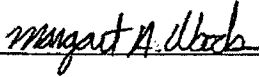
22 MR. BROWN: Thank you.
23
24
25

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on July 9, 10, 11 and 12, 2012 at the time and
6 place heretofore set forth; and that the foregoing pages
7 numbered from 9 through 554, inclusive, constitute a true and
8 accurate transcription of my stenographic notes of the said
9 proceeding.

10 I further certify that I am neither attorney nor counsel
11 for, nor related to or employed by any of the parties
12 connected to the action, nor am I financially interested in
13 the action.

14 March 12, 2014

15
16 

17 Margaret A. Woods, Court Reporter
18 in and for the State of South Carolina at Large.
19
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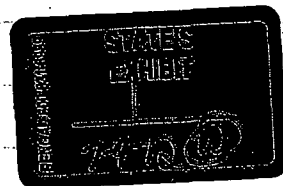
Dear Mama,

This hard to say
but I think that Rob
wants to have sex with
me because he send next
time he wants to. I don't
know how to say No.
he kisses and rubs
on my butt and I have
to do it to him. I don't
want to do it. Help me

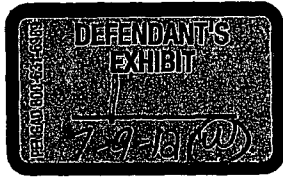
to say No.

Miley.

Please do not say
any thing to Rob.



I feel like that It really
happen.



Weekly/Monthly Planner

July 2008 - June 2009

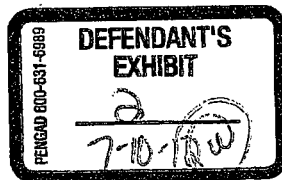
Tabbed Monthly Calendars

Weekly Calendars

Yearly Reference Calendars

Contacts Pages

Resource Pages

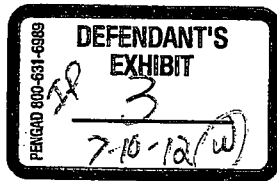


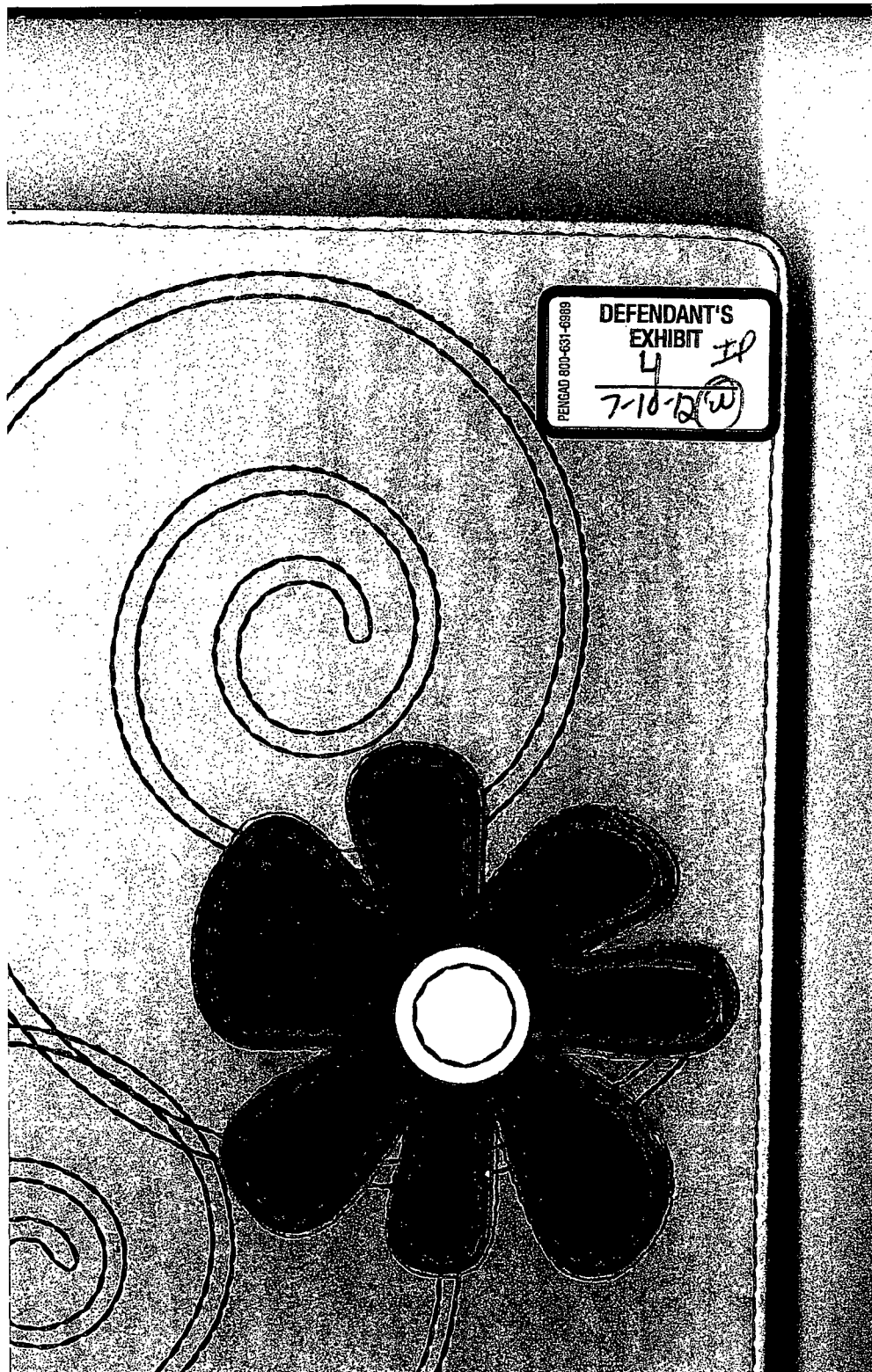
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Jul
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INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

2009050406

NCIC²

INO.	ENTD.
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INCIDENT TYPE					COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM						
Criminal Sexual Conduct with a Minor					☒ YES ☐ NO	☐ YES ☒ NO	residence		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Religious Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.						
3.					☐ YES ☐ NO	☐ YES ☐ NO									
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND, NUMBER, STREET NAME AND NUMBER)					DISPATCH DATE/TIME 24 HR. CLOCK			WEAPON TYPE							
Boiling Springs, SC					29316										
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK			LOCATION NO.						
05/03/08				05/07/09		05/07/09			19						
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE		
Horton, Stephanie Renee					#1 PA		☒ J ☐ O	W	F	33	N				
ADDRESS					CITY		STATE	ZIP CODE		LOCATION NO.					
					Boiling Springs		SC	29316		19					
VICTIM'S NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE		
Minor					#1 SC		☒ J ☐ O	W	F	13	N				
HEIGHT					WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
ADDRESS					CITY		STATE	ZIP CODE		LOCATION NO.					
					Boiling Springs		SC	29316		19					
VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO EXPLAIN -					COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO										
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE															
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG. ☐ OTHER ☐ ALONE ☐ ASSISTED					* J - This Jurisdiction S - State O - Out of State U - Unknown										
☒ SUSPECT					NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
☐ RUNAWAY					Horton, Robert Stephen		W	M	38	N					
☐ WANTED					FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
☐ WARRANT					ADDRESS		CITY		STATE	ZIP CODE		LOCATION NO.			
☐ ARREST							Boiling Springs		SC	29316		19			
☐ JAIL					SUSPECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
☐ SUMMONS					DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE		TOTAL # ARRESTED								
On May 7, 2009, I met with the complainant, who stated that her daughter (victim) disclosed to her via a letter that she had been sexually assaulted by the suspect, who is her stepfather. She states that her daughter disclosed that this has been going on for over a year. The victim will be referred to the Children's Advocacy Center. Further investigation needed.															
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY															
JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY															
TYPE (GROUP)														TOTAL VALUE	
STOLEN															
DAMAGED															
BURNED															
COVERED															
SIZED															
SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18							
☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER							
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY															
REPORTING OFFICER(S)				DATE		BADGE #		APPROVING OFFICER				DATE		BADGE #	
Megan Burrell				05/07/09		732									
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO															

562

10/26/11 Page 4
Duplicate Discovery

CASE NUMBER

NCIC

AGENCY I.D.
SC0420000

SUPPLEMENTARY REPORT

2009050406

INQ. ENTD.

☐ ORIGINAL
REPORT
MODIFIES
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

The victim was seen at the Children's Advocacy Center on May 8, 2009 and May 14, 2009 for forensic evaluation. The victim gave a clear disclosure of sexual abuse by the suspect (her stepfather). The victim disclosed that the suspect digitally penetrated her genital area on multiple occasions. She also disclosed mutual oral sex and rubbing of the genitals. The victim disclosed that one incident occurred in her bedroom closet and that when the suspect ejaculated, the semen dripped onto the carpet. The suspect wiped up the semen with a sock. The victim also disclosed that one of the incident of mutual oral sex and rubbing of the genitals occurred at the suspect's parents residence, which is located at [REDACTED] Boiling Springs, SC. The most recent incident occurred at her residence on May 2, 2009 and the victim disclosed penile oral penetration and disclosed that he suggested "adult relations". The victim then disclosed to her mother (the complainant) about the sexual abuse through a written note.

ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY											
	REPORTING OFFICER(S)			DATE		BADGE #		APPROVING OFFICER			DATE	
	Megan Burrell			06/10/09		732						
								FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			OFFICER	

File: 145243				Fund amount: 36		REL: 145243:00							
Tran	Posting date	Fin. date	Fin. desc.	Transaction	Reference	Amount	Inv. Amt	Share	Comment	Unit	Unit Price	Unit Cost	Unit Value
12	10/12/99	10/12/99		City Marketing & Research Fee	Re: 445	57.31			A. Harkins, Robert	445	Audited		
				State Tax		10.42							
				City Tax		40.49							
11	10/12/99	10/12/99		Preferred Rate	Re: 445	553.79			A. Harkins, Robert	445	Audited		
				State Tax		52.86							
				City Tax		42.31							
10	10/11/99	10/11/99		City Marketing & Research Fee	Re: 445	57.31			A. Harkins, Robert	445	Audited		
				State Tax		10.42							
				City Tax		40.49							
9	10/11/99	10/11/99		Preferred Rate	Re: 445	553.79			A. Harkins, Robert	445	Audited		
				State Tax		52.86							
				City Tax		42.31							
8	10/10/99	10/10/99		City Marketing & Research Fee	Re: 445	57.31			A. Harkins, Robert	445	Audited		
				State Tax		10.42							
				City Tax		40.49							
7	10/10/99	10/10/99		Preferred Rate	Re: 445	553.79			A. Harkins, Robert	445	Audited		
				State Tax		52.86							
				City Tax		42.31							
6	10/09/99	10/09/99		City Marketing & Research Fee	Re: 445	57.31			A. Harkins, Robert	445	Audited		
				State Tax		10.42							
				City Tax		40.49							
5	10/09/99	10/09/99		Preferred Rate	Re: 445	553.79			A. Harkins, Robert	445	Audited		
				State Tax		52.86							
				City Tax		42.31							
4	10/09/99	10/09/99		City Marketing & Research Fee	Re: 445	57.31			A. Harkins, Robert	445	Audited		
				State Tax		10.42							
				City Tax		40.49							
General ☒ Local ☐ Foreign NO summary ☐ Local ☐ Foreign View table: A B C D Close													

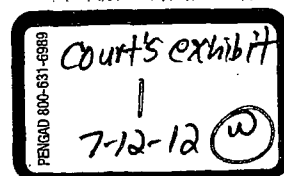


Please clarify the 2 counts he is charged with. Why are there 2 charges? Is each charge the same?

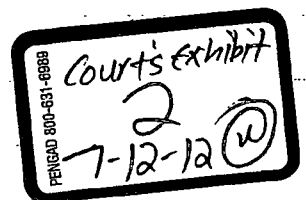
Are we suppose to id 2 occasions?

Is it a question of what she did to him or him to her for each account?

Pertaining to the law, do we need to have the dates or just that the ~~sex~~ sexual conduct took ~~place~~ place over a general period of time?



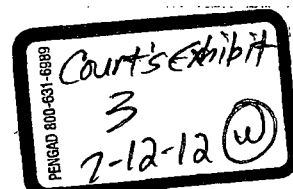
We can not reach an agreement on the second count. Everyone agrees on one. Can we rule on only one? Four people are disagree opposing eight. They want to list the 2nd as a hung jury. Can we leave it (the 2nd) blank.



- ① Can the mother be held accountable since he was allowed to stay after she became aware of the sexual problems?
- ② When ~~the~~ did he start planting flowers after surgery?
- ③ What is the date of the closet incident?

- ① This is not a matter for the jury's consideration.
- ② Question of fact that I am not permitted to comment upon. If you believe a witness has provided the answer the testimony may be replayed.
- ③ Same as above #2.

File



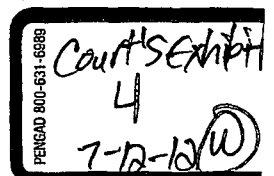
Opelisa Sharpe
July 12, 2012

Q We do not ^{all} agree on the second
 Count. Do we need to reach ~~a~~ a
~~unanimous~~ ^{decision} on either guilty or not
 guilty?

Before a decision may be written on
 either indictment the decision must be
 unanimous as to that particular indictment.

Q

Melissa Sharpe
 July 12, 2012



568

Form 4. NOTICE OF APPEAL FROM A SENTENCE
IMPOSED BY THE COURT OF GENERAL SESSIONS
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF GENERAL SESSIONS
DERHAM COLE, CIRCUIT COURT JUDGE

CASE NO. 2009 - GS - 42 - 03879

ROBERT S. HORTON

APPELLANT

V.

THE STATE

RESPONDENT

NOTICE OF APPEAL

ROBERT S. HORTON APPEALS HIS CONVICTION AND SENTENCE IN
THIS CASE. THE SENTENCE WAS IMPOSED BY THE HONORABLE
DERHAM COLE ON JULY 12, 2012. APPELLANT RECEIVED WRITTEN
NOTICE OF THIS ORDER ON JULY 12, 2012.

APRIL 15, 2013

S/ ROBERT S. HORTON sdc#351540

PCI, Q4A-112

430 OAKLAWN ROAD

DELEER, SC 29669

APPELLANT

OTHER COUNSEL OF RECORD:

ALAN M. WILSON

STATE ATTORNEY GENERAL

P.O. BOX 11549

COLUMBIA SC 29211

ATTORNEY FOR RESPONDENT

RECEIVED

APR 29 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

COURT OF GENERAL SESSIONS

DERHAM COLE, CIRCUIT COURT JUDGE

CASE NO. 2009 - GS - 42 - 03879

ROBERT S. HORTON

APPELLANT

v.

THE STATE

RESPONDENT

RECEIVED

PROOF OF SERVICE

APR 29 2013

SC Court of Appeals

I CERTIFY THAT I HAVE SERVED THE NOTICE OF APPEAL
ON COURT OF APPEALS BY DEPOSITING A COPY OF IT IN THE
UNITED STATES MAIL, POSTAGE PREPAID, ON APRIL 15, 2013,
ADDRESSED TO:

SC COURT OF APPEALS

P.O. BOX 11629

COLUMBIA, SC 29211

SPARTANBURG COUNTY

CLERK OF COURT

P.O. BOX 3483

SPARTANBURG, SC 29304

I, ROBERT S. HORTON, SCDC # 351540, CERTIFY UNDER THE
PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
CORRECT.

ROBERT S. HORTON, APRIL 15, 2013

X *[Signature]* SCDC # 351540

Dr. Brian Russell Horton

129 Beech St.
Pikeville, Kentucky 41501
606-899-1226 (cell)
606-437-7262 (office)

To Whom It May Concern:

My name is Dr. Brian R. Horton. I am submitting the enclosed paperwork on behalf of my brother, Robert Stephen Horton, SCDC #351540. Should you need to correspond with me concerning this submission, I may be reached the above address and phone numbers.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dr. B. Horton', with a stylized, cursive script.

Dr. Brian R. Horton

RECEIVED
APR 29 2013
SC Court of Appeals

THE HONORABLE JEANETTE BARBER

CLERK, SOUTH CAROLINA COURT OF APPEALS

POST OFFICE BOX 11629

COLUMBIA, SC 29211

RECEIVED

APR 29 2013

SC Court of Appeals

Dear Miss Barber,

I have enclosed the following paperwork required to appeal the sentence rendered to me on July 12, 2012, for Case Number 2009-GS-42-03879, by the Honorable Derham Cole in Spartanburg County General Sessions Court.

My attorney in this matter, Michael Brown of Spartanburg, was instructed and agreed to file my notice of appeal within the required ten (10) business day window. He did not, and in fact, demanded more money to do so, after the ten business day window had closed.

I was unable to seek help and file my own appeal while in R + E status at Kirkland Correctional Institution. I have only recently had access to a law library, having been transferred to Perry Correctional Institution on February 26, 2013.

In light of these circumstances, I plead for consideration in granting me a Direct Appeal, which is provided to me by law, and was not filed thru no fault of my own. I maintain my innocence, and believe a proper examination of my case,

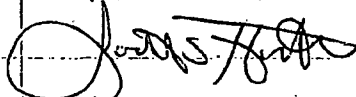
by counsel far wiser and competent than I had
available through the course of my trial, will
bear this out.

I understand and respect the conditions that
are placed upon these rights that are granted
to me; However, I ask that you consider the
circumstances in which this appeal comes before
you, and grant me a Direct Appeal of my
case.

I thank you very much for your time
and consideration.

Best Regards,

Robert S. Horton



SCDC # 351540

PCI, Q4A-112

430 Oaklawn Road

Peizer, SC 29669

Case No. 2009-GS-42-03879

CLERK FILING THE NOTICE OF APPEAL

APRIL 15, 2012

THE HONORABLE JEANNIE BARBER
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SC 29211

RE: ROBERT S. HORTON, APPELLANT, V. THE STATE, RESPONDENT
CASE NO. 2009 - GS - 42 - 02879

DEAR MISS BARBER,

ENCLOSED FOR FILING IS A NOTICE OF APPEAL IN THE
ABOVE CASE. ALSO ENCLOSED ARE THE FOLLOWING:

(1) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON
THE RESPONDENT(S).

APRIL 15, 2012

S/ ROBERT S. HORTON, SEDCH 351540

PCI, Q4A-112

430 OAKLAWN ROAD

PELZER, SC 29669

APPELLANT

OTHER COUNSEL OF RECORD:

ALAN M. WILSON

STATE ATTORNEY GENERAL

P.O. BOX 11549

COLUMBIA, SC 29211

ATTORNEY FOR RESPONDENT

RECEIVED

APR 29 2013

SC Court of Appeals

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert S. Horton, Appellant.

Appellate Case No. 2013-000904

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2009GS4203879

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN 20 PM 12: 23
M. HOPE BLACKLEY

ORDER

The notice of appeal in the above matter was not timely served as required by Rule 203, SCACR. The above captioned appeal is hereby dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Spartanburg County after fifteen (15) days, exclusive of the date of filing this order.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Robert S. Horton

Robert Michael Dudek

Michael Demorris Brown

Salley W. Elliott

FILED

5/6/13 AT



RECEIVED

JUN - 6 2013

ATTORNEY GENERALS

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) 734-1100
FAX: (803) 734-1839
www.sccourt.org

FILED
CLERK OF COURT
STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY
2013 JUN 20 PM 12:20
M. HOPE BLACKLEY

May 24, 2013

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Robert S. Horton
Lower Court Case No. 2009GS4203879
Appellate Case No. 2013-000904

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert S. Horton
Robert Michael Dudek
Michael Demorris Brown
✓ Salley W. Elliott

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

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

Robert S. Hutton, 351540
v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-42-3065

APPLICATION FOR

POST-CONVICTION RELIEF

2013 JUL 17 AM 9:15
M. HOPE BLACKLEYINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible 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 Perry Correctional Institution 430 Oaklawn rd Pelzer, SC 29669
2. Name and location of Court which imposed sentence General Sessions, Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-3878-3879
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 12, 2012, 18 years
 - (b) _____

ML

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- 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) Trial Counsel failed to timely file a notice of Appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
2013 JUL 17 AM 9:15
M. HOPE BLACKLEY

- (a) Ineffective Assistance of Counsel
 (b) See attached MEMORANDUM
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Trial Counsel failed to timely file a notice to Appeal
 (b) leave for motion to amend
 (c) See attached MEMORANDUM
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? _____
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. Notice of Appeal from judgement of Conviction
 ii. Notice of Appeal from judgement of Conviction
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Court of General Sessions, Spartanburg County
 ii. South Carolina Court of Appeals
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

FILED
 2013 JUL 17 AM 9:15
 M. HOPE BLACKLEY

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:

FILED
2013 JUL 17 AM 9:15
M. HOPE BLACKLEY

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? _____
- (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. Michael D. Brown, 145 N. Church st suite 210 Spartanburg SC 29306
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Sentence and Conviction vacated
20. Are you now under sentence from any other court that you have not challenged?
NO

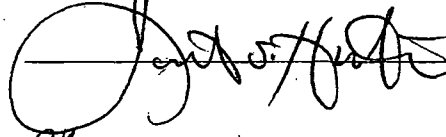
FILED
2013 JUL 17 AM 9:15
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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 9th
day of July, 2013.

Nancy C. Merchant (L.S.)
Notary Public

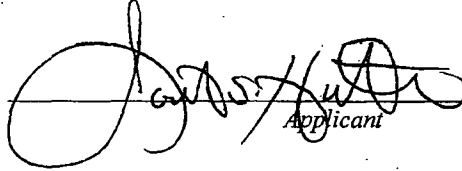
My Commission Expires: 1-23-2023

FILED
CLERK OF COURT
2013 JUL 17 AM 9:15
M. HOPE BLACKLEY

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

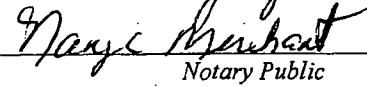
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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

9th day of July, 2013.


Notary Public

My Commission Expires: 1-23-2023

FILED
2013 JUL 17 AM 9:15
M. HOPE BLACKLEY

State of South Carolina) Court of Common Plea
 County of Spartanburg)

2013-CP-42-3065

Robert S. Horton
 Applicant

V.

SUMMONS

State of South Carolina
 Respondant

M. HOPE BLACKLEY

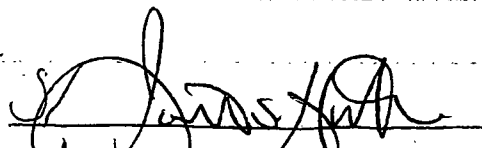
2013 JUL 17 AM 9:14

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within (90) ninety days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgement by default will be rendered against you for the relief demanded in the complaint.

Spartanburg, South Carolina

Dated: July 11, 2013


 Applicant

Address: 430 Oaklawn rd, Pelzer, South Carolina 29669

Applicant contends that he was denied the effective assistance of trial counsel in violation of the South Carolina Constitution Article one sections three and fourteen and the United States Constitution's sixth and fourteenth Amendments.

Counsel rendered ineffective in the following manners,

- 2013 JUL 17 AM 9:15
M. HOPE BLACKLEY
- A) failure to call wife Stephanie Horton; Department of Social Services caseworker Porsha Moore, and Department of Social Service caseworker Kathryn A. Foster all witnesses in favor of the defense
 - B) failure to present evidence relevant to the defense. To Wit: Child protective Services Report dated 5/08/2009 by Kathryn A. Foster.
 - C) failure to present expert testimony of applicants physical disabilities to put the states case through the adversarial testing process.
 - D) failure to exploit the great inconsistencies in the first and second taping of the alleged victim video taped sessions.

- E) failure to impeach the credibility of the alleged victim with a 1999 CPS report in Greenville Co that Kathryn A. Foster found to be relevant to present report.
- F) failure to object to alleged victim arousing the passion and prejudice of the jury by bringing blue security pillow on stand with her.
- G) failed to timely file a notice of appeal

Applicant contends that the foregoing issues as set forth in this MEMORANDUM is sufficient to constitute a claim of Ineffective Assistance of trial Counsel and as such deny the applicant his guaranteed right to a fair trial by the South Carolina Constitution Article one sections three and fourteen and the Sixth and Fourteenth Amendments of the United States Constitution. Applicant moves this honorable court to set aside conviction and sentence and remand for a new trial.

Date 7-11-2013

[Signature]

2013 JUL 17 AM 9:15
M. HOPE BLACKLEY

State of South Carolina }
 County of Spartanburg }

STATE OF SOUTH CAROLINA
 Court of Common Pleas

Robert S. Horton
 Applicant

V.

State of South Carolina
 Respondent

SWORN AFFIDAVIT
 OF
 ROBERT S. HORTON

I, Robert S. Horton, pursuant to U.S.C.A. 28 § 1746
 certify and verify under penalty of perjury that
 the following facts and circumstances are true
 and correct.

I, Robert S. Horton, the Applicant in the above
 ENTITLED CAPTIONED CASE, do solemnly swear that
 on July 9-12, 2012, Applicant was represented by
 one Michael Demorris Brown in a case that went
 to trial. Applicant was charged with one count
 of Second Degree Sexual Conduct with a
 Aged 11-14, and one count of Second Degree
 Sexual Conduct with a minor, aged 11-14, to include
 digital penetration.

Issue (1): Direct Appeal

A) Counsel failed to timely file a Notice of Appeal

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 MICHAEL B. BLACKLEY

of Conviction and Sentence. Counsel promised Applicant that in the event of a Conviction, Counsel would file Applicants Notice to Appeal the Following day, July 13, 2012.

- B) Applicant wrote letters to Counsel, and Applicants family made repeated Attempts to reach Counsel, leaving messages via phone, text, and email, to ensure that applicants Notice of Appeal would be filed with the required (10) business day window following trial. Counsel failed to respond to any of the attempts to contact him during the Statute of limitations.

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- c) Counsel responded to Applicants family well after the statute of limitations had expired. Counsel stated that the Contract between Counsel and applicant did not call for Counsel to file any appeal. Even though Counsel was aware that the statute of limitations had expired for filing a notice of Appeal, Counsel stated for an additional retainer that Counsel would file the appeal.

- D) Counsel did not require a contract between

Counsel and Applicant. Counsel issued a receipt for the Retainer Fee, and nothing more. Applicant's family has requested Counsel to produce a copy of said Contract to disprove Counsel's claim. Counsel has failed to produce any contract.

- E) Counsel promised Applicant that, in the event of a conviction, Counsel would visit Applicant at the Spartanburg County Detention Center the following day, prior to Applicant being remanded to SCDC, for Applicant to sign over Power of Attorney papers to Applicant's family. Counsel failed to do so, resulting in several months delay in this action, causing harm to Applicant's interests and stress on Applicant's family.

Issue 2) Case Files

ⓐ

- A) Applicant was remanded to Kirkland Correctional Institution for seven and a half months, and denied access to the law library or assistance of any kind. Upon arriving at Perry Correctional Institution on February 26, 2013, at the advice of Law Clerks, Applicant sent

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both regular parcel AND Certified Mail to Counsel requesting all of Applicants case files. This request was made in March, 2013, asking for files to be available for pick up by Applicants Family (7) days after receipt of mail. After Counsel failed to return numerous messages left for him, Counsel finally released Applicants case files in May 2013, two months after request was made.

Issue 3) Meetings with Counsel

- A) Counsel Regularly and routinely missed scheduled appointments with Applicant, without phone call or text to notify
- B) Counsel missed no less than three appointments with Applicant between July 2009 and July 2012, included several between South Carolina Department of Social Services and Applicant, which were documented by the DSS Caseworker.
- C) Counsel missed (B) Appointments with Applicant in the months leading up to the July 2012 trial.

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D) Counsel informed Applicant that the (4) evenings prior to trial start were to be reserved for trial prep for Applicant. In Actuality, Counsel only met with Applicant for (3) hours on the evening before trial began, to view the video taped statements of the alleged victim. The video lasted (2) hours, with little discussion between Counsel and Applicant.

Issue 4) Discovery by State

A) Counsel informed Applicant, via text message, on July 5, 2012 that Counsel had finally received the Childrens Advocacy Centers Video taped interviews with the Alleged Victim, and scheduled a viewing for Sunday evening, July 8, 2012; this was (1) day before the start of trial.

B) Upon receiving Applicants Case Files, Applicant discovered therein a receipt for the Video taped statements, dated August 25, 2009. Counsel was in possession of said video for nearly (3) years.

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Issue 5) Defense Evidence

- A) Applicant was made aware of similar accusations made by the alleged victim and contained in a 1999 Department of Social Services Report. Applicant informed Counsel of said Report in January 2010.
- B) Counsel made no attempt to locate or prove existence of said Report until Friday, July 6, 2012. Counsel sent a text message to Applicant inquiring which county said Report supposedly originated in.
- C) Counsel informed Applicant at trial start that he had been unable to verify that any such report existed. Upon conferring with Judge Derham Cole at the outset of trial, Judge Cole informed Counsel that without proof of report, Counsel and defense could not mention it in trial.
- D) Upon receiving Applicants files, Applicant discovered notes made in a Child Protective Services Report by Kathryn A. Foster.

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Caseworker Foster not only made mention of finding the 1999 Report in the DSS database, she also gives the Report number, and discloses that the allegations made in the 1999 Report appear relevant to the current proceedings.

- E) Counsel was aware of this information, having received it in 2009, yet willfully suppressed this vital evidence to the detriment of the Applicant.

Issue 6) Failure to call witnesses

- A) Applicant informed Counsel in January 2010 that Applicant's Spouse, who is also the mother of Alleged Victim, was willing to testify for the defense on Applicant's behalf. Counsel never interviewed Applicant's Spouse.
- B) Counsel informed Applicant that although Applicant's Spouse was listed as a witness for the state, that Applicant's Spouse would also be called as a witness for the defense.

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When on the last day of trial, Applicant asked Counsel when Applicants spouse would be called back, Counsel informed Applicant that she had already been called and could not be called back.

c) Citing his lack of being able to introduce the 1999 DSS Report (see issue 5, Defense Evidence), Counsel informed Applicant that when Counsel called Applicants spouse, that Counsel could introduce the relevant facts of the 1999 DSS Report thru questioning. Yet, Counsel did not call Applicants spouse.

D) At a prior attempt to begin trial in October 2011, Counsel AND Applicant discovered the absence from the States witness list the initial DSS Caseworker for the alleged victim, whom spent (18) months together. Counsel issued a Subpeona this DSS Caseworker, Porscha Moore. Counsel then refused to call her as a witness, informing Applicant what the jury would infer from her testimony.

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Issue 7) Failure to exploit inconsistencies in Statements and aggressively cross examine witnesses.

- A) Counsel noted, along with applicant, that in the Video taped Statement by Alleged victim, (Shown in two (1) hour interviews) that the alleged victim stated in Interview One that Applicant had not threatened her with harm, only asking Alleged Victim to keep Allegations a secret. Wherein Interview two, Alleged Victim claimed Applicant threatened physical harm to Alleged Victim and Applicants Spouse if Alleged Victim spoke.
- B) In Interview two, Alleged Victim stated that she knew that these allegations would cause Applicant to lose his spouse and family, although she states that she the Alleged victim, did not know that the acts she described were sexual.
- C) Counsel failed to explore and exploit the Statements during cross examination.

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M. ROPE BLACKLEY

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D) Counsel Abandoned the strategy that Counsel and Applicant had developed during the previous (3) years.

E) Counsel ignored written notes from Applicant during trial, pertaining to statements made by witnesses.

Issue 8) Expert Testimony

A) Applicant has documented physical disability, which affects physical and sexual performance. Applicant was prescribed a regime of medicines, which also affect physical and sexual health.

B) Counsel was provided with names, phone numbers and addresses of Doctors, Specialists, therapists, Surgeons and other Caregiver (to include Applicant's spouse), yet Counsel never contacted, subpoenaed or requested any relevant information.

C) Applicant's disability and medicinal program

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D. HOPE BLACKLEY

had strong bearing to disprove allegations.

D) Counsel requested that Applicant bring all medical records that Applicant possessed when he arrived for the second day of trial. Applicant did so. Counsel failed to introduce or use the records in trial, and failed to return them with case files.

E) Expert testimony from those mentioned in Issue 8, B, would cast doubt on alleged victims statements.

Issue 9) Failure to Object

A) Counsel failed to object to States Claims that Applicant was a thief for retrieving items left in trash, in Applicants house, After Applicants family had moved out.

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B) Counsel failed to object to the Alleged Victim, then 17 years of age, being allowed to enter courtroom and testify while clutching a large, fluffy pillow, like a child. Such action prejudices the jury. Counsel refused

to object.

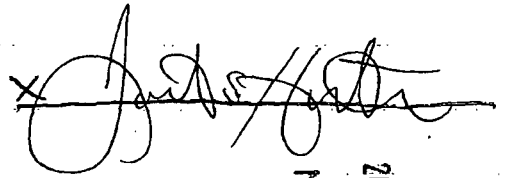
- c) The state used visuals AND previously unmade points during closing arguments to the Jury, leaving the defense no opportunity to ~~refute~~. Counsel Refused to object.

Counsel hindered, prevented, and obstructed the Applicant in the free exercise and enjoyment of his right to the effective assistance of counsel and the right to a fair trial secured to him by the Constitution and Laws of South Carolina Article One, sections Three and Fourteen, and the Constitution and Laws of the United States Sixth and Fourteenth Amendments.

Applicant has submitted on this day to the State of South Carolina a copy of Applicants Summons, sworn Affidavit, Post Conviction Relief Application, motion for execution of subpoenas / motion to subpoena, and exhibits in support of his Post Conviction Relief Application, in support of each and

every Allegation so duly noted. The States failure to Rebut the Factual predicate of every allegation on a point for point basis of Applicants Averments within ninety (90) days from the day of Receipt will constitute an implied agreement between both parties that the facts set forth by the Applicant stand as true and correct in both the private and public Record and the Relief demanded shall be granted.

Date 7-11-2013



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M. HOPE BLACKLEY

State of South Carolina)	Court of Common Plea
County of Spartanburg)	
Robert S. Horton)	
applicant)	
V.)	MOTION FOR EXECUTION
State of South Carolina)	OF SUBPEONA / MOTION
respondant)	TO SUBPEONA WITNESSES

Comes one Robert S. Horton moving this honorable court pursuant to rule 45 South Carolina Civil Procedure to execute subpoenas. Said witnesses are significant to the determination of facts and applicant is entitled to examine the witnesses in his upcoming P.C.R hearing because the burden of proof is on the applicant.

- 1) Stephanie Horton / Wife 2470 Bramlett Church Rd.
Gray Court, South Carolina 29645
- 2) Kathryn A. Foster / Spartanburg Department of Social
Service 630 Chesnee Highway, Sptbg S.C. 29303
- 3) Porsha Moore / Laurens Department of Social
Services 93 Human Service Rd Laurens
South Carolina 29325

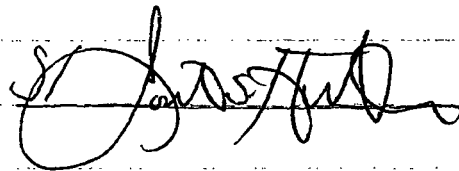
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Dr. Howard C. Bean/Carolina Family Physician
1690 Skylyn Drive, Spartanburg, South Carolina 29303

Dr. Eugene Mironer/Carolina's Center for the
Advanced Management of Pain, 1330 Boiling Springs Rd.
Suite 2700, Spartanburg, South Carolina, 29303

Date 7-11-2013



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M. HOPE BLACKLEY

Michael, I am writing to you
 Kelsey + Brown, C
 145 N. Church, St.
 Suite 210
 Spartanburg, SC 29306-5123

2013 JUL 17 AM 9:16
 M. HOPE BLACKLEY

Michael,

I am writing to you to find out the status of my Appeal. I have been in contact with my family and they are informing me that they have been unable to reach you, either in your office or via your cell phone. My family also states that they have checked with the Clerk of Court in Spartanburg County Courthouse and that there is no record of any Appeal having been filed on my behalf so far. The last conversation between you and I as we awaited the Jurys verdict centered on my appeal, should I not be acquitted. You told me that you would file my notice of Appeal, if needed, on the morning of Friday, July 13, 2012. You also stated that, if needed, you would meet me at the Spartanburg County Detention Center on Friday, July 13, 2012, so I could sign Power of Attorney paperwork over to my family, but you did not show. I need to be sure that you will honor our agreement and file my appeal. I also need to know what to do regarding Power of Attorney for my family. Please contact me ASAP, and please return my family's calls to either 864-578-7910 (Susan Threlk, Sister) or 864-578-7911 (Bobbie Horton, Father)

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EXHIBIT B

August 16, 2012

Michael Demetrius Brown

Sinner & Parnell, LLC

45 W. Church St.

Suite 210

Spartanburg, SC 29306-5123

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2012 JUL 17 AM 9:16
M. HOPE BLACKLEY

Michael,

I wrote you a few weeks back asking about your filing my appeal of my conviction, and I have not heard from you yet. I am very disappointed, upset, confused and embarrassed. I have been informed by my family that per the Spartanburg County Clerk of Courts office, my appeal was not filed, and that there is a 10 business day limit on filing such an appeal, which has now passed. Why was my appeal not filed? I specifically instructed you to file this appeal, or notice of appeal, in the event of a conviction, and you agreed. You yourself also made it a point to discuss this as we waited for the jury to return with their verdict. You showed me the paperwork that you would file for my appeal, and stated that you would do so the very next day, if needed. So why did you not keep your word? As the shock of all this starts to wear off, I am becoming more and more aware of the poor defense you offered on my behalf, especially with all that you and I had discussed over the last 3 years. So why would you deny me the right to appeal my sentence? I expect a reply to this letter, and to my family's calls, ASAP.

→

Michael Demorris Brown

LAID 11 L

August 29, 2013 603

Laney + Brown, LLC

15 N. Church Street

Suite 210

Spartanburg, SC 29306-5123

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2013 JUL 17 AM 9:16
M. HOPE BLACKLEY

Michael,

After contacting my family this week, I was informed that you finally responded to their numerous texts and phone calls by texting my brother. I am now aware that it was not a "failure" to file my notice of appeal, but a deliberate act on your part. My brother, Dr. Brian Horton, states that you informed him that your "Contract" with me did not call for you to file my appeal, when in fact, you never asked me to sign any contract. I have a receipt for the \$5000⁰⁰ retainer you requested, and if needed for my defense, could have and would have paid more as needed. I am glad that my brother has asked you for a copy of this contract, because it is a document you cannot produce, since it doesn't exist. My brother also informs me even though the 10 day statute of limitations has expired for filing my appeal, you claimed that you would file it anyway for an additional \$10,000⁰⁰ fee, money that my family does not have. That's extortion. You defended me poorly. You did not call all defense witnesses to testify. You did not request my medical records from my doctors to use in my defense. →

604

UNIT 11 D

Form 4. NOTICE OF APPEAL FROM A SENTENCE
IMPOSED BY THE COURT OF GENERAL SESSIONS
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

COURT OF GENERAL SESSIONS
DERHAM COLE, CIRCUIT COURT JUDGE

CASE NO. 2009-GS-42-03879

ROBERT S. HORTON

APPELLANT

v.

THE STATE

RESPONDENT

NOTICE OF APPEAL

ROBERT S. HORTON APPEALS HIS CONVICTION AND SENTENCE IN
THIS CASE. THE SENTENCE WAS IMPOSED BY THE HONORABLE
DERHAM COLE ON JULY 12, 2012. APPELLANT RECEIVED WRITTEN
NOTICE OF THIS ORDER ON JULY 12, 2012

APRIL 15, 2013

s/ ROBERT S. HORTON scdc#351540
PCI, Q4A-112
430 OAKLAWN ROAD
DELAER, SC 29669
APPELLANT

OTHER COUNSEL OF RECORD:

ALAN M. WILSON
STATE ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA SC 29211
ATTORNEY FOR RESPONDENT

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-3065
Robert S. Horton, #351540,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 17, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the July 2009 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor – 2nd degree, but the indictment was later amended and Applicant was re-indicted at the November 2011 term (2009-GS-42-3879). The Applicant was represented by Michael D. Brown, Esquire. On July 12, 2012, the Applicant proceeded to trial after which he was found guilty of criminal sexual conduct with a minor – 2nd degree. The Honorable J. Derham Cole sentenced Applicant to eighteen years.

A Notice of Appeal was filed by the Applicant. However, the South Carolina Court of Appeals dismissed Applicant's appeal as untimely served on May 6, 2013. State v. Horton, No. 2013-UP-904 (Ct. App. May 16, 2013). The Remittitur was issued on May 24, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- a. Ineffective assistance of Counsel, in that;
 - i. Counsel failed to file a timely notice to appeal,
 - ii. Counsel failed to call important witnesses,
 - iii. Counsel failed to present evidence relevant to Applicant's defense,
 - iv. Counsel failed to present expert testimony of Applicant's physical disabilities,
 - v. Counsel failed to exploit the great inconsistencies in the State's evidence,
 - vi. Counsel failed to impeach the credibility of the alleged victim with a relevant CPS report from Greenville County,
 - vii. Counsel failed to object to alleged victim arousing the passion and prejudice of the jury by bringing blue security pillow on stand with her,

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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.

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 2, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Robert S. Horton,

) 2013-CP-42-3065
)

) Applicant,
)

) v.
)

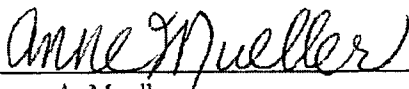
) CERTIFICATE OF SERVICE BY MAIL
)

) 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
P.O. Box 1015
Rock Hill, SC 29730



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 2nd day of July, 2014.

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF COMMON PLEAS NONJURY

3
4 ROBERT S. HORTON,)
5 APPLICANT,)
6 VS.)
7 STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)

TRANSCRIPT
OF
RECORD
2013-CP-42-3065

9
10 March 26th, 2015
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

15
16 A P P E A R A N C E S:

17 LEAH B. MOODY
18 ESQ.
Attorney for the Applicant

19 SUZANNE H. WHITE
20 ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

21

22

23

24

25

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

ROBERT S. HORTON

Direct examination by Ms. Moody

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Cross-examination by Ms. White

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MICHAEL BROWN

Direct examination by Ms. White

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Cross-examination by Ms. Moody

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Redirect examination by Ms. White

54

Closing by Ms. Moody

55

Closing by Ms. White

56

Certificate

58

P R O C E E D I N G S

THE COURT: All right. We're on the record in the case of Robert S. Horton versus The State of South Carolina, application for post-conviction relief.

I'll ask the State to go over the status of the case with the Court.

MS. WHITE: Thank you, Your Honor.

This is Case Number 2013-CP-42-3065. Mr. Robert Horton is represented today by Ms. Leah Moody. He was indicted in July of 2009 on the charge of criminal sexual conduct with a minor second degree. The indictment was amended and he was reindicted November of 2011, but I believe it was the same charge. It was just an amendment to the indictment.

July 12th, 2012, he went to trial. Was represented by Mr. Michael B. Brown. He was found guilty of criminal sexual conduct with a minor second degree and was sentenced to 18 years. The Applicant filed a pro se notice of appeal. It was dismissed by the Court of Appeals as untimely served.

He's filed this application alleging ineffective assistance of counsel in that counsel failed to file a timely notice of appeal, counsel failed to call important witnesses, counsel failed to present evidence relevant to the defense, failed to present expert testimony regarding Applicant's physical disabilities, failed to exploit the

Robert Horton - Direct examination
by Ms. Moody

1 great inconsistencies in the State's evidence, failed to
2 impeach the credibility of the alleged victim with a
3 relevant child protective services report from Greenville
4 County, and failed to object to the alleged victim arousing
5 the passion and prejudice of the jury by bringing a blue
6 security pillow on the stand with her.

7 At this point I'll turn it over to Ms. Moody.

8 THE COURT: Ms. Moody.

9 MS. MOODY: Thank you, Your Honor.

10 May it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. MOODY: I would like to call Mr. Robert Horton to
13 the stand.

14 THE COURT: All right. Mr. Horton, if you'll come
15 forward to the stand please over here to my left. Take your
16 time, sir.

17 (Witness complies.)

18 THE COURT: Place your left-hand on the Bible please.
19 Raise the right to the best of your ability.

20 ROBERT HORTON, being first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please, sir.

23 (Witness complies.)

24 THE COURT: State your name.

25 THE WITNESS: Robert Steven Horton.

Robert Horton - Direct examination
by Ms. Moody

1 THE COURT: Thank you.

2 Ms. Moody, your witness.

3 MS. MOODY: Thank you, Your Honor.

4 THE COURT: Yes, ma'am.

5 DIRECT EXAMINATION

6 BY MS. MOODY:

7 Q Mr. Horton, where are you currently incarcerated?

8 A I'm at Perry Correctional Institute in Pelzer.

9 Q Okay. And when did you go into Perry Institution?

10 A I arrived at Perry February 26th of 2013.

11 Q Okay. And that's as a results of your trial?

12 A That was after I'd went through R&E. I initially went
13 to Kirkland in Columbia for seven and a half months.

14 Q Okay. All right. So as of all of that -- as a result
15 of your trial and your conviction?

16 A Yes, ma'am.

17 Q Okay. And who was your attorney in this particular
18 case?

19 A Michael Brown.

20 Q Okay. And how did you come to be represented by
21 Mr. Brown?

22 A A reference. Somebody give me a reference to him.

23 Q Okay. So you hired him?

24 A Yes.

25 Q Okay. And when you hired him, were you -- did you hire

Robert Horton - Direct examination
by Ms. Moody

1 him from in -- within his office or were you incarcerated --
2 well, being held at the Spartanburg Jail?

3 A I -- that took place actually before I turned myself
4 in. I was allowed to come down there.

5 Q Okay.

6 A I actually wasn't present when, when the transaction
7 took place. My father went and took a \$5,000 check to
8 retain his services.

9 Q Okay. And so Mr. Brown was representing you and, from
10 that point of being hired, you had conversations with
11 Mr. Brown?

12 A Yes, ma'am.

13 Q Okay. What was your first meeting was -- with --
14 excuse me.

15 when was your first meeting with Mr. Brown?

16 A It's hard to say. I don't really remember now. It was
17 leading up to -- the only, the only focus we had then was
18 leading to turning myself in --

19 Q Okay.

20 A -- to answer.

21 Q So relatively early on --

22 A Yes.

23 Q -- you met with Mr. Brown?

24 A Yes.

25 Q Okay. And what, if anything, did you discuss with

Robert Horton - Direct examination
by Ms. Moody

1 Mr. Brown?

2 A My innocence. The state of my innocence. I needed
3 help. I knew very little about the legal process. At that
4 point I knew charges were coming and that was my focus.

5 Q Okay. So you turned yourself in and then are you
6 released out on a bond?

7 A I was denied bail and I stayed in Spartanburg County
8 Detention Center for two weeks before I was granted bond.

9 Q Okay. And at what point did you get really into the
10 discussion of your case with Mr. Brown?

11 A Immediately after being released, after I was granted
12 bond we had meetings and started discussing it and gathering
13 facts and information.

14 Q And this is a CSC with a minor --

15 A (Witness nods affirmatively.)

16 Q -- correct?

17 And so, when you discussed your case, did you discuss
18 basically the background of this victim with Mr. Brown?

19 A I actually brought a composition notebook and I wrote
20 pretty much the entire history since I had met the victim's
21 mother --

22 Q Okay.

23 A -- and our life together. I pretty much put all
24 together that was pertinent facts to her character, things
25 that she's been through, and how we operated as a family.

Robert Horton - Direct examination
by Ms. Moody

1 Q Okay. So basically you explained to him, again, you
2 said your innocence, but you discussed your case and your
3 position?

4 A Yes.

5 Q Okay. And did you-all receive a plea offer from the
6 State?

7 A He had mentioned it. He had mentioned certain times,
8 pleaing to 15 years, pleaing to 12, and I think the last
9 thing he said was zero to ten --

10 Q Okay.

11 A -- with a cap. But I'd never, I'd never saw an offer
12 sheet or anything like that. It was just verbal.

13 Q Right.

14 But you received a plea, a plea offer from the State?

15 A I'm assuming. Verbal through my attorney.

16 Q Okay. And ultimately you decided not to accept the
17 plea offer?

18 A I was not pleading to a, to a charge I didn't commit.

19 Q Okay. Now, that takes you up to the point where y'all
20 are preparing for a trial.

21 A Yes, ma'am.

22 Q Okay. And you-all went to trial in this case?

23 A (Witness nods affirmatively.)

24 Q And in helping your attorney prepare for trial, did you
25 provide him with information?

Robert Horton - Direct examination
by MS. Moody

1 A I did.

2 Q Okay. And some of that information you have -- is part
3 of the basis of why you filed your PCR?

4 A Yes, ma'am.

5 Q Okay. And one of the -- I'm gonna go through with you
6 the issues starting with you say your counsel failed to call
7 important witnesses.

8 A Yes, ma'am.

9 Q Can you please tell the Court who those important
10 witnesses were and why?

11 A One, one was my wife, who she, she took no sides in
12 this, but she's got to stand by her daughter. I can take
13 care of myself. But she was willing to testify to what she
14 knew, what she knew about us, our relationship, things she'd
15 observed. Just there were general aspects of what she'd
16 seen observed that would of supported what I said. It would
17 of corroborated my testimony.

18 Q Okay. And did you discuss specifically with Mr. Brown
19 him calling your wife?

20 A I -- specifically I, I don't know. I assume that there
21 was gonna be interviews, you know. I knew very little of
22 the process at that time.

23 Q Well, I mean when you say he didn't call the witness
24 and you knew your wife would just, as you just said,
25 corroborate your version of the facts --

Robert Horton - Direct examination
by Ms. Moody

1 A Right.

2 Q -- did you discuss with him why he did not call your
3 wife as a witness?

4 A what he had told me that he, he would call her as a
5 witness for us, for the defense. When we arrived at the
6 last day of trial on Thursday I asked him when he would call
7 her. He said she's already been called for the state. We
8 can not recall her.

9 Q Okay. So he had an opportunity to cross-examine your
10 wife?

11 A Yes.

12 Q Okay. But you still wanted him to call her in your
13 case?

14 A In my case.

15 Q Present your defense?

16 A At least for character as well, you know. She could of
17 been a character witness as well.

18 Q Okay. You -- now, there's some other witnesses that
19 you wanted him to call?

20 A Yes.

21 Q And can you please tell the court.

22 A One of them was the initial D.S.S. worker, case worker,
23 that was assigned. Her name was Portia Moore.

24 Q Now, when you said initial, was it pertinent to this
25 particular case?

Robert Horton - Direct examination
by Ms. Moody

1 A Yes.

2 Q Okay. And she was the initial person who met with---

3 A Minor --

4 Q Okay.

5 A -- my stepdaughter.

6 Q Okay.

7 A And she stayed with them for 18 months, half of the
8 duration that we waited for trial. She spent more time with
9 her than anybody and there were things that -- you know, she
10 had called me once and talked on the phone. She admitted to
11 me that her story had changed, my stepdaughter's story had
12 changed with her and several other points. But the State
13 did not plan on presenting her as a witness, and, to me,
14 that's kind of -- that's a strong statement, the person that
15 spent the most time with this child and the State's not
16 calling them as a witness is suspicious to me.

17 Q Well, before that did you have an opportunity to
18 discuss calling this witness with Mr. Brown?

19 A Yes.

20 Q Okay. And why did she not get called as a witness for
21 you?

22 A The statement he gave me was he knew what she would say
23 and he knew what the jury would infer from that and there
24 was no point.

25 Q But you felt different?

Robert Horton - Direct examination
by Ms. Moody

1 A I did.

2 Q Okay. Any other witnesses that --?

3 A There was a case worker from D.S.S. that had found my
4 stepdaughter on an earlier screen-out. She had---

5 Q When you say earlier screen-out---

6 A She was young. She was four years old and there was a,
7 an incident that D.S.S. had looked into.

8 Q Okay. Now, were you involved in that incident?

9 A I did not know any of them at that time.

10 Q Okay.

11 A This is four years before I met them.

12 Q Okay. But this -- had Mr. Brown dealt with this in the
13 Court?

14 A He mentioned it that it was discussed before the judge
15 before trial started.

16 Q Okay. But you still wanted Mr. Brown to call her to
17 testify?

18 A Well, she stated in her, her case file notes that the
19 earlier incident appeared relevant to my, my case and I felt
20 like she needed to explain how that was relevant considering
21 I was not involved in it if it's---

22 Q Well, when you say she, clarify who she is.

23 A Oh, sorry. Her name's Katherine Foster.

24 Q Okay. So Katherine Foster was the earlier D.S.S. case
25 worker?

Robert Horton - Direct examination
by Ms. Moody

1 A She was doing research on it from the initial point,
2 yes.

3 Q Okay. And so, during this case, she touched the
4 case -- this -- your particular case in this instance?

5 A She said it appeared relevant --

6 Q Okay.

7 A -- to the current proceedings.

8 Q Okay. But -- and you discussed this with Mr. Brown?

9 A I did.

10 Q Okay. And he decided he did not want to call her?

11 A I don't -- I'm assuming. I didn't even see a subpoena
12 for her.

13 Q Okay. All right. Are there any other witnesses?

14 A No, I think that was it.

15 Q Okay. Now, your -- a second issue that you raised is
16 your counsel failed to present evidence relevant to your
17 defense.

18 Outside of the testimony of the, the witnesses, what
19 evidence did you want him to raise that was, I guess, it was
20 helpful to your case is what you're saying?

21 A Well, what they was -- my medical condition, the
22 disability, the medications they had me on, the effects of
23 those, and how they would of---

24 Q And -- now, did you give that information to your
25 attorney about your medication and the physical disability?

Robert Horton - Direct examination
by Ms. Moody

1 A Yes, gave him names and numbers of doctors to call.

2 Q Right.

3 But I'm saying like was there any paperwork or some
4 kind of diagnosis that you had that you gave to him for him
5 to follow-up?

6 A I gave him the medical notes I had. After the first
7 day of trial he asked me to bring whatever medical records I
8 had personally---

9 Q So---

10 A ---concerning that and I brought him that that Tuesday.

11 Q At what point did you bring this up to your attorney at
12 the trial?

13 A About my, my disability?

14 Q Physical disability.

15 A No, this had been discussed. You know, this -- well,
16 there's three years between the arrest and trial.

17 Q Okay.

18 A So this had been discussed plenty of times.

19 Q Okay. And so you felt he should of brought that
20 information for -- before the jury?

21 A I do because it, it would dis -- some of the things
22 that she had said, some of the allegations made, this would
23 disprove some of those.

24 Q Okay. And ultimately he decided he didn't want to use
25 that or --

Robert Horton - Direct examination
by Ms. Moody

- 1 A No.
- 2 Q -- y'all discussed it and it didn't come out?
- 3 A It didn't happen --
- 4 Q Okay.
- 5 A -- is all I know.
- 6 Q All right. The next issue is your counsel did not --
- 7 and I guess this kind of goes into -- wait a minute.
- 8 So as far as the evidence relevant to your defense,
- 9 that's the physical disability?
- 10 A Yes.
- 11 Q Okay. But you also list -- you also state is one of
- 12 your issues is that your attorney didn't call the experts to
- 13 testify as to your physical disabilities?
- 14 A There was, there was no expert testimony or any sworn
- 15 affidavits or anything that would of supported that.
- 16 Q Okay. So those actually go together, right, the
- 17 evidence that would be relevant to your---
- 18 A Yes, ma'am.
- 19 Q ---defense and then the expert testimony---
- 20 A Yes, ma'am.
- 21 Q ---as to that?
- 22 Okay. Your next -- and I really need you to explain
- 23 this to the Court what you mean by this. Your next
- 24 allegation you state that your counsel failed to exploit the
- 25 great inconsistencies in the State's evidence.

Robert Horton - Direct examination
by Ms. Moody

1 what does that mean?

2 A There were two one hour videos of the interview, the
3 initial interviews with her, which I, I don't even have
4 transcripts for those. So a lot of that---

5 Q But it's---

6 A ---and the Court transcript doesn't say what the video
7 says. So we're missing some parts of that.

8 Q But in the -- the, the Court had an opportunity to
9 review those?

10 A We did review those and there were differences in
11 things she said from the first video to the second video.

12 Q And so you wanted, at -- so in the closing you wanted
13 Mr. Brown to point out these inconsistencies or you're
14 saying---

15 A The closing, the cross-examination, wherever to bring
16 it out. She, in the first video that was on there, she said
17 I had never threatened her. But the next week, in the next
18 video, she said I had indicated I would hurt her and her
19 mother.

20 Q Okay. And so that information you wanted him to, I
21 guess, highlight that information for the jury?

22 A Yes.

23 Q Okay. Is, is there any other inconsistencies that you
24 are referring to in this---

25 A She would get confused on some of them. It was simple

Robert Horton - Direct examination
by MS. Moody

1 yes or no answers on some things.

2 Q well, when you say she you're talking about the victim?

3 A I'm talking about Minor my stepdaughter. I'm sorry.

4 Q Okay. And so that's, again, to the video?

5 A Yes.

6 Q Okay. But outside of the video, was there any other
7 consistency that you felt that he did not bring to the light
8 of the jury?

9 A I just -- he just didn't aggressively cross-examine.
10 It was very, very soft. She---

11 Q Now, when you say she, now--

12 A I'm sorry.

13 Q You got to be clear.

14 A I'm sorry.

15 Q So when you say, you say he didn't -- so this is all as
16 it relates to cross-examining the victim in the case?

17 A Yes.

18 Q Okay. It's not as to any other witness or is it?

19 A Maybe with the SLED agent, you know, and that goes into
20 having expert testimony on -- as far as what the SLED agent
21 had testified to.

22 Q Okay. So that goes back to your physical disabilities.
23 He didn't have that expert present so that he could
24 point out the inconsistencies?

25 A Actually that was -- the SLED agent was pointing out

Robert Horton - Direct examination
by Ms. Moody

1 the DNA.

2 Q Oh, you're talking about the analysis of the DNA?

3 A Yes.

4 Q You wanted him to attack it?

5 A But the State pretty much had put it out there that
6 there was only one DNA present. Considering what the
7 charges were, what this child, what **Minor** was saying, there
8 should of been two DNAs present and the presentation
9 basically said that my DNA could overpower her DNA.

10 Q Okay. And so, at, at any point, did y'all discuss
11 that?

12 A Yes.

13 Q Like when y'all were preparing for trial, did y'all
14 discuss DNA -- the issue of DNA---

15 A Yes.

16 Q ---and how your DNA would show up or might not show up
17 in the test that they run?

18 A Right. Yes, ma'am.

19 Q So y'all went through that whole process of
20 understanding that?

21 A That, that was very early on too.

22 Q What do you mean?

23 A Like I said, there was three years of a wait and that
24 was very early on.

25 Q But they did have the test, right?

Robert Horton - Direct examination
by Ms. Moody

1 A They did have the test.

2 Q Okay. And so from those test results did you --
3 you-all discussed the presence of DNA?

4 A Yes.

5 Q Okay. And was there ever a point where you discussed
6 that there was some inconsistency?

7 A With the DNA?

8 Q Yes.

9 A Basically---

10 Q How they could of messed up DNA or something.

11 A Well, I don't have any knowledge of how or whatnot,
12 but -- and I know, I know things get glamorized on TV. But
13 if DNA is there, if somebody's been involved in something,
14 their DNA is gonna be there. Like I said, I'm very -- I
15 don't know these procedures. But I do not believe one DNA
16 can overpower another DNA.

17 Q Okay. But your DNA was present?

18 A My DNA was present.

19 Q Okay.

20 A Which---

21 Q And so, are you -- I guess I need to like really ask
22 you this.

23 Are you saying that -- I mean your DNA is unique to
24 you?

25 A Yes.

Robert Horton - Direct examination
by Ms. Moody

1 Q Okay. And your DNA, if it's there, and it's not
2 contaminated --

3 A Yes.

4 Q -- so are you saying that there was some contamination,
5 the DNA was improperly handled, or are you just saying that
6 you wanted---

7 A I'm saying---

8 Q ---an expert to talk about DNA from your standpoint?

9 A I'm saying the DNA doesn't support the charges. She's,
10 she's alleging oral sex. There would of been saliva. There
11 would of been her DNA present. The DNA test doesn't support
12 what she says.

13 Q Okay. But I'm saying other than -- if your DNA is
14 there and you're not saying that it's contaminated---

15 A Right.

16 Q ---you're only wanting a witness or expert to show the
17 statement from SLED is, is, is not correct?

18 A Right.

19 Q Okay.

20 A Somebody to counter this overpowering comment.

21 Q Okay. well, did y'all go into that?

22 Did y'all talk about that?

23 A We, we discussed it.

24 Q You and Mr. Brown discussed it?

25 A Yes.

Robert Horton - Direct examination
by Ms. Moody

1 Q Okay. And did y'all come to a resolution on whether
2 that was the case?

3 A Apparently not.

4 Q Well, I mean y'all discussed it and you took an issue
5 with it.

6 A Uh-huh. (Affirmative).

7 Q So, at some time in time, did y'all discuss that that
8 was an untrue statement by the SLED agent?

9 A We -- yeah, we had discussed that somebody could
10 disprove that, yes.

11 Q Okay. And so -- now, this was a retained case.
12 Did you-all pay for an expert?

13 A No.

14 Q So did y'all say you wanted to pay for an expert?

15 A Don't remember a conversation -- a lot of this was
16 assumption on my part. We're discussing expert testimony
17 and, and, like I said, I, I believe in it. I paid this man.
18 I've left it in his hands. There's very little---

19 Q Okay.

20 A ---I can do about it.

21 Q Let's be clear cause we need to make sure.

22 When you paid him that payment, I guess your, and I'm
23 not trying to put words in your mouth, you're saying that
24 payment included hiring the necessary expert?

25 A It was never explained to me that it wasn't.

Robert Horton - Direct examination
by Ms. Moody

1 Q Okay.

2 A If it had been and more funding was needed, that was
3 possible.

4 Q Okay.

5 A But it was never discussed.

6 Q Okay. So that was one point of, of inconsistency as to
7 whether your DNA could overpower your stepdaughter's --

8 A Yes.

9 Q -- the victim's?

10 Now, is there any other inconsistency that you felt
11 should of been brought out or highlighted?

12 A My mind's a jumble right now.

13 Q I mean -- take your time.

14 I mean it just -- I just want you to be, want you to
15 get on the record if there is something else.

16 A I felt it odd the investigator for the Sheriff's
17 Department, for one, they didn't even get my stepdaughter's
18 DNA from the start, and, again, I'm just layman's opinion.
19 You know, it -- overcome a little ignorance I have of all
20 this. It just seems that the underlying allegations here,
21 you would get all DNA --

22 Q Uh-huh. (Affirmative.)

23 A -- and he asked her on the stand, you didn't think it
24 was important and---

25 Q When you say he---

Robert Horton - Direct examination
by Ms. Moody

1 A Oh.

2 Q ---who is he?

3 A When Mr. Brown asked the, the investigator --

4 Q Okay.

5 A -- if she thought it wasn't important, the investigator

6 said guess not. Literally just kind of flip, I guess not.

7 Q Okay. And so is that all of the inconsistencies?

8 A There was another, and I'm not remembering if it was my
9 stepdaughter, the investigator. There was allegation that I
10 took all the money out of the bank so they would not have
11 any money when in---

12 Q But what does that have to do with the actual charge
13 like---

14 A Nothing. It was -- to the charge, I guess nothing.

15 Q Okay. So as to the actual offense, charging or
16 indictment, what you were being tried for, there are no
17 other consistencies -- inconsistencies other than the DNA --

18 A The DNA, the video.

19 Q -- the video, then the statements from the -- and when
20 I say DNA, like the, the overpowering of the, your DNA, and
21 then the statement from the law enforcement or SLED
22 investigator who did not get your stepdaughter's DNA?

23 A Yes.

24 Q That's all the consistencies?

25 A Yes.

Robert Horton - Direct examination
by Ms. Moody

1 Q Okay. Inconsistencies. Excuse me.

2 You also allege that your counsel failed to impeach the
3 credibility of the alleged victim with relevant CPS report
4 from Greenville County.

5 A Yes.

6 Q Can you explain that to the Court?

7 A This was the case, the case I was mentioning earlier
8 with the D.S.S. case worker, Katherine Foster.

9 Q The -- when she was four?

10 A When she was four.

11 Q Okay.

12 A And going off the notes that she said it was relevant
13 to the case.

14 Q So the notes from -- well, this D.S.S. case worker,
15 that goes back to calling her again --

16 A Yes.

17 Q -- and that you wanted him to use that evidence against
18 the victim on the stand?

19 A Yes.

20 Q Did y'all discuss that?

21 A Yes.

22 Q And what was the discussion?

23 A well, we actually had one discussion in his office. We
24 knew it might not be admitted, and I, I think I know better
25 now, having had some time to study of some past cases, but

Robert Horton - Direct examination
by Ms. Moody

1 it was -- I actually suggested to him could we have my wife
2 on the stand and ask her if she had ever caught my
3 stepdaughter masturbating, and I don't think that's
4 admissible, but he didn't give me that kind of response. So
5 I was---

6 Q What do you mean he didn't give you that kind of
7 response?

8 A I was kind of led to believe that he would be able to
9 question my wife. He would be able to use questions like
10 that and I don't, I don't think that's admissible based on
11 some things I've said now. But, at that point, I thought
12 well, if we don't have the case that we can show as
13 evidence, we can introduce some of it by questioning my
14 wife.

15 Q Okay. So you wanted -- so you -- the -- so you, you
16 understand what your allegation is here?

17 A Yes.

18 Q Your allegation is that counsel failed to impeach the
19 credibility of the alleged victim and you wanted your wife
20 to be the person that could show that -- show something
21 inconsistent about---

22 A In the absence of the report, yes.

23 Q Okay. In the absence of the report.

24 Okay. So you didn't want to him actually introduce
25 that report---

Robert Horton - Direct examination
by Ms. Moody

1 A Yes.

2 Q ---since you knew -- well, you just testified that you
3 knew it might not come in?

4 A Right.

5 Q Okay. And if the Court ruled on it, you still wanted
6 him to attempt to try and get that information in?

7 A I felt we could get it in based on things I've learned
8 since. We can't---

9 Q well, I'm talking about at the trial.

10 Like during the trial---

11 A Uh-huh. (Affirmative).

12 Q ---where were you after the Court ruled on that -- you
13 wanted him to still try to get it in through your -- get
14 some information in through your wife?

15 A If -- yes.

16 Q Okay.

17 A Yes.

18 Q All right. And that's what you felt would of impeached
19 the testimony of your stepdaughter?

20 A Yes.

21 Q Okay. Now, you also allege that your counsel failed to
22 object to the alleged victim's arousing and passion and
23 prejudice of the jury by bringing a blue security blanket,
24 excuse me, a blue security pillow on the stand when she
25 testified.

Robert Horton - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q Okay. And can you explain that to the Court, what you
3 mean by that?

4 A She was 17 years old when she took the stand. She's
5 nearly an adult and she came in clutching a big fluffy
6 security pillow just like a child would, and that just, to
7 me, was prejudice. You're showing her as a little bitty
8 child and she's not.

9 Q Oh.

10 But you don't disagree, at 17, she's still considered a
11 child?

12 A Not, not one that would tote a security blanket or
13 pillow around.

14 Q So you're saying as far as her maturity is concerned---

15 A It lags behind, but not to that degree.

16 Q Okay. So you felt like that your attorney should have
17 objected to her coming to the stand?

18 A Yes.

19 Q Okay. And did y'all discuss that?

20 A Well, we discussed it best we could cause it was -- she
21 just walked in with it.

22 Q Okay. All right. Now, your last allegation is that
23 your counsel failed to file a timely notice of appeal?

24 A Yes.

25 Q And I don't need you necessarily to say that. So

Robert Horton - Direct examination
by Ms. Moody

1 you're -- to explain what a timely notice of appeal is.

2 But you're stating, by this allegation, what to the
3 court?

4 A Before the jury came back in he, he told me if the
5 charges -- if this did not go the way we wanted it to go, he
6 would be at the courthouse on Friday and he would file the
7 notice to appeal. Matter of fact, he said he had to be
8 there anyway.

9 Q So be at the courthouse -- be at this courthouse?

10 A Yes.

11 Q Okay.

12 A If he -- if I was convicted, that he would be here the
13 following day to file the notice for appeal---

14 Q Okay.

15 A ---and that didn't happen.

16 Q Okay. And how did you know that didn't happen?

17 A There's no appeal on record.

18 Q And how did you learn that there was no appeal on
19 record?

20 A Well, for the first thing, when I finally was able to
21 contact my family, that was, that was important to make sure
22 that was followed up on and they tried contacting him,
23 emails, phones, texts, and during the ten business day
24 period that you have to file that appeal, there was no
25 response from him and---

Robert Horton - Direct examination
by Ms. Moody

1 Q Did you ultimately get an appeal, an appeal filed?

2 A I tried to file my own.

3 Q Well, when I'm -- I'm sorry.

4 Did you file a notice?

5 Did you ultimately get a notice filed?

6 A I'm not sure if---

7 Q So when you said you filed your own, you filed a notice
8 of an appeal?

9 A Yes.

10 Q Okay. And what happened with that notice?

11 A It was sent back. The first thing it was sent back it
12 was assigned a case number followed by a few days later
13 another letter saying it was not filed in a timely period.

14 Q Okay.

15 A It was not filed within those ten days.

16 Q And what did you understand about that?

17 A That he should of filed the appeal in those ten
18 business days.

19 Q Well, filed a notice of appeal?

20 A Notice of appeal, yes, ma'am.

21 Q Okay. And from the letter that you received, I guess
22 you're saying you received a letter from the Court or the
23 Clerk of Court?

24 A Yes.

25 Q Okay. And what was the result of not being filed

Robert Horton - Direct examination
by Ms. Moody

1 timely?

2 A It was denied. That was pretty much the basis of the
3 letter. It was denied and it said they were closing the
4 case on that direct appeal.

5 Q So you never got your appeal, your case reviewed by the
6 Court of Appeals?

7 A No, ma'am.

8 Q Okay. And so your allegation is he failed to file a
9 timely notice of appeal that affected your ability?

10 A Yes.

11 Q Okay. So now those are all the allegations that you
12 allege in your PCR application.

13 What are you -- how do you feel that you were
14 prejudiced in this process?

15 A By, by the appeal, by not filing the appeal?

16 Q Well, all of them taken into conjunction.

17 A I feel like there was enough evidence available to
18 present to a jury. We're, we're talking about reasonable
19 doubt. There was plenty to present to a jury to show
20 reasonable doubt and I believe that was evident because
21 there was one charge that was a mistrial. They couldn't
22 come to a conclusion -- a consensus on one of the charges.

23 If my medical history had been introduced, my wife
24 could of testified to my daily life, how I -- my mobility
25 she could of testified to. I know she wouldn't of wanted

Robert Horton - Direct examination
by Ms. Moody

1 to, but she could of testified to how we were -- when we
2 were intimate, my limitations. There was plenty she could
3 of offered that would corroborate what I said and would of
4 gone against these allegations.

5 Q But she did testify at the trial?

6 A She testified. But he, he only talked to her on cross,
7 cross-examination---

8 Q Okay.

9 A ---and she was willing to be called as a witness for
10 us.

11 Q Okay. Now, as to the relief you're seeking from the
12 Court, can you -- well, let me go back.

13 You addressed the issues all but the appeal.

14 So how are you prejudiced as to the appeal notice?

15 A I -- that's my right to have that appeal, and, again,
16 these are charges -- these are crimes I did not commit. I
17 want every available opportunity I have to, to prove that---

18 Q All right.

19 A ---and they took that away from me and it set me back.
20 I'm just now getting the PCR heard and this process could of
21 been moving along quicker if it had been filed.

22 Q Okay. So what relief are you asking -- seeking from
23 the Court here today?

24 A I'm asking for a new trial.

25 Q And are you -- and, and, in the alternative, are you

Robert Horton - Direct examination
by Ms. Moody

1 asking for anything else?

2 A Any, any relief I can, can have. Any opportunity I can
3 have to present my side, to present my -- to show innocence.

4 Q I mean but as to the appeal, I mean if you have a new
5 trial, you realize that you won't be getting the appeal,
6 you'll get a new trial?

7 A Yes, ma'am.

8 Q And are you saying you don't want the appeal?

9 A I do want the appeal.

10 Q Okay. So it's -- you want a new trial or you want the
11 right to appeal your case?

12 A I want the right to appeal my case.

13 Q Okay. I mean -- I'm saying and/or. That's what I
14 mean.

15 A Right.

16 Q Okay. All right. Is there anything else you wish to
17 tell the Court, convey to the Court?

18 A Nothing that comes to mind. I appreciate the
19 opportunity.

20 Q Okay. Thank you. No further questions. Please answer
21 any questions the State may have.

22 THE COURT: You may cross-examine.

23 MS. WHITE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. WHITE:

Robert Horton - Cross-examination
by Ms. White

1 Q Mr. Horton, I just want to ask you a little bit about
2 some of the allegations.

3 You said that you wanted your attorney to call your
4 wife as a witness?

5 A Yes.

6 Q He cross-examined her, and during that, was able to get
7 her to testify on the stand things about the fact that her
8 daughter had lied to her in the past about chatting on the
9 computer with boys?

10 A Yes, ma'am.

11 Q He was able to introduce journals from the stepdaughter
12 where she talked about wanting boyfriends, but never
13 mentioned any abuse.

14 Is that right?

15 A That's right.

16 Q Okay. He also was able to talk with her about how she
17 had heard about this, but then also how your -- the
18 stepdaughter interacted with you on a daily basis even
19 somewhat after the allegations?

20 A Yes.

21 Q Okay. He also talked with her about your relationship
22 and how, after you had had I believe it was a back surgery,
23 how that affected you physically?

24 A Yes.

25 Q Okay. So all of that information came out during her

Robert Horton - Cross-examination
by Ms. White

1 cross-examination before the jury?

2 A Yes.

3 Q Okay. And, in fact, he had a -- he proffered testimony
4 or presented it outside the presence of the jury about this
5 alleged prior or this prior incident potentially and the
6 fact that she had caught the stepdaughter masturbating,
7 talked to her about it, and found out that the father and
8 his new wife might have demonstrated that, and that might be
9 how she knew about it?

10 A Right.

11 Q Okay. So that evidence was presented to the Court.

12 The Court would not allow it to be in front of the
13 jury, but he allowed Mr. Brown to present that testimony as
14 a proffer?

15 A In the proffer, right.

16 Q Okay. And, in fact, the State had filed a pretrial
17 motion to prevent any kind of testimony about any prior
18 allegations.

19 Is that right?

20 A I don't know if they, they -- it was -- when I got my
21 transcripts I was able to see what was discussed before the
22 judge. I couldn't hear it at the time though.

23 My understanding now is you, you can't present that
24 evidence to show promiscuity or preoccupation with sex. But
25 that was that -- not why I wanted it presented. That would

Robert Horton - Cross-examination
by Ms. White

1 of shown learned behavior, that this is something -- the
2 investigators are telling my wife a 14-year old child can
3 not make up these allegation when apparently they been of
4 her life from very early on.

5 Q Okay. And you said you have reviewed your transcript.

6 So, the very beginning, you recall the State making a
7 motion to exclude any prior allegations, alleged maybe false
8 allegations by the child, and they discussed the allusion to
9 an incident from 1999?

10 A After the State initially said they knew nothing of the
11 report. They denied knowing anything about it.

12 Q But that wasn't ultimately presented and discussed with
13 the judge and the judge said that it would have to be shown
14 to be relevant in particular to this allegation?

15 A Right.

16 Q Okay. In regards to medical disability and
17 medications, your attorney, as I mentioned prior, discussed
18 with your wife, at the time, how your back surgery had
19 affected you and how long your recovery was?

20 A Yes, ma'am.

21 Q They also talked about what -- how that had affected
22 your abilities whether to lift things or things like that?

23 A Yes, ma'am.

24 Q Okay. And, in fact, testimony was presented about you
25 trying to help your stepdaughter even though you'd had the

Robert Horton - Cross-examination
by Ms. White

1 back surgery when she was sick with mono?

2 A She was very sick.

3 Q Okay. You -- in regards to disability and medications,
4 how that affected you, you had talked with Mr. Brown about
5 that.

6 Was that part of your defense or was that simply to
7 show and to, to gain sympathy?

8 A Well no.

9 Q Is that -- if that makes sense.

10 A I think that's evidence to my defense.

11 Q Okay.

12 A My wife could of testified to, if she'd been asked,
13 when, when we were intimate, there's -- I'm restricted by my
14 movements, but when the intimacy ended, there's no moving.
15 I'm not going anywhere. I'm in pain -- after, after that's
16 taking place, the pain sets back in. According to these
17 allegations, that's -- there's no way.

18 Q Now, did, did he not ask your wife about intimacy and
19 she indicated it was primarily through oral sex?

20 A I wouldn't -- she said that. I wouldn't say primarily
21 because she was pregnant.

22 Q But, but that is what her testimony was.

23 A It was easier for both of us. We both had medical
24 issues.

25 Q So, when asked, she testified about it being primarily

Robert Horton - Cross-examination
by Ms. White

1 oral sex?

2 A Yes.

3 Q Okay. In regards to inconsistencies and the victim, he
4 did cross-examine the victim about things from her lying to
5 about chatting with people on-line, did he not?

6 A Yes.

7 Q Okay. He also tried to address inconsistencies as to
8 whether or not you had known she used mouthwash versus she
9 said she didn't know you knew and some other things like
10 that.

11 Is that right?

12 A Yes, ma'am.

13 Q Okay. And, and obviously there were some issues, and
14 you discussed this, there's some kind of mental disabilities
15 or slowness for the victim.

16 Is that right?

17 A She has a learning disability.

18 Q Learning disability.

19 And, in fact, your wife testified that maybe --
20 although she was 17, she was more around the seventh or
21 eighth grade---

22 A On certain---

23 Q ---education?

24 A Certain levels.

25 Q Right.

Robert Horton - Cross-examination
by Ms. White

1 A She, she was on the right age level with certain
2 subjects and she might be two, two years behind on another,
3 three years on another.

4 Q Okay. And the State kind of presented that in a way
5 that would show that would explain some of the issues with
6 her interview.

7 Is that right?

8 A I think so, yes, ma'am.

9 Q Okay. In regards to the DNA, you said you wanted him
10 to address the fact that there should of been multiple DNA
11 present, but it is true that he cross-examined the expert
12 about the fact that they only took a sample from you?

13 A Yes.

14 Q And that, when they tested the carpet in the closet
15 where there was alleged to have been activity, they only
16 tested it for your DNA?

17 A That's correct.

18 Q Okay. So, so he did raise the question to them as to
19 why they did not test for saliva?

20 A Right.

21 Q Why they did not test for the victim's DNA?

22 A Yes.

23 Q Okay. And your testimony is that you specifically
24 requested your attorney to file a notice of appeal prior to
25 even the conviction?

Robert Horton - Cross-examination
by Ms. White

1 A The discussion we had was before the jury came back in.

2 Q Did you ever talk with him, after, after the jury came
3 back in, about what you wanted to do at that time?

4 A After the jury came back in, after their verdict?

5 Q After the verdict, right.

6 A I was pretty much in shock at that point.

7 Q Okay. So---

8 A He patted me on my back and he had said he would come
9 out to the, the detention center on Friday for me to sign
10 over a power of attorney to my family and he didn't do that
11 and that's pretty much the last I heard.

12 Q Okay. All right. Thank you.

13 That's all I have, Your Honor.

14 MS. MOODY: No further questions.

15 THE COURT: Anything further?

16 MS. MOODY: No, sir.

17 THE COURT: All right, sir. You may step down.

18 The Applicant may call its next witness.

19 MS. MOODY: No further witnesses, Your Honor.

20 THE COURT: All right. State wish to call witnesses.

21 MS. WHITE: Thank you, Your Honor.

22 We'd call Mr. Brown briefly.

23 THE COURT: Sir, come forward.

24 (Witness complies.

25 THE COURT: Place your left-hand on the Bible. Raise

Michael Brown - Direct examination
by Ms. White

1 your right.

2 MICHAEL BROWN, being first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat please, sir.

5 (Witness complies.)

6 THE COURT: State your name please, sir.

7 THE WITNESS: Michael Brown.

8 THE COURT: Thank you.

9 THE WITNESS: Yes, sir.

10 THE COURT: Ms. White, your witness.

11 MS. WHITE: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Brown, I want to ask you some questions kind of in
15 the order, order in which Mr. Horton raised them as well and
16 just address them.

17 Is it accurate that you began representing him shortly
18 even before his arrest once he -- right before he turned
19 himself in?

20 A Yes, he came to my office and discussed the nature of
21 what he felt to be pending charges, and we made arrangements
22 for him to turn himself in at the detention facility.

23 Q And was that -- is it true that that was in about a
24 three year time period prior to the trial?

25 A Yes, I would say so.

Michael Brown - Direct examination
by Ms. White

1 Q Okay. And, during that time period, did you talk with
2 him about obviously various witnesses that y'all could
3 present at trial?

4 A Yes.

5 Q What, in reference to his wife, can you tell me what
6 your discussions were and get -- and maybe even closer to
7 trial, what was your understanding as to how that was gonna
8 work?

9 A Well, throughout the pendency of the case, Mr. Horton
10 wanted to maintain contact with his wife, and I discussed
11 with him repeatedly that, at some point, the nature of our
12 particular conversations in terms of attorney/client, I felt
13 were compromised, some of the things that we would have to
14 attempt to address if he was talking to her directly. I, I
15 let him know, at various points, the prosecutor even came
16 back and was letting me know the nature of the discussions
17 that were taking place between Mr. Horton and his wife and
18 the fact that she was sharing that with the prosecution and
19 I talked to Mr. Horton about that.

20 But that being said, we did feel that she was gonna
21 take the stand at some point on behalf of the State as I was
22 being informed by Ms. Reese, the assistant solicitor, and we
23 did have a chance to, to cross-examine her as we felt the
24 issues that were, were relevant at trial.

25 Q So, throughout this, he was under the impression that

Michael Brown - Direct examination
by Ms. White

1 she was fully supportive I guess of him, but it kind of was
2 not as he understood.

3 Is that an accurate way---

4 A Well, I took it that he, he wanted her to be supportive
5 and he was having discussions with her, and I simply
6 informed him, based upon the information that he was sharing
7 with his wife and what I knew was coming back from the
8 State, that there was gonna be something that was gonna,
9 gonna be inconsistent between the two.

10 Q Okay. And so did you talk with him about the fact that
11 you would try to address any issues on cross?

12 A Yes, I told him I would have latitude to, to go into
13 pretty much what we wanted to on cross-examination.

14 Q And did you feel like you were able to get her to
15 testify, I guess, on a positive nature for y'all during that
16 cross as much as possible?

17 A As, as much as possible in terms of what we knew and
18 what we had discussed, yes.

19 Q In regards to her proffered testimony, you proffered
20 her testimony about maybe the victim's prior knowledge of,
21 prior sexual knowledge or experience, and even a little bit
22 about a prior D.S.S. case.

23 Is that right?

24 A That's correct.

25 Q And in your discussion with him, had you talked about

Michael Brown - Direct examination
by Ms. White

1 whether or not you would possibly be able to introduce
2 that---

3 A I did.

4 Q ---at trial?

5 A I told him the limitations and, and based upon an
6 attempt that we would make to anticipate that there would be
7 some form of objection and the Court would rule upon it.

8 Q And were you prepared to proffer the testimony based on
9 that understanding?

10 A Yes.

11 Q Okay. In regards to the DNA, obviously the DNA
12 regarding the Applicant's semen was found in the closet of
13 the victim.

14 Is that right?

15 A That's correct.

16 Q And as we've discussed, no DNA was taken from the
17 victim or nothing was examined for anyone but him.

18 Is that right?

19 A That's correct.

20 Q And how -- in your discussions with him, did you ever
21 talk about whether or not an expert would be helpful?

22 A No, I don't think we specifically addressed anything in
23 terms of an expert being helpful. We discussed with him the
24 fact that we could go into the, the nature of the
25 examination, that the -- the request that we had no problem

Michael Brown - Direct examination
by Ms. White

1 with coming forth based upon the request for Megan Burrell
2 of the Sheriff's Department asking directly if a swab could
3 be taken, and, of course, Mr. Horton made himself available
4 readily for them and had nothing that he considered that he
5 wanted to hide. So he did make himself available for that.

6 Q And that's referencing to the Buccal swab that they
7 took to match?

8 A Yes.

9 Q Okay. And you raised some issues having to do with
10 whether or not consent to search I guess or take the carpet
11 from the home was proper.

12 Is that right?

13 A Yes, that's correct.

14 Q I want to jump back about the witnesses. Portia Moore
15 and Katherine Foster were both D.S.S. workers.

16 Was anything discussed about whether or not they could
17 be called as witnesses to support the defense?

18 A I recall some discussion that Mr. Horton had about what
19 he felt Portia would, would be able to say in regards to I
20 imagine something that was gonna be inconsistent that the
21 minor would of, would of stated. But as I recall it, I did
22 have the, the opportunity. I think she was working in
23 Laurens or I think it was Laurens County then. I went to
24 actually see her in regards to anything that she felt would
25 be consistent in what Mr. Horton wanted her potentially to

Michael Brown - Direct examination
by Ms. White

1 state.

2 In that conversation, as I gathered it, it wouldn't be
3 information that was gonna come forth in the manner in which
4 Mr. Horton thought it would.

5 Q And based off---

6 A And that would of been---

7 Q I'm sorry.

8 A That would of been presented to a jury. It wouldn't be
9 consistent with what he was hoping would come out.

10 Q So based on your conversations with Ms. Moore you chose
11 not to call her as a witness?

12 A Yes.

13 Q Okay. And Ms. Foster's experience with the case, that
14 was more directed at the prior incident.

15 Is that right?

16 A As I understand it, yes.

17 Q Okay.

18 THE COURT: I haven't read the transcript.

19 The information that was proffered concerning the prior
20 allegations in the victim's sexual activity I assume was
21 excluded by the judge?

22 MS. WHITE: Yes, Your Honor.

23 THE COURT: All right. You may proceed.

24 Q In regards to the evidence of medical disability or
25 medications that was, that he was on, in your discussions

Michael Brown - Direct examination
by Ms. White

1 with him, what of that did you feel like would be helpful
2 for your defense?

3 A I don't think we specifically stated calling any
4 doctors. I know that he would -- was gonna have the
5 opportunity to talk about his physical limitations, what he
6 had gone through as it relates to any surgeries, any ongoing
7 convalescing at his home, the assistance he may have
8 received from his wife, his ability to go outside and garden
9 or the lack -- or losing the ability to do the things he
10 would normally do around the house in just his direct
11 testimony. Coupled with that would of been the fact that
12 Mrs., Mrs. Horton would of had the opportunity to talk about
13 any potential limitations, limitations that he had as well.

14 Q There was no discussion and there was no -- any kind of
15 disability that indicated that he would of been incapable
16 of, of conducting or having oral sex with someone?

17 A No.

18 Q Okay.

19 A I recall specifically asking him about the aspects of,
20 of his ability to have -- to engage in sexual activities
21 and, at some point, Mrs. Horton was the person that actually
22 said the how it occurred.

23 Q Okay. And, in fact, the victim had specifically
24 alleged instances of oral sex. No intercourse.

25 Is that right?

Michael Brown - Direct examination
by Ms. White

1 A That's correct.

2 Q Okay.

3 A That was consistent with Mrs. Horton's testimony.

4 Q The fact that she brought in the security blanket or
5 pillow at the time, was that something you had been aware of
6 before or was that something you kind of you just saw as it
7 happened?

8 A I don't think we really paid attention to her presence
9 outside the standing in the courtroom. So when she walked
10 up, it wasn't something that initially shocked the
11 conscience.

12 Q Okay. And, in fact, the video had been done three
13 years earlier as well.

14 Is that right?

15 A That's correct.

16 Q So even though she was 17 at the time of the trial, the
17 jury also saw her at 13 or 14 on the video?

18 A That's correct.

19 Q Okay. Final question, Mr. Brown.

20 In regards to an appeal, do you recall having a
21 conversation with Mr. Horton, prior to even the, the
22 verdict, about whether or not he wanted to appeal this?

23 A I don't, I don't recall having a conversation. I don't
24 know if he received some type of correspondents or some type
25 of indication that he would have the ability to appeal.

Michael Brown - Direct examination
by Ms. White

1 Subsequent to the trial, his brother, who, as I know him to
2 be Doctor Brian Horton, contacted our office in regards to
3 getting his records. I never heard from Mr. Robert Horton
4 directly after that and we sent those records to him.

5 Q Okay.

6 A And as far as I understood, they had already moved
7 forth in terms of appealing it. But I didn't file a notice
8 of appeal.

9 Q Okay. All right. And you don't recall discussing with
10 him whether or not he wanted one at the time of the verdict
11 or directly before?

12 A No, because in-between the -- I think the last
13 opportunity we had to, to address the Court during the time
14 period of charging the jury, Mr. Horton and myself and his
15 sister were out in this hallway behind this very courtroom
16 and we were having a discussion in terms of his possibility
17 or his opportunities to still plea and it was very emotional
18 and it was the same heightened level of emotion at the
19 conclusion of the trial---

20 Q Okay.

21 A ---and we, we just didn't, just didn't talk.

22 Q And did you ever receive a letter from him asking you
23 to file an appeal on his behalf?

24 A No.

25 Q Okay.

Michael Brown - Direct examination
by Ms. White

1 A Not that I recall now.

2 Q Okay. Thank you.

3 That's all I have, Your Honor.

4 THE COURT: Ms. Moody, you may cross-examine.

5 MS. MOODY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. MOODY:

8 Q Mr. Brown, you don't recall stating -- having a
9 conversation with him about filing an appeal?

10 A I don't, I don't, I don't recall that. I do, I do
11 recall talking about the opportunity for him still having
12 the abilities to plea, but in terms of an actual appeal --.

13 Q So after the Court sentenced him, you don't recall
14 whether he indicated or whether you discussed his appeal?

15 A No, I recall him crying and just being very emotional
16 and I had my hand on his back and I do recall patting him.
17 But in terms of having a, a conversation, I don't recall
18 that.

19 Q Okay. So you indicated that you talked to his brother,
20 Doctor Horton, who contacted you about records?

21 A Yes, at the time---

22 Q Actually did you talk to him?

23 A I didn't talk to him. He contacted my office and we
24 sent out the requested information.

25 Q Okay. So---

Michael Brown - Cross-examination
by Ms. Moody

1 A Certified.

2 Q When, when people contact your office for a copy of
3 their records, what do they usually intend to do with those
4 records?

5 A I don't know. I don't have that -- I haven't had that
6 happen that often.

7 Q So do you normally file a notice of appeal on behalf of
8 your clients?

9 A Upon request. I haven't had that situation happen that
10 often.

11 Q So after a trial, on the trial -- well, do you, do you
12 do a lot of trials?

13 A Yes, I do.

14 Q Okay. And of those trials, do people normally want to
15 appeal when they're found guilty?

16 A I haven't had a lot of trials in which that would,
17 would be necessary.

18 Q Is -- are you saying because you win them or I mean
19 you've had people to get convicted and go to jail?

20 A I have. I have.

21 Q Okay. And so, when they get convicted, they don't
22 indicate that they want an appeal?

23 A No, we would have -- we would have direct conversation
24 in regards to that especially if they were multiple charges,
25 potential time period that could extend beyond what they

Michael Brown - Cross-examination
by Ms. Moody

1 could of been sentenced to, if there was a great enhancement
2 of charges or the potential to have greater time. We would
3 have those kind of conversations and, and, in that instance,
4 I think there would of been a notice---

5 Q Okay. So---

6 A ---if we had the discussion.

7 Q So you didn't have that conversation with Mr. Horton or
8 you did?

9 A Not that I recall.

10 Q Okay.

11 A I think we talked about, in total, the fact that he was
12 obviously on trial for two separate and distinct charges and
13 the time period that each would of carried and the
14 potentials involved from that. But after the trial, no.
15 Just with the indication I think the State indicated to me
16 that they couldn't prove, you know, pursue the charge that
17 the jury couldn't come to an agreement on. But we didn't
18 discuss anything after the trial.

19 Q Okay. And so you are aware that he received a
20 dismissal of an appeal?

21 A Based upon the information I received in regards to
22 this hearing. I didn't know anything prior to that.

23 Q Okay. As far as the witnesses are concerned, as to the
24 DNA, you -- I think you testified that there was DNA found
25 in the closet. You discussed this with Mr., Mr. Horton.

Michael Brown - Cross-examination
by Ms. Moody

1 Okay. And as far as like bringing forth any kind of
2 expert, you just thought that his testimony alone would of
3 been sufficient?

4 A No, in examining, cross-examining the investigator, we
5 also put on the fact that she distinctly wanted to seek his
6 DNA for testing. No comparison on **Minor** or anyone else
7 that potentially could of been at the scene. So --.

8 Q Okay. So I guess what I'm, I'm understanding you to
9 say is that, whatever expert the State used, you were fine
10 with them -- their testimony as it relates to DNA?

11 A As it relates to the DNA that was analyzed, the State's
12 expert, they also were able to corroborate the information
13 that we were seeking to get out of them based upon the
14 cross-examination.

15 Q Okay.

16 A Yes.

17 Q So as to contamination as to -- I mean I think you
18 heard his testimony about his DNA being the strongest that
19 could overpower her DNA.

20 Are you testifying that, because they only used that
21 carpet sample, that there was no need to try and refute that
22 with another expert?

23 A I don't know if we talked about refuting in particular.
24 what we talked about was the fact that it was uncontroverted
25 that they only attempted to look at his DNA, sought the

Michael Brown - Cross-examination
by Ms. Moody

1 swab, and that's what they examined. The fact that they
2 were saying that the seminal fluid would of been to such a,
3 an amount that, I think as he's referring to, would of
4 overpowered a -- any saliva, that may have been something
5 that was, that was stated. But it wasn't a consideration
6 that we had discussed in terms of having the ability to
7 cross-examine the State's witnesses, both of that -- the
8 expert as well as the chief investigator.

9 Q Okay. Now, what -- so like you, you've testified.
10 He's testified.

11 What was your exact strategy for trying to aid him in
12 his defense?

13 Did y'all talk about your exact strategy?

14 A You mean the overall strategy as it relates to the---

15 Q Yes.

16 A ---the nature of the case?

17 Yes, we did. We were very detailed in terms of what we
18 wanted to present in terms of the minor child's ability to
19 have -- gain prior knowledge both through her access,
20 ability to access the computer, both with her interactions
21 with members of the opposite sex at church. We did attempt
22 to allude to her prior potential activities in the home of
23 others, outside of Mr. Horton and Mrs. Stephanie Horton,
24 other family members. Her exposure to boys at church was
25 part of our discussion at some point, and, ultimately,

Michael Brown - Cross-examination
by MS. MOODY

1 having the ability to see a family engaged in their
2 day-to-day activity including possibly being exposed to what
3 Mr. Horton and Mrs. Horton were doing when confined to their
4 home.

5 MS. MOODY: Okay. Beg the Court's indulgence.

6 (Pause.)

7 MS. MOODY: No further questions.

8 THE COURT: You may redirect.

9 MS. WHITE: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Brown, so when you talked about, for example, the
13 DNA expert, strategically it was beneficial for you to
14 present, on cross-examination, the, I guess the lack of
15 examination?

16 A Absolutely.

17 Q Is that right?

18 A Yes.

19 Q Okay.

20 A Absolutely.

21 Q So instead of trying to have someone come in and show
22 that there might of been DNA of the child, especially
23 because it was her closet, you just tried to highlight, I
24 guess, their lack of examination?

25 A Yes, contamination never was an issue and any other

Michael Brown - Redirect examination
by Ms. White

1 potential expletive that's been alluded to, if we had gone
2 that route, if they had examined the materials they could of
3 found the minor child's DNA and that would only bolster the
4 State's position as opposed to what we felt would weaken it
5 since there wasn't any other DNA but Mr. Horton's, and based
6 upon his testimony of him giving the reason why that DNA
7 would of been present in her closet.

8 Q Okay. All right. Thank you.

9 That's all I have, Your Honor.

10 THE COURT: Anything further, Ms. Moody?

11 MS. MOODY: No, sir, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: State wish to call any additional
15 witnesses?

16 MS. WHITE: No, Your Honor.

17 THE COURT: All right. Ms. Moody, I'll be happy to
18 hear from you.

19 MS. MOODY: Your Honor, basically my client takes the
20 position, while he requests a new trial, he would ask the
21 Court to consider the fact, I think which is his strongest
22 position, is that he was not afforded an appeal. It's
23 clear, from the testimony, that no appeal was filed by
24 Mr. Brown. There is, in the record, where he was told that
25 he could have an appeal and he attempted to try to get his

1 own appeal after learning that there was no notice of an
2 appeal.

3 I think he's, at least, entitled to get a -- an appeal
4 of this record, Your Honor, and as to the other issues, we
5 would rest on the record cause it is contained within the
6 transcript as well as the evidence that was or the documents
7 that were presented throughout the trial.

8 THE COURT: Yes, ma'am.

9 MS. WHITE: Thank you, Your Honor.

10 The State would argue that the Applicant's failed to
11 meet his burden of proof as to these allegations. I think
12 it's clear that there was strategic decisions for any
13 decision that was made. I think that it's clear, as to the
14 cross-examination, the information that was proffered, what
15 was able to be presented.

16 Mr. Brown testified that he was never requested to file
17 an appeal, but the Applicant had been advised on the record.
18 So we would just ask that the application be denied.

19 THE COURT: Thank you very much. I'll take it under
20 consideration.

21 MS. MOODY: Thank you, Your Honor.

22 MS. WHITE: Thank you, Your Honor.

23 THE COURT: I'll notify you when I have reached a
24 decision.

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* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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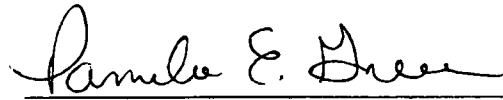
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 26th day of March, 2015.

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

August 12th, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Robert S. Horton, #351540,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-3065

ORDER OF DISMISSAL

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SPARTANBURG COUNTY
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This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 17, 2013. The Respondent made its Return on or about July 2, 2014. An evidentiary hearing into the matter was convened on March 26, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Michael D. Brown, Esquire, ("Counsel") also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the appellate records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the July 2009 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor - 2nd degree, but the indictment was later amended and Applicant was re-indicted at the

November 2011 term (2009-GS-42-3879). The Applicant was represented by Michael D. Brown, Esquire. On July 12, 2012, the Applicant proceeded to trial after which he was found guilty of criminal sexual conduct with a minor – 2nd degree. The Honorable J. Derham Cole sentenced Applicant to eighteen years.

A Notice of Appeal was filed by the Applicant. However, the South Carolina Court of Appeals dismissed Applicant's appeal as untimely served on May 6, 2013. State v. Horton, No. 2013-UP-904 (Ct. App. May 16, 2013). The Remittitur was issued on May 24, 2013.

ALLEGATIONS

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

- a. Ineffective assistance of Counsel, in that;
 - i. Counsel failed to file a timely notice to appeal,
 - ii. Counsel failed to call important witnesses,
 - iii. Counsel failed to present evidence relevant to Applicant's defense,
 - iv. Counsel failed to present expert testimony of Applicant's physical disabilities,
 - v. Counsel failed to exploit the great inconsistencies in the State's evidence,
 - vi. Counsel failed to impeach the credibility of the alleged victim with a relevant CPS report from Greenville County,
 - vii. Counsel failed to object to alleged victim arousing the passion and prejudice of the jury by bringing blue security pillow on stand with her,

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "A reasonable probability is a probability

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sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he retained Counsel to represent him on the charge. Applicant testified that he discussed his innocence with Counsel and provided Counsel with all of the pertinent facts. Applicant testified that Counsel discussed possible plea offers for fifteen, twelve and then zero to ten years, but Applicant refused to plead to a charge he did not commit.

Applicant testified that Counsel failed to call witnesses to assist with Applicant’s defense. Applicant testified that Counsel failed to call Applicant’s wife as a witness. However, Applicant acknowledged that his wife was called as a witness by the State and Counsel had the opportunity to cross-examine her. Applicant testified that Counsel failed to call Porchia Moore, the person who performed the initial DSS investigation and met with the victim. Applicant testified that Counsel said he was aware of what Ms. Moore would testify to and it would not help. Applicant also alleged that Counsel failed to call Katherine Foster, who was another DSS worker involved with the victim.

Applicant testified that Counsel failed to present relevant evidence regarding Applicant’s medical disability and how various medications affected Applicant. Applicant testified that he provided Counsel with medical notes after the first day of trial; however, Applicant stated that there were three years between his arrest and trial and Counsel failed to obtain any medical testimony or expert.

Counsel testified that he was retained to represent the Applicant on the charges. Counsel testified that he advised the Applicant not to share information with his wife regarding the trial strategy because Counsel knew that the wife would testify on behalf of the State, but Applicant did not listen and shared information with her about strategy. Counsel testified that he never

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discussed calling an expert to testify regarding the DNA and never discussed calling any of Applicant's doctors to testify. Counsel testified that he discussed the physical issues Applicant faced as a result of back surgery with Applicant prior to trial. Counsel testified that both the Applicant and his wife testified about Applicant's prior surgeries. Counsel testified that there was never an issue of potential contamination of the DNA. However, Counsel testified that he was able to cross-examine the State's expert as to why only the Applicant's DNA was sought to corroborate their suspicions. As to Porchia Moore and Katherine Foster, Counsel testified that he had the opportunity to see Moore in Laurens County.

This Court finds the testimony of Counsel to be more credible than that of the Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 426 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 34 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). 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). This Court finds that the Applicant failed to present testimony from any of the witnesses he alleges that Counsel failed to call at trial. The Court would be required to speculate as to what their testimony would be and how it might have affected the Applicant's trial. Therefore, the Applicant has failed to meet his burden of proof as to this claim.

Applicant testified that Counsel failed to highlight inconsistencies in the State's case,

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including the differences between the two videos of interviews with the victim. Applicant insisted that Counsel should have brought out the inconsistencies in his cross-examination of witnesses or during the closing arguments. Applicant also argued that Counsel was ineffective for failing to aggressively cross-examine the victim and the SLED agent. Counsel did not question the SLED agent about the fact that there was only one person's DNA present, when there should have been two people's DNA present if the story was true. Counsel testified that he did cross-examine both the victim and the State expert. Counsel testified that he cross-examined the expert as to why she only tested for the Applicant's DNA.

The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 449 (9th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination could have been beneficial to the defense.

Applicant testified that he wanted Counsel to present evidence regarding the prior DSS case involving the victim and prior allegations and a situation in which his wife stated that she caught her daughter masturbating. Counsel testified that the possibility of presenting issues of prior sexual knowledge or allegations was dealt with pre-trial motions. Counsel also testified that he was able to raise the inference of prior knowledge of sexual behavior on the victim's behalf based upon questions regarding the victim's father's viewing of pornography.

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Applicant testified that Counsel failed to object when the victim, who was seventeen years old at the time of trial, came up to testify on the stand carrying a security blanket. Counsel testified that he did not raise an issue about the victim's security blanket because he was not aware of it until she came into the courtroom with it.

This Court finds that the Applicant failed to meet his burden of proof as to these claims. The Applicant produced no evidence or testimony that any additional argument would have allowed evidence regarding prior assault allegations related to the victim be presented at trial. There was also no evidence that an objection made to the victim's security blanket would have affected the outcome of the trial. Therefore, this claim is denied. This Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, all allegations in this application for post-conviction relief, other than the request for a belated review of direct appeal issues, must be denied and dismissed with prejudice.

Direct Appeal

The Applicant alleged that Counsel failed to perfect a direct appeal on Applicant's behalf following Applicant's request. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California.¹ White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the

¹386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967).

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applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).²

Applicant testified that Counsel failed to file a timely notice of appeal. Applicant testified that before the jury returned, Counsel told Applicant that he would file a notice of appeal on Applicant's behalf if they were not successful. Applicant asserted that his family attempted to contact Counsel following the trial in regards to the appeal, but were unable to.

Counsel testified that he did not recall a conversation regarding Applicant's desire to appeal and did not file a notice of appeal on Applicant's behalf. Counsel testified that following the trial, he did receive a request from the Applicant's brother for a copy of Applicant's file.

This Court finds the testimony of both Applicant and Counsel to be credible as this issue, so out of an abundance of caution; this Court finds that the Applicant is entitled to a belated review of his direct appeal issues. The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Applicant's lack of a direct appeal can be remedied by a petition for belated review of his direct appeal issues pursuant to White v. State, supra.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony was credible, while the Applicant's testimony was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below

² "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for a White v. State review.**" [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

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the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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 cautions Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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J. HOPE BLACKLEY

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice with the exception of a finding that the Applicant is entitled to a belated review of his direct appeal issues; and
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate belated review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7th day of July, 2015.



Roger L. Couch
Presiding Judge

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WITNESSES

Spartanburg Co. Sheriff's Office

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ARREST NUMBER

M113982

ACTION OF GRAND JURY

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Bill

Foreperson of Grand Jury
Date: *July 12, 2012*

VERDICT

*Guilty of Criminal Sexual
Conduct With a Minor,*

Second Degree

Angela Sharpe

Foreperson of Petit Jury

Date: *July 12, 2012*

DOCKET NO. 09-GS-42-3879

Amended
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE
vs.

Robert Stephen Horton

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, SECOND DEGREE

SC Code: 16-03-655 (B) (1)

CDR Code: 0396

Class FEL/C

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

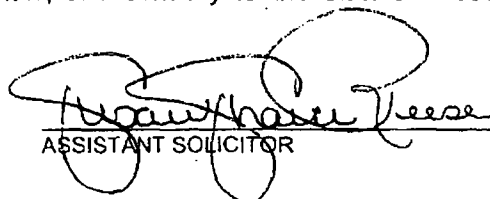
INDICTMENT

At a Court of General Sessions, convened on NOV 22 2011 the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That the Defendant, Robert Stephen Horton, did in Spartanburg County, between the dates of January 1, 2008 and May 7, 2009, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did engage in a sexual battery upon the minor, Minor [REDACTED] who was fourteen (14) years of age or less, but at least eleven (11) years of age at the time of the battery. Said incident occurred in Spartanburg County, South Carolina, in violation of Section 16-03-655 (B) (1), *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.



ASSISTANT SOLICITOR

STATE 680 SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE VS.)
Robert Stephen Horton)
AKA:)
Race: WHITE Sex: M Age: 41)
DOB: 12-18-1970 SS#:)
Address: 1444 Mountain View Road)
City, State, Zip: Boiling Spring, SC 29316)
DL#: SID#)

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

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

TO: Criminal sexual conduct with minor - victim 11 to 14 yrs of age - 2nd degree 0-20 years + sex registration

in violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

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

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

ATTEST: Susan S. Reese 6712 Michael D. Reese 69749
REESE, SUSAN S. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~

~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$3.90
TOTAL	\$133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS4203879

A/W#: M113982

Date of Offense: 5/2/2008

S.C. Code §: 16-03-0655

CDR Code #: 0396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk C. L. Ward

Court Reporter: MC Ward

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: July 12, 2012