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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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JUN 29 2011

S.C. Supreme Court

DARRELL EFIRD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Juror No.	Name	Sex	Race	STRIKES			
				*Court	Plaintiff	Defense	Accept
19	James H. Bennett	M	W		Excuse		
12	Janet Barnes	F	B		Present	Excuse	
136	Bobby G. Long	M	W		Excuse		
168	Debra A. Peters	F	W		Present	Excuse	
59	Randy M. Crenshaw	W	M		Present	Present	X
87	Betty B. Granger	W	F		Present	Excuse	
46	William H. Chamberlin	W	M		Present	Present	X
161	Marcee Musgrove	W	F		Present	Present	X
218	Debra F. Thompson	F	W		Present	Present	X
72	Connie Ellertsson	F	W		Present	Excuse	
* 68	Michael J. Duda	M	W		Present	Present	X
1	Kelly D. Adams	F	B		Present	Present	X
22	Robert E. Bigger	M	W		Excuse		
243	Robin A. Wilson	W	F		Present	Present	X
40	Linda R. Burris	F	W		Present	Excuse	X
237	Amy R. Williams	W	F		Present	Excuse	
164	Edward M. Nivens	W	M		Present	Present	X
121	Henrietta W. Jones	B	F		Present	Present	X
120	Maggie S. Johnson	B	F		Present	Present	X
155	Sarah R. McCullough	W	F		Present	Present	X
203	Cathy L. Smith	W	F		Present	Present	X
83 (Alt.)	Michael J. Gleason	W	M		Present	Present	

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

* Foreperson

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Lee S. Alford, Circuit Court Judge

Case No.: 2007-GS-46-1992, 1993, 1994, 1995, 1996

THE STATE,

RESPONDENT,

V.

DARRELL R. EFIRD,

APELLANT.

BRIEF OF APPELLANT

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ISSUE PRESENTED

1. Whether the lower court erred in denying the Appellant's motion for a directed verdict on the indictment for attempt to commit criminal sexual conduct, in the first degree. Indictment No.: 2007-GS-46-1995.

STATEMENT OF THE CASE

During the June 2007 term of the York County Grand Jury, the Appellant was indicted for three counts of criminal sexual conduct with a minor, second degree (2007-GS-46-1991-1993), criminal sexual conduct, second degree (2007-GS-46-1994), attempt to commit criminal sexual conduct, first degree (2007-GS-46-1995) and incest (2007-GS-1996). R. pp. 499-510. On July 10-12, 2007, a jury trial was held in front of the Honorable Lee S. Alford at the Moss Justice Center in York, South Carolina.

During the jury trial, the Honorable Lee S. Alford granted the Appellant's request for a directed verdict on one count of criminal sexual conduct with a minor, second degree (2007-GS-46-1991). R. p. 295-96. At the close of the trial, the jury found the Appellant guilty of two counts of criminal sexual conduct with a minor, second degree (2007-GS-46-1992, 1993), criminal sexual conduct, second degree (2007-GS-46-1994) and incest (2007-GS-46-1996). The jury also found the Appellant guilty of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) on the indicted charge of attempt to commit sexual conduct, first degree (2007-GS-46-1995). The Honorable Lee S. Alford sentenced the Appellant to a term of twenty years for criminal sexual conduct, second degree (2007-GS-46-1994), a consecutive term of ten years and a concurrent term of twenty years for the two counts of criminal sexual conduct with a minor, second degree (2007-GS-46-1992, 1993), a concurrent term of ten years for ABHAN (2007-GS-46-1995), and a concurrent term of one year for incest (2007-GS-46-1996). R. pp. 511-15.

Trial counsel submitted the Notice of Intent to Appeal on August 15, 2007. On February 22, 2008, Tommy A. Thomas and Tricia A. Blanchette filed a Motion

Substituting Counsel, which was granted by this Court on March 4, 2008. This Brief follows.

ARGUMENT

I. Standard of Review

On appeal from a motion for a directed verdict, the Court must view the evidence in the light most favorable to the State. State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). The Court may only reverse the lower court if there is no evidence to support the lower court's ruling. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). If there is any evidence reasonably tending to prove the guilt of the accused, the Court must find that the case was properly submitted to the jury. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000).

II. The Trial Court Erred in Denying the Appellant's Motion for a Directed Verdict on the Indictment for Attempt to Commit Criminal Sexual Conduct, in the First Degree.

The Appellant would submit that the trial court erred by applying the improper standard and denying the Appellant's motion for a directed verdict on the indictment for attempt to commit criminal sexual conduct, in the first degree. Indictment No.: 2007-GS-46-1995. The Appellant would further submit that even under the proper standard, the evidence did not support the submission of the indictment to the jury.

A. The Trial Record

At trial, the State called the Appellant's daughter Tabitha Efird to testify regarding the alleged offenses contained in the indictments. During the State's direct examination of Tabitha Efird, the State asked Tabitha about being home for Christmas break in 2005. The following testimony was elicited by the State:

Q: Was there a real chance that he was alone with you?

A: Yes. One night when I was there my mom was off at a friend's house, Heidi Capitt... I had fallen asleep on the couch waiting for my mom

to get back and he come home. He caught me in the living room and he was trying to persuade me to have sex with him and I wouldn't and he reached out and grabbed me. I tried fighting him off. And at that time he was going to try to rape me and my mom and Heidi pulled up and so he let me go and I went running to my bedroom.

Q: And you stated he was trying to persuade you. How was he trying to persuade you?

A: Telling me if I would have sex with him he would do stuff for me. I believe he was trying to convince me to have sex with me and he would buy me an IPOD that I wanted for Christmas.

Q: You stated that he grabbed you. Was there any other physical contact with you that day?

A: He tried to but not really. He grabbed me by both arms and tried to shake me at one point but he didn't hold me down or anything?

Q: Are you on the couch, are you standing up?

A: I'm standing up trying to get away from him.

Q: Was it in one room or another room?

A: It's in the living room of the house, which is at the front of the house. The living room is here; my bedroom is there; their bedroom is there and the bathroom is right here. So I was trying to get from the living room to my bedroom and he had grabbed me.

R. pp. 139-140, lines 2-25, lines 1-8.

After the State rested, the defense moved for a directed verdict on all counts, which was denied by the court. R. p. 282. Defense counsel then entered a specific motion for a directed verdict on the charge of attempt to commit criminal sexual conduct, first degree (2007-GS-46-1995). R. p. 282. Defense counsel argued to the court that the testimony of Tabitha Efird regarding a "grabbing" did not satisfy the definition of aggravated force as alleged in the indictment. R. p. 283. Defense counsel also argued that the indictment alleged extortion and that the State offered no evidence of extortion.

Specifically, defense counsel stated: "An offer to buy something for someone in return for something is not extortion. Extortion is threatening to do something to someone if they do not submit to an act." R. p. 283, lines 22-24.

In response, the State provided the court with case law and argued regarding aggravated force that "it doesn't even have to rise to the level of force required to convict somebody for assault and battery of a high and aggravated nature." R. p. 284, lines 20-22. The State also argued that the charge was for attempt; therefore, the State only had to show an attempt to use aggravated force.

After the State's argument, the court took the motion under advisement. R. p. 285. The trial court denied defense counsel's motion and held as follows: "I find that these cases indicate that threats to do harm to the alleged victim or to someone else could constitute aggravated coercion in so far as CSC 1st and his concern that that would be sufficient." R. pp. 303-4, lines 24-5, 1-3.

The defense called Heidi Capitit, a family friend and schoolteacher, to the stand in response to Tabitha's testimony regarding the alleged incident in December of 2005. R. pp. 306, 313. Ms. Capitit testified that she had gone shopping with Mrs. Efird, and they went back to Ms. Capitit's home to cook. R. p. 313. She testified that Tabitha called, so they returned to the Efird house. R. p. 313-314. She further testified that when they arrived back to the Efird home Tabitha came running out of the house with the phone telling her mother about a strange phone message from a friend of Mrs. Efird. R. pp. 314, 319.

At the close of the defense's case, counsel renewed his motions for a directed verdict. Again, the court took the specific motion regarding the charge of attempt to

commit criminal sexual conduct, first degree (2007-GS-46-1995), under advisement. The record is absent regarding the court's ruling, but it can be inferred that the motion was denied.

Following closing argument, the jury was sent out to deliberate. The jury returned indicating that they were unable to reach a verdict on some of the charges. R. p. 483. The court gave the jury an Allen charge before they were sent out to further deliberate. R. pp. 484-5. On the charge of attempt to commit criminal sexual conduct, first degree (2007-GS-46-1995), the jury returned a verdict on the lesser included offense of assault and battery of a high and aggravated nature. R. p. 487. Once the verdicts were entered, defense counsel made a motion notwithstanding the verdict on the grounds previously stated in his motion for a directed verdict. R. p. 492. The court denied the motion finding that there was substantial evidence to support the jury's verdict. R. p. 494, lines 9-15.

B. Argument

When reviewing a motion for a directed verdict, the trial court must view the evidence in the light most favorable to the State. The trial court is to determine if there is any direct or substantial circumstantial evidence that reasonably tends to prove guilt or from which guilt may be logically deduced. State v. Childs, 299 S.C. 471, 477, 385 S.E.2d 839, 843 (1989), State v. Pinckney, 339 S.C. 346, 349 529 S.E.2d 526, 527 (2000). The court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984).

Here, the indictment at issue read “attempt to commit criminal sexual conduct in the first degree, to wit: the use of aggravated force and/or extortion to accomplish a sexual battery, to wit: sexual intercourse in violation of Section 16-3-652(a)(b) S.C. Code of Laws, 1976, as amended.” Indictment No.: 2007-GS-46-1995. Aggravated force is defined as follows: “The actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of use of a deadly weapon.” S.C. Code Ann. §16-3-651(c) (2007).

In State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct. App. 1997) the Court reviewed the trial court’s denial of a motion for a directed verdict on charges of criminal sexual conduct in the first degree. Similar to the instant case, the State argued that the aggravated force requirement was met if any of the ABHAN circumstances of aggravation were present. Id. at 585, 491 S.E.2d at 264-5. In finding this assertion to be false, the Court noted that “many of the circumstances of aggravation for purposes of ABHAN have nothing to do with the degree of force associated with the attack. In fact, a conviction for ABHAN may be sustained even if no real force was used against the victim.” Id. In contrast, the Court determined that “whether a sexual battery amounts to first-degree CSC under section 16-3-652(a) is dependent on the degree of force used.” Id. The Court concluded:

Therefore, under section 16-3-652(a), a sexual battery constitutes first-degree CSC only if it was accomplished through the use of force and the force constitutes aggravated force. Thus, while the “aggravation” necessary for an ABHAN conviction may not be related to the force used in the attack, but, instead, to the general circumstances surrounding the attack, section 16-3-651 clearly requires the “aggravation” necessary for a first-degree CSC conviction to be associated with the degree of force used. To conclude that the presence of any of the circumstances that are considered aggravating for the purposed of ABHAN is sufficient to

support a conviction for first-degree CSC would largely read out the force requirements of section 16-3-651 and section 16-3-652.

Id. at 586, 491 S.E.2d at 265. The Court held that the victim's testimony that "Green had his hands on her shoulders during the attacks" did not amount to aggravated force and that the trial court erred in denying the motion for a directed verdict. Id. at 588, 491 S.E.2d at 266.

In the instant case, the State erroneously argued to the court that aggravated force "doesn't even have to rise to the level of force required to convict somebody for assault and battery of a high and aggravated nature." R. p. 284, lines 20-22. Further error was committed when the trial court held that the level of force needed to meet aggravated coercion was satisfied, thus denying the defense's motion for a directed verdict. R. pp. 303-4, lines 24-5, 1-3. It is apparent that the trial court was referring to the requirement of aggravated coercion as required for the charge of criminal sexual conduct, in the second degree. S.C. Code Ann. 16-3-653(1). The Appellant would submit that the trial court's finding was clearly erroneous because the charge at issue was attempt to commit criminal sexual conduct, in the first degree, and the indictment alleged "aggravated force".

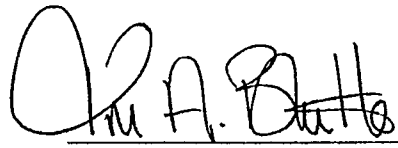
The Appellant would further submit that even under the proper standard the testimony did not establish the use of "aggravated force." The victim testified that the Appellant grabbed her and tried to rape her, but she was able to get free and run to her bedroom when her mother pulled up, by surprise, with her friend Ms. Capitit. R. p. 139-140. In complete contradiction, Ms. Capitit testified that Tabitha called her mother at Ms. Capitit's home, which resulted in them returning to the Efirid's home. R. p. 313-314. She further testified that Tabitha came out of the home when they pulled up and gave her

mom the phone to listen to a phone message. R. p. 314. Based upon the testimony regarding this issue, the Appellant would submit that the trial court should have granted his motion for a direct verdict since the evidence did not establish aggravated force.

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this Court reverse the above-mentioned findings of the lower court and order a new trial.

Respectfully submitted,



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July 1, 2008

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Lee S. Alford, Circuit Court Judge

Case No.: 2007-GS-46-1992, 1993, 1994, 1995, 1996

THE STATE,

RESPONDENT,

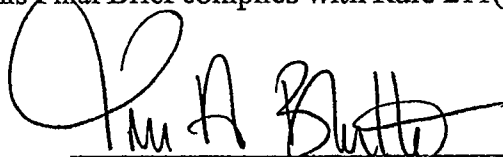
V.

DARRELL R. EFIRD,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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July 1, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
Hon. Lee S. Alford, Circuit Court Judge

The State,

Respondent,

v.

Darrell R. Efir,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court properly deny Appellant's motion for a directed verdict on the charge of attempt to commit criminal sexual conduct in the first degree?

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant began sexually abusing his daughter when she was only four or five years old. (R. 130). He began by touching her vagina with his finger. Over time, he also fondled her breasts, made her perform oral sex on him, and performed oral sex on her. (R. 130-131).

When she reached the age of eight, he entered her room, began putting his finger in her vagina, and then forced her to have sexual intercourse with him for the first time. (R. 132).

At trial, the victim testified the abuse occurred: "pretty frequent." (R.133). She continued:

Really any time my mom was lying down with a migraine, any time she was gone. Any time he could get me alone. He would take me on car rides sometimes and do it while we were in the car. I mean he did just anything he could when he had the chance. (R. 133).

As she got older, the abuse continued. Appellant would use the finger of a non-latex glove instead of a condom because the victim was found to be allergic to latex after a reaction to a condom used by Appellant. (R. 133-134). Appellant would offer bribes to the victim in order to entice her into having sex with him and to not tell anyone. (R. 135). The abuse continued on a frequent basis until the victim went to college. (R. 135-136).

The victim returned home from college over Christmas break in 2005 because the dorms were closing. (R. 138). At trial, the following colloquy occurred regarding Appellant's attempt to commit criminal sexual conduct.

- Q. Was there a real chance that he was alone with you?
A. Yes. One night when I was there my mom was off at a friend's house, Heidi Capitt. . . I had been playing a video game while I was in the living room and I had fallen asleep on the couch waiting for my mom to get back and he come home. He caught me in the living room and he was trying to persuade me to have sex with him and I wouldn't and he reached out and

grabbed me and I tried fighting him off. And at that time he was going to try to rape me and my mom and Heidi pulled up and so he let me go and I went running to my bedroom.

Q. And you stated he was trying to persuade you. How was he trying to persuade you?

A. Telling me that if I had sex with him he would do stuff for me. I believe he was trying to convince me to have sex with [him] and he would buy me an IPOD that I wanted for Christmas.

Q. You stated that he grabbed you. Was there any other physical contact with you that day?

A. He tried to but not really. He grabbed me by both arms and tried to shake me at one point but he didn't hold me down or anything?

Q. Are you on the couch, are you standing up?

A. I'm standing up trying to get away from him.

Q. Was it in one room or another room?

A. It's in the living room of the house So I was trying to get from the living room to my bedroom and he had grabbed me.

Q. And you stated that your mom and a friend came home. What happened then?

A. He let me go as soon as he heard the car in the drive because he has pretty good hearing. He let me go and I went to my bedroom. (R. 139-140) (emphasis added).

The victim said she remained in her bedroom because she was scared to come out. (R. 140).

Later that evening, Appellant and the victim's mother were having a heated argument.

The victim "just couldn't take it anymore." She testified:

I stood at the door way from the hallway into the kitchen and said something about the fact that he had been molesting me. I'm not exactly sure what I said but I remember that you know I told my mom . . . I looked at her and I told her I said I can't do this anymore I can't. And I looked at him and I said you can't keep treating me this way and you can't keep treating her this way. I said you know for years you've abused me. You've sexually assaulted me, you just molested me in every way possible. I just can't do this anymore. (R. 141-142).

The victim and her mother left the house, but later met with Appellant at a local Denny's. There, the parties discussed what had happened and returned home. Once home, the victim's mother wrote a "contract" that included demands to be filled by Appellant in order for them to remain quiet. (Contract State's Exhibit 1; R. 144-148). After the victim returned to school, she made the decision to report the abuse. Shortly after spring break, she reported the sexual abuse and attempted criminal sexual conduct to the police.

Appellant was indicted during the June 2007 term of the York County Grand Jury on a total of six charges related to the years of abuse. He proceeded to trial before the Honorable Lee S. Alford and a jury. After the State presented its case, Appellant moved for a directed verdict on several of the charges. (R. 282). He maintained the State failed to show he used aggravated force or extortion in order to accomplish the sexual battery as is required for attempted criminal sexual conduct in the first degree. (R. 282-285). After argument by counsel, the court found the testimony was sufficient to demonstrate he used aggravated force to attempt to accomplish the sexual battery and submitted the charge to the jury. (R. 285-287; 303-304).

Appellant renewed the motion after the defense presented its case. (R. 398). The court again stated that he believed there was "some inclination of force," but he wanted to review the case law to determine if the proper standard was met by the testimony of the victim. He specifically reserved judgment on the issue until the following morning. (R. 400). The following morning, however, the judge did not issue a ruling on the motion for a directed verdict. (See R. 402). The offense was submitted to the jury along with the lesser included offense of assault and battery of a high and aggravated nature (ABHAN).

Judge Alford directed a verdict in favor of Appellant on one count of criminal sexual conduct with a minor in the second degree. He was convicted of ABHAN as a lesser included offense of attempted criminal sexual conduct in the first degree. The jury convicted Appellant of the remaining charges as indicted. (R. 486-487). The judge sentenced Appellant to a total of thirty years in prison. (R. 495-496). This appeal followed.

ARGUMENT**I. Did the trial court properly deny Appellant's motion for a directed verdict on the charge of attempt to commit criminal sexual conduct in the first degree?**

Appellant contends the trial court erred in denying his motion for a directed verdict on the charge of attempt to commit criminal sexual conduct in the first degree because there was no evidence Appellant used aggravated force or extortion in the attempt to accomplish the sexual battery. The issue may not be properly preserved because Appellant did not ensure he received a ruling on the issue from the trial court. In addition, the victim's testimony provides ample evidence Appellant used aggravated force sufficient to sustain the court's decision to send the offense to the jury.

A. Preservation

In order to preserve the issue raised on appeal, Appellant was required to move for a directed verdict and obtain a ruling by the trial court immediately after the State presented its case and again at the close of the case if Appellant presented any evidence. State v. Rosemond, 348 S.C. 621, 628, 560 S.E.2d 636, 640 (Ct. App. 2002). Additionally, in order to preserve an issue, it must be raised to and ruled upon by the trial court. See State v. James, 362 S.C. 557, 562, 608 S.E.2d 455, 457 (Ct. App. 2004) (citing Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 865, 866 (2001)).

First, in this case Appellant presented a defense and renewed his previous directed verdict motions after he completed his defense. Appellant acknowledges, however, the record is devoid of a ruling on his renewed motion, but asks that the ruling be inferred.

(App.Br.9). This Court could find the issue is not preserved for review because the trial court took the matter under advisement and never issued a specific ruling.

Additionally, Appellant seems to argue that the trial court analyzed the issue under the wrong standard because the trial court stated there was “aggravated coercion” instead of “aggravated force” when making its ruling. (App.Br.11). Compare S.C. Code Ann. §§ 16-3-652(a) & 16-3-653(1) (Supp. 2007). It appears this was simply a misstatement by the court and the court meant to use “aggravated force.” The court specifically ruled: “I find that these cases indicate that threats to do harm to the alleged victim or to someone else could constitute aggravated coercion in so far as CSC 1st and his concern that that would be sufficient.” (R. 303-304). Obviously, the court is ruling based on a determination that the amount of force used was sufficient to satisfy a CSC 1st analysis, even though the court used the wrong term. Also, the issue regarding the appropriate standard is not properly preserved, because Appellant never raised the issue of the trial court’s use of the term “aggravated coercion” instead of “aggravated force” below. The issue was not raised to and ruled upon by the court, and the trial court was not given the opportunity to remedy the misstatement. See James, 362 S.C. at 562, 608 S.E.2d at 457.

Finally, the indictment for attempt to commit criminal sexual conduct also included the aggravating circumstance of the victim submitting as a result of extortion. See S.C. Code Ann. § 16-3-652(b) (Supp. 2007). While Appellant mentioned the lack of extortion evidence in his motion for a directed verdict, he did not offer much of an argument and instead focused on the “aggravated force” argument. The court never ruled on whether there was evidence of extortion presented by the victim. Therefore, because he did not properly raise

the issue, the conviction can be affirmed based on section 16-3-652(b) even if there was no evidence of “aggravated force” under section 16-3-652(a). Accordingly, the decision of the trial court to submit the offense of attempt to commit criminal sexual conduct should be upheld and the convictions and sentences should be affirmed.

B. Merits

If the court finds the issue is preserved or that the ruling may be inferred based on the offense being submitted to the jury, the issue still fails on the merits. The trial court, in a directed verdict motion, is concerned with the existence or nonexistence of evidence, not with its weight. State v. Freiburger, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362-63 (2006). On appeal from the denial of a motion for directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the court must find the case was properly submitted to the jury. McCombs, 368 S.C. at 493, 629 S.E.2d at 363.

Section 16-3-652 provides:

A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

- (a) The actor uses aggravated force to accomplish sexual battery.
- (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible

confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

S.C. Code Ann. § 16-3-652(a) & (b) (Supp. 2007).

Aggravated force is defined in section 16-3-651:

For the purposes of §§ 16-3-651 to 16-3-659.1: "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

S.C. Code Ann. § 16-3-651(c) (Supp. 2007). Several cases have analyzed these sections to determine whether the State provided sufficient evidence to warrant sending the cases to the jury. Our Supreme Court has explained:

To convict a defendant of first-degree CSC, the State must present evidence the defendant committed a sexual battery and actually used aggravated force at the time of the assault, i.e., the defendant overcame the victim through the use of physical force, physical violence of a high and aggravated nature, or the threat of the use of a deadly weapon. The evidence must show the actual use of aggravated force occurred near in time and place to the assault, such that the effect of the aggravated force caused the victim to submit to the assault.

State v. Brown, 360 S.C. 581, 588-589, 602 S.E.2d 392, 396 - 397 (2004) (citing State v. Lindsey, 355 S.C. 15, 20-22, 583 S.E.2d 740, 742-743 (2003) (affirming denial of defendant's directed verdict motion on charge of first-degree CSC where record contained evidence defendant physically forced victim to submit to assault by confining her in automobile, grabbing her hands, getting on top of her, and holding her down as she kicked, pushed and fought to get him off of her); State v. Frazier, 302 S.C. 500, 397 S.E.2d 93 (1990) (affirming attempted first-degree CSC conviction where State presented evidence that defendant grabbed victim, forced her into woods, and ripped her clothes off in effort to

commit sexual battery); State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct. App. 1997) (reversing denial of defendant's directed verdict motion on charge of first-degree CSC where record contained no evidence defendant used physical force, physical violence, or threatened use of deadly weapon while sexually assaulting his minor daughter by shaving her pubic hair and performing oral sex on her)).

In the instant case, the State did not have to prove Appellant succeeded in the sexual battery, because he was charged with attempt. The State only had to prove he attempted the sexual battery and used, or attempted to use, "aggravated force" during that attempt in order to meet the elements of attempt to commit criminal sexual conduct in the first degree. The testimony of the victim provides ample evidence that Appellant used "aggravated force." She testified he "reached out and grabbed me and I tried fighting him off." She further described the aggravated force used by Appellant: "He grabbed me by both arms and tried to shake me at one point." Finally, the victim testified she was trying to get to her bedroom when he "had grabbed" her and prevented her from leaving the living room. (R. 139-140).

The testimony shows Appellant used "aggravated force" when he grabbed the victim's arms, shook the victim, prevented the victim from leaving the living room, and "was going to try to rape" the victim. The only thing that prevented the criminal sexual conduct from occurring was the victim's mother and friend returning home. The victim's testimony is ample evidence to support the trial court's decision to submit to the jury the charge of attempted criminal sexual conduct in the first degree. Accordingly, the court should affirm Appellant's conviction and sentence for attempted criminal sexual conduct in the first degree.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

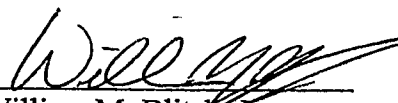
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Columbia, SC 29211
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ATTORNEYS FOR RESPONDENT

July 31, 2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

—————
Appeal From York County
Hon. Lee S. Alford, Circuit Court Judge
—————

The State,

Respondent,

v.

Darrell R. Efir,

Appellant.

—————
CERTIFICATE OF COUNSEL
—————

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

July 31, 2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From York County
Hon. Lee S. Alford, Circuit Court Judge

The State,

Respondent,

v.

Darrell R. Efird,

Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

Tricia Blanchette, Esquire
Post Office Box 12725
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 31st day of July, 2008.



ELLEN DuBOIS

Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Darrell R. Efird,

Appellant.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Unpublished Opinion No. 2009-UP-248
Submitted May 1, 2009 – Filed May 28, 2009

AFFIRMED

Tricia A. Blanchette, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General William M. Blich, Jr., all of Columbia; and Solicitor Kevin S. Brackett, of York, for Respondent.

PER CURIAM: Darrell R. Efird appeals his conviction and sentence for assault and battery of a high and aggravated nature as a lesser included offense of attempted first-degree criminal sexual conduct (CSC), arguing the trial court erred in denying his motion for a directed verdict on the attempted first-degree CSC charge because there was no proof he used aggravated force. South Carolina Code Section 16-3-652 (2003) provides:

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

For first-degree CSC, "[a]ggravated force' means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon." S.C. Code Ann. § 16-3-651 (2003). While the State must show a defendant actually used aggravated force to overcome a victim for first-degree CSC, in the instant case, Efird was charged with attempted first-degree CSC. "Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime." State v. Nesbitt, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001). "In the context of an 'attempt' crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense. In other words, the completion of such acts is the defendant's purpose." State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (citations omitted). In addition to proof of intent, the State must show the defendant effectuated "some overt act, beyond mere preparation, in furtherance of the intent, and there must be an actual or present ability to complete the crime." Nesbitt, 346 S.C. at 231, 550 S.E.2d at 866. "[P]reparation consists in devising or arranging the means or measures necessary for the commission of the crime; the attempt or overt act is the direct movement toward the commission." State v. Quick, 199 S.C. 256, 260, 19 S.E.2d 101, 103 (1942). At trial, the State presented evidence showing Efird was attempting to have sex with the victim, and after she refused, Efird

physically grabbed her as she tried to fight him off. Further, the victim testified Efirid only stopped because someone pulled a car into the driveway of the house. Therefore, the State presented evidence supporting a conclusion: (1) Efirid had the specific intent to use physical force to overcome the victim in order to accomplish a sexual battery, and (2) Efirid performed an overt act towards the commission of the crime. Accordingly, we must affirm the trial court's denial of Efirid's motion for a directed verdict. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 363 (2006) (stating if any direct evidence or substantial circumstantial evidence reasonably tends to prove the guilt of the accused, we must find the case was properly submitted to the jury).

AFFIRMED.¹

SHORT, WILLIAMS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

2009-CP-46-3273

COUNTY OF

2009 JUL 30 PM 3:56

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant.)
CLERK OF COURT)
DARRELL R. EFIRD, #322883)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence General Sessions, York S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-43-1992 (CSC, 2nd degree); 2007-GS-43-1993 (CSC, 2nd degree)
 - (b) 2007-GS-43-1994 (CSC, 2nd degree); 2007-GS-43-1995 (Attempt CSC, 1st)
 - (c) 2007-GS-43-1996 (Incest)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 20yrs for CSC, 2nd (2007-GS-46-1994), consecutive term of 10yrs and
 - (b) Concurrent term of 20yrs (2007-GS-412-1992; 1993)



(c) A Current 10 yrs for ABHANS (2007-GS-46-1445); Current one-year term for Incest (2007-GS-46-1446)

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?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. S.C. Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Convictions Affirmed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. May 28, 2009
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Unpublished Op. No. 2009-UP-248
- ii. _____

(c) A Current 10yrs for ABHAN(2007-65-46-1445), Current one-year term for Incest (2007-65-46-1446)
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?
Yes

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
 - i. S.C. Court of Appeals
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. Convictions Affirmed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. May 18, 2009
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Op. No. 2009-UP-248
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of Counsel
- (b) ii
- (c) ii

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

- (a) See attached Memorandum of Law
- (b) ii
- (c) ii

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) Exclusive Post-Conviction Issues

(b) ll

(c) ll

17. Were you represented by an attorney at any time during the course of:

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

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. James Boyd, Rock Hill, S.C.
 - ii. Tricia A. Blanchette, P.O. Box 12725, Columbia, S.C. 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Direct Appeal
 - iii. _____

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

That my Convictions and Sentences be reversed for New Trial

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

NO

STATE OF SOUTH CAROLINA)
)
County of York)

VERIFICATION

I, Darrell R. Egid, #322883, 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.

Darrell R. Egid # 322883

SWORN to and subscribed before me this 22nd day of July, 2009
Carol A. Buckston (L.S.)
Notary Public

My Commission Expires: 07-10-2011

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

I, Darrell R. Egid #322883, 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.

Darrell R. Egid #322883
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of July, 2009
Carol A. Phuckston
Notary Public

My Commission Expires: 07-10-2011

2009-CP-46-3272

Date: July 22, 2009

Clerk of Court-York County
David Hamilton
P.O. Box 549
York, S.C. 29745

Re: Post-Conviction Relief Application

Dear Mr. Hamilton:

Enclosed please find my original Application for Post-Conviction Relief (PCR) and Memorandum of Law in Support of same for filing with your office. I have also enclosed a self-addressed stamped envelope for your return to me clocked-stamped copies of these documents.

Thank you for your kind attention to this matter.

Sincerely Yours

/s/ Darrell Ehir #322883
Darrell Ehir, #322883
Perry Correctional Inst.
430 Oaklawn Road-23B
Pelzer, S.C. 29569

cc: file

RECEIVED

JUL 27 2009

P.C.I. MAILROOM

2009 JUL 27 10:53 AM
P.C.I. MAILROOM

January 11, 2010

Mr. Bennett J. Schiller III
Post Office Box 36365
Rock Hill, S.C. 29732

Re: Darrell Efird, Z322883 v. The State (Amended PCR)
Case No. 2009-CP-46-3272

Dear Mr. Schiller:

Enclosed please find my original Amended Application for Post-Conviction Relief (PCR) for submission on my behalf to the courts so all my available grounds can be heard at my PCR hearing.

Thank you for your kind attention to this matter.

Sincerely Yours

/s/ Darrell Efird #322883
Darrell Efird, #322883
Perry Correctional Institution
430 Oaklawn Road-Q3B
Pelzer, S.C. 29669

cc: Applicant's File

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 Darrell Efird, #322883,)
 Applicant,)
 vs.)
 The State,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 Case No.: 2009-CP-46-3272

AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

The Applicant, through his undersigned Attorney, move the Honorable Court to grant leave to Amend the Application for Post-Conviction Relief (PCR) to include the following available grounds:

1. The Applicant was denied the right to effective assistance of trial counsel by counsel's failure to move to suppress evidence (written contract) obtained under a defective search warrant.

When a defendant alleges that counsel's failure to articulate a defective search warrant under S.C. Code §17-13-140 he must show that such claim is meritorious and that verdict would have been different absence evidence that should have been excluded. See e.g., Sikes v. State, 448 S.E.2d 560 (1994); State v. Covert, 528 S.E.2d 482 (Ct. App. 2006).

In this case, the state executed a search warrant on applicant's home to obtain a "written contract Document signed by Applicant and the Minor victim (his daughter)" that was used by the solicitor to corroborate the minor victim's testimony against the applicant. Consequently, the search warrant was never signed by any "issuing judicial officer. See Exhibits A, A-1 (Search Warrant) and Exhibit B (Return).

In Covert, Supra, our Supreme Court held that "the search warrant statute under §17-13-140 contains requirements different from those mandated by the Fourth Amendment, and is in some ways 'more strict' than the federal constitution". State v. McKnight, 352 S.E.2d 471 (1987). "While we have recognized a 'good faith' exception to statute's requirements where the officers make a good faith attempt to comply with the statute's affidavit procedures, McKnight, Supra, explaining State v. Sachs, 216 S.E.2d 501 (1975), we have left open the question whether a good faith exception would be applied where 'the officer reasonably believe the warrant is valid when the search is made, but subsequently determined to be invalid'". McKnight, Supre.

"Here, we do not reach the question whether there exist a good faith exception to the statute where a defective warrant is issued, since under South Carolina law an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of §17-13-140. See also Davis v. Sanders, 19 S.E. 138 (1894).

Here, the solicitor used the "written contract" in its case in chief to im- properly corroborate the minor victim's testimony and to extensively cross ex- amine applicant to prove its case. Even proper corroboration testimony that is merely cumulative to victim's testimony in criminal sexual conduct prosecution can- not be harmless because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. See, e.g., Jolly v. State, 443 S.E.2d 566 (S.C. 1994).

Finally, as there was no physical or forensic evidence connecting applicant to the crimes and the case was primarily a swearing contest, trial counsel's failure to move to suppress the "written contract" was ineffective assistance of counsel that prejudiced applicant's defense and right to a fair trial. See Cobbs v. State, 408 S.E.2d 223 (S.C. 1991); see also Strickland v. Washington, 104 S.Ct. 2052 (1984).

Respectfully Submitted

This _____ day
of _____, 2010

BY: _____
Bennett J. Schiller III
Post Office Box 36365
Rock Hill, S.C. 29732
Attorney for Applicant

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	Case No.: _____
Darrell Efird #322883,)	
Applicant,)	
vs.)	MEMORANDUM OF LAW IN SUPPORT OF
The State,)	APPLICATION FOR POST-CONVICTION
Respondent.)	RELIEF

The Applicant presents the Memorandum of Law in Support of Application for Post-Conviction Relief (PCR) and would show the following unto the Court.

STATEMENT OF THE CASE

During the June 14, 2007, term of the York County Grand Jury, the Applicant was indicted for three counts of criminal sexual conduct with a minor, second degree (2007-GS-46-1991-1993), criminal sexual conduct, second degree (2007-GS-46-1994), attempt to commit criminal sexual conduct, first degree (2007-GS-46-1995) and incest (2007-GS-46-1996). On July 10-12, 2007, a jury trial was held in front of the Honorable Lee S. Alford. The applicant was represented at trial by James Boyd

During the jury trial, the Honorable Lee S. Alford granted Applicant's request for a direct verdict on one count of criminal sexual conduct with a minor, second degree (2007-GS-46-1991). Tr. p. 295-96. The jury found the Applicant guilty of two counts of criminal sexual conduct, second degree (2007-GS-46-1992, 1993), criminal sexual conduct, second degree (2007-GS-46-1994) and incest (2007-GS-46-1996). The jury also found the Applicant guilty of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) on the indicted charge of attempt to commit sexual conduct, first degree (2007-GS-46-1995). The Honorable Lee S. Alford sentenced the Applicant to a term of twenty years for criminal sexual conduct, second degree (2007-GS-46-1994), a consecutive term of ten years and a concurrent term of twenty years for the two counts of criminal sexual conduct with a minor, second degree (2007-GS-46-1992, 1993), a concurrent term of ten years for ABHAN (2007-GS-46-1995), and a concurrent term of one year for incest (2007-GS-46-1996).

Trial counsel filed a timely Notice of Appeal. On February 22, 2008, Tommy A. Thomas and Tricia A. Blanchette filed a Motion Substituting Counsel, which was granted by the SC Court of Appeals. The S.C. Court of Appeals affirmed applicnat's conviction in Unpublished Opinion No. 2009-UP-248 submitted May 1, 2009-Filed May 28, 2009.

ARGUMENT

The Applicnat was denied effective assistance of trial counsel by counsel's failure to move for dismissal of his indictments that were "sham legal processes" that were not presented by a grand jury for trial of his cases under the circuit court's original criminal jurisdiction.

To prove counsel was ineffective, a PCR applicant must show counsel's performance was deficient and the deficient performance cause prejudice to applicnat's case. State v. Bryant, 581 S.E.2d 157 (S.C. 2003); see also Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Accordingly, in applicant's case, he contends that his indictments were "sham legal processed instruments" that were not "true billed" by a lawfully constituted grand jury for trial of his cases under the general sessions court's original criminal jurisdiction to convict him.¹ A "sham legal process" is defined under S.C. Code of Law, Section 16-17-735; in relevant part, as follows:

- (E)(3)...the issuance, display, reliance on an instrument that is not lawfully issued...which purports to:
 - (b) assert jurisdiction or authority over or determine or adjudicate the legal status, rights...of a person...
 - (c) require or authorize the search, seizure, "indictment", arrest, trial or sentencing of a person...

Here, applicnat's indictments indicates that he was indicted by the York County Grand Jury for four counts of criminal sexual conduct with a minor, second degree (2007-GS-46-1991-1994), attempt criminal sexual conduct, first degree (2007-GS-46-1995), and incest (2007-GS-46-1996) during the June 14, 2007, term of York County General Sessions Court. Conversely, under S.C. Code of Law, Section 14-5-820, the S.C. Legislature has enacted the following schedule for terms of general sessions court in York County

The court of General Sessions shall be held at York on the

¹ Under The South Carolina Constitution Article V, Section 22, the county grand jury must first agree to "true bill" an indictment before the charge therein can be submitted to the circuit court for trial under its "original criminal jurisdiction.

first Monday in January for three weeks, the first Monday in February, the first Monday in March for two weeks, the first Monday in April for two weeks, the fourth Monday in May, the third Monday in June for two weeks, the fourth Monday in July, the fourth Monday in September, the fifth Monday in September when there is a fifth Monday, the third Monday in October for two weeks, the third Monday in November for two weeks, and the third Monday in December

In conjunction, the S.C. Legislature has enacted S.C. Code of Law, Section 14-9-170, which mandates the following provisions for convening the grand jury for service upon the general sessions court:

The grand jury as legally drawn in accordance with law for service upon general sessions court in each of the counties shall constitute the grand jury for the county court and shall meet with the county court at each of its terms (to deliberate and return true bill or no bill indictments).

Further, under S.C. Code of Law, Section 14-9-210, the S.C. Legislature has mandated the following requirement for the county solicitors to obtain an indictment for trial of a case in general session court:

The county solicitor shall prepare and, through presiding judge of the general sessions court, submit to grand jury, "while in attendance upon general sessions court", bill of indictmentThe grand jury shall act thereon and report its action to the presiding judge....All cases in which bill of indictment are found shall stand for trial by general sessions court as though found by the grand jury "while in attendance upon general sessions court".

Therefore, as it is obvious from the plain and unambiguous language of S.C. Code of Law, Section 14-5-820, for terms of general sessions court in York County, there was no term of general sessions court held in York County on June 14, 2007. See also the General Sessions Court schedule for York provided by the South Carolina Court of Administration attached hereto as Exhibit A. Likewise, as the S.C. Legislature has enacted laws that requires the grand jury's attendance upon the general sessions court for return of an indictment, the grand jury could not have been in attendance at a non-existing June 14, 2007, term of General Sessions Court in York to return applicnat's indictments "true bill" for trial of his cases. See S.C. Code of Laws, Sections 14-9-179 and 14-9-210. The law requires the presentment of a grand jury as a condition precedent to the "trial of a crime", as the grand jury is a constituent part of the court, and without the presentment the general sessions court has no authority to exercise its original criminal to try the cause (or criminal case). See State v. McClure, 289 S.E.3d 158 (1982).

Simply put, under S.C. Statutory Laws and Constitution, a formal accusation (indictment), which charges some offense known to law, is essential for every trial for a crime, without which the general sessions court acquires no jurisdiction of the cause (case) to proceed with a trial, even with the consent of the accused. And where the law requires a particular form of accusation (indictment), that form of accusation is essential and fundamental under the State Laws and Constitution. See State v. Hayward, 564 S.E.2d 379 (S.C. 2002), citing Anderson v. Anderson, 382 S.E.2d 897,900 (1989).

Notwithstanding, to the extent that the Respondent may argue that our Constitution grants the general sessions court original criminal jurisdiction to try criminal cases, and that an indictment is merely an accusatory document that puts a defendant on notice of the charge, the applicant will submit that for the court to accept the Respondent's definition of an indictment it would have to hold that a defendant can also be tried upon a "no bill" indictment that contains an "notice" accusation that is return by the grand jury. If, however, the court decline to accept the Respondent's argument that a defendant can be tried upon a "no bill" indictment, then the court would have to conclude that the grand jury's "true bill" indictment is a constituent part of the general sessions court that must be satisfied before trial of a case un the circuit court's original jurisdiction. A conviction obtained without presentment of a "true bill indictment" by a grand jury will be voided on appeal. Anderson v. State, 527 S.E.2d 398 (S.C.App. 2000).

Moreover, since jurisdiction of an offense must be conferred by law, jurisdiction to take cognizance of an offense or to render a particular judgment cannot be conferred on the general sessions court when the offense in the indictment has not been "true billed" by a grand jury "whose jurisdiction is a constituent part of the circuit court's jurisdiction. See Evans v. State, 611 S.E.2d 494 (2005); State v. Williams, 210 S.E.2d 298 (1974).

The applicant further submits that any reliance on the recently decided case of State v. Gentry, 610 S.E.2d 494 (2005), to deny his jurisdictional argument would be misplaced since he is not challenging the general sessions court's original jurisdiction to hear and determine criminal cases, that authority is rightfully granted by the S.C. Constitution. See Article V, Section 11. Instead, the applicant is contending that the State has failed to comply with statutory and constitutional laws, jurisdictional in nature, specifying the manner and means for lawful return of "true billed" indictments before any trial can take place under the circuit court's original criminal jurisdiction. See, e.g., Cases of

McClure, State v. Hann, 12 S.E.2d 720 (1940), Anderson, Supra, Evans, Supra, cited cited above; See also S.C. Constitution Art I, Section 11.

Finally, with regard to the S.C. Legislature's enactment for terms of court for York County under §14-5-820, for attendance of the grand jury upon general sessions court under §14-9-170, and for obtaining bills of indictments by the county solicitor under §14-9-210, S.C. Statutory law holds that if a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation contrary to that of the legislature. see State v. Taub, 519 S.E.2d 797 (S.C. 1999). Thus, as the court had to comply with the legislative intent and constitutional requirements, counsel's failure to object to applicant's fatally defective indictments was ineffective assistance of counsel that was prejudicial. Strickland, Supra; Bryant, Supra.

The Applicant was denied effective assistance of trial counsel by counsel's failure to object and move to dismiss indictments charging double jeopardy offenses.

To prove ineffective assistance of counsel, the applicant must show trial counsel's performance fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different. Strickland v. Washington, 104 S.Ct. 2052 (1984); Johnson v. State, 450 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson, infra.

The Double Jeopardy Clause protects against second prosecution for same offense after acquittal, a second prosecution for same offense after conviction and multiple punishment for same offense. State v. Blick, 481 S.E.2d 452 (S.C.App. 1997). Here, applicant contends that he was charged, and received multiple punishment, for same offense. Thus, the relevant inquiry is whether the jury convicted applicant of the same offense. A review of the indictments shows no obvious difference between them regarding time period for same crimes: Indictment 1992 charges CSC with Minor, 2nd degree between years 01-"02"; 1993 charges CSC with Minor, 2nd degree, between years "02"-03; 1994 charges CSC, 2nd degree, between "02"-05; 1996 charges Incest between "02"-06.

Given the wording of these indictments, the jury could not have convicted the applicant for CSC with Minor, 2nd degree, for "02" under indictment 1992; for CSC with Minor, 2nd degree, for "02" under indictment 1993; for CSC, 2nd degree, for "02" under indictment 1994' and Incest for "02" under indictment 1996. As these indictments charge the same offenses for the year 2002, it is for this reason that the court could conclude that applicant was tried and convicted for same offense or

conduct.

The U.S. Supreme Court has held that the Double Jeopardy Clause protects a defendant from even the "risk" of being punished twice for the same offense. Abney v. U.S. 431 U.S. 651,660-662 (1977). As the charges alleged in applicant's indictments does create a "risk" of double jeopardy, his counsel's failure to object and challenge the indictments on double jeopardy grounds was ineffective assistance of counsel that was prejudicial. Strickland, Supra, Johnson, Supra.

The Applicant was denied effective assistance of trial counsel by counsel's failure to object to the sufficiency of the charges in his indictments.

A counsel's failure to challenge defective offenses charged in an indictment is ineffective assistance that is prejudicial. See, e.g., Pagett v. State, 484 S.E.2d 101 (S.C. 1997); see also, State v. Gentry, 610 S.E.2d 494 (2005).

Accordingly, applicant's indictment 2007-GS-46-1992 charges that between 2001 and 2002 he committed a second degree CSC offense with a Minor who was at least 14 years old but less than 16 years old. Likewise, indictment 1993 charges that between 2002 and 2003 he committed a second degree CSC offense with a Minor who was at least 14 but less than 16 years old. Both indictments list the victim's birthday as July 14, 1986. Thus, in July 15, 2002 and 2003 the victim was not less than 16 years old as alleged in the indictments.

Moreover, indictment 2007-GS-46-1994 charges applicant with CSC, 2nd degree, that was committed between 2002 and 2005; however, from January 1, 2002 until July 13, 2002, the victim was a "minor" who was at least 14 years old but less than 16 years old, which precluded this portion of applicant's charge under Section 16-3-653, S.C. Code of Laws, as amended.

Notwithstanding, indictment 2007-GS-46-1995 charges applicant with "Attempt CSC First Degree" between January 1, 2005 and December 31, 2005. Conversely, indictment 1994 alleges that applicant "engaged in sexual battery with victim in 2005". An attempt to commit an offense is the doing of acts toward the commission, and with such intent, but falling short of actual perpetration or completion of the offense. See State v. Hiott, 276 S.E.2d 163 (S.C. 1981).

should this be 1994

The applicant submits that as indictment (1995) alleges he engaged in sexual battery with the victim in 2005, he was insufficiently charged with "attempt CSC First Degree during the same time period (2005), and counsel's failure to object and move for dismissal of the Attempt CSC indictment was ineffective assistance that was prejudicial. Strickland, Supra, Pagett, Supra.

The applicant was denied effective assistance of trial counsel by counsel's failure to object to solicitor's vouching for its key witness during closing argument.

During closing argument, the solicitor vouched for the credibility of the victim as follows:

Solicitor: Their version is unreasonable and full of holes. Her's (victim) is consistent, cohesive, and "true".

Tr. p. 457, L. 3-4.

A solicitor may not vouch for the credibility of a state witness based on personal knowledge or other information outside the record. State v. Kelly, 540 S.E.2d 851 (2001). Vouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known to the prosecution which supports conviction. *Id.*

The evidence against applicant was not overwhelming, but rather, case was basically swearing contest between minor victim and applicant. Therefore, counsel's failure to object to solicitor's vouching for victim's credibility was ineffective assistance of counsel that was prejudicial. See Mathew v. State, 565 S.E.2d 766 (S.C. 2002; State v. Johnson, 512 S.E.2d 793 (S.C. 1999)).

The applicant was denied effective assistance of trial counsel by counsel's failure to object to solicitor's "Golden Rule" argument in closing.

A "golden rule" argument is one in which an attorney invites jurors to place themselves in the position of a party. Von Dohlen v. State, 502 S.E.2d 738 (2004). Put another way, the "golden rule argument" ask jurors to become advocates for the "victim" and ignore their obligation to exercise calm and reasonable judgment. State v. Reese, 597 S.E.2d 169 (S.C.App. 2004), quoting Black's Law Dictionary 700 (7th ed. 1999),

In this case, the solicitor made the following "golden rule" argument:

Just imagine for a minute...that I call you up... and I said I want you to get on the stand and tell me about the last time you had sex with your wife or husband...First of all you would tell me I was whacked out of my head. But for whatever reason you were compelled to do that, think about how difficult it would be to get on that stand and testify you know what my wife and I did last Thursday night this is how it happened. You would be mortified, and that was consensual, loving, hopefully fun encounter for you. That wasn't a dark, dastardly deed that you weren't even consenting to. Think about what that takes. "Put yourself in her (victim's) shoes.

Tr. p. 436, L. 7-20.

Although the S.C. Supreme Court found that the single comment in Von Dohlen did

"so infect the trial with unfairness as to make the resulting conviction a denial of due process" 746, the Court cited with approval other cases which held that (depending on the strength or weakness of the state's case) the "golden rule" argument by solicitor could constitute grounds for reversal of conviction.

Here, the state's evidence was not overwhelming but rather was a swearing contest between minor victim and applicant. In fact, the jury was unable to reach a verdict on some of the state's indictments until after the judge's "Allen" charge. As a result, counsel's failure to object to solicitor's "golden rule" argument in this instances was ineffective assistance that was prejudicial. Strickland, Supra, Johnson, Supra; see also Tr. p. 48'

Applicant was denied effective assistance of trial counsel by counsel's failure to object to solicitor's closing argument that appealed to passion and prejudice of jury.

During closing argument, the solicitor made the following improper argument:

Solicitor: But the reality is that child abuse happens in our community and it happens a lot more than people are willing to believe. It use to be a dark little coner and only a few people came out of there but the reality is that it is growing and that child abuse does happen and that we must confront it.

Tr. p. 433, L. 19-24

This was an argument that improperly appealed to the passion and prejudice of the jury, and counsel's failure to object was ineffective assistance that prejudiced the applicnat's defense. See State v. Liberte, 521 S.E.2d 744 (S.C.App. 1999).

The applicant was denied effective assistance of trial counsel by counsel's failure to object to solicitor's closing argument on applicnat's lack of remorse.

The solicitor made the following improper argument in closing regarding applicant's lack of remorse:

Solicitor: ...did he (defendant) sit there like he already knew the story? Like it really wasn't a revelation and like he really could have responded. Does he get up on that stand, does he show the awe and confusion and fear that he claims that is in his heart? Or does he sit there stoic, denial, lying, and blank...

Tr. p. 447, L. 25—p. 448, L. 5.

Defendant is entitled to postconviction relief on claim that trial counsel failed to object to comment by prosecutor in closing argument that defendant showed no remorse. Fossick v. State, 453 S.E.2d 899 (S.C. 1995).

The applicant was denied effective assistance of trial counsel by counsel's failure to move to suppress evidence obtained upon a defective search warrant.

When defendant claims that counsel's failure to challenge an illegal search and seizure claim on motion to suppress was ineffective assistance, he must show that such claim is meritorious and that verdict would have been different absent evidence that should have been excluded. See Sikes v. State, 448 S.E.2d 560 (S.C. 1994).

Accordingly, in this case a contract was entered between the applicant, his wife and daughter, whereby if he provided financial assistance to his wife and daughter his daughter would not disclose his alleged CSC offenses. The "Contract" was state's Exhibit One. Tr. p. 354, L. 16--358, L. 18. The solicitor used this contract to cross examine applicant and to argue extensively in closing argument to demonstrate applicant's guilt to the jury. Tr. p. 415, L. 17--418, L. 19.

The police obtained this "contract" from applicant's home by executing a "search warrant" without an "affidavit". Under §17-13-140, S.C. Code of Law, a warrant issued under this statutory requirement "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing grounds for the warrant". See State v. York, 156 S.E.2d 326 (1967).

Before evidence resulting from an arrest or search authorized by warrant upon affirmation may be admitted, the state must demonstrate a good faith attempt to comply with the statute requiring that a warrant be issued only upon affidavit. State v. Sachs, 216 S.E.2d 501 (S.C. 1975).

The applicant submits that his counsel rendered ineffective assistance by failing to object to the defective search warrant and to move to suppress the evidence of the "contract" obtained thereunder. Defense counsel's failure to challenge validity of the search warrant issued for samples of defendant's blood, saliva, and hair after defendant was arrested for CSC and kidnapping offenses, was deficient, as element of claim of ineffective assistance; had counsel challenge validity of search warrant defendant could have objected to evidence that he refused to comply with request of police. see Gantt v. State, 580 S.E.2d 133 (S.C. 2003); See also, State v. Johnson, 512 S.E.2d 795 (S.C. 1999).

The Applicant was denied effective assistance of trial counsel by counsel's failure to object to solicitor's proffer of specific references to victim from its expert witness.

Prior to the testimony of the State's expert witness, Doctor Allison Foster Defelice, the court limited the scope of the Doctor testimony to general knowledge. Tr. p. 193.

Consequently, the state proffered specific references to victim and opinions. Tr. p. 205, L. 25--p. 206, L. 14. As a result, this specific reference had the effect of

impermissibly corroborating the victim's testimony. Improper corroboration testimony that is merely cumulative to victim's testimony in CSC prosecution cannot be harmless, because it is precisely this cumulative effect which enhances devastating impact of improper corroboration. Jolly v. State, 443 S.E.2d 566 (S.C. 1984).

The applicant submits that counsel's failure to object to the solicitor's proffer of ~~expert~~ testimony that exceed the scope of the judge's ruling was ineffective assistance of counsel that prejudiced the defense. Strickland, Supra, Jolly, infra.

CONCLUSION

WHEREFORE, for the foregoing reason, this Honorable Court should reverse applicant's convictions and sentences for a new trial.

This 22 day
of July, 2009

Respectfully Submitted

1st Darrell Efirid #322883
Darrell Efirid #322883
Perry Correctional Inst.
430 Oaklawn Road-Q3B
Pelzer, S.C. 29669

to the statute's requirements where the officers make a good faith attempt to comply with the statute's affidavit procedures, McKnight, Supra, explaining State v. Sachs, 216 S.E2d 501 (1975), we have left open the question whether a good faith exception would be applied where "the officer reasonably believe the warrant is valid when the search is made, but subsequently determined to be invalid". McKnight, Supra. Here we do not reach the question whether there exists a good faith exception to the statute where a defective warrant is issued, since under South Carolina law an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of §17-13-140. See also Davis v. Sanders, 19 S.E 138 (1894).

Here, the Solicitor used the "written contract" in its case in chief to improperly corroborate the minor victim's testimony and to extensively cross examine applicant to prove its case. Even proper corroboration testimony that is merely cumulative to victim's testimony in criminal sexual conduct enhances the devastating impact of improper corroboration. See, e.g., Jolly v. State, 443 S.E.2d 566 (S.C. 1994)

Finally, as there was no physical or forensic evidence connecting applicant to the crimes and the case was primarily a swearing contest, trial counsel's failure to move to suppress the "written contract" was ineffective assistance of counsel that prejudiced applicant's defense and right to fair trial. See Cobbs v. State, 408 S.E2d 223 (S.C. 1991); see also Strickland v. Washington, 104 S.Ct. 2052 (1984).

Respectfully Submitted,



Bradford A. Rawlinson
241 Oakland Avenue
P.O. Box 36365
Rock Hill, SC 29732
(803) 366-0333
ATTORNEYS FOR APPLICANT

Rock Hill, SC

Dated this 30 day of August, 2010

STATE OF SOUTH CAROLINA

County of York

SEARCH WARRANT

Date March 21, 2006

Officer Any Lawful Officer

"Kevin Covert v. The State" Opinion No. 26632
Heard January 21, 2009 - Filed April 13, 2009
Jackson v. Demmo 378 U.S. 368, 84 S.Ct 1775, 12 L. Ed. 2d 908 (1964)

Exhibit A-1

STATE OF SOUTH CAROLINA

COUNTY OF York

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 16, 1979

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF York

it appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure
under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A Vinyl house located at 111 Wilson Street, Fort Mill South Carolina in the county of York. The house is located in front of a Beige
Mobile Home. The House is Beige in color with Green Shutters and a Green Roof. The house has a Brown Swing on the front porch
and a Green and White Swing in the front Yard.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize
such property if found:

DESCRIPTION OF PROPERTY

Large Blue Dildo, Pink Smooth Dildo, a glow in the dark Dildo with nipples, any Vibrators. Any Documents between the Victim and
Suspects.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy
of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such
search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person
in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy
shall be attached to a prominent place on such premises.

S. C.

20

Signature of Judge

(L. S.)

EXHIBIT B

RETURN

I received the attached Search Warrant 3-21, 20 06, and have executed it as follows:
On 3-22, 20 06 at 12:45 o'clock PM, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with _____
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 Written Contract Document Signed by Darrell, Christine and Tabitha EFIRD.

This inventory was made in the presence of Carson Neely
AND Amanda P. Carter

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 3rd
day of April, 20 06
Lynn Benjett (L.S.)
Signature of Judge

1:33pm

Amanda P. Carter
(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

County of York

SEARCH WARRANT

Date March 21, 2006

Officer Any Lawful Officer

RETURN

I received the attached Search Warrant 3-21, 20 06, and have executed it as follows:
On 3-22, 20 06 at 12:45 o'clock PM, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 Written Contract Document Signed by Darrell, Christine
and Tabitha EFIRD.

This inventory was made in the presence of Carson Neely
AND Amanda P. Carter

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 3rd
day of April, 20 06
Lynn Bejwell (L.S.)
Signature of Judge

Amanda P. Carter
(Signature of Officer Executing Warrant)

1:33 pm

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT
2009-CP-46-3273

Darrell R. Efird, #322883

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 30, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for two counts of criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1992, 2007-GS-46-1993), criminal sexual conduct, 2nd degree (2007-GS-46-1994), attempt to commit criminal sexual conduct in the first degree (2007-GS-46-1995), and incest (2007-GS-46-1996). James W. Boyd represented the Applicant.

On July 12, 2007, the Applicant proceeded to trial was convicted by a jury of two counts of criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1992, 2007-GS-46-1993), criminal sexual conduct, 2nd degree (2007-GS-46-1994), the lesser included offense of assault and battery of a high and aggravated nature for the attempt to commit criminal sexual conduct in the first degree charge, (2007-GS-46-1995), and incest (2007-GS-46-1996).

The Honorable Lee S. Alford sentenced the Applicant to confinement for twenty (20)

years for criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1992), twenty (20) years for criminal sexual conduct, 2nd degree, ten (10) years for assault and battery of a high and aggravated nature, and one (1) year for incest, sentences running concurrently, and ten (10) years for the criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1993) running consecutive to the twenty (20) year sentence for criminal sexual conduct, 2nd degree.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Ebird, Unpublished Op. No. 2009-UP-248 (S.C. Ct. App. filed May 28, 2009). The Remittitur was issued on June 15, 2009.

II.

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

1. Ineffective assistance of trial counsel;
 - a. Failure to move to dismiss his indictments that were "sham legal processes,"
 - b. Failure to object and move to dismiss indictments "containing double jeopardy offenses,"
 - c. Failure to object to sufficiency of charges in his indictments,
 - d. Failure to object to Solicitor's vouching of key witness in closing argument
 - e. Failure to object to solicitor's "Golden Rule" argument in closing,
 - f. Failure to object to Solicitor's closing argument appealing to passion and prejudice of the jury,
 - g. Failure to object to solicitor's closing argument on applicant's lack of remorse,
 - h. Failure to move to suppress evidence obtained upon defective search warrant,
 - i. Failure to object to solicitor's proffer of specific references to victim from its expert witness,

For the purpose of this Return, the Respondent incorporates the York County Clerk of Court records, the South Carolina Department of Corrections' records, and the direct appeal

records including the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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 v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record.

Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Defects in the language of an indictment do not divest an otherwise proper court of subject matter jurisdiction over a case. U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

Additionally, in order to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001).

The Respondent denies each individual allegation, and demands strict proof of each claim. Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.



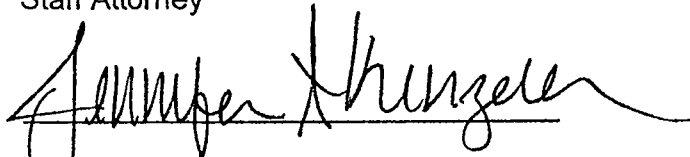
Respectfully submitted,

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Attorney General

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Chief Criminal Appeals & Post Conviction
Relief

JENNIFER A. KINZELER
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By: 

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December 4, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

DARRELL R. EFIRD,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2009-CP-46-3273

AFFIDAVIT OF SERVICE BY MAIL

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

Bradford A. Rawlinson, Esquire
 1176 Ebenezer Rd.
 Rock Hill, SC 29732

STATE OF SOUTH CAROLINA)
)
)
)
)
)
)
COUNTY OF YORK)

IN THE COMMON PLEAS
COURT OF YORK

CASE NO.: 2009-CP-46-03273

DARRELL EFIRD.,)
)
PLAINTIFF.,)
)
-V-)
)
STATE OF SOUTH CAROLINA.,)
)
DEFENDANT.)

TRANSCRIPT OF RECORD

YORK, SOUTH CAROLINA
SEPTEMBER 2, 2010

B E F O R E:

HONORABLE JOHN C. HAYES, III, JUDGE.

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WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT LARGE

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E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE:</u>
DARRYL EFIRD	MR. RAWLINSON	5-33
	MS. KINZELER	33-41
MR. JAMES BOYD	MS. KINZELER	42-51
		58-59
	MR. RAWLINSON	51-58

* * * * *

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
APPL.1	COURT SCHEDULE		P.19
RESP.1	AFFIDAVIT		P.45

REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK COUNTY CLERK OF COURT'S OFFICE.

1 (ON THE RECORD AT 9:51 A.M..)

2 THE COURT: Thank you, take your seats. The first
3 case I believe is Efird.

4 MS. KINZELER: Yes, sir. We'll get him out.

5 MS. KINZELER: Your Honor.

6 MR. RAWLINSON: Your Honor, may we approach?

7 THE COURT: Yes, sir.

8 (NOTE: BENCH CONFERENCE OFF THE RECORD AT 9:52
9 A.M..)

10 (NOTE: APPLICANT ENTERING COURTROOM FROM HOLDING
11 CELL.)

12 THE COURT: Is it possible to arrange his shackles and
13 handcuffs so that he would have one hand to use his papers
14 with?

15 MS. KINZELER: May it please the court, Your Honor.

16 THE COURT: Yes.

17 MS. KINZELER: This is the case of Darrell Efird
18 versus the State of South Carolina Case No. 2009-CP-46-
19 3273. Mr. Efird was originally indicted by the June 2007
20 term of the York County Grand Jury for several various
21 accounts of criminal sexual conduct, attempt to commit
22 criminal sexual conduct in the first degree and incest. He
23 was represented at trial by Mr. Jim Boyd on July 12, 2007
24 he proceeded to trial and was convicted of all the original
25 indictments as indicted except for one. That was dismissed

1 after Mr. Boyd's motion for a directed verdict. And after
2 the jury found him guilty of the other indictments Judge
3 Alford sentenced Mr. Efird to confinement for a period of
4 twenty years for CSC with a minor 2nd; another twenty for
5 another CSC 2nd degree; ten for assault and battery of a
6 high and aggravated nature, one year for the incest all of
7 those run concurrently and then a consecutive ten for
8 another CSC charge. There was an appeal filed on his
9 behalf and after the Court of Appeals confirmed his
10 conviction we are now here for his PCR action. He is
11 represented today by Mr. Brad Rawlinson and I will turn it
12 over to him at this time.

13 THE COURT: All right. Mr. Rawlinson.

14 MR. RAWLINSON: The State would call Mr. Efird.

15 THE COURT: All right, Mr. Efird, please come up and
16 be sworn.

17 MADAME CLERK: Place your left hand on the bible and
18 raise your right please.

19 (WHEREUPON: DARRELL EFIRD, BEING
20 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAME CLERK: Have a seat.

22 MADAME COURT REPORTER: Mr. Rawlinson, please; just a
23 moment, please.

24 Mr. Efird.

25 MR. EFIRD: Yes.

DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

5

1 MADAME COURT REPORTER: Would you speak toward the mic
2 please and speak up so the Judge can hear you and I can
3 record your responses correctly.

4 MR. EFIRD: Yes, ma'am.

5 MADAME COURT REPORTER: Thank you, sir.

6 DIRECT EXAMINATION

7 DARRELL EFIRD BY MR. RAWLINSON:

8 Q. Good morning, Mr. Efird. Mr. Efird, in your
9 application PCR today you've made several arguments but one
10 of the first that you've made is the solicitor, Assistant
11 Solicitor Mindy Hervey, made improper statements during her
12 closing. One of the arguments that you made is that she
13 made improper vouching statements toward one of her
14 witnesses. Why do you feel that way?

15 A. Which issue are you asking about? Are you asking
16 about the - -

17 Q. The vouching in the closing statement.

18 A. The vouching in closing statement.

19 "Mr. Boyd's failure to object to the Solicitor's
20 vouching for it's key witness during closing argument was
21 ineffective assistance" - -

22 THE COURT: Don't go quite so fast.

23 A. Yes, sir. I'm sorry. "Mr. Boyd's failure to object
24 to the Solicitor's vouching for it's key witness during
25 closing argument was ineffective assistance of counsel that

1 prejudiced my defense and right to a fair trial. Since a
2 solicitor may not vouch for the credibility of a state
3 witness based on a" - -

4 THE COURT: Can I interrupt you just a minute? Do you
5 have a citation where that is? Where in the transcript so
6 I can be looking at what we're talking about?

7 A. Yes, sir. This is from transcript Page 457, Line 3
8 through 4.

9 THE COURT: All right. Thank you.

10 A. Yes, sir. "Since the solicitor may not vouch for the
11 credibility of a state witness based on personal knowledge
12 or other information outside the record this prejudiced my
13 defense by allowing the solicitor to impress upon the jury
14 that prosecution had evidence not presented during trial to
15 support conviction. In my case the solicitor vouched for
16 the credibility of my daughter by making this statement.
17 Quote from the transcript Page 457, Line 3 through 4. This
18 is the solicitor.

19 "Their version is unreasonable and full of holes.

20 Her's is consistent, cohesive and true."

21 The solicitor had no physical or forensic evidence
22 connecting me to the crimes so there was no overwhelming
23 evidence against me but rather was basically a swearing
24 contest between my daughter and myself.

25 BY MR. RAWLINSON:

DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

7

1 Q. You made the reference that the solicitor was
2 referring to evidence outside of the record based on
3 personal knowledge of other information outside the record.
4 What information do you think she was referring to?

5 A. I have no idea what she was referring to except beside
6 the statement she made in the transcript.

7 Q. Okay. You've also said that she made an improper
8 Golden Rule argument.

9 Your Honor, it's transcript Page 436, Line 7 through
10 20.

11 Why do you feel that way?

12 A. The -- Mr. Boyd's failure to object to the Solicitor's
13 Golden Rule argument was ineffective assistance of counsel
14 that prejudiced my defense and right to a fair trial since
15 in fact the jury was unable to reach a verdict on some of
16 the state's indictments until after the judge's Allen
17 charge. That was on the transcript Page 482 through 485.
18 There was no physical or forensic evidence to give strength
19 to the State's case. This Golden Rule argument which was
20 on the transcript 436, Line 7 through 20. This prejudiced
21 my defense by allowing the solicitor to sway the jurors to
22 become advocates for my daughter and ignored their
23 obligation to exercise calm and reasonable judgement.

24 Q. You mentioned calm and reasonable judgment. You've
25 also made the or had the position in your PCR application

1 that her closing statement appealed to the pride and
2 prejudice of the jury. On Page -- Transcript Page 433 on
3 Lines 19 through 24.

4 A. Yes.

5 Q. Before you give me your initial -- Your position on
6 that did at any time you ever feel from your impression
7 that the jury was influenced by that in any way?

8 A. Yes, sir.

9 Q. Was there any outward signs that you observed from the
10 jury?

11 A. There were just the expressions on the faces of some
12 of the jurors.

13 Q. Okay. And why did you chose to present this argument
14 in your PCR?

15 A. Well it was Mr. Boyd's failure to object to the
16 solicitor's improper argument was ineffective assistance of
17 counsel that prejudiced my defense and right to a fair
18 trial since a prosecutor may not urge jurors to convict a
19 criminal defendant in order to protect community values,
20 preserve civil order, or deter future law breaking. This
21 prejudiced my defense by allowing the solicitor to appeal
22 to the passions and prejudices of the jurors in such a way
23 that I was convicted for reasons not wholly relevant to my
24 guilt or innocence. Jurors were persuaded by such an
25 improper appeal to believe that by convicting me they would

DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

9

1 assist in the solution of some pressing social problem.
2 Solicitor's closing argument was on Transcript Page 433,
3 Line 19 through 24.

4 Q. Okay. And the last argument you've made about the
5 solicitor's improper remarks in her closing statement can
6 be found on the Transcript Page 447, Lines 25 through --
7 It's blank on my sheet but - -

8 A. 448 through Line 5.

9 Q. So and you've made the argument that she improperly
10 commented on your lack of remorse?

11 A. Yes, sir.

12 Q. Did you observe any outward sign from the jury that
13 they were influenced by that?

14 A. Yes, sir, just by their facial expression.

15 Q. Okay. And why have you taken this position in your
16 application for post conviction relief?

17 A. Yes, sir. Mr. Boyd's failure to object to solicitor's
18 argument of lack of remorse was ineffective assistance of
19 counsel that prejudiced my defense and right to a fair
20 trial - -

21 THE COURT: Try not to go quite so fast because this
22 lady is taking it down.

23 A. Yes, sir, I'm sorry. I get a little nervous.

24 THE COURT: I can certainly understand that.

25 A. I will start over. Mr. Boyd's failure to object to

1 solicitor's argument of my lack of remorse was ineffective
2 assistance of counsel that prejudiced my defense and right
3 to a fair trial since a persecutor may prosecute with
4 earnestness and vigor and in deed he or she should do so.
5 But while he or she may strike hard blows he or she is not
6 at liberty to strike foul ones. It is as much his or her
7 duty to refrain from improper methods calculated to produce
8 a wrongful conviction as it is to use every legitimate
9 means to bring about a just one. Since the definition for
10 remorse is repentance or sorrowful for one's misconduct
11 this prejudiced my defense by allowing the solicitor to
12 give an improper argument that swayed the jurors that I had
13 something to be -- excuse me -- that I had something to be
14 remorseful about. The argument implied that I was an
15 empty, emotionless and deceiving person who would not
16 acknowledge my guilt. And that was on Transcript Page 447,
17 Line 25 and on Page 448, Line 5.

18 Q. All right. And you've also made -- You've also taken
19 the position that the search warrant used to -- First let
20 me back up. In your opinion what was the most important
21 piece of evidence in this trial?

22 A. The signature; the search warrant that I had was not
23 signed or dated.

24 Q. And in terms of the evidence that was presented at
25 trial; in terms of what they used to convict - - -

DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

11

1 A. Oh yes, sir, the - -

2 Q. - - - what was in your opinion what was the most
3 important piece of evidence?

4 A. The only thing they had was the contract.

5 Q. Okay. And how was that contract retrieved?

6 A. It was retrieved by a search warrant, an invalid
7 search warrant.

8 Q. Okay. And why do you take the position that it was an
9 invalid search warrant?

10 A. The search warrant I received from Patricia Babcock
11 which was -- Patricia Blanchett which was supposed to have
12 come straight from Mr. Boyd was unsigned and undated.

13 Q. Your Honor, may I approach?

14 THE COURT: Yes, sir.

15 Q. Mr. Efird, do you recognize that document?

16 A. Yes, sir.

17 Q. And could you tell the court what that document is;
18 what you are holding in your hand?

19 A. Yes, sir. This is a search warrant for York County
20 for my address where they came in and searched my house.
21 Ms. Carter came in and searched my house with another
22 gentleman, another officer. At the bottom of this search
23 warrant there is no date or a signature of a judicial
24 official.

25 Q. Okay. And did you receive that at any time from any

1 of your counsel both in your trial counsel or your appeal
2 counsel?

3 A. I received this from my appellate counselor.

4 Q. And where did -- And where do you believe that your
5 appeal counsel got that - -

6 A. I was told all the information - - I'm sorry. I was
7 told all the information she received came from Mr. Boyd.

8 Q. Okay. And so you've taken the position that there is
9 no other possible scenario -- Well do you remember there
10 being a signed search warrant entered into evidence during
11 the trial of the case?

12 A. No, sir.

13 Q. Do you ever remember Mr. Boyd talking about the search
14 warrant?

15 A. No, sir.

16 Q. Did you all have any talks about admissibility of the
17 contract because of a possible motion to suppress?

18 A. No, sir, but at that time I did not know the law.

19 Q. You've also made in your application for post
20 conviction relief you've also said that the judge made
21 specific -- The judge made an order in terms of the expert
22 witness.

23 A. Yes, sir. But -- Excuse me. I would like to speak a
24 little bit more on the search warrant issue if I may? Yes,
25 sir. Since under South Carolina law an unassigned warrant

DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

13

1 is not a warrant and it is not capable of being issued. I
2 ask, Your Honor, if he - Do you have a copy of the search
3 warrant?

4 THE COURT: That I don't see in my -- I'm looking for
5 it but I don't see a copy of that in my paperwork.

6 MS. KINZELER: Your Honor, it wasn't part of the court
7 records for me to give to you. We have to come in and
8 hear.

9 The COURT: All right.

10 BY THE APPLICANT:

11 A. All right when a defendant is contesting the legality
12 of a search because of defect under warrant statute he only
13 shows that the state is attempting to introduce evidence
14 against him rather than that he has had legitimate
15 expectation of privacy in connection with searched
16 premises. That's under the US Constitution Constitution
17 Amendment 4; Code 1976, Section 17-13-140. The Davis
18 requirement that a warrant must be signed by the issuing
19 judicial official in order to be complete in a common law
20 decision predicated on public policy considerations. The
21 signature is the assurance that a judicial official has
22 found that law enforcement has made the requisite -- Excuse
23 me -- requisite probable cause showing and serves as notice
24 to the citizen upon whom the warrant is served that it is a
25 validly issued warrant. Without the signature it is merely

1 an unfinished paper.

2 MS. KINZELER; Your Honor, I just want to object and
3 see if maybe Mr. Efird could cite the statutes in the cases
4 rather than read them and Your Honor could look them up or
5 we can have him continue to read the law. But I think we
6 are just here about his allegations and he can cite to the
7 law he is relying on rather than reading it.

8 THE COURT: Well it appears to me he's reading from
9 his application.

10 Is that correct?

11 A. Yes, sir, these are notes from my memorandum that I
12 have.

13 The COURT: I'm going to -- I don't know that he has
14 the cites and we are not going to stop and let him go get
15 them. I think he's telling us what he's got and you'll
16 just have to figure the rest of it out.

17 MS. KINZELER: Okay. Thank you, Your Honor.

18 THE COURT: Go ahead.

19 A. Thank you, sir. The solicitor extensively cross
20 examined me on each item on the contract.

21 Excuse me, Your Honor, let me start over.

22 This prejudiced my defense by allowing the solicitor
23 to use the written contract in chief to improperly
24 corroborate my daughters's testimony. The solicitor
25 extensively cross examined me on each item of the contract

1 grilling me with the questions that no matter how I
2 answered them the solicitor made them seem like they had no
3 merit or truth. All the answers I gave about the contract
4 and that I signed the contract was extensively argued to
5 demonstrate my assumed guilt to the jury. So without the
6 written contract the solicitor had no physical or forensic
7 evidence connecting me to the crimes making their case a
8 swearing contest between my daughter and myself.

9 Q. Okay.

10 A. Also I would like to speak about the affidavit.

11 Q. We're getting there.

12 A. Okay.

13 Q. Now do you have any other basis of saying that that
14 contract should have been excluded?

15 A. Yes, sir. I had asked for the affidavit to have a
16 search warrant drawn up and signed you had to have a State
17 of South Carolina requires an affidavit. I sent in to the
18 Clerk of Court I have exhibits here that I listed asking
19 for that affidavit a certified copy of it. I received a
20 response from the Clerk of Court saying that I would have
21 to ask Ms. Mindy Hervey or Jim Boyd for the copy of that.
22 I sent a letter I have the stamped copy of that to Ms.
23 Hervey asking for that certified copy and have not received
24 a response yet as of today.

25 Q. And so of all the material you've gotten in this case

1 you have never seen an affidavit?

2 A. No, sir, I have not.

3 Q. Have we gone over what the state has sent me?

4 A. Yes, sir.

5 Q. And I've been down to your institution on two separate
6 occasions; correct?

7 A. Yes, sir, that's correct.

8 Q. And we went over all the material that the state has
9 sent me; correct?

10 A. Yes, sir, you sent me a copy of everything.

11 Q. And did you see an affidavit listed in that material?

12 A. No, sir, not at any time.

13 Q. Did you see a signed search warrant in that material?

14 A. No, sir, not at any time.

15 Q. Did you see the search warrant that you've identified
16 that is unassigned in that material?

17 A. Yes, sir, I did.

18 Q. All right. Now going back to the expert testimony.

19 A. Yes, sir.

20 Q. The judge made a ruling outside the presence of the
21 jury that the expert can only testify to general knowledge.
22 In your opinion did she ever make any specific comment
23 about you?

24 A. Yes, sir.

25 Q. In what way?

1 A. Well since the court limited the scope of Doctor
2 Allison Foster Defelice's -- I'm not sure how to pronounce
3 that last name -- testimony to general knowledge which is
4 on Page Transcript 193. This prejudiced my defense by
5 allowing the solicitor to exceed the scope of the judge's
6 ruling. As a result this specific reference had the effect
7 of impermissible corroborating my daughter's testimony.

8 Doctor Defelice did not interview my daughter in a one on
9 one private session yet was allowed to give an improper
10 corroboration testimony on just what she read and heard in
11 court giving strength to my daughter's testimony which in
12 CSC prosecution cannot be harmless because it is precisely
13 this cumulative effect which enhances the devastating
14 impact of improper corroboration. And this was given on
15 the Transcript Page 205, Line 25; Page 206, Line 14.

16 Q. Okay. Is there any other reasons for which you think
17 that you should be granted post conviction relief?

18 A. Yes, sir.

19 Q. What are those reasons?

20 A. I have evidence here, Your Honor. Mr. Boyd's failure
21 to object and move to dismiss indictments charging
22 unconstitutional grand jury proceeding which was
23 ineffective assistance of counsel that prejudiced my
24 defense and right to a fair trial. Since the -- Since
25 legislation has enacted laws that require the grand jury's

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DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

18

1 attendance upon the general session court for return of an
2 indictment also the law requires the presentment of a grand
3 jury as a condition precedent to the trial of a crime. As
4 the grand jury is a constituent part of the court and
5 without the presentment the general sessions court has no
6 authority to exercise it's original jurisdiction to try my
7 case. There was no term of general session court held in
8 York County on June 14th 2007 to return my indictments true
9 bill. I have a statement -- I have a copy and the original
10 from the Clerk of Court out of Columbia showing the
11 calendar dates of the Court of General Sessions. Does Your
12 Honor have that Exhibit C?

13 THE COURT: I don't have any exhibits.

14 MS. KINZELER: Your Honor, I believe it might be
15 attached to his application - - -

16 THE COURT: Oh okay.

17 MS. KINZELER: - - - as an Exhibit identified for the
18 Court.

19 THE COURT: I don't see it. I've got the application.

20 A. I've got plenty of copies, Your Honor, if you want

21 - -

22 THE COURT: Well if it's not in the record I can't
23 consider it.

24 A. Your Honor, I have where I sent copies to - -

25 THE COURT: Wait just a minute. We're trying to

1 figure something out.

2 A. Yes, sir.

3 THE COURT: I'm not sure what but we're working mighty
4 hard.

5 MR. RAWLINSON: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. RAWLINSON:

8 Q. Mr. Efird, the document I just handed you is that the
9 document that you've been referring to?

10 A. Yes, sir.

11 Q. And where did you receive that copy from?

12 A. I received this copy from the South Carolina Court
13 Administration out of Columbia, South Carolina.

14 Q. And is it a true certified copy?

15 A. Yes, sir, it is.

16 Q. I move to admit this into the record, Your Honor.

17 MS. KINZELER: I don't have an objection, Your Honor.

18 THE COURT: In without objection. Do you have a copy
19 for me?

20 MR. RAWLINSON: Yes, Your Honor.

21 THE COURT: Be Number One; right?

22 (WHEREUPON: APPLICANT'S EXHIBIT NUMBER ONE IDENTIFIED
23 AND MARKED, ENTERED INTO EVIDENCE.)

24 A. Sir, were you ever given a copy - -

25 THE COURT: Wait just a second. He will ask you a

1 question.

2 A. Yes, sir.

3 (NOTE: COPY MADE OF APPLICANT'S EXHIBIT NUMBER ONE
4 AND HANDED TO THE COURT.)

5 BY MR. RAWLINSON:

6 Q. Mr. Efird, what is that document that you've been
7 referring to? What is it in your opinion that it shows?

8 A. It shows on June the 14th of 2007 there was no general
9 session court.

10 Q. Okay. And you've read and could you give us the
11 statute you've been reading from?

12 A. Yes, sir, I sure can. Hang on one second. This is
13 Section 14-9-170. The Grand Jury has drawn in accordance
14 with law pursuant upon the Court of General Sessions that
15 each of the counties shall institute the Grand Jury for the
16 county court and shall meet with the county court at each
17 of it's terms. This term shall exceed each sessio in each
18 session of the Circuit Court at which term the Grand Jury
19 will need not meet for the common court. Also Section 14-
20 9-210 the County Solicitor shall prepare and through the
21 presiding judge of the court of General Sessions shall
22 submit the Grand Jury while in attendance upon the Court of
23 General Sessions bills of indictments and all cases
24 pertaining to -- Excuse me -- Pending in the county court
25 in which the punishment may be exceeded.



DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

21

1 Q. Okay. And what is your interpretation of that
2 statute?

3 A. Yes, sir. The Grand Jury cannot meet outside the
4 General Session Court.

5 Q. Is there any other reason why you think you should be
6 granted post conviction relief?

7 A. Yes, sir. I have all my indictments which were
8 supposed to be as exhibits also.

9 Q. Specifically what is your argument in terms of the
10 indictments?

11 A. One argument is in the double jeopardy.

12 Q. And why do you take the position that the indictment
13 violated the double jeopardy clause?

14 A. Yes, sir.

15 Q. Before you start let me show you a series of
16 documents. Can you tell the Court what those documents
17 are?

18 A. Yes, sir. These are my indictments.

19 Q. And do you recognize those indictments?

20 A. Yes, sir.

21 Q. And Indictment Number that ends in 1992 - - -

22 A. Yes, sir.

23 Q. - - - can you -- Is there a range, a date range that
24 is listed on that indictment?

25 A. Yes, sir. Also if I -- with the Court's leniency I

1 would like to go back to one of the indictments that are
 2 not here which is 0-1-9-9-1 which I was given a direct
 3 verdict on. Is that okay?

4 THE COURT: Okay.

5 A. All right. In this indictment, Your Honor, Judge
 6 Alford consented to the fact that the wording has
 7 sufficient particularity about the time period in the body
 8 of the indictment. When it was brought to his direct
 9 attention that we did not live in York County in the year
 10 of 2000 so I was granted a direct verdict this being the
 11 case the meaning in the other indictments are clear and
 12 unambiguous. This was done in the Transcript Page 290
 13 through 296 of Line 14-22. If it's okay with Your Honor I
 14 would just like to just discuss the indictments using the
 15 last four digits 1-9-9-2?

16 THE COURT: That's fine.

17 A. All right. In the argument for criminal sexual
 18 conduct with a second degree Mr. Boyd failed to object and
 19 move to dismiss indictments charging double jeopardy
 20 offenses. Since the double jeopardy clause protects
 21 against second prosecution for same offense after
 22 conviction and multiple punishments for same offense here I
 23 contend I was charged and received multiple punishment for
 24 the same offense thus the relevant inquiries as to whether
 25 a jury convicted me of the same offense. A review of the

1 indictment shows no obvious difference between the
2 regarding time period the crimes -- for the same crime.
3 Indictment 1-9-9-2 charges CSC with a minor 2nd degree
4 between years '01 and '02. 1-9-9-3 charges CSC with a
5 minor 2nd degree between years '02 and '03. 1-9-9-4
6 charges CSC 2nd degree between '02 and '05. 1-9-9-6
7 charges incest between '02 and '06. Given the wording of
8 these indictments the jury could not have convicted me for
9 CSC with a minor 2nd degree for '02 under Indictment 1-9-9-
10 2 for a CSC minor 2nd degree for '02; under Indictment 1-9-
11 9-3 for CSC 2nd degree for '02; under Indictment 1-9-9-4
12 and incest for '02 under Indictment 1-9-9-6. As these
13 indictments charge the same offense for the year of 2002 it
14 is for this reason that the court could conclude that I was
15 tried and convicted for the same offense or conduct. The
16 Supreme Court has held that double jeopardy clause protects
17 a defendant from even the risk of being punished twice for
18 the same offense. As the charges related to my indictment
19 does create a risk of double jeopardy my counselor's
20 failure to object and challenge the indictment on double
21 jeopardy grounds.

22 Q. If you could look at Indictment No. 1993 or ending in
23 1993.

24 A. Yes.

25 Q. What is the range indicated on that; on that document?

1 A. Between 2002 and 2003.

2 Q. And what was your daughter's birthday?

3 A. To go to the sufficiency I would like to go over start
4 with 1-9-9-2.

5 Q. When was your daughter's birthday?

6 A. June -- excuse me. July 14th 1986.

7 Q. And the range you stated was 2002 to 2003?

8 A. Yes, sir. I believe that's correct. Or actually --
9 Yes. On the 1-9-9-3?

10 Q. Correct.

11 A. Yes.

12 Q. Okay. And is there also a range indicated on that
13 indictment about the age of the victim?

14 A. Yes, sir.

15 Q. What is that range?

16 A. Well between 2002 and 2003.

17 Q. The age of the victim.

18 A. Oh the age of the victim would be from under sixteen
19 to over sixteen.

20 THE COURT: Which one we on now 1-9-9-2?

21 MR. RAWLINSON: 1-9-9-3, Your Honor.

22 A. If his Honor would I would like to go back to start
23 for from the beginning.

24 Q. What's the age of the victim listed on Indictment
25 ending in 1993?

DARRYL EFIRD: DIRECT EXAMINATION BY MR. RAWLINSON

25

1 A. Seventeen years old is the ending age.

2 Q. And is there a specific range indicated on that
3 indictment as to the age of the victim?

4 A. They give a -- Hang on. 1-9-9-3?

5 Q. 1-9-9-3.

6 A. There is a statute 16-3-655 that gives a range of age
7 that this indictment should fall under.

8 Q. Okay. And do you know what that range is?

9 A. Less than sixteen years old because at sixteen it
10 becomes consent in the State of South Carolina.

11 Q. So, Mr. Efird, could you read what that indictment
12 says?

13 A. The Defendant, Darrell Efird, did in York County,
14 South Carolina between 2002 and 2003 willfully and
15 unlawfully commit criminal sexual conduct with a minor in
16 the 2nd degree by engaging in sexual battery with a minor
17 who was at least fourteen years of age but less than
18 sixteen years of age to wit the defendant engaged in minor
19 -- with minor initials T E with the date of birth July 14,
20 1986 and sexual intercourse in or fellatio congolinus or
21 digital penetration in or anal penetration in violation of
22 16-3-655, South Carolina Code of Laws 1976 as amended.

23 Q. So the range of the victim indicated on the indictment
24 is at least fourteen years of age but less than sixteen
25 years of age?

1 A. Yes, sir, that is correct.

2 Q. And the birth date on listed on this indictment is
3 July 14th, 1986?

4 A. Yes, sir, that is correct.

5 Q. At the end of 2003 if you could do some quick math for
6 me in November of 2003 how old would your daughter have
7 been?

8 A. Seventeen.

9 Q. And you believe that this indictment should be
10 dismissed -- Should have been objected to on those grounds?

11 A. Yes, sir. Not just on the grounds of the date. There
12 is two -- They are using two statutes in this amendment.
13 They're using statute 16-3-665 and 16-3-653 in the code of
14 law as amended.

15 Q. Okay. Is there any other reason why you believe your
16 attorney should have objected to any of the indictments?

17 A. Yes, sir.

18 Your Honor, I would like to go back to the sufficiency
19 of each indictment if I may.

20 THE COURT: Fine with me.

21 A. All right. Mr. Boyd failed to object to the
22 sufficiency of the charges of Indictment 1-9-9-2. In this
23 indictment since Tabitha's birthday is July 14th, 1986 thus
24 in July 15th of 2002 she was not less than sixteen years
25 old as alleged in indictments which precluded this portion

1 of my charges. The body of the indictment contains two
2 statutes 16-3-655 and 16-3-653 of the South Carolina law.
3 Even in the opening statement of Solicitor Mindy Hervey
4 this is "all right now" -- this is in the transcript Page
5 50, Line 11 through 21 and this was her opening statement.

6 "All right so you have three with a minor for those
7 three years those three ages and then without a minor once
8 she turns beyond sixteen because the State of South
9 Carolina the age of consent is sixteen. But the purpose of
10 a sexual act they are no longer a minor at sixteen and for
11 that reason the law changes and it takes a different turn
12 under the age of sixteen consent is never an issue. A six
13 year old and an eleven year old and a fourteen year old and
14 a fifteen year old could not consent to a sex act with
15 their father or with anyone."

16 Your Honor, I would like to read if I may of
17 indictments and information Key 71.2. "Offenses intended
18 to be charged must be described in indictment which are
19 sufficient in particularity the conviction or criminal
20 thereupon may be pleaded and barred to any subsequent
21 prosecution Code 1962, Section 17-402. In Brown versus
22 State 343 or Supreme Court 342 540 S.E. 2d 846 Statute Key
23 189 "When the terms of a statute are clear and unambiguous
24 the Supreme Court must apply them according to their
25 literal meaning". Also Statute Key 188 "In constructing a

1 statute words must be given their plain and ordinary
2 meaning without result to subtle or forced construction to
3 limit or expand the statute's operation".

4 Under those keys, Your Honor, you can see where
5 they're using two statutes in that indictment. And also I
6 would like to step back to Indictment 1-9-9-3. Mr. Boyd's
7 failure to object to the sufficiency of the charges in the
8 indictment was ineffective assistance of counsel that
9 prejudiced my defense and a right to a fair trial. Since
10 Tabitha's birthday is July 14th 1986 thus in July 15th of
11 2002 she was not less than sixteen years old as alleged in
12 the indictment which precluded this portion on my charge.
13 Charges were between 2002 and 2003 so from July 15th 2002
14 to July 13th of 2003 she was over sixteen and then she was
15 seventeen years old. On July 14th 2003 the body of the
16 indictment contains two statutes Section 16-3-655 and 16-3-
17 653 of the South Carolina code of laws as amended.

18 It shows here, Your Honor, also they are using two
19 statutes in this indictment. All right, Your Honor, I
20 would like to move over to Indictment 1-9-9-4 also for the
21 sufficiency of this indictment. Mr. Boyd failed to object
22 to sufficiency of the charges in the indictment was
23 ineffective assistance of counsel that prejudiced my
24 defense and a right to a fair trial since Indictment
25 charges me with CSC 2nd degree that was committed between

1 2002 and 2005 an error from January 1st 2002 until July
2 13th of 2002 Tabitha was a minor who was at least fourteen
3 years old but less than sixteen years old this precludes
4 this portion of my charge. The body of this indictment
5 contains two statutes Section 16-3-653 and 16-3-655.

6 All right now, Your Honor, I would like to move over
7 to Indictment 1-9-9-5 for attempt to commit criminal sexual
8 conduct 1st degree. Mr. Body failed to object to the
9 sufficiency of the charges in the indictment and was
10 ineffective assistance of counsel and prejudiced my defense
11 and a right to a fair trial. Since indictment charges me
12 with an attempt CSC 1st degree between January 1st 2005 and
13 December 31st 2005 conversely Indictment 1-9-9-4 alleges
14 that I engaged in sexual battery with the victim in 2005.
15 An attempt to commit an offense is a doing of acts towards
16 the commission and when such intent will fall short of
17 actual penetration or completion of the offense. I submit
18 that Indictment 1-9-9-4 it alleges I engaged in sexual
19 battery with the victim in 2005. I was insufficiently
20 charged with attempt CSC 1st degree during the same time
21 period of 2005 and counsel failed to object and move for
22 dismissal of the attempt CSC indictment was ineffective
23 assistance that was prejudicial.

24 Also Indictment 1-9-9-6 I was charged with incest
25 during the same time period of 2002 through 2006 so how

1 could I be charged with attempt CSC 1st degree if
2 Indictment 1-9-9-6 alleges I was engaging in incest with
3 the same time period of 2005 which means consent?

4 Now, Your Honor, I would like to move over to
5 Indictment 1-9-9-6 for the sufficiency of this indictment.
6 Mr. Boyd's failure to object to sufficiency of the charges
7 in the indictment was ineffective assistance of counsel
8 that prejudiced my defense and a right to a fair trial.
9 Since the indictment charges me with incest during the time
10 period of 2002 through 2006 however from January 1st of
11 2002 until July 13th of 2002 Tabitha was a minor who was at
12 least fourteen years old but less than sixteen years old
13 which precludes this portion on my charge. The body of the
14 indictment contains two statutes 16-15-20 and 16-3-655.

15 Your Honor, that would cover all the sufficiency I
16 have on my indictments.

17 BY MR. RAWLINSON:

18 Q. Mr. Efird, do you have anything else that you would
19 like to say to the Court?

20 A. Well we just basically touched on the affidavit. I
21 would like to cover that a little more if that's alright
22 with His Honor.

23 THE COURT: Please.

24 A. Mr. Boyd's failure to challenge the illegal search and
25 seizure claim to suppress the written contract was

1 ineffective assistance of counsel that prejudiced my
2 defense -- I'm sorry I'm going too fast -- and a right to a
3 fair trial since under South Carolina code of law a warrant
4 shall be issued only upon the affidavit before evidence
5 resulting from an arrest or search authorized by a warrant
6 upon affirmation may be admitted the State must demonstrate
7 a good faith attempt to comply with the statute requiring
8 that a warrant be issued only upon affidavit. Since there
9 was no affidavit given to my appellate lawyer there must
10 not have been sufficient facts to form the basis of a
11 judgment by the issuing officer this probable cause exist
12 -- did not exist. The prejudice of my defense allowed the
13 solicitor to introduce the contract as State's Exhibit One.
14 Allowing the solicitor to use the written contract in chief
15 to improperly corroborate my daughter's testimony since
16 they had no physical or forensic evidence connecting me to
17 the crimes.

18 Your Honor, also we just lightly touched over my
19 reason for the indictments not being constitutional. If I
20 may I would like to go in depth a little bit further on
21 that?

22 Q. Sure.

23 A. Mr. Boyd's failure to object and move to dismiss
24 indictments charging an unconstitutional Grand Jury
25 proceeding was ineffective assistance of counsel that

1 prejudiced my defense and right to a fair trial since
2 legislation has enacted laws that requires the grand jury's
3 attendance upon general session for return of an
4 indictment. Also the law requires the presentment of a
5 grand jury as a condition precedent to the trial of a
6 crime. As the grand jury is a constituent part of the
7 court and without the presentment the general sessions
8 court has no authority to exercise its original
9 jurisdiction in my case. There was no term of general
10 sessions court held in York County on June 14th 2007 to
11 return my indictments True Bill for my case. This
12 prejudiced my defense by allowing the solicitor not to
13 comply with statutory and constitutional law,
14 jurisdictional in nature specifying the manner and means
15 for lawful return of true bill indictments before any trial
16 can take place under the circuit courts original criminal
17 jurisdiction. In my case there was prosecutorial
18 misconduct because the solicitor did not present the
19 indictments to the presiding judge of the general sessions
20 court which had to be submitted to the grand jury while in
21 attendance upon general session court bills of indictment
22 because there was no grand jury on June 14th of 2007.
23 Since the grand jury cannot convene outside the general
24 sessions court my indictments are defective and
25 unconstitutional. I believe, Your Honor, that covers all

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CROSS EXAMINATION BY MS. KINZELER

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1 my issues today. In conclusion, Your Honor, for these
2 issues I feel my conviction should be vacated. Also the
3 last thing I would like to request, Your Honor, is that no
4 matter what happens your decision is today that my lawyer
5 do a 59-E before the appeal is done by him or the State.

6 MR. RAWLINSON: Nothing further, Your Honor.

7 THE COURT: Cross?

8 MS. KINZELER: May it please the court, Your Honor.

9 CROSS EXAMINATION

10 DARRELL EFIRD BY MS. KINZELER:

11 Q. Mr. Efrid, I'm going to try to go through your
12 allegations one at a time. First of all we will just start
13 with your issue about the Grand Jury having not met and the
14 Court's jurisdiction to hear your case. We will start
15 there is that okay?

16 A. That's fine.

17 Q. We've been talking about your indictments. You have a
18 copy of those handy?

19 A. Yes, ma'am.

20 Q. And if you look at your indictments briefly do each of
21 those the faces of the indictment looks like this?

22 A. Ma'am, I don't have my glasses so I couldn't see. All
23 right if I put them on?

24 Q. May I approach, Your Honor.

25 THE COURT: Yes, ma'am.

1 Q. This is the side of the indictment we are looking at
2 for now is that okay? We'll look there first.

3 A. 1-9-9-6?

4 Q. It's the same for each just the face of the indictment
5 not the back.

6 A. Yes, ma'am.

7 Q. That's what we're looking at. Okay. For each of your
8 indictments on the left side action of the Grand Jury.
9 Each of these indictments indicate that they were true
10 billed and there is a signature of the foreperson of the
11 Grand Jury; is that correct?

12 A. Yes, ma'am. There's also a date of 6/14/07 that he
13 wrote in.

14 Q. Okay.

15 A. Can we go over that indictment a little bit better?

16 Q. Well lets just follow my questions for now and then
17 we'll probably get to it.

18 A. All right.

19 Q. Now is your contention that the Grand Jury never met
20 on June 14th 2007?

21 A. Yes, ma'am.

22 Q. Or they never met in General Sessions Court? Do you
23 think they never met at all or do you think they met but
24 not in the right term of court?

25 A. According to the Code of Laws they cannot met outside

DARRELL EFIRD: CROSS EXAMINATION BY MS. KINZELER

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1 of the General Sessions Court unless there is extra terms
2 given by a judge.

3 Q. So you don't dispute that the Grand Jury did meet and
4 that the Foreperson did sign your indictments?

5 A. Rephrase that question one more time.

6 Q. We agree that the Grand Jury did meet?

7 A. No they did not meet on the 14th.

8 Q. Okay.

9 A. They did meet on the 18th of June.

10 Q. Have you - -

11 THE COURT: All right well let me ask you what basis
12 do you have for that? I hadn't seen any evidence for that.

13 A. Okay.

14 THE COURT: I hate to interrupt you but - -

15 MS. KINZELER: No that's okay.

16 A. No, sir, anytime you want to interrupt.

17 THE COURT: No I'm talking to her.

18 A. Oh I'm sorry.

19 THE COURT: I do mind interrupting you too but I'm
20 moving into her examination. I apologize to her but I
21 apologize to you too. I just want to know the basis for
22 your statement that they met on the 18th.

23 A. Yes, sir. The calendar shows that they met on the
24 18th of June in York County. Also - -

25 THE COURT: Wait wait wait.

1 MS. KINZELER: Can we see what - -

2 THE COURT: What calendar?

3 MS. KINZELER: - - - calendar you are looking at?

4 THE COURT: Let me follow up on this.

5 What calendar?

6 A. Applicant's Number 1-9 the date of 9-2-10. That was
7 given into evidence.

8 THE COURT: It doesn't say anything on there. I'm
9 looking at it and it doesn't say a word about the Grand
10 Jury.

11 A. It says General Sessions York County on the 18th, sir.

12 THE COURT: I got you on that but it doesn't say a
13 word about the Grand Jury.

14 A. Well the Grand Jury meets during the term of General
15 Sessions Court. Also - -

16 THE COURT: That's your position but you made a
17 factual statement that they met on a certain date. I'm
18 just asking you to support it with facts not
19 interpretation.

20 A. Okay. That would be on the Code 14 or excuse me
21 Section 14-9-170 Grand Jury.

22 THE COURT: Well you referred that to me but that
23 doesn't have anything to do with the date. And incidently
24 that has to do with the county courts which were abolished
25 in 1976. But go ahead. Let's go back and let her ask

1 questions.

2 BY MS. KINZELER:

3 Q. I may be able to clear this up. May I approach, Your
4 Honor.

5 THE COURT: I think its clear to me but go ahead clear
6 it up for everybody.

7 BY MS. KINZELER:

8 Q. Have you ever seen this court calendar?

9 A. Yes I was showed that today.

10 Q. Okay. Does the court calendar that we are looking at
11 now does that indicate that the Grand Jury met on June 14th
12 of 2007?

13 A. It says Grand Jury but that was Common Pleas Court.

14 THE COURT: I understand his position. He says that
15 they can't met outside the General Sessions Court because
16 of that statute he's talking about which actually applies
17 only to county courts which were abolished in 1976. I got
18 that.

19 Q. Okay.

20 A. Well, Your Honor, can I go back to the indictment?

21 THE COURT: Yes.

22 A. On the face of the indictments you will see this says
23 in the middle section you will see it says the State of
24 South Carolina Court County of York. And it says in the
25 middle there Court of General Session June 14th Term 2007.

1 THE COURT: Okay. Got ya.

2 BY MS. KINZELER:

3 Q. We can move on from the Grand Jury issue now.

4 A. Hold on one minute. If you will turn to the back side
5 of that also, Your Honor, I don't know if your's has the
6 back side.

7 THE COURT: It does.

8 A. Okay. It says that a Court of General Sessions
9 convened on June 14th 2007 the Grand Juries of York County
10 say upon their oath. They gave their oath that they met in
11 court.

12 Q. Okay.

13 A. And it says a Court of General Sessions not Common
14 Pleas, sir.

15 THE COURT: All right. Thank you.

16 BY MS. KINZELER:

17 Q. Okay. We will move on from the indictment issue.
18 With regard to the Solicitor's closing arguments is it your
19 position that the Solicitor doesn't have a right to comment
20 on the credibility of a witness? Is that what your
21 position is?

22 A. I'm sorry rephrase that question again now.

23 Q. Do you believe that the Solicitor is not allowed to
24 comment on the credibility of a witness in her closing
25 argument?

DARRELL EFIRD: CROSS EXAMINATION BY MS. KINZELER

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1 A. No, ma'am, not according to law.

2 Q. Okay. Now with regard to the search warrant issue.

3 You and Mr. Rawlinson had a conversation about that and you

4 referred to documents that Mr. Rawlinson got from the State

5 which would probably have been me because I sent them to

6 him. Do you recall sending me a letter with some

7 attachments?

8 A. Yes I do.

9 Q. May I approach?

10 THE COURT: Yes.

11 Q. Does this look like what you sent to me?

12 A. Yes this is the letter I sent you.

13 Q. Okay. I will take it back and I ask you a question

14 about it. Do you have a copy of this?

15 A. Yes I do.

16 Q. Okay. And in there there is a search warrant

17 attached; is that right?

18 A. Yes, ma'am.

19 Q. So the search warrant that we've been talking about so

20 far is the one that you sent to me that I sent to your

21 attorney; is that right?

22 A. I gave my attorney a copy of the search warrant.

23 Q. Okay.

24 MADAME COURT REPORTER: Just a minute, Madame Attorney

25 General.

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Sir, I'm going to take this. I'm afraid you are going to get that exhibit in your file.

A. Okay.

MADAME COURT REPORTER: Thank you.

A. All right. If I may look through my paperwork I have the dates stamped from Perry on the search warrant that I sent you.

Q. That's okay. I just want to clarify you got that search warrant you had - -

A. That was not signed.

Q. Okay. And you've never seen a signed search warrant is that your position?

A. No, ma'am.

Q. Okay. With regard to the contract was it not part of your trial strategy with Mr. Boyd to present the contract as evidence of your defense that the allegations were made up?

A. According to Matthew versus State defense counsel cannot assert trial strategy as a defense to ineffective assistance claims for failure to object to comments which constitute an error of law and are inherently prejudicial. That's under criminal law Key 641-13.

Q. Okay so just this one question and it's just yes or no. Was the use of the contract during trial part of your trial strategy with Mr. Boyd? It either was or it wasn't.

DARRELL EFIRD: CROSS EXAMINATION BY MS. KINZELER

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1 A. No not that I can remember.

2 Q. Okay. So it wasn't. Okay. I think that's all I
3 have.

4 Thank you.

5 THE COURT: Any redirect?

6 MR. RAWLINSON: No, Your Honor.

7 THE COURT: Step down and have a seat with your
8 attorney.

9 A. Thank you, sir.

10 THE COURT: All right let's take a short break before
11 we get into the next witness. We will be at ease for about
12 five minutes.

13 (NOTE: COURT IN RECESS AT 10:50 A.M..)

14 (NOTE: BACK ON THE RECORD AT 11:02 A.M..)

15 THE COURT: All right let's get Mr. Efird back in.

16 (NOTE: DEFENDANT ENTERING COURTROOM.)

17 MS. KINZELER: May it please the Court.

18 THE COURT: All right. Does Mr. Rawlinson have any
19 more witnesses?

20 Mr. Rawlinson, do you have any more witnesses?

21 MR. RAWLINSON: No, Your Honor.

22 THE COURT: All right. The State.

23 MS. KINZELER: Your Honor, we call Mr. Boyd.

24 THE COURT: Please come up and be sworn.

25 (WHEREUPON: JAMES W. BOYD,

1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 JAMES W. BOYD BY ATTORNEY GENERAL KINZELER:

4 Q. Can you state your name for the record please?

5 A. It's James W. Boyd.

6 Q. And, Mr. Boyd, where are you currently employed?

7 A. I practice law in Rock Hill, South Carolina.

8 Q. Some criminal defense law?

9 A. That's correct.

10 Q. How long have you been practicing criminal law?

11 A. Since I graduated from law school in 1977.

12 Q. Okay. And do you recall how you came to represent Mr.
13 Efird?

14 A. Yes I was retained to represent Mr. Efird.

15 Q. I will sort of go over the issues one by one starting
16 with the indictments. It's my understanding that he was
17 originally facing six indictments and after your motion for
18 a directed verdict he was -- That charge was dismissed the
19 Indictment ending in 1991?

20 A. That's correct.

21 Q. And then there were five remaining indictments?

22 A. Yes that's correct.

23 Q. Did you all go over all the indictments and the
24 elements of the offenses that the State would have to prove
25 at trial?

JAMES BOYD: DIRECT EXAMINATION BY MS. KINZELER

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1 A. Yes. We had gone over each charge initially there
2 were I believe arrest warrants on each one. And then later
3 indictments and we went over the charges and the
4 allegations extensively.

5 Q. Did you all talk about the elements of the offenses
6 the State would have to prove beyond a reasonable doubt as
7 far as the ages of the victim compared to the indictments
8 as they were alleged?

9 A. I don't know that we went over each; I know we went
10 over the charge about the age and she would have to be a
11 certain age for a certain offense. I don't remember
12 pointing to each indictment and going over that relating to
13 the age but we did discuss the age and what the State would
14 be required to prove on each one.

15 Q. Okay. And did you have any concerns about the other
16 five indictments that Mr. Efird was ultimately convicted of
17 as far as the Court's jurisdiction or the ages and time
18 frames stated in the indictments?

19 A. Not that I recall.

20 Q. And you discussed the State's burden of proving his
21 guilt beyond a reasonable doubt for each of those charges?

22 A. That's correct.

23 Q. Okay. Did you discuss Mr. Efird's version of the
24 facts?

25 A. That - -

1 Q. I mean his version of the events?

2 A. Oh yes.

3 Q. And there's been a discussion about a contract. Can
4 you sort of fill the Court in a little bit about the
5 substance of what that contract said?

6 A. Well basically what had happened there was an argument
7 between Mr. Efird and his wife concerning money; financial
8 situation. His daughter was there and at that point while
9 they were having the argument she came in and made the
10 allegation the initial allegation to them that he had
11 engaged in improper sexual conduct with her. Basically
12 that led to them meeting I believe at a Denny's restaurant
13 all three of them and drawing up a contract which basically
14 set forth that the daughter would receive certain financial
15 -- I believe she would receive fifty dollars a week and she
16 would be provided a car have a phone bill paid and some
17 other financial things. And also his wife would receive --
18 Be entitled to certain things and they would all keep quite
19 about these allegations.

20 Q. And we heard testimony today that that contract was
21 found as a result of the execution of a search warrant?

22 A. That's correct. There was a search warrant issued and
23 it was found I believe in a safe in the home.

24 Q. May I approach, Your Honor.

25 THE COURT: Yes, ma'am.

JAMES BOYD: DIRECT EXAMINATION BY MS. KINZELER

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1 Q. Mr. Boyd, I would just ask if you can identify this
2 search warrant?

3 A. This appears to be a copy of the search warrant.

4 Q. Does it also include in there the affidavit for the
5 search warrant?

6 A. It does.

7 Q. Does it appear to you that the magistrate signed both
8 the affidavit and the search warrant itself?

9 A. Yes. Yes the affidavit was signed by the Judge on
10 March 22nd 2006. And the search warrant itself the
11 authorization for the search was signed by the magistrate
12 Lynn Benefield.

13 Q. Your Honor, I move this in as Respondent's One.

14 THE COURT: Mr. Rawlinson?

15 MR. RAWLINSON: No objection.

16 THE COURT: In without objection. Have it marked and
17 give me copy.

18 (WHEREUPON: RESPONDENT'S
19 EXHIBIT NUMBER ONE IDENTIFIED AND MARKED, ENTERED INTO
20 EVIDENCE.)

21 BY MS. KINZELER:

22 Q. In determining whether or not you could file a motion
23 to suppress the contract that was found as a result of the
24 search warrant did you determine whether or not there were
25 any defects you could challenge in that search warrant?

1 A. In looking at it I did not see -- It appeared to me to
2 be. The affidavit supported the reason for the search it
3 seemed to be properly executed so I saw no reason to try to
4 challenge the search.

5 Q. So the contract is found and you can't move to
6 suppress it based on the search warrant. Can you tell the
7 court a little bit about how you all developed your trial
8 strategy and your discussions about that with Mr. Efird?

9 A. Yes. Basically not only was the contract found but I
10 think there would have been discussion about the contract
11 because everybody talked about the contract including Mr.
12 Efird. I mean he acknowledged that there had been a signed
13 paper. Basically and what I had informed Mr. Efird in
14 these kind of cases there has been an allegation basically
15 it's going to boil down to her credibility the alleged
16 victim's credibility his credibility and the -- We need to
17 have some motivation for her to make these allegations and
18 basically if we couldn't establish motive there was going
19 to be -- He would have a real problem refuting the
20 allegations. I think the contract gave us some idea of the
21 potential motive she had for doing it being a financial
22 motive that it occurred -- Basically these allegations came
23 up at a time when she was going to the College of
24 Charleston her grades had fallen drastically at the College
25 of Charleston. I believe she had lost a scholarship. She

JAMES BOYD: DIRECT EXAMINATION BY MS. KINZELER

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1 had basically I think -- I don't remember all the details
2 at this time but it was basically a threat by her parents
3 particularly Mr. Efird who was the bread winner of the
4 family to cut her off from financial support because of her
5 falling grade situation and other activities. And so our
6 position was and our theory of the case was that she had
7 made up these allegations in order to -- Because of the
8 financial situation and this contract supported that
9 theory.

10 Q. And in addition -- And that was a discussion that you
11 and Mr. Efird had together?

12 A. Oh yes that's correct.

13 Q. Was he understanding of an agreement with that trial
14 strategy?

15 A. Yes.

16 Q. In addition to using the contract with regard to the
17 motive of the victim did you also present other witnesses
18 on Mr. Efird's behalf?

19 A. That's correct yes.

20 Q. Is it your recollection that some of those witnesses
21 were put up to challenge the victim's credibility about
22 some things that she had said before?

23 A. That's correct. I know -- Yes that's correct.

24 Q. With regard to the expert testimony have you had a
25 chance to review the trial transcript since the - -

1 A. I skimmed over it and the particular testimony that
2 Mr. Efird testified to I don't recall. I would need to
3 look at the transcript to comment.

4 Q. Was it your understanding that Judge Alford's ruling
5 was that she could testify generally but couldn't make an
6 ultimate finding on the issue before the jury?

7 A. That's correct. In fact I believe I had made a motion
8 before her testimony to basically suppress her testimony
9 completely arguing that it was improper and not relevant.
10 I did not win that argument, and Judge Alford made that
11 ruling.

12 Q. Do you recall her ever making any ultimate
13 conclusions?

14 A. I don't recall that off the top of my head. I would
15 have to look at the transcript to make sure.

16 Q. And when the -- Do you recall making certain
17 objections during her testimony when things seemed like
18 they started to get specific about this case?

19 A. Again I don't remember a particular objections during
20 her testimony. I may have but I just don't remember it.

21 Q. If I said Pages 216 and 247 of the transcript indicate
22 that you made those objections would you agree or do you
23 want to see the transcript?

24 A. Oh I would agree. If it's in the transcript I would
25 certainly - -

JAMES BOYD: DIRECT EXAMINATION BY MS. KINZELER

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1 THE COURT: What page again?

2 MS. KINZELER: Page 216 and Page 247.

3 THE COURT: Okay. Thank you.

4 BY MS. KINZELER:

5 Q. Now back to the indictment issue. Did you ever have
6 any concern that the Grand Jury never met and that the
7 indictments were fraudulently True Billed?

8 A. No I did not and that's not an issue I even considered
9 or looked at.

10 Q. Is that because the Grand Jury convened outside of
11 terms of court that aren't necessarily General Sessions?

12 A. That's my understanding. That's not an issue I've
13 researched or looked at. That's the practice I know in
14 York County so every case is like that.

15 Q. With regard to the Solicitor's closing argument did
16 you see anything in there that you can recall thinking that
17 you should have objected to as with regard to vouching or
18 the Golden Rule those arguments?

19 A. I don't recall a vouching a Golden Rule argument. I
20 know she the Solicitor did attack the credibility of --
21 Make argument concerning the credibility of Mr. Efird. She
22 made argument his demeanor in the courtroom which I think
23 those are all proper arguments she's entitled to do.

24 Q. And then likewise is it your understanding that from
25 the defense perspective in your closing argument you can

1 also attack the credibility of the state's witnesses?

2 A. That's correct.

3 Q. And discussing you know perhaps the victim's motive
4 behind testifying and things of that nature?

5 A. Yes that's correct.

6 Q. Did you and Mr. Efird go over the discovery together?

7 A. Yes we did.

8 Q. And I guess through him you wanted fact witness that
9 you ended up presenting at trial?

10 A. That's correct.

11 Q. Did you discuss with Mr. Efird his right to testify?

12 A. Yes.

13 Q. And was it his decision to testify at trial?

14 A. It was. I mean that was a mutual decision I agreed
15 with that decision. Basically his daughter's making these
16 allegations against him and if he did not testify he was
17 not going to be able to refute it basically so it was a
18 situation where he needed to testify to have a chance of
19 prevailing at trial.

20 Q. And during Mr. Efrid's testimony at trial was that
21 consistent with your trial strategy about the motive of the
22 victim in bringing allegations and the contract?

23 A. Yes.

24 Q. Did you all prepare for that testimony ahead of time?

25 A. Yes we did.

JAMES BOYD: DIRECT EXAMINATION BY MS. KINZELER
CROSS EXAMINATION BY MR. RAWLINSON

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1 Q. Do you recall renewing motions for a directed verdict
2 and a motion for a new trial?

3 A. I did at the end that's correct.

4 Q. And it's my understanding those motions were all
5 denied. Is that your recollection?

6 A. They were.

7 Q. I think that's all I have. Thank you.

8 THE COURT: Mr. Rawlinson.

9 MR. RAWLINSON: I beg the Court's indulgence for one
10 moment.

11 CROSS EXAMINATION

12 JAMES BOYD BY MR. RAWLINSON:

13 Q. Good morning, Mr. Boyd.

14 A. Good morning.

15 Q. Or good afternoon. Did you and you may have already
16 answered this so excuse me if this question seems
17 duplicative. Did you discuss with Mr. Efird the possible
18 down falls, I know that you all talked about the possible
19 benefits of the contract, but did you all discuss the
20 possible down falls of having that contract admitted?

21 A. Not in -- I don't think we talked about it in the
22 context that it wasn't going to be admitted. We talked
23 about it in the context of what the state was going to
24 show. They were going to have an entirely different
25 interpretation of it than we had of it and that they were

1 going to use it as basically to show an admission on his
2 part. As far as I mean I didn't see any way the contract
3 wasn't going to come in. I mean it was relevant it was
4 seized as a result of a lawful warrant. I didn't see any
5 way to keep it out so my strategy was to try to use it to
6 our advantage.

7 Q. In terms of the Solicitor's closing argument in terms
8 of vouching what -- I guess what do you understand vouching
9 to be?

10 A. Well again I didn't follow exactly what each one was
11 that he was saying. The - -

12 Q. I can give you a quote if you want.

13 A. Okay. That's fine.

14 MS. KINZELER: Your Honor, may I approach just to give
15 him a copy of the transcript?

16 THE COURT: Certainly.

17 (NOTE: ATTORNEY GENERAL KINZELER HANDING DOCUMENTS TO
18 WITNESS JAMES BOYD.)

19 BY MR. RAWLINSON:

20 Q. Could you turn to 457, Lines 3 and 4?

21 A. Okay.

22 Q. Solicitor Mindy Hervey says, "Their version is
23 unreasonable and full of holes. Her's is consistent
24 cohesive and true."

25 Would you characterize a solicitor stating that a

1 particular, any particular witness's statement is true to
2 be vouching for that witness?

3 A. No that's not what I consider vouching. I mean if the
4 solicitor says in my opinion it's true that's one thing but
5 to argue that the story is consistent and true I don't
6 think so. I mean that looks like a typical argument that
7 solicitor's make to me.

8 Q. And in terms of the Golden Rule argument if you could
9 turn to 435, Lines 7 through 20. I guess before we go to
10 that passage maybe I should preference my remarks by what
11 is your general understanding of what a Golden Rule
12 argument is?

13 A. You can't ask the jury to put themselves in the place
14 of the witness.

15 Q. And would you agree that that's an improper argument
16 to make?

17 A. Yes.

18 Q. The solicitor says on Page 435, "Just imagine for a
19 minute that I call you up and I said I want you to get on
20 the stand and tell me about the last time you had sex with
21 your wife or husband. First of all you would tell me I was
22 whacked out of my head but for whatever reason you were
23 compelled to do that think about how difficult it would be
24 to get on the stand and testify you know what my wife and I
25 did last Thursday night this is how it happened you would

1 be mortified and that was consensual loving hopefully funny
2 time for you. That wasn't a dark dastardly deed that you
3 weren't even consenting to. Think about what that takes.
4 Put yourself in the victim's shoes."

5 A. Well I think the part that -- The part about put
6 yourself in the victim's shoes I think could arguably be a
7 Golden Rule argument. I don't think the rest of it crosses
8 that line. But that last sentence possibly could have.

9 Q. At the time were you concerned about that that last
10 part of that?

11 A. I don't remember listening to the argument now. In a
12 closing argument you've got to make the decision whether to
13 object or not. At that point it's been said you don't know
14 what's going to be said until its said and once it's been
15 said if you object often times you are calling the jury's
16 attention to it and you risk the judge ruling that it's
17 proper which then the jury is going to potentially hold
18 that against you if the judge rules it improper. You still
19 have called attention to it so. Often times if it's not a
20 situation just where its just really egregious it's better
21 just not to say anything.

22 Q. If you would turn to Page 433, Lines 19 through 24.
23 Mr. Efird has stated that the solicitor in his opinion made
24 an argument that appealed to the pride and prejudice of the
25 jury. The solicitor says, "But the reality is that child

1 abuse happens in our community and it happens a lot more
2 than people are willing to believe. It used to be a dark
3 little corner and only a few people came out of there but
4 the reality is that it is growing and that child abuse does
5 happen and that we must confront it."

6 Were you concerned about that phrase that part of the
7 closing statement in terms of inflaming the jury?

8 A. At this point I don't have an independent recollection
9 of that being said at the time. Evidently at the point I
10 did not have a concern there was no objection.

11 Q. Mr. Efird has also said there was a number of concerns
12 he's raised in his post conviction relief application about
13 the closing argument. I think his final one was that and
14 you can turn to Page 447, Line 25 it looks like.

15 The solicitor says "Did he the defendant set there
16 like he already knew the story but like it wasn't a
17 revelation and like you really could have responded? Does
18 he could get up on that stand and does he show the awk and
19 confusion and fear that he claims that is in his heart or
20 does he sit there stoic in denial lying and blank?"

21 Now would you classify that statement as being one in
22 which the State was attempting to comment on Mr. Efird's
23 lack of remorse?

24 A. I don't see that as a lack of remorse I see that as a
25 comment on his demeanor on the witness stand and in court.

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I think the State is entitled to do and I did not -- That did not raise a red flag with me.

Q. Okay. Now -- And you've reviewed their case file; correct?

A. I've skimmed through it yes.

Q. There was -- My client has become concerned that the ranges indicated on the face of the indictments they have -- They over lap. Was that ever a concern for you during the course of the trial?

A. No it wasn't that I recall.

Q. Do you recall why that wasn't a concern?

A. No I don't. In fact that being an issue was the first time I recall that even coming up was today listening to the testimony.

Q. So you don't remember ever talking to Mr. Efird about that?

A. About the range? No.

Q. About the ranges. That was never a part of you all's discussion?

A. Not that I recall. I mean there was the situation that and the one that was granted a directed verdict was granted was that the child -- They wasn't in York County during that period of time so it couldn't have happened in York County. So I know I did review that but I don't recall seeing any issues regarding those.

JAMES BOYD: CROSS EXAMINATION BY MR. RAWLINSON

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1 Q. Do you recall after the trial Mr. Efird obviously
2 appealed the jury's verdict?

3 A. That's correct.

4 Q. Do you recall ever having any conversations with Ms.
5 Blanchett?

6 A. Ms. Blanchett? I don't know who that is.

7 Q. Patricia Blanchett Mr. Efird's appellate counsel.

8 A. No I don't recall having any conversations with her.
9 She may have contacted -- May have but I don't recall it.
10 She may have contacted my office. We normally send down a
11 number of documents when appellate defense takes over a
12 case to them but I don't recall any particular
13 conversations.

14 Q. So it's your normal course in your office to send a
15 copy of your file to appellate counsel once they've been
16 --

17 A. Not the whole total file. If they ask for it I will
18 send it. But I have a list and I don't remember what
19 everything that's on it but they want for purposes of
20 appeal and we usually go down that list and go ahead and
21 send those items. I know they want written motions that
22 type of thing we send those things down. But you know she
23 may have requested the entire file I don't remember.

24 Q. Would it be usual for appellate counsel to want a copy
25 of the search warrant?

1 A. No that would not be unusual.

2 Q. Okay. Do you have -- At any time during the course of
3 this case were you ever presented with a search warrant
4 that was unsigned?

5 A. Yes I do have an unassigned search warrant in my file.

6 Q. How did you receive this unsigned search warrant?

7 A. I'm not sure. I either got it -- Well it's two
8 possible ways I either got it through discovery or I got it
9 from Mr. Efird that it was given to him by the officers.
10 But one of those two ways I'm not sure.

11 Q. I guess you know hind sight is twenty twenty but in
12 retrospect do you find it somewhat unusual that you have a
13 search warrant in your file one signed and one not signed?

14 A. Not necessarily. I've seen that in other files in
15 other cases. Sometimes you get a copy of an unassigned one
16 for some reason.

17 Q. I beg the Court's indulgence.

18 (PAUSE.)

19 Nothing further, Your Honor.

20 THE COURT: Redirect?

21 MS. KINZELER: I do have a few follow ups, Your Honor.

22 REDIRECT EXAMINATION

23 JAMES BOYD BY MS. KINZELER:

24 Q. With regard to the closing argument I do just want to
25 point you to two of the four excerpts that were cited in

1 your cross examination Page 435, Line 7 through 20.

2 A. All right.

3 Q. Is it your understanding from what the solicitor is
4 saying there that she is asking the juror's to put their
5 shoes -- Put themselves in the shoes of the victim as far
6 as testifying or as far as in her shoes with regard to the
7 actual crimes that occurred?

8 THE COURT: Its actually 436.

9 A. Okay. That's why I couldn't find it.

10 Q. I'm sorry I wrote down the wrong number.

11 A. Okay now what was your question again?

12 A. Is that excerpt in your opinion discussing the victim
13 and being in her shoes as far as getting up on the stand
14 and testifying or is that about the victim and being in her
15 shoes as far as when the crimes actually occurred and what
16 was happening to her?

17 A. It appears to be concerning her taking the stand to
18 testify concerning what has happened not when the deed was
19 happening.

20 Q. Okay. And then I just want to clarify for the record.
21 You did have the signed copy of that search warrant prior
22 to going to trial and found no reason to challenge it?

23 A. Yes.

24 Q. Okay. That's all I have. I will take that
25 transcript.

1 MR. RAWLINGSON: Nothing further.

2 THE COURT: All right. You can step down and be
3 excused.

4 Unless you got another one.

5 MS. KINZELER: I don't, Your Honor.

6 THE COURT: All right.

7 MS. KINZELER: Mr. Boyd has another one this
8 afternoon.

9 THE COURT: Okay. Belton will be this afternoon?

10 MS. KINZELER: Yes, Your Honor.

11 THE COURT: You are excused until we need you again.

12 MS. KINZELER: And nothing further.

13 THE COURT: All right any other witnesses?

14 MS. KINZELER: No, sir.

15 THE COURT: Any reply?

16 MR. RAWLINSON: No.

17 THE COURT: Anybody want to make some brief comments?
18 I've got the of course the testimony from today. I've got
19 all copies of the exhibits; I've got the application, the
20 record and the transcript but I will be glad to -- I think
21 Mr. Efird's issues have been spelled out by him very -- I'm
22 not going to use the word succinctly but have been spelled
23 out by him and let's leave it like that.

24 MS. KINZELER: I do have cases to rely on. If you
25 don't want argument I can just give you my cases.

1 THE COURT: All right just share them with me and Mr.
2 Rawlinson.

3 MS. KINZELER: Okay.

4 THE COURT: All right. We will take a short break so
5 we can get ready on Mr. Michael Turner.

6 MS. KINZELER: I think we are going to do Mr. Starnes
7 next.

8 THE COURT: We will take a minute to get ready for Mr.
9 Starnes.

10 (END OF TRANSCRIPT OF RECORD IN THE MATTER OF DARRELL
11 EFIRD VERSUS STATE OF SOUTH CAROLINA 2009-CP-46-3273.)

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CERTIFICATE

I, THE UNDERSIGNED WANDA NELSON, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE SIXTEEN JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 2ND DAY OF SEPTEMBER, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Wanda Nelson

WANDA NELSON, CVR
OFFICIAL COURT REPORTER

DATE: 1-3 / 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Darrell Efird, #322883,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2009-CP-46-3273

DAVID HARRINGTON
 C.C.P. & S.S.
 YORK COUNTY, SC

2010 SEP 23 AM 10:05

FILED-RECEIVED

ORDER

Respondent filed an application for Post Conviction Relief (PCR) August 31, 2010. The Court heard this matter on September 2, 2010. The attorney for the State of South Carolina was Jennifer A. Kinzeler, and the attorney for the Applicant was Bradford A. Rawlinson.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the June 2007 term of the York County Grand Jury for two counts of criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1994), attempt to commit criminal sexual conduct in the first degree (2007-GS-46-1995), and incest (2007-GS-46-1996). James W. Boyd represented the Applicant.

On July 12, 2007, the Applicant proceeded to trial and was convicted by a jury of two counts of criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1992, 2007-GS-46-1993), criminal sexual conduct, 2nd degree (2007-GS-46-1994), the lesser included offense of assault and battery of a high and aggravated nature for the attempt to commit criminal sexual conduct in the first degree charge, (2007-GS-46-1995), and incest (2007-GS-46-1996).

The Honorable Lee S. Alford sentenced the Applicant to confinement for twenty (20) years for criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1992), twenty (20) years

for criminal sexual conduct, 2nd degree, ten (10) years for assault and battery of a high and aggravated nature, and one (1) year for incest, sentences running concurrently, and ten (10) years for the criminal sexual conduct with a minor, 2nd degree (2007-GS-46-1993) running consecutive to the twenty (20) year sentence for criminal sexual conduct, 2nd degree.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Efirid, Unpublished Op. No. 2009-UP-248 (S.C. Ct. App. Filed May 28, 2009). The Remittitur was issued on June 15, 2009.

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

Ineffective assistance of counsel:

- a. Failure to move to dismiss his indictments that were "sham legal processes,"
- b. Failure to object and move to dismiss indictments "containing double jeopardy offenses,"
- c. Failure to object to sufficiency of charges in his indictments,
- d. Failure to object to Solicitor's vouching of key witnesses in closing argument,
- e. Failure to object to Solicitor's "Golden Rule" argument in closing,
- f. Failure to object to Solicitor's closing argument appealing to passion and prejudice of the jury,
- g. Failure to object to Solicitor's closing argument on Applicant's lack of remorse,
- h. Failure to move to suppress evidence obtained upon defective search warrant,
- i. Failure to object to Solicitor's proffer of specific references to victim from its expert witness.

Applicant who filed an amended application in which he alleged ineffective assistance of Counsel based on counsel's failure to move to suppress a written contract discovered pursuant to a search warrant.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989), *citing Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

The Court interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a

just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 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.

Defects in the language of an indictment do not divest an otherwise proper court of subject matter jurisdiction over a case. U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

Applicant alleges the indictments on which he was tried were not properly presented to the York County Grand Jury. Applicant predicates this argument on Sections 14-9-170 and 14-

9-210 of the South Carolina Code of Laws, 1976 as amended. Reliance on these statutes is misplaced as these sections pertain only to county courts, not circuit courts. County courts were abolished July 1, 1979 and to the undersigned's recollection York County never had a county court other than a family court.

In further support of his claim that the Grand Jury which true billed his indictment, was not properly convened, Applicant has entered in the record the terms of the General Sessions Court for York County for 2007 which shows no York Court County General Sessions Court was scheduled for the week in which his case was presented to the Grand Jury, June 14, 2007. Applicant also points to the language in the indictment which states "[a]t a court of General Sessions, convened on June 14, 2007." The Applicant's argument here is that on June 14, 2007, no General Sessions Term was scheduled for York County.

As to the latter issue, the Court notes that the cited language does not say "at a Term of General Sessions," but simply says "[a]t a court of General Sessions." The South Carolina Constitution states:

The Grand Jury of each county . . . shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court."
Art. V, § 22, Constitution of the State of South Carolina.

Notably, the Constitution places absolutely no restriction on when a Grand Jury may meet.

Section 14-7-1520, S.C. Code of Laws, 1970, as amended, provides that Grand Jurors are to attend sessions:

. . . the first day of the first week of criminal court in the county or at such other time as the clerk of court may designate (emphasis added).

It is clear from the above that Applicant's attack on the Grand Jury's return of true bill on his indictments has no merit.

Applicant alleges that trial counsel was ineffective for failing to object to Solicitor's vouching of key witnesses in closing argument. Solicitor argued in closing argument that "Their [Defendant's] version is unreasonable and full of holes. Her [victim's] story is consistent, cohesive, and true." (TR p. 457, LL 3-4). Solicitor's argument was improper because Solicitor may not vouch for the truthfulness of a witness. However, the Applicant was not prejudiced by his trial counsel not objecting to the statement. Trial counsel testified that he did not object because he did not believe the Solicitor's statement was vouching. Even if trial counsel should have objected, Applicant was not prejudiced because the record wholly supports the jury's verdict.

Additionally, in order to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). The Court affirmatively finds the Solicitor's comments did not so infect Applicant's trial with unfairness so as to make his resulting conviction a denial of due process.

Applicant alleges trial counsel was insufficient for failing to object to Solicitor's "Golden Rule" argument in the closing. Solicitor argued in her closing, "Put yourself in her [the victim's] shoes." (TR p. 436, L 20). Trial counsel testified that he did not object because did not want to bring the jury's attention to the statement during closing arguments. Trial counsel further testified that he risked being overruled by the trial judge which he thought could bring more attention to the Solicitor's argument as opposed to diffusing its impact on the jury. Moreover, trial counsel committed no error in failing to object to the Solicitor's statement because the

argument was not calculated to suggest that the jury should put themselves in the victim's shoes as to the crime. Rather, the Solicitor asked the jury to put themselves in the victim's position as to the traumatic experience of the victim having to testify against her father about his horrific sexual abuse of her. These type statements are not improper and, therefore, the Applicant was not prejudiced by them.

In order to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). The Court affirmatively finds the Solicitor's comments did not so infect Applicant's trial with unfairness so as to make his resulting conviction a denial of due process.

Applicant alleges that trial counsel was ineffective for failing to object to Solicitor's closing argument because it appealed to the passion and prejudice of the jury. At trial, Solicitor argued, "But the reality is is that child abuse happens in our community and it happens a lot more than people are willing to believe. It used to be a dark little corner and only a few people came out of there[.]" (TR p. 433, LL 19-22). Trial counsel testified that he did not recall these statements made by Solicitor. Trial counsel was not ineffective for failing to object because the Applicant was not prejudiced as these statements did not rise to the level of appealing to the passion and prejudice of the jury.

Again, in order to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). The Court affirmatively finds the Solicitor's comments did not so infect Applicant's trial with unfairness so as to make his resulting conviction a denial of due process.

Handwritten signature and initials, possibly "J. H. H." with a checkmark.

Applicant alleges that trial counsel was ineffective for failing to object to Solicitor's closing argument which commented on Applicant's lack of remorse. In her closing, Solicitor argued, "Does he [the Applicant] get up on that stand does he show the awe and confusion and fear that he claims that is in his heart? Or does he sit there stoic, denial, lying, and blank like his wife?" (TR p. 448, LL 2-5). Solicitor's argument appears proper in regard to the credibility of the Applicant, and it does not appear to refer to Applicant's lack of remorse. Thus, trial counsel was not ineffective for failing to object because Solicitor's statements were not prejudicial.

In order to be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). The Court affirmatively finds the Solicitor's comments did not so infect Applicant's trial with unfairness so as to make his resulting conviction a denial of due process.

While not specifically raised by Applicant, the Court is aware that an argument is often made that while one or two errors alone do not rise to the level of ineffectiveness or prejudice, the cumulative effect of several errors creates either ineffectiveness or prejudice. To allay such argument, the Court specifically finds that even when viewed cumulatively, the alleged errors, to the extent the allegations constitute error, did not so infect Applicant's trial with unfairness as to make Applicant's resulting convictions a denial of due process.

Applicant alleges that trial counsel was ineffective for failing to move to suppress evidence obtained upon a defective search warrant. Applicant testified that the search warrant was not signed, therefore, making it insufficient. Applicant also testified that the search warrant resulted in the police finding a contract, the terms of which indicated the Applicant was paying the victim to keep quiet about the crimes committed with which he was charged. Trial counsel

testified that the search warrant was proper and could not be challenged. While Applicant claims the search warrant was unsigned, trial counsel testified that it was in fact signed and not objectionable. As a result, Applicant has failed carry his burden on this allegation.

Applicant alleges trial counsel was ineffective for failing to object to Solicitor's proffer of specific references to victim from its expert witness. At trial, the trial judge limited the expert witness's testimony to testifying "generally about in so far as educating the jury as to information that they have in general why certain things happen or do not happen and whether it's consistent or inconsistent." (TR p. 193, LL 15-18). The trial judge explained that the expert could not give ultimate opinions or make opinions as to the particular facts in the case. The record reveals that expert testified within the trial judge's guidelines. Thus, trial counsel was not ineffective.

Applicant also alleges trial counsel was ineffective for not objecting to the trial judge's Allen Charge. The record reveals that the Allen Charge by the trial judge was proper. Further, Applicant at his PCR hearing did not explain or give a reason for why the Allen Charge was improper. Thus, trial counsel was not ineffective for failing to object to the Allen Charge because trial counsel had no reason to object.

Applicant alleges trial counsel was ineffective for failing to object or move to dismiss the indictments based on a violation of his protection against double jeopardy. A review of the several indictments reveal that some time frames overlap, but indictments are notice documents and the state must prove the alleged offenses to a jury's satisfaction beyond a reasonable doubt.

The victim testified that the Applicant is her father (TR p. 120, LL 22-23)¹ and that she was born on July 14, 1986 (TR p.121, LL 3-4). The victim testified the Applicant started touching her inappropriately when she was four (4) years old (TR p. 130, LL 11-18). Victim

¹Reference is to Trial Transcript

PC # 9

testified that Applicant had vaginal intercourse with her when she was eight (8) (TR 132, LL 2-7). Also, victim testified that the sexual intercourse continued and that around twelve (12) years of age, Applicant started using condoms (TR p. 133, LL 11-19). Victim testified that Applicant would have sex with her "at least once a week" (TR 135, L 22 through 136, L1).

The victim turned sixteen (16) on July 14, 2002. The indictments alleged Applicant committed Criminal Sexual Conduct prior to that time, "between 2001 and 2002" 07-GS-46-1992; "between 2002 and 2003" and when victim "was at least fourteen (14) years of age but who was less than sixteen (16) years of age" 07-GS-46-1993. Both of these indictments allege victim was a minor at the time of the alleged sexual activity.

Indictment 07-GS-46-1994 alleges Criminal Sexual Conduct, second degree "by use of aggravated coercion against will and consent of the victim." Indictment 07-GS-46-1995 alleges attempt to commit Criminal Sexual Conduct in the first degree by use of "aggravated force" and "extortion." Indictment 07-GS-46-1996 alleges Incest based on carnal intercourse by Applicant with his daughter.²

Trial counsel was not ineffective in not pursuing a claim of double jeopardy as no such claim existed.

Applicant specifically raised by amended motion ineffectiveness of trial counsel in failing to move to suppress a contract discovered pursuant to the search warrant discussed herein above. Initially, it should be pointed out that the Court has found counsel was not ineffective in failing to move to suppress evidence obtained pursuant to the search warrant.

As to the contract issue, trial counsel testified that he was relying on the contract as a trial strategy, a claim Applicant did not dispute. Trial Counsel's trial strategy as to the contract was

² At Applicant's hearing concerning Indictment 07-GS-46-1991, the trial judge granted a directed verdict as to this indictment so any issue regarding it is moot. See TR p. 290, LL14-18 and TR p. 295, LL 13-18.

John H. 10

that the victim and her mother were testifying against Applicant as to these allegations because both had a financial interest in keeping quiet as to the allegations and apparently did so until the victim felt Applicant was renegeing on the contract (TR p. 414, L 23 through p. 418, L 19).

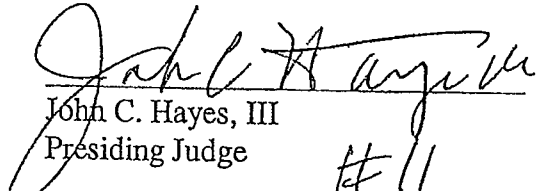
Where, as here trial counsel articulates a valid reason for employing a certain strategy, such conduct is not deemed ineffective assistance of counsel. See Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (Sup. Ct. 2000).

Applicant's allegations are without merit and therefore his Application for Post Conviction Relief is denied and dismissed with prejudice.

Applicant has thirty (30) days to seek Certiorari from the South Carolina Supreme Court after receipt of this Order.

IT IS SO ORDERED.

^{20th}
September 15, 2010
York, South Carolina


John C. Hayes, III
Presiding Judge #11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Darrell R. Efird,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2009-CP-46-3273

ORDER

FILED-RECEIVED
 2010 OCT 29 PM 2:58
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

This court issued its Order denying Applicant's Application for Post Conviction Relief and dismissing same with prejudice on September 20, 2010. Applicant has timely filed a motion pursuant to Rule 59(e) SCRCPP requesting the Court to alter or amend said Order.

The Court finds the September 20, 2010 Order adequately, fully and correctly disposed of Applicant's argument regarding the search warrant issue.

Wherefore, Applicant's Rule 59(e) SCRCPP Motion is DENIED.

IT IS SO ORDERED.

John C. Hayes, III

 John C. Hayes, III
 Presiding Judge

October 26th, 2010
 York, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

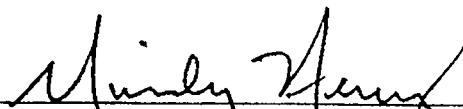
INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2nd DEGREE

The defendant, Darrell Efird, did in York County, South Carolina, between 2000 and 2001, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: the defendant engaged a minor, initials T.E., with a date of birth July 14, 1986, in sexual intercourse, and/or fellatio and/or cunnilingus and/or digital penetration and/or anal penetration in violation of Section 16-3-655(2), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 ASSISTANT SOLICITOR

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

YCS Carter

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

June 14, Term 2007

I hereby appear in my own proper person and plead guilty to the within indictment or to

sh

ARREST WARRANT NUMBER

J-150438

THE STATE

vs.

Defendant

Witness

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

DARRELL EFIRD

TRUE BILL

W. Hampshiri
Foreperson of Grand Jury
Date: 6-14-07

VERDICT

Darrell Efird
Joe P. ...
Presiding Judge

Foreperson of Petit Jury
Date: 7/11/07

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, 2ND DEGREE

SC Code: 16-03-655
CDR Code: 397

York

VS.

Darrell Efird

INDICTMENT/CASE#: 2007GS4601992

A/W#: J150439

Date of Offense: 09-01-2002

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397

Race: W Sex: M Age: 47

DOB: SS#:

Address:

DL#: 3139257 SID#:

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS TO: Sex / Criminal sexual conduct with minor - victim under 16 v 2nd Degree

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

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

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST:

[Signature] Solicitor

Darrell R. Efird Defendant

[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 20 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: _____

[X] 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.

[X] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

SPECIAL CONDITIONS:

[] RESTITUTION: [] Heard, [] Waived, [] Ordered

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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 125.00

PTUP _____

_____ 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, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 219 1 1 B

Sentence Date: 7-12-07

[Signature] Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

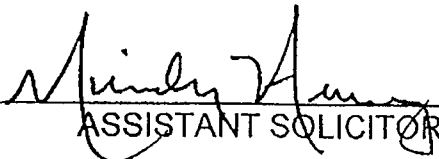
INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2nd DEGREE

The defendant, Darrell Efird, did in York County, South Carolina, between 2001 and 2002, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: the defendant engaged a minor, initials T.E., with a date of birth July 14, 1986, in sexual intercourse, and/or fellatio and/or cunnilingus and/or digital penetration and/or anal penetration in violation of Section 16-3-655(2), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

653

WITNESSES

YCSO Carter

sh

ARREST WARRANT NUMBER

J-150439

ACTION OF GRAND JURY

TRUE BILL

DM Nampachi

Foreperson of Grand Jury

Date: 6-14-07

VERDICT

Goiffy
Muller

Foreperson of Petit Jury

Date: 7/12/07

DOCKET NO. 2007-GS-46-01717

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 14, Term 2007

THE STATE

vs.

DARRELL EFIRD

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, 2ND DEGREE

SC Code: 16-03-655
CDR Code: 397

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SOUTH CAROLINA

OF York

VS.

Darrell Efird

W Sex: M Age: 47

DOB: SS#: Address:

DL# 3139257 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS4601993

A/W#: J150441

Date of Offense: 09-01-2002

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS TO: Sex / Criminal sexual conduct with minor - victim under 16 v 2nd Degree

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

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

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST [Signature] Solicitor, [Signature] Defendant, [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 10 days/months/years or [] under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [X] CONSECUTIVE to sentence on: 07-65-46-1994

[X] 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.

[X] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

SPECIAL CONDITIONS:

[] RESTITUTION: [] Heard, [] Waived, [] Ordered Total: \$ ___ plus 20% fee: \$ ___ Payment Terms: [] set by SCDPPS

PTUP ___ 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:

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$ 125.00

[] Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

David Hamilton Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

PRESIDING JUDGE [Signature]

Judge Code: 07-1-1-13

Sentence Date: 7-12-07

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

WITNESSES

YCS@Carter

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

June 14, Term 2007

I hereby appear in my own proper person and plead guilty to the within indictment or to

sh

ARREST WARRANT NUMBER

J-150441

THE STATE

Defendant

vs.

Witness:

ACTION OF GRAND JURY

DARRELL EFIRD

C.C.C PLS. AND G.S.

TRUE BILL

Foreperson of Grand Jury

Date 6-14-07

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2ND DEGREE

Foreperson of Petit Jury

Date: 7/12/07

SC Code 16-03-655

CDR Code 397

SOUTH CAROLINA

OF York

VS.

Darrell Efirid

A.K.A.

Race: W Sex: M Age: 47

DOB: SS#:

Address:

DL#: 3139257

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS4601994

A/W#: J150442

Date of Offense: 09-01-2002

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Criminal Sexual Conduct 2nd Degree

in violation of § 16-3-653 of the S.C. Code of Laws, bearing CDR Code # 0161

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 initial)

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

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 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 §7-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$ 125.00

PTUP

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, §35.13 TP

Requires \$500 be paid to Clerk during probation.

David Hamelto Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

PRESIDING JUDGE

Judge Code: 211113

Sentence Date: 7-12-07

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT, 2nd DEGREE

The defendant, Darrell Efird, did in York County, South Carolina, between 2002 and 2005, willfully and unlawfully and feloniously without just cause commit criminal sexual conduct in the second degree by engaging in sexual battery, to wit: sexual intercourse and/or cunnilingus and/or fellatio and/or digital penetration and/or anal penetration and/or vaginal penetration by use of aggravated coercion against will and consent of the victim, Tabitha Efird to accomplish the sexual battery, this in violation of Section 16-3-653, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

659
WITNESSES

YCSO Carter

sh

ARREST WARRANT NUMBER

J-150442

ACTION OF GRAND JURY

TRUE BILL

OK Nemo

Foreperson of Grand Jury

Date 6-14-07

VERDICT

Guilty

Mull

Foreperson of Petit Jury

Date 7/12/07

DOCKET NO. 2007-GS-46- 01994

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 14, Term 2007

THE STATE

vs.

DARRELL EFIRD

Indictment for

CRIMINAL SEXUAL CONDUCT
2ND DEGREE

SC Code: 16-03-653

CDR Code 161

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness.

C.C.C. PLS. AND G.S

OF

York

VS.

Darrell Efird

W Sex: M Age: 47

DOB: SS#:

Address:

DL#: 3139257 SID#:

INDICTMENT/CASE#: 2007GS4601995

A/W#: J150444

Date of Offense: 09-01-2002

S.C. Code § : 16-03-0655(C)

CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Assault & Battery of a High and Aggravated Nature

in violation of § C/L 17.25.30 of the S.C. Code of Laws, bearing CDR Code # 0013

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.

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

ATTEST:

Solicitor:

Defendant: Darrell R. Efird

Attorney for Defendant: Jamall D. Boyd

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years of 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 §7-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered Total: \$ plus 20% fee: \$ Payment Terms: set by SCDPPPS

PTUP 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:

Table with columns for Recipient, *Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 35.13, § 73.3, § 33.7, § 50-21-114, § 56-5-2942(J)) and their corresponding amounts.

Appointed PD or appointed other counsel §35.13 TP Requires \$500 be paid to Clerk during probation.

TOTAL \$125.00 David Hamel Clerk of Court/ Deputy Clerk Court Reporter: Wanda Nelsa

PRESIDING JUDGE Judge Code: 211103 Sentence Date: 07-12-07

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

ATTEMPT TO CRIMINAL SEXUAL CONDUCT 1st DEGREE

The defendant, Darrell Efird, did in York County, South Carolina, between January 1, 2005 and December 31, 2005, willfully, feloniously, and unlawfully without just cause and against the will and consent of the victim, Tabitha Efird, attempt to commit criminal sexual conduct in the first degree, to wit: the use of aggravated force and/or extortion to accomplish a sexual battery: to wit: sexual intercourse in violation of Section 16-3-652(a)(b) S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

YCSO Carter

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

June 14, Term 2007

I hereby appear in my own proper person and plead guilty to the within indictment or to

sh

ARREST WARRANT NUMBER

J-150444

Defendant

THE STATE

vs.

Witness:

ACTION OF GRAND JURY

DARRELL EFIRD

C.C.C. PLS. AND G.S.

TRUE BILL

OW Hampshire
Foreperson of Grand Jury

Date 6-14-07

VERDICT

ABHAN

Indictment for

ATTEMPT TO COMMIT CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE

Muller
Foreperson of Petit Jury

Date 7/12/07

SC Code. 16-03-652
CDR Code: 160

STATE OF

York

VS.

Darrell Efird

AKA:

Race: W Sex: M Age: 47

DOB: SS#:

Address:

DL#: 3139257 SID#:

INDICTMENT/CASE#: 2007GS4601996
A/W#: J150456
Date of Offense: 03-21-2006
S.C. Code § : 16-15-0020
CDR Code #: 0090

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Sex / Incest

in violation of § 16-15-0020 of the S.C. Code of Laws, bearing CDR Code # 0090

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 initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Solicitor: Darrell R Efird Defendant James C. Boyd Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 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 §7-25-135

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPS
Recipient:
*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 35.13 (Public Def/Prob) \$500 \$
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$
TOTAL \$ 125.00

PRESIDING JUDGE Judge Code: Sentence Date: 7-12-07

David Hamilton Clerk of Court/ Deputy Clerk
Court Reporter: Miranda Nelson

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

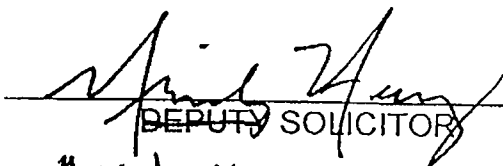
INDICTMENT

At a Court of General Sessions, convened on June 14, 2007 the Grand Jurors of York County present upon their oath:

INCEST

That on or about or during the time period of 2002 through 2006, Defendant Darrell Ray Efird did willfully and unlawfully commit the crime of Incest, in that the Defendant Darrell Ray Efird did engage in carnal intercourse upon and with the victim, his minor daughter Tabitha Nicole Efird (Date of Birth: July 14, 1986). The Defendant Darrell Ray Efird is the father of said minor victim. Said incident occurred within York County, South Carolina. All in violation of Section 16-15-20 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR
Assistant

699
WITNESSES

YCSO/Carter

sh

ARREST WARRANT NUMBER

J-150456

ACTION OF GRAND JURY

TRUE BILL

DM Hampson
Foreperson of Grand Jury

Date: 6-14-07

VERDICT

Guilty

Mull-Ad
Foreperson of Petit Jury

Date: 7/12/07

DOCKET NO. 2007-GS-46- 01996

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 14, Term 2007

THE STATE

vs.

DARRELL RAY EFIRD

Indictment for

INCEST

SC Code: 16-15-20

CDR Code:0090

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C C C PLS AND G.S.