

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO THE COURT OF APPEALS
Appeal from Edgefield County
The Honorable William P. Keesley, Circuit Court Judge

88 SUPREME COURT

Opinion No. 2015-UP-174(S.C. Ct. App. filed April 1, 2015)

Appellate Case No: 2015-001342

STATE OF SOUTH CAROLINA,

PETITIONER,

v.

TOMMY S. ADAMS,

RESPONDENT.

CORRECTED APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) COURT OF GENERAL SESSIONS

State of South Carolina,)
PLAINTIFF,)
-VS-) TRANSCRIPT OF TRIAL
Tommy Swinson Adams,) 03-GS-19-416
DEFENDANT.) 03-GS-19-418

BEFORE THE HONORABLE JOHN C. FEW, JUDGE

October 12, 13, and 14, 2005
EDGEFIELD, SOUTH CAROLINA

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1 Wednesday, October 12, 2005

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 (The jury was qualified,
6 selected and seated.)

7 THE COURT: Any exception to the
8 composition or manner of selection of the jury?

9 MR. MAYE: None from the State, Your
10 Honor.

11 MR. HUFF: No, Your Honor.

12 THE COURT: All right, ladies and
13 gentlemen, we are going to break for the day here.
14 And I am going to ask you to return tomorrow morning
15 before 9:30, and we will --

16 Are there any pre-trial matters that we
17 need to take up?

18 MR. MAYE: Nothing from the State, Your
19 Honor.

20 MR. HUFF: No, Your Honor.

21 THE COURT: No motions?

22 MR. HUFF: No, sir. We just need to get
23 some exhibits marked by the court reporter.

24 THE COURT: All right. We will begin
25 tomorrow morning at 9:30. The Bailiff is going to

1 show you the jury room in just a second, and you
2 will return in the morning to that jury room. Do
3 not come into the courtroom.

4 She'll show you the way that you get
5 in the courthouse without coming through the
6 courtroom. Now, I'm going to talk to you in detail
7 tomorrow morning about what your responsibilities
8 are and about some of the rules and some of the
9 things that I expect from you during the course of
10 this trial.

11 But I'm going to tell you now that
12 you may not discuss this case in any manner
13 whatsoever until I have given you permission to
14 begin your deliberation. So when you go home
15 tonight, if you see friends or family members and
16 they say, "What are you up to up there at the
17 courthouse"? you can tell them that you're on a
18 jury.

19 But you can't tell them the nature of
20 the case. You can't tell them the allegations that
21 have been made against the defendant. You can't
22 tell them about the identity of the witnesses or the
23 issues that we discussed during voir dire. Do not
24 discuss this case in any way.

25 Now, I say that sometimes, and jurors

1 for some reason don't seem to understand the
2 importance of complying with my instruction. So I'm
3 just going to repeat it. It's very important, and
4 the only way that I -- my way of dealing with people
5 who don't comply with that instruction is limited,
6 and I don't like using it.

7 So please do not discuss this case.
8 If somebody tries to discuss the case with you, then
9 you bring it to my attention tomorrow morning and I
10 will deal with them. I certainly have no reason to
11 suspect that there might be any kind of press
12 coverage about this coverage. But I generally will
13 say this to the jury in every case.

14 When you're watching TV tonight or if
15 you're reading the paper in the morning -- I don't
16 know if Edgefield even has a paper that's printed on
17 Thursday morning or not. But please be careful not
18 to allow yourself to be exposed to any press
19 coverage that there may be.

20 I really don't think there's going to
21 be any. But be mindful of that, and do not allow
22 yourself to be exposed to any press coverage there
23 may be about this case. You folks have a nice
24 evening. We'll start tomorrow morning at 9:30. And
25 I look forward to seeing you all then.

1 (The jury was excused for
2 the day at 5:36 p.m.)

3 Mr. Maye?

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

5 THE COURT: -- do you have any idea about
6 calling another case tomorrow afternoon?

7 MR. MAYE: I don't anticipate we can get
8 this case to the jury and have it resolved prior to
9 beginning another case tomorrow. That would be my
10 guess. I don't know that we can. I don't know if
11 we can plead a case and strike another again. I
12 could attempt to call them in the event that we do,
13 but I don't think that we'll -- I just don't know
14 that we'll complete this case --

15 THE COURT: All right.

16 MR. MAYE: -- in time to do that.

17 THE COURT: All right. Well, then, I'm
18 going to take that as a no.

19 MR. MAYE: Yes, sir. That's my opinion.

20 THE COURT: So what that means is that you
21 folks have completed your service as jurors for the
22 week. And even though I will repeat, as I did
23 yesterday, my recommendation to you that you spend
24 some time up here --

25 All right, anything further in this

1 case before we adjourn for the day?

2 MR. HUFF: Your Honor, just when I got
3 here this afternoon, Solicitor Maye informed me that
4 there is the allegation that my client had made an
5 oral statement at some time in the past, I guess
6 back when this case was commenced somewhere in 2003,
7 that was not disclosed to me in response to
8 discovery.

9 And I think the comment was to the
10 effect that his daughter, the alleged victim, being
11 a -- she's not a person that lies. The Solicitor
12 and I discussed it. I didn't want to necessarily
13 argue that motion right now.

14 I would certainly think from a
15 discovery perspective I would object to it being
16 disclosed two and a half years hence for the first
17 time once I'm here to draw a jury. I would ask that
18 that statement not be allowed during the trial of
19 this case. There was another comment that --

20 THE COURT: Wait a minute, now. Mr. Maye,
21 what was the statement?

22 MR. MAYE: Your Honor, I asked, as I
23 sometimes do -- Investigator Virginia Bledsoe has
24 now been with the Sheriff's Office for about a year
25 now, is that correct?

1 MS. BLEDSOE: Uh-huh.

2 MR. MAYE: When I spoke with her this
3 morning, I asked her, always out of an abundance of
4 caution, were there any other statements -- there's
5 no confession or Denno issues or anything. I said
6 was there anything else, when anybody was talking,
7 were there any statements made.

8 There was one that was in the
9 incident report where he made a statement. I don't
10 think there's any dispute that we've talked about
11 that. It's in the incident report, about -- I'm not
12 going to go into detail because it's of a graphical
13 sexual manner.

14 But I asked was there anything else
15 -- did you ever talk to her, and was anything else
16 ever said? Investigator Bledsoe related to me that
17 at the initial time that she talked with Mr. Adams
18 and just went through the initial allegations that
19 he made the comment to her that **Victim**, the victim
20 in this case, does not lie.

21 He has not had experience with her
22 being dishonest, basically, that she does not lie,
23 that she is not dishonest and he has not known her
24 to. I made that available to Mr. Huff as soon as I
25 knew, and certainly I don't know that it's either

1 inculpatory or exculpatory. I told him about it as
2 soon as I --

3 THE COURT: It strikes me that that is --
4 unless it came up in the context of some discussion
5 such that it might be considered to be a confession,
6 then I don't know that it's admissible. In my
7 opinion, it would be pitting witnesses, in a sense.
8 It would be one witness commenting on the
9 credibility of another witness.

10 Now, you know, that situation could
11 change dramatically during the course of the trial,
12 depending on what happens in the cross-examination
13 of the victim. But from the standpoint of
14 affirmative evidence in your case in chief, it would
15 be trying your case in chief.

16 MR. MAYE: No, sir. The only reason I
17 brought it up is because I could conceive of a
18 situation where he testifies she is dishonest, she
19 had been dishonest numerous occasions to that, that
20 it could come up. That's the only reason that I
21 brought it up, because I feel like I've got an
22 obligation.

23 I said, "Is there anything, did this
24 individual say anything to y'all?" and I just want
25 to make sure that I had disclosed that. I don't see

1 it coming out in my case in chief at all, because I
2 don't think it was in the context of a confession.

3 THE COURT: All right, all right.

4 MR. MAYE: He just basically made the
5 comment. I think they typically ask them, you know,
6 "Does this child exaggerate or lie?" He said, "No,
7 she always tells the truth."

8 THE COURT: All right. Well, now --

9 MR. MAYE: I don't intend to offer that in
10 my case in chief.

11 THE COURT: If it is to be excluded, it
12 would be because of the late disclosure as opposed
13 to an earlier disclosure has prejudiced -- not the
14 content of the statement but the timing of the
15 disclosure that prejudiced you. It seems to me that
16 the time in which I would best make that judgment
17 would be after -- if and when it is offered,
18 especially since it's not going to be offered in his
19 case in chief.

20 If there's something you want to say
21 about that now, I'll hear it. But it seems to me
22 that even if I rule against you, I would have to
23 consider it again at the time it's offered. If I
24 rule in your favor, I'd have to consider it again at
25 the time it's offered.

1 MR. HUFF: Right.

2 THE COURT: So I don't think there's a
3 point in me addressing that question right now, with
4 his assurance that that comment is not coming out in
5 his case in chief.

6 MR. HUFF: Judge, I agree with you. And
7 as I stated, I appreciate the Solicitor telling me
8 that. In fairness to both of us, we weren't really
9 wanting to argue the issue at this point. And I do
10 thank the Solicitor for his indication that it would
11 not be a matter in his case in chief.

12 As difficult as these cases become, I
13 find that if I don't try to address it when it's in
14 my mind, it may be forever lost. So I wanted to
15 place that on the record at this point.

16 THE COURT: All right.

17 MR. HUFF: And I do thank you for letting
18 me do that.

19 THE COURT: All right, anything further?

20 MR. HUFF: No, Your Honor.

21 THE COURT: What's this situation with
22 regard to his bond?

23 MR. HUFF: Your Honor, he has -- I'm sorry
24 for not looking. He is out, I believe, on a
25 personal recognizance bond, I believe. Do you

1 recall? He has paid a bondsman. Your Honor, he has
2 been -- I believe, for about a year and a half or
3 two years.

4 THE COURT: Okay. Well, I can tell you
5 that I am going to follow the same procedure that I
6 follow with every single case. And that is the
7 moment the jury is sworn, the bond is up and he is
8 in custody, unless you provide that the bondsman's
9 obligations will continue throughout the trial.

10 And in that event, I will then decide
11 whether or not it is appropriate for me to allow him
12 to remain on bond during the course of the trial,
13 and I will hear from the Solicitor as to whether or
14 not he takes a position on that.

15 So if you want to go ahead and start
16 working on making those arrangements, he'll be free
17 tonight because the jury hasn't been sworn. But as
18 soon as the jury is sworn, unless other arrangements
19 are made, he'll be in custody.

20 MR. HUFF: Thank you so much, Your Honor.

21 THE COURT: All right, anything further?

22 MR. MAYE: Your Honor, I think it's
23 premature to address that now. There have been some
24 pretty substantial issues involving bond. His bond
25 was, in fact, revoked, and he was in jail for a good

1 period of time for a matter that occurred in between
2 the time he was charged and now. His bond was
3 revoked by Judge Keesley, and he was incarcerated
4 for a good period of time.

5 THE COURT: Okay. I don't want to address
6 that now. You'll have a chance to be heard --

7 MR. MAYE: Yes, sir.

8 THE COURT: -- if and when that comes up
9 tomorrow.

10 MR. MAYE: Yes, sir, thank you.

11 THE COURT: Okay?

12 MR. HUFF: Thank you, Your Honor.

13 THE COURT: Now, I'm going to anticipate
14 that when I roll in here about 9:23 tomorrow morning
15 that I'm going to put on my robe, take a sip of
16 coffee, walk on the bench, and instruct the jury be
17 brought in the courtroom.

18 So if something comes up overnight
19 that you all need to have taken up, I can tell you
20 what I'll do. I'll give you my cell phone, and you
21 all can call me and tell me about so I can get here
22 early.

23 But, otherwise, I'm planning on
24 starting at 9:30. I'm not planning on anybody
25 saying "I've got an issue that needs to be taken

1 up," all right. So if there's something that's
2 going to need to be taken up, I want to know about
3 it.

4 MR. MAYE: Your Honor, the only possible
5 thing that I can think about, there is apparently a
6 domestic action between these two parties. I don't
7 intend to call -- there would be nothing in my case
8 in chief that would in any way impact that.

9 I think I would object in this case
10 to the extent that I can adopt any -- prior to
11 anything coming into evidence of any issue about
12 that in any opening statements. I don't know to
13 what extent I can limit it, but I think there's a
14 Family Court action between these two parties.

15 And unless it bears some direct
16 relevance on the offense in this case, I do not
17 intend to mention it. I would object to it becoming
18 an issue in this case, unless there's some
19 connection.

20 THE COURT: Do you anticipate a situation
21 in which the Family Court proceedings or what has
22 happened or not happened during those proceedings
23 would come into evidence in this case?

24 MR. HUFF: Judge, I certainly don't intend
25 to state anything, I believe, along those lines in

1 any opening argument that I might make in this case.

2 THE COURT: All right, okay.

3 MR. HUFF: I think I'm going to tailor my
4 opening argument to the facts regarding the indicted
5 charges.

6 THE COURT: All right, let's go.

7 MR. MAYE: Thank you, Your Honor.

8 THE COURT: Okay, we'll be in recess until
9 9:30 in the morning, unless I am informed that you
10 need to convene earlier.

11 MR. HUFF: And can we get your cell phone
12 number privately?

13 THE COURT: I'm not going to put it on the
14 record.

15 --End of Day--

1 Thursday, October 13, 2005

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT: Bring the jury in, please, Mr.
6 Bailiff.

7 COURT REPORTER: We have marked some
8 exhibits, Your Honor.

9 (Defendant's Exhibit One, a
10 card; Defendant's Exhibit Two, a letter;
11 Defendant's Exhibit Three, a card; and Defendant's
12 Exhibit Four, a card, were received in evidence
13 without objection.)

14 (The jury returned to the
15 courtroom at 9:39 a.m., after which the following
16 proceedings were had:)

17 THE COURT: Good morning.

18 THE JURY: Good morning.

19 THE COURT: Swear the jury, please.

20 CLERK OF COURT: If you would please stand
21 and raise your right hand.

22 (Whereupon, the jury panel was
23 sworn.)

24 THE COURT: Ladies and gentlemen, we are
25 now ready to begin with the trial of this case.

1 This is, as I told you yesterday, the State of South
2 Carolina versus Tommy Swinson Adams.

3 Mr. Adams has been indicted in two
4 indictments. The first of those is 2003-GS-19-418,
5 for criminal sexual conduct with a minor in the
6 first degree. And in that indictment, it is alleged
7 that Tommy Swinson Adams did in Edgefield County
8 between September 1, 1999, and December 25, 2002,
9 did engage in sexual battery, to wit sexual
10 intercourse, on more than one occasion with the
11 victim, Victim [REDACTED], said victim being less than 11
12 years of age, in violation of Section 16-15-140 of
13 the South Carolina Code of Laws.

14 In Indictment #2003-GS-19-416, for a
15 lewd act on a child under 16, it is alleged that
16 Tommy Swinson Adams, being over 14 years of age, did
17 in Edgefield County between September 1, 1999, and
18 December 25, 2002, willfully and lewdly commit a
19 lewd or lascivious act upon or with the body of
20 Victim [REDACTED], being a child ten years of age, and
21 that the defendant did approximately 15 times during
22 this time frame place his hands inside the pants and
23 rub his hand back and forth on her vaginal area with
24 the intent of arousing, appealing to, or gratifying
25 the lust, or passions, or sexual desire of the said

1 defendant, all in violation of Section 16-15-140 of
2 the South Carolina Code of Laws.

3 Now, ladies and gentlemen, as I told
4 you yesterday -- and I'm going to repeat this
5 because it's important -- the fact that the
6 defendant has been indicted in this case is not
7 evidence. What I just read to you from the
8 indictments is not in any sense evidence of the
9 allegations that are contained within those
10 indictments.

11 The defendant has pled not guilty to
12 these indictments. And a plea of not guilty casts
13 the burden on the State to prove the defendant
14 guilty beyond a reasonable doubt. A defendant in a
15 criminal trial in South Carolina is always presumed
16 to be innocent of the crime with which he has been
17 charged unless and until his guilt has been proven
18 beyond a reasonable doubt.

19 Now, this is what we call the
20 presumption of innocence, of course, and it's not
21 just a legal theory or a legal phrase. It is a
22 substantial constitutional right to which every
23 defendant is entitled. The presumption of innocence
24 accompanies the defendant from the time he is
25 charged, throughout the trial, and into the jury

1 room until you reach a verdict of guilt that's based
2 on evidence that satisfies you of that guilt beyond
3 a reasonable doubt.

4 Now, ladies and gentlemen, the trial
5 of this case can be broken down into five basic
6 phases, and I'm going to kind of go over those with
7 you now. The first phase is the opening statements,
8 when the lawyers will stand before you and they will
9 tell you what this case is about.

10 They'll tell you what the issues are
11 in this case, how each side stands on those issues,
12 and they will also go over some of the evidence that
13 you will hear that relates to those issues. The
14 second phase is what we call the evidentiary phase,
15 when witnesses will come here to this witness stand,
16 you'll hear their testimony, and you will probably
17 also see some other physical or documentary evidence
18 as well.

19 When all of the evidence has been
20 entered, the third phase will begin, and that is the
21 closing arguments, when the lawyers will stand
22 before you and they will argue to you as to whether
23 or not the State has met its burden of proof.

24 Then the fourth phase is when I will
25 tell you the law that's applicable to this case. We

1 call that the jury charge. And then the fifth phase
2 is when you will go back into the jury room and you
3 will deliberate.

4 Now, it's very important that you not
5 begin to make up your mind about whether or not the
6 State has met its burden of proof until you've been
7 through all five of those phases, including that
8 fifth phase, or at least a part of it, when you'll
9 have a chance to listen to what the other members of
10 the jury think about the evidence. Only then will
11 you be in the right position to make up your mind
12 about the facts in this case.

13 Now, as I told you during the voir
14 dire portion of the case yesterday, your
15 responsibility as a juror is to come in here with an
16 open mind, setting aside anything that you might
17 know or that you might have heard about this case,
18 any biases or prejudices that you may have about the
19 issues in this case or the people that may be
20 involved in this case and listen very carefully to
21 the testimony and the evidence that will be
22 presented before you in this courtroom under my
23 supervision.

24 And then when the time comes to
25 render a verdict, it is based solely on that

1 testimony and evidence in light of the law as I will
2 explain it to you. Now, I told you yesterday also
3 that you are not permitted to discuss this case in
4 any manner until I have given you permission to
5 begin your deliberations during that fifth phase,
6 and that's very important. I expect you all to
7 adhere to that instruction.

8 Now, ladies and gentlemen, as members
9 of the jury, you are the exclusive judges of the
10 facts in this case, and I am not permitted to
11 indicate to you how I might feel about the facts.
12 So if I say anything or do anything during the
13 course of the trial that might lead you to believe
14 that I have an opinion about the facts, then you
15 must disregard that.

16 But on the other hand, I am the
17 exclusive judge of the law. And if you have some
18 idea as to what the law is or what the law should
19 be, and if that differs from what I will tell you
20 the law is, then you are obligated under the oath
21 that you have just taken as jurors to set your
22 notion of the law aside and to accept and apply the
23 law precisely as I will explain it to you.

24 And one other role that I play is to
25 decide on the admissibility of evidence. And from

1 time to time, I expect that the lawyers will be
2 making objections when evidence is offered that they
3 do not believe complies with the rules of evidence.

4 Now, when a lawyer makes an
5 objection, that's not an attempt to hide anything
6 from you. That's the way our system of evidence
7 works. When evidence is offered that one lawyer
8 feels does not comply with the rules of evidence, it
9 is that lawyer's responsibility not only to his
10 client but also to the court system to make an
11 objection.

12 And then it becomes my responsibility
13 to rule. If I sustain the objection, that means I
14 believe the evidence is admissible, and I will not
15 allow it in for you to consider. If I overrule the
16 objection, that means I believe the evidence is
17 admissible, and I will allow it in, and you can
18 consider it.

19 Now, most of the time I'll do that
20 just as I sit here. The lawyer will stand. They'll
21 make an objection, they may briefly state the
22 grounds for their objection, and then you'll hear me
23 say it is sustained or overruled. Sometimes I might
24 have to have a conference with the lawyers up here
25 at the bench or down there in front of the Court

1 Reporter.

2 And sometimes I may actually have to
3 send you all back into the jury room so that I can
4 openly discuss the evidence question. Sometimes I
5 even have to listen to the testimony before I can
6 decide whether or not you can listen to it.

7 All right, Mr. Maye.

8 MR. MAYE: May it please the Court.

9 THE COURT: We did swear the jury,
10 correct?

11 MR. MAYE: That's correct, Your Honor.

12 THE COURT: All right.

13 OPENING STATEMENT

14 BY THE STATE

15 MR. MAYE: Ladies and gentlemen, I
16 appreciate the patience that you've already
17 demonstrated in this case. All of you have been
18 taken away from what you would have normally been
19 doing this week, whatever your lives entail, whether
20 or not you were working or you would have been at
21 home or elsewhere. Most of you have made a list of
22 the top ten things that y'all were going to be doing
23 this week. I don't think this would be on
24 anybody's.

25 The job that you have to sit up here

1 as judges of the facts in this case is one of the
2 most important duties that a citizen has. Outside
3 of military draft, this is the only compulsory
4 public service that's left. And it's an awesome
5 responsibility.

6 The 12 of you are going to sit as
7 judges of the facts in this case, are ultimately
8 going to decide the verdict for Tommy Adams, the
9 defendant in this case, who's sitting next to his
10 lawyer, is charged with criminal sexual conduct with
11 a minor and a lewd act.

12 Now, the Judge at the conclusion of
13 all the evidence in this case is going to tell you
14 and he'll charge you with what the details of the
15 law are. But the State in this case, I submit to
16 you, we're going to prove that he molested this
17 young lady right here, Victim [REDACTED].

18 She's going to be on the stand in
19 this case. In the State's case, Victim [REDACTED] is
20 going to get up and testify, and she's going to tell
21 you what happened in this case. And there wasn't
22 anybody else there but Victim [REDACTED] and the defendant in
23 this case, Mr. Tommy Adams.

24 That's going to be the State's case.
25 You're going to hear from the investigator. Victim [REDACTED]

1 is going to tell you what her family situation has
2 been like. She's going to lay out for you where she
3 has lived, how Mr. Adams had access to her to do
4 this to her. She's going to tell you what about
5 what her family situation is.

6 [Victim] is going to get on the stand
7 today, and she's going to tell you that her mom,
8 Kathy Adams, met Tommy Adams about 1995. They got
9 married about 1996. And during that time period,
10 they lived in two houses here in Edgefield County,
11 both of them here within the county, but one at [REDACTED]
12 [REDACTED], which is out in Clarks Hill, where
13 they have primarily lived, kind of a country
14 residence.

15 And during the time frame that we're
16 talking about, she was molested and assaulted by Mr.
17 Adams in this case. We're talking about between
18 September 1, 1999, and December 25, 2002.

19 Now, [Victim] is going to tell you that
20 she's 13 now. But during that time period when it
21 first started happening, she was seven. And this
22 went on from the time that she was seven until she
23 was ten, until she finally told her mom.

24 She's going to relate to you that
25 they lived in this house, that going back and forth

1 in between the two, there were a lot of children
2 there. Kathy and Tommy had two children who were
3 there most of the time.

4 [Victim] has got a brother who was
5 there most of the time. Then there were two
6 children that were Tommy's that were in and out and
7 stayed there part of the time, as they went back and
8 forth in between those two residences.

9 [Victim] is going to tell you that her
10 mom, Kathy, did work as an engineer. She often
11 traveled. She's further going to tell you that
12 Tommy Adams for a long period of time from that
13 September 1, 1999, to December 25, 2002, time frame
14 was not working. So he was home a great deal of the
15 time when she was gone.

16 She's going to tell you that this
17 first started happening when her mother, who is an
18 engineer, went on a business trip to Canada. She's
19 going to tell you all about how Tommy Adams got her
20 alone in a bedroom, took her clothes off, and
21 systematically began a pattern of molesting her that
22 included penetrating her with his fingers, that
23 included having this young lady take his penis in
24 her hands, with him instructing her on what to do,
25 with him threatening her with punishment if she

1 didn't do it, with him threatening her about not
2 telling and encouraging her and intimidating her
3 into not telling her mom or not letting the
4 authorities know, with him forcing his penis inside
5 of her mouth on occasion.

6 Ladies and gentlemen, this young lady
7 is going to relate to you how at just about every
8 opportunity that he got when mama was gone away on a
9 trip or shopping, or other people were outside of
10 the house, or the other children had gone to bed
11 that he would get this girl in the bedroom at one
12 residence or the other and he would molest her.

13 And you're going to get it straight
14 from her. She's going to tell you about what the
15 situation was and about what he was doing to her
16 during this time period.

17 Ladies and gentlemen, I submit to you
18 that you're going to learn in this case that she
19 told her mother during a particularly painful
20 conversation that they were having, discussing the
21 death of her real father, that during that
22 conversation, when the discussion moved to Tommy
23 Adams, about how he treated her, that she broke down
24 and she told her mama.

25 And you'll learn that they packed up,

1 and they left, and they haven't been with him since.
2 She gathered her children up, and she left at that
3 point in time.

4 Ladies and gentlemen, you're going to
5 hear that Victim told her mama, that she told
6 authorities. And you're going to hear her from this
7 witness stand up here today get up and tell you and
8 put it in your hands.

9 At the conclusion of all the evidence
10 in this case, the State is going to want you to come
11 back with a guilty plea in this case, now that she's
12 told you what happened in this case, criminal sexual
13 conduct with a minor and a lewd act. I appreciate
14 your close attention.

15 OPENING STATEMENT

16 BY THE DEFENSE

17 MR. HUFF: May it please the Court.

18 Ladies and gentlemen, this is Tommy Adams.
19 Boy, you've heard just a mouthful about him. Judge
20 Few just told you that he's charged with two
21 indictments, with these two crimes, criminal sexual
22 conduct in the first degree and lewd act on a minor.

23 He has also told you that Tommy Adams
24 is innocent of this charge and that these are only
25 allegations, and that's all they are, allegations.

1 Have you ever heard of allegations before?

2 Have you ever known somebody that's
3 been accused of something they didn't do? Have you
4 ever heard in the neighborhood, "Did you hear about
5 Dave Johnson, that he did such and such?" or "Did
6 Ms. Jones tell you about what she heard about so-
7 and-so that so-and-so told her?" and now the rumor
8 just spreads?

9 Ladies and gentlemen, has every
10 accusation or allegation that you have heard in your
11 life been found to be absolutely true? Or have you
12 learned that what was said in a lot of the instances
13 aren't true? You know, I think we hear about New
14 Orleans after the hurricane, that they were raping
15 and killing people in one of the centers there. And
16 then we find out that really wasn't true. It was
17 just hype.

18 I remember as a kid being accused of
19 breaking my mother's vase, and I got spanked for it,
20 and I didn't do it. And then my mother found out
21 that the neighbor's child -- because in those days,
22 kids always played together. That if I got in
23 trouble up the street, Ms. Smith wouldn't spank me;
24 when I got home, my mother would spank me. That's
25 just the way we grew up.

1 But I had to pay for something I
2 didn't do, and I've never forgotten that. And I'm
3 sure my mother never did either, because sometimes
4 it's easy to jump to conclusions and to accept the
5 allegation until you find out the truth.

6 We see that a lot in our profession
7 as lawyers, and as judges, and even as law
8 enforcement officers. And you may have even read
9 about it in newspapers and seen it on the TV where
10 people have been convicted of crimes -- rape,
11 murder, armed robbery -- and sent to prison. Later
12 they find out that that person was innocent.

13 We've seen it especially since the
14 invention of DNA and using that type of testing.
15 Women who have taken a stand, put their hand on a
16 Bible and sworn to tell the God's honest truth that
17 "That man raped me. I will never forget his face as
18 long as I live," absolutely convinced that what
19 they're telling you is true. And then luckily, some
20 years down the line, the man gets a DNA test and is
21 absolutely found to be utterly innocent.

22 The Department of Justice says it's
23 happened over a hundred times in death penalty
24 cases, that people have been sitting on Death Row
25 for ten and 20 years ultimately to be found

1 innocent, some too late. So, ladies and gentlemen,
2 these are allegations. That's all they are.
3 They're serious.

4 Those that I've described to you are
5 serious. Somebody in drawing this jury to serve
6 said yesterday that he didn't believe in the system.
7 It's the best we've got, ladies and gentlemen -- the
8 best we've got. I was appointed to represent a man
9 in Aiken some years ago who was charged with dealing
10 drugs. He had spent almost a year in the county
11 jail, and we tried the case.

12 And I'll never forget when the jury
13 came back with their verdict, and I was scared to
14 death because I utterly believed my client was
15 innocent. And they came back not guilty. And he
16 turned to me and said, "Mr. Huff, who pays me back
17 for the year I spent in jail?" I didn't know what
18 to tell him.

19 I was thankful that the system worked
20 properly that day. I tell you that to tell you
21 this. There are a couple of things that are true
22 here today, just a couple. One is that today a
23 man's freedom is going to hang in the balance.

24 And, secondly, one of two things are
25 true: either Tommy Adams is guilty, or he is not

1 guilty. You have a hard burden today. I've often
2 wondered what jurors think when they get selected
3 and take their first seat in the jury box before a
4 case begins.

5 I remember telling the House
6 Judiciary Committee one day when I was testifying
7 before them that in passing a certain piece of
8 legislation that we didn't need a law that helped
9 defense lawyers, or prosecutors, or law enforcement.
10 We needed a law to help jurors make a decision to
11 find the truth.

12 And that was a bill to enact
13 videotaping of DUI cases. It was my idea, and I
14 introduced it into the legislature through --

15 MR. MAYE: Your Honor?

16 THE COURT: If it's an objection.

17 MR. MAYE: It's an objection, yes, sir,
18 Your Honor.

19 THE COURT: I'll sustain the objection.

20 MR. MAYE: Yes.

21 THE COURT: Limit your opening statement
22 to the facts of this case.

23 MR. HUFF: Thank you, Your Honor. What I
24 hope you will do during the course of this trial is
25 understand you have a hard job. You're going to be

1 called upon at the end of this case to decide
2 whether somebody committed a crime or not.

3 And I am confident that you're going
4 to hear two totally different stories, and you're
5 going to have to sit in judgment. And there's not
6 going to be any DNA. There's not going to be any
7 videotapes. There's not going to be any of that.

8 There's going to be two people saying
9 two different things. I hope you understand that
10 your duty is to search earnestly for the truth, to
11 apply the law as the Judge will give you at the end
12 of this case. The Judge has told you that Tommy
13 Adams is innocent. There is a presumption of
14 innocence that remains upon him.

15 The Judge said two things, unless or
16 until the State removes that presumption. And I
17 submit to you they will not. But that is your
18 decision. I'm not going to ask you to return a
19 verdict of not guilty in this case. The State has
20 said they want you to return a verdict of guilty.

21 That's your job. There's a rail here
22 for a reason. I cannot get in that box with you.
23 All I can do is do my best job to let you find the
24 truth. And, ladies and gentlemen, please understand
25 this, that many times the truth is like treasure.

1 It's not laying around on the
2 surface, it's buried. And sometimes you've got to
3 dig for it. Sometimes it may hurt digging for that
4 truth. But I hope we can find it together today.
5 Thank you.

6 THE COURT: Would you two who are seated
7 right in front of the window, would you mind turning
8 around and seeing if you can adjust those blinds so
9 that the glare is not behind you. Just those lower
10 blinds, if you could close them just a little bit.
11 They may be fixed. They won't close? Okay, all
12 right, thank you.

13 Call your first witness.

14 MR. MAYE: The State calls Victim [REDACTED] to
15 the stand.

16 (The witness was sworn.)

17 CLERK OF COURT: Have a seat in the
18 witness stand and state your full name.

19 MS. Victim: My name is Victim [REDACTED].

20 Victim [REDACTED], having first
21 been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MAYE:

24 Q Victim [REDACTED], tell the ladies and gentlemen of
25 the jury how old you are.

Victim [REDACTED] - Direct

37

1 A I'm 13 years old.

2 Q Okay. When is your birthday?

3 A My birthday is January 12, 1992.

4 Q Victim [REDACTED], who is this lady that's sitting
5 right here?

6 A That's my mom, Kathy Adams.

7 Q Where do you live now, Victim [REDACTED]?

8 A I live at [REDACTED] [REDACTED] [REDACTED].

9 Q [REDACTED] [REDACTED] -- what county is that in?

10 A [REDACTED] [REDACTED].

11 Q What other places have you lived here in
12 Edgefield County?

13 A I lived at [REDACTED] [REDACTED] [REDACTED].

14 Q What county is that in?

15 A Edgefield County.

16 Q Who lives with you now?

17 A My mom, Kathy Adams; my brother, Carlton
18 [REDACTED]; and my two little half sisters, Tessa and
19 Elizabeth [REDACTED].

20 Q Victim [REDACTED], tell the ladies and gentlemen of
21 the jury about what other places you've lived and
22 how you came to live in these two different places
23 here in Edgefield County.

24 A I lived in Augusta when I was born, and I
25 lived there until 1996. We moved to [REDACTED] [REDACTED]

Victim [REDACTED] - Direct

38

1 [REDACTED], and we lived there for a year. In 1997, we
2 bought [REDACTED] [REDACTED], while we still owned
3 [REDACTED] [REDACTED]. We lived there for a year.
4 And then from 1998 till 2002, we went back and forth
5 between the two houses.

6 Q Okay. How do you know Tommy Adams?

7 A He's my stepdad.

8 Q When did your mom and Tommy first start
9 going out with each other, and when did you first
10 get to know him?

11 A 1995.

12 Q Okay. Victim [REDACTED], who is your biological dad,
13 your real dad?

14 A Kelly Wren.

15 Q Kelly Wren, okay. Victim [REDACTED], when y'all were
16 moved to the first house that you lived in here in
17 Edgefield, describe for the ladies and the gentlemen
18 who all lived there and what your living situation
19 was like.

20 A I lived with my mom, Kathy Adams, my
21 stepdad, Tommy Adams. I lived with my little
22 sister, Tessa, my half sister. I lived with my
23 brother, Carlton [REDACTED]. And about half -- well, on
24 the weekends of every week, Tommy -- my
25 stepbrothers, Tommy and Cody, were there.

Victim [REDACTED] - Direct

39

1 Q Your whole brother is who?

2 A Carlton [REDACTED].

3 Q Carlton, okay. And your two sisters that
4 live there, whose children are they? Who are their
5 mom and dad, their biological parents?

6 A Their mom is Kathy Adams, and their dad is
7 Tommy Adams.

8 Q How about the two boys that you were
9 talking about?

10 A Their mom is Sharon Adams, and their dad
11 is Tommy Adams.

12 Q [REDACTED] what does your mom do? What kind
13 of job does she have?

14 A She's an engineer at PCS Nitrogen.

15 Q Has she been doing that as long as you've
16 known her?

17 A Yes.

18 Q [REDACTED], let me ask you about the period of
19 time between September 1, 1999, and December 25,
20 2002. Tell the ladies and gentlemen of the jury
21 what was going on between you and Tommy Adams.

22 A When my mom went to Canada in 1999, in
23 September, I was in my bedroom, about to go to
24 sleep. And my stepdad, Tommy Adams, came in there
25 and asked me if I wanted to watch TV with him.

Victim [REDACTED] - Direct

40

1 Q Where were the other people that were in
2 the house?

3 A They were in their beds sleeping. Tessa
4 and Elizabeth, I think they were in my room
5 sleeping, and Carlton was in his room.

6 Q Okay. What happened?

7 A I went in there, and we were watching TV.
8 And then he turned off the TV, and he started taking
9 off my clothes. And then he took off his clothes,
10 and he got on top of me.

11 And he was grinding his -- he put his
12 hands inside me, or tried to, and he was grinding
13 his hips back and forth against me while he was
14 smoking. And then when he was done with that, he
15 asked me to hold his penis, and to squeeze it, and
16 move my hands back and forth on it. He instructed
17 me on what to do, and then he put his fingers inside
18 my vagina and was moving them back and forth.

19 Q Okay. Were there other times that he did
20 this to you during that time period?

21 A Yes.

22 Q Where would your mom be when this was
23 taking place?

24 A She would be either on a business trip or
25 -- yes, she'd be on a business trip, she wouldn't be

Victim [REDACTED] - Direct

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1 at home -- or she'd be out shopping or doing
2 something.

3 Q Okay. Tell the ladies and gentlemen of
4 the jury about other times that he did this to you
5 and what he did at those other times.

6 A He would mix it up. Sometimes, he would
7 get all the way on me and put his hands in me.
8 Other times, he would just fondle me or ask me to
9 hold his penis. Once he made me perform oral sex on
10 him.

11 Q Victim [REDACTED], did he ever threaten you?

12 A If I told him that I didn't want to do
13 something, he'd tell me if I didn't, he would spank
14 me. And he told me not to tell anybody what was
15 happening, what he was doing to me.

16 Q Victim [REDACTED], why didn't you tell anybody what
17 was happening during the course of this going on?

18 A I was afraid of what he would do to me. I
19 was afraid he might spank me or try to hurt me in
20 some way.

21 Q Victim [REDACTED], how many times did he actually put
22 his penis inside of you?

23 A Three or four times.

24 Q Victim [REDACTED], how many times did he rub on you
25 and things other than put his penis inside of you?

Victim [REDACTED] - Direct

42

1 About how many times did he do that?

2 A About 15 or 20 times.

3 Q The oral sex that you testified about him
4 making you do, putting his penis inside of your
5 mouth, how many times did that happen?

6 A That happened once.

7 Q Victim [REDACTED], tell the ladies and gentlemen of
8 the jury, how would he get you alone to do these
9 things? How did that happen? Describe for the
10 ladies and gentlemen some of the circumstances he
11 used to do that.

12 A We would be in the master bedroom, which
13 was my parents' bedroom. My mom wouldn't be at
14 home. And my little sisters and brothers would
15 either be in their room asleep with the door closed
16 -- we'd have the door closed to the master bedroom
17 -- either that or if it happened during the daytime,
18 they would be outside or something, and he'd tell
19 them not to come in.

20 Q Victim [REDACTED], at about the last time that this
21 happened, how did he get you by yourself about the
22 last time this happened?

23 A It was Christmas Eve, and we went to our
24 other house at [REDACTED] [REDACTED] [REDACTED] to wrap
25 presents. My little sisters and brothers and my mom

Victim [REDACTED] - Direct

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1 were at [REDACTED], and he said we were
2 going to go up there to wrap presents. When we --

3 Q Did anybody go with you when y'all went to
4 wrap presents?

5 A No, it was just us.

6 Q Okay. What happened when he got you up
7 there under that circumstance?

8 A Well, we wrapped the presents, and then we
9 were about to leave. And he said, "Let's go in the
10 bedroom." We got in there, and he put me on the
11 bed, and he started trying to take off my pants.
12 But I kept pulling them up, and I wouldn't let him
13 take them down.

14 And I was crying, and I was screaming
15 at him to stop. And he was telling me to hush and
16 be quiet. And I just wouldn't let him pull my pants
17 down, so we just left.

18 Q Victim [REDACTED], how did you get to be when your
19 mom was going to go out of town? How did that make
20 you feel?

21 A Whenever she was going to leave, I'd pitch
22 a fit. I wouldn't want her to leave. I'd start
23 crying and begging her to stay, because I didn't
24 want to be alone with him.

25 Q Did that create a problem between you and

Victim [REDACTED] - Direct

44

1 your mom because you didn't want to be alone?

2 A She was probably wondering why I didn't
3 want to be alone, but she still went on her business
4 trip.

5 Q [REDACTED], did there come a time that you
6 finally told your mom?

7 A Yes.

8 Q Tell the ladies and gentlemen of the jury
9 about that.

10 A In April of 2003, I went to my mom to ask
11 her how my real dad had died, because everybody was
12 telling me a different story. And we were talking
13 about that, and she told me he had committed
14 suicide. And we were --

15 Q Do you know what year that was that he
16 committed suicide, that he died?

17 A 1996 -- I believe it was 1996. And we
18 were talking --

19 Q Had you been wondering about that for a
20 while at that point in time?

21 A Yes, for a couple of years probably.

22 Q Tell the ladies and gentlemen of the jury
23 about that conversation.

24 A We were talking about it, and she -- well,
25 it came up about how my stepdad had been being a

Victim [REDACTED] - Direct

45

1 good father. And I said, "Well, actually, he hasn't
2 been." And I told her about all the things that he
3 had been doing to me and making me do. And then
4 after that, she packed up, and we left and went to
5 [REDACTED].

6 Q Have y'all ever lived around him since
7 that time?

8 A No.

9 Q Did y'all wait, or did y'all leave
10 immediately?

11 A We left immediately.

12 Q Where was he when you told your mother
13 about this?

14 A He was on the road. He was a truck
15 driver.

16 Q Your mom was working during that time
17 period from September 1, 1999, until December 25,
18 2002. What was Tommy Adams doing that time
19 period --

20 A He didn't always work.

21 Q -- work-wise?

22 A Yes, he didn't always work. Sometimes he
23 did, and sometimes he didn't. In July of 2002, he
24 stopped working, and he didn't start working again
25 until March 2003.

Victim [REDACTED] - Direct

46

1 Q [REDACTED], how old is Tommy Adams, your
2 stepdad?

3 A He's 50.

4 Q Do you know when he was born?

5 A September 26, 1955.

6 Q [REDACTED], did this ever happen any other
7 places other than in these two houses that you lived
8 in --

9 A No.

10 Q -- in Edgefield County?

11 A No.

12 Q [REDACTED], after you told your mom, who all
13 else did you talk with and tell about this
14 happening?

15 A I had to talk to different people, just
16 like the doctor. I had to talk to the investigator,
17 and I talked with some other people.

18 Q [REDACTED], please answer any questions the
19 defense has for you.

20 CROSS-EXAMINATION

21 BY MR. HUFF:

22 Q Now, [REDACTED], is it my understanding that
23 you and your mom moved -- what house are you living
24 in now?

25 A [REDACTED].

1 Q Is it my understanding that you, and your
2 mom, and your sisters moved into that house about
3 February 2003? Does that sound about right? I'm
4 sorry?

5 A I guess.

6 Q Okay. So it was a little bit of time
7 before you told your mom that y'all had moved over
8 to the house, sometime in February '03. Now, you've
9 always called Tommy Adams "Daddy," right?

10 A Yes.

11 Q Okay. Now, you have said today that your
12 dad did some pretty awful things, and this was
13 supposed to have occurred for about three years,
14 right? Is that right?

15 A Yes.

16 Q Okay. And you never told anybody in 1999
17 when you say this started, right?

18 A Right.

19 Q You didn't tell any friends?

20 A No.

21 Q Didn't tell anybody at school?

22 A Huh-huh.

23 Q Didn't tell any guidance counselor?

24 A No.

25 Q Did you go to church anywhere?

Victim [REDACTED] - Cross

48

1 A No.

2 Q Okay. You didn't tell your brothers or
3 sisters?

4 A No.

5 Q Okay. Now, you've got one half brother,
6 and that's Cody, right?

7 A He's my stepbrother.

8 Q Stepbrother, I'm sorry. And y'all have
9 been pretty close all the time, haven't you?

10 A Yes.

11 Q Okay. And you never told Cody?

12 A No.

13 Q Now, in 2000, you never told anybody
14 during that year, did you?

15 A No.

16 Q Didn't tell your mom, didn't tell Cody?

17 A No.

18 Q Didn't tell any teacher or anybody at
19 school?

20 A No.

21 Q Okay. Were you going to church anywhere
22 during that time, during 2000?

23 A Uh-huh.

24 Q Okay. And in 2001, did you ever tell
25 anybody during that time?

1 A No.

2 Q Okay. Or 2002?

3 A No.

4 Q Okay. But after you, and your mom, and
5 your sisters moved over to the house you're in now,
6 sometime after that you told your mom what you say
7 happened, right?

8 A Yes.

9 Q Okay. Now, you've had a family doctor
10 that you've seen while you've been growing, a Dr.
11 Middleton, right?

12 A Yes, we saw Dr. Middleton.

13 Q Okay. I understand you've stopped going
14 there. But he would give you checkups whenever
15 you'd go and see him, right?

16 A Yes.

17 Q Okay. And after Dr. Middleton, I believe
18 you saw Dr. Bouché as your family doctor, right?
19 She's a female.

20 A Yes.

21 Q All right. And she would give you
22 checkups and exams during those years too, right?

23 A Right.

24 Q Okay. And I think you said after this was
25 supposed to have happened, you also said you saw

Victim [REDACTED] - Cross

50

1 some other doctor, that you had to talk to a doctor,
2 an investigator, and some other people about what
3 you say happened, right?

4 A Yes.

5 Q And that doctor that you say you saw that
6 you had to talk to, was he up in Columbia or
7 Lexington?

8 A Well, I told Dr. Bouché. After I told my
9 mom, she took me there. And I think they
10 recommended -- she recommended where I should get
11 checked out.

12 Q Okay, all right. And I believe that was
13 some doctor that the Prosecutor's Office uses up in
14 the Columbia or Lexington area, is that right?

15 A I guess so.

16 Q Okay. And he gave you an exam as well,
17 right?

18 A Yes.

19 Q Okay. Now, you know that your mother has
20 taken Tommy, your daddy, to Family Court, right?

21 A Yes.

22 Q And you know that their Family Court case
23 began --

24 MR. MAYE: Objection. I think it's
25 irrelevant, the Family Court case.

1 MR. HUFF: Motive, Your Honor.

2 THE COURT: Didn't we have a
3 discussion about this yesterday?

4 MR. MAYE: Yes, sir.

5 MR. HUFF: Judge, I'd be glad to take
6 a sidebar, if necessary. I believe it goes to the
7 motive and basis --

8 MR. MAYE: I'd like to take it up
9 outside the presence of the jury and not argue it in
10 front of the jury, if you want to do that.

11 THE COURT: All right, I'm going to
12 send the jury back into the jury room for just a few
13 minutes.

14 (The jury left the
15 courtroom at 10:26 a.m., after which the following
16 proceedings were had:)

17 THE COURT: When this was brought up
18 yesterday, I thought you said there was not going to
19 be any reason to bring this up.

20 MR. HUFF: Judge, I said the Solicitor --
21 my understanding was yesterday he didn't want me to
22 bring anything up in opening argument, and I said I
23 was not going to do that. Based upon the testimony
24 I'm hearing today, I believe it goes to motive or
25 basis for this allegation. I think it will --

Victim - Cross

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1 THE COURT: What are the questions?

2 MR. HUFF: I'm sorry, Your Honor?

3 THE COURT: Ask her the questions.

4 IN-CAMERA EXAMINATION

5 Q Victim, you and your mother discussed what
6 you've testified to today before your mother filed
7 for a Family Court action, right? Is that right?

8 A Yes, that's right.

9 Q And you are aware that your allegations
10 were brought up in that Family Court case, weren't
11 you? Let me ask another question. You're aware
12 that your mother has told the Family Court Judge
13 about this as well, right? You and your mom have
14 discussed that?

15 A We haven't really talked about it much.

16 Q I'm sorry?

17 A We haven't really talked about it much.

18 Q But you know that there's a Family Court
19 case going on between your mom and Tommy Adams?

20 A Yes.

21 Q Okay.

22 MR. HUFF: Judge, that's all I'm
23 going to ask.

24 THE COURT: How does what the mom did
25 tie into the child's motive?

1 MR. HUFF: Judge, I think that is
2 something I'd tie up through the remainder of the
3 case and in closing argument.

4 MR. MAYE: May it please the Court,
5 if I could be heard briefly. He's talking about the
6 mother's motive. That's not this witness. He can
7 ask this witness if somebody told her to lie or told
8 her to say something other than the truth.

9 But that wouldn't be this
10 witness's motive. He's trying to talk about motive
11 of a third party in this case, not the witness
12 that's on the stand now. If he has anything about
13 her being -- he can certainly ask her if she's been
14 coached or anybody has asked her to say anything
15 other than the truth.

16 But to wrap up some Family Court
17 case that her mother and this man are involved in is
18 certainly not her motive. It might be the motive of
19 a third party but not this witness. It wouldn't
20 have any place in this case.

21 MR. HUFF: And, Judge, I respectfully
22 would ask too -- I know that Solicitor Maye and I
23 are going to need to argue some motions in the
24 future. I would just simply ask if we need to do
25 that as to the current witness that's testifying

1 that we excuse -- each or either side excuse that
2 witness while we argue the basis of the motion, just
3 so that there's no implantation of ideas either way
4 of what to say or not to say.

5 Judge, a case is putting together the
6 pieces of a puzzle. And this is the first witness
7 in this case, and I've got to be able to pull my
8 pieces together in order to present my defense at
9 the appropriate time. I'm not going into anything
10 beyond the facts.

11 THE COURT: The question before me
12 has got nothing to do with pieces of any puzzle.
13 The question is whether the evidence that you seek
14 to elicit from this witness is relative under the
15 rules of evidence.

16 And the fact that the mother may
17 have had some motive to attack or to go after the
18 defendant would be, it seems to me, relevant only
19 insofar as that was communicated to this witness.
20 Would you disagree with that?

21 MR. HUFF: Judge, the question is
22 going to the motive for this allegation to be made.
23 At this point through this witness, I'm not delving
24 into all of that. I've simply asked a question to
25 lay the foundation of a motive of why this may have

1 been said.

2 As far as the timing, I haven't
3 delved into that yet. I would ask, if I could, Your
4 Honor, if respectfully it's possible to have the
5 witness sequestered while we continue to argue this
6 issue, because I believe by arguing --

7 THE COURT: No, I want the
8 sequestration to extend to all parties. All these
9 witnesses out of the courtroom for the pendency of
10 this -- the sequestration of all witnesses.

11 MR. HUFF: Judge, I'm just asking as
12 a witness is on the stand if the Solicitor and I --
13 either witnesses for the defense or witnesses for
14 the State -- if we're going to argue --

15 THE COURT: All right, I'm going to
16 exclude all witnesses from the courtroom at this
17 time for purposes of this hearing --

18 MR. HUFF: Yes, sir.

19 THE COURT: -- because both sides and
20 I are discussing things that could be interpreted as
21 witness coaching type comments. So anybody who is
22 named on the witness list for either party is to
23 leave the courtroom at this time.

24 MR. HUFF: Yes, sir.

25 THE COURT: And, Deputy, will you

Victim [REDACTED] - In-Camera Examination

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1 take Victi [REDACTED] and her family. You're welcome to go
2 with her, and you all can go back to room five.

3 MR. MAYE: The only thing that I
4 would ask, I would ask at this point in time that
5 all witnesses be sequestered and that extend not
6 just to this hearing but that extend for the
7 remainder of the testimony. I'm requesting
8 sequestration.

9 MR. HUFF: Judge, I would oppose
10 that. I see no basis for it. The case has already
11 begun. I'm just asking as we are arguing an issue
12 before the Court. I certainly would agree to --

13 THE COURT: All right, I don't want
14 to hear any more about that right now. All right,
15 now, the question that you wanted to ask this
16 witness is, "Isn't it true that your mother has
17 filed a Family Court action against Mr. Adams in
18 which she has made the same allegations that have
19 been made in this criminal case?"

20 MR. HUFF: That's correct. And that
21 is, I believe, the extent of my questioning of this
22 witness as to anything in Family Court.

23 THE COURT: All right.

24 MR. HUFF: In essence, I --

25 THE COURT: I overrule the objection.

1 But, now, as we get farther in this, as I
2 understand, the State's evidence so far, it was the
3 child's making of this allegation against Mr. Adams
4 that began the problems between the wife and
5 husband. Is that correct?

6 MR. HUFF: Well -- and, Judge, I
7 would simply state that that would be jumping the
8 gun, so to speak.

9 THE COURT: Well, that ain't jumping
10 the gun, because if you're getting into the -- you
11 don't have to answer the question any farther than
12 you've already answered. But the timing of all that
13 is, it seems to me, important in terms of how you're
14 going to establish motive.

15 And it also is going to be
16 important in terms of the breadth of questions that
17 I've going to allow this witness to be asked, I
18 think. So that's all I've got to say right there.
19 Anything else you all want to bring up right now
20 that relates to this witness's testimony?

21 MR. HUFF: No, Judge, I would
22 simply --

23 THE COURT: Okay, now, as far as the
24 questions for the witnesses for the rest of the
25 case, what's the basis for questioning?

1 MR. MAYE: Your Honor, if he's trying
2 to develop some motive, I don't want each witness
3 building on the other one. If they've got truth to
4 tell, they can tell it independently and not build
5 on each other's testimony in this case, Your Honor.
6 I move that it be excluded.

7 Whatever the Court's ruling is
8 certainly I respect that, Your Honor. But it is
9 commonly granted when one party or the other
10 requests a motion for sequestration. I have not in
11 the past articulated any -- I mean, it just speaks
12 for itself.

13 One witness can't build on the
14 other one if they testify -- they're not hearing the
15 cross-examination of the other witnesses. They are
16 not allowed to -- that keeps one witness from
17 picking up what others said.

18 THE COURT: I understand. But you're
19 mistaken about the law on the sequestration of
20 witnesses. The law in Federal Court is if you ask
21 for it, you get it. But the law in the State Court
22 is you've got to prove a basis for it.

23 And the suggestion is that this
24 business about motive, as he's putting that
25 together, is going to -- I think that our system and

1 State Court is set up to be reluctant to sequester
2 witnesses. Is it true that most of the witnesses on
3 your side are going to testify about character
4 issues and also about just sort of the circumstances
5 in which they lived?

6 MR. HUFF: Yes, sir.

7 THE COURT: Are any of them going to
8 have any direct testimony that relates to whether or
9 not he did this?

10 MR. HUFF: No. And, Judge, if --

11 THE COURT: I deny the motion to
12 sequester the witnesses. I'm going to take a short
13 break, and I'll be right back.

14 MR. HUFF: Thank you, Your Honor.

15 MR. MAYE: Thank you.

16 (Break in proceedings.)

17 THE COURT: Have you all told the
18 witnesses that they can come back in the courtroom?
19 How about Vict [REDACTED], where is she?

20 Let's clear this up. Since Ms.
21 Victim went back into what I think is essentially the
22 Solicitor's Office during that meeting, did anybody
23 have any conversation with her about her testimony?

24 MR. MAYE: No, sir, Your Honor. I
25 have had no contact with her, and my investigator

Victim [REDACTED] - In-Camera Examination

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1 has had no contact. She was with me.

2 THE COURT: I certainly did not mean
3 that as an accusation. I just wanted that cleared
4 up on the record.

5 MR. MAYE: No, sir.

6 THE COURT: Bring the jury in.

7 (The jury returned to the
8 courtroom at 10:38 a.m., after which the following
9 proceedings were had:)

10 THE COURT: Mr. Huff?

11 MR. HUFF: May it please the Court.

12 CROSS-EXAMINATION CONTINUED

13 Q Now, Victim [REDACTED], you love your mom, right?

14 A Yes.

15 Q Okay. And you wouldn't want to do
16 anything to hurt her?

17 A Right.

18 Q I'm sorry?

19 A You're right.

20 Q Okay. Now, we've already said since
21 February of '03, you, and your mom, and your sisters
22 left and moved over to the house you're in now and
23 that after that this allegation that you make came
24 out, right?

25 A Yes.

Victim █████ - Cross Continued

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1 Q Okay. Now, in June of 2003, after you
2 made these allegations, right, you sent your daddy a
3 Father's Day card, didn't you?

4 A Yes.

5 Q And this is the Father's Day card you sent
6 him, right?

7 A Yes.

8 Q Okay.

9 MR. HUFF: Your Honor, we would
10 mark --

11 Q Well, let me ask this. Would you read
12 what you wrote to your daddy on that Father's Day
13 card?

14 A Okay. "Happy Father's Day. I love you.
15 Love, Victim █████ P.S. I hope you like your present.
16 Love, Victim █████."

17 Q Okay. So you bought him a present as
18 well, right?

19 A Yes.

20 Q Okay. And you also, I believe, wrote him
21 an additional letter during that time for Father's
22 Day. Would you read this to the jury for what you
23 wrote Father's Day of 2003 after you made these
24 allegations?

25 A "Dear Daddy, Happy Father's Day. I miss

Victim [REDACTED] - Cross Continued

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1 you. I bought you a present with my own money.
2 Also I get to wear different earrings now but only
3 gold or silver. I use some of Mama's earrings. I
4 love you. Love, Victim [REDACTED]. Happy Father's Day."

5 Q Okay. Now, you also sent him a
6 Valentine's Day card that year, 2003 -- February of
7 2003 -- right? This is the card you sent your dad,
8 is that right?

9 A Yes.

10 Q Okay. Would you read that to the jury?

11 A "Wherever you may go, I want you to know I
12 love you. Happy Valentine's Day from Victim [REDACTED]."

13 Q Okay, thank you. And I believe you also
14 made him a Valentine's card of your own. You made
15 this card for him as well, right?

16 A Yes.

17 Q All right. Would you read that to the
18 jury? This was Valentine's Day of 2003. Read that
19 to the jury.

20 A "Dear Mama and Daddy, Happy Valentine's
21 Day. I love you a whole lot. I love you a
22 trillion. Thank you for being my mama and my daddy.
23 I love you. Love, Victim [REDACTED]."

24 Q Okay. Now, you also had a little notebook
25 that you used while you were in school, right?

1 MR. MAYE: Your Honor, I have not
2 seen--

3 MR. HUFF: I'm sorry.

4 MR. MAYE: I have no objection to
5 this.

6 (Defendant's Exhibit Number
7 Five, notebook, was received in evidence.)

8 Q Victim █████, this was your notebook that you
9 wrote things in during 2001-2002, right?

10 A Yes.

11 Q All right. If you would, turn to a page
12 dated November 26, 2001. Would you read what you
13 wrote there?

14 A "What I'm thankful for: I'm thankful for
15 my life and family. I am thankful for my family
16 because they love me and care for me. I'm thankful
17 for my life because without my life, I would not be
18 here."

19 Q Okay. Victim █████, I'm also turning to a page
20 dated February 12, 2002. Would you read to the jury
21 what you wrote there?

22 A "I think real love is caring. When a
23 person cares for you, they usually love you. My
24 mama cares for me a lot. So does my dad. Other
25 people care for me too, grandparents, uncles, aunts,

Victim [REDACTED] - Cross Continued

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1 etc. That is what I think love means."

2 Q Okay. And you have written other things
3 throughout this. All this is in your handwriting,
4 right?

5 A Yes.

6 Q Okay. Now, Victim [REDACTED], you wrote all of these
7 things during a time when you're saying that Tommy
8 Adams was molesting you --

9 A Yes.

10 Q -- and having sex with you?

11 A Yes.

12 Q Okay. And during these times when you
13 were expressing your love for your daddy, you never
14 told anybody that any such thing had happened to you
15 at all, did you?

16 A Huh-uh.

17 Q Okay. Matter of fact, when you wrote your
18 Happy Father's Day card to your dad in June of 2003,
19 after this allegation was made, you continued to
20 spend time with you day, after this Happy Father's
21 Day card was wrote?

22 A I don't remember.

23 Q Your mother was there the whole time?

24 A I don't remember. I guess.

25 REDIRECT EXAMINATION

Victim ██████ - Redirect

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1 BY MR. MAYE:

2 Q ██████ Victim ██████, all this was something that you
3 just kind of wrote things that were going through
4 your mind during these years, right?

5 A I guess.

6 Q You loved your daddy?

7 A Yes.

8 Q You wrote those things because this is how
9 it should be between a daddy and a daughter?

10 A Yes.

11 Q This notebook was for a school project,
12 right?

13 A Yes.

14 Q Your teacher would see it and you knew
15 your teacher would read it?

16 A Yes.

17 Q You never wanted any trouble for your
18 mother?

19 A No.

20 MR. MAYE: Nothing further.

21 (The witness was sworn.)

22 CLERK OF COURT: Have a seat.

23 VIRGINIA BLEDSOE, having
24 first been duly sworn, testified as follows:

25 DIRECT EXAMINATION

Virginia Bledsoe - Direct

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1 Q Investigator, introduce yourself and tell
2 us about your background in law enforcement.

3 A I was formerly an investigator with the
4 Edgefield County Sheriff's Office for two and a half
5 years. I'm no longer with the Sheriff's Office. I
6 was there from 1993 till last year.

7 Q Investigator, did you have an opportunity
8 to investigate this case in your capacity in working
9 for the sheriff here in Edgefield?

10 A Yes, sir, I did.

11 Q Tell us how you got involved in this case.

12 A A call came in to the Sheriff's Office
13 from DSS. A report had been made about a case of
14 suspected child abuse, child sexual abuse. So I
15 went out to the home and spoke with Victim .

16 Q Did you interview her?

17 A Yes, I did.

18 Q What else did you do in this case?

19 A I interviewed her, and Tommy Adams, the
20 defendant.

21 Q You talked with him?

22 A Yes, I did.

23 Q What did that interview go like? Was he
24 in custody at that time, or was he --

25 A No, sir, he was not.

Virginia Bledsoe - Direct

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1 Q Okay. How did that interview go? What
2 did he say?

3 A He denied the allegations, but he made
4 some odd statements to me that day.

5 Q What were those statements?

6 A He mentioned his younger daughter, which
7 she was very young. I don't remember her age at
8 that time. He mentioned something about he talked
9 frankly with his children -- his older children --
10 about sex, and he said that he had commented that
11 her boobs -- she had big boobs for her age, and she
12 was a small child.

13 And he also made a comment that day
14 that he told **Victim**, his older child -- his
15 stepchild -- that "Your cooter belongs to your
16 daddy, and if anybody wants to touch that or bother
17 that, you need to tell them to ask me."

18 Q Had you disclosed to him prior to that
19 time what the allegations were against him?

20 A Yes, sir, I did.

21 Q Did he make those statements after you
22 told him that?

23 A Yes, sir.

24 Q After all of your investigation in this
25 case, what action did you take?

Virginia Bledsoe - Direct

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1 A I obtained arrest warrants for Mr. Tommy
2 Adams, lewd act for a minor and criminal sexual
3 conduct with a minor.

4 Q Answer any questions the defense has for
5 you.

6 CROSS-EXAMINATION

7 BY MR. HUFF:

8 Q Ms. Bledsoe, where are you working now?

9 A I was formerly at Saluda Police
10 Department. I've gone out of law enforcement to
11 start my own business.

12 Q In what type of business are you working
13 now?

14 A A daycare center.

15 Q Okay. And I apologize to you if I
16 misunderstood what you said. I thought you said you
17 had been with the Sheriff's Department in Edgefield
18 for two and a half years. Is that incorrect?

19 A No, sir. I was an investigator for two
20 and a half years.

21 Q Okay, I've got you.

22 A I went to work for Edgefield County
23 Sheriff's Office in 1993.

24 Q All right. What did you do when you
25 started with the Sheriff's Department?

Virginia Bledsoe - Direct

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1 A When I first started with the Sheriff's
2 Office, I worked the jail and dispatch. And then I
3 was given the opportunity by Sheriff Billy Parker to
4 go to the Criminal Justice Academy in Columbia to be
5 a police officer.

6 Q Okay. And so you were only an
7 investigator for two and a half years before you
8 left?

9 A Yes, sir, that was right.

10 Q Okay. Now, you have investigated other
11 sex abuse cases before, right?

12 A Yes, sir, I have.

13 Q Okay. And you have even attended some
14 training seminars on child sex abuse, right?

15 A Yes, sir, I have.

16 Q Okay. And you've even discussed other sex
17 abuse -- child sex abuse or adult sex abuse -- cases
18 with other officers and investigators, right?

19 A Yes, sir.

20 Q Even with other agencies, right?

21 A Yes, sir.

22 Q Okay. And you are aware, based upon your
23 experience, that some of these allegations are true?

24 A Yes, sir.

25 Q And you're also aware that some of the

Virginia Bledsoe - Direct

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1 allegations are false?

2 A Yes, sir.

3 Q Okay. And you're also aware that some of
4 these allegations sometimes are made just before or
5 just after a Family Court domestic action is filed,
6 right?

7 A Yes, sir.

8 Q Okay. Now, you investigated this case
9 based upon what people told you, right?

10 A Yes, sir.

11 Q Okay. And you assume that what people
12 tell you when they -- in one of these type of child
13 sex abuse cases, you're assuming that what they're
14 telling you is true?

15 A Yes, sir. And I believe what **Victim** **██████████**
16 has told me on this case.

17 MR. HUFF: Your Honor, I would move
18 to strike as not responsive to my question. I
19 believe --

20 THE COURT: I don't want to hear
21 anything else. I'm going to send the jury out for
22 just a second, please.

23 (The jury left the
24 courtroom at 11:02 a.m., after which the following
25 proceedings were had:)

1 THE COURT: I don't want to sound
2 like I was jumping on you or criticizing you, but I
3 do want you both to refrain from making any argument
4 about evidentiary objections unless I ask for it.
5 And I think that's -- I normally do -- I mean, I
6 think that's what we're supposed to do anyway, but
7 just as a matter of custom we tolerate and we invite
8 some argument. But in this case, I think it is
9 appropriate to not argue evidentiary objections
10 unless I ask for it, if the jury is in the
11 courtroom.

12 Now, you invited that answer, and
13 you've been inviting it ever since your opening
14 statement when you started talking about how some
15 accusations are correct and some are not. And when
16 you asked her that question a second ago -- "Isn't
17 it true that some of these accusations are correct
18 and some are not?" -- if you were watching me, you
19 would have seen my head jerk around because I saw a
20 door opening somewhere as to what this witness's
21 opinion was as to whether or not the victim is
22 telling the truth.

23 That's a delicate subject, and
24 I don't know -- that was my initial reaction. The
25 only reason for you to make the obvious point on

Virginia Bledsoe - Direct

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1 cross-examination that some accusations are false is
2 to raise the suggestion that this victim is not
3 telling the truth and to raise the question as to
4 what this witness thinks about the victim, whether
5 or not she's telling the truth.

6 And it just seems to me that her
7 answer that she just gave flows naturally from the
8 line of questioning that you were just following.
9 And while ordinarily it would not be appropriate for
10 this witness or any witness to say whether or not
11 they believe another witness --

12 MR. HUFF: Judge, may I place my
13 basis for that question and my objection to the
14 response on record?

15 THE COURT: Sure, absolutely.

16 MR. HUFF: Judge, I think it's
17 objectionable because it is witness vouching.

18 THE COURT: I agree with you, unless
19 the door is opened to it.

20 MR. HUFF: And, Judge, I asked not
21 one particular side --

22 THE COURT: It's not --

23 MR. HUFF: I'm sorry.

24 THE COURT: I mean, you can call it
25 vouching if you want to. But what it is, under

1 normal circumstances it is a pitting of the
2 witnesses issue.

3 One witness is not allowed to
4 comment on the credibility of another witness. That
5 is the question of pitting. And ordinarily it's
6 impermissible, no doubt about it.

7 MR. HUFF: And, Judge, I would cite
8 to you a case that Judge Anderson taught me a long
9 time ago, State v. Alton (H)) and that's exactly why
10 I have not asked this witness what her opinion was.
11 I don't think she can give it. She's not an expert.

12 What I have tried to very delicately
13 do is through this witness to put in the jury's mind
14 that some accusations are true, some accusations are
15 false. I have not asked her nor does she have the
16 right to give her opinion sua sponte of who she
17 believes.

18 Now, it was good for both sides.
19 Some of them are true. I could have just said that
20 "Isn't it true that some of these accusations are
21 false?" I didn't do that.

22 THE COURT: Judge Anderson's case
23 deals with what is the effect of a lawyer asking
24 that type of question, or does it deal simply with
25 whether or not one witness can comment on the

Virginia Bledsoe - Direct

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1 credibility of another one?

2 MR. HUFF: Pitting the witnesses.

3 It's one of the oldest cases--

4 THE COURT: Well, that's easy. We
5 know that's the law under normal circumstances.

6 MR. HUFF: And so I would not and I
7 have not asked her does she believe or disbelieve
8 what this girl has alleged. I was very cautious in
9 not asking that. I simply asked that -- matter of
10 fact, in response to the last question asked --

11 THE COURT: All right. Why don't we
12 just take this whole thing about some -- you know,
13 this is a four-walled courthouse, four-walled
14 courtroom. That fact is equally obvious to the fact
15 that some accusations are not true.

16 Why don't we just take that out
17 of this case, and I'll just instruct the jury that
18 this witness is not permitted to testify about
19 whether or not they believe another witness, it's
20 for the jury to determine that, and we'll just quit
21 dancing around.

22 MR. HUFF: Right.

23 THE COURT: Do you have any objection
24 to that?

25 MR. MAYE: No, sir, Your Honor. I

Virginia Bledsoe - Direct

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1 just --

2 THE COURT: But what's also going to
3 stop, though -- because when you ask that question,
4 you're suggesting -- when a person hears you make
5 that suggestion -- "Isn't it true that some
6 witnesses are telling the truth and some are not?"
7 or "Some accusations are false, and some are not" --
8 you are suggesting that this witness should then
9 say, "Yes, but I do or I do not believe this
10 witness."

11 If you were having a
12 conversation out on the street and you made the
13 comment, then a natural response would be, "Yes, but
14 I believe the witness this time." And so that's why
15 I'm saying you opened the door.

16 And so if I'm going to make that
17 correction, you're going to stop with that
18 suggestion that some accusations are true and some
19 are false, because you're getting it both ways if it
20 goes that way.

21 MR. HUFF: Judge, let me look at my
22 other questions that I had.

23 MR. MAYE: Your Honor, the only thing
24 that I would have -- I've had this come up before --
25 it's my belief that it you know that a witness is

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1 prohibited from giving an answer because of the
2 rule, you can't ask a witness a question and expect
3 them to remain silent, relying on that.

4 He's dancing all around it. He
5 knows that that's the probable response for her.

6 THE COURT: I agree with you. But I
7 think the appropriate thing to happen here is that I
8 clear all this up with the jury, and I make a
9 comment that is something along the lines of the
10 fact that some accusations are made by other people
11 on other facts are not true and some are true has
12 got nothing to do with this case.

13 This witness is not allowed to
14 testify about the credibility of the victim, and I
15 instruct them to disregard that, and we move
16 forward. Any objection?

17 MR. MAYE: I don't have any
18 objection, Your Honor.

19 MR. HUFF: I don't have any
20 objection.

21 MR. MAYE: Your Honor, may I for a
22 minute walk back to my office, personal privilege?
23 Thank you.

24 MR. HUFF: May I have a second to
25 discuss your ruling with my client while we wait?

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1 THE COURT: Well, yes, you may. But
2 it is at this point not a ruling.

3 MR. HUFF: I understand.

4 THE COURT: All right.

5 (Whereupon, a recess was
6 taken.)

7 THE COURT: Mr. Huff, do you want to
8 say something?

9 MR. HUFF: No, Your Honor, we're
10 fine. We would be happy for your curative
11 instruction, and that would end the matter as to any
12 of those type of questions.

13 (The jury returned to the
14 courtroom at 11:17 a.m.)

15 THE COURT: All right, ladies and
16 gentlemen, let me clear a couple a things up before
17 we move forward. I suppose that it is somewhat
18 obvious that there may be people who on different
19 sets of facts and other situations have made
20 accusations against people that are not people and
21 that some people have made accusations against other
22 people that are true.

23 It will be your job in this case
24 to determine what it is that the State has proven
25 beyond a reasonable doubt. That's your job to

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1 determine that on the facts of this case.

2 Now, with regard to the last
3 statement by the witness, I am going to instruct you
4 to disregard anything that you may have heard this
5 witness say regarding whether or not she believes or
6 does not believe any other witness. That is a
7 matter for you.

8 It is not for a witness to tell
9 you who they believe. It is for you to decide who
10 you believe.

11 All right, any objection?

12 MR. MAYE: Nothing from the State,
13 Your Honor. Thank you.

14 MR. HUFF: No, Your Honor, nothing.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION CONTINUED

17 BY MR. HUFF:

18 Q Thank you, Your Honor. Now, Ms. Bledsoe,
19 you said that you went and talked with Victim . You
20 also talked with her mother, Kathy Adams, as well,
21 right?

22 A Yes, sir.

23 Q I believe at that time that Mary Carr with
24 DSS also went out there with you, right?

25 A Yes, sir.

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1 Q All right. And isn't it true, ma'am,
2 that, as you have stated, Mr. Adams said this did
3 not happen, it's not true, right?

4 A Yes, sir, he denied the allegations.

5 Q All right. And didn't he also say --
6 wasn't he also asked why did he think these
7 allegations were being made against him, and didn't
8 he say that Kathy, his wife, had asked him for a
9 divorce before because she didn't get along with --

10 MR. MAYE: Your Honor, I'm going to
11 object to him going into Family Court matters again.
12 I thought we were beyond that.

13 THE COURT: Let me see you all up
14 here.

15 The objection is sustained. And
16 we just had a lengthy conversation in that sidebar
17 as to why the objection is sustained. Do you want
18 anything on the record, Mr. Huff?

19 MR. HUFF: Judge, if we could do that
20 at a later time, it would be fine with me.

21 THE COURT: All right, I'm going to
22 allow you to remind me that we need to put that on
23 the record during the next break, because if you
24 want it done now, I'll send the jury out right now
25 so we can put it on the record right now, because

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1 I'll forget.

2 MR. HUFF: Judge, I'll be happy to do
3 that later.

4 THE COURT: All right. I'll start
5 thinking about lunch, like I told somebody
6 yesterday, it's so important to me. All right, you
7 may proceed.

8 MR. HUFF: I have no further
9 questions, Your Honor.

10 MR. MAYE: Nothing further.

11 THE COURT: All right, you may step
12 down.

13 MR. MAYE: Beg the Court's
14 indulgence.

15 May I approach the bench, Your Honor?

16 THE COURT: Yes.

17 MR. MAYE: The State would rest, Your
18 Honor.

19 THE COURT: All right. We are going
20 to get that break, because I have some matters of
21 law that I will need to take up at this time, and I
22 would like for you all to go back into the jury
23 room.

24 (The jury left the
25 courtroom at 11:29 a.m.)

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1 THE COURT: Okay, the objection a
2 minute ago was made that apparently you were trying
3 to prove that there had been a statement made by the
4 defendant to this investigator that Ms. Adams, the
5 victim's mother, had previously been seeking a
6 divorce, had previously been asking for a divorce.

7 I ruled that that was a
8 statement that was made out of court, that you were
9 operating to prove the truth of the matter, asserted
10 that it was hearsay and inadmissible. Now, that's
11 the basis of my ruling.

12 MR. HUFF: Judge, if I could, there
13 really are two parts of what was -- of the question
14 that I asked. Ms. Bledsoe had been stating what my
15 client said out of court.

16 The question I asked her was,
17 "Didn't you ask my client, 'Well, then, why would
18 this allegation have been made?'" And then his
19 response was, "Well, she had been asking for a
20 divorce. Maybe that's it."

21 I think that a statement of the
22 defendant is admissible. It was on the State's
23 side. I understand you stated I did not object to
24 it, but I've never had a statement by the defendant
25 not admissible.

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1 THE COURT: Well, I've already ruled.
2 There's no sense in arguing it.--

3 MR. HUFF: Yes, sir.

4 THE COURT: -- because I'm not going
5 to change my mind.

6 MR. HUFF: Right.

7 THE COURT: Do you have any motions?

8 MR. HUFF: Judge, I do move for a
9 motion for a directed verdict at this time. The
10 State has rested. Just prior to the State resting,
11 we had a sidebar where the Solicitor was discussing
12 with the Court and myself about the issue of
13 identification; that he felt that he did not need to
14 have in the record that somebody had identified my
15 client as the person who is alleged to have
16 committed these acts.

17 I stated to the Court that it's
18 the State's case, they've got to carry their burden.
19 The State then chose to rest. I move for a directed
20 verdict for two reasons. One, the record does not
21 establish the identification of my client, Tommy
22 Adams, as the person who has committed either of
23 these crimes charged in these two indictments.

24 THE COURT: I deny that motion.

25 MR. HUFF: All right. Judge --

1 THE COURT: What other motion? You
2 said you had two.

3 MR. HUFF: I also move to dismiss
4 because the State has not proven jurisdiction of
5 this case. In my recollection and in taking my
6 notes, no witness has said that these crimes
7 occurred in Edgefield County.

8 Now, normally, what my
9 experience has been is a law enforcement officer
10 always says these crimes occurred in Edgefield
11 County. That was never said, nor was it said by Ms.
12 **Victim**. They have not proven jurisdiction, and that
13 is fatal to the State's case.

14 THE COURT: Didn't the victim testify
15 that they lived in two houses? I think the question
16 was and the answer was here in Edgefield?

17 MR. MAYE: Both houses are here in
18 Edgefield. She testified that it happened in the
19 bedroom of the houses where he took her. And I
20 personally had this witness state that both
21 residences were in Edgefield County.

22 So there is evidence in the
23 record of jurisdiction in this case, Your Honor. I
24 specifically asked her that, and she said that it
25 happened at those two houses and in the bedroom, and

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1 both are in Edgefield County.

2 THE COURT: I deny the motion.

3 Anything further?

4 MR. HUFF: No, Your Honor.

5 THE COURT: All right. Are you ready
6 to proceed with -- are you going to put up a case?

7 MR. HUFF: Your Honor, I need to
8 discuss that with my client. I believe that we
9 will.

10 THE COURT: We'll take a short break,
11 at which you can have that discussion.

12 MR. HUFF: Okay.

13 (Short break in
14 proceedings.)

15 THE COURT: All right, Mr. Huff?

16 MR. HUFF: Your Honor, may it please
17 the Court. I would ask for the Court's indulgence.
18 I would like to do a little bit of legal research
19 based upon what's been testified to at this point.
20 I would ask the Court to consider a lunch break at
21 this time since it's right at 12:00.

22 THE COURT: Legal research about
23 what?

24 MR. HUFF: About issues and motions
25 that have been made, Judge. I just don't - my hope

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1 is to be able to get to a computer and do some
2 research to make a decision whether or not to place
3 a defense before the Court in this matter.

4 If I choose not to, then we
5 would be done other than, I believe, closing and
6 charge. If I believe I should present a defense, I
7 can tell you that I believe my case would take no
8 more than possibly an hour to an hour and a half.

9 There is no doubt in my mind
10 that we would have this case to the jury very early
11 afternoon. My witnesses, many are going to be
12 short, possibly no more than five to ten minutes
13 maximum. And I would just ask that at this point I
14 feel the need to try to do some research on one or
15 two legal matters and would just ask the Court's
16 indulgence.

17 I don't know what time Your
18 Honor would normally break for lunch. But being
19 it's right at 12 or a few minutes before, I would
20 ask that we recess at this time for lunch.

21 THE COURT: All right, bring the jury
22 in.

23 (Jury in at 12:02 p.m.)

24 THE COURT: All right, ladies and
25 gentlemen, I'm going to take a little bit of an

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1 early lunch break. It's not all that out of line.

2 We're going to break for lunch

3 now. I have some legal matters that I need to

4 attend to in this case. So I'm going to ask you to

5 be back in the jury room at 1:15. Have a nice

6 lunch. Remember, now, that you may not discuss this

7 case in any way. Be back in the jury room at 1:15.

8 (Jury out from 12:03 p.m.

9 to 1:15 p.m. for lunch.)

10 THE COURT: All right, we'll be in

11 recess until 1:15.

12 (Break in proceedings for

13 lunch.)

14 THE COURT: All right, go ahead and

15 bring the jury in.

16 Do either of you anticipate any

17 unusual requests for charge?

18 MR. MAYE: None from the State.

19 MR. HUFF: Judge, I don't believe so,

20 but I'll try to pull those out.

21 THE COURT: Do you have them? That's

22 what I'm going to work on right now.

23 MR. HUFF: Yes, sir.

24 (Jury in at 1:20 p.m.)

25 THE COURT: All right, you may

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1 proceed.

2 MR. HUFF: Your Honor, we would call
3 Sharon Adams to the stand.

4 (The witness was sworn.)

5 CLERK OF COURT: Have a seat in the
6 witness stand and state your full name.

7 MS. ADAMS: My name is Sharon B.
8 Adams.

9 SHARON B. ADAMS, having
10 first been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HUFF:

13 Q Ms. Adams, do you know Tommy Adams and
14 Victim Wren?

15 A Yes, I do.

16 Q All right. How do you know them?

17 A Tommy Adams is my ex-husband. I know
18 Victim as being his stepdaughter.

19 Q Okay. When were you married to Tommy
20 Adams?

21 A I was married to Tommy Adams -- we married
22 in '73 to '95.

23 Q Okay. So about 22 years?

24 A Yes, sir.

25 Q Do you have any children together between

Sharon Adams - Direct

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1 the two of y'all?

2 A Yes, sir, we have.

3 Q All right. What are their names?

4 A Leslie, our daughter; and then Tommy, Jr.;
5 and Cody.

6 Q Okay. And how did you get to meet Victim

7

8 A Well, after we divorced, because Tommy
9 would go up there on the weekends, it eventually got
10 to the place where we were over our differences and
11 I could go around the family and be around their
12 girls, and Victim and Carlton.

13 Q All right. And my understanding is that
14 Tommy and Kathy Wren had two children together?

15 A That is correct.

16 Q Three -- two?

17 A Two.

18 Q And I believe that's Victim and is it
19 Tessa?

20 A Carlton.

21 Q Carlton, I'm sorry. So were you able to
22 develop a relationship with Victim?

23 A Yes.

24 Q All right. And were you able to spend
25 time with Tommy, and Victim, and Carlton, and with

Sharon Adams - Direct

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1 your children? Was it kind of a real strange
2 relationship, or did it almost become a Brady bunch
3 type of situation?

4 A It was like a Brady bunch.

5 Q Okay. Describe the opportunities that you
6 had to be around **Victim** and Tommy? Were there times
7 at the lake? Were there times in houses, or
8 birthday parties, or things like that?

9 A Yes, there was. There were some times at
10 the lake. There was an Easter egg hunt that we had
11 up at the lake. I was around Tommy and all the
12 other kids. There was a time -- they had a
13 houseboat, a deck boat -- I was on the boat with
14 them, and all the kids were on the boat also.

15 Q Were there times when **Victim** and Carlton
16 would spend the night at your house?

17 A Yes, they have.

18 Q Okay. And times when your children, Cody
19 and Tommy, Jr., would spend the night at Tommy's
20 house?

21 A That is correct.

22 Q Okay. So it really was a Brady bunch type
23 of situation?

24 A Yes, sir.

25 Q All right. Tell me, if you would, or

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1 describe to the jury what type of relationship you
2 observed between Tommy and the children in general.

3 A The relationship that I observed, that the
4 kids loved him very much, and it was obvious that he
5 was a loving father. He did things with them. He
6 tried to do things so they could have fun.

7 Q Okay. Did he ever try to kind of, so to
8 speak, split the family and dote on some children
9 more than others?

10 A No, sir.

11 Q Okay. Describe, if you would, the
12 relationship that you observed between **Victim** toward
13 Tommy, her daddy.

14 A **Victim** was crazy about Tommy. She always
15 called him "Daddy," and that was her daddy. And she
16 loved him, and she would always go to her daddy for
17 things.

18 Q You had mentioned something about the
19 lake, and Easter egg hunts, and things of that sort.
20 Do you remember the Easter egg hunt as a particular
21 occasion, and could you describe what you observed
22 of the interaction between **Victim** and Tommy on that
23 event?

24 A Well, when the kids would go and find the
25 Easter eggs, because they would put money in them,

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1 they would go to their daddy and tell him that they
2 found money in the Easter eggs or how many they had
3 found. Then there was lunch fixed, and he fixed
4 lunch for them.

5 Q Okay. Did you observe their relationship
6 toward Kathy as well?

7 A Yes, I did.

8 Q All right. Was there one parent that the
9 kids seemed to gravitate to more than the other?

10 A Yes, sir.

11 MR. MAYE: Objection to the relevance
12 of this, Your Honor, as to how that ties into -- in
13 this case.

14 THE COURT: I overrule as to
15 relevance.

16 Q Was there one parent that the children --
17 and I'm including specifically **Victim**. Was there
18 one parent that they tended to gravitate to more
19 than the other?

20 A Yes, sir. That was Tommy.

21 Q Okay. Now, if you would -- and was there
22 ever a time that -- describe, if you would, **Victim**'s
23 conduct toward Tommy, and was it one that was stand-
24 offish, withdrawn, or was it more toward the other
25 end of being open, and hugging, and an "I love you,

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1 Daddy," type of situation? You describe what you
2 observed through these years.

3 A She acted no different from any of the
4 other children. They all loved their daddy, and she
5 acted no different. She showed no difference toward
6 him. It was nothing to see her go up and hug him or
7 ask him, "Daddy, can I do this?" or do that.

8 Q Okay. Now, was there also a time that you
9 and Tommy had thought about adopting children?

10 A Yes, sir.

11 Q All right. What, if anything, did you
12 have to do to entertain that decision?

13 A We took a course through DSS. It was a
14 six weeks' course that we went through. It was a
15 course that we went to every night for six weeks.

16 Q Okay. Were you and Tommy approved to
17 adopt children?

18 A Yes, sir, we were.

19 Q Okay. Now, let me turn to your
20 relationship with **Victim**. Describe what type of
21 relationship you and **Victim** had.

22 A Well, **Victim** knew I cared a lot about her,
23 just as I did all the other children. I would have
24 done anything for her. She could have come to me
25 and talked to me about anything.

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1 Q Okay. Do you feel like y'all had a very
2 close relationship?

3 A I feel like we did.

4 Q Do you feel that if there was any sexual
5 abuse going on that your relationship with Victim
6 would be of the sort --

7 MR. MAYE: Objection to that, Your
8 Honor.

9 THE COURT: Sustained.

10 MR. MAYE: It calls for speculation.

11 THE COURT: Sustained.

12 Q In your years around Victim and around
13 Tommy, did you see any signs or indications that any
14 sexual abuse was going on with Victim's?

15 MR. MAYE: Objection, Your Honor.
16 She's not qualified to that.

17 THE COURT: Sustained.

18 Q Did Victim ever -- did you ever observe
19 Victim being fearful of Tommy or withdrawn from him?

20 A No, sir, not at all.

21 Q Did Victim ever -- based upon your
22 relationship with Victim, did she ever indicate to
23 you in any way that any sexual abuse was occurring
24 to her?

25 MR. MAYE: Objection, Your Honor.

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1 That's the third time he has asked that question.

2 THE COURT: Did you say, "Did Victim
3 ever indicate to you?"

4 MR. HUFF: That's correct, in any
5 manner.

6 THE COURT: I sustain the objection.

7 Q Did Victim ever tell you that she was
8 being sexually abused?

9 A No, sir.

10 Q Did she ever tell you that she was being
11 sexually abused by Tommy Adams?

12 A No, sir.

13 Q Okay. You're not married to Tommy Adams
14 now?

15 A No, sir, I'm not.

16 Q Why would you be here to testify today?

17 A Because I know what kind of person Tommy
18 is. He's a loving father --

19 MR. MAYE: Objection, Your Honor, if
20 she's going to go into character or anything.
21 That's very limited if she's going to go into any
22 kind of character. The rules are pretty specific
23 on that if he's going to call her as a character
24 witness.

25 THE COURT: Let me see you at the

Sharon Adams - Direct

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1 bench, please.

2 Q Sharon, you've been divorced from Tommy
3 for how long?

4 A Ten years.

5 Q Okay. Do you receive any child support or
6 anything from him?

7 A Yes, I do.

8 Q Okay. Your divorce is finalized?

9 A Yes, sir.

10 Q Okay, all right. Thank you. No further
11 questions.

12 CROSS-EXAMINATION

13 BY MR. MAYE:

14 Q Ms. Adams, just a couple. You don't know
15 what went on and how he was with **Victim** when you
16 weren't around, do you?

17 A No, sir.

18 Q You wouldn't have any way of knowing that,
19 would you?

20 A No, sir.

21 Q Between September 1, 1999, and December
22 25, 2002, there was a good period of time in there
23 when he wasn't working at all, isn't that right?

24 A I believe that is correct.

25 Q In fact, just about the whole latter part

Sharon Adams - Cross

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1 of the year, what, from July on until sometime in
2 December, he wasn't work at all, was he?

3 A That is correct.

4 Q And so he had lots of access to the
5 children at that time, didn't he?

6 A Well, he had access to all of them,
7 including my two -- our two.

8 Q Your two boys?

9 A Yes, sir.

10 Q Nothing else.

11 MR. HUFF: I have nothing further,
12 Your Honor.

13 THE COURT: You can step down, ma'am.

14 MR. HUFF: We would call Leslie Boyce
15 to the stand.

16 (The witness was sworn.)

17 CLERK OF COURT: Have a seat and
18 state your full name.

19 MS. BOYCE: Leslie Adams Boyce.

20 LESLIE ADAMS BOYCE, having
21 first been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HUFF:

24 Q Leslie, by the middle name of Adams, I
25 would assume that you're related somehow to Tommy

Leslie Adams Boyce - Direct

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1 Adams?

2 A That is my daddy.

3 Q All right. I want you, if you would, to
4 tell me, did you ever have occasions to be around
5 **Victim** and Tommy while they were together or with
6 all the kids together?

7 A Yes, sir -- many occasions.

8 Q All right. I used the phrase earlier that
9 the family was more like a Brady bunch family.
10 Would that be an incorrect or a correct --

11 A Correct.

12 Q -- representation?

13 A Correct.

14 Q Kids are running back and forth between
15 different households?

16 A Yes.

17 Q I'm assuming those households are where
18 Tommy and Kathy lived, where Sharon Adams, who just
19 testified, lived. And you're not a teenager
20 anymore --

21 A No.

22 Q -- so I'm assuming you had a house of your
23 own?

24 A That's correct.

25 Q Do you have any children?

Leslie Adams Boyce - Direct

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1 A I have a son. He's six.

2 Q Okay. Describe, if you would, the
3 family's -- I guess I want to key in on the children
4 primarily. And I think those are **Victim** and Tessa,
5 and Cody, Tommy, Jr., and Carlton. Was it a common
6 event that they would all be together in different
7 households playing, or spending the weekend, or
8 going to the lake, things of that sort?

9 A Yes.

10 Q Okay. And if you would, please, describe
11 for me what you -- describe what type of father your
12 dad was in his relationship to the general in
13 general.

14 A No different from how he raised me and
15 made me the woman that I am.

16 Q Okay.

17 A Very loving, affectionate, confidence-
18 building.

19 Q Okay. Did you have occasions and plenty
20 of opportunity to see him interact -- the
21 interaction between **Victim** and your dad, Tommy?

22 A Absolutely.

23 Q All right. Was this an isolated incident,
24 or was this through the years?

25 A Many times through the years. It was

1 weekends at their home. One of the properties has a
2 pond that we would fish. We would go to the lake.
3 We would camp. We would boat, just to spend the day
4 up at the lake, to picnic, all the time. It was a
5 constant, this family was always together.

6 Q Okay. Describe, if you would, what you
7 observed of the relationship specifically between
8 **Victim** toward Tommy.

9 A Just as I was when I was a little girl.
10 That's your daddy. You love him. You hug him. You
11 go to him to confide in him, to talk to him, to get
12 support from. And it reminded me of, like I said,
13 when I was a child. I always ran to my daddy.

14 Q Okay. Did you sense that the relationship
15 between **Victim** and Tommy, then, was very open and
16 caring?

17 A Very.

18 Q Did you ever see any conduct by **Victim**
19 that would appear that **Victim** was afraid of Tommy?

20 A Absolutely not.

21 Q That she was hesitant to be around him?

22 A Absolutely not.

23 Q That she was withdrawn from him?

24 A No.

25 Q Were some of these times that you were

C

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Leslie Adams Boyce - Direct

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1 around Victim and the other kids when Kathy Wren was
2 not at home?

3 A Yes, there was times.

4 Q In those situations, did you ever see
5 Victim display any conduct that she was afraid to be
6 around Tommy?

7 A No.

8 Q That she was withdrawn --

9 A No.

10 Q -- or upset?

11 A No.

12 Q In your relationship towards Victim,
13 describe that relationship.

14 A I'm a big sister to all of them -- Tommy,
15 Cody, Victim, Carlton, my two half sisters, Tessa
16 and Elizabeth, between 15 and 25 years older than
17 those children. I'm the big sister.

18 They'll come to me and talk to me. I
19 want them to. I've always tried to have that open
20 of a relationship with them, every one of them.
21 They're all my siblings.

22 Q Okay. Did Victim ever tell you that she
23 was being sexually assaulted?

24 A No.

25 Q Okay.

Leslie Adams Boyce - Direct

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1 MR. MAYE: Objection to that, Your
2 Honor. We've already been through that same
3 objection with another witness.

4 THE COURT: I think that's a
5 different objection, and I overrule the objection.

6 Q Answer any questions that Mr. Maye may
7 have for you.

8 MR. MAYE: Beg the Court's
9 indulgence. No questions.

10 THE COURT: You can step down, ma'am.

11 MR. HUFF: We would call Tommy [REDACTED],
12 Jr., to the stand.

13 (The witness was sworn.)

14 CLERK OF COURT: Have a seat in the
15 witness stand and state your full name.

16 TOMMY [REDACTED], JR., having
17 first been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HUFF:

20 Q Tommy, if you would, have you had
21 opportunities in the past to observe the
22 relationship between Tommy Adams and Victim [REDACTED]?

23 A Yes, sir, I did.

24 Q And I believe Victim [REDACTED] is your --

25 A Stepsister.

Tommy [REDACTED], Jr. - Direct

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1 Q -- stepsister, okay.

2 A Yes, sir.

3 Q You're a little bit older than she is?

4 A Yes, sir.

5 Q Were y'all living together or in close
6 proximity to one another back in '99, 2000, 2001,
7 2002?

8 A Yes, sir, we -- me, her, Cody, and
9 Carlton, we're all the older ones, so we mostly hung
10 out, and we talked about different things, just
11 played games -- football, stuff like that.

12 Q All right. Describe, if you would, what
13 type of relationship of time that your dad spent
14 with you and all the kids together?

15 A He spent equal time with us. He didn't
16 single out one child and just show them all the
17 attention. He loved all of his children equally.

18 Q Okay. In 1999, do you remember Kathy Wren
19 going to Canada?

20 A Yes, sir, I do. I was actually there
21 three days of the five she was gone, and I spent the
22 night. As a matter of fact, I slept with [REDACTED] and
23 the two girls that night.

24 Q Okay. Has [REDACTED] ever stated to you that
25 she was being sexually abused in any manner?

Tommy [REDACTED], Jr. - Direct

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1 A No, sir. She never said anything to me
2 even remotely close to that.

3 Q All right, thank you. Answer any
4 questions that Mr. Maye may have for you.

5 CROSS-EXAMINATION

6 BY MR. MAYE:

7 Q When Kathy went to Canada, you weren't
8 there every night, were you?

9 A No, sir. I'm going to say three.

10 Q So you don't know what might have happened
11 when you weren't there, do you?

12 A No, sir.

13 Q And, obviously, Victim [REDACTED] didn't tell anybody
14 about this until afterwards, did she?

15 A No, she didn't.

16 Q Nothing else.

17 MR. HUFF: Nothing further, Your
18 Honor.

19 THE COURT: You can step down, sir.

20 MR. HUFF: We would call Cody [REDACTED]
21 to the stand.

22 (The witness was sworn.)

23 CLERK OF COURT: Have a seat and
24 state your full name.

25 MR. ADAMS: Cody [REDACTED] [REDACTED].

Cody ██████ - Direct

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CODY [REDACTED], having
first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HUFF:

5 Q Cody, you are part of the Brady bunch,
6 right?

7 A Yes, sir.

8 Q Are you and Victim about the same age?

9 A Yes, sir.

10 Q All right. It's my understanding that
11 kind of within that Brady bunch you and Victim had a
12 closer relationship than any of the other children?

13 A Yes, sir, we were very good friends. We
14 hung out a lot.

15 Q Okay. And matter of fact, y'all have
16 continued to go to school together?

17 A Yes, sir.

18 Q Okay. Would you describe what type of
19 activities you and your dad -- your dad would take
20 you, and Victim [REDACTED], and all the kids, what type of
21 things y'all did during the years?

22 A Yes, sir. We would go to the lake. We
23 would play football outside on Sunday afternoons.
24 We went to church together for probably about a year
25 and a half to two years. And we'd just do fun

Cody [REDACTED] - Direct

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1 things together that kids want to do.

2 Q Okay. It's my understanding that sometime
3 in the early part of 2003 that Kathy Wren, and
4 [REDACTED], and Carlton moved out away from Tommy Adams
5 and moved to another house. Are you aware of that?

6 A Yes, sir.

7 Q All right. And did you and Tommy, Jr.,
8 have a very close relationship with Kathy Wren, your
9 stepmother, or was it a little difficult?

10 A No, sir, sometimes it was rocky. I mean,
11 a stepmother is not your real mother, so it's not
12 going to be the perfect thing.

13 Q Okay. You feel that during these years of
14 '99 through 2001 that your relationship with [REDACTED]
15 was very close, as you stated?

16 A Yes, sir.

17 Q All right. Have you and [REDACTED] continued
18 to talk at school when you would see each other
19 there?

20 A Yes, sir.

21 Q Has she ever said anything to you about
22 Tommy or brought him up at all during those
23 conversations?

24 A Yes, sir. She has called me several times
25 and I've talked to her at school, where she would

Cody [REDACTED] - Direct

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1 tell me that she missed her daddy and that she loved
2 him, and she hopes he's doing all right.

3 Q Okay. Thank you. Answer any questions
4 that Mr. Maye may have for you.

5 MR. MAYE: No questions.

6 THE COURT: All right, you can step
7 down.

8 MR. HUFF: Your Honor, we would call
9 Wade Boyce to the stand.

10 (The witness was sworn.)

11 CLERK OF COURT: Have a seat in the
12 witness stand and state your full name.

13 MR. BOYCE: My name is Dennis Wade
14 Boyce.

15 DENNIS WADE BOYCE, having
16 first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HUFF:

19 Q Mr. Boyce, what do you do for a living?

20 A Sheet metal worker, welder by trade.

21 Q Okay. It's my understanding you're
22 married to Leslie Boyce?

23 A That's correct.

24 Q And that's Leslie that just testified,
25 that's Tommy Adams's daughter?

Dennis Boyce - Direct

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1 A That's correct.

2 Q How long have y'all been married?

3 A Ten years.

4 Q During that marriage, have you had
5 occasions to be able to be around I'm just going to
6 say the children in this case?

7 A Yes, sir, I have, many times.

8 Q And by those, I would identify them as
9 **Victim**, and Tessa, and Carlton, and Tommy, and Cody,
10 the children that we've been talking about --

11 A Yes, sir.

12 Q -- here in court today. You have one
13 child?

14 A I have one.

15 Q Would you please describe -- you're how
16 old now?

17 A Thirty-one.

18 Q Okay. And so you got married when you
19 were how old?

20 A Twenty-one.

21 Q Okay. Describe, if you would, your
22 observations of the interaction between the
23 children. I'm, of course, specifically going to be
24 asking you about **Victim**, the interaction and
25 relationship that you observed between **Victim** and

Dennis Boyce - Direct

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1 Tommy Adams as far as a father and a daughter.

2 A A very excellent relationship. It was
3 very open. I mean, there was a lot of love, you
4 know, if the child had some questions or problems in
5 school or vice versa. I mean, it was just a real
6 loving, warm relationship.

7 Q Were you ever around Victim and Tommy in
8 times that Kathy Wren may have not been there,
9 either at work, or on a trip, or things of that
10 sort?

11 A No, sir, I do not believe so.

12 Q You don't think you were around then? The
13 times that you were around Tommy and Victim, did you
14 ever -- and specifically, sir, if you could focus in
15 on 1999 to 2001 or '02 -- did you ever witness any
16 conduct from Victim of being withdrawn or fearful
17 towards Tommy Adams?

18 A No, sir.

19 Q Thank you. Answer any questions Mr. Maye
20 may have.

21 CROSS-EXAMINATION

22 BY MR. MAYE:

23 Q Certainly, if you had seen Tommy Adams do
24 anything to molest this child, you would have done
25 something about it, wouldn't you?

Dennis Boyce - Cross

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1 A Yes, sir.

2 Q He wouldn't have done it in front of you
3 and gotten by with it, would he?

4 A No, sir.

5 Q Okay.

6 REDIRECT EXAMINATION

7 BY MR. HUFF:

8 Q Let me ask you this. Mr. Boyce, if you
9 had had any indication whatsoever that Tommy Adams
10 was having sexual intercourse or molesting any of
11 these children, what would you have done?

12 A I'd have probably confronted him or went
13 to the authorities.

14 Q Okay. Are you going to let anybody that
15 you know molest or abuse a child?

16 A No, sir.

17 Q Thank you. Nothing further.

18 RECROSS EXAMINATION

19 BY MR. MAYE:

20 Q You don't have any idea what he was doing
21 when you weren't around, do you?

22 A No, sir.

23 Q You wouldn't have any way of knowing,
24 would you?

25 A No, sir.

1 Q Nothing else.

2 THE COURT: All right, step down,
3 sir.

4 MR. HUFF: Your Honor, I would need
5 to take a short recess and take a matter up with the
6 Court.

7 THE COURT: All right. Ladies and
8 gentlemen, I'll send you back to the jury room for
9 just a few minutes, please.

10 (Jury out at 2:08 p.m.)

11 THE COURT: There's somebody standing
12 outside that door. I want them brought inside the
13 courtroom, please.

14 MR. HUFF: Judge, I just need about
15 two minutes to determine whether or not -- if
16 there's any additional witnesses I'm going to have.

17 THE COURT: All right.

18 MR. HUFF: Thank you, Your Honor.
19 The defense is going to rest at this time. I would
20 ask -- I discussed with my client his right to
21 testify or not testify, that Your Honor also would
22 most likely give a charge that the jury could not
23 even consider that, that it shouldn't be discussed
24 or brought up.

25 I discussed with him that this

1 is his decision freely and voluntarily. He agrees
2 with that. I don't know if the Court needs to
3 review that with him.

4 THE COURT: You have had this
5 discussion with him not only today but in days
6 before this?

7 MR. HUFF: That's correct, Your
8 Honor.

9 THE COURT: Are you satisfied that he
10 understands both his right to remain silent and his
11 right to testify?

12 MR. HUFF: I am, Your Honor.

13 THE COURT: And he understands that
14 it's him that has to make the decision, not you?

15 MR. HUFF: That is correct.

16 THE COURT: All right.

17 Mr. Adams, please stand. Raise
18 your right hand.

19 (The witness was sworn.)

20 THE COURT: All right, sir. You can
21 put your hand down. Now, Mr. Adams, you have had
22 these discussions with your attorney about whether
23 or not you're going to testify. Have you understood
24 everything that your attorney has told you about
25 that decision?

1 MR. ADAMS: Yes, sir.

2 THE COURT: You understand that you
3 have under the Fifth Amendment to the United States
4 Constitution the right to remain silent, and that
5 means that no one can compel you to testify in this
6 trial.

7 So if you choose not to testify,
8 then you don't have to testify. And I will tell the
9 jury very clearly that they may not even consider
10 the fact that you decided not to testify, that this
11 is a constitutional right that you have, and that
12 the exercise of that right cannot be held against
13 you.

14 But, on the other hand, you have
15 the right to testify if you choose to do that. And
16 if you testify, then just like all of the other
17 witnesses who have testified here, you become
18 subject to cross-examination on any subject that
19 might be relevant to this case. You understand
20 that?

21 MR. ADAMS: Yes, sir.

22 THE COURT: Now, have you had all the
23 time you need to make up your mind as to whether or
24 not you wish to testify?

25 MR. ADAMS: Yes, sir.

1 THE COURT: Are you satisfied that
2 you understand both your right to remain silent and
3 your right to testify?

4 MR. ADAMS: Yes, sir.

5 THE COURT: Is there anything you
6 want to ask me about that decision now?

7 MR. ADAMS: No, sir.

8 THE COURT: You're ready to make your
9 decision?

10 MR. ADAMS: Yes, sir.

11 THE COURT: And you understand that
12 this is your decision?

13 MR. ADAMS: Yes, sir.

14 THE COURT: And even though you
15 should rely on the advice that is given to you by
16 your lawyer, when it comes down it, you must make
17 this decision.

18 MR. ADAMS: Yes, sir.

19 THE COURT: Are you ready to make
20 your decision?

21 MR. ADAMS: Yes, sir.

22 THE COURT: And what is that
23 decision?

24 MR. ADAMS: Not to be a witness.

25 THE COURT: You will not testify?

1 MR. ADAMS: No, sir.

2 THE COURT: All right, you can be
3 seated.

4 MR. HUFF: Your Honor, we would
5 therefore rest the defense case. I would need to
6 make motions for a directed verdict of not guilty at
7 this time. Again, Your Honor, I believe that the
8 State has failed to prove identification in this
9 case.

10 THE COURT: All right. Well, I don't
11 think that the evidence has changed much on either
12 of the motions that you made earlier, and I've
13 denied those motions.

14 Are you going to put up any
15 reply?

16 MR. MAYE: No, sir.

17 THE COURT: All right. Are you all
18 ready to go right into closing arguments?

19 MR. HUFF: Judge, I would be. There
20 is one thing I need to retrieve from my car, which
21 is less than 200 feet out the front door, if I could
22 do that.

23 THE COURT: Is that the car with the
24 big dent in it out there?

25 MR. HUFF: No, it's the car that's

1 going to need a new bumper, Your Honor, now that
2 we've placed it in the record that I had a wreck
3 during the lunch break. But if I could have just a
4 moment to do that, Your Honor --

5 THE COURT: All right.

6 MR. HUFF: -- I would certainly
7 appreciate it.

8 THE COURT: I have been over your
9 request for charge. The one that you called the
10 presumption of innocence, I'm not charging that.
11 Everything else is covered by my standard charges,
12 except for the comment that a reasonable doubt is a
13 doubt for which you could give a reason, which is an
14 incorrect statement of law.

15 And then you asked for a charge
16 on the good character of the defendant. And based
17 on your presentation of evidence, I assume you
18 withdraw that request?

19 MR. HUFF: That's correct, Your
20 Honor.

21 THE COURT: All right.

22 MR. HUFF: That's correct.

23 THE COURT: I have broken down the
24 charge into elements. The elements of CSC first on
25 a minor are that the defendant committed a sexual

1 battery, and then I use the definition of sexual
2 battery from the statute.

3 And the second element is that
4 the victim at the time of the sexual battery was
5 less than 11 years of age. And then on the lewd act
6 on a child, I've got four elements. First, the
7 State must prove the defendant was over 14.

8 Second, the State must prove the
9 defendant committed or attempted a lewd or
10 lascivious act upon or with the body or its parts of
11 a child under the age of 16. Third, the State must
12 prove the defendant did so willfully and lewdly.
13 And, fourth, the State must prove the defendant did
14 so with intent of arousing, appealing to, or
15 gratifying the lust, passions, or sexual desires of
16 himself or of the child.

17 Now, in the indictment you put
18 all this stuff in there about it happening multiple
19 times. And also you've got the wrong statute number
20 in there for the CSC. The statute number doesn't
21 bother me, but is there anything about the
22 indictment where you have alleged it occurred
23 multiple times?

24 MR. MAYE: I believe on the
25 indictments on the lewd act. On the CSC, no,

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1 there's no allegation of that, because a single time
2 is enough to go forward on the indictment. The lewd
3 act, she did testify that it happened multiple
4 times.

5 THE COURT: But you don't have to
6 prove that.

7 MR. MAYE: No, sir, I don't, no, sir.
8 I just sometimes put it there, but we don't have to
9 prove it. I don't think any narrative makes me have
10 to prove any additional elements.

11 THE COURT: All right.

12 MR. HUFF: Judge, if I could, and I
13 apologize, I did not number the request for charge
14 that I handed up to the Court. One was entitled
15 "resolution of doubt in favor of defendant." Is
16 Your Honor going to be charging that, stating "If
17 there is a reasonable doubt, then you must resolve
18 in favor of the defendant and find him not guilty"?
19 That's one of the charges I provided to the Court.

20 THE COURT: Everything you asked for
21 is covered. My reasonable doubt charge says, "If,
22 based on your consideration of the evidence, you are
23 firmly convinced that the defendant is guilty of the
24 crime charged, then you must find him guilty.

25 "But, on the other hand, if you

1 think that there's a real possibility that he's not
2 guilty, then you must give him the benefit of the
3 doubt and find him not guilty."

4 MR. HUFF: Judge, I think that last
5 part would cover that charge. I would ask that you
6 charge that a doubt is a doubt that would cause a
7 person to hesitate to act.

8 THE COURT: I just read you that one
9 little part. Yes, reasonable doubt is doubt which
10 makes an honest, sincere, conscientious juror in
11 search of the truth of the case hesitate to act.

12 MR. HUFF: That covers that, Your
13 Honor. And, again, Judge, you have stated that your
14 charge -- I haven't seen it -- would subsume the
15 ones I've handed up, and I will certainly take you
16 at your word for that.

17 On the general charge of proof,
18 I would just ask, does your charge have anything
19 toward the latter part of that charge saying that
20 the defendant stands cloaked in robes of innocence
21 and --

22 THE COURT: No, I try to take all the
23 drama out of it and get straight to the law. I
24 don't charge about the robes of righteousness. You
25 can argue. My presumption of innocence charge is

1 pretty much the same thing I gave in my opening
2 remarks.

3 MR. HUFF: Thank you, Your Honor. I
4 don't think I've got anything else, Judge. If I
5 could, I will go immediately to my car and be back
6 in less than two minutes.

7 THE COURT: All right.

8 MR. MAYE: May it please the Court,
9 Your Honor, I just had one other thing. I'm very
10 reluctant to object either on opening statement or
11 closing argument. I should have gotten up many more
12 times during the opening statement than I did.

13 I did object, and it was
14 sustained. I'd ask that Mr. Huff keep his argument
15 on the facts in this case or any reasonable
16 inferences. I'm going to move in limine there
17 certainly will be no argument in this case as to any
18 personal experiences of his as there was on opening
19 statement or specific instances in other cases.
20 They have no place. I am very reluctant to object
21 during argument.

22 THE COURT: All right. I think he
23 understands your position. If you feel that he
24 violates the law on closing arguments and you make
25 an objection, I'll rule.

1 MR. MAYE: Thank you, Your Honor.

2 (Whereupon, a recess was
3 taken.)

4 BAILIFF: All rise.

5 THE COURT: Be seated. All right,
6 are you ready?

7 MR. MAYE: Yes, Your Honor.

8 THE COURT: Bring the jury in.

9 You're going to open? You can
10 go ahead and invoke this unknown quantity called
11 opening on the law.

12 MR. MAYE: I didn't plan to do so,
13 unless somebody attempts to force me to do it.

14 MR. HUFF: Although I know that this
15 is one of the most brilliant legal scholars I know,
16 I will not require the State to open on the law,
17 Your Honor.

18 THE COURT: Okay. I'm still waiting
19 to find somebody who knows what that means.

20 MR. HUFF: It's just one of those--

21 THE COURT: It's one of those very
22 common instances where lawyers refuse to forget the
23 past. Somebody said that years ago. Nobody knew
24 what it meant then. That's why I keep repeating it.

25 So you're going to open?

1 MR. HUFF: Yes, sir.

2 (The jury returned to the
3 courtroom at 2:12 p.m.)

4 THE COURT: Who's Mr. Moore? And Mr.
5 Connolly? Okay. Let me see if I can get you two to
6 switch with these two jurors over here. You all can
7 go ahead and do that now. Thank you.

8 All right, ladies and gentlemen,
9 you have heard all of the testimony and evidence
10 that you will hear in this case, and we're now ready
11 for the closing arguments of the attorneys.

12 CLOSING ARGUMENT

13 MR. HUFF: May it please the Court.
14 Ladies and gentlemen, that's the case. This case
15 has been very brief, and I think that's something
16 you need to consider.

17 This isn't a case where there's
18 a whole lot to tell. It's a case where you in
19 deciding what happened can consider what was said,
20 what was not said. And I would submit to you that
21 this is more a case of what was not said than
22 anything else.

23 This is what we sometimes call a
24 he said-she said type of case. You have no DNA in
25 this case. You have no medical evidence of any

1 sexual abuse whatsoever. Now, you've heard
2 testimony that Victim had seen three doctors --
3 three -- I think Dr. Barrington, Dr. Bouché, and
4 then a doctor in Columbia.

5 After this allegation which we
6 had talked about earlier today that's -- after we
7 talked about this allegation that came out, Victim
8 says that she was examined by another doctor, a
9 physical examination. Let's see what physical
10 evidence there is that a 40-something-year-old man
11 has been having full penile intercourse with a 7-
12 year-old girl.

13 I hate to speak with you
14 graphically, but, ladies and gentlemen, this is not
15 a time to wince from the accusation that's been made
16 here, a 40-something-year-old man supposedly having
17 multiple intercoursings with a 7-year-old girl. Three
18 doctors, and recall what you hear as to physical
19 findings from those medical doctors -- nothing,
20 nothing.

21 The Judge is going to tell you
22 that you can decide to believe all of what someone
23 says, none of what someone says, or somewhere in
24 between. He's going to tell you, I believe, that
25 you can decide this case upon what you've heard and

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1 what you have not heard.

2 And I'm going to suggest to you
3 what you have not heard brings forth something the
4 Judge is going to define is reasonable doubt. That
5 is what you decide this case on. I want you to
6 understand something. Tommy Adams is not on trial
7 here.

8 You may not believe that. But
9 what Judge Few told you from the very beginning,
10 he'll tell you again. Tommy Adams is presumed
11 innocent. It's not a legal fiction. He is innocent
12 unless or until the State removes all reasonable
13 doubt from your mind, that if there remains any
14 reasonable doubt in your mind, you must resolve that
15 doubt in favor of Tommy Adams.

16 That's the law, ladies and
17 gentlemen. That's the oath that you have taken.
18 You absolutely can consider -- and I hope you will
19 consider -- the utter failure or absence of any
20 physical evidence whatsoever in this case. The
21 reason there is none, ladies and gentlemen, is there
22 has been no sexual abuse in this case.

23 If there had been, there would
24 have been medical evidence. And, ladies and
25 gentlemen, you would have not only heard from one

1 doctor but probably two or three. They would have
2 come in here and sworn under oath, "I examined this
3 girl during these years and immediately thereafter,
4 and let me tell you what I found. I have found
5 signs of penile penetration. I have found signs of
6 sexual abuse."

7 Not one did, because it doesn't
8 exist. You would find a witness coming in here and
9 taking this stand and taking her oath saying "I am a
10 sex abuse counselor, and I have talked with this
11 girl, and I have had interview sessions with this
12 girl. And she has told me all of this stuff about
13 what Tommy Adams did." And maybe "We did role-
14 playing" or maybe "We used dolls" or things of that
15 sort.

16 You've heard none of it. Why?
17 It doesn't exist. What you have heard is a loving
18 father who didn't decide that his kids were more
19 important than any other person's kids. They were a
20 Brady bunch, that he was the type of father that
21 involved all the kids, spent time with the kids,
22 that the kids would come to more so than Kathy Wren,
23 **Victim** mother.

24 **Victim** loved Tommy. They had a
25 great and wonderful relationship. He would be the

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1 one that she would run and show her Easter eggs to.
2 It is easy to make an accusation. It is hard to
3 defend. But what do you submit? What do you try to
4 show to allow you to judge the believability of this
5 evidence?

6 You call people that saw the
7 conduct between Victim and Tommy -- no fear, no
8 withdrawal; a wide-open relationship of love and
9 affection, of caring, of a father to a daughter.
10 What else can you show?

11 Ladies and gentlemen, you can
12 see through the years the type of relationship that
13 Victim had with Tommy. Now, ladies and gentlemen,
14 in 2003 -- February 2003 -- when the parties split,
15 this accusation hadn't been brought up. And you've
16 got to decide where the accusation came from.

17 But what does it say? "Happy
18 Valentine's Day, Mommy and Daddy. I love you a
19 trillion. Thanks for being my mama and daddy."
20 This is February of 2003. On Father's Day, "Happy
21 Father's Day. I miss you. I bought you a present.
22 Love, Victim I hope you like your present. I love
23 you." She loves her family.

24 I can only present to you in
25 Victim own words what she was doing and what was

1 feeling during that time that she expressed in these
2 cards. And, ladies and gentlemen, it does not stand
3 to reason that even this Father's Day card, this is
4 after Kathy Wren has taken the children away from
5 Tommy, after they've made this accusation.

6 That in 2003 -- if you've got
7 any doubt this was after the accusation. She's
8 writing her dad that she loves him and "Have a Happy
9 Father's Day." It's totally different than what you
10 see and hear in the courtroom today, isn't it?

11 But I submit to you what you saw
12 in court today was a person that showed no emotion
13 whatsoever. She says that she's been sexually
14 abused for years and never told anybody. And she
15 testified from this seat today in a very
16 unemotional, almost scripted manner about what
17 happened, very general, I would submit to you, in
18 details.

19 When did it happen? Many times.
20 Who was in the house at that time? The other kids
21 were; sometimes they were asleep -- no dates, no
22 seasons, no what was going on with my life to pin
23 this to a specific date. Sometime in the last three
24 years this occurred, numerous times. She wasn't
25 asked about specific dates. Just give me

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1 generalizations, because that's easy to make up.

2 The thing I would also tell you,
3 ladies and gentlemen, is this. There's a domestic
4 action pending, and blood is thicker than water. I
5 will never be able to answer all of your questions
6 in this case. It's impossible, because if somebody
7 says somebody did something, you want to believe
8 them.

9 And you may ask, "Why would she
10 say this? Why would she do that?" I don't know if
11 I could ever -- if anybody could ever -- answer that
12 for you, because we don't have the answer to those.
13 What you need to understand, as the Judge told you
14 about beyond a reasonable doubt, it is the State's
15 evidence that is on trial here.

16 Tommy Adams is presumed
17 innocent. And as Judge Few says, that's not a legal
18 fiction. That's true. And you've listened to the
19 evidence. And some people say that the presumption
20 of innocence is like a robe, a glowing white robe of
21 righteousness. And when you come into court, that
22 robe is completely bright. And as the State
23 presents its case, they try to remove that robe.

24 But if they leave any bit of it
25 remaining -- a sleeve, a cuff, a buttonhole -- then

1 the State has not met its burden of proof. And
2 that's what the law is. And the Judge, I believe,
3 will tell you that if that is the case, then you
4 resolve any doubt in favor of Tommy Adams and you
5 find him not guilty.

6 I am not telling you what your
7 verdict should be. I will never do that. I had one
8 lawyer tell me one time that he's told juries,
9 "Whatever you decide, it needs to be the type of
10 verdict that you would sign your name to, knowing
11 that tomorrow morning when you wake up and look in
12 the mirror that there is no reasonable doubt in your
13 mind that your verdict was absolutely correct."

14 I cannot express to you any
15 stronger than you've got to look at the doubt in
16 this case. These allegations, ladies and gentlemen,
17 are very easy to make, but hard to prove. What did
18 Virginia Bledsoe tell you? Sometimes they're true,
19 sometimes they're false.

20 She even admits that to you.
21 She's been involved in cases where these type of
22 allegations were false. The question we don't have
23 answered in some of those cases was whether the
24 person was convicted and sent to prison or found not
25 guilty.

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1 That's ultimately what we have
2 before you today. Now, I want to show you one thing
3 about reasonable doubt. Judge Few is going to tell
4 you and give you a definition of it. We've got
5 different levels of burdens of proof in our court
6 system. Some are low, some are high. Some apply to
7 civil cases, which we're not in. Some apply to a
8 criminal case, which we are in.

9 Ladies and gentlemen, at the
10 very bottom it says there is no evidence at all.
11 There's no trace of evidence whatsoever. If you
12 were to believe that's the case in this case, you
13 must return a verdict of not guilty. Above that, in
14 our state we have a burden of proof called a
15 scintilla of evidence. That's any evidence at all,
16 even the smallest measurable amount of evidence.

17 If they haven't shown the
18 scintilla of evidence, you must find Tommy Adams not
19 guilty. If they have, all they have shown is a
20 scintilla, but that results in a not guilty verdict.
21 Above that, we have a burden called reasonable
22 suspicion. That evidence should be based on
23 specific or particular facts or reasons, not based
24 on a hunch or a guess.

25 If the State has only convinced

1 you that there is reasonable suspicion that Tommy
2 Adams is guilty, that results in a not guilty
3 verdict. You cannot base a verdict of guilty on a
4 hunch, or he probably did it, or he might have done
5 it.

6 That's a not guilty. Above that
7 is probable cause. That's reasonable and
8 trustworthy information that a particular person has
9 committed a particular crime -- trustworthy
10 information.

11 Where is medical evidence?
12 Where is professional counseling evidence? It's not
13 here. Nobody else says this happened. Even Kathy
14 Adams doesn't say it happened, **Victim** mother.

15 Above that, ladies and
16 gentlemen, is preponderance -- what we call
17 preponderance of evidence -- that's what we use in
18 civil cases, a fender-bender, a car wreck -- the
19 greatest weight or amount of evidence. That's like
20 using scales. You lay the evidence on it, and if
21 one tilts to the other side and it doesn't remain
22 completely even, if it tilts a little bit, that's
23 the preponderance of the evidence.

24 If you believe that the State --
25 at this point, we're not completely equal to the

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1 State, if you believe the State has tilted those
2 scales a little bit to make you think that Tommy
3 Adams may have done this, that's a preponderance of
4 the evidence. The result is not guilty. It's not
5 horseshoes when it comes to somebody's freedom in
6 our country.

7 Above that is clear and
8 convincing evidence. That means a firm belief that
9 the allegations are true -- a firm belief the
10 allegations are true. If you have a firm belief
11 that these allegations are true, your verdict is not
12 guilty, because that's not the standard the Judge is
13 going to tell you about.

14 Above that is reasonable doubt,
15 ladies and gentlemen. That is proof so convincing
16 that you would rely on it without hesitation in the
17 most important of your own affairs. Even with
18 reasonable doubt, it's a not guilty verdict unless
19 all of that is removed. Unless and until the States
20 moves up every one of these steps and moves beyond
21 reasonable doubt would your verdict be allowed to be
22 guilty.

23 I hope you understand this
24 standard that this case is to be measured by. See,
25 the scales can't be cooked, not in our courtroom,

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1 not under our system of justice. You'll have to ask
2 yourself, has the State removed every bit of its
3 burden of proof in this case?

4 Do you think Tommy probably did
5 it? Not guilty. Do you have some question in your
6 mind, some reasonable doubt, when you discuss this
7 in your jury room? The verdict is not guilty.

8 Unless the State has so
9 convinced you beyond all reasonable doubt, you
10 return a verdict of not guilty. I'm going to sit
11 down. I don't get to say anything else. We've done
12 the best that we can to try to let you find the
13 truth in this case.

14 I simply ask you to use your
15 common sense to understand that these allegations
16 are made, sometimes they're false, sometimes there's
17 reasons they're made. I believe one of the jurors
18 even said during voir dire that she served on one of
19 these types of juries last year --

20 MR. MAYE: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. HUFF: I would submit to you that
23 your verdict is one of two types, guilty or not
24 guilty, guilty if it's proven beyond a reasonable
25 doubt, not guilty if it's not. I hope you

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1 understand one thing that I learned from a Judge
2 many years ago.

3 A not guilty verdict, if the
4 evidence isn't proven, is a verdict that does
5 justice, that's not guess, that's not playing
6 horseshoes. A verdict of not guilty does justice if
7 the case isn't proved. Thank you.

8 MR. MAYE: May it please the Court?

9 THE COURT: Yes, sir.

10 CLOSING ARGUMENT

11 MR. MAYE: Ladies and gentlemen, this
12 case is about betrayal. Let's think about that. On
13 all the betrayals that one can come up with, it
14 would be hard to imagine anything that would rise to
15 a greater level of betrayal than that of someone
16 who's exercising the responsibility of caring for a
17 child.

18 Out of all the bad things that
19 there are out in the world, when children -- well,
20 parents are the ones that ultimately have the
21 responsibility to the children of protecting them
22 from all the bad things that there are out there in
23 the world. And that's just a fundamental system of
24 family, and trust, and decency that is certainly one
25 of the most sacred bonds that there can be possibly

1 be.

2 What we have here, ladies and
3 gentlemen, is the ultimate betrayal. Victim [REDACTED]
4 was, what, about four years old when she got around
5 Tommy Adams. And when he married Kathy Adams, that
6 became her dad. And it's pretty obvious, even
7 continuing up here into this courtroom, that she
8 considered him her daddy.

9 She never showed any animosity,
10 any hatred for him. Ladies and gentlemen, I want
11 you to imagine the level of confusion that would
12 take place in a child's mind the one person above
13 all others, her daddy, that she expected to protect
14 her, and look after her, and tend to her, he's using
15 her as his sexual plaything.

16 What did he tell Virginia
17 Bledsoe? What a vile thing to say! He's just been
18 talked to by this investigator about allegations of
19 sexual misconduct that he's alleged on this child.
20 And what does he tell the investigator from the
21 Sheriff's Office? "Your cooter belongs to your
22 daddy," because he's using this child as his sexual
23 plaything.

24 You can bet it belonged to him.
25 He considered it his personal property, because he

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1 was using it for his own sexual benefit and lust.
2 Yes, it belonged to him, and he showed that. It
3 didn't belong to anybody else in the world. "If
4 anybody else wants to come and touch you or do
5 anything else, they've got to talk to me, because
6 that cooter belongs to me."

7 He's even telling this
8 investigator that. What an inappropriate thing, and
9 it shows what's in his heart, malice. What an
10 ultimate betrayal, what confusion. Listen to your
11 parents. Honor thy father and mother.

12 That only works when they're
13 worthy of being honored. And in this circumstance,
14 what's this child going to do? Every time her mama
15 goes off on a trip, she can't hardly get out of
16 town, and he's messing with her. He's putting his
17 penis inside of her. She's got her fondling his
18 penis. You've heard the facts in this case. You
19 heard the testimony.

20 There's no lack of any evidence
21 here. She was there. She's an eyewitness. Wasn't
22 none of the defense witnesses there. She was there.
23 You never know what goes on behind closed doors or
24 what kind of face she presented to the rest of the
25 world.

1 She knows because she was there
2 behind those closed doors with her daddy, who was
3 supposed to be looking out for her. But he can't do
4 that. It belongs to him. He's using her for his
5 sexual plaything right there in the household, a
6 betrayal of everybody in that family.

7 And, sure, he wasn't going to
8 let anybody else know what was going on. They're
9 going to tell you, "You didn't hear from any
10 doctors, and you didn't hear from any counselors."
11 This thing would have been over a long time before
12 this if he'd have left any damage.

13 If he'd have injured this child
14 where a doctor would have seen it, if he'd have done
15 something where somebody else -- because they want
16 to tell you, "Oh, you can't find him guilty if
17 doctors didn't come in here with DNA evidence,
18 sexual exams, and give you physical, hard proof.
19 Oh, you can't find him guilty."

20 And, "Oh, you can't find him
21 guilty unless somebody saw him, unless a doctor
22 tells you, unless there was an eyewitness. Oh, you
23 can't find him guilty. Move up the ladder into all
24 these levels of proof."

25 The Judge is going to tell you

1 what the law is in this case. The 12 of you that go
2 back in that jury room and deliberate decide what
3 goes on here in Edgefield County as to this case.
4 And the Judge is going to tell you what the law is
5 in this case. He'll charge you exactly what the law
6 is to carry out.

7 Criminal sexual conduct with a
8 minor, exactly what we have here, as this girl told
9 you from the stand, a sexual battery. And the Judge
10 is going to tell you what a sexual battery is. It's
11 any intrusion. It's all of these things he was
12 doing to her. It's putting his fingers inside of
13 her. It's putting his penis inside of her. It's
14 any penetration, however slight.

15 He didn't have to enter her
16 completely -- any penetration, however slight,
17 including him putting his penis in her mouth. Oh,
18 if he had injured this girl where a doctor could
19 have seen it, it would have been over a long time
20 before December 25, 2002, when this girl finally
21 said she'd enough.

22 They have the audacity to tell
23 you in this case this girl can't tell you anything
24 about the specifics. "Oh, it's just a general,
25 scripted, broad thing this girl" -- "she's just up

1 here, and she don't know what's going on. She can't
2 give you any specifics."

3 She sure knew about the trip to
4 Canada. She could sure tell you exactly when it
5 started, when he started dragging her back there in
6 that bedroom, and molesting her, and using her for
7 his own lust and satisfaction, because it belongs to
8 him.

9 He couldn't even resist throwing
10 that in in front of this investigator after she's
11 telling him what he's been accused of. That's his
12 attitude. That's his true colors, and it came out
13 right then. He couldn't even cover it up when he
14 was talking to the police, because that's what he
15 believes.

16 Couldn't tell you any details --
17 because it was happening over and over again. She
18 told you when it started, when her mama went to
19 Canada, and she told you when it ended, when she'd
20 enough. It wasn't going to take long for it to come
21 out after then, because on December 25, 2002, she
22 finally fought back against this rascal over here.
23 And she said enough is enough, and she told her mama
24 it happened.

25 And what brought it out? A

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1 highly charged, emotional conversation between her
2 and her mama when she finds out how her daddy really
3 died. They talked what a good daddy he was. She
4 had had enough. She told her mama what kind of
5 daddy he was, and she told law enforcement, and she
6 kept telling.

7 And she sat right up here on
8 this stand in front of the 12 of you that are going
9 to be the judges of the facts in this case, and she
10 told you under oath exactly what this man was doing
11 to her. And she didn't hesitate, and she didn't
12 equivocate.

13 She told you that he had been
14 inside of her about three or four times and 15 or 20
15 times of messing with her, every opportunity he
16 could get. That's how many times it happened.
17 Anytime those boys weren't there, anytime he could
18 sneak her off to a bedroom, yes, that's when it was
19 happening, anytime mama wasn't there.

20 If he's not working and mama's
21 out trying to make a living, and going up and down
22 the road, and traveling other places, yes, sir, he's
23 sitting home and this child is his plaything,
24 because it belongs to him. That's his attitude.

25 The Judge is going to tell you

1 the law in this case -- any penetration, any
2 intrusion, however slight. And you don't have to
3 split anybody wide open to the point that they're
4 having to go to a doctor, because it would have been
5 over a long time before then if he had done that.

6 This child wouldn't have had to
7 have waited till December the 25th until she finally
8 got old enough, and had enough of presence of mind,
9 and threw off that confusion of her own daddy
10 betraying her trust, and did something about it,
11 because she finally stood up to him.

12 And she's putting it in your
13 hands now. Tell -- that's the one thing that comes
14 out of all these witnesses up here. If somebody is
15 doing something wrong to you -- people are telling
16 your children every day, "If anybody touches you, if
17 anybody does anything to you in an improper manner,
18 come tell me."

19 That doesn't work when daddy's
20 doing it, the ultimate betrayal of trust. It just
21 doesn't. What's she going to think? Do what your
22 parents tell you what to do. The very person that's
23 supposed to be protecting her from this is doing it.
24 What's she going to do? Is she going to write it in
25 some journal where her teachers are going to see it?

1 No.

2 Is she going to tell her other
3 siblings? No -- until she finally realized there's
4 only way to do it and she fought back herself first.
5 And it wasn't until her mama brought out what had
6 happened to her daddy, and they got down to talking
7 truly about what kind of daddy Tommy Adams was to
8 her that it came out.

9 And it came out, and it has
10 continued to come out, and it continued to come out
11 through this child on that stand. She was there.
12 There weren't any of the defense witnesses there.
13 They don't know what went on behind those closed
14 doors. But she knows, and she told you.

15 The State is going to have to
16 prove this happened in Edgefield County. This child
17 told you right here in Edgefield County underneath
18 two roofs what was going on behind those closed
19 doors that everybody else couldn't see. But she was
20 there, and she told you, and it happened here in
21 Edgefield.

22 And that's one of the things the
23 State has got to prove. And the State has got the
24 burden of proof, and the State welcomes it in this
25 case. And it doesn't take any doctor's evidence or

1 him damaging her to the point that it would have
2 come out way ahead of time, or it doesn't take an
3 eyewitness in this case to equal a guilty verdict,
4 because if there had been even one of these things,
5 this child wouldn't have had to have stood up for
6 herself. Somebody else would have stood up for her.

7 But she had to do it, and she
8 exercised the courage, however long it took. If it
9 took three years of being his sexual plaything, and
10 it took her developing and getting to the point
11 where she could finally stand up for herself to do
12 it, she did it.

13 And she had the courage to get
14 up here in this courtroom, and if one would make a
15 list as to where a 13-year-old girl would want to be
16 this week, that would be one of the last ones,
17 sitting up here having to pour out the intimate
18 details of that betrayal of her daddy to her in
19 front of you 12 people.

20 How much courage does that take?
21 And she's got it. The same courage she exercised on
22 December 25, 2002, you saw up here today in October
23 of 2005, because she told you. She said enough, and
24 that's enough of betrayals in this case.

25 Ladies and gentlemen, go back in

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1 that jury room and do justice for everybody here in
2 Edgefield County. Don't let anybody tell you what
3 you can and can't do.

4 MR. HUFF: Your Honor?

5 THE COURT: Yes, sir.

6 MR. HUFF: I think "doing justice for
7 people in Edgefield County" is inflaming the jury
8 and is not proper in argument.

9 THE COURT: I sustain the objection.

10 Ladies and gentlemen, I'll
11 charge you on the law. Your job is to determine
12 whether or not the State has met its burden of
13 proving each of the elements of the crimes charged
14 beyond a reasonable doubt.

15 You can continue.

16 MR. MAYE: Ladies and gentlemen, you
17 take the law as the Judge gives it to you, of
18 course, the law as countless juries have been given
19 right here where you sit over the years. Do
20 justice. Do justice for Victim [REDACTED].

21 She has brought it to you. She
22 puts it in your hands. Do justice to this child.
23 If you do that, you will have done all anybody can
24 ask of you.

25 CHARGE OF THE COURT

1 THE COURT: Ladies and gentlemen, now
2 that you have heard all of the evidence and the
3 arguments of the lawyers, it becomes my
4 responsibility to instruct you on the law that is
5 applicable to this case.

6 As I told you in the beginning,
7 under the South Carolina Constitution and Code of
8 Laws, only the jury can make the findings of fact in
9 this case, and I am not permitted to indicate to you
10 how I might feel about the facts.

11 So if I have said anything or
12 done anything that leads you to believe that I have
13 an opinion about the facts, then you must disregard
14 that, because this jury must independently weigh the
15 testimony and evidence that has been presented
16 before you and render a verdict that is based solely
17 on that testimony and evidence in light of the law
18 as I now instruct you.

19 Now, that same Constitution and
20 Code of Laws that makes you the exclusive judges of
21 the facts also makes me the exclusive judge of the
22 law. So if you have some idea as to what the law is
23 or what the law should be, and if that differs from
24 what I now tell you the law is, then you are
25 obligated under the oath that you have taken as

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1 jurors to set your notion of the law aside and to
2 accept and apply the law precisely as I now explain
3 it.

4 To determine the facts in this
5 case, you will have to evaluate the credibility,
6 which, of course, means the believability of the
7 witnesses who have been called on to testify. And
8 some of the things that you might wish to consider
9 as you decide whether or not to believe a particular
10 witness's testimony include the following: the
11 manner and appearance of the witness who testified.
12 Was he or she straightforward or hesitant in
13 answering questions.

14 Is the testimony of the witness
15 consistent or inconsistent? How did the witness
16 come to know the facts that he or she has testified
17 to, and what is that witness's ability to know those
18 facts? Is there some reason that a witness would
19 want to give testimony that would help or hurt one
20 side or the other?

21 Is the testimony of a witness
22 strengthened or weakened by other testimony and
23 evidence? As members of the jury, you can believe
24 as much or as little of each witness's testimony as
25 you think it is appropriate to do.

1 You can believe the testimony of
2 one witness against all of the others, or you can do
3 just the opposite. And you are not required to
4 accept testimony as true, even if it is
5 uncontradicted.

6 Now, the fact that the defendant
7 was arrested, and charged, and indicted in this case
8 is not evidence, and it cannot be considered by you
9 in any way as evidence of the defendant's guilt, nor
10 does it create any presumption or inference of
11 guilt. The indictment is simply the formal written
12 instrument that serves to process this case and
13 bring it into this court for trial.

14 The defendant has pled not
15 guilty to these indictments, and that plea casts the
16 burden on the State to prove the defendant guilty
17 beyond a reasonable doubt. A person charged with
18 committing a crime in South Carolina is never
19 required to prove themselves innocent.

20 Now, it is a very important rule
21 of law in our country that a defendant in a criminal
22 trial will always be presumed to be innocent of the
23 crime with which he has been charged unless and
24 until his guilt has been proven by evidence that
25 satisfies you of that guilt beyond a reasonable

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1 doubt.

2 We've talked about this. This
3 is the presumption of innocence, and it's not merely
4 a legal phrase or a legal theory. It is a
5 substantial constitutional right to which every
6 defendant is entitled.

7 The presumption of innocence
8 accompanies the defendant from the time he is
9 charged, throughout the trial, and into the jury
10 room until you reach a verdict of guilt based on
11 evidence that satisfies you of that guilt beyond a
12 reasonable doubt.

13 Now, ladies and gentlemen, I
14 instruct you now and I emphasize to you that the
15 fact that the defendant did not testify in this case
16 cannot be considered by you in any way during your
17 deliberation. The defendant has a constitutional
18 right to remain silent, and the exercise of that
19 right cannot and must not be held against the
20 defendant.

21 Under the oath that you have
22 taken as jurors, you are to draw no inference and no
23 conclusion whatsoever from the fact that the
24 defendant did not testify. Do not even discuss this
25 fact in the jury room. The defendant is not

1 required to prove anything. The burden of proof
2 remains on the State.

3 A reasonable doubt is a doubt
4 which makes an honest, sincere, conscientious juror
5 in search of the truth in the case to hesitate to
6 act. Proof beyond a reasonable doubt must therefore
7 be proof of such a convincing character that a
8 reasonable person would not hesitate to rely on it
9 and act on it in the most important of his or her
10 own affairs.

11 Proof beyond a reasonable doubt
12 can also be described as proof that leaves you
13 firmly convinced of the defendant's guilt. Now,
14 there are very few things in this world that we know
15 with absolute certainty. And in criminal cases, the
16 law does not require proof that overcomes every
17 possible doubt.

18 If, based on your consideration
19 of the evidence, you are firmly convinced that the
20 defendant is guilty of the crime charged, then you
21 must find him guilty. But, on the other hand, if
22 you think that there is a real possibility that he
23 is not guilty, then you must give him the benefit of
24 the doubt and find him not guilty.

25 Now, as you know from my having

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1 read the indictments, the defendant is charged with
2 two crimes. As to both of those crimes, the first
3 thing that the State must prove beyond a reasonable
4 doubt is that those crimes occurred in Edgefield
5 County. That is one element that the State must
6 prove as to both of these alleged crimes.

7 The defendant is first charged
8 with criminal sexual conduct with a minor in the
9 first degree. In order to convict the defendant of
10 this crime, the State must prove two additional
11 elements, each beyond a reasonable doubt.

12 The first element which the
13 State must prove is that the defendant engaged in
14 sexual battery with the victim. Our Code of Laws
15 defines sexual battery to include sexual
16 intercourse, cunnilingus, fellatio, anal
17 intercourse, or any intrusion, however slight, of
18 any part of a person's body or the object into the
19 genital or anal openings of another person's body
20 except when such intrusion is accomplished for
21 medically recognized treatment or diagnostic
22 purposes.

23 The second element that the
24 State must prove is that the victim at the time of
25 the sexual battery was less than 11 years of age.

1 The defendant is also charged with committing a lewd
2 act upon a child. In order to convict the defendant
3 of this crime, the State must prove four essential
4 elements, each beyond a reasonable doubt.

5 First, the State must prove that
6 the defendant was over the age of 14 years at the
7 time. Second, the State must prove that the
8 defendant committed or attempted a lewd or
9 lascivious act upon or with the body or its parts of
10 a child under the age of 16 years.

11 Third, the State must prove that
12 the defendant did so willfully and lewdly. And,
13 fourth, the State must prove that the defendant did
14 so with the intent of arousing, appealing to, or
15 gratifying the lust, passions, or sexual desires of
16 himself or of the child.

17 Now, regarding the second
18 element, the word "lewd" means obscene, or sexually
19 indecent, or licentious. The word "lascivious"
20 means tending to incite lust, or lewd, or indecent,
21 or obscene, or tending to defray the morals in
22 respect to sexual relations.

23 Regarding the third element,
24 "willfully," of course, means that it was done
25 intentionally, not that it was done accidentally or

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1 innocently. Now, ladies and gentlemen, your
2 verdicts in these cases must be unanimous. All 12
3 of you must agree before you can write a verdict.

4 In just a second, I'm going to
5 send you back into the jury room. But I'm going to
6 ask you not yet to begin your deliberations because
7 I may have some matters of law that I need to take
8 up with the lawyers. While I'm doing that, I would
9 like for you to select a foreperson to serve the
10 jury.

11 The job of foreperson is to
12 preside over the deliberations and, when it becomes
13 necessary, to communicate with the Court, and fill
14 out the verdict form. And any other communication
15 with the Court from the foreperson would have to be
16 in writing.

17 Now, when you go back to the
18 jury room, you will have the indictments with you.
19 And on the back of the indictments, in the lower
20 left-hand corner, you will see the word "verdict."
21 And below that word, there are four blank lines.

22 When the jury has unanimously
23 reached a verdict, then the foreperson will write
24 the verdict on one of those blank lines, and sign
25 it, and then notify the Bailiff that you have

1 reached a verdict. And we'll get you back out here.
2 into the courtroom to receive that verdict.

3 Your verdict options on both of
4 these indictments are either guilty or not guilty.
5 Those are the two options that you have for a
6 verdict on both of these indictments.

7 Mr. Moore and Mr. Connolly, if
8 you two would remain in your seats, please. The
9 rest of you please go to the jury room. As soon as
10 you have picked a foreperson, please let the Bailiff
11 know who it is.

12 We'll put that on the record.
13 And at that time, I will send to you the exhibits
14 and the indictments and an instruction through the
15 Bailiff that you may begin your deliberations.

16 (The jury left the
17 courtroom at 2:58 p.m.)

18 THE COURT: Any exceptions to the
19 charge?

20 MR. MAYE: None from the State, Your
21 Honor.

22 MR. HUFF: None, Your Honor.

23 THE COURT: All right. We just have
24 a few exhibits, so you all agree on the proper set
25 of exhibits. And as soon as they tell us who the

1 foreperson is, then the Bailiff can take the
2 exhibits and indictments back to the jury and tell
3 them to begin deliberation.

4 Have you got anything else to
5 do, Mr. Maye?

6 MR. MAYE: I'm going to check back
7 and there and see.

8 THE COURT: All right.

9 MR. MAYE: Thank you, Judge.

10 THE COURT: We'll be in recess until
11 we hear from the jury.

12 (Court in recess.)

13 THE COURT: Ma'am, come up front,
14 please. You're Ms. Watson?

15 MS. WATSON: Yes, sir.

16 THE COURT: All right, raise your
17 right hand.

18 (The witness was sworn.)

19 THE COURT: Okay. Now, something
20 happened back there with the jury asking you a
21 question. Is that what happened?

22 MS. WATSON: Well, I was standing
23 with the other Bailiff back there, and they came out
24 and asked if it had to be a hundred percent, and she
25 told them yes.

1 THE COURT: Okay. The other Bailiff,
2 Ms. Scurry, told them yes?

3 MS. WATSON: We told them yes,
4 uh-huh.

5 THE COURT: Okay, all right. So who
6 came out, the forelady?

7 MS. WATSON: Yes.

8 THE COURT: All right. And that was
9 all that was said?

10 MS. WATSON: That's all.

11 THE COURT: Okay.

12 And I'll hear from counsel.

13 Anything you want to say?

14 MR. MAYE: Huh-uh. I take no
15 position on it, Your Honor.

16 MR. HUFF: Judge, I think Ms. Scurry
17 said what the law is. Of course, it more properly
18 should have been Your Honor. But I'm sure nothing
19 was done intentionally. But we've got no position
20 for that.

21 THE COURT: All right. Well, would
22 you mind going back there and tell Ms. Scurry that
23 if the jury asks any more questions -- and this is
24 the procedure that should always be followed -- to
25 tell the foreperson to write the question down and

1 then, without looking at the question, bring it
2 directly to the presiding Judge.

3 MS. WATSON: Okay.

4 THE COURT: It's always best for
5 nobody else to say anything to the jury.

6 MS. WATSON: Okay.

7 THE COURT: All right, thank you.

8 I have a note from the jury.
9 It's not signed or anything. It just says, "May we
10 continue tomorrow?"

11 MR. MAYE: I have no objection to
12 that at all.

13 MR. HUFF: No, I don't either.

14 THE COURT: All right, bring them in.

15 (The jury returned to
16 the courtroom at 5:14 p.m., after which the
17 following proceedings were had:)

18 THE COURT: Ms. Oliphant, I had a
19 note from you, I think, that says that you all would
20 like to continue your deliberations tomorrow?

21 MS. OLIPHANT: Yes, sir, if possible.

22 THE COURT: All right. Yes, ma'am,
23 we can adjourn for the day, and I will let you go
24 home for the night. You can be seated. I would
25 like for you to be back in the jury room tomorrow

1 morning at 9:00.

2 Now, from this point until you
3 are all back together in the jury room, all 12 of
4 you, you may not discuss this case. You can only
5 discuss the case when all 12 of you are together in
6 the jury room. So when you go home tonight, do not
7 discuss this case with anyone nor allow anyone to
8 discuss the case with you.

9 And when you return in the
10 morning and all 12 of you are present, I will then
11 be told that you are all here. And I will then give
12 you an instruction that you can resume your
13 deliberations. But until you have gotten that
14 instruction from me, do not discuss this case in any
15 way, either among yourselves or with someone else.

16 Now, everything else that I have
17 told you during the course of this trial remains
18 true. You all have a nice night, and I will see you
19 tomorrow morning at nine.

20 I will be here in the courtroom
21 doing some other non-jury matters at nine, and we'll
22 be just awaiting your verdict. When you get here,
23 come on in, and as soon as you're all here, I'll be
24 told that, and I will send word to you to begin.

25 MR. MAYE: May it please the Court,

1 Your Honor, if we could look at the sentencing
2 sheet.

3 THE COURT: When you go home tonight,
4 you can think about this if you want to, but
5 otherwise put it out of your mind. Certainly don't
6 do anything in the way of trying to do some
7 research. This is a problem that comes up from time
8 to time now with the Internet making information so
9 accessible to everybody.

10 It would not be appropriate for
11 any of you all to do anything in the way of looking
12 up anything. Just go home and have a nice evening.
13 Don't worry about this case. Don't do any kind of
14 research or anything like that. And I'll see you
15 tomorrow morning at 9:00.

16 (Jury out for the day at
17 5:18 p.m.)

18 MR. MAYE: May it please the Court,
19 Your Honor, thank you for indulging that. Twice
20 I've had them leave here and go home and do research
21 and then come back and discuss it in the jury room.
22 We had to bring all the jurors back in and do that.
23 So I appreciate you asking them now. We might avoid
24 some problems.

25 THE COURT: All right. We need to

1 take up the question of the defendant's bond.

2 MR. HUFF: Judge, we certainly could
3 do that. I believe --

4 MR. MAYE: They sent it to us, and I
5 brought it to the Court's attention. Thank you,
6 Your Honor.

7 MR. HUFF: I haven't seen it, but the
8 Solicitor told me he was going to be sending it up
9 to your desk. I just assume it was a letter from
10 the bonding company that they would continue on.

11 THE COURT: Is that suitable for you?

12 MR. MAYE: Your Honor, I leave it to
13 the discretion of the Court. I'm just going to base
14 my decision on your discretion.

15 MR. HUFF: Judge, I'll just tell you
16 Mr. Adams has come to court anytime we've needed
17 him.

18 THE COURT: There was some discussion
19 yesterday about there having been a period of time
20 in which his bond was revoked?

21 MR. HUFF: Judge, early on, back in
22 2003, right after all this happened, there was --
23 the Family Court order said that there could be
24 contact in order to effect visitation. That did not
25 get to be agreed to, so to speak, between the

1 parties.

2 His bond was revoked, and he was
3 incarcerated. I came back before Judge Keesley. He
4 set additional terms and conditions on the bond,
5 felt it was okay for him to be released, and my
6 client has not violated those terms and conditions
7 whatsoever.

8 I see no reason why he would
9 want to do it. The case is over. It's in the
10 jury's hands. And I don't think he would violate in
11 any way.

12 MR. MAYE: Your Honor, I'm not going
13 to push this issue one way or another. But there
14 was an original violation of the terms of the bond.
15 I ruled him back in for bond revocation. He left
16 some very menacing and somewhat threatening messages
17 for Ms. Kathy Adams through her answering machines.

18 There was two series of
19 messages. They were taunting and pretty menacing.
20 And based on Judge Keesley's hearing, he revoked his
21 bond and he stayed incarcerated for about two and a
22 half months. Now, in all fairness, after Mr. Huff
23 asked Judge Keesley to reconsider after some period
24 of time and to let him back out, I'm unaware of
25 anything that happened since that time.

1 But certainly at one point in
2 time he left some very threatening and ominous
3 messages for her, and it concerned Judge Keesley
4 enough that he locked him up. But in all fairness,
5 I have not heard anything else since that time after
6 he got out again. But there certainly was that
7 issue early on in this case.

8 MR. HUFF: And, Judge, if I might,
9 certainly, though, Judge Keesley then allowed new
10 bond and set additional conditions. And I think the
11 Solicitor is correct. There was communication to
12 Kathy Adams because my client felt like he was being
13 done wrong -- nothing toward Victim [REDACTED]

14 And nothing has occurred since
15 that time. I don't think he's a flight risk. I
16 don't think he's a threat to the community. He has
17 shown up in court all the time. And we're just
18 asking for the overnight to let him come back while
19 they continue their deliberations.

20 Judge Keesley saw fit to
21 reinstate the bond, and we've lived with that for
22 the last two and half years, I guess I would say,
23 Your Honor. Judge, I don't know if there's anything
24 else that I could tell you.

25 It, of course, is your decision.

1 I would just ask that even during lunch today, you
2 know, he left and came back. I would ask that he be
3 allowed to stay at home tonight and come back
4 tomorrow morning at 9:00. Thank you, Your Honor.

5 MR. MAYE: I have a copy of Judge
6 Keesley's bond order. I thought I had it. This is
7 his order on the reconsideration. It's in the file.

8 THE COURT: I am going to follow my
9 normal procedure, which is to adhere to the letter
10 of the law regarding the effects of the swearing of
11 the jury on bond, and that the surety on the bond
12 has met its obligations, and there is no provision
13 for the release of the defendant pending the outcome
14 of the trial.

15 So he will be held in the
16 custody of Edgefield County until the conclusion of
17 the trial. We'll be in recess until nine tomorrow
18 morning.

19 (Court in recess.)

20 --End of Day--

1 Friday, October 14, 2005

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 BAILIFF: All rise.

6 THE COURT: Be seated, please. All
7 right, I understand we have a verdict. This is
8 quite naturally an important moment for a lot of
9 people in the courtroom. Nevertheless, I expect
10 everyone to be able to control their emotions when
11 this verdict is announced.

12 If there's anybody who feels
13 that they cannot control their reaction, then I
14 would ask you to leave the courtroom at this time,
15 because if there is any kind of an outburst, then I
16 have limited options as to how I can deal with it.

17 Bring the jury in, please.

18 (The jury returned to the
19 courtroom at 10:31 a.m.)

20 THE COURT: Ms. Oliphant, has the
21 jury reached a verdict?

22 MS. OLIPHANT: Yes, sir, we have.

23 THE COURT: Would you pass those
24 verdict forms to the Bailiff, please?

25 VERDICTS OF THE JURY

1 CLERK OF COURT: Your Honor, this is
2 Indictment #2003-GS-19-416, the State versus Tommy
3 Swinson Adams, indictment for lewd act on a child
4 under 16, verdict, guilty.

5 Indictment #2003-GS-19-418, the State
6 versus Tommy Swinson Adams, indictment for criminal
7 sexual conduct with a minor, first degree, verdict,
8 guilty.

9 Madam Forelady, ladies and
10 gentlemen of the jury, if these are your verdicts,
11 please indicate each of you by raising of the hand.
12 Thank you.

13 MR. HUFF: Your Honor, we would ask
14 that the jury be polled individually.

15 CLERK OF COURT: Ladies and
16 gentlemen, the verdict that I have just published
17 was the verdict you reached in the jury room. I ask
18 you, was it your verdict then, and is it your
19 verdict now? As I call your name, please answer yes
20 or no.

21 Phoebe Oliphant.

22 MS. OLIPHANT: Yes.

23 CLERK OF COURT: Janet R. Bush.

24 MS. BUSH: Yes.

25 CLERK OF COURT: Joan M. Shedrick.

1 MS. SHEDRICK: Yes.
2 CLERK OF COURT: Jerry Nicholson.
3 MR. NICHOLSON: Yes.
4 CLERK OF COURT: Jessie A. Bailey.
5 MS. BAILEY: Yes.
6 CLERK OF COURT: Warrena Mathis.
7 MS. MATHIS: Yes.
8 CLERK OF COURT: Deborah H. Jones.
9 MS. JONES: Yes.
10 CLERK OF COURT: Gary D. Miller.
11 MR. MILLER: Yes.
12 CLERK OF COURT: Dana M. Hutto.
13 MS. HUTTO: Yes.
14 CLERK OF COURT: Karen Johnson.
15 MS. JOHNSON: Yes.
16 CLERK OF COURT: Benjamin D. Clark,
17 Jr.
18 MR. CLARK: Yes.
19 CLERK OF COURT: Cynthia Howard?
20 MS. HOWARD: Yes.
21 THE COURT: Anything else, Mr. Huff,
22 before we move into sentencing?
23 MR. HUFF: No, Your Honor.
24 THE COURT: Any motions?
25 MR. HUFF: Judge, not at this time.

1 We would like under the rules to have, I believe,
2 ten days to make any such new motions.

3 THE COURT: You have -- okay, well,
4 the rules provide that you have ten days to make
5 motions. Anything further before we move into
6 sentencing?

7 MR. HUFF: No, Your Honor.

8 THE COURT: All right. Bring the
9 defendant around, please.

10 I need a sentencing sheet for
11 the CSC -- I have two sentencing sheets for the lewd
12 act -- or I can just change the CDR codes on it. Do
13 you know the CDR code?

14 MR. MAYE: Just a moment, Your Honor.

15 THE COURT: Mr. Huff, if you would
16 like, you can go ahead and start looking over this
17 sentencing sheet for the lewd act, which I have, I
18 think, filled in everything. You have that one
19 ready?

20 MR. MAYE: Yes, sir, Your Honor, if I
21 could see the indictment number and check the
22 warrant number.

23 THE COURT: That's the indictment.

24 MR. MAYE: Thank you, sir.

25 THE COURT: You've got it listed

1 as --

2 MR. MAYE: Yes, sir.

3 THE COURT: -- violent and most
4 serious?

5 MR. MAYE: Yes, sir. And the
6 indictment number for the lewd act, Your Honor.

7 THE COURT: The number?

8 MR. MAYE: Yes, sir.

9 THE COURT: Indictment number?

10 MR. MAYE: Yes, sir.

11 THE COURT: 2003-416.

12 Okay, if you have reviewed these and they're
13 correct, I'd like for you to sign it. You can give
14 the defendant a chance to review it for correctness,
15 and he can sign it.

16 And, Solicitor, I'd like for you
17 to sign as well.

18 MR. MAYE: Yes, sir.

19 THE COURT: Both of them.

20 MR. HUFF: Your Honor, if I might,
21 you've asked me as to any motions I might have. I
22 at least could place on the record at this time we
23 would be at this time making a motion for a new
24 trial but pursuant to the rule would like the
25 allotted by the rule to reflect on the course of the

1 trial to flesh out the bases for that motion, but at
2 least would like to preserve it for the record at
3 this time.

4 SENTENCE OF THE COURT

5 THE COURT: All right, sir.

6 Does he have any prior criminal
7 record?

8 MR. MAYE: Your Honor, he has a prior
9 criminal domestic violence conviction with Ms. Adams
10 as the victim in this case.

11 THE COURT: What is the date of the
12 offense for the criminal domestic violence?

13 MR. MAYE: 5/9/02.

14 THE COURT: Simple CDV?

15 MR. MAYE: Yes, sir, simple CDV. He
16 was charged with simple CDV, and he was convicted of
17 simple CDV.

18 THE COURT: Do you have the arrest
19 warrant --

20 MR. MAYE: I have --

21 THE COURT: -- or a summary of the
22 alleged facts in that case?

23 MR. MAYE: Yes, sir, Your Honor. I
24 think I've got an incident report for it as well.

25 MR. MAYE: Your Honor, that incident

1 occurred 4/19/02. The victim in this case, Kathy
2 Adams, had returned to the residence. She indicated
3 that Mr. Tommy Adams was waiting on her, that he
4 assaulted her.

5 He struck her, threw her down
6 and threw her into a fence in the yard. One of the
7 children that was there at the time called 911.
8 She received injuries to her face, and she had some
9 of her hair pulled out at that time, Your Honor.
10 And that was in the presence of several of the
11 children, is what she in the incident report
12 indicates. He was convicted of that.

13 MR. HUFF: Your Honor, on that
14 occasion, it was a dispute between the parties. Mr.
15 Adams says that he had found that Ms. Adams was not
16 being faithful to him. They got in an argument.
17 And he pled guilty -- did not go to trial but pled
18 guilty.

19 THE COURT: Well, I don't consider it
20 as an aggravating circumstance. I just wanted to
21 know about it for purposes of background.

22 MR. HUFF: Yes, Your Honor.

23 THE COURT: All right. Anything else
24 from the State?

25 MR. MAYE: Nothing else from the

1 State, Your Honor. We leave sentencing to the wise
2 discretion of the Court. Thank you.

3 THE COURT: Mr. Huff?

4 MR. HUFF: Your Honor, Mr. Adams is
5 50 years old. He is a trucker by profession.
6 You've heard the extent of his ever having any prior
7 record. That's it. I think you have heard the
8 testimony in the case.

9 I don't know if there's anything
10 else we could tell you. He has minor children, of
11 course, some of which testified this week. There's
12 not much else I can tell you about Mr. Adams. He
13 has lived the straight and narrow and has not gotten
14 in trouble other than what you've heard one time in
15 his life three years ago.

16 THE COURT: Mr. Adams, is there
17 anything you'd like to say?

18 MR. ADAMS: No, sir, not at this
19 time.

20 THE COURT: This is the only chance
21 you're going to get to speak to me.

22 MR. ADAMS: I didn't do it. I beg
23 for your leniency in sentencing so I can be with my
24 family. You can put me on parole, and you wouldn't
25 never have to worry about me. You know, I'm 50

1 years old. I've worked hard all my life.

2 I've taken pride in my family,
3 and I really do love my family. And I've tried my
4 best to take care of them. I haven't been a perfect
5 parent. Being a parent is a learning experience.
6 But I haven't done this thing that I've been accused
7 of.

8 I don't know what kind of, you
9 know, limits you could put on me as far as allowing
10 me to work and take care of my family. You know,
11 I'd move to another state or whatever you need me to
12 do if you thought there was something there that I
13 was going to do to somebody. I just -- I don't know
14 what else to say.

15 MR. HUFF: Your Honor, if I could at
16 least state one other thing to the Court when you're
17 deciding to impose sentence.

18 THE COURT: Yes, sir.

19 MR. HUFF: I would ask the Court to
20 consider this case has been -- it's just had a lot
21 of nuances in my representation of Mr. Adams as to
22 trying to get at what has happened in this matter.

23 The things that convinced me
24 that this case was one that needed to be put before
25 a jury to make a decision was that also what has not

1 been put before the Court or the jury is that
2 according to Mr. Adams that prior to this
3 allegation, there had been discussions of Ms. Adams
4 leaving and a divorce being filed.

5 Once these allegations all came
6 out, there was an order of protection sought by Ms.
7 Adams almost immediately. But in my investigation,
8 the parties separated several months prior to that
9 being filed and nothing being said.

10 When Ms. Adams filed a motion
11 for separate maintenance in the Family Court, it was
12 some ten months after this allegation came out.
13 Even the Family Court Judge found that to be quite
14 unusual and, as he stated in the record, a red flag
15 that something else was going on.

16 To date the parties have still
17 never been divorced in Family Court, nor has one
18 been filed by Ms. Adams. Additionally, Your Honor,
19 one of the cards that were left for my client on
20 Father's Day of 2003 was one by Ms. Adams saying
21 "Thank you for being such a good father to our
22 children."

23 I have that card in my
24 possession but could not place it into evidence.
25 Ms. Adams was not called to testify. On those

1 bases, I found this case one that needed to be
2 tried, and I found it difficult to understand that
3 Ms. Adams would thank him for being a good father
4 after this allegation came out, would place that in
5 a writing to him.

6 I know the jury has reached a
7 verdict, Your Honor. And I'm not in any way
8 attacking in any way their decision. It's been
9 made. But I would ask the Court to take those
10 matters into consideration in fashioning a sentence
11 in this case, also understanding that Mr. Adams has
12 not been one, as you've seen, that has come before
13 this Court before, having been convicted of numerous
14 crimes, coming back, and back, and back, and back.

15 He says that he would not ever
16 be before this Court again, and I certainly believe
17 that. I know you've got to impose sentence, but I
18 ask that you take these matters into consideration
19 in fashioning what you think would be appropriate.

20 THE COURT: The court system, of
21 course, is structured in such a way that different
22 entities perform different tasks. It is the jury's
23 responsibility to determine whether or not the State
24 has proven beyond a reasonable doubt that the
25 defendant is guilty of the crime charged.

1 It is not for me to come along
2 behind and say, or even to consider in sentencing,
3 whether I agree or disagree with that decision. And
4 so to the extent that you may have arguments or
5 evidence that tends to call into doubt the
6 correctness of the jury's verdict, those would be
7 properly addressed in your motion for a new trial.

8 As I sit here today, however, I
9 completely agree with the verdict of the jury. I am
10 convinced that these acts took place. It is hard --
11 well, as I consider the sentence that should be
12 imposed, of the variety of different things that I
13 do consider, the thing that stands prominent in my
14 mind is the act and what happened.

15 And it is, as the Solicitor
16 described in his closing argument, as despicable and
17 unimaginable an act of betrayal as one can possibly
18 imagine. The range of sentencing that I have here
19 is anywhere from zero to 45 years.

20 SENTENCE

21 And it's my view that this crime
22 calls for the maximum punishment. The sentence is
23 15 years on the lewd act, followed by a consecutive
24 term of 30 years on the criminal sexual conduct in
25 the first degree.

1 Ladies and gentlemen, as far as
2 your service, that concludes our week of court here.
3 I do have some non-jury matters that I have to
4 attend to, but your work is complete.

5 I would like to speak to you in
6 the jury room before you leave. So I'll ask you to
7 go back to the jury room now, and I'll see back
8 there in just a second.

9 (Whereupon, the just was
10 dismissed.)

11 THE COURT: Gentlemen, it was a
12 well-tried case, and we're adjourned.

13 --End of Transcript--

C

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

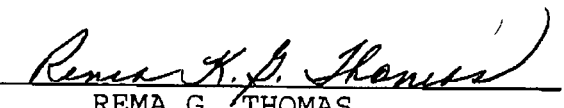
COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON OCTOBER 12, 13, AND 14,
2005, IN EDGEFIELD, SOUTH CAROLINA.

C

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
THIRTEENTH DAY OF FEBRUARY, 2006.


REMA G. THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12/13/2013

C

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF EDGEFIELD	)	ELEVENTH JUDICIAL CIRCUIT
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT
	)	OF MOTION FOR NEW TRIAL
Tommy Swinson Adams,	)	
	)	
Defendant.	)	03-GS-19-416
	)	03-GS-19-418

INTRODUCTION

Following a jury trial held on October 12-14, 2005, defendant was convicted of criminal sexual conduct with a minor in the first degree and of a lewd act on a child under the age of 16. The alleged victim was defendant's stepdaughter, Victim [REDACTED]. The State called two witnesses, Victim [REDACTED] and Virginia Bledsoe, a former investigator with the Edgefield County Sheriff's Office, who investigated the allegations against defendant.

Victim [REDACTED] testified that Tommy Adams was her stepdad (Tr. 38), and testified about the conduct that gave rise to the charges. In describing such conduct, she testified that her "stepdad, Tommy Adams," did the things described, although most of the time she simply referred to the perpetrator as "he." (Tr. 39 et seq.) At no time during her testimony did Victim [REDACTED] physically identify the defendant in court as the person who committed the acts at issue.

During the cross-examination of State's witness Virginia Bledsoe, who interviewed Victim [REDACTED] and defendant about the allegations, Bledsoe was asked the following about her interviews of victims in sexual abuse cases: "And you assume that what people

tell you when they—in one of these types of child abuse cases, you're assuming that what they're [the victims] telling you is true?" (Tr. 70.) Bledsoe answered: "Yes, sir. And I believe what Victim [REDACTED] has told me in this case." (*Id.*) Defendant moved to strike the answer. (*Id.*) The trial court granted the motion and gave a curative instruction. (Tr. 71-78.)

At the close of the State's case, and again at the close of all the evidence, defendant moved for a directed verdict on the ground that the State failed to identify the defendant as the perpetrator due to the failure to present an in-court identification. (Tr. 82, 114.) The court denied the motions. (*Id.*)

Defendant has filed a motion for a new trial. The motion is based on the insufficiency of the evidence to identify defendant as the perpetrator of the alleged offenses and the prejudice arising from State's witness Bledsoe vouching for the credibility of Victim [REDACTED].

ARGUMENT

I. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH DEFENDANT'S IDENTITY AS THE PERPETRATOR DUE TO THE ABSENCE OF AN IN-COURT IDENTIFICATION.

It is well settled that the grant or refusal of a new trial is within the sound discretion of the trial judge. *State v. Taylor*, 348 S.C. 152, 558 S.E.2d 917 (Ct. App. 2001), *aff'd*, 355 S.C. 392, 585 S.E.2d 303 (2003). When there is no evidence to support

a conviction, a motion for a new trial should be granted. *State v. Garrett*, 350 S.C. 613, 567 S.E.2d 523 (Ct. App. 2002).

In *State v. Dyer*, 314 S.C. 562, 431 S.E.2d 576 (1993), a prosecution for driving under the influence, the State's witnesses were the officer who stopped the defendant, administered field sobriety tests, and arrested her, and the officer who administered the breathalyzer test. Defendant was not physically identified by either witness as the person who was apprehended and tested. Defendant argued that the State failed to prove the identity of the perpetrator, an essential element of the offense. On appeal, the court upheld the conviction, stating:

During the testimony, neither witness actually pointed to appellant and stated she was the offender. Nevertheless, both officers repeatedly referred to appellant by name as they described the incident. One officer also spoke of his observation of "the defendant's" condition. Appellant does not argue that she is not in fact Robin Dyer or that she was not the defendant in this case. This is therefore a question of the weight of the evidence. In spite of the fact that the weight would have been greater had appellant been physically identified in court as the offender, there is sufficient evidence of her identity to support the conviction. *Preston v. State*, 259 Ind. 353, 287 N.E.2d 347 (1972); *State v. Russell*, 135 N.J.S. 154, 342 A.2d 884 (1975).

431 S.E.2d at 576-77.

In this case, the only witness who could have identified the defendant as the perpetrator of the charged offenses was **Victim**. Although she referred to the person who committed the acts by name or called him stepdad or dad (*See* Tr. 38, 39, 46, 47, 64), she did not physically identify the defendant in court, nor even refer to him as "defendant," as did the witness in *Dyer*. Thus, unlike in *Dyer*, the evidence of defendant's identity is insufficient to support his conviction. Therefore, a new trial should be ordered.

II.

THE PREJUDICIAL EFFECT OF BLEDSON'S
TESTIMONY VOUCHING FOR THE CREDIBILITY
OF Victim REQUIRES A NEW TRIAL.

A motion for a new trial may be granted based on the prejudicial effect of incompetent testimony even though a curative instruction has been given. *See State v. Johnson*, 363 S.C. 184, 610 S.E.2d 305 (Ct. App. 2005). In ruling on a motion for a new trial based on the prejudicial effect of incompetent testimony, even following curative instruction, the trial judge must consider other testimony in the case. *Id.*

Improper bolstering occurs when a witness is allowed to give her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror. *State v. Douglas*, 367 S.C. 498, 626 S.E.2d 59, 71 (Ct. App. 2006); *see State v. Dempsey*, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000). This is what occurred in this case.

An analogous situation was presented in *State v. Johnson*, in which the court affirmed the grant of a new trial in a murder prosecution based on testimony from the State's witness that she did not pass a polygraph test. Defendant argued that the witness's mention of the polygraph test would imply to the jury that her testimony was truthful because of the implication that she had since passed a polygraph. The trial court gave a curative instruction but, nevertheless, granted a new trial. In affirming the grant of a new trial, the appellate court stated:

In granting the new trial, the trial judge determined that the prejudicial effect of the polygraph testimony was not overcome by his initial curative instruction. He stated that because Marion was the first witness and mentioned her polygraph results, the jury could infer that the other witnesses also took polygraph tests and the results of those tests

affected their testimony. We agree, and . . . we find the polygraph testimony was critical in assessing Marion's credibility, which affected the credibility of the other witnesses who also gave inconsistent statements. Further, we find Marion's credibility and the credibility of the other witnesses were vital elements in the State's case.

610 S.E.2d at 309. Accordingly, the court held that the trial court did not abuse its discretion in granting a new trial. *Id.*

Similarly, in this case, the credibility of **Victim** obviously was vital to the State's case. The entire defense was based on undermining her credibility. The only other witness for the State was the investigator, Bledsoe. Her inadmissible testimony that she believed **Victim** was telling the truth was critical in assessing **Victim** credibility and it was her credibility on which the whole case rested. The jury could not be expected to disregard Bledsoe's testimony and, thus, the prejudicial effect of Bledsoe's testimony could not be overcome by the curative instruction. Therefore, as in *State v. Johnson*, a new trial should be granted.

III. THE PREJUDICIAL EFFECT OF THE SOLICITOR'S CLOSING ARGUMENT REQUIRES A NEW TRIAL.

A motion for a new trial may be granted based on the prejudicial effect of Solicitor's closing argument.

The Solicitor requested that the jury "go back in that jury room and do justice for everybody here in Edgefield County." (Tr. P. 142, Line 25 through P. 143, Line 2). The Defense counsel placed an objection on the record, to which the court sustained the objection and made the following statement to the jury: "Ladies and gentlemen, I'll charge you on the law. Your job is to determine whether or not the State has met its

burden of proving each of the elements of the crimes charged beyond a reasonable doubt".

A solicitor's closing argument must not appeal to the personal biases of the jurors. In addition, the argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). See also State v. Linder S.C. 278 S.E.2d 335.

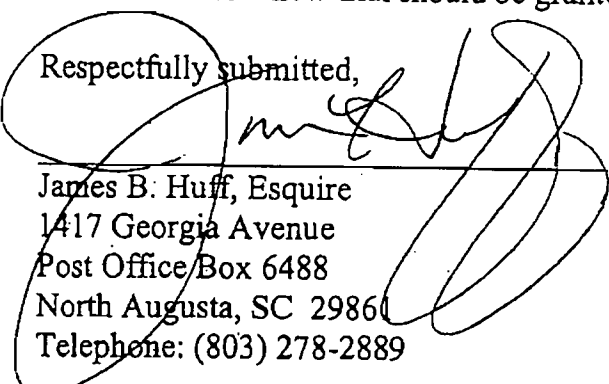
Our court has held, "A prosecutor may not urge jurors to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted for reasons wholly irrelevant to his own guilt or innocence. Jurors may be persuaded by such appeals to believe that, by convicting a defendant, they will assist in the solution of some pressing social problem. The amelioration of society's woes is far too heavy a burden for the individual criminal defendant to bear". State v. Liberte & Sims 336 SC 648, 521 S.E.2d 744 (Ct. App. 1999).

The courts statement to the jury did not cure the prejudicial effect of the Solicitor's statement. The court did not even instruct the jury to disregard the Solicitors prejudicial statement. Even if such had occurred, such a curative instruction would not have been sufficient in this case. Therefore, a new trial should be granted.

CONCLUSION

For the foregoing reasons, defendant's motion for a new trial should be granted.

Respectfully submitted,



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North Augusta, SC 29861
Telephone: (803) 278-2889

Attorney for Defendant

June 23, 2006
North Augusta, SC

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

STATE,

v.

Tommy Swinson Adams,

Defendant.

IN THE COURT OF GENERAL SESSIONS

2003-GS-19-416

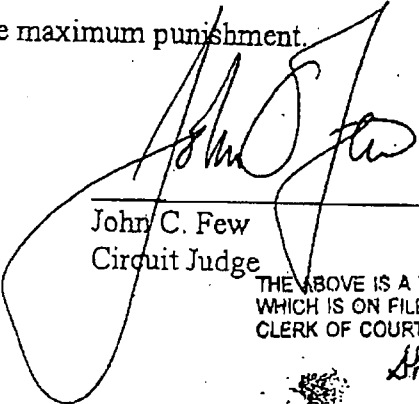
2003-GS-19-418

ORDER

These indictments are before the Court on the Defendant's Motion for a New Trial. Defendant was tried in October 2005 for Criminal Sexual Conduct with a Minor in the First Degree and Lewd Act on a Minor. He was convicted on both charges, and sentenced to the maximum penalty of 45 years in prison. Defendant moved at the time for a new trial, but at Defendant's request, he was given additional time in which to file a brief in support of the motion. The brief was delivered to the Court by letter dated June 23, 2006. I have reviewed the brief in detail, and I now deny the Motion for a New Trial. All of the issues discussed in the Motion were discussed in detail on the record at the trial. For the same reasons I denied the motions for directed verdict and mistrial during the trial, I now deny the Motion for a New Trial.

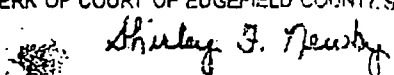
I have also interpreted the Motion as one for reconsideration of the sentence, and I deny that motion. The crimes committed by the Defendant are among the most heinous imaginable. Such vicious criminal behavior as this demands the maximum punishment.

IT IS SO ORDERED.


 John C. Few
 Circuit Judge

July 10, 2006

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
 WHICH IS ON FILE IN THE OFFICE OF THE
 CLERK OF COURT OF EDGEFIELD COUNTY, SC


 Shirley J. Newby

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TOMMY SWINSON ADAMS,

APPELLANT

AMENDED FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the trial judge erred in failing to direct a verdict of acquittal where the State failed to establish that appellant was the person to whom the child was referring when she testified against her stepfather?

STATEMENT OF THE CASE

Appellant Tommy Swinson Adams was indicted by the Edgefield County grand jury in August 2003 for criminal sexual conduct (CSC) with a minor in the first degree and lewd act on a minor. The CSC indictment alleged he engaged in sexual battery upon the child between September 1, 1999 and December 25, 2002, when she was less than eleven years old. ROA p. 189. The lewd act indictment alleged that he committed lewd acts on the child during the same time period in that fifteen times he placed his hand inside her pants and rubbed her vaginal area. ROA p. 187.

Adams proceeded to trial before the Honorable John C. Few on October 12, 2005. The jury found him guilty of both charges. Judge Few sentenced him to thirty years in prison for CSC and a consecutive sentence of fifteen years for the lewd act conviction. ROA p. 185. ROA p. 173. The trial court retained jurisdiction pending post-trial motions. ROA p. 166-167. On June 23, 2006, Adams moved for a new trial and included a memorandum in support of his motion. ROA p. 176. Judge Few denied the motion by written order dated July 10, 2006.

Adams filed a notice of appeal July 18, 2006 and this brief follows.

STATEMENT OF THE FACTS

A. W. was born on January 12, 1992. Appellant Adams started seeing her mother, Kathy, in 1995 and he moved with them in 1996 when they moved to Edgefield. She lived with her mother Kathy, brother, and two half-sisters (fathered by Adams) in two different houses in Edgefield County from 1996 to 2002. ROA pp. 37 -39.

According to the child, Kathy went to Canada in September 1999 and Adams came in her room and asked her if she wanted to watch TV with him. ROA p. 39, lines 22-25. Her sisters were asleep in her room. ROA p. 40, lines 3-5. She went in Adams' room and watched TV. He removed their clothing and then, she said, he was "grinding" his hips back and forth against her while he was smoking. ROA p. 40, lines 11-14. He then asked her to hold his penis and squeeze and rub it. ROA p. 40, lines 15-16. He put his fingers inside her vagina and moved them "back and forth." ROA p. 40, lines 17-18.

The child testified that on other occasions when her mother, Kathy was out of town, he repeated similar acts. One time he made her perform oral sex on him. ROA p. 41, lines 6-10. She testified he put his penis inside of her "three or four times." ROA p. 41, lines 21-23. If she told him she did not want to do the activities, he would spank her. He told her not to tell anyone about the events. ROA p. 41, lines 12-16. She was afraid to tell anyone. ROA p. 41, lines 18-20.

According to the child, on Christmas Eve of 2002, he tried to molest her and she resisted, not letting him take down her pants. ROA p. 43, lines 3-17.

In April 2003, she told Kathy "the things he had been doing to me and making me do." Kathy packed up the children and moved out immediately. ROA p. 45, lines 1-11.

In June 2003, the child sent Adams a Father's Day card in which she wrote "Happy Father's Day. I love you. Love, [the child]. P.S. I hope you like your present." ROA p. 61, lines 14-16. Around the same time period, she wrote "Dear Daddy, Happy Father's Day. I miss you. I bought you a present with my own money. Also I get to wear different earrings now but only gold or silver. I used some of Mama's earrings. I love you. Love, [the child]. Happy Father's Day. ROA p. 62, lines 1-4. She also sent him a Valentine's Day card in February 2003 in which she stated "[w]here ever you may go, I want you to know I love you." ROA p. 62, lines 11-12. She made another card to both her parents in which she expressed that she loved them a "trillion." ROA p. 62, lines 17-23.

In a November 26, 2001 entry in her school notebook, she wrote she was thankful for her family because they loved and cared for her. In February 2002, she wrote that her dad cares for her a lot and that is what love means. ROA p. 63, line 8 – p. 64, line 4.

A former Edgefield County Sheriff's investigator, Virginia Bledsoe, testified that she interviewed the child and Adams. He denied the allegations but said that he talked "frankly with his older children about sex" and he commented that the child had "big boobs for her age." ROA p. 67, lines 3-12. According to Bledsoe, he also said that he told the child, "[y]our cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." ROA p. 67, lines 13-17.

Adams' first wife, Sharon, to whom he was married for twenty-two years and had three children, testified that she spent a lot of time with the child and Adams and that they had a good relationship. ROA pp. 87-90. She testified that THE CHILD loved her stepfather and called him "daddy." ROA p. 90, lines 14-17. She testified that all the children tended to gravitate more toward Adams than his wife, Kathy. ROA p. 91, lines 16-

20. Sharon stated she had a very close relationship with the child and that the child could have come to her and talked to her about anything. ROA p. 92, line 22 – p. 93, line 3. She never observed the child being fearful or withdrawn around Adams. ROA p. 93, lines 18-20. the child never told her that she was being sexually abused. ROA p. 94, line 7-14.

Adams' adult daughter, Leslie Boyce, testified that her father was "very loving, affectionate, confidence building" when he raised her as well as the child ROA p. 98, lines 14-18. She said the child was open and not fearful around Adams. ROA p. 99, lines 14-24. the child, with whom she shared a close relationship, never told her about any abuse. ROA p. 100, lines 18-24. Adams' son-in-law Dennis Boyce testified that they had an open and warm relationship and that the child was never fearful or withdrawn around Adams. ROA p. 108, lines 2-18.

Adams' son, Tommy [REDACTED], Jr., testified that he slept with the child and two girls when Kathy went to Canada in 1999, for three of the five days she was gone. ROA p. 102, lines 18-23. She also never told him that she was being molested. ROA p. 103, lines 1-2

Adams' son, Cody, testified that he was the same age as the child and they had a very close relationship. ROA p. 104, lines 8-16. He said that the child had told him since his father's arrest that she missed and loved her daddy. ROA p. 106, lines 1-6.

There was no physical evidence introduced to connect Adams to the offenses and none of the child's doctors testified.

The jury deliberated for over two hours on October 13, 2005 and approximately an hour and a half on October 14, 2005, before finding Adams guilty. ROA pp. 152, 155-157; 162-163.

ARGUMENT

The trial judge erred in failing to direct a verdict of acquittal where the state failed to establish that appellant was the person to whom the victim was referring when she testified against her stepfather.

At trial, the state never had either of its two witnesses point appellant out and identify him as Tommy Adams or the child's stepfather. The child referred in her testimony to "Tommy Adams" and "stepdad" when she testified. ROA p. 38, lines 20-21; p. 39, lines 24-25. Investigator Bledsoe testified that she obtained warrants for "Mr. Tommy Adams" but never identified him in court as Tommy Adams. Therefore, since the state failed to establish appellant's identity, it failed to establish an essential element of the offense and appellant was entitled to a directed verdict.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648, (2006). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). When reviewing a denial of a directed verdict, this Court must view evidence and all reasonable inferences in the light most favorable to the state. Weston, 367 S.C. at 292, 625 S.E.2d at 648. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648.

The conviction should be reversed on appeal if the state failed to establish an essential element of the crime charged. State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006). In this case, the state failed to establish the essential element of appellant's identity.

In State v. Dyer, 314 S.C. 562, 431 S.E.2d 576 (1993), the witnesses for the state were the officer who stopped appellant, administered field sobriety tests, and arrested her, and the officer who administered the breathalyzer test. Dyer was not physically identified by either witness as the person who was apprehended and tested. She argued that the state failed to prove the identity of the perpetrator, an essential element of the offense. Noting that both officers "repeatedly referred to appellant by name as they described the incident" and "one officer also spoke of his observation of 'the defendant's' condition," the Supreme Court held that her identity was a question of the weight of the evidence. Id. at 563, 431 S.E.2d at 576-577.

Dyer is distinguishable because only one witness who could have identified appellant as the perpetrator testified at trial. Therefore, there was insufficient evidence to support his conviction.

This Court should adopt the reasoning of the dissenting judge in an Indiana state court decision. That judge believed the state should be required to have an in court identification of the defendant to prove its case. In Preston v. State, 287 N.E.2d 347 (Ind. 1972), the dissenting judge stated that "basic due process would require that when the evidence linking the appellant to the alleged criminal acts is an eye-witness identification the in-court identification should consist of pointing out which person in the court committed the acts." The dissent further noted,

[h]aving a supposed eye-witness testify to a name or refer to the title 'defendant' does not tend to prove this element but merely tends to establish that criminal acts were committed by a person who may or may not be the present defendant. Trials are designed to test the truth or falsity of allegations made against a person in custody not against a name in the abstract. A definite link must be established between the

person actually on trial and the crime. It is not sufficient to simply link the crime and a name.

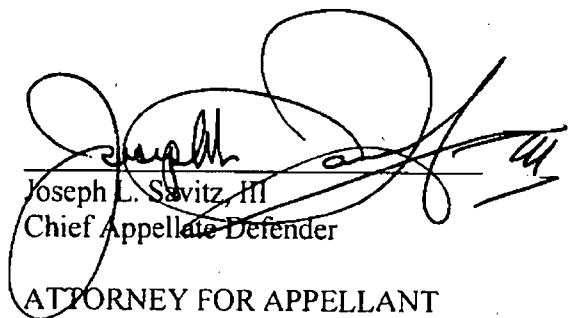
Id. at 358 (J. DeBruler dissenting).

Because the state failed to establish his identity as the perpetrator of the offenses, appellant was entitled to a directed verdict of acquittal.

CONCLUSION

Based on the foregoing, appellant is entitled to a directed verdict of acquittal on both charges.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of October, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TOMMY SWINSON ADAMS,

APPELLANT

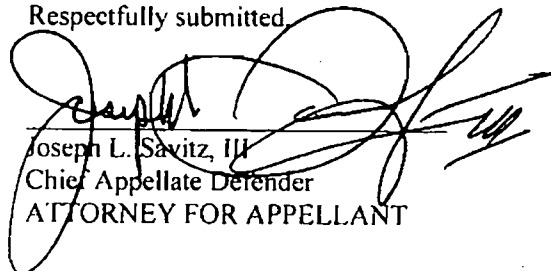
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tommy Swinson Adams states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge John C. Few, which was held on July 13, 2006, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Tommy Swinson Adams.

Respectfully submitted,



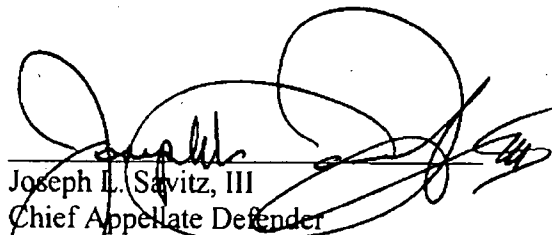
Joseph L. Savitz, III
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of October, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Amended Final Brief of Appellant 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."

October 8th, 2008



Joseph L. Savitz, III
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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

THE STATE OF SOUTH CAROLINA
 In The Court of Appeals

The State, Respondent,

v.

Tommy Swinson Adams, Appellant.

Appeal From Edgefield County
 John C. Few, Circuit Court Judge

Unpublished Opinion No. 2008-UP-560
 Submitted October 1, 2008 – Filed October 10, 2008

APPEAL DISMISSED

Appellate Defender Eleanor Duffy Cleary of
 Columbia, for Appellant.

Attorney General Henry Dargan McMaster,
 Chief Deputy Attorney General John W.
 McIntosh, Assistant Deputy Attorney General
 Salley W. Elliott, all of Columbia; and Donald
 V. Myers, of Lexington, for Respondent.

PER CURIAM: A jury found Tommy Swinson Adams guilty of first-degree criminal sexual conduct with a minor and committing a lewd act on a minor. Adams argues the trial judge erred in refusing to grant his motion for a directed verdict. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss Adams's appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

SHORT, THOMAS, and PIEPER, JJ., concur.

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

EDGEEFIELD COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas § 03 FEB 23 PM 1:23

County of Edgefield)

2009-CP-19-00064

Tommy S. Adams #311901)
Full name and prison number, if any, of applicant)

v.)

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina)
Name of Respondent)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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention Broad River Corr. Inst., Congaree 250, 4460
Broad River Road, Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Court of General Session,
Edgefield County, Edgefield, S.C. 29824
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 03-GS-19-416 - Lewd Act on Child Under Sixteen
 - (b) 03-GS-19-418 - CSC - With Minor 1st
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 03-GS-19-416 - 15 years on October 14, 2005 Confinement
 - (b) 03-GS-19-418 - 30 years on October 14, 2005 Confinement
 - (c) Sentences are consecutive for a total of 45 years

5. 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 _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. convictions and sentences affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Filed October 10, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UP Op. No. 2008-UP-560
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assit. of Counsel
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Counsel failed to conduct the necessary investigation and preparation for presenting defense or case,
 (b) Counsel failed to obtain or consult with an expert in the proof of sexual battery (sexual penetration)
 (c) See: Memorandum In Support Of PCR Application hereto affixed (attached).

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

N/A

ii.

iii.

iv.

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

i.

N/A

ii.

iii.

iv.

(c) the disposition thereof:

i.

N/A

ii.

iii.

iv.

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) First time challenged - not direct appealable
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? No
- (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 application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. James B. Huff, Esq. (S.C. Bar Association)
- ii. Eleanor Duffy Cleary, Div. of Appellate Defense, Columbia, SC
- iii. _____

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

- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Conviction and Sentence Vacated, or New Trial
Granted

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

No

STATE OF SOUTH CAROLINA)

COUNTY OF Edgefield)

VERIFICATION

I, Tommy S. Adams #311901, 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.

Tommy Adams #311901

Sworn to and subscribed before me

This 10 day of Feb, 2009

Carolyn B. King L.S.
Notary Public for South Carolina

My Commission Expires Oct 1, 2018

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

I, Tommy S. Adams #311901, 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 or 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 proceeding or give security therefor.

Tommy Adams #311901
Applicant

Sworn to and subscribed before me

This 9 day of Feb, 2009

Carolyn B. King L.S.
Notary Public for South Carolina

My Commission Expires: Oct 1, 2018

THE STATE OF SOUTH CAROLINA
In The Court Of Common Pleas

EDGEFIELD COUNTY
Court of General Sessions

John C. Few, Circuit Court Judge

Case No. _____

Tommy S. Adams #311901 Applicant,

v.

State of South Carolina Respondent.

MEMORANDUM IN SUPPORT OF
POST-CONVICTION RELIEF APPLICATION

Tommy Adams #311901
1st _____

Tommy S. Adams #311901
BRCI, ~~Congress~~ Unit
4460 Broad River Road
Columbia, SC 29210

ARGUMENTS PRESENTED

1. TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE IN FAILING TO EMPLOY PSYCHOLOGIST TO INTRODUCE BEHAVIORAL EVIDENCE TO EXPLAIN TYPICAL CHARACTERISTICS OF ASSAULT VICTIM AS OPPOSED TO VICTIM IN THE PRESENT CASE.
2. INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO CALL PHYSICIAN WHO PERFORMED INITIAL EXAM ON ALLEGED VICTIM AND REPORTED NO SIGNS OF ABUSE FOUND.
3. TRIAL COUNSEL RENDERED DEFICIENT PERFORMANCE IN FAILING TO CALL OR INTERVIEW TOMMY S. [REDACTED] JR. AND CODY L. [REDACTED] AS WITNESS TO REBUT INVESTIGATOR BLEDSOE'S TESTIMONY THAT DEFENDANT MADE INFLAMMATORY STATEMENT.

STATEMENT OF THE CASE

On June 13, 2003, Tommy Adams (herein after Defendant-Applicant or Applicant) was charged with the statutory offenses of Criminal Sexual Conduct (CSC) with a Minor in the first degree (2003-GS-19-418) and for lewd act on a child under sixteen (16) (2003-GS-19-416) in Edgefield, South Carolina. During the course of the prosecution, applicant was represented by Mr. James B. Huff, Esq., and the State was represented by Solicitor Ervin Maye, Esq.. Trial for the above-stated offenses took place in the Edgefield County Courthouse before the Honorable Judge John C. Few, and a jury, on October 12, 2005, and concluded on the same day. The jury returned a verdict of guilty on both counts charged against applicant and the trial judge imposed a sentence of thirty (30) years imprisonment for the charge of CSC with a minor and fifteen (15) years imprisonment for the charge of lewd act on a minor under sixteen with both sentences to be run consecutively to the other. A timely Notice of Appeal was filed on applicants behalf on July 31, 2006, in which applicant was represented by counsel Eleanor Duffy Cleary, Esq., of the South Carolina Office of Indigent Defense. Applicants direct appeal was denied on the grounds that the evidence was sufficient to support the convictions and the sentence imposed was within the discretion of the trial judge.

During the course of the trial, applicant maintains that counsel provided him with deficient assistance that included, but is not limited to, counsels failure to call two key witnesses that would have provided mitigating and exculpatory evidence favorable to the applicant as well as

his failing to employ a psychologist to explain the common characteristics of sexually assaulted victims as a sharp contrast was evident in the behavior of that of the alleged victim. These errors, either single or cumulatively, prejudiced the applicant in that he was denied the "effective assistance" of counsel guaranteed to him and, thus, in light of the lack of and circumstantial evidence presented, can not be said to be harmless.

Applicants application for post-conviction relief and memorandum in support of applicants application for post-conviction relief now follow:

1. TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE IN FAILING TO EMPLOY PSYCHOLOGIST TO INTRODUCE BEHAVIORAL EVIDENCE TO EXPLAIN TYPICAL CHARACTERISTICS OF ASSAULT VICTIM AS OPPOSED TO VICTIM IN THE PRESENT CASE.

Applicant first contends that counsel provided him with deficient performance in failing to employ, or seek funds to employ, the expertise of a psychologist to introduce behavioral evidence to explain the typical characteristics of a sexually assaulted victim as opposed to the victim in the present case.

Expert testimony concerning common characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. State v. Weaverling, 337 S.C. 365, 523 S.E.2d 787 (SC App 1999), rehearing denied.

Additionally, the court in Weaverling noted that, "when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors-like reactions of child victims of sexual abuse-expert testimony on general behavioral characteristics of such victims should be admitted". Id. at 794. Here, the alleged victim exhibited none of the common characteristics of a sexually abused child. The victim, along with an investigator from the Edgefield County Sheriff's

Office, were the only two state witnesses to testify and no physical signs of sexual abuse were introduced during the course of the proceedings. Furthermore, the victim's credibility was a key factor in the prosecution of the applicant to which a substantial part of was the behavior of the victim prior to and after the allegations were alleged to have begun. Applicant maintains that the lack of common behavioral characteristics in the victim should have been used to reinforce the defense's position that no assault occurred.

Some researchers have concluded that sexual abuse/assault is associated with the most adverse psychological effects. Sue Boney-McCoy & David Finkelhor, Psychosocial Sequelae of Violent Victimization in a National Youth Sample, 63(5) J. Consulting & Clinical Psychol. 726 (1995). Moreover, while the psychological science encompassing sexually abused children (Battered Child Syndrome(BCS)) is subject to endless variables and must be taken into consideration with numerous factors, an extensive review of research in the area of sexual abuse and its impact on children suggest that "the variables most consistently associated with more adverse impact are longer duration of abuse, force or violence accompanying the abuse, and father or father-figure as the perpetrator." Penelope K. Trickett & Frank W. Putman, Developmental Consequences of Child Sexual Abuse, in Violence Against Children In The Family And The Community 49 (1998). The two most common diagnosis associated with sexual abuse are Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD). Faigman, Kaye, Saks, & Sanders, Modern Scientific Evidence, Volume 2, pages 93-97 (2002). Both diagnosis contain symptoms unattributable to the victim in the present case: hypervigilance, learned

helplessness, distressing recollections (images, thoughts, perceptions), hallucinations, dissociative flashbacks, hyperarousal, making efforts to avoid activities, places, or people who arouse recollections of the trauma, diminished interest or participation in significant activities, feeling detached or estranged from others, irritability or outburst of anger, exaggerated startled responses, etc. Id. Volume 1, pages 159-162. These common characteristics of sexually assaulted victims are almost a direct opposite of the behavioral characteristics displayed prior to and after the date the sexual assaults were alleged to have begun.

While applicant does not contend that counsel should have attempted to become an expert in the field of the psychological effects of sexually abused children himself, it is the applicants assertion that through the testimony presented and a common sense approach to the question of credibility that a psychologist should have been employed to relate to the jury the sharp contrast between a typical sexual abuse victims behavior and that of the victim in the present case in an effort to strengthened the defense's position that no assault took place. An overview of the indicators that were apparent in the transcript and show and contradict a typical sexual assault victims behavior, supplemental to applicants maintained innocence and the numerous character witnesses presented, are as follows:

- A. T.T. Page 61, Ln. 1: On cross-examination, the alleged victim admits to sending fathers day cards to the defendant and additionally purchasing him a present. The card was written by the alleged victim and stated "I love you" on the interior.
- B. T.T. Page 62, Ln. 5: Alleged victim admits to sending defendant Valentines day card that stated "wherever you may go, I want you to know that I love you."
- C. T.T. Page 63, Ln. 22: Notebook from school introduced

into evidence that showed from the same time the alleged victim made the allegations against applicant she wrote in her notebook " What I'm thankful for. I'm thankful for my life and my family. I'm thankful for my family because they love and care for me. . . . "

D. I.T. Page 63, Ln. 22: Notebook from school additionally quotes the victim saying " I think real love is caring. When a person cares for you they usually love you. My mama cares for me alot. So does my dad. . . . "

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court set out the parameters used to determine whether counsel was ineffective. A defendant making a claim of ineffective assistance of counsel must show both: 1) that counsel failed to render reasonable effective assistance under prevailing professional norms, and 2) that he was prejudiced by his counsel's ineffective performance. Strickland, Id.; Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1994); see also Evans v. State, 611 S.E.2d 510, 363 S.C. 495 (2005) (To prove that counsel was ineffective, the applicant must show that counsel's performance was deficient and that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different, a "reasonable probability" is a probability sufficient to undermine the confidence in the outcome of the trial).

In Fraiser v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), the South Carolina Supreme Court dealt with a claim that counsel was ineffective for failing to call an expert to examine DNA evidence presented at trial. The Court held that where the record indicated that counsel vigorously cross-examined the state's experts, counsel's failure to call an expert will not necessarily raise to the level of deficiency. In the present case, no psychological testimony to explain the behavior of the allege victim

was presented by the state as any such testimony would have more than likely been favorable to the applicant. As such, counsel knew or should have known by the testimony presented by both the state and the defense and through reasonable investigation, that the behaviors and mannerisms of the alleged victim were inconsistent with that of a sexually assaulted child, that symptoms commonly associated with MDD or PTSD were absent, and that a psychologist would have been better equipped to explain these inconsistencies as indicators of falsehood as opposed to simply allowing the question to remain "open".

In light of the absence of a strong presence of guilt and in that there is no requirement the sexual assault victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony, Weaverling, supra at 794, counsel's failure to call an expert to testify to such can not be deemed "reasonable trial strategy" nor can such lack of performance be deemed harmless or unprejudicial in a case where credibility was a key factor in the prosecution of applicant.

2. INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO CALL PHYSICIAN WHO PERFORMED INITIAL EXAM ON ALLEGED VICTIM AND REPORTED NO SIGNS OF ABUSE FOUND.

In the present case, the alleged victim encountered a total number of three physicians from the time of her initial allegation that a sexual assault occurred to the trial of applicant. The physician who ultimately treated the alleged victim and performed an examination to determine whether or not signs of sexual assault were present was the physician

last seen by the alleged victim, Dr. Dwight R. Reynolds (Dr. Reynolds), and referred to by the former physician. Applicant contends that trial counsel's failure to call Dr. Reynolds as an expert witness at applicant's trial amounted to ineffective assistance where Dr. Reynolds ultimately concluded and documented that no signs of sexual assault were apparent.

Directly on point, Underwood v. State, 425 S.E.2d 20 (S.C. 1992), dealt with a similar situation and a similar set of facts. Underwood, like applicant, was charged with CSC with a minor and for lewd act upon a minor. The alleged victim of abuse in Underwood was examined, similar to the alleged victim in the present case, by more than one physician. The first physician to examine the alleged victim reported no findings of sexual abuse while the second physician testified at trial that physical evidence of sexual abuse had been found. Underwood later claimed that his trial counsel had rendered ineffective assistance in failing to call the first physician that examine the victim in order to show that no signs of abuse had been present. The court in Underwood concluded that since trial counsel extensively questioned the second physician who testified at trial about the inconsistencies between the two findings on physical evidence and because counsel articulated a valid reason for not calling the first physician, such conduct was not ineffective. Id., at 22. See also Fraiser v. State, *supra*. (Counsel's failure to call an expert witness at trial to rebut the State's expert testimony will not necessarily raise to the level of deficient where he undertakes a vigorous cross-examination of the State's witness).

Here, the alleged victim was referred to Dr. Reynolds who failed to find any signs of sexual abuse. Unlike Underwood, no other physician

countered Dr. Reynolds conclusion and no physician or medical expert of any kind testified for either the defense or prosecution during the course of the trial. Thus, no vigorous cross-examination was possible and no valid reason for not producing Dr. Reynolds to testify that no signs of sexual abuse were found existed where the testimony of the alleged victim was the only evidence presented and credibility was a substantial factor in both the defense of the applicant and the case of the prosecution. Such testimony would have been crucial, both as substantial evidence that sexual battery did not occur, and as evidence to impeach victim's credibility. See also Pauling v. State, 503 S.E.2d 468, 331 S.C. 606 (S.C. 1998) (Where only evidence of sexual battery was victim's testimony and no corroborating physical evidence of penetration or forensic evidence of sexual assault were present, counsel provided ineffective assistance in failing to call nurse whose notes indicated that no assault occurred.)

Counsel has a duty to make reasonable investigations or to make reasonable investigations unnecessary, Strickland v. Washington, supra, and an additional obligation to investigate possible methods for impeaching prosecution witnesses. Tucker v. Ozmint, 350 F.3d 433 (S.C. Ct.A. 2004). Failure to investigate any and all medical reports in a case where the victim has alleged sexual assault and the defendant has adamantly denied such, where no physician or medical expert of any kind has been presented by the prosecution, and where credibility is a key issue can not be said to rise to the level of attorneys practicing under prevailing professional norms. Dr. Reynolds testimony, and the documents associated with his conclusions (see Exhibit A), were vital to the position of the defense that no sexual assault occurred and failure to

produce either was prejudicial to the applicant in receiving a fair trial. Had applicant's trial been void of this error, the result of the proceedings would have been different. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1994).

3. TRIAL COUNSEL RENDERED DEFICIENT PERFORMANCE IN FAILING TO CALL OR INTERVIEW TOMMY S. [REDACTED] JR. AND CODY L. [REDACTED] AS WITNESS TO REBUT INVESTIGATOR BLEDSOE'S TESTIMONY THAT DEFENDANT MADE INFLAMMATORY STATEMENT.

Applicant next alleges ineffective assistance of counsel in regards to counsel failing to call either Tommy [REDACTED] Jr. or Cody Lee [REDACTED] as a witness to rebut an investigators claim that applicant made inappropriate and inflammatory remarks concerning the subject matter for which applicant was charged.

Virginia Bledsoe, an investigator with the Edgefield County Sheriff's Office, was called to testify at applicant's trial by the attorneys for the State. Bledsoe testified that she was called upon to investigate the present allegation of sexual abuse and that during the course of her investigation she interviewed both the applicant and the alleged victim regarding the incident. During the interview between the applicant and Investigator Bledsoe, Investigator Bledsoe testified that applicant made strange comments to her when they were engaged in a conversation about the alleged incident. Specifically, Bledsoe testified that the applicant had informed her that he had previously told his daughter, the

alleged victim in this case, that "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me ". T.T. Page 67, Ln. 3. Bledsoe was unable to recover any notes from this interview and could not remember the time or date for this statement. Applicant maintains that such a statement was never made. As both Tommy Jr. and Cody were present at the initial conversation regarding the alleged comment and could have testified to the exact nature of the comment made, and contrary to the testimony of Investigator Bledsoe, failure to call either as a recumbent witness fell below an objective standard of reasonableness.

It is well acknowledged in South Carolina that a post-conviction relief applicant must "produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witnesses failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (S.C. 1998). An applicant's "mere speculation what the witness' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Applicant maintains that by either submitted documentation or by testimony presented at his scheduled post-conviction relief hearing that testimony will be provided to support his position that the comments alleged to have been spoken by applicant in the presence of Investigator Bledsoe and that such testimony will be contrary to the recollection of Investigator Bledsoe and favorable to applicant. As such, failure to call Tommy Jr. or Cody as a witness at trial fell below an objective standard of reasonableness and prejudice ensued. Strickland v. Washington, *supra*; Judge v. State, *supra*.

CONCLUSION

For the above-stated violations of applicants statutorily, state provided, and constitutional guaranteed rights, as well as in the interest of justice, applicant respectfully request to be granted relief in the form of vacation of his conviction and sentence. Basis for the requested relief can be found in, but is not limited to, the grounds set forth in this memorandum, any written or verbal amendments prior to or at applicants hearing in this matter, and that in such a conviction is inconsistent with substantial justice and can not be considered harmless or unprejudicial when viewed in any light

Tommy Swinson Adams #311901

Tommy Swinson Adams #311901
Broad River Cl, Congaree Unit
4460 Broad River Road
Columbia, South Carolina 29210

Date Feb 10th 2009

Columbia, South Carolina

State of South Carolina)
)
 County of Edgefield) In The Court of Common Pleas
)
) Case No.: _____

Tommy S. Adams, #311901,

Applicant,

vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, the Applicant in the above captioned matter, do hereby under oath and penalty of perjury certify that I have served copies of the same documents upon the below listed parties.

1. Mr. Henry D. McMahan	2. Clerk of Court, Edgefield County
Attorney General	P.O. Box 34
P.O. Box 11549	Edgefield, S.C. 29824

Sworn to before me

this 10 day of February, 2009.

Carolyn G. King

Notary Public For South Carolina:

My Commission Expires: Oct 1, 2018

Respectfully Submitted,

Tommy S. Adams #311901

Tommy S. Adams, #311901

B.R.C.I., Congaree 250

4460 Broad River Road

Columbia, S.C. 29210

Applicant,

vs.

Respondent.

MOTION TO ADDRESS ALL ISSUES

Now comes the Applicant, Tommy S. Adams, #311901, by and through his Court appointed attorney, who ask this Honorable Court to require the attorneys involved in this Post-Conviction Relief Action and any Amendment thereof, to be meticulous in the preparation of any "Order" prepared in this matter.

Specifically, the Applicant request that each and every issue in the Post-Conviction Relief Action and any Amendment thereof, at the hearing, be addressed in the "Order" of the Court at the conclusion of the Evidentiary Hearing in this matter.

The applicant request this Motion pursuant to S.C. Code, § 17-27-80. Citing, Pruitt v. State, 423 S.E.2d 127 (1992); Bryan v. State, 493 S.E.2d 500 (1997).

Wherefore, Applicant request the Motion be granted.

Sworn to before me

this 10 day of February, 2009.

Carolyn King

Notary Public For South Carolina:

My Commission Expires: Oct. 1, 2018

Respectfully Submitted,

Tommy Adams # 311901

Tommy S. Adams, #311901

B.R.C.I., Congaree 250

4460 Broad River Road

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 11TH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	Case No.: 2009-CP-19-0064
Tommy S. Adams, #311901,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed February 23, 2009, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted at the September 2003, term of the Edgefield County Grand Jury for Lewd Act on a Child Under Sixteen (2003-GS-19-0416), and Criminal Sexual Conduct with a Minor—1st Degree (2003-GS-19-0418). James B. Huff, Esquire, represented him. On October 12-14, 2005, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Few sentenced him to confinement for fifteen (15) years for the Lewd Act on a Child Under Sixteen and thirty (30) years for Criminal Sexual Conduct with a Minor—1st Degree. The sentences were ordered to run consecutively.

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. Adams, Op. No. 2006-UP-560 (S.C. Ct. App. filed October 10, 2008). The Remittitur was sent on October 18, 2008.

Attached herewith and incorporated herein by reference are the records of the Edgefield County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel provided deficient performance in failing to employ psychologist to introduce behavioral evidence to explain typical characteristics of Assault victim as opposed to victim in the present case."
 - b. "Ineffective Assistance of Counsel in Failing to Call Physician who performed initial exam on alleged victim and reported no signs of abuse found."
 - c. "Trial counsel rendered deficient performance in failing to call or interview Tommy S. [REDACTED], Jr. and Cody L. [REDACTED] as witnesses to rebut Investigator Bledsoe's testimony that Defendant made inflammatory statement."

III.

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 at 117, 386 S.E.2d 624 at 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.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute.

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

IV.

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

V.

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

VII.

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

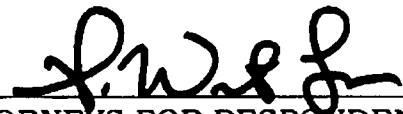
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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July 7, 2009.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	09-CP-19-00064
	)	
TOMMY S. ADAMS, #311901,	)	
Applicant,	)	
	)	
vs.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

[Note: This application follows SCRCF Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCF.]

1. Applicant is detained at the Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina, 29210.
2. The sentence was imposed by the Edgefield County Court of General Sessions.
3. Applicant was indicted on August 20, 2003, and convicted on October 14, 2005, as follows:

03-GS-19-416 Lewd Act on a Child Under Sixteen
03-GS-19-418 Criminal Sexual Conduct with a Minor – 1st Degree
4. On October 14, 2005, Applicant was sentenced consecutively to the maximum terms of 15 years for lewd acts and 30 years for CSC Minor.
5. A finding of guilty was made after a plea of not guilty.
6. The Applicant appealed from the judgment of conviction and sentence.
7. The appeal was filed in the South Carolina Court of Appeals, which affirmed on October 10, 2008 in an Unpublished Opinion (2008-UP-560).
8. Not applicable.

9 & 10. **GROUND FOR RELIEF WITH SUPPORTING FACTS**

9(a) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and*

Fourteenth Amendments to the United States Constitution and South Carolina law because counsel failed to adequately challenge the state's case and to present evidence in Applicant's defense.

10(a) Counsel's conduct was both unreasonable and prejudicial, as set forth below. See *Strickland v. Washington*, 466 U.S. 668 (1984).

i. Counsel provided ineffective assistance in failing to object to Detective Bledsoe's testimony that, while Applicant denied the allegations, he made "odd statements" when he "mentioned something about he talked frankly with his children—his older children—about sex." Specifically, Bledsoe testified Applicant told his step-daughter, the alleged victim in the case: "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." Record on Appeal (ROA) at 67.¹ These general comments were inadmissible because they were neither relevant nor material to the crimes charged, see *State v. Nelson*, 331 S.C. 1, 15-16, 501 S.E.2d 716, 723-724 (1998), nor statements that could be construed as conveying an admission of guilt, see *State v. Tufts*, 355 S.C. 493, 499, 585 S.E.2d 523, 525 (Ct. App. 2004). Nonetheless, without objection from the defense, these statements were admitted and the State relied on them heavily in closing arguments as "vile" statements indicative of guilt:

What did he tell Virginia Bledsoe? What a vile thing to say. He's just been talked to by this investigator about allegations of sexual misconduct that he's alleged on this child. And what does he tell the investigator from the Sheriff's Office? "Your cooter belongs to your daddy," because he's using this child as his sexual plaything.

You can bet it belonged to him. He considered it his personal property, because he was using it for his own sexual benefit and lust. Yes, it belonged to him, and he showed that. It didn't belong to anybody else in the world. "If anybody else wants to come and touch you or do anything else, they've got to talk to me, because the cooter belongs to me."

He's even telling this investigator that. What an inappropriate thing, and it

¹He also allegedly said his youngest daughter had "big boobs for her age." ROA at 67.

shows what's in his heart, malice.

ROA 134-135. *See also* ROA 136 ("It's belongs to him").

She could sure tell you exactly when it started, when he started dragging her back there in that bedroom, and molesting her, and using her for his own lust and satisfaction, because it belongs to him.

He couldn't even resist throwing that in in front of this investigator after she's telling him what he's been accused of. That's his attitude. That's his true colors, and it came out right then. He couldn't even cover it up when he was talking to the police, because that's what he believes.

ROA 138. This testimony and argument was improper and prejudicial, especially in light of the complete lack of evidence corroborating the alleged victim's testimony of abuse.

ii. Alternatively, even assuming the general statements addressed above were admissible, counsel was ineffective in failing to investigate and to present rebuttal testimony from Applicant's oldest sons establishing that these comments were made only in the non-criminal, parental context of educating Applicant's children about sexual matters.

iii. Counsel was ineffective in cross-examining Detective Bledsoe in a fashion that elicited her testimony that she believed the alleged victim in this case. *See State v. White*, 361 S.C. 407, 415-416, 605 S.E.2d 540, 544 (2004) ("White argues that Badger [the state expert] improperly testified she believed the victim. We conclude White opened the door to this testimony by cross-examining Badger as to whether she had cases in which she did not believe the alleged victim"). Specifically, counsel asked: "And you assume that what people tell you when they—in one of these type of child sex abuse cases, you're assuming that what they're telling you is true?" The detective responded: "Yes, sir. And I believe what Victim has told me on this case." ROA 70.

Although the trial court subsequently instructed the jury to disregard this testimony,² in this context where there is no valid claim of overwhelming evidence of guilt, the prejudice from this improper vouching for the alleged victim's credibility and bolstering of her testimony was prejudicial and requires reversal, as asserted in trial counsel's own motion for new trial. See *State v. Smith*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010); *Ingle v. State*, 348 S.C. 467, 475, 560 S.E.2d 401, 405 (2002); *State v. Barrett*, 299 S.C. 485, 487, 386 S.E.2d 242, 243 (1989).

iv. Counsel was ineffective in failing to consult with and present the testimony of a forensic psychiatrist or other mental health expert concerning the common behaviors of victims of sexual abuse and to contrast those behaviors with the behavior of the alleged victim in this case, especially in light of her mother's report to forensic interviewers of "no changes" in behavior. See, e.g., *State v. Weaverling*, 337 S.C. 460, 473 523 S.E.2d 787, 794 (1999).

v. Counsel was ineffective in failing to consult with and present the testimony of the physician who examined the alleged victim at the request of the state and found no physical evidence of abuse or, alternatively, in failing to consult and present the testimony of a forensic pediatrician about the significance of the lack of physical findings in light of the alleged victim's allegations.

vi. Counsel was ineffective in advising Applicant prior to trial and during trial that he should not testify. At the close of the State's case, when asked if the defense would "put up a case," due to counsel's failure to previously prepare a defense, counsel requested a recess "to

²The Court instructed: "I am going to instruct you to disregard anything that you may have heard this witness say regarding whether or not she believes or does not believe any other witness. That is a matter for you. It is not for a witness to tell you who they believe. It is for you to decide who you believe." ROA 78.

discuss that with my client. I believe that we will.” ROA 84. After a short break, counsel then requested a lunch recess in order to do “legal research based upon what’s been testified to at this point.” ROA 84. Counsel wanted to “do some research to make a decision whether or not to place a defense before the Court in this matter” and indicated that if a defense was presented it would last no more than an hour to an hour and a half. ROA 85. Counsel presented brief, general testimony from five of Applicant’s family members that he is a good father and had a good relationship to the alleged victim and his other children. Following this testimony, counsel again sought “two minutes to determine whether or not—if there’s any additional witnesses I’m going to have.” ROA 110. Counsel then informed the court that the “defense is going to rest at this time” and “[h]e agrees with that.” ROA 110-111. While counsel informed the Court that this had been discussed with Applicant also “in days before this,” ROA 111, Applicant was asked, on the question of timing, only if he “had all the time” he needed to make a decision, ROA 112.

vii. Despite counsel’s advice to Applicant not to testify, counsel provided ineffective assistance of counsel in essentially promising the jury in opening statements that Applicant would testify and then high-lighting his failure to do so in closing arguments. Specifically, in opening statements, counsel asserted:

And, I am confident that you’re going to hear two totally different stories, and you’re going to have to sit in judgment. And there’s not going to be any DNA. There’s not going to be any videotapes. There’s not going to be any of that. There’s going to be two people saying two different things.

ROA 35. Even though Applicant, consistent with counsel’s advice, did not testify, counsel highlighted this failure in closing argument by asserting that “[t]his is what we sometimes call a he said-she said type of case” without corroborating DNA or medical evidence. Applicant was

prejudiced because the jury could only infer from counsel's failure to deliver the Applicant's story through the Applicant's testimony that the Applicant had something to hide or that counsel did not believe he would be a credible witness.

viii. Counsel was ineffective in failing to object and in failing to request that the jury foreperson and bailiffs be questioned or the jurors returned to court for proper instructions following improper communications between the jury foreperson and a bailiff during deliberations. Specifically, the following exchange occurred on the record during deliberations:

THE COURT: Ma'am, come up front, please. You're Ms. Watson?

MS. WATSON: Yes, sir.

THE COURT: All right, raise your right hand.

(The witness was sworn.)

THE COURT: Okay. Now, something happened back there with the jury asking you a question. Is that what happened?

MS. WATSON: Well, I was standing with the other Bailiff back there, and they came out and asked if it had to be a hundred percent, and she told them yes.

THE COURT: Okay. The other Bailiff, Ms. Scurry, told them yes?

MS. WATSON: We told them yes, uh-huh.

THE COURT: All right. And that was all that was said?

MS. WATSON: That's all.

THE COURT: Okay. And I'll hear from counsel. Anything you want to say?

ROA 153-154. Defense counsel responded only:

Judge, I think Ms. Scurry said what the law is. Of course, it more properly should have been Your Honor. But I'm sure nothing was done intentionally. But

we've got no position for that.

ROA 154. No corrective action was taken other than to instruct the bailiffs "that if the jury asks any more questions – and this is the procedure that should always be followed—to tell the foreperson to write the question down and then, without looking at the question, bring it directly to the presiding judge." ROA 154-155. Counsel's conduct was deficient and Applicant was prejudiced because it is unclear what the jury was asking. Thus, the bailiff's communication that "it had to be a hundred percent" could have meant that the jury had to be unanimous, that the jury had to be a hundred percent confident of guilt (as opposed to finding beyond a reasonable doubt), that the jury had to be a hundred percent convinced of innocence (as opposed to failing to find proof beyond a reasonable doubt), or any number of things that remain unknowable because neither the foreperson nor the bailiff was questioned and no attempt was made for the court to inquire and give appropriate follow-up instructions. *See State v. Cameron*, 311 S.C. 204, 428 S.E.2d 10 (1993).

Each of these errors was individually prejudicial and requires reversal. Alternatively, the cumulative impact of these errors requires reversal. *See Strickland, supra*.

11 & 12. Applicant appealed directly to the South Carolina Court of Appeals. Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court from these convictions and sentences.

13. None of the grounds set forth in (9) has been previously presented to this or any other Court, State or Federal.

14. Not Applicable.

15. These grounds rely on additional facts outside the record which was before the previous courts.

16. Applicant was previously represented by counsel.
17. Applicant was represented at trial by James Huff, P.O. Box 6488, N. Augusta, SC 29841 and on direct appeal by Eleanor Duffy Cleary, Division of Appellate Defense, S.C. Commission on Indigent Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.
18. Applicant seeks the vacation of his convictions and sentences.
19. Not applicable.

Respectfully submitted,



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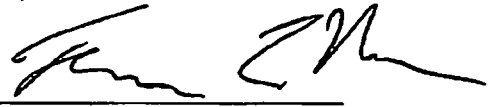
October 7, 2010.

CERTIFICATE OF SERVICE

I do hereby certify that I have served Applicant's Amended Application for Post-Conviction Relief, in the above-referenced case, on counsel for the Respondent by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

A. West Lee
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

This the 17th day of October, 2010, in Columbia, South Carolina.


TERESA L. NORRIS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	09-CP-19-00064
	)	
TOMMY S. ADAMS, #311901,	)	
Applicant,	)	
	)	
vs.	)	SECOND AMENDED APPLICATION
	)	FOR POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
<u>Respondent.</u>	)	

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Applicant is detained at the Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina, 29210.
2. The sentence was imposed by the Edgefield County Court of General Sessions.
3. There are no co-defendants.
4. Applicant was indicted on August 20, 2003, and convicted on October 14, 2005, as follows:
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10 & 11. GROUND S FOR RELIEF WITH SUPPORTING FACTS

10(a) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law because, during trial, counsel failed to adequately challenge the state's case and to present evidence in Applicant's defense.*

11(a) Counsel's conduct was both unreasonable and prejudicial, as set forth below. See *Strickland v. Washington*, 466 U.S. 668 (1984).

i. Counsel provided ineffective assistance in failing to object to Detective Bledsoe's testimony that, while Applicant denied the allegations, he made "odd statements" when he "mentioned something about he talked frankly with his children—his older children—about sex." Specifically, Bledsoe testified Applicant told his step-daughter, the alleged victim in the case: "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." Record on Appeal (ROA) at 67.¹ These general comments were inadmissible because they were neither relevant nor material to the crimes charged, see *State v. Nelson*, 331 S.C. 1, 15-16, 501 S.E.2d 716, 723-724 (1998), nor statements that could be construed as conveying an admission of guilt, see *State v. Tufts*, 355 S.C. 493, 499, 585 S.E.2d 523, 525 (Ct. App. 2004). Nonetheless, without objection from the defense, these statements were admitted and the State relied on them heavily in closing arguments as "vile" statements indicative of guilt:

What did he tell Virginia Bledsoe? What a vile thing to say. He's just been talked to by this investigator about allegations of sexual misconduct that he's alleged on this child. And what does he tell the investigator from the Sheriff's Office? "Your cooter belongs to your daddy," because he's using this child as his sexual plaything.

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He's even telling this investigator that. What an inappropriate thing, and it shows what's in his heart, malice.

ROA 134-135. *See also* ROA 136 ("It belongs to him").

She could sure tell you exactly when it started, when he started dragging her back there in that bedroom, and molesting her, and using her for his own lust and satisfaction, because it belongs to him.

He couldn't even resist throwing that in in front of this investigator after she's telling him what he's been accused of. That's his attitude. That's his true colors, and it came out right then. He couldn't even cover it up when he was talking to the police, because that's what he believes.

ROA 138. This testimony and argument was improper and prejudicial, especially in light of the complete lack of evidence corroborating the alleged victim's testimony of abuse.

ii. Alternatively, even assuming the general statements addressed above were admissible, counsel was ineffective in failing to investigate and to present testimony from Applicant's sons, Tommy [REDACTED], Jr., and Cody [REDACTED], establishing that these comments were made only in the non-criminal, parental context of educating Applicant's children about sexual matters.

iii. Counsel was ineffective in cross-examining Detective Bledsoe in a fashion that elicited her testimony that she believed the alleged victim in this case. *See State v. White*, 361 S.C. 407, 415-416, 605 S.E.2d 540, 544 (2004) ("White argues that Badger [the state expert] improperly testified she believed the victim. We conclude White opened the door to this testimony by cross-examining Badger as to whether she had cases in which she did not believe the alleged victim"). Specifically, counsel asked: "And you assume that what people tell you when they—in one

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iv. Counsel was ineffective in failing to consult with and present the testimony of a forensic psychiatrist or other mental health expert concerning the common behaviors of victims of sexual abuse and to contrast those behaviors with the behavior of the alleged victim in this case, especially in light of her mother's report to forensic interviewers of "no changes" in behavior. See, e.g., *State v. Weaverling*, 337 S.C. 460, 473 523 S.E.2d 787, 794 (1999).

v. Counsel was ineffective in advising Applicant prior to trial and during trial that he should not testify. At the close of the State's case, when asked if the defense would "put up a case," due to counsel's failure to previously prepare a defense, counsel requested a recess "to discuss that with my client. I believe that we will." ROA 84. After a short break, counsel then requested a lunch recess in order to do "legal research based upon what's been testified to at this point." ROA 84. Counsel wanted to "do some research to make a decision whether or not to place

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a defense before the Court in this matter" and indicated that if a defense was presented it would last no more than an hour to an hour and a half. ROA 85. Counsel presented brief, general testimony from five of Applicant's family members that he is a good father and had a good relationship to the alleged victim and his other children. Following this testimony, counsel again sought "two minutes to determine whether or not-if there's any additional witnesses I'm going to have." ROA 110. Counsel then informed the court that the "defense is going to rest at this time" and "[h]e agrees with that." ROA 110-111. While counsel informed the Court that this had been discussed with Applicant also "in days before this," ROA 111, Applicant was asked, on the question of timing, only if he "had all the time" he needed to make a decision, ROA 112.

vi. Despite counsel's advice to Applicant not to testify, counsel provided ineffective assistance of counsel in essentially promising the jury in opening statements that Applicant would testify and then high-lighting his failure to do so in closing arguments. Specifically, in opening statements, counsel asserted:

And, I am confident that you're going to hear two totally different stories, and you're going to have to sit in judgment. And there's not going to be any DNA. There's not going to be any videotapes. There's not going to be any of that. There's going to be two people saying two different things.

ROA 35. Even though Applicant, consistent with counsel's advice, did not testify, counsel highlighted this failure in closing argument by asserting that "[t]his is what we sometimes call a he said-she said type of case" without corroborating DNA or medical evidence. Applicant was prejudiced because the jury could only infer from counsel's failure to deliver the Applicant's story through the Applicant's testimony that the Applicant had something to hide or that counsel did not believe he would be a credible witness.

vii. Counsel was ineffective in failing to object and in failing to request that the jurors and bailiffs be questioned or the jurors returned to court for proper instructions following improper communications between jurors and the bailiffs during deliberations. Specifically, the following exchange occurred on the record during deliberations:

THE COURT: Ma'am, come up front, please. You're Ms. Watson?

MS. WATSON: Yes, sir.

THE COURT: All right, raise your right hand.

(The witness was sworn.)

THE COURT: Okay. Now, something happened back there with the jury asking you a question. Is that what happened?

MS. WATSON: Well, I was standing with the other Bailiff back there, and they came out and asked if it had to be a hundred percent, and she told them yes.

THE COURT: Okay. The other Bailiff, Ms. Scurry, told them yes?

MS. WATSON: We told them yes, uh-huh.

THE COURT: All right. And that was all that was said?

MS. WATSON: That's all.

THE COURT: Okay. And I'll hear from counsel. Anything you want to say?

ROA 153-154. Defense counsel responded only:

Judge, I think Ms. Scurry said what the law is. Of course, it more properly should have been Your Honor. But I'm sure nothing was done intentionally. But we've got no position for that.

ROA 154. No corrective action was taken other than to instruct the bailiffs "that if the jury asks any more questions – and this is the procedure that should always be followed—to tell the foreperson to

write the question down and then, without looking at the question, bring it directly to the presiding judge.” ROA 154-155. Counsel’s conduct was deficient and Applicant was prejudiced because it is unclear what the jury was asking. Thus, the bailiff’s communication that “it had to be a hundred percent” could have meant that the jury had to be unanimous, that the jury had to be a hundred percent confident of guilt (as opposed to finding beyond a reasonable doubt), that the jury had to be a hundred percent convinced of innocence (as opposed to failing to find proof beyond a reasonable doubt), or any number of things that remain unknowable because neither the jurors nor the bailiffs were questioned and no attempt was made for the court to inquire and give appropriate follow-up instructions. See *State v. Cameron*, 311 S.C. 204, 428 S.E.2d 10 (1993). The most logical understanding of the question was that the jury was hung and the simple answer that it had to be “a hundred percent” conveyed to the jury that the jurors could not leave until a decision was reached without also providing the jury a proper *Allen* charge instruction informing jurors that they should “approach the evidence with an open mind and consider the opinions of their fellow jurors,” in an attempt to reach a verdict, *State v. Williams*, 386 S.C. 503, 510, 690 S.E.2d 62, 65 (2010), but that they should not give up an honestly held opinion and change their mind “if it would do violence to [their] conscience,” *Green v. State*, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002). See *Blake by Adams v. Spartanburg General Hosp.*, 307 S.C. 14, 16, 17, 413 S.E.2d 816, 817, 818 (1992) (trial judge’s grant of new trial upheld where bailiff “made comments to a juror urging the jury to reach a verdict”; while these comments would have been appropriate if given by the trial court, reversal was required because “in so encouraging jurors, a trial judge [also] has the duty to ensure that no juror feels compelled to sacrifice his conscientious conviction in order to concur in the verdict”). Indeed, it was even reported in the media that “[t]he jury was deadlocked, we are told, with a nine

guilty to three innocent voting" apparently when the question was asked of the bailiffs. *See* <http://www.edgefelddaily.com/sheriff1015015.html> (Attached). If this numerical division was also made known to the bailiffs, the situation is even worse because if this had been properly conveyed to the court, the court would have been obligated not only to give an *Allen* charge but to also instruct the jury not to make known the numerical divide of the jury. *See Tucker v. Catoe*, 346 S.C. 483, 495, 552 S.E.2d 712, 718 (2001); *State v. Elmore*, 279 S.C. 417, 423, 308 S.E.2d 781, 785 (1983).

ix. Counsel was ineffective in failing to consult with mental health experts and to present evidence that Applicant does not meet the criteria for or exhibit common characteristics of an incest or intrafamily sexual abuser. *See State v. Jarrell*, 350 S.C. 90, 105, 564 S.E.2d 362, 370-371 (2002); *United States v. Powers*, 59 F.3d 1460, 1472 (4th Cir. 1995).

Each of these errors was individually prejudicial and requires reversal. Alternatively, the cumulative impact of these errors requires reversal. *See Strickland, supra*.

10(b) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law due to counsel's failure to present evidence and to adequately argue in Applicant's behalf for some leniency in sentencing.*

11(b) Counsel was ineffective in failing to consult with mental health experts and to present evidence to the court prior to imposition of sentence that Applicant does not meet the criteria for or exhibit common characteristics of a pedophile or an incest or intrafamily sexual abuser. Additionally, on testing measures used routinely in sexually violent predator assessments to assess the risk of recidivism for sexual offenders, Applicant would be classified in the lowest level of risk category. Without this evidence, counsel argued only that Applicant was 50 years old, "a trucker by

profession," "has minor children," and "has lived the straight and narrow" for the most part. Applicant was prejudiced because counsel was left with saying, "I don't know if there's anything else we could tell you," Tr. 169, when, in fact, substantial evidence for leniency was available through expert reports and/or testimony. In the absence of this evidence, the trial court sentenced Applicant to the maximum sentence on both offenses and ordered that the sentences run consecutively. *See Strickland v. Washington*, 466 U.S. 668 (1984).

12 & 13. Applicant appealed directly to the South Carolina Court of Appeals. Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court from these convictions and sentences.

14. None of the grounds set forth in (9) has been previously presented to this or any other Court, State or Federal.

15. Not Applicable.

16. These grounds rely on additional facts outside the record which was before the previous courts.

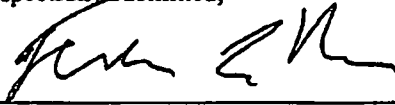
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18. Applicant was represented at trial by James Huff, P.O. Box 6488, N. Augusta, SC 29841 and on direct appeal by Eleanor Duffy Cleary, Division of Appellate Defense, S.C. Commission on Indigent Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

19. Applicant seeks the vacation of his convictions and sentences.

20. Not applicable.

Respectfully submitted,



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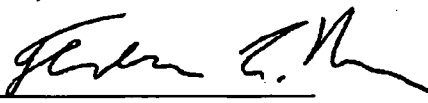
November ³⁰____, 2010.

CERTIFICATE OF SERVICE

I do hereby certify that I have served Applicant's Amended Application for Post-Conviction Relief, in the above-referenced case, on counsel for the Respondent by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

A. West Lee
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

This the 30th day of November, 2010, in Columbia, South Carolina.


TERESA L. NORRIS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	09-CP-19-00064
	)	
TOMMY S. ADAMS, #311901,	)	
Applicant,	)	
	)	
vs.	)	FINAL AMENDED APPLICATION
	)	FOR POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

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9. Not applicable.

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GROUND FOR RELIEF WITH SUPPORTING FACTS

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ROA 134-135. *See also* ROA 136 ("It belongs to him").

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ROA 138. This testimony and argument was improper and prejudicial, especially in light of the complete lack of evidence corroborating the alleged victim's testimony of abuse.

ii. Alternatively, even assuming the general statements addressed above were admissible, counsel was ineffective in failing to investigate and to present testimony from Applicant's sons, Tommy [REDACTED], Jr., and Cody [REDACTED], establishing that these comments were made only in the non-criminal, parental context of educating Applicant's children about sexual matters.

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Judge, I think Ms. Scurry said what the law is. Of course, it more properly should have been Your Honor. But I'm sure nothing was done intentionally. But we've got no position for that.

ROA 154. No corrective action was taken other than to instruct the bailiffs "that if the jury asks any more questions – and this is the procedure that should always be followed—to tell the foreperson to

write the question down and then, without looking at the question, bring it directly to the presiding judge.” ROA 154-155. Counsel’s conduct was deficient and Applicant was prejudiced because it is unclear what the jury was asking. Thus, the bailiff’s communication that “it had to be a hundred percent” could have meant that the jury had to be unanimous, that the jury had to be a hundred percent confident of guilt (as opposed to finding beyond a reasonable doubt), that the jury had to be a hundred percent convinced of innocence (as opposed to failing to find proof beyond a reasonable doubt), or any number of things that remain unknowable because neither the jurors nor the bailiffs were questioned and no attempt was made for the court to inquire and give appropriate follow-up instructions. See *State v. Cameron*, 311 S.C. 204, 428 S.E.2d 10 (1993). The most logical understanding of the question was that the jury was hung and the simple answer that it had to be “a hundred percent” conveyed to the jury that the jurors could not leave until a decision was reached without also providing the jury a proper *Allen* charge instruction informing jurors that they should “approach the evidence with an open mind and consider the opinions of their fellow jurors,” in an attempt to reach a verdict, *State v. Williams*, 386 S.C. 503, 510, 690 S.E.2d 62, 65 (2010), but that they should not give up an honestly held opinion and change their mind “if it would do violence to [their] conscience,” *Green v. State*, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002). See *Blake by Adams v. Spartanburg General Hosp.*, 307 S.C. 14, 16, 17, 413 S.E.2d 816, 817, 818 (1992) (trial judge’s grant of new trial upheld where bailiff “made comments to a juror urging the jury to reach a verdict”; while these comments would have been appropriate if given by the trial court, reversal was required because “in so encouraging jurors, a trial judge [also] has the duty to ensure that no juror feels compelled to sacrifice his conscientious conviction in order to concur in the verdict”). Indeed, it was even reported in the media that “[t]he jury was deadlocked, we are told, with a nine

guilty to three innocent voting” apparently when the question was asked of the bailiffs. See <http://www.edgefelddaily.com/sheriff1015015.html> (Attached). If this numerical division was also made known to the bailiffs, the situation is even worse because if this had been properly conveyed to the court, the court would have been obligated not only to give an *Allen* charge but to also instruct the jury not to make known the numerical divide of the jury. See *Tucker v. Catoe*, 346 S.C. 483, 495, 552 S.E.2d 712, 718 (2001); *State v. Elmore*, 279 S.C. 417, 423, 308 S.E.2d 781, 785 (1983).

viii. Counsel was ineffective in failing to consult with mental health experts and to present evidence that Applicant does not meet the criteria for or exhibit common characteristics of an incest or intrafamily sexual abuser. See *State v. Jarrell*, 350 S.C. 90, 105, 564 S.E.2d 362, 370-371 (2002); *United States v. Powers*, 59 F.3d 1460, 1472 (4th Cir. 1995).

ix. Counsel was ineffective in failing to adequately investigate and present favorable defense evidence from non-family witnesses made known to him by Applicant.

x. Counsel was ineffective in failing to object to the Solicitor’s overly, emotional closing argument, describing Applicant “dragging her back there in that bedroom, and molesting her . . . because it belongs to him.” ROA 138. There was no evidence or testimony about “dragging” and this argument clearly relied on the improper and inadmissible testimony offered by Bledsoe without objection.

Each of these errors was individually prejudicial and requires reversal. Alternatively, the cumulative impact of these errors requires reversal. See *Strickland, supra*.

10(b) *Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law due to counsel’s failure to present evidence and to adequately argue in Applicant’s behalf for some leniency in*

sentencing.

11(b) Counsel was ineffective in failing to consult with mental health experts and to present evidence to the court prior to imposition of sentence that Applicant does not meet the criteria for or exhibit common characteristics of a pedophile or an incest or intrafamily sexual abuser. Additionally, on testing measures used routinely in sexually violent predator assessments to assess the risk of recidivism for sexual offenders, Applicant would be classified in the lowest level of risk category. Without this evidence, counsel argued only that Applicant was 50 years old, "a trucker by profession," "has minor children," and "has lived the straight and narrow" for the most part. Applicant was prejudiced because counsel was left with saying, "I don't know if there's anything else we could tell you," Tr. 169, when, in fact, substantial evidence for leniency was available through expert reports and/or testimony. In the absence of this evidence, the trial court sentenced Applicant to the maximum sentence on both offenses and ordered that the sentences run consecutively. *See Strickland v. Washington*, 466 U.S. 668 (1984).

12 & 13. Applicant appealed directly to the South Carolina Court of Appeals. Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court from these convictions and sentences.

14. None of the grounds set forth in (9) has been previously presented to this or any other Court, State or Federal.

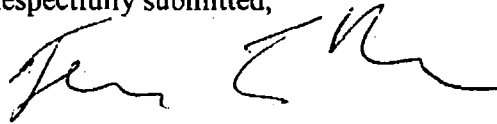
15. Not Applicable.

16. These grounds rely on additional facts outside the record which was before the previous courts.

17. Applicant was previously represented by counsel.

18. Applicant was represented at trial by James Huff, P.O. Box 6488, N. Augusta, SC 29841 and on direct appeal by Eleanor Duffy Cleary, Division of Appellate Defense, S.C. Commission on Indigent Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.
19. Applicant seeks the vacation of his convictions and sentences.
20. Not applicable.

Respectfully submitted,



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December 2, 2010.

CERTIFICATE OF SERVICE

I do hereby certify that I have served Applicant's Final Amended Application for Post-Conviction Relief, in the above-referenced case, on counsel for the Respondent by hand-service to:

A. West Lee
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

This the 2nd day of December, 2010, in Columbia, South Carolina.


TERESA L. NORRIS

Edgefield County As It Happens

Edgefield County, South Carolina

October 15, 2005

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School System[EC District Office](#)[School Board](#)[Strom Thurmond](#)[Fox Creek](#)[High School News](#)[Student News](#)**Public Offices****Merriwether man given 45 years for
criminal sexual conduct conviction**

Edgefelddaily.com

web posted October 15, 2005

EDGEFIELD – Friday saw the end of the two day criminal sexual conduct trial of Tommy S. Adams, 50, of Clarks Hill. The case, prosecuted by Assistant Solicitor Irvin Maye, was based completely on the testimony of the young girl who made the accusations with the absence of any supporting physical evidence. The case stems from her accusations that molestation had taken place beginning in 1999 through 2002. The girl was seven years old at the time. With the jury reaching a verdict of guilty after four hours of deliberation over two days Judge John Few sentenced Mr. Adams to 45 years in prison, basically a life sentence for Mr. Adams.

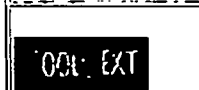
The only two witnesses on the stand for the state were the young girl and former Edgefield County Sheriff's CSC Investigator Bledsoe. Rather stoic, but brave in her testimony, the girl recounted serious accusations in rather broad and general terms only getting specific on one claim during her time on the stand.

Three doctors had examined the girl and no evidence of the claims were found. That was a hurdle Assistant Solicitor Maye had to overcome with the nine woman, three man jury, who were instructed not to make any conclusion before going to deliberations. Mr. Maye's claimed Mr. Adams had full "intercourse" with the girl during closing arguments which had several of the women on the jury shaking their heads in agreement even though three medical doctors could not support that claim. Mr. Maye said he did not need evidence, just the girl's words. Defense attorney James Huff of North Augusta put several family members on the stand to establish that the accusations did not fit the description families had of Mr. Adams. He insisted the lack of evidence demanded a not guilty verdict.

The jury was deadlocked, we are told, with a nine guilty to three innocent voting on Thursday afternoon. Deliberations were allowed to be taken up again on Friday morning and after just over another hour and a half they reached the verdict of guilty on both counts.

Most observers thought with no physical evidence the best the state could hope for was a conviction of the lewd act on a minor charge and a not guilty verdict on the criminal sexual conduct charge due to the deadlocked jury earlier. Even with the surprise verdict all were stunned when Judge John Few sentenced Mr. Adams to 15 years for the lewd act charge and 30 years on the criminal sexual conduct charge to run consecutively, a life sentence for the fifty year old man.

Mr. Adams' ex-wife and family members wept quietly as the verdict and sentence were read, breaking down after leaving the courtroom. Mr. Adams' oldest daughter wept uncontrollably and had to be supported by her husband.

Edgefield County Edgefield Johnston Trenton	Mr. Adams' attorney, James Huff, said he would be filing an appeal of the conviction within the next ten days in addition to motions involving certain legal matters regarding the trial. We did not seek comment from the victim or her mother after the trial as their privacy is respected though she did e-mail the Editor later in the day.	
Legislative Contacts	Related stories:	
Public Forums To enter you must read our Terms of Service	Criminal Sexual Conduct trail moves into second day of deliberations	
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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD _) 2009-CP-19-00064

TOMMY ADAMS)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
 RESPONDENT _)

December 2, 2010
Lexington, South Carolina

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

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

A. WEST LEE, ASSISTANT ATTORNEY GENERAL
Attorney for the State

TERESA NORRIS, ESQ.
Attorney for the Applicant

CAROL M. THUEME, RPR
Official Court Reporter

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1 MR. LEE: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. LEE: This is Tommy Adams versus the State
4 of South Carolina. It's 2009-CP-19-0064. It comes to the
5 Court by way of application for post-conviction relief
6 filed February 23rd, 2009.

7 The applicant was indicted at the September 2003
8 term of the Edgefield County Grand Jury for lewd act on a
9 child under 16 and criminal sexual conduct with a minor in
10 the first degree. He was represented by Mr. James Huff,
11 and from October 12th to the 14th, 2005, the applicant
12 underwent trial, pursuant to which he was found guilty as
13 indicted. He was sentenced by the Honorable John Few to
14 confinement for a period of 15 years for the lewd act
15 charge and 30 years for the criminal sexual conduct
16 charge, both sentences to be run consecutively.

17 Timely notice of appeal was filed on the
18 applicant's behalf and an appeal was perfected. The South
19 Carolina Court of Appeals subsequently affirmed the
20 applicant's conviction and sentence. That order was filed
21 October 10th, 2008, and remittitur was sent down
22 October 18th, 2008.

23 In his current application, the applicant
24 alleges that he's being held in custody unlawfully for
25 ineffective assistance of counsel. He makes several

1 specific allegations and an amendment was filed in the
2 case. I believe that should be in Your Honor's packet.

3 At this time, I will turn it over to his
4 attorney, Ms. Teresa Norris, to expand upon the
5 applicant's claims.

6 THE COURT: Yes, ma'am.

7 MS. NORRIS: Thank you, Your Honor. I do have
8 one final amendment copy that has just a couple of things
9 and makes minor changes.

10 Your Honor, to that, basically we do have a
11 number of issues.

12 This was essentially what I will refer to as a
13 he-said/she-said, and we submit that Mr. Adams never had
14 his say in that.

15 First, there's an issue that Mr. Huff did not
16 object to testimony about Mr. Huff making the statement,
17 quote, "Your cooter belongs to your daddy," unquote.

18 Alternatively, we submit that Mr. Huff was
19 ineffective in not presenting rebuttal evidence to that
20 showing that the comment was made in an innocent context,
21 and there were available witnesses to that.

22 We also submit that Mr. Huff was ineffective in
23 eliciting testimony from the investigating officer that
24 she believed the alleged victim, who was 13 years old at
25 the time of her testimony and the only substantive witness

1 for the State.

2 We submit that Mr. Huff was ineffective in
3 failing to consult and present testimony of a mental
4 health expert related to **Victim** behavior, whether that
5 was consistent or inconsistent with the allegations that
6 she had made.

7 We submit that Mr. Huff was ineffective in not
8 advising Mr. Adams to testify; in fact, advising him to
9 the opposite.

10 And, nonetheless, as a separate issue, Mr. Huff
11 told the jury in his opening statements that they would
12 hear two different versions of the story, and they only
13 heard one, which could only leave the jury wondering why
14 Mr. Adams wasn't called.

15 Another issue is that Mr. Huff did not object or
16 request further questioning of jurors and bailiffs after a
17 bailiff disclosed that the jury foreperson had come out of
18 deliberations and asked if they had to be, quote, "One
19 hundred percent." The bailiff put on the record that the
20 answer was "yes," but we don't know anything else about
21 that situation. And, of course, if they had been hung and
22 it had come to the Court, they would have been given an
23 Allen charge to tell them to appropriately consider and
24 deliberate but not do violence to their own conscience.
25 We do have several jurors that are under subpoena that are

1 coming in, including the jury foreperson.

2 The next issue about mental health experts
3 related to an incest abuser, we're going to withdraw that
4 issue as well as the issue related to sentencing as we
5 want to keep our focus on guilt or innocence.

6 We also submit that Mr. Huff was ineffective for
7 failing to investigate and present favorable evidence from
8 a witness that Mr. Adams told him about but Mr. Huff did
9 not interview and did not call him.

10 And finally, we submit that he was ineffective
11 for failing to object to the State's closing arguments
12 that went overboard in arguing to the jury that Mr. Adams
13 was dragging his stepdaughter into the bedroom, when of
14 course there was no evidence to that even by her own
15 testimony.

16 So those are the issues and we are prepared to
17 proceed.

18 THE COURT: All right. Call your witness.

19 MS. NORRIS: We call Dr. Amanda Salas.

20 THE COURT: Come around, please.

21 THE CLERK: Raise your right hand and put your
22 left on the Bible.

23 DR. AMANDA SALAS, after having so affirmed,
24 testified as follows:

25 THE CLERK: Have a seat and state your name for

1 the record, please.

2 THE WITNESS: My name is Amanda Salas,
3 S-A-L-A-S.

4 DIRECT EXAMINATION

5 BY MS. NORRIS:

6 Q Dr. Salas, what is your current position?

7 A I'm a psychiatrist at Beaufort Memorial Hospital.

8 Q And could you please summarize your education and
9 training.

10 A Yes. I went to medical school at the University of
11 South Carolina and graduated with my M.D. degree in 2003.
12 From there I pursued training in adult and child and
13 adolescent psychiatry at the Medical College of Georgia.
14 I was in training there from 2003 to 2008.

15 I was in practice in Greenwood, South Carolina
16 from 2008 and 2009. And then from 2009 to 2010, I did a
17 forensic fellowship back at the University of South
18 Carolina.

19 And then in July of this year, 2010, is when I
20 started working full time as an attending on staff at
21 Beaufort Memorial Hospital.

22 Q And are you licensed in South Carolina?

23 A I am, yes.

24 Q Great. And are you board certified in a particular
25 specialty?

1 A I am board certified in adult psychiatry.

2 Q Are you board eligible for other specialties?

3 A I am board eligible for child/adolescent psychiatry
4 as well as forensic psychiatry.

5 Q Tell me what board eligibility means.

6 A Board eligibility means that you have completed the
7 training and that you're in process or able to complete
8 the process of becoming board certified so that you can
9 sit for the examinations required in order to obtain board
10 certification in another subspecialty.

11 Q And in your training both as -- well, I guess as all
12 three, general psychiatry, forensic psychiatry and child
13 and adolescent psychiatry, do you have training and
14 experience working with rape victims and child sexual
15 abuse victims?

16 A I do. I do work a lot with trauma victims.

17 MS. NORRIS: Your Honor, we offer Dr. Salas as
18 an expert in forensic and child and adolescent psychiatry.

19 THE COURT: Any voir dire?

20 MR. LEE: Can the State ask a couple of
21 questions, Your Honor?

22 THE COURT: Sure.

23 MR. LEE: You stated that you were board
24 eligible in child psychology. Did you also testify that
25 you hadn't passed your boards yet; is that correct?

1 THE WITNESS: Well, I didn't testify that I
2 haven't passed. I haven't completed the examination
3 process. I don't know if I passed or not, quite honestly.

4 MR. LEE: But you've taken your boards?

5 THE WITNESS: I have taken -- there are two
6 parts, two components to the board examination for
7 child/adolescent psychiatry. One of them is a written
8 exam, which I have completed and passed. The other one is
9 a two-part oral exam, which I don't know the results of
10 that.

11 MR. LEE: And you stated that you had experience
12 with trauma victims. I believe your question was, do you
13 have experience with child molestation, rape, that kind of
14 situation. Are you saying yes or is that --

15 THE WITNESS: I'm saying yes.

16 MR. LEE: Your Honor, the State's objection to
17 her qualification as an expert would rest in the fact that
18 she hasn't completed or doesn't know that she's passed her
19 boards in child psychology just yet.

20 THE WITNESS: If I can clarify, it's actually
21 child psychiatry.

22 MR. LEE: Also, Your Honor, there's been no
23 testimony that she's ever testified in court as an expert
24 in that particular psychiatric field.

25 THE COURT: Anything else?

1 MS. NORRIS: Your Honor, just in response to the
2 objection, we have numerous cases in this state where
3 social workers with master's level and even mental health
4 counselors with less, in terms of education, have been
5 qualified. Dr. Salas has, without question, completed the
6 training and is in the process, and the fact that she
7 doesn't have a board certification doesn't take away that
8 she has completed the fellowships for both forensic and
9 child and adolescent.

10 THE COURT: Anything else?

11 MS. NORRIS: No, sir.

12 THE COURT: All right. The witness is qualified
13 as an expert in the field of forensic child and adolescent
14 psychiatry.

15 You may continue.

16 MS. NORRIS: Thank you, Your Honor.

17 BY MS. NORRIS:

18 Q Dr. Salas, were you provided information related to
19 this particular case?

20 A I was provided information.

21 Q And what information have you reviewed?

22 A I reviewed the forensic evaluation that was done at
23 the Dickerson Center for Children as well as the
24 transcript of testimony that was completed by Victim [REDACTED],
25 Sharon Adams, Leslie Adams Boyce, Tommy [REDACTED], Jr., and

1 Cody [REDACTED], as well as Dennis Boyce.

2 In addition, I received copies of the indictment
3 as well as the Department of Social Service's intake
4 summary report as well as the incident report pertaining
5 to the matters in this case.

6 Q And let me show you the -- let me have it marked
7 first.

8 (WHEREUPON, Applicant's Exhibits Nos. 1-2 were
9 marked for identification only.)

10 BY MS. NORRIS:

11 Q Dr. Salas, let me show you what has been marked as
12 Applicant's Exhibit 1 for identification. Is that the
13 forensic interview of Victim [REDACTED] that you referred to?

14 A That's correct.

15 Q Let me show you what has been marked as Applicant's
16 Exhibit 2, an incident report. Have you seen that
17 document as well?

18 A That's correct.

19 MS. NORRIS: Your Honor, we offer both
20 Applicant's Exhibit 1 and Exhibit 2.

21 THE COURT: Any objection?

22 MR. LEE: No objection, Your Honor.

23 THE COURT: Mark those in evidence, please,
24 ma'am.

25

1 (WHEREUPON, Applicant's Exhibits Nos. 1-2 were
2 admitted into evidence.)

3 BY MS. NORRIS:

4 Q Dr. Salas, not talking about this case but talking
5 generally, if you had a child that had experienced what
6 was described here, both in testimony and in the forensic
7 interview by Victim [REDACTED], what types of symptoms would you
8 generally expect to see in a child that had suffered that
9 abuse?

10 A What I would typically expect to see is of any
11 possibility, any combination of a manifestation of
12 psychological sequelae, to include symptoms of mental
13 illness and/or behavioral disturbances. This could
14 include anything that would range from aggression and
15 acting out. You could have low self-esteem. You could
16 have depressive mood symptoms. You could have anxiety
17 symptoms. You could have disturbed sleep symptoms. You
18 could have separation anxiety symptoms.

19 You could also end up with substance abuse that
20 wasn't prevalent or present before the abuse had occurred,
21 and you could end up with disturbance of relationships.
22 And that's to name a few of the symptoms that would be
23 expected.

24 Q And handing you back Applicant's Exhibit 1, the
25 forensic interview, there's a list on page two of -- under

1 the heading, Informant's or Victim's Clinical Information,
2 are those the types of symptoms you would expect, anxiety,
3 hyperarousal, that whole list there?

4 A Correct, those are symptoms that you would expect to
5 find.

6 Q And moving now to this particular case, were any of
7 those symptoms reported by Victim or by her mother?

8 A What is documented in these records indicates that
9 the mother thought that she had personality changes of
10 late. I don't really know what that means because no
11 further descriptions were provided.

12 And in regards to the behavior that was
13 demonstrated in Victim, the changes are not reported by
14 Ms. Adams.

15 It was not documented in the forensic interview,
16 but it did come up in Victim testimony later on at the
17 time of trial that she was experiencing some separation
18 issues. But up until that point, there was no
19 documentation provided to me that I saw that that was the
20 case.

21 Q And that was some two-and-a-half years after the
22 alleged report?

23 A That's correct. Roundabout, yes.

24 Q What would be the -- out of the list of possible
25 symptoms, both in your testimony and in the forensic

1 interview, is there one of those that would particularly
2 stand out as, number one, you would expect to see this,
3 typically?

4 A Not in terms of a key identifying symptom.

5 The thing to note about abuse and behaviors that
6 come subsequently, there is no specific behavioral pattern
7 that says that this screams abuse or that is confirmatory.

8 What happens is that you have abuse and the
9 expectation is that there is a change from how a child or
10 victim was functioning prior to that abuse incident. We
11 cannot predict what that change is going to look like, but
12 a change does occur.

13 Q And the only change pointed here was by Victim
14 herself?

15 A When the testimony at court was provided, she
16 reported that change. And, again, I'm not certain what
17 the personality changes of late really means when it was
18 reported by her mother.

19 Q At the end of the forensic interview, Applicant's 1,
20 in the interviewer's summary, the interviewer referred to,
21 "Victim appeared to be experiencing memory blocks, not an
22 uncommon occurrence for children who have been traumatized
23 by sexual abuse."

24 Based on what we have here as the interview, can
25 you -- do you agree that it is necessarily memory blocks?

1 A I actually disagree with that interpretation of what
2 has happened.

3 In this interview as recorded, what I noticed is
4 that **Victim** oftentimes said, "I don't remember" or "I
5 can't remember." And it certainly could be one symptom of
6 a memory block, but it is more commonly an avoidance
7 technique that is utilized by children when they don't
8 want or are uncomfortable answering a question.

9 And sometimes it happens when children know the
10 answer to a question, but children respond to what -- they
11 want to please the person who's asking the question. And
12 if they feel uncomfortable because they don't know what
13 the desired response is, sometimes children will divert
14 their attention and try to avoid answering a question.

15 It's similar to what I saw in her testimony that
16 was provided as well when they inquired about whether or
17 not she had had contact with her stepfather after the
18 incident.

19 For someone who had such a remarkable ability to
20 provide the history earlier in the testimony regarding
21 where she lived, when she lived there, et cetera, and it
22 was very detailed, I found it interesting that she
23 couldn't recall at that point whether she had had contact
24 with the alleged perpetrator.

25 Q When **Victim** -- according to the information we have,

1 when Victim reported to her mother, quote, "Daddy makes me
2 do things," unquote -- and this is on page one of the
3 forensic interview -- and the mother's response is, quote,
4 "Did he stick his penis inside you?" unquote, to you, does
5 that cause concern about what comes after that is going to
6 be simply what happened?

7 A It does cause a level of concern pretty significantly
8 that comes out of that.

9 If someone came into my office, for example, and
10 they disclosed something similar in terms of "daddy makes
11 me do things," under no circumstances would I proceed with
12 a leading question because it taints and biases the
13 response that you would get from a child. Instead, you
14 proceed with open-ended questions to try to extract the
15 information without inserting symptoms or thoughts or
16 leading a child into saying something.

17 Q Victim in the forensic interview -- well, let me ask
18 you generally. When a child, say of seven, eight years
19 old begins to be abused, how detailed or how much
20 information would you expect that child to remember, at
21 least, of the first incident?

22 A I would expect the first incident to be very
23 traumatic, especially if they don't have a previous
24 history of abuse. And a lot of the details are typically
25 remembered unless they end up in such a symptomatic level

1 with psychiatric symptoms that they suppress the memory
2 and they would end up with significant behavioral and
3 mental status changes subsequent to that.

4 But at ages seven or eight or nine, children
5 have good memory as well as good verbal skills. And as
6 long as the child were in a situation in which they were
7 comfortable sharing and disclosing what had happened, I
8 would expect them to be able to do so.

9 If they had memory blocks, as are described
10 here, I would expect them to have other symptoms endorsed
11 and reported regarding psychiatric or psychological
12 issues.

13 Q And is it typical that a child who has been abused
14 for several years at the age of 10 or 11 would physically
15 try to fight off her abuser?

16 A Trying to divert the abuser's or thwart their efforts
17 of being abused, I find it improbable that a child who
18 physically is not at a developmental stage to engage in a
19 physical confrontation would fight back with a lot of
20 physical aggression unless the aggressor had provoked them
21 to that point and initiated the aggression.

22 Q And I've heard the phrase "fight or flight" used with
23 reference particularly to children. What does that
24 essentially mean?

25 A Fight or flight refers to our mental state and our

1 body shifting between our autonomic parasympathetic and
2 sympathetic nervous systems. Which means that when you
3 are confronted, i.e., the typical example is when a man
4 encounters a bear in the woods, you either fight or
5 flight. You either get geared up and you fight with what
6 you perceive to be a direct threat or you run to avoid the
7 situation and get away from it. You don't stay there and
8 remain a passive recipient of letting the bear do to you
9 whatever the bear wishes.

10 Q And for children, in particular, again 10 or 11 years
11 old, when they hit the fight response as opposed to the
12 flight, would you expect that to happen when the child was
13 isolated and with no one there to help?

14 A I would not expect it to happen under those
15 circumstances where they knew there was nobody there
16 coming to rescue them, save them or make them safe.

17 I also would expect for someone who hits that
18 fight response to continue to escalate in a manner in
19 which they at age 11 don't have the brain development to
20 say it's time to turn it off right now, and I would expect
21 them to continue to manifest fighting symptoms even if the
22 aggressor stopped trying to maintain control over the
23 child that was fighting.

24 Q And would that basically add to the disruptive
25 behaviors that you had talked about before?

1 A I would expect when someone has a trauma that results
2 in that fight or flight response, that the trauma is
3 significant enough that you would end up seeing disruptive
4 behaviors and changes in their psychological makeup and
5 well-being.

6 Q And, just in general, when a child has been abused
7 for two to three years, not just abused but, as she
8 described, some instances of actual vaginal penetration,
9 touching and instances of oral sex, would you expect that
10 after that child makes the disclosure and is removed from
11 the home and in safety, that she would continue to contact
12 the alleged abuser?

13 A I would not expect for that particular victim to make
14 independent efforts to contact the abuser.

15 Now, if that were a child who was being told
16 that you have to or something, if the child's makeup was
17 such they were going to comply with whoever was giving
18 that directive, but I would not expect it to come on that
19 child's own initiative.

20 Q And that would be things such as sending Father's Day
21 cards and "I love you, daddy" notes?

22 A Even more remarkable to me is using your own money to
23 purchase a gift.

24 MS. NORRIS: Just a second, Your Honor.

25 No further questions.

1 THE COURT: Cross-examination.

2 MR. LEE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q Ms. Salas, specifically, how many children of sexual
6 abuse have you worked with?

7 A I don't know is the answer because I don't keep a
8 record of who in my practice and who in my past experience
9 has actually had sexual abuse from those who haven't.

10 Q Five, ten, more than ten, an estimate?

11 A I would say that it's probably been over 50, and
12 that's a very conservative estimate. But that's based on
13 knowledge that, in training alone, in one year of
14 training, and the program I did was for two years of child
15 training, I saw approximately 200 outpatients over the
16 course of that year and at least a quarter of them had a
17 history of abuse, which is common for what you would find
18 in the general population for history of abuse.

19 Q Talking about the forensic report, on the last page
20 you said -- where I believe the doctor made a finding that
21 the child showed evidence of a memory block, you stated
22 that her responses could be a symptom of a memory block,
23 correct?

24 A It's possible that that would --

25 Q It is possible. Okay.

1 A -- that would be a symptom of a memory block.

2 Q Have you ever interviewed Victim [REDACTED]

3 A I have never interviewed Victim [REDACTED].

4 Q So the information that you're getting, the
5 speculation that you're having on a behavior is coming
6 from reading the reports, right?

7 A Right. The statements that I disclosed earlier is
8 the information that I've had available to me.

9 Q And just because someone asks a leading question
10 doesn't make the answer necessarily not true, right?

11 A Correct.

12 Q I mean, I'm asking you leading questions right now
13 and you're telling the truth, right?

14 A Yes, that's correct.

15 Q And you said the memory of the child's first abuse
16 should be fairly clear in their mind?

17 A It would be something that I would expect them to
18 recall details of.

19 Q Have you ever had a child with her first abuse come
20 in, or his first abuse, I guess, come in and not be able
21 to remember all that well? Is it possible that they
22 wouldn't?

23 A It would be possible.

24 Q And you said that, I guess, to use your metaphor -- I
25 get my metaphors confused -- you said that the child, you

1 wouldn't expect them to stand there and let the bear do
2 what they want, right?

3 A Correct.

4 Q Okay. So it would be a fight or flight issue?

5 A Yes.

6 Q But you wouldn't expect a 10-year-old to fight, they
7 would always flight? I believe you said under no
8 circumstances would they fight?

9 A It -- did I say under no circumstances?

10 Q I believe that's what you said.

11 A Okay. Would you ask the question again so I can
12 answer you clearly?

13 Q It's not possible -- would a child always take the
14 flight response? Would they not ever fight?

15 A Oh, no, you can't say always fight and never flight.

16 Q But can you say always flight and never fight?

17 A No, you cannot say always flight and never fight.

18 There's no way to predict what someone is going to do
19 under those circumstances. But our bodies are set up for
20 fight or flight. Not "and" but an "or".

21 MR. LEE: Okay. I beg the Court's indulgence
22 just one moment, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. LEE:

25 Q If you go through one of these checklists in the

1 forensic reports, basically when you meet with the child
2 and you're looking for those symptoms, those behavioral
3 aspects, maybe they're sleeping more, maybe they're not
4 sleeping at all, right?

5 A Correct.

6 Q Maybe they're eating more, maybe they're not eating?

7 A Correct, that could happen.

8 Q Okay. Maybe they are always fearful or very timid or
9 maybe they get very aggressive?

10 A Both could also happen.

11 Q Okay. So really it could go either way in any case
12 almost?

13 A You would expect symptoms to present, that's correct.

14 Q But ultimately the diagnosis of those symptoms,
15 because it could go either way, is going to be subjective,
16 correct?

17 A It's clinical, and so what happens is that you ask
18 the questions to find out what symptoms are endorsed and
19 then you put it together in the clinical picture.

20 MR. LEE: That's all my questions at this time,
21 Your Honor. Thank you.

22 THE COURT: Redirect?

23 MS. NORRIS: No, Your Honor. I would ask that
24 the doctor be excused.

25 THE COURT: Any objection?

1 MR. LEE: No objection, Your Honor.

2 THE COURT: Thank you, Doctor. You're free to
3 go.

4 THE WITNESS: Thank you.

5 THE COURT: Call your next witness.

6 MS. NORRIS: Sharon Adams.

7 MR. LEE: Your Honor, if I may interject for a
8 second.

9 (A bench conference was held with the judge and
10 attorneys.)

11 (A break in proceedings was had while other
12 proceedings were taken.)

13 (Proceedings resumed.)

14 MS. NORRIS: The applicant calls Sharon Adams.

15 SHARON ADAMS, after being duly sworn, testified
16 as follows:

17 THE CLERK: Have a seat and state your name for
18 the record, please.

19 THE WITNESS: My name is Sharon B. Adams.

20 DIRECT EXAMINATION

21 BY MS. NORRIS:

22 Q And are you related in any way to Mr. Tommy Adams?

23 A I am his ex-wife.

24 Q And how long were you folks married?

25 A Almost 22 years.

1 Q And do you have any children with Tommy?

2 A Yes, I do.

3 Q How many?

4 A Three.

5 Q And how old are they now?

6 A Leslie is 36, Tommy, Jr. is 20, and Cody is 19.

7 Q And are those the folks that we sent out in the
8 hallway while you're testifying?

9 A That's correct.

10 Q Now, you testified during the trial about your
11 observations of Tommy with **Victim**. Have you recently had
12 a chance to review that testimony?

13 A Yes.

14 Q And is it still truthful to the best of your
15 knowledge?

16 A Yes, it is.

17 Q Now I'm going to ask you about a different topic.

18 When did you learn that you would be asked to be
19 a witness during his trial?

20 A During his first trial?

21 Q Right.

22 A If I'm not mistaken, it was -- I was told during
23 lunch or during the break that I would be put on the
24 stand.

25 Q During lunch or a break and while the trial was going

1 on?

2 A During the trial, yes.

3 Q Do you remember the circumstances of that, where you
4 were?

5 A It was either in front of the courthouse or we had
6 lunch that day at Hardee's.

7 Q And was it a group discussion or just --

8 A The children were there, present.

9 Q So it is just -- all of you all were present?

10 A Correct.

11 Q Were you present during -- for any discussions
12 between Mr. Huff and the applicant, Tommy Adams, about
13 whether Tommy would testify in his own defense?

14 A Mr. Huff told Tommy he would not put him on the
15 witness stand that day, and this was during a break. It
16 was not in the courtroom. Again, I can't recall if it was
17 during lunch or during a break before we went back in
18 after lunch. I believe that's when it took place, but he
19 told him he would not put him on the witness stand.

20 Q Do you recall what the reason was?

21 A Well, he told him -- he said, "If you turn the
22 slightest bit red in the face, they're going to throw the
23 book at you." Plus he said, "If we put you on the witness
24 stand, we will also have to put Kathy," who at the time
25 was his current wife, "on the witness stand, too."

1 Q So was it clear to you that Mr. Huff did not want him
2 to testify?

3 A Yes.

4 MS. NORRIS: I don't have any other questions,
5 Your Honor.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MR. LEE:

9 Q Ms. Adams, Mr. Huff did call you to testify at trial;
10 is that correct?

11 A Called me in reference as on the phone?

12 Q No, he called you to the witness stand to testify.

13 A Oh, yes, yes.

14 Q At which point you presented evidence in favor of
15 Mr. Adams, correct?

16 A Correct.

17 MR. LEE: I beg the Court's indulgence one
18 moment, Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. LEE:

21 Q Had you spoken with Mr. Huff before that day to allow
22 him to prepare and to ask you what your testimony would be
23 at trial?

24 A No.

25 MR. LEE: Okay. No further questions, Your

1 Honor.

2 THE COURT: Redirect?

3 MS. NORRIS: No, Your Honor.

4 THE COURT: Thank you, ma'am. You may step
5 down.

6 MS. NORRIS: We'd call Tommy [REDACTED], Jr.

7 THE COURT: Come up here, please, sir.

8 THE CLERK: Raise your right hand and place your
9 left hand on the Bible.

10 TOMMY [REDACTED], JR., after being duly sworn,
11 testified as follows:

12 THE CLERK: Have a seat and state your name for
13 the record, please.

14 THE WITNESS: Tommy Swenson [REDACTED], Jr.

15 DIRECT EXAMINATION

16 BY MS. NORRIS:

17 Q And are you related to the gentleman next to me over
18 here?

19 A Yes, ma'am.

20 Q And how are you related?

21 A He's my father.

22 Q How old were you at the time when he was tried in
23 2005?

24 A I was 15 years old.

25 Q And what's the age difference between you and Victim [REDACTED]

1

[REDACTED]

2

A It's three years, two or three years.

3

Q You older or she's older?

4

A I'm older.

5

Q Did you attend your father's trial?

6

A Yes, ma'am, I did.

7

Q Do you recall the testimony about him making a statement to Victim [REDACTED], quote, "Your cooter belongs to daddy"?

10

A Yes, ma'am, I do.

11

Q Did you ever hear him say that to her?

12

A Yes, ma'am.

13

Q Tell me the context.

14

A We were having a discussion about telling me, my brother Cody, and Victim [REDACTED] we were discussing the birds and the bees story as some people put it, and it was taken out of context the way that he said it. He didn't mean it as it was his. It was that if anybody was to come to date Victim [REDACTED] or anything like that, that she was supposed to come to him and ask him because he was her father, just like he would do the same with us.

22

Q And was that a discussion where you, Cody, and Victim [REDACTED] were all there with your father?

23

24

A Yes, ma'am, we were all there together.

25

Q Was there anybody else present?

1 A Yes, Kathy was there, my ex-stepmother, his ex-wife.

2 Q Did you ever hear him say to [REDACTED] quote, "Your
3 cooter belongs to daddy," any other time outside of that
4 context?

5 A No, ma'am.

6 Q You testified during the trial about your
7 observations of your father with [REDACTED]. Have you
8 recently had a chance to review that testimony?

9 A Yes, ma'am, I have.

10 Q Still truthful, to the best of your knowledge?

11 A Yes, ma'am.

12 Q If you had also been asked the questions about the,
13 quote, "cooter" comment during the trial, would your
14 testimony have been the same as it has been today?

15 A Yes, ma'am.

16 Q I'm going to shift gears on you a little bit.

17 When did you learn that you would be a witness
18 during the trial?

19 A It's probably the day of the trial or the beginning
20 day of the trial that I was going to be called on the
21 stand.

22 Q And did you sit down and talk with Mr. Huff to
23 prepare for your testimony?

24 A If you want to call it that. It was more like
25 something we did during a recess.

1 Q Tell me -- describe the conversation for me.

2 A We were at Hardees's eating lunch during the recess
3 of the trial the first day and he asked me if I was to
4 take the stand and what I would testify for. Before then,
5 I never went to his office or anything, never got asked
6 any questions. It seemed like it was a last-minute thing.

7 Q Were you present for any discussions between Mr. Huff
8 and your father about whether Tommy, Sr. would testify in
9 his own defense?

10 A Yes, ma'am, I was.

11 Q And where and when was that?

12 A That was, again, the day of the trial during a
13 recess. I think we were on the courthouse steps and he
14 told my father that he did not want him to testify because
15 he thought he would get angry.

16 Q Was it clear to you that Mr. Huff did not want him to
17 testify?

18 A Yes, it was.

19 MS. NORRIS: No further questions.

20 THE COURT: Cross?

21 MR. LEE: Briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. LEE:

24 Q Mr. [REDACTED], so it's your testimony that the applicant
25 made the statement, "Your cooter belongs to daddy," in a

1 discussion of the birds and bees with you and your sister?

2 A Yes, sir, and my brother, all three of us.

3 MR. LEE: No further questions.

4 THE COURT: Redirect?

5 MS. NORRIS: No, Your Honor.

6 THE COURT: Thank you, sir. You may step down.

7 MS. NORRIS: We'd call Cody [REDACTED].

8 CODY [REDACTED], after being duly sworn, testified as
9 follows:

10 THE CLERK: Have a seat and state your name for
11 the record, please.

12 THE WITNESS: My name is Cody [REDACTED]s.

13 DIRECT EXAMINATION

14 BY MS. NORRIS:

15 Q And are you related to Mr. Tommy Swenson Adams, Sr.?

16 A Yes, ma'am, that's my father.

17 Q How old were you at the time of the trial in 2005?

18 A I was 14.

19 Q And what is the age difference between you and Victim

20 [REDACTED]

21 A We're just a few months apart.

22 Q Did you actually attend your dad's trial?

23 A Yes, ma'am.

24 Q Do you recall the testimony about him making a
25 statement to Victim [REDACTED], quote, "Your cooter belongs to

1 daddy," unquote?

2 A Yes, ma'am.

3 Q Did you ever hear your father say that to her?

4 A No, ma'am, not in the context that was anything --
5 anything bad.

6 Q Well, if you heard it -- first of all, let me just
7 ask you that: Did you ever hear him say it?

8 A Yes, ma'am.

9 Q All right. Now tell me the context.

10 A The context was, me and my brother Tommy [REDACTED], Jr.
11 and Victim [REDACTED] were all in the living room with our stepmother
12 and our father and Daddy was having a talk to us about sex
13 because Daddy had taken me and Tommy to work with him one
14 day and I had found a condom and I didn't know what it
15 was, and he told us that he would sit us down and talk to
16 us about it, and we all sat down in the living room and
17 talked about it.

18 And when he said that, he was saying it because
19 he doesn't want people to harm Victim [REDACTED]. He didn't want
20 other men to just take control of her. He was protecting
21 her as he was protecting all of us.

22 Q Now, you testified during the trial about your
23 observations of him with Victim [REDACTED]. Did you recently have a
24 chance to review that testimony?

25 A Yes, ma'am.

1 Q Is it still truthful, to the best of your knowledge?

2 A Yes, ma'am.

3 Q If you had been asked the questions that I've asked
4 you earlier about this, quote, "cooter" comment, would
5 your testimony have been the same as it has been today?

6 A Yes, ma'am.

7 Q When did you actually learn that you would be asked
8 to be a witness during the trial?

9 A It was right before the trial. I would say a few
10 days before. We had never met with anyone.

11 Q Who actually told you that you were going to testify?

12 A I believe it was Daddy.

13 Q Up until you showed up at the courthouse for the
14 trial, had you ever met Mr. Huff?

15 A I believe I had met him one time and that was when
16 Daddy had went up there to do something, I guess talk to
17 him over -- something about the trial.

18 Q And did he actually talk to you that day about your
19 observations, what you could testify to?

20 A No, ma'am.

21 Q Did he ever sit down and talk to you about what you
22 could potentially testify about?

23 A No, ma'am.

24 Q Were you present for any discussions between Mr. Huff
25 and the applicant, Tommy Adams, about whether Tommy would

1 testify in his own defense?

2 A On the day of the trial, it was.

3 Q Do you remember where and what was said?

4 A We were on the courthouse steps. And to my
5 knowledge, that I remember, the thing was Daddy -- he
6 didn't want to put Daddy on the stand because Daddy would
7 turn red. He didn't want Daddy to get upset over
8 anything. And that was the only thing that I knew of.

9 MS. NORRIS: No further questions, Your Honor.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. LEE:

13 Q Mr. [REDACTED], you were how old at the time of trial?

14 A Fourteen.

15 Q And you were how old at the time of the conversation
16 in which the "cooter" comment was made?

17 A I don't know. You want me to give you a guess of how
18 old I was?

19 Q Best estimate.

20 A Probably, I would say, I don't know, 11 or so.

21 Q So that would have made your sister 11 also?

22 A No, she's younger than me.

23 Q So ten?

24 A She would have been ten, probably close to turning to
25 11.

1 Q And so he made -- it's your testimony that he made
2 that comment in the completely innocent context of a
3 discussion with his children about the birds and bees?

4 A Right.

5 Q He couldn't have said something a little more
6 innocent like, "You don't let anyone touch you or hurt
7 you" or "You're daddy's little girl" and, you know, "I'll
8 protect you," or anything other than "Your cooter belongs
9 to daddy"?

10 A I don't know.

11 MR. LEE: No further questions.

12 THE COURT: Redirect?

13 MS. NORRIS: No, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 MS. NORRIS: We call Leslie Boyce.

16 LESLIE BOYCE, after being duly sworn, testified
17 as follows:

18 THE CLERK: Have a seat and state your name for
19 the record, please.

20 THE WITNESS: My name is Leslie Adams Boyce.

21 DIRECT EXAMINATION

22 BY MS. NORRIS:

23 Q Are you related to Mr. Tommy Adams?

24 A That's my daddy.

25 Q And are you the oldest daughter we heard about?

1 A Uh-huh, I am.

2 Q And how much difference is there between you and the
3 next child, Tommy, Jr.?

4 A Tommy, Jr., there's 16 years difference between me
5 and Tommy, Jr.

6 Q So basically for 16 years you were an only child?

7 A That's correct.

8 Q Now, you testified during trial about your
9 observations of your dad with **Victim**. Have you recently
10 had a chance to review that testimony?

11 A I have.

12 Q And is it still truthful, to the best of your
13 knowledge?

14 A Yes, it is.

15 Q Were you present during closing arguments of the
16 trial?

17 A Yes, I was.

18 Q Do you remember the prosecutor's argument?

19 A Yes.

20 Q Could you describe his demeanor during that argument?
21 Was he talking like I'm talking now?

22 A No, ma'am.

23 Q Describe it.

24 A He has very loud, very boisterous, very aggressive.
25 His facial expressions and all that were very stern.

1 Q Were you present for any meetings between your dad
2 and his lawyer, Mr. Huff?

3 A Yes, I was.

4 Q How many times?

5 A The most, three.

6 Q And did you also attend roll call with your dad --

7 A I did.

8 Q -- at the time?

9 A I did.

10 Q When did you learn that you would be asked to be a
11 witness during his trial?

12 A I don't guess I initially recall a formal time. I
13 always knew I would be. You know, it's pretty obvious to
14 me that I would be called as a witness.

15 Q And was that just obvious to you, or your dad said,
16 "I'm going to need you," or did Mr. Huff --

17 A It was obvious to me that I would testify.

18 Q Did you ever sit down with Mr. Huff beforehand and
19 discuss what your testimony would be?

20 A No.

21 Q Did you discuss it during trial?

22 A Not as to what my testimony would be, no.

23 Q Was there a discussion of who would testify, that you
24 recall?

25 A Again, it's obvious that it would be, you know, me

1 and my brothers and my mother.

2 Q Were you present for any discussions between Mr. Huff
3 and your dad about whether your dad would testify in his
4 own defense?

5 A Leading up to, before trial?

6 Q Uh-huh.

7 A I do not -- I was there, but I do not recall any
8 mentioning of him to be testifying. That was something
9 that was being left in the air.

10 Q And so beforehand you don't recall any discussion of
11 it in your presence?

12 A That's correct.

13 Q How about during the trial?

14 A During the trial, Mr. Huff stated to us that he did
15 not know whether he was going put Daddy on the stand or
16 not. He also stated that, in the past, in the times that
17 he had put his defendants on the stand that he lost his
18 case.

19 And on the courthouse steps, the day that the
20 trial was going to be ending, at that point we still
21 didn't know if Daddy was going to go on the witness stand.
22 He was unsure of himself and then he decided that he was
23 not going to put Daddy on the stand.

24 Q Going back when you said initially that he hadn't
25 decided whether he would call your dad to testify, was

1 that discussion after the trial had already started and
2 the opening statements?

3 A Yes.

4 Q And do you recall what was actually said when
5 Mr. Huff said that he didn't want your dad to testify?

6 A I do. He did say that he was -- he was unsure about
7 putting Daddy on the stand. He was afraid that Dad's
8 emotions may overcome him as far as turning red in the
9 face and things like that.

10 Q So was it clear to you that Mr. Huff did not want him
11 to --

12 A It was very clear that Mr. Huff did not want Dad
13 taking the witness stand.

14 MS. NORRIS: No further questions.

15 THE COURT: Cross?

16 MR. LEE: Briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. LEE:

19 Q Ms. Boyce, you testified that it was obvious to you
20 that you would testify in your father's trial. Is that
21 because he was your father and you knew you could testify
22 to his good behavior?

23 A Because he's my dad, uh-huh.

24 Q Right. So it was just obvious that you would be
25 called to testify in his trial?

1 A Well, yes.

2 Q Okay. And it was also obvious to you that your
3 brothers would be called, and your mother?

4 A That's correct.

5 MR. LEE: Beg the Court's indulgence one second.

6 That would be my questions for the witness, Your
7 Honor. Thank you.

8 THE COURT: Redirect?

9 MS. NORRIS: No, Your Honor.

10 THE COURT: Thank you, ma'am. You may step
11 down.

12 Call your next witness.

13 MS. NORRIS: The applicant calls Henry Rainey.

14 HENRY RAINEY, after being duly sworn, testified
15 as follows:

16 THE CLERK: Have a seat and state your name for
17 the record, please.

18 THE WITNESS: Henry A. Rainey.

19 THE COURT: Spell your last name, please.

20 THE WITNESS: R-A-I-N-E-Y.

21 DIRECT EXAMINATION

22 BY MS. NORRIS:

23 Q Mr. Rainey, do you know Tommy Adams?

24 A Yes, ma'am, I do.

25 Q Do you recall when you met him?

1 A Around -- it had to be around 1998, '99, somewhere
2 along in there.

3 Q And how did you meet Tommy?

4 A We was co-workers at CMC Metal Recycling.

5 Q And did you also socialize together?

6 A Yes, ma'am.

7 Q What type of social events would you get together?

8 A Cookouts over at my house, over at the drag strip.
9 We would hang around his automotive shop together.

10 Q And when Tommy would come to your house, would he
11 bring his children with him?

12 A Yes, ma'am.

13 Q And did you have the opportunity to observe him
14 interacting with his children?

15 A Yes, ma'am.

16 Q And did you have any kids around while that was going
17 on?

18 A Yes, I did.

19 Q How many kids? And were they your kids, grandkids?

20 A My kids, my nieces, nephews, grandkids.

21 Q And how often would you say that you would get
22 together with Mr. Adams when his children were present?

23 A I would say probably once every two, three months,
24 something like that.

25 Q And did that same level of get-together continue from

1 the time you met him until he was arrested in 2003?

2 A Oh, after he left CMC Metals he went back to driving
3 and then I did not see him after then.

4 Q And do you recall when he left CMC?

5 A No, ma'am, I'm not quite sure what year that were.

6 Q What were your observations of Mr. Adams as a father?

7 A He was one that I admired because he was, you know,
8 very protective of the kids, so he made me be a better
9 father by looking at him. There were things that he was
10 doing.

11 Q And what sort of things?

12 A He was more protective of his kids than I were, and I
13 observed that, but I never seen nothing out of the
14 ordinary.

15 Q Did you ever notice him treat his stepchildren
16 differently?

17 A No, ma'am. I didn't even know they was his
18 step-kids. I thought they was his kids. He never said
19 "step-kids." He said they was his "kids."

20 Q Ever notice any of his children that seemed afraid of
21 him or sort of shying away from him?

22 A No.

23 Q Prior to Tommy's trial in 2005, did his lawyer or
24 anyone involved in his representation ever call you about
25 whether you'd be willing to testify?

1 A No, ma'am.

2 Q If someone had called you, would you have come in and
3 testified at his trial?

4 A Yes, ma'am.

5 Q And would your testimony be any different than it has
6 been today?

7 A No, ma'am.

8 MS. NORRIS: No further questions, Your Honor.

9 THE COURT: Cross?

10 MR. LEE: Beg the Court's indulgence one moment,
11 Your Honor.

12 THE COURT: Yes, sir.

13 MR. LEE: No questions for this witness, Your
14 Honor.

15 THE COURT: Thank you, sir. You may step down.
16 Call your next witness.

17 MS. NORRIS: Your Honor, we'd call
18 Phoebe Oliphant.

19 PHOEBE OLIPHANT, after having been duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat and state your name for
22 the record.

23 THE WITNESS: Phoebe Sabrina Oliphant Molton.

24 DIRECT EXAMINATION

25 BY MS. NORRIS:

1 Q Ms. Molton, did you serve as a juror in Mr. Adams'
2 trial?

3 A Yes, ma'am, I did.

4 Q And did you actually serve as the jury foreperson?

5 A Ma'am?

6 Q Did you serve as the foreperson, the person that
7 filled out the forms?

8 A No, ma'am. No, ma'am.

9 Q During deliberations when you were back discussing at
10 the end of the trial, did you leave the room to ask a
11 question of anyone?

12 A No, ma'am.

13 Q You didn't go out and ask a bailiff if you had to be
14 one hundred percent?

15 A Oh, did all of us have to agree? Yes, ma'am.

16 Q So you did ask a question?

17 A Yes, ma'am.

18 Q Who did you ask it of?

19 A Who I asked it to?

20 Q Uh-huh.

21 A I don't know what officer was on duty that day.

22 Q And do you recall specifically the question that you
23 asked?

24 A No, ma'am, I don't recall it.

25 Q And according to our court transcript, the question

1 was whether you had to be one hundred percent. What were
2 you actually asking with that, one hundred percent what,
3 put it that way?

4 A Should all of us agree on doing the same thing. I
5 mean, like, since we had 12 in the back, you know, trying
6 to, you know, determine everything that went on and how it
7 went on, we wanted to make sure that everybody agreed on
8 the same thing. We couldn't have like 11 -- I mean nine
9 doing something and two saying, you know, we disagree.
10 All of us be on one accord.

11 Q So you went out during the discussions to clarify
12 that?

13 A Yes, ma'am. Because -- I mean, I never been on jury
14 duty before.

15 Q I understand.

16 A So, I mean, I just like was wondering, you know, what
17 do we need to do and how do we need to do it. Because, I
18 mean, like I said, I never been on it before so I don't
19 know what to expect. And I want to say the right thing
20 because I don't want to put nobody in a place, you know
21 what I'm saying, and jeopardize their life for
22 misunderstanding or somebody making a wrong decision on
23 somebody's life. I don't -- you know, I don't want to
24 hold it on me.

25 Q Do you recall specifically what was said in response

1 to the question of, "Do we have to be one hundred
2 percent?"

3 A It's all jurors, they have to agree on the same
4 thing.

5 Q When you say "they," who is "they"?

6 A The ones that was on jury duty that particular day.

7 Q You're talking about the courtroom bailiffs that were
8 sort of taking care of you folks?

9 A Yes, ma'am.

10 Q Was it one or two of them, three of them?

11 A I'm thinking it was one, but I don't recall.

12 Q And was anything said beyond, yes, you have to be a
13 hundred percent?

14 A No, ma'am, that was all.

15 Q And when you were told that, did you go back into the
16 jury room and tell the other jurors that?

17 A Yes, ma'am, I did.

18 Q And was it your impression based on that answer that
19 basically you were just going to be stuck there unless
20 everybody in that room agreed?

21 A Yes, ma'am.

22 MS. NORRIS: I don't have any further questions,
23 Your Honor.

24 THE COURT: Cross?

25 MR. LEE: Beg the Court's indulgence one moment,

1 Your Honor.

2 No questions for this witness, Your Honor.

3 THE COURT: Thank you, ma'am. You may step
4 down.

5 Call your next witness.

6 MS. NORRIS: We'd call Warrena Mathis.

7 THE COURT: Come around to the front, please.

8 WARRENA MATHIS, after having affirmed, testified
9 as follows:

10 THE CLERK: Have a seat and state your name for
11 the record.

12 THE WITNESS: My name is Warrena Mathis.

13 THE COURT: Spell your first name for me,
14 please.

15 THE WITNESS: W-A-R-R-E-N-A.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MS. NORRIS:

19 Q Ms. Mathis, did you serve as a juror during Tommy
20 Adams' trial?

21 A I did.

22 Q And during deliberations, do you remember a juror
23 leaving the room to -- for any purpose when you all were
24 deliberating?

25 A Yes.

1 Q And do you recall who that person was?

2 A I think it was Ms. Oliphant.

3 Q Was she the foreperson, the woman sort of in charge
4 in there?

5 A Yes.

6 Q And when she came back in, do you recall what she
7 said to you?

8 A I don't remember. I remember something to the effect
9 that we was going -- we wasn't going to leave until we
10 found him guilty. We were going to stay there.

11 Q Do you remember hearing the phase, "We have to be a
12 hundred percent" or something along that line?

13 A Yes, yes.

14 Q And so basically your understanding is that until
15 everybody agreed you weren't leaving?

16 A We weren't leaving.

17 Q And did you change your vote because of that
18 understanding?

19 A I did.

20 MS. NORRIS: I don't have any other questions,
21 Your Honor.

22 MR. LEE: Your Honor, at this time the State
23 moves to strike these jurors' testimony, that's
24 specifically the jurors from the jury in the original
25 trial. You're not allowed to discuss jury deliberations.

1 both of our jurors be excused.

2 THE COURT: You folks are free to go if you wish
3 to leave. You're welcome to stay if you want to stay.

4 MS. NORRIS: Your Honor, I call Mr. Tommy
5 Swenson Adams.

6 THE COURT: Come around, please.

7 TOMMY ADAMS, after being duly sworn, testified
8 as follows:

9 THE CLERK: Have a seat and state your name for
10 the record, please.

11 THE WITNESS: My name is Tommy Swenson Adams.

12 DIRECT EXAMINATION

13 BY MS. NORRIS:

14 Q Mr. Adams, were you convicted of criminal sexual
15 conduct with a minor and lewd acts related to Victim [REDACTED] ?

16 A Yes, ma'am.

17 Q Serving 45 years in prison?

18 A Yes, ma'am.

19 Q How old are you, Mr. Adams?

20 A I'm 55.

21 Q How old were you when you were convicted and
22 sentenced?

23 A Fifty.

24 Q And you heard Sharon Adams testify. How long were
25 you married to her?

1 A Approximately 22 years.

2 Q And when did you meet Kathy, **Victim** mother?

3 A She came to work at a company I was working for,
4 Columbia Oxygen, in 1987, and so we had a working
5 relationship until 1995 when we had started having a
6 personal relationship.

7 Q And did Kathy have any children?

8 A Yes, ma'am.

9 Q Who were they?

10 A **Victim** and Carlton.

11 Q And how old were they when you first met them?

12 A **Victim** would have been three and Carlton would have
13 been two.

14 Q And when did you actually move into the home where
15 **Victim** and Carlton lived?

16 A June of 1995.

17 Q And were **Victim** and Carlton in that home full time or
18 did they -- was there custody with their real father?

19 A Neither her nor I was divorced at that time. Our
20 divorces was pending. So they spent time outside the home
21 with their father and also me, so it was shared time.

22 Q And later on, did any other children live in your
23 home?

24 A Yes, ma'am. After Kathy and I were married in
25 1996 -- well, actually, we had one child before we were

1 married. We had one daughter together and she was born in
2 January of '96 and we married in April of '96. Then we
3 had a second child, Elizabeth, that was born in September
4 of '97.

5 Q And during that time period -- let's focus our time
6 period now from September of 1999 to December of 2002.

7 Did any of your children from your marriage with Sharon,
8 did they also stay with you at times?

9 A Yes, ma'am.

10 Q Tell me who and when.

11 A Cody and Tommy, Jr.

12 Sharon and I divorced in December of '95 and we
13 shared custody. The kids stayed with Sharon during the
14 week and they stayed with me on the weekend. I picked
15 them up on Friday from school, when school was in session,
16 and then returned them to school on Monday morning, but
17 they would spend -- generally, you know, say fifty
18 weekends out of the year with me. You know, there'd maybe
19 a couple of weekends out of the year they'd be with
20 Sharon.

21 Q So during the week pretty much you would have four
22 children in the home?

23 A Yes, ma'am.

24 Q And then on the weekends six children in the home?

25 A Yes, ma'am.

1 Q Did you view Victim and Carlton as your children?

2 A Yes, ma'am, I do.

3 Q Did you treat them any differently than you treated
4 your biological children?

5 A No, ma'am.

6 Q Victim testified that you touched and rubbed her in a
7 sexual way 15 to 20 times. Did you do that?

8 A No, ma'am.

9 Q She testified that you penetrated her vagina with
10 your penis at least three to four times. Did that happen?

11 A No, ma'am.

12 Q She testified that you had her to perform oral sex on
13 you. Did that happen?

14 A No, ma'am.

15 Q You swear before this Court?

16 A Yes, ma'am, I do.

17 Q Do you recall how you learned of the allegations
18 against you?

19 A Yes, ma'am. I had gone on a trip. I was driving, a
20 truck driver at that time, and I came back and a detective
21 and a -- I guess you would say an agent from DSS, I don't
22 know if you call it officer or agent -- came to visit me.

23 At that point in time, Kathy and I had -- were
24 separated. We had two houses and she was living at -- we
25 called it the city house, which is at [REDACTED].

1 And I was living at [REDACTED], which we called
2 the country house. And I was -- had came back from a
3 trip. And like I said, the detective, Ms. Bledsoe, and a
4 DSS agent -- I'm trying to think of her name -- came to
5 talk to me. That's my first one.

6 Q And now, do you recall Investigator Bledsoe
7 testifying in your trial that you made statements about
8 one of your children having big boobs for her age?

9 A Yes, ma'am.

10 Q And what was the context when you had that discussion
11 with Investigator Bledsoe?

12 A Well, she had originally asked me if my kids knew
13 about sex and I related to her that I had talked to Tommy,
14 Jr., Cody and Victim [REDACTED] about it, but I had never spoken with
15 it to the younger children because I didn't think they
16 were age appropriate. Because it was just like -- that
17 context -- the reason why is that I told her, Tessa, you
18 know, she would come out of the bathroom just wearing
19 nothing but her underwear, without a T-shirt on, and she
20 was like the age of seven and that she was starting to
21 develop and I would have to tell her, "You need to put on
22 a shirt. Don't walk around the house that way." And
23 that's the context that I used it in.

24 Q And --

25 A And that was the reason I said it because she asked

1 me why didn't I talk to the other kids about it. I didn't
2 think they were old enough at that time.

3 Q And -- what was -- first of all, let me ask you: Did
4 you say to Victim , quote, "Your cooter belongs to daddy,"
5 unquote?

6 A Yes, ma'am.

7 Q Tell me when.

8 A We had a group session between the three oldest kids,
9 being Tommy, Jr., Cody and Victim . As previously
10 testified to, the boys had gone to work with me and they'd
11 found some condoms and they had been playing with them and
12 they come and asked me what they were.

13 So I took time to talk with Kathy, told her it
14 was time for us to discuss the birds-and-bees talk with
15 the kids. And we sat down and we discussed, you know, how
16 we would do it, so we -- like we called them in and we
17 talked to them.

18 And when I made that comment, I made it to Tommy
19 and Cody and Victim that their bodies -- and I used the
20 term "cooter belonged to me," in the state that they have
21 protection when they were out there. That if they was
22 ever to be alone, that they could always rely on me to
23 help them, they could come to me with anything.

24 And that goes -- it wasn't -- I wasn't singling
25 out Victim . It was there for all three of the kids that,

1 you know, that I didn't want nothing happening to them,
2 that I was wanting them to keep themselves until they were
3 married, and they had my support.

4 And it was said in that context. And it was,
5 you know, with their mother there. I didn't mean any
6 other thing than they had my protection to keep their
7 virginity, I guess.

8 Q When you say "their mother," was that Kathy Wren or
9 Sharon Adams that was there?

10 A Kathy Wren was there. That's Victim's mother.

11 Q And why would you use the word "cooter"? Why not say
12 vagina or something more innocent sounding?

13 A I think cooter sounds more innocent to me than
14 vagina. I mean, that's just the way we always called it.
15 We -- you know, we called the girls' vaginas cooters and,
16 I mean, and the boy's penises goobers. I mean, that's
17 just the way we talked.

18 Q And where did you grow up, Mr. Adams?

19 A I grew up in Beech Island, South Carolina. I went to
20 Donner Elementary. Then we moved to Clearwater, which is
21 like a little rural town within Beech Island. That's
22 country. I picked cotton as a kid, you know, so that was
23 real country.

24 Then when I married at age 17, when I married
25 Sharon Adams, we moved to Belvedere and lived in Belvedere

1 and North Augusta then, what's referred to as the CSRA.

2 Q And you just grew up hearing "cooter" as the word for
3 a woman's vagina?

4 A Yes, ma'am.

5 Q Outside of basically this sex education discussion,
6 or however you want to phrase it, did you make that
7 statement to **Victim** any other time?

8 A No, ma'am.

9 Q How long after you were arrested was it until you
10 retained Mr. Huff?

11 A I retained him approximately a week after I was
12 arrested to represent me whenever I was posted bail. The
13 Honorable Judge Carpenter told me that in my -- this type
14 case that --

15 Q Let me stop you there. I didn't ask you that.

16 A Okay.

17 Q Did Mr. Huff continue to represent you throughout
18 your case?

19 A Yes, ma'am.

20 Q He represented you through your trial?

21 A Yes, ma'am.

22 Q How long was it -- or how much time passed from the
23 time you were arrested until your trial?

24 A Two-and-a-half years, approximately.

25 Q Prior to your trial, did Mr. Huff ask you about

1 witnesses that would be willing to testify on your behalf?

2 A Yes, ma'am.

3 Q Was Mr. Henry Rainey one of the people you told him
4 about?

5 A Yes, ma'am.

6 Q Did Mr. Huff ask you prior to trial about this,
7 quote, "cooter" comment?

8 A Yes, ma'am. It was in the discovery.

9 Q It was in Investigator Bledsoe's police report,
10 right?

11 A Yes, ma'am.

12 Q That we have actually marked into evidence here as
13 Applicant's Exhibit 2.

14 Did you tell Mr. Huff, then, essentially what
15 you've testified to today?

16 A Yes, ma'am.

17 Q And did you specifically tell him that Tommy, Jr. and
18 Cody were also present for that conversation?

19 A Yes, ma'am.

20 Q Did you have discussions with Mr. Huff, prior to your
21 trial, about whether or not you should testify in your own
22 defense?

23 A Yes, ma'am.

24 Q One time, two times?

25 A Two times.

1 Q Tell me about the first one, when, and tell me about
2 the discussion.

3 A The first time we had gone up for roll call and we
4 went downstairs to get a transcript from the separation
5 and we were talking about whether I would take the stand
6 or not and, you know, he told me that I turn red and I
7 would not be a good witness, that I showed my emotions,
8 and he didn't think that I would be a good witness because
9 of that.

10 Q And tell me about the second time you discussed with
11 him -- or when there was discussions about whether you
12 would testify.

13 A When he asked for a recess during the trial to
14 prepare his defense, we went and discussed it, what his
15 action was going to be, how he was going to do his
16 defense. And he told me on the courthouse steps that, of
17 course, it would be my decision whether I took the stand
18 or not, but he advised me not to, because based on these
19 type of trials, that every time his client took the stand
20 he lost.

21 Q Did he say anything else about why he believed you
22 should not testify?

23 A Other than, you know, my emotions of turning red.

24 Q If Mr. Huff had advised you that he believed it was
25 important for you to testify in your own defense, would

1 you have done so?

2 A Yes, ma'am, I would.

3 Q There are a number of allegations in your PCR
4 application with respect to Mr. Huff failing to object to
5 various things. Were you simply relying on Mr. Huff as
6 your lawyer during the trial to make the decision about
7 whether objections should be made or not?

8 A Yes, absolutely. Yes, ma'am.

9 Q And specifically when the information came in from
10 when the bailiff was questioned by Judge Few about the
11 jury foreperson coming out and asking if it had to be a
12 hundred percent, was there any discussion between you and
13 Mr. Huff at that point prior to him saying, "We leave it
14 to the Court"?

15 A No, ma'am. We was actually on a recess and they
16 called us back in when they called the bailiff out. And
17 it's in the transcript what was said.

18 I was sitting at the table next to him and he
19 said he didn't have any position on it I believe is what
20 the statement was.

21 Q So is it your testimony, Mr. Adams, that you never,
22 touched Victim [REDACTED] in a sexual way?

23 A That's correct, I never have touched Victim [REDACTED] in any
24 sexual way.

25 MS. NORRIS: I don't have any other questions,

1 Your Honor.

2 THE COURT: Thank you.

3 Cross?

4 MR. LEE: Just a few questions, Mr. Adams.

5 CROSS-EXAMINATION

6 BY MR. LEE:

7 Q You said that the "Your cooter belongs to daddy"
8 comment was made not just to Victim but to all of the
9 children, correct?

10 A To the three kids.

11 Q Oh, the three -- I'm sorry. The three children,
12 right?

13 A Right.

14 Q And so was -- were you using cooter as a general word
15 for all of their genitalia?

16 A No, sir.

17 Q Okay. And if what you were saying was intended to
18 convey that you supported them keeping their virginity
19 until marriage, why not just say, you know, if you guys
20 want to stay chaste, or if you want to stay virgins, know
21 that you have Daddy's support or if anyone tries to hurt
22 you, I'll protect you, why not just say that?

23 A I did say that but not in that context that you bring
24 it because I don't talk like you do.

25 Q And you said that it was your attorney, he told you

1 that it was your decision to testify, right?

2 A That's correct.

3 MR. LEE: Beg the Court's indulgence one moment.

4 No further questions for the witness, Your

5 Honor.

6 THE COURT: All right. Anything further of the

7 witness?

8 MS. NORRIS: Just one question.

9 REDIRECT EXAMINATION

10 BY MS. NORRIS:

11 Q Mr. Adams, how adamant -- well, let me strike that.

12 On a scale of one to ten, with one being you
13 should testify, ten being you shouldn't testify, where
14 would you put Mr. Huff's insistence that you should not
15 testify?

16 MR. LEE: Objection, Your Honor. I didn't ask
17 him anything about testifying.

18 THE COURT: You want to be heard?

19 MS. NORRIS: No, Your Honor.

20 THE COURT: All right. Sustained.

21 Thank you, sir. You may step down.

22 All right. Anything else from the applicant?

23 MS. NORRIS: No, Your Honor.

24 THE COURT: State have any witnesses? Do you
25 have a witness?

1 MR. LEE: Yes, Your Honor. The State will call
2 Mr. Jim Huff to the stand.

3 THE COURT: Come around, please.

4 JAMES HUFF, after being duly sworn, testified as
5 follows:

6 THE CLERK: Have a seat and state your name for
7 the record, please.

8 THE WITNESS: My name is Jim Huff, H-U-F-F.

9 DIRECT EXAMINATION

10 BY MR. LEE:

11 Q Mr. Huff, how long have you been practicing law?

12 A Twenty-six years.

13 Q And what percentage of that practice has been in the
14 practice of criminal law?

15 A Through the years, originally I clerked for a circuit
16 judge and then prosecuted here in Lexington County with
17 the Solicitor's Office. Also I was a city prosecutor for
18 about four or five years if I recall correctly.

19 In private practice, the part of criminal
20 defense, I think at the least, possibly 60 to 65 percent
21 at least of my practice was criminal defense in the early
22 years.

23 I would say in the last ten years, probably
24 anywhere from 75 percent to, in the last year or so, about
25 95 percent.

1 Q So you had experiences dealing with these types of
2 cases before?

3 A Yes, sir, I believe so.

4 Q And I believe it was the applicant's testimony that
5 you were retained in this case; is that correct?

6 A Yes, sir.

7 Q Okay. And after being retained in the case, did you
8 have occasion to meet with the applicant?

9 A Yes, sir.

10 Q And do you recall about how many times throughout the
11 course of your representation you met with the applicant?

12 A No, sir, I did not -- I did not bring with me what I
13 believe I used back at that time, something called Time
14 Slips, some software, and so I cannot pinpoint exactly how
15 many times that I met with Mr. Adams.

16 I would -- and it would probably have to be a
17 guess -- I would probably say as far as him being
18 physically present in my office, probably maybe four to
19 seven times, of course, numerous times on the phone. We
20 certainly would prepare for trial and go over the
21 testimony of witnesses and of Mr. Adams.

22 Q Okay. And -- so during these discussions, what was
23 the defense that he provided to you on his behalf?

24 A Well, the defense was that he didn't commit the
25 crime. And it was a defense that I believed.

1 Q Okay. And why did you believe that defense?

2 A It's my hope that through the years of experience
3 that -- of course knowing that people can always be
4 misled -- it's my hope that we gain a sensibility or
5 sensitivity to decide whether someone is telling us the
6 truth or not. I know it's not scientific, but I think in
7 common life, in common-day experience, most people feel
8 they've got some barometer to gauge that. And I think
9 that as we certainly believe police officers have the
10 ability to do that, I think criminal defense lawyers gain
11 the same type of hunch or gut feeling. And I felt that
12 Mr. Adams had not committed this crime.

13 Q So he asserted to you that he hadn't done anything
14 and you believed him?

15 A Yes.

16 Q Okay.

17 A Not just because of his word, but because of other
18 things in the case, the lack of evidence and things.

19 Q So you filed a Rule 5 Brady motion?

20 A Yes, sir.

21 Q And what did the evidence consist of?

22 A In my opinion, the evidence really consisted of
23 **Victim** **██████** saying that Mr. Adams committed this crime on
24 her and nothing else.

25 Q So it's essentially her word and her word alone

1 versus -- and that was it, there was no additional
2 evidence?

3 A I don't think there was any additional evidence.

4 There was no physical evidence in the case. I
5 think some of the things we brought out at trial was that
6 there was no physical evidence of sexual molestation, of
7 penetration of a child. I believe the testimony was at
8 age seven she had seen three different doctors, one a
9 forensic examination after this allegation came out.

10 There was no -- she wrote a Happy Father's Day
11 card to him.

12 It was, in my opinion, a very bare, one-witness
13 assertion that he did it with nothing to back that up or
14 support it.

15 Q So you must have decided pretty quickly that you were
16 going to trial, then?

17 A Yes, sir. I mean, I believe I looked at what our
18 options might be as far as whether pretrial intervention
19 might be available, whether there might be a plea to some
20 probationary sentence, up to a trial. Of course, you've
21 got to discuss that with your client and let them make the
22 decisions.

23 Q And did the applicant decide to go to trial?

24 A Yes, sir.

25 Q And in support of his contention that he didn't do it

1 or that he was a good, loving father, did he offer
2 potential witnesses for you to interview in this matter?

3 A Yes, sir.

4 Q And did you interview those witnesses?

5 A I believe I did. There was -- from what I found in
6 my file, there were -- we had, I believe at one time,
7 about seven potential witnesses. I've got a witness
8 contact list. Of course, I had to provide the Court with
9 a witness list prior to the drawing of the jury. That was
10 typed up. I also had one in my file that I added
11 witnesses to from the beginning, until we got to a final
12 potential witness list.

13 Q Okay. And you did end up ultimately calling several
14 witnesses on his behalf at trial, correct?

15 A That's correct.

16 Q And I believe you stated that you had to submit to
17 the judge prior to the pulling of the jury a witness list?

18 A That's right. And I believe we listed on there, I
19 believe, nine potential witnesses.

20 Q Okay. And would the witnesses who testified here
21 today -- Ms. Boyce, Mr. [REDACTED], Jr., Mr. Cody [REDACTED] and
22 Ms. Sharon Adams -- were they on that list?

23 A Yes, sir. I've got a copy of the list with me. We
24 had -- yes -- would you ask those witnesses again? Would
25 you name them?

1 Q The witnesses who testified here today --
2 Ms. Leslie Boyce, Ms. Sharon Adams, Mr. Tommy [REDACTED], Jr.
3 and Mr. Cody [REDACTED], along with Mr. Henry Rainey -- were
4 all those witnesses on the witness list you submitted to
5 the judge?

6 A Yes, sir.

7 Q Okay. And again, that was submitted prior to the
8 pulling of the jury?

9 A Yes, sir.

10 Q And had you informed those people on that witness
11 list prior to the day of trial that they would be
12 testifying at trial?

13 A All but Henry Rainey. I had spoken with his brother
14 Timothy Rainey. My recollection is that both Timothy
15 Rainey and Henry Rainey also worked with Mr. Adams at the
16 same employer.

17 I had Mr. Rainey's telephone number. I also
18 have Henry Rainey -- excuse me -- Timothy Rainey, I had
19 his home and cell. And the best I can recall, I know I
20 talked with Timothy Rainey and discussed the case. And
21 somehow I believe that he was going to be the better
22 witness if we felt like we needed to call one, as far as a
23 co-worker.

24 But, yes, all the other witnesses, I had spoken
25 to them -- my file, notes, contact information -- and I

1 also had them on my prepared witness list as potential
2 witnesses.

3 Q Right. And so the others, beyond Mr. Rainey, Ms.
4 Boyce, Mr. [REDACTED], Jr., Mr. [REDACTED] and Ms. Adams, had you
5 told them prior to the day of trial -- as was the
6 allegation today that they didn't hear until the day of
7 trial -- had you told them prior that they would be
8 witnesses in the case?

9 A Yes. I believe Ms. Boyce, Mr. Adams' daughter, was
10 honestly a great help. She was very vocal, very involved
11 in her dad's defense. She -- I recall having numerous
12 conversations with her, many times her being in my office
13 to discuss her father's case. She was a -- dedicated to
14 her dad's defense, was an active participant in it, in the
15 discussions in it.

16 And as far as, I believe, Ms. Sharon Adams,
17 Mr. Adams' first wife, I know we had spoken before. I had
18 notes reflecting that, what her testimony was going to be
19 about.

20 I had prepared, in fact, a list of witnesses
21 with specific topics that we would cover on or during
22 their testimony. I had several topics as far as Ms.
23 Boyce, several topics as far as Ms. Adams and also as well
24 as Tommy [REDACTED], Jr. and Cody [REDACTED].

25 Q So if I'm hearing you correctly thus far, you've got

1 the State's evidence in the case and discussed that with
2 the applicant, and that basically consisted of the
3 victim's testimony alone.

4 And -- so you pretty quickly decided you're
5 going to go to trial. You got this list of witnesses.
6 You talked to them and ultimately you pulled it down to a
7 witness list that you were going to call at trial, right?

8 A Yes, potential witnesses, right.

9 Q Now, in a he-said/she-said situation like this,
10 wouldn't you have felt it was important to call the
11 applicant to testify at trial?

12 A Whether or not you put the accused on the witness
13 stand at trial is -- there's several factors that would be
14 important. Yes, it could be.

15 Several things need to be discussed with your
16 client prior to trial and during trial.

17 Prior to trial, what are the facts: What are
18 they going to be able to testify to; what are they going
19 to add to the testimony? Mr. Adams and I discussed that.

20 We discussed what his testimony was going to be
21 prior to the beginning of the trial. It's my recollection
22 that Mr. Adams was going to be a witness in the case.

23 During the trial, you always come to the
24 conclusion of the State's case, and I think any trial
25 attorney is going to have to talk with his client and let

1 the client make a decision whether or not they are going
2 to testify in the case.

3 There is potential good, potential bad that
4 comes with placing your client on the stand in general.
5 Your client certainly would be able to put a face to the
6 allegation. The jury gets to look at him, decide whether
7 or not he appears to be an honest person with integrity,
8 whether he appears to be hiding things. Any prior records
9 that he has might come out pursuant to the rules. I don't
10 believe Mr. Adams had any, as best I recall. But they
11 also get opened up possibly to prior bad acts or other
12 things that may be in their background pursuant to the
13 rules, if they are admissible.

14 So it's a mixed bag. I think that any trial
15 lawyer has to sit down with their client at the conclusion
16 of the State's case and make a review and assessment of
17 whether or not it is imperative that the client testify,
18 beneficial that the client testify, or potentially very
19 damaging or deadly if the client were to testify, and
20 that's what you've got to do in any criminal case.

21 Q Okay. And specifically in this case, what was your
22 advice to Mr. Adams?

23 A It's my recollection that during a break of the
24 trial -- it may have been a lunch break -- we went over
25 what the State had presented and discussed the strength of

1 the State's case or whether it was strong or weak and what
2 we would be able to put up in defense.

3 I know that one issue we had discussed was
4 issues of identification or jurisdiction in the case. My
5 recollection is, when we came back from court or prior to
6 the break, it certainly was my intention and understanding
7 that Mr. Adams was always going to testify in this case.

8 We discussed the matter during the recess. As
9 is always in every single case, my discussion with the
10 client is: It is your decision, this is what I think is
11 good or bad about the case, this is what you can add, this
12 is what you expose yourself to if you testify, it is your
13 decision.

14 And I know that -- I have heard today that -- a
15 summary of it would be that I either told Mr. Adams not to
16 testify or that I would not allow him to testify. That is
17 not true.

18 Q Who ultimately made the decision not to testify?

19 A Mr. Adams made the decision. Matter of fact, I was
20 somewhat surprised that he made the decision not to
21 testify, even though I felt that the State's case was
22 weak. It was -- I don't know if I would say, if it's
23 proper to say it's a flip of the coin whether or not he
24 should testify, but it was something that he certainly had
25 to decide on his own.

1 And if I recall correctly, there was during the
2 testimony on the record, I know that we had -- I had
3 placed on the record that I had discussed with Mr. Adams
4 his choice to testify or not testify in the case. And I
5 believe in the transcripts from the trial, on page 113,
6 there was a colloquy I had requested between -- that the
7 Court, Judge Few, to discuss those rights and
8 possibilities with Mr. Adams. And I believe on 113, line
9 14, the Court asked "And even though you should rely upon
10 the advice that is given to you by your lawyer, when it
11 comes down to it, you must make this decision."

12 Mr. Adams responded, "Yes, sir."

13 And the Court said, "Are you ready to make your
14 decision?"

15 Adams said, "Yes, sir."

16 And the Court stated, "And what is your
17 decision?"

18 Mr. Adams said, "Not to be a witness."

19 The Court, "You will not testify?"

20 Mr. Adams, "No, sir."

21 So I wanted to make absolutely clear that any
22 decision to testify or not was Mr. Adams' decision. And
23 it never is mine. The client always owns the case.

24 Q Now, speaking specifically about the reference to the
25 cooter testimony, there is an allegation made that you

1 should have objected to the detective's testimony
2 regarding that. Do you recall what your thinking was at
3 that time, why you didn't object?

4 A I think there's a couple of things. One, I didn't
5 think it was objectionable. It was a statement of the
6 accused. I think both sides get to interpret its meaning
7 as they choose. The jury ultimately has to make that
8 decision.

9 Also, the intent was when the case began that
10 Mr. Adams was going to testify. So he certainly was going
11 to clear that up when he took the stand. So I felt like
12 that would be clarified, if it needed to be clarified,
13 when he testified.

14 And I think we certainly had the ability to
15 argue to the jury or have them understand that it wasn't a
16 statement that Ms. Wren's body was his play thing, if you
17 will. Because -- I believe from -- I haven't looked back
18 where it is in the transcript, but in the amended
19 application, I think what appears in quotes is: Quote,
20 "Your cooter belongs to your daddy," comma, "and if
21 anybody wants to touch that or bother that, you need to
22 tell them to ask me."

23 That, evidently being a quote from the record,
24 would indicate to me it was more of a father saying,
25 "Don't let anybody touch you inappropriately." You know,

1 you've got to -- you know, "You have them come talk to me
2 and I'll make take care of it and make sure it doesn't
3 happen."

4 It's somewhat similar -- in some ways it is
5 innocuous along the lines of what a circuit judge stated,
6 according to my understanding, one time in South Carolina
7 on a statutory rape case when the girl stated that it was
8 consensual and that she gave it to the boy, the judge
9 said, "It doesn't belong to you, it belongs to the State."

10 I'm not trying to be comical about it because
11 it's not a comical issue, but that was my thought on it,
12 that we would clear it up primarily when Mr. Adams
13 testified and that standing alone, it's not subject to
14 only one interpretation.

15 Q And, again, even though it was objectionable, you
16 thought if you objected it wouldn't have made a
17 difference?

18 A Any time you object during a trial, regardless of the
19 ruling you get, no matter what side of the courtroom you
20 stand on, as prosecutor or defense, it waves somewhat of a
21 red flag to the jury that it must be something important
22 and hurtful to your case or you wouldn't be objecting.

23 So in some trials, some testimony may be
24 objectionable and not have any effect at all. Some might
25 be totally destructive and damning and you better object

1 to it.

2 Q And, again, you thought that the corrected testimony,
3 as it were, would come out in Mr. Adams' testimony, but
4 ultimately he chose not to testify?

5 A Yes, sir.

6 Q Which surprised you?

7 A Yes, sir. It was understandable, but you can't push
8 a client, Mr. West -- I mean Mr. Lee. You have to give
9 them the benefit of your experience. You've got to
10 explain to them what the law and the rules are as best you
11 can. But ultimately on all facets of the trial the client
12 controls it, they own it, and they've got to -- you've got
13 to obey their instructions.

14 If you lead a client -- and what I mean by that
15 is pressuring them or intimidating them or telling them
16 what they should do, which I've had -- I couldn't tell you
17 how many hundreds of times I've had clients ask me, "What
18 should I do?" And my response is, "I can't tell you. You
19 have to make your own decision," because that decision is
20 either going to be right or it's going to be wrong and
21 I've got to let the client bear the responsibility and
22 result of their own choice?

23 Q Okay. And you called the -- you called several of
24 Mr. Adams' children to testify as character witnesses at
25 trial, correct?

1 A Yes, sir.

2 Q And elicited testimony from them about how good a dad
3 he was?

4 A Yes, sir.

5 Q Why didn't you ask them about the cooter comment?

6 A Again, as to them specifically, I think at that point
7 I would have probably still felt that it was not the
8 damaging evidence that the State was making it out to be
9 as to whether or not -- as to why I did not specifically
10 ask them to clarify it, as I sit here today, I can't give
11 you an answer. I don't -- my notes don't reflect anything
12 about that. And I know it's been a few years. I don't
13 know why I didn't ask them that specific question. So I
14 really have no good answer for you or any answer other
15 than what I've given you.

16 Q Now, there was an allegation that you failed to
17 consult a mental health expert regarding, I guess,
18 behavior of the alleged victim. What was your take on
19 that?

20 A I'm sorry. Could you ask that again?

21 Q What was your take on the possibility of getting a
22 mental health expert in this situation?

23 A As far as mental health to testify as to?

24 Q The victim's actions versus what the standard actions
25 would be of a victim of something like this.

1 A Well, in the first place, I don't think there are
2 standard actions or behaviors of rape victims. The years
3 that I have been prosecuting and defending, I feel like it
4 is anything that an expert wants it to be.

5 I've heard that the person sleeps too much to
6 the person can't sleep, the person eats too much and gains
7 weight to the person has loss of appetite and are losing
8 weight, that they become aggressive, that they become
9 withdrawn. It's -- there is -- at least in my experience,
10 based upon listening to experts and attending seminars,
11 the thing that I read, there is no true science. There is
12 no true test mentally to prove that someone has been
13 abused. And I felt that that issue would come out and
14 that many people in their own common sense can decide
15 whether or not somebody evidences being abused.

16 And what we saw during this trial with Victim
17 [REDACTED], if there ever was an alleged victim that showed no
18 signs of anything, it was Victim [REDACTED]. I recall that she
19 was utterly emotionless, blank. And what I would have
20 anticipated at the trial was somebody that would get on
21 the stand and cry and scream and do that. She gave none
22 of it.

23 But there was -- there being no such witness, no
24 outcry witness that the State was going to put up, no
25 witnesses that we were aware of based upon testimony that

1 would show she had had any type of personality change,
2 that everything in the family was normal and status quo, I
3 felt would speak on its own.

4 Q In fact, you presented evidence with relation to her
5 behavior after the fact anyway, did you not, by submitting
6 evidence of the holiday cards, the gifts, et cetera?

7 A Yes, sir, I did.

8 Q Now, there is some discussion about --

9 MR. LEE: I beg your pardon one moment, Your
10 Honor.

11 BY MR. LEE:

12 Q There is some discussion about the bailiff -- the
13 question from the foreperson about a hundred percent and
14 the bailiff's interaction. Do you recall why you didn't
15 ask further questions at that point?

16 A Yes, sir. The -- just one moment.

17 I think the testimony of Ms. Watson was that the
18 only comment was -- there was a question whether or not
19 the -- that was asked, quote, "If it had to be a hundred
20 percent," and they said yes. It went no further than
21 that. It impressed me that the jury was having trouble
22 making a unanimous decision, and I felt that we were at
23 the best going to get a hung jury or at the least -- the
24 worst, a hung jury.

25 As best I can recall, I believe I spoke very

1 briefly with Mr. Adams on it as to whether or not we
2 should do anything about it or leave it alone. And the
3 decision was that -- to just leave it alone, that I felt
4 like we were gaining momentum with the jury, that they
5 were really having to struggle on this case. I took it as
6 the jury was split on this case.

7 But as best I can recall -- and I will tell you
8 I could be mistaken, but as best I can recall, there was
9 very fast comments between Mr. Adams and I as to whether
10 or not we should do anything else, but it would have been
11 brief.

12 I don't recall if there was -- how much time
13 there was after we got the question or the statement. But
14 the record's not going to show that time wise, whether it
15 was 30 seconds or five minutes. It's just not going to
16 show that.

17 Q Let's talk about the State's closing argument for a
18 second.

19 There's an allegation that you should have
20 objected to the State's closing argument. I believe
21 Ms. Boyce testified that the prosecutor's demeanor during
22 the closing was loud and stern.

23 Is there an objection that you can make -- is it
24 against the rules for a prosecutor to be loud or stern
25 during his closing?

1 A No, sir, there is no objection. I mean, I think our
2 courts, at least the times I've read where there -- in
3 court opinions where there has been an alleged error
4 during a prosecutor's closing argument, it appears that
5 the Court begins their decision that there was no error
6 with comments such as, the advocates are to advocate and
7 to be passionate and deliberate and firm in their
8 representation, whether it be from the defense or the
9 State.

10 There was nothing that I saw that would sustain
11 an objection or there would be any error based upon the
12 tone of voice or volume of argument by an attorney making
13 their closing argument to a jury.

14 Q Now certainly -- in cases where you get an outcome
15 that's not what you'd hoped for, especially in a case
16 where the sentence is as long as this one was, you're not
17 happy with the outcome, but do you feel you provided
18 effective, competent representation to the applicant?

19 A Yes, sir, I think I did.

20 As far as the outcome, I quite honestly was
21 shocked. I believed that Mr. Adams was innocent of this
22 charge. I still believe that. But I believe that I gave
23 him competent representation in the case based upon the
24 facts, the evidence and how the case was tried, and the
25 testimony that was and was not presented. I felt like I

1 gave him adequate representation.

2 Q And just one final question.

3 There has been a lot of testimony today,
4 represented today about Mr. Adams being a good dad, et
5 cetera. But the victim didn't testify today, did she?

6 A No, sir. No, sir, I didn't see her.

7 MR. LEE: No further questions.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MS. NORRIS:

11 Q Mr. Huff, starting specifically with the "your cooter
12 belongs to your daddy" comment, did you believe that that
13 was basically a confession by Mr. Adams?

14 A No.

15 Q To either criminal sexual conduct with a minor or
16 lewd acts?

17 A Confession of nothing. Confession would have to be a
18 recognition of guilt and admission that you've committed a
19 crime. I did not view that statement as being that at
20 all.

21 Q Did you view it as relevant, even, to the offenses?

22 A Relevant, yes. Because the State would have the
23 ability to put the spin on it that they would desire.

24 There's a difference between -- when it comes to
25 admissibility, I think in trial work the actions, conduct,

1 statements of people, specifically the defendant, is
2 nothing more than paint. And I think both the defense and
3 the prosecution paint the picture they want with the same
4 paint samples they've got.

5 Q If you can keep some of the prosecution's paint out,
6 you like to keep it out, right?

7 A If we can, certainly. Sometimes some of their paint
8 helps us, sometimes it hurts us.

9 Q Did "your cooter belongs to daddy" help in this case?

10 A Mrs. Norris, I don't know how to answer that. I
11 would lean towards saying no, but it depends on how the
12 jury took it. And there a lot of times are things that
13 come into evidence at trial that one party thinks will
14 help their side when it may wind up helping the other.

15 As a general statement in this case, would I
16 have preferred that comment not to have been in evidence?
17 Yes. Did I think it was going to come in? Yes. Did I
18 think we could explain it and give it a neutral and
19 positive meaning? Yes, did that as well.

20 Q Did you make any effort to object or move in limine
21 that that be excluded?

22 A I don't believe I did. I haven't reread all the
23 transcript but I'm pretty confident that none of those
24 were made.

25 Q Now, with respect to the second issue about whether

1 Tommy and Cody could have rebutted this, is it your
2 testimony that you had talked to Tommy -- let me do it one
3 at a time -- Tommy, prior to the beginning of trial about
4 what his testimony could be?

5 A Well, on Tommy Adams, yes. My notes reflect that I
6 noted what his age was. I noted when he had stayed at the
7 house. I noted issues about family activities they did.
8 And I had some shorter information as to Cody [REDACTED].

9 Q Now, with respect to Tommy, let me make sure we're
10 looking at that same page. Is that a copy of the page
11 you're looking at?

12 A That's it, yes, ma'am.

13 (WHEREUPON, Applicant's Exhibit No. 3 was marked
14 for identification only.)

15 BY MS. NORRIS:

16 Q Looking at Applicant's 3 --

17 A Yes, ma'am.

18 Q -- I'm going to put the actual exhibit in front of
19 you so you can make sure it is an accurate reflection of
20 your notes.

21 With respect to Tommy, do you see the beginning
22 of your note there where it says, "Stayed with me" or
23 "Stayed W/me"?

24 A Uh-huh.

25 Q So wouldn't that imply to you that it was Tommy

1 Adams, Sr. that you were talking to as opposed to Tommy
2 [REDACTED], Jr. when you wrote those notes?

3 A It could be. It could be.

4 Q And your note with respect to Cody, right underneath
5 that on Applicant's Exhibit 3, does that indicate to you
6 one way or the other whether or not you were talking to
7 Tommy Adams, Sr. or talking to Cody?

8 A It doesn't. I think it could be taken either way.

9 Q Now, moving to the issue about whether you advised
10 Mr. Adams to testify, your testimony, as I understand it,
11 is that going into this trial you fully expected him to
12 testify; is that right?

13 A Yes, ma'am.

14 Q And when you look at your file there in front of you,
15 and obviously you have shared this file with me, do you
16 have notes in there, your preparation notes for
17 cross-examining Victim [REDACTED]?

18 A Yes.

19 Q Do you also have notes in there in preparation for
20 cross-examining Investigator Bledsoe?

21 A Yes, ma'am.

22 Q Do you have any notes in there in preparation for
23 Tommy Adams, Sr. to testify?

24 A No, because on direct examination I already know what
25 his testimony is going to be.

1 Q So --

2 A I mean, I already know the facts of the case. I
3 already know what he's going to testify to in the topics.

4 And I think routinely, as I think back on my
5 career, I don't know if I -- if it's been a practice to
6 draw up an examination of my own client. Because that
7 evidence, you know, I pretty much know from heart.

8 For cross-examination, you try to many times tie
9 it to exhibits you know are going to come in, to the
10 incident reports or prelim transcript.

11 So I think it's more beneficial to have your
12 cross written up or some notes as to what you're going to
13 do, what exhibits you're going to refer to, page number,
14 paragraph, things like that than to what your client is
15 going to testify to.

16 Q Do you -- I believe you testified that there was some
17 discussion at a recess or lunch on the courthouse steps or
18 somewhere there. You acknowledged discussing finally with
19 him -- or I mean finally in the context of you said after
20 the State's case you would revisit that issue?

21 A Right. I don't recall the chronology of the case
22 right now, whether we went to lunch after the State rested
23 or before the State rested. I just don't recall. But I
24 know there was some conversation and certainly would have
25 been one after the State rested.

1 If the case was still going on and we'd broke
2 for lunch, still had witnesses to come, there would have
3 always been -- once the State is through and you know
4 there's nothing else coming in, you always have that
5 conversation with your client.

6 Q And during that conversation, do you remember who all
7 was present for that?

8 A If we went to lunch -- I don't think we did go to
9 lunch because that's when I had a wreck during lunch.

10 If there was a conversation outside the
11 courtroom as to Mr. Adams testifying, I can't swear to you
12 who was there. It would be my best guess that Ms. Boyce
13 would have been there; Mr. Adams' children, two sons would
14 have been there; possibly Sharon Adams, possibly, but I'm
15 not sure, but I would feel pretty confident that Ms. Boyce
16 and Mr. Adams' two sons would have been there.

17 Q And do you recall specifically what the discussion
18 was then?

19 A As to the -- as to Mr. Adams testifying, my --
20 specifically what he and I had said verbatim, no, ma'am, I
21 could never give you that.

22 As a general answer to you, I would have
23 discussed with him, of course, it's his right to testify
24 or not. I can't tell him what to do.

25 I usually discuss what the damaging evidence is

1 that's been testified to that's going to hurt us, the
2 testimony that is not there that may help us -- sometimes
3 cases are won on lack of evidence rather than on what
4 evidence is actually presented -- and kind of the strength
5 and weaknesses of the prosecution's case.

6 As I stated previously, I always discuss -- I
7 know that one thing that I normally say to clients is that
8 whether or not you should testify, you look at what is it
9 that you feel you have to get into evidence that no one
10 else can get into evidence before you testify.

11 Sometimes there's something crucial that the
12 client needs to testify to that I might get in through
13 cross-examination on a prosecution witness. Sometimes
14 I've got to put up a defense witness to get that in.
15 Sometimes it's absolutely got to be the defendant himself,
16 the accused.

17 I always try to make my case through people
18 other than the defendant so that I can come down to the
19 end of the case and then let my client see what the
20 prosecution has left and make a best-guess judgment of
21 whether or not you need to take the stand.

22 Q And as your client is making that, as you phrase it,
23 "best-guess judgment," do you just say here are the pros
24 here are the cons, or do you actually advise your client
25 about what they should do? "In my opinion," do you say

1 that to them?

2 A I would answer you this way: I will always tell them
3 what the strengths and weaknesses of the case are and tell
4 them that if you want to take the stand, you can certainly
5 take the stand. What is it that you are going to testify
6 to? And is it crucial to your defense? Does it help make
7 or break the case? What do we potentially see as the
8 downside of you testifying?

9 What are you -- what doors are you potentially
10 opening up by letting them get you on the stand and then
11 cross-examine you? What bad things could come out?

12 And how do we feel about the jury? Where do we
13 think they are? And it's -- it is just so unscientific it
14 isn't funny.

15 But you also are trying -- it's almost like a
16 football game. There's momentum in trials just like there
17 is on a football field. And sometimes if you feel the
18 momentum is high for your side, then you might decide not
19 to testify. If you feel it's low, then you might feel you
20 need to go testify. But I discuss all of that.

21 And I know I discussed that with Mr. Adams, all
22 those topics and ultimately tell him, it's your call, your
23 decision.

24 I do not believe I have ever told a client, "you
25 should not testify." I know I've never told a client,

1 "you will not testify because I will not put you on the
2 stand." That has never occurred.

3 Q Understanding that, I guess my question is more this:
4 Obviously you want to always advise about the pros and
5 cons, but as always happens at least in my experience, and
6 I'm sure yours is greater with more years of practice,
7 your client's going to look at you and say, "What do you
8 think?" or something like that.

9 Do you just say, "I'm not going to answer that,
10 don't have an opinion," or do you give them your opinion,
11 "As your lawyer, this is what I advise you to do,"
12 recognizing, of course, that you are making clear that
13 it's their decision?

14 A No, ma'am. I never tell them, "I'm advising you to
15 do this or that" or "In my advice, you ought to do this or
16 that." I don't do that. Because when you do, you really
17 are telling your client what to do.

18 Certainly your client is going to rely on your
19 judgment and experience. And as I've stated previously, I
20 have had hundreds of clients ask me, "What do you think I
21 ought to do? What would you do if you were in my shoes?"
22 I get that all the time.

23 My answer is always, "I will not tell you what I
24 would do. I'm not going to tell you what you should do.
25 Here's the pros and cons. This is what I see is damaging

1 to your case. This is where -- weaknesses I see in the
2 prosecution's case. This is what's good about what we've
3 put up in the case." Those are the things that I discuss
4 with the client.

5 And then I say, "You know the good and the bad.
6 You've got to make the decision if you're going to testify
7 or not."

8 Q So with respect to your actual opinion, at that point
9 where you're having that final conversation with your
10 client after the State's rested and you've presented your
11 other cases, is it your testimony that you say, "Here are
12 the pros, here are the cons, but I'm not going to advise
13 you one way or the other, you've got to make the
14 decision?"

15 A No, ma'am. I am advising the client. I'm advising
16 them on the pros and cons, the strengths and weaknesses of
17 the prosecution's case.

18 What I'm specifically telling you is, I don't
19 tell them my opinion that you ought to testify or you
20 should not testify. I don't tell the client that.
21 Because ultimately one of a couple of things are going to
22 happen.

23 If I tell the client to testify and they testify
24 and get convicted, then it's my fault, that they should
25 not have testified and I enticed them and coerced them

1 into testifying to their detriment and they got convicted.

2 If I tell them you better not testify and they
3 don't testify and they're convicted, it's my fault because
4 they really should have testified and maybe things would
5 have been different.

6 That's, Ms. Norris, where a lawyer -- a line a
7 lawyer should not ever step over. We don't entice, bully,
8 trick or cajole a client to testify or not testify. If
9 there's any part, I think, of a criminal trial where a
10 lawyer brings a person to the edge of the diving board and
11 then turns around and steps back, it's at that moment. We
12 don't push them in the water and we don't hold them back.
13 We've trained them, hopefully, in trial preparation of how
14 to testify. We've covered what they intend to testify
15 about. We've prepared them. But we've got to let them
16 fly or not fly on their own. To do one or the other, to
17 push them or hold them back, I think a lawyer oversteps
18 his bounds.

19 Q And that's the same whether it's someone like
20 Mr. Adams, or as many of our criminal defendant clients
21 are, mentally retarded, low IQs, you're not going to
22 advise them at all, you're just going to say, "Here it is,
23 jump or don't jump?"

24 A If they're -- I would probably answer you this way:
25 Yes. If they're competent to stand trial, then I'm going

1 to have the same discussion with them. If I don't think
2 they understand, that they're not competent, then
3 hopefully we've already taken that up with the Court.

4 If I think that the client is not competent but
5 the Court has ruled that they are, then I'm going to have
6 that conversation with them because I'm stuck with what
7 the judge has ruled.

8 But I'm not going to tell any client that, "You
9 should testify," or "You're going to testify," or that,
10 "You're not going to testify," or that, "In my opinion,
11 you shouldn't testify."

12 Q All right. Moving to the issue that I don't believe
13 was addressed on direct, but the issue in the application
14 about eliciting the statement from Investigator Bledsoe
15 that she believed **Victim** what were you trying to get at
16 by asking her, you know, aren't there some cases or
17 whatever -- let me get the transcript and make sure I get
18 what you actually asked her there.

19 A Yes, ma'am.

20 Q I think I've got it here. Do you happen to have the
21 transcript with you?

22 A I do, yes, ma'am. If you could just give me the
23 page.

24 Q On page 70, I believe?

25 A All right. Thank you.

1 Q And the question leading in is: "And you assume that
2 what people tell you when they -- in one of these type of
3 child sex abuse cases, you're assuming that what they're
4 telling you is true?"

5 And with that she responded, "Yes, sir, and I
6 believe what Victim [REDACTED] has told me on this case."

7 What did you hope to gain by asking the
8 question, you assumed they're telling you the truth?
9 Because clearly she believed Victim [REDACTED] in this case, charges
10 were filed.

11 A Well, I'm not going to -- I would agree with you most
12 of the time that she might have believed Victim [REDACTED]. I also
13 know that in practice, if somebody makes an allegation,
14 there's going to be a warrant, whether the officer may
15 believe it or not. If they don't, then they're going to
16 be in trouble.

17 My intent in asking the question was that I knew
18 that there was a domestic case going on in this matter
19 between Mr. Adams and his wife. That the officer was
20 going to say that in some of these cases people may tell
21 the truth, in some of them they may tell a lie. And
22 basically I don't know.

23 I wasn't going to specifically ask, "Did you
24 believe or disbelieve her?" I wanted before the jury that
25 this officer in her experience had found that people who

1 make these accusations sometimes tell the truth and they
2 sometimes lie. That was a neutral question that I felt
3 would take away from the State's case, that only -- that
4 alleged victims in these type of cases always tell the
5 truth and that it must be true if it's said. That's where
6 my intent was in that question.

7 I didn't ask her what she believed. I asked
8 her, "You assume they're telling you the truth." The
9 follow-up was going to be and I believe was -- I would
10 have to go back and read it, but I believe the follow-up
11 was that she also admitted that sometimes people don't
12 tell the truth about these type of accusations, and
13 particularly when there is a domestic separation or
14 divorce filing in close proximity of time of this type of
15 accusation.

16 Q Now, moving to the incident where the bailiff
17 informed the Court that the foreperson had stepped out and
18 asked this question about one hundred percent, it's my
19 understanding that you're sort of reading the tea leaves
20 on that and your experience was that the jury was
21 basically hung and having difficulty reaching a decision?

22 A I think that's probably a good analogy.

23 Q And generally when a jury follows proper procedure
24 and sends in a note saying we're hung or we're deadlocked
25 that first time, the typical procedure is to give an Allen

1 charge, correct?

2 A I'm sorry. I was trying to find something in the
3 transcript. Would you please ask that again? My
4 apologies.

5 Q Well, let me wait.

6 A I think I found where that -- I found where that is
7 in the transcript. I believe it's around page 153.

8 Q My question basically was: Had the jury followed
9 proper procedure in this case and sent a note out saying
10 we're hung, we're deadlocked, however the phrasing was, is
11 it your understanding at that point that the trial court's
12 typical action is to give an Allen charge?

13 A No, ma'am. It's a mixed bag, if you would. I've
14 had -- when jurors have written back that they were hung,
15 that they were at an impasse, couldn't make a unanimous
16 decision, I've seen some judges offer an Allen charge.
17 Some judges don't and allow them to continue to
18 deliberate. And I've had attorneys not request an Allen
19 charge and the judge give it. And I've had attorneys
20 object or request an Allen charge and the judge refuse to
21 give it.

22 So in response to your question, the answer
23 would be no, I don't know what typical is.

24 Q Did you see a down side or consider whether there was
25 a down side to asking the Court to bring the jury in and

1 give them appropriate instructions again?

2 A A down side being something that would be detrimental
3 to Mr. Adams' case?

4 Q Yes.

5 A No, I don't think I saw that there would be a down
6 side to doing that.

7 As best I can recall -- of course the transcript
8 on page 153 doesn't give times. My best recollection is
9 there was not much time that passed before the Court
10 recessed on line 12 and the Court started back on line 13
11 and asked Ms. Watson to come up.

12 I think that was one thing that factored in to
13 what occurred in the transcript.

14 Specifically to your question, a down side or
15 would it have been detrimental to Mr. Adams' case to ask
16 for some further instruction from the Court, no, ma'am, I
17 don't think it would have been detrimental necessarily.

18 THE COURT: Let me know when you get to a good
19 stopping point, please.

20 MS. NORRIS: Now's fine, Your Honor.

21 THE COURT: We're going to recess for lunch.
22 I've got a temporary restraining order hearing that Judge
23 McMahon had set at 2 o'clock.

24 Mr. Huff, during the break you cannot discuss
25 your testimony with anyone.

1 We're in recess until 2 o'clock. I'll start
2 back with you all as soon as that hearing is over.

3 (A lunch break was taken.)

4 THE COURT: Are you ready to go forward? I need
5 you back on the stand, please.

6 All right. You may continue with
7 cross-examination.

8 MS. NORRIS: Thank you, Your Honor.

9 BY MS. NORRIS:

10 Q Mr. Huff, we left off talking about the information
11 that the jurors had asked a question of the bailiff. And
12 although our transcript doesn't include a time period --

13 A I think I can tell you. I found some in my notes
14 over lunch.

15 Q I bet that's exactly what I was going to show you.

16 A Yeah, I was going to bring that to your attention
17 when I got back.

18 I don't want to usurp your question, but my
19 notes reflected that the jury went out -- if I may, unless
20 you want to ask the question.

21 Q No.

22 A My notes reflect they went out at 2:55 p.m. and Ms.
23 Watson, one of the bailiffs, was sworn at 4:37 p.m. So
24 probably within five minutes maybe -- at least by 4:30 is
25 probably when the question or the issue came up, somewhere

1 around in that general vicinity. The judge probably took
2 no time in ordering to bring her out and us to be back in
3 the courtroom. That would be my best guess. It would be
4 some time very close to 4:30 that that issue arose.

5 Q So, in essence, even by your estimate, the jury had
6 been deliberating for an hour and a half when they came
7 out, or at least the foreperson came out?

8 A Right. I think that would be close, yes, ma'am.

9 As far as the other thing, if I could, also
10 would tell you that -- I think you had referred to some of
11 my notes earlier about Mr. Adams' two sons. And thinking
12 back over the lunch break, I'm more inclined to believe
13 that my notations were based upon a conversation with
14 Mr. Adams, Sr., my client, as to what his children would
15 testify to, than it being a reflection of them being in
16 front of me and writing those notes after a discussion
17 with them.

18 As to me meeting with them face-to-face before
19 the actual trial, I'm not sure. It may have just been
20 that I knew what we would offer them for and had them
21 listed as witnesses. But during the lunch break, I think
22 your conclusion that it was based upon a conversation with
23 Mr. Adams, Sr. is probably much more likely to be correct.

24 Q Anything else you realized about your file over
25 lunch?

1 A Not that I can think of right now.

2 Q All right. You mentioned with respect to whether to
3 object to what the bailiff did or have the Court to give
4 further instructions, that you turned to -- you feel like
5 you turned to Mr. Adams and had I think what you
6 characterized as fast comments or spoke to him briefly.
7 Do you recall specifically whether you talked to him about
8 whether if the jury was brought back in, the type of
9 instructions that you could request?

10 A I would probably say no. I don't think I -- my best
11 recollection is that we would have spoken as to what do we
12 think that means, that their question, whether we felt it
13 was positive or negative for the defense. But I don't
14 think I would have gone into: Well, we can make the judge
15 bring all the jurors out and see what else was said, if
16 anything else was said or, you know, certainly don't think
17 an Allen charge would have been appropriate at this point
18 in time. But I don't think we discussed anything as to
19 what the Court might do. Probably we may have spoken
20 about whether or not an objection would be proper, but I
21 would probably say we didn't even talk about that. I just
22 don't fully recall. But I know we would have had some
23 comment amongst Mr. Adams and myself as to what it might
24 have meant.

25 Q Moving then to Mr. Rainey, let me make sure I

1 understand your direct, that you had his name and Tim
2 Rainey's name. Do you know their relationship?

3 A If I'm correct -- let me try and look back through my
4 notes. I believe my understanding was that they were
5 brothers. Let me look back at my notes. I'm not sure I
6 can put my hands on that right now.

7 I know that Tim Rainey was a co-worker at CMC
8 with Mr. Adams. But somehow -- whether I've got something
9 in my file or not -- I had the opinion that they were
10 related somehow.

11 Q If I were to tell you that Mr. Henry Rainey is Tim
12 Rainey's uncle, would you have any basis to dispute that?

13 A Not whatsoever. I just knew that there was some type
14 of relationship between the two of them, between the two
15 Raineys.

16 Q And in making your determination there, as I
17 understand it, you talked to Tim Rainey, right?

18 A That's correct.

19 Q And I believe you made the comment that, based on
20 that discussion, you decided that he would make a better
21 witness than Henry Rainey if you were going to call one of
22 them; is that correct?

23 A Well, I'm not going to say it's necessarily because
24 of my conversation with Tim Rainey because I could only
25 know about either Rainey by talking to Mr. Adams, and he

1 would have told me who the potential witnesses were and
2 what they might offer as far as testimony. And so in
3 conjunction with that, somehow we felt that Tim Rainey
4 would be the better witness. Of course, to err on
5 caution, it's better to list everybody on your witness
6 list rather than leave them off and have them excluded.

7 Q Well, I guess my question boils down simply to how
8 could you determine whether Mr. Rainey would be a good
9 witness, Mr. Henry Rainey, without talking to him?

10 A Well, the only way that could be possible would be in
11 talking with Mr. Adams as to what Mr. Adams felt that
12 either of the Raineys might contribute to the case.

13 I don't have time records with me on this case.
14 Of course, in most criminal cases, time records aren't
15 kept like they are when you're being paid by the hour.

16 I can only assume at, just what I can find here
17 with me today, I don't see where I had any conversation
18 with Henry Rainey but would have had some information from
19 Mr. Adams that he was a potential witness. So it would
20 probably have to be that based upon what Mr. Adams told me
21 as to the value of either Raineys, Tim Rainey was the one
22 that would have been a witness that we would intend to
23 call, because I don't have in my written notes, the little
24 summaries of the potential witnesses, what Henry Rainey
25 might testify to.

1 And I think I even set a numerical order of
2 testimony on my witness list as to how I would intend to
3 call these witnesses during the trial. And unless I can
4 put my hands back on that, I don't think it reflected --
5 it did not -- it wound up where we did not call either
6 Rainey as a witness.

7 Q Is it your general practice that when your client
8 tells you, you know, A, B and C are my witnesses, that you
9 just rely on that without calling them ahead of time and
10 finding out, from your perspective as a lawyer, what
11 information might be relevant?

12 For instance, if someone -- if your client tells
13 you, "This guy is a great witness for me," and you call
14 him and find out he's been convicted of forgery ten times,
15 so do you just rely on the defendant or do you typically
16 follow up?

17 A I've done both. And I certainly have had clients
18 absolutely assert that this witness is going to save me
19 and he will say such and such. And once I've contacted
20 the witness, the last person we'd want to put on the stand
21 is that potential witness and would say something
22 completely different than what my client told me they
23 would say or any helpfulness they would have.

24 Ms. Norris, I do not recall what was said to me
25 by Mr. Adams regarding Henry Rainey. I just don't recall

1 that.

2 So as a general rule, to answer your question, I
3 usually will contact that witness, but it depends on what
4 I had been informed of by my client.

5 If we were, for example, going to use a witness
6 who had seen the relationship between Mr. Adams and Victim
7 and he were to say Tim Rainey and Henry Rainey had been at
8 my house and they've seen it, if Tim Rainey had been over
9 there 40 times in the last three years and Henry Rainey
10 had only been there one time, I probably would not spend
11 much time with Henry Rainey. I would gravitate more
12 toward the person who had more credibility and testimony
13 to give.

14 But I cannot tell you what testimony Henry
15 Rainey would have given because I don't see anything in my
16 file that would indicate I spoke to him.

17 Q And with respect to Tim Rainey being a better
18 potential witness, do you recall why he did not testify in
19 the end?

20 A No, I don't. I don't recall that, why that decision
21 was made.

22 Q Moving to the prosecutor's closing argument,
23 understanding that it's not objectionable for a prosecutor
24 to be emotional and theatrical in itself, do you recall
25 the prosecutor's testimony -- and it's on page 138 of the

1 record if you want to look at it -- not testimony, but the
2 prosecutor's argument that Mr. Adams was, quote, "Dragging
3 her back there in that bedroom and molesting her." And
4 then it goes on to say, "Because it belongs to him."

5 Specifically looking at the "dragging her back
6 there," do you recall any evidence, any testimony even
7 from Victim [REDACTED] that Mr. Adams was dragging her anywhere?

8 A Ma'am, I have not looked back over Victim [REDACTED] testimony
9 as to whether -- as to what specifically she testified to.
10 I have not reviewed that before today. So I certainly
11 would have very little recall as to specifics to be able
12 to answer that question.

13 The dragging could imply that he physically drug
14 her back against her will by force and violence. It could
15 imply that he's just telling her to go back, similar to
16 dragging your -- you know, family garbage into a family
17 setting. So I don't know. I guess it could have been
18 taken either way or interpreted either way.

19 Q Do you recall -- and this is on page 84 of the
20 record -- asking at the end of the State's case to have a
21 recess so that you could do some research? And the
22 specific thing that you said is, "Do some research to make
23 a decision whether or not to place a defense before the
24 Court in this matter." Do you recall specifically what
25 research you wanted to do?

1 A Absolutely. It was an issue of identification. From
2 what I could recall at that point in time, no witness had
3 testified that the man sitting next to me, Tommy Adams,
4 was daddy, father, or the person who allegedly had sexual
5 intercourse or contact with Victim [REDACTED]. And I felt that
6 before I made that motion I wanted to try to do some
7 research on it.

8 I also did not want to flag that issue before
9 the prosecution if there was an attempt by the prosecutor
10 to reopen the record and allow that question to be asked
11 by putting Victim [REDACTED] back on the stand.

12 It's a process I think is -- should never be
13 allowed, but the rules allow it.

14 Q Going back to the issue of whether Mr. Adams would
15 testify, as I understood what you've told us, a final
16 determination of that, of whether your client will testify
17 is never made, even in your own mind, until the State's
18 case is in and you've been able to put in all of the
19 defense that you can so your client is fully informed; is
20 that accurate?

21 A That's accurate.

22 Q And with that being the case, if a determination has
23 not been made even in your own mind, why did you inform
24 the jury in the opening statement in this case that they
25 would hear two different versions? Let me make sure I

1 quote it accurately.

2 A What page are you on, Ms. Norris?

3 Q Page 35.

4 "I'm confident that you're going to hear two
5 totally different stories and you're going to have to sit
6 in judgment."

7 And then of course it goes on where you discuss
8 the DNA.

9 And then you say, "Specifically, there's going
10 to be two people saying two different things."

11 A What line is that one on?

12 Q I don't have that.

13 A I can find it for you. That should be, Ms. Norris,
14 page 35, lines eight and nine of the transcript.

15 It would, quote, "There's going to be two people
16 saying two different things. I hope that you understand
17 that your duty is to search earnestly for the truth."

18 It goes on with a few other comments.

19 Q Certainly that's not the sum total of your opening
20 statement, and I apologize.

21 A No, no.

22 Q I wasn't trying to imply that.

23 But my question specifically is: If you had --
24 if it is always your practice to wait so that the
25 defendant can make his decision, and that point comes

1 after the State's case and after you've presented
2 everything that you can in defense so they have the full
3 picture, why would you tell the jury that they're going to
4 hear two different -- two different people here, two
5 different stories?

6 A Right. And what I probably should have -- the word I
7 believe I should have used there was "versions," two
8 different versions. But evidently it came out as two
9 different people.

10 I would not have intentionally stated to the
11 jury that Mr. Adams is going to take the stand and you'll
12 hear from him such and such. I've never done that.

13 So I believe I misstated myself to some degree
14 in that one comment and should have used the word
15 "versions," because there was certainly going to be --
16 even if we had put no witnesses up at all, the
17 cross-examination would have given a different version.

18 Q So basically that was just inadvertent language?

19 A Yes, I would say so. Because I've never promised --
20 I don't think I've ever promised a jury that my client's
21 going to testify, or that I would promise them they would
22 get certain evidence unless I was actually sure that the
23 case could not even reach them without that evidence,
24 similar to somebody being prosecuted for drug possession
25 without the drugs. You know, I could promise them that,

1 you know, if there was no analysis of the drugs, they're
2 not going to be able to hear about the drugs, but you
3 never stake yourself out with promises to juries in
4 opening arguments like that.

5 Q And the reason you don't is that the jury very
6 clearly notices when you don't present that evidence?

7 A They could. I've seen smart juries. I've seen not
8 so smart juries.

9 Q And it --

10 A I wasn't trying to imply that I was promising that
11 Mr. Adams was going to take the stand. Could they have
12 taken it that way from that statement? I think they could
13 have. They might not have. I just don't know. But I
14 think it would have been better to have used the phrase
15 "two versions."

16 MS. NORRIS: Just a second.

17 I don't have any further -- any additional
18 questions. Thank you, Mr. Huff.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Redirect?

21 MR. LEE: A couple of questions, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. LEE:

24 Q Mr. Huff, there's a couple of questions about keeping
25 the prosecution's paint out basically.

1 When they were -- I can't remember the exact
2 reference that Ms. Norris was discussing but it was --
3 basically what your testimony was that it depended on what
4 the jury thought. And you weren't going to know the
5 answer to that until after the jury came back with their
6 decision, correct?

7 A As to -- I missed the first part of your question.

8 Q There was a -- you were talking earlier about keeping
9 the prosecution's paint out. You said something to the
10 effect of paint. What were you referring to?

11 A I said basically that in every criminal case there
12 are some asserted facts that you normally get in an
13 incident report that are irrefutable, you know, the time
14 of day that something happened, what type of car it was or
15 whatever it may have been, but that I think trial work is
16 basically both the prosecution and defense get so many
17 dabbles or dabs of paint and they can paint completely
18 different things with the same paint.

19 Q And this was specifically referring to the cooter
20 comment?

21 A Yes.

22 Q And you had testified that it could have -- the jury
23 could have seen it one way or they could have seen it the
24 other way, basically your way or the prosecution's way?

25 A Yes, sir.

1 Q So you're not going to know the answer to that, what
2 they think, until after they come back with a verdict,
3 correct?

4 A Well, I'm not going to know how they see the entire
5 case because we are never going to know what a jury
6 thinks. I've seen them hang decisions on issues that were
7 stupid in my opinion, that were irrelevant and was just
8 almost insane, what made them find people not guilty or
9 guilty. So, no, I'm not -- you know, you're never going
10 to know that, and even a verdict may not tell you.

11 Q So with these contestable issues, these dabs of
12 paint, sometimes you just have to make strategic decisions
13 concerning them, correct?

14 A Yes, sir. There are -- always in trial work there
15 are strategy decisions that are made. There's also
16 mistakes made in trial work by defense attorneys. I think
17 that's what's up to a judge to determine at some later
18 date.

19 Q That is why it's called strategy. When you make
20 these strategic decisions, I mean sometimes they go your
21 way and sometimes they don't?

22 A Yes, sir.

23 Q Now, you had -- most of the witnesses -- I believe it
24 was your testimony that upon reviewing the file some more,
25 you thought that maybe in some of those notes, or the

1 notes that you had on the testimony of the other
2 witnesses, came from your discussions with Mr. Adams?

3 A Yes, sir. I think in my review during lunch, I think
4 that makes more sense based upon those two items.

5 Q Okay. And did most of the witnesses when you called
6 them at trial testify basically the same way that
7 Mr. Adams had said they would testify?

8 A Yes, sir. I mean, I'm sure we covered the topics
9 that I had noted I wanted to cover with them and that had
10 been discussed with me previously, either through
11 Mr. Adams or actually speaking with those witnesses.

12 Q And, again, those witnesses were several members of
13 his family who testified that he was a good dad basically,
14 correct?

15 A Yes.

16 Q Okay. And did you hear Mr. Rainey's testimony here
17 today?

18 A Mr. who?

19 Q Mr. Rainey's testimony here today.

20 A Yes, sir.

21 Q Essentially, is it true that he testified that,
22 again, Mr. Adams was a good dad?

23 A I believe that's what his testimony was, that he had
24 worked with him and that he was a good dad.

25 Q He was a co-worker/friend, correct?

1 A Yes.

2 Q And you had several family members testify to
3 basically the exact same thing at trial, right?

4 A I did.

5 Sometimes jurors may totally improperly imply
6 that a person who is related has a bias or prejudice and
7 are willing to perjure themselves to help the defendant.
8 Sometimes they know that's not the case, that people when
9 they take an oath they mean to tell the truth. But, yes,
10 I think we put up significant evidence of the type of man
11 that Tommy Adams is and the type of good, loving, caring
12 father that he was.

13 Q And you testified that the specific statement made by
14 the prosecutor in closing, the "dragging her back there,"
15 could have been interpreted a couple of ways, correct?

16 A Yes, sir, I think it probably could be.

17 Q Now, if it's one of those issues that go either way,
18 if you stand up and object, is it possible that
19 highlighting that issue could work negatively against you?

20 A Again, it's speculative. It could. You know, it
21 could be that the prosecutor intended it to mean basically
22 that he just got her back in the bedroom. It could be
23 that he was implying that she was physically drug across
24 the floor. It's a word that was subject to, I guess,
25 interpretation.

1 But in all honesty, I don't see where a jury
2 could make a decision of guilt or innocence on that issue,
3 of how Victim got back to the bedroom, if she ever did, to
4 receive this conduct from Mr. Adams, but more the fact of
5 whether it happened or not, whether the violation of the
6 statute actually occurred.

7 MR. LEE: I believe that's all my questions.
8 Thank you for your time.

9 THE WITNESS: Thank you.

10 THE COURT: Recross.

11 RECROSS-EXAMINATION

12 BY MS. NORRIS:

13 Q Regardless of whether information goes specifically
14 to a precise element of an offense, isn't it true, though,
15 that typically prosecutors making prejudicial arguments
16 that are not based on the evidence, that that is something
17 that you would object to?

18 A Right. If a prosecutor makes comments as to
19 assertions that are not in the record, the defense
20 attorney, in my opinion, should first look at objecting to
21 it as being outside the bounds of what has actually been
22 testified to or admitted into evidence as documentary
23 evidence and then immediately decide whether or not it is
24 hurtful to the degree that it is prejudicial or not. I
25 think you've got to do both.

1 You know, sometimes people violate the rules.
2 They lead a witness when they shouldn't, but it's not
3 hurtful. Sometimes they make some comment that they can't
4 back up that wasn't in the record. So it's a little bit
5 of a domino or multifaceted decision.

6 But as a general premise, Ms. Norris, if your
7 statement is that if the prosecutor strays outside the
8 record, that the defense attorney should object, I would
9 say in the first instance, yes, he should object. But
10 then I think you've got to look at whether it's, in your
11 opinion, prejudicial or do you -- could it cause improper
12 emphasis on it by an objection. And it's a part of trial
13 work that you are never going to get a real answer to.
14 It's impossible.

15 Q All right. And going back to our paint analogy,
16 where I think we started with, you got a piece of
17 information, one side paints it one way and the other side
18 paints it the other, my question is: If you can exclude
19 any portion of the prosecution's paint because it's
20 inadmissible, would that be a situation where you would
21 make a strategic decision, to let the prosecution bring in
22 evidence that you could otherwise exclude, that is not
23 helpful to you?

24 A If it's evidence that is hurtful to the client's
25 case, then I think that the defense attorney should object

1 to it and try to seek its exclusion. As to whether or not
2 it could be a strategic choice to allow it in, I would
3 generally say no.

4 If it's hurtful -- by definition if it's
5 something that hurts my client's case in that it proves
6 his presence, disproves an alibi defense, if it shows
7 intent, any time you can take out of the prosecution's
8 quiver an arrow that hurts your client, I think you ought
9 to do that.

10 The question is, there are some things that
11 absolutely hurt, such as presence at the scene, conduct
12 that would reflect intent. There are some things that
13 aren't that clear-cut, it might be strategic. But to
14 answer what I feel was your question, if you know it is
15 harmful, yes, I think you should object and try to exclude
16 it.

17 Q And that is basically my question.

18 And I understand that you have testified that
19 you did not see anything inadmissible or irrelevant about
20 the "your cooter belongs to daddy" comment. So obviously
21 that is something that Judge Keesley will need to decide.

22 A Right. And if he finds that that was something that
23 was detrimental, that should not have been allowed into
24 evidence and I failed to object to it, you know, it well
25 may warrant, as the Court reviews it, a new trial for

1 Mr. Adams.

2 Q And that comment ultimately did come -- did become
3 sort of a centerpiece for the prosecution's closing
4 argument; didn't it?

5 A I looked at the closing extremely briefly. I believe
6 you had brought out one portion of it today, and I think
7 he did mention that in his closing argument. I really
8 have not read -- reread the entire closing, but it was
9 mentioned in it.

10 I think the record would stand on the transcript
11 of how important the prosecutor felt it should be. I
12 don't know what the jury thought about it, but I just
13 haven't reread it enough to say what degree of emphasis it
14 had on it.

15 MS. NORRIS: Thank you. I have no further
16 questions.

17 THE COURT: Anything else of the witness?

18 MR. LEE: Nothing from the State, Your Honor.

19 THE COURT: Thank you, Mr. Huff. You may step
20 down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Anything further from the State?

23 MR. LEE: No further witnesses from the State,
24 Your Honor.

25 THE COURT: Any reply testimony from the

1 applicant?

2 MS. NORRIS: No, Your Honor.

3 THE COURT: You all wish to make an argument or
4 just want me to decide it on the record?

5 MS. NORRIS: I'll just make a brief argument, if
6 I may.

7 I think certainly with respect to what has
8 become sort of our centerpiece, although as much as I
9 might desire that it not be, the cooter comment, Your
10 Honor, I submit that that is just clearly something that
11 could have been excluded from the evidence in this case.

12 It is not a statement indicative of guilt. It
13 was clearly made in the context of even telling
14 Investigator Bledsoe that, yes, he did talk to his
15 children about sex in the particular context of sex
16 education and it's just not relevant.

17 It is also prejudicial to the extent that the
18 prosecutor took a statement such as that, and although as
19 Mr. Adams pointed out himself, he uses different language
20 than perhaps Mr. Lee would in talking to his children
21 about sex education, but that is Mr. Adams' background.
22 But that comment came to be something that the prosecutor
23 used repeatedly to say that it was a vile thing, that it
24 was made to tell Victim that he was basically using her as
25 a sex toy, and that simply was just not the case.

1 So regardless of whether, you know, Mr. Huff
2 could have painted that in a different way if Mr. Adams
3 testified, and clearly there's dispute there between the
4 witnesses with Mr. -- all of our witnesses saying that
5 Mr. Huff advised him not to testify, obviously that is a
6 factual dispute Your Honor will have to decide.

7 But regardless of that, these two young men that
8 are in the courtroom today were in the courtroom for the
9 trial and could have testified to clear that up and rebut
10 it. So I submit, first, it's inadmissible.

11 But even if it came in, he didn't put in the
12 evidence to put it in the proper context. So this became
13 sort of the central theme of the State's case in a case
14 where the only evidence whatsoever of sexual abuse was the
15 testimony of a 13-year-old child. Backed up, of course,
16 by the elicited testimony -- or I will say in fairness,
17 Mr. Huff immediately objected and moved to strike it and
18 the judge did give a curative instruction when
19 Investigator Bledsoe testified that she believed **Victim**.
20 But, again, improper testimony and regardless of the
21 instruction to the jury, I just don't think in this type
22 of case where this is one witness and that man's doing 45
23 years on the statement of one 13-year-old child. Add to
24 that the inadmissible testimony that the officer believed
25 her, I just think is incredibly prejudicial.

1 When you move beyond that, it could -- should
2 the defense have presented an expert related to the
3 behaviors of Victim I submit absolutely. As Mr. Huff
4 testified, and he's got lots of experience, in his
5 understanding, behaviors mean nothing. But I submit that
6 the jurors that were in that box don't have Mr. Huff's
7 experience. They had nothing. They weren't even told
8 that in the forensic interview, the very first
9 opportunity, the beginning of prosecution, when not only
10 Victim but also Victim mother were asked that whole
11 laundry list that's in Applicant's Exhibit 1 about is she
12 exhibiting any change in behavior since before these
13 allegations to now, the jury never heard that.

14 What the jury heard was Victim testifying in the
15 trial that she cried when her mother wasn't present. That
16 wasn't even reported during the forensic interview. The
17 jury never heard any of that.

18 Mr. Huff, I think very candidly and honestly,
19 testified that it was inadvertent that he told the jury up
20 front that two people would testify to two different
21 stories. And understanding that lawyers make mistakes, we
22 all do, in this particular case that was just
23 extraordinarily prejudicial, because not only was the jury
24 told the defendant is going to tell his story, and the
25 jury was waiting for that, this was not a case that took

1 two weeks to try. This was a case that all of the
2 evidence was submitted in one day. So the jury wasn't
3 waiting long to hear his side, which they never heard.
4 That in itself is extraordinarily prejudicial.

5 With respect to the question asked by the
6 jurors, obviously it is for Your Honor to decide whether
7 it's prejudicial that Ms. Oliphant asked, "Does it have to
8 be hundred percent?" and went back in and told the other
9 jurors they did. And the impression, both the foreperson
10 who asked the question and another jury, their impression
11 was: We're not leaving here until all 12 of us decide.

12 Had that been conveyed to the trial court, they
13 would have been told properly that they should try to
14 reach a verdict, but to not do violence to their own
15 conscience.

16 Ms. Mathis testified she changed her vote, and I
17 think it's clear how it changed, because she thought she
18 wasn't getting out of that room.

19 And the only way to have known what the specific
20 concern of the jury was then was to ask the Court either
21 to inquire or to simply reinstruct them again because
22 obviously they had been instructed in that fashion.

23 With respect to Mr. Henry Rainey, obviously as a
24 defense lawyer we talk to our clients and we listen to
25 them, but to just make a determination one way or the

1 other about would he be a good witness, which is
2 different, obviously we rely on our clients to some extent
3 to tell us who the potential witnesses are. But I don't
4 think you can even begin to decide who will be a good
5 witness or not without talking to them. And obviously at
6 some point in this case, Mr. Huff did have, as he
7 testified himself, Mr. Rainey on a witness list that was
8 provided to the Court. And you simply can't make a
9 decision without talking to him.

10 With respect to the prosecutor's closing
11 argument, again as Mr. Huff pointed out, dragging her can
12 be an interpretation, I guess. But in the context of a
13 prosecutor who was very emotional as described by Ms.
14 Boyce, an emotional prosecutor in front of a jury, when
15 he's talking about dragging her back there, the
16 interpretation is not going to be that he asked her to go
17 in the jury room. The visual that that presents to the
18 jury is physically dragging her. And there was absolutely
19 no evidence, even by her testimony, of that happening in
20 this case.

21 So I submit, Your Honor, again as I said sort of
22 at the start, that this is a she-said/he-said case and he
23 never had a say. No explanation of the cooter comment.
24 No testimony from him. No independent witness,
25 independent of his family. And regardless, obviously Your

1 Honor will judge their credibility here today as it plays
2 into whether the discussions of whether Mr. Adams would
3 testify. But anybody in the legal system, anybody in a
4 jury box, anybody anywhere would automatically expect
5 family members to provide favorable testimony. You don't
6 get that when you got Mr. Rainey to come in for you. It's
7 not just his family that says this.

8 So I submit, Your Honor, that you should grant
9 relief and grant Mr. Adams a new trial.

10 THE COURT: Thank you, ma'am.

11 Anything from the State?

12 MR. LEE: Yes, Your Honor, just briefly.

13 By and large, we submit that the transcript of
14 record, the testimony presented here today and the
15 transcript before Your Honor will bear out that Mr. Huff
16 provided effective assistance of counsel in this case.

17 Specifically speaking to a few points, with
18 regard to the now infamous cooter comment, one possible
19 construction of that is that it would be a statement
20 against penal interest by a person who has been taken in
21 by authorities and is being questioned regarding a crime,
22 and the statement, "Your cooter belongs to your daddy," or
23 whatever it was that was said, could be construed as a
24 statement against penal interest, which is not only
25 relevant to the case but is going to be admissible.

1 Even if you could argue that he should have
2 objected, there is no resulting prejudice because it would
3 have come in.

4 Further, Mr. Huff testified that he thought
5 Mr. Adams was going to clear that issue up. Ultimately,
6 Mr. Adams decided not to testify. He made that decision
7 on his own. Mr. Huff even testified that he was surprised
8 by that decision. He testified that he advised him of the
9 pros and cons, but ultimately told him that his decision
10 was going to be his own to make and he could not advise
11 him either way. He decided not to testify presumably
12 because he didn't think the State had met its burden of
13 proof, and that's on him.

14 With regard to the statement that you said that
15 the applicant alleged that Mr. Huff told the jury that two
16 people would testify to two separate stories, I believe
17 that what the record will bear out is that Mr. Huff stated
18 that the jury would hear two stories. And in any
19 adversarial setting, you're getting two stories, you're
20 getting two sides. You're getting the plaintiff's and the
21 defense. You're getting the solicitor and the defense.
22 You're getting two stories regardless of who testified,
23 regardless of how the evidence is born out, regardless of
24 how the questions are made, you're getting those two
25 stories.

1 Mr. Huff had a trial strategy in this case. The
2 defense was of innocence, and his trial strategy was both
3 to cross-examine the State's witnesses to point out that
4 there was no evidence other than the child's own
5 statement. And in doing so, he called several people,
6 members of the applicant's family, to testify on his
7 behalf of being a good father, to being around the
8 children, to being around him while he is also in the same
9 setting as the victim in the case, as Victim [REDACTED], and how they
10 interacted together. That evidence was borne out to the
11 jury. Mr. Huff also bore out evidence of the holiday
12 cards, the gifts. All that was brought out to the jury.

13 Perhaps Mr. Rainey would have added something to
14 that as an unbiased third party, but ultimately what he
15 was going to testify to was the exact same thing that was
16 already being borne out to the jury by the other
17 witnesses. If anything it's cumulative, there was no
18 prejudice there.

19 With regard to the jurors, the State would
20 submit that -- I can't remember her name -- the witness
21 that the applicant alleges stated that she changed her
22 mind as a result of whatever happened with the bailiff,
23 the State would submit that that is not what she testified
24 to, and the record will clear that up.

25 As for the closing argument, Ms. Norris was

1 attempting to speak for the jury in saying that there is
2 no possible way they could have construed that as any
3 other way than he was physically dragging her back because
4 the prosecutor was loud and stern.

5 I don't think that just because the prosecutor
6 is being loud and stern, that there's only one possible
7 interpretation of that, and to say that is speculative,
8 and especially when you weren't there.

9 Regardless, Mr. Huff in his testimony today has
10 borne out that there was a clear trial strategy; that he
11 took the steps to effect that trial strategy. Ultimately
12 he was not pleased with the result. Nobody would be.
13 This was a particularly egregious sentence, very long. So
14 of course he's not going to be happy with the result. But
15 he did what he could do to provide the applicant with
16 effective assistance of counsel. He testified that that's
17 what he believed he.

18 So in summary, the State would submit that the
19 applicant hasn't met his burden of proof in proving both
20 ineffective assistance of counsel and resulting prejudice
21 and his application for post-conviction relief should be
22 denied.

23 THE COURT: Thank you.

24 Anything else from the applicant?

25 MS. NORRIS: Just a brief response, Your Honor.

1 With respect to Mr. Adams' statement being
2 against his penological interest, even in the context of
3 Applicant's Exhibit 2, the police incident report, it is
4 clear that the context is that he was being asked whether
5 he talked to his children, whether his children knew about
6 sex. So he was saying -- answering that question to him.
7 He wasn't saying, "I'm denying that I raped her, or
8 committed criminal sexual conduct with a minor and
9 committed lewd acts on her." He wasn't saying, "I deny
10 that. But let me tell you, I did say this to her: Her
11 cooter belongs to daddy." I mean, that is just ridiculous
12 to say that that is against his -- that that exception is
13 applicable here.

14 It is in line with State versus Nelson where not
15 only were children -- another CSC minor lewd act case
16 where children's toys and videos were admitted into
17 evidence, but also the defendant made statements to police
18 officers that he was uncomfortable around adult women and
19 that he had fantasies about children.

20 Even saying that, admitting that he had
21 fantasies, sexual fantasies about children was excluded
22 because it wasn't relevant. He wasn't saying, "I
23 committed this crime." He wasn't saying anything, which
24 is exactly what the comment in this case was.

25 And, finally, that Mr. Lee -- well, two things:

1 One, obviously Your Honor will recall and the record will
2 reflect whether Ms. Mathis said that her vote changed.
3 But I submit that was, in fact, her testimony. That's the
4 last question I asked her.

5 The other -- and this I promise is the final
6 thing. It wasn't just Mr. Huff's argument that the jury
7 would hear two different stories. It is a direct quote on
8 page 35 of the transcript, "There's going to be two people
9 saying two different things."

10 There's no way to interpret that in a logical
11 fashion that does not imply and tell the jury that
12 Mr. Adams is going to get on that witness stand and tell
13 them.

14 Again, I submit that he is entitled to a new
15 trial.

16 THE COURT: All right. Thank you very much.
17 I'll notify you of my decision in writing.

18 MR. LEE: Thank you, Your Honor.

19 (The proceedings were concluded.)

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

21

22

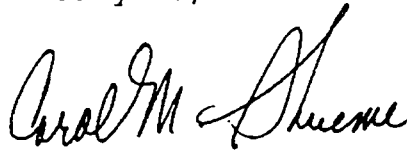
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF EDGEFIELD)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 3rd day of
15 December, 2010.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 February 18, 2011

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25



A place where healing begins.

FORENSIC INTERVIEW

Name: **Victim**

Race: White

DOB: [REDACTED]

Age: 11

Address: [REDACTED]
[REDACTED]

Law Enforcement: Investigator Bledsoe, Edgefield Sheriff's Department 803-637-5337

DSS: Mary Carr, Edgefield County DSS, 803-637-4040

Type of Alleged Abuse/Presenting Problem:

Sexual ☒ Physical ☐ Emotional ☐ Physical Neglect ☐ Emotional Neglect ☐

INFORMANT'S or VICTIM'S INFORMATION REGARDING ALLEGATION

Summary of Allegation: Cathy Adams, **Victim**' mother, brought her to the appointment and provided the following information. **Victim** started asking questions about how her first daddy died. (Her biological father committed suicide in 1996.) As she answered **Victim**'s questions, Ms. Adams reports that she told **Victim** to remember that she has stepfather, (Tommy Swinson Adams), who is like her daddy. **Victim** replied that she had to tell mom something. She stated that whenever mom is out of town "daddy makes me do things." She stated that this started when she was eight years old. Mom asked **Victim** "did he stick his penis inside you?" **Victim** answered, "yes." **Victim** further told her mother that the last time this happened was Christmas Eve at the Spring Haven house, but that she (**Victim**) was able to fight Mr. Adams off. Ms. Adams states that once **Victim** disclosed, she immediately packed up and moved all the children to their other address. Ms. Adams states that Mr. Adams denies the abuse took place.

INFORMANT'S or VICTIM'S INFORMATION REGARDING CHILD

Describe Family Dynamics: **Victim** lives with her mother, Cathy Adams, her step father, Tommy Adams, her siblings: Carlton [REDACTED], age 9, Tessa [REDACTED], age 7, Elizabeth [REDACTED], age 5. Mr. Adams two children from a previous marriage, (Tommy Jr., age 13, and Cody, age 11), live with the Adams family each weekend. Prior to **Victim** disclosure, Mr. and Ms. Adams were separated. Per Ms. Adams, Mr. Adams has a history of criminal domestic violence and was convicted of CDV in April of 2002. Also per Ms. Adams, in 1999 or early 2000, DSS investigated Mr. Adams for physical abuse because he pulled Carlton's hair and left a bloody spot on his scalp. Physical abuse was founded by DSS and the family had a safety plan put in

1615 Augusta Road
West Columbia
South Carolina 29169
P (803) 791-1511
F (803) 791-1572

Victim

Forensic Interview, 4/30/03, Page 2

place. It is important to note that Ms. Adams believes her daughter Tessa has exhibited some personality changes of late.

Child's Current Physical Condition: No illness or medications reported.

Child's Current Level of Intellectual Functioning: Ms. Adams reports that Victim is of above average intelligence and has excellent attention span and verbal skills.

Brief Psycho-Social History: Victim attends Merriweather Elementary and is in the fifth grade. No known exposure to sexually explicit material.

INFORMANT'S or VICTIM'S CLINICAL INFORMATION

Behavior of the Child: (as compared to behavior before and after the alleged abuse or the disclosure of the abuse): No changes reported by Ms. Adams.

- ___ Anxiety/Hyperarousal:
- ___ Trauma Reenactments:
- ___ Flashbacks/Intrusive Thoughts:
- ___ Fearfulness:
- ___ Nightmares/Night Terrors/Sleep Problems:
- ___ Change in Eating Habits:
- ___ Separation Difficulties:
- ___ Aggression:
- ___ Conduct/Oppositional Problems:
- ___ Difficulties with Peers:
- ___ Sexualized Behavior or Themes In play or With Other Children:
- ___ Inappropriate Sexual Knowledge:
- ___ Pronounced Disturbance of Mood and Affect:
- ___ Enuresis/Encopresis:
- ___ Marked Distrust In Others:
- ___ Other
- ___ Comments:
- ___ Test Results:

CHILD'S INTERVIEW

Truth vs. Lies and Right vs. Wrong: Victim agrees to talk only about the truth today.

Interview Rules: Interview rules are explained to Victim and she agrees to abide by them.

Summary of Child's Narrative of the Allegation:

Victim, do you know why you are here today?

Yes, cause I told my mom that daddy has been sexually abusing me.

Did this happen one time or more than one time?

More.

Think about the time you remember the most and tell me all about it.

A time I fought him off or another time?

Victim [REDACTED]

Forensic Interview, 4/30/03, Page 3

Let's start with a time you were not able to fight him off.

Ok. Let's see. When I was 8 and 9 mom went on trips a lot for her work. We were at the country house on [REDACTED]. We have three bedrooms and once I was going back to go to sleep and my sister was in bed and dad said, "aren't you going to sleep with me and watch T.V.?" I went into his room and I got in bed and was watching T.V. with him and then he like, well, all the lights were off except the T.V. I can't remember anymore.

OK. Let's talk about a different time.

This one he was touching me in places. I was in the kitchen when I was 10 and he put his hands down my pants. This was at [REDACTED] in the summer of 2002.

Where exactly did he put his hands?

Down my clothes in the front.

Did he touch your skin or your clothes?

Skin.

Did he touch you with anything other than his hands?

Not that time.

Did he touch your private?

Yes. He touched the top of my legs, too.

Did his fingers go inside the opening of your private?

I'm not sure. They might have.

What did he do with his hand?

He moved it back and forth.

What did it feel like?

I can't remember.

Did you feel any pain?

No.

Did he touch you anywhere else?

No.

Did he make you touch him anywhere?

No.

What did he say?

Nothing but I kept saying I want to go outside. He told Tommy and Cody to scoop leaves out of the pool and he told Tessa, Carlton and Elizabeth to play and said to me "you can stay in here with me."

Did anyone see this happen?

No.

Let's talk some more about the T.V. in the room time.

How old were you when that happened?

I was eight.

You said you were watching TV on his bed right?

Yes.

Then what happened?

He turned off the T.V. He took off his clothes.

What did he have on?

He only had on pants.

Victim

Forensic Interview, 4/30/03, Page 4

Did he have on underwear?

He doesn't wear underwear.

So did he have any clothes on?

No.

What happened with your clothes?

He took off my clothes.

How?

He pulled off my underwear and nightgown.

Where were you when he did this?

Lying down on the bed.

What kind of nightgown were you wearing?

I don't remember.

So did you have any clothes on at this point?

No. Then he was getting on top of me and he—I don't remember any more.

Do you remember anything more happening?

When I was eight he put his private part inside me. This probably happened more than one time.

When you say he put his private part "inside" me, what do you mean?

Inside my private part.

Inside the opening of your private part?

Yes.

What did it feel like when that happened?

I don't remember.

Did you feel pain?

I don't remember.

Did he ever use anything from a jar or something else on your private part or on his private part?

I don't remember.

Did he ever say anything to you?

No.

Did he ever tell you not to tell?

He said don't tell your mom.

Did you ever see anything come out of his private part?

No.

Did you ever feel anything come out of his private part?

No.

Did he ever make you touch him anywhere?

Yes, he made me put my hand on his private part.

Did this happen the T.V. time?

I can't remember.

What did his private part feel like?

I can't remember.

Tell me about the time you fought him off.

On Christmas Eve he wanted me to help him wrap Christmas presents and he told me to lay down and I was screaming and kicking. He said, "be quietVictim hush, stop screaming." He was trying to take my pants and my underwear off.

Where were you?

Victim

Forensic Interview, 4/30/03, Page 5

Spring Haven.

Did anyone see or hear this?

No we were there but no one else was.

Victim do you remember any other time?

No.

Tell me about your dad.

In September he turned 47. He's taller than mom. He would get angry and yell at me.

When I was little he spanked me a lot.

Does he drink alcohol?

He drinks Corvasiay.

What is that?

I don't know. Pepsi and some other stuff.

How are you sure he is drinking alcohol?

Cause mama has to buy it from the alcohol store. He drinks beer too.

Was he drinking when did he the things to you that you just told me about?

No. He smokes, too.

What does he smoke?

Cigarettes.

Did he ever physically hurt you?

No.

Did he ever physically hurt your brothers or sisters?

He would beat my little brother Carlton. He'd pull his hair and make his head bleed and dunk him under the water in the toilet. He did this when Carlton was 4 and 5 and 6. He'd tell Carlton to stop scratching his skin cause Carlton has eczema. He'd tell Carlton not to tell mama.

Is mom good to you?

Yes. She screams sometimes.

What kind of things does she scream?

To stop and go in time out.

What happens when you get in trouble at home?

They take away my game boy, stuff like that.

Does mom ever scare you?

No, but she scares my little sister.

Does she hit them when they are in trouble?

No.

Do you have any idea if you dad did anything like this to your brother or sister?

No.

Did he ever take pictures of you?

No.

Did he ever show you pictures?

No.

Is there anything else you wish I'd ask you?

No.

Victim, did you say this all started happening with your step dad when you were eight?

Yes.

Was the T.V. time the first time it happened?

Victim

Forensic Interview, 4/30/03, Page 6

I think so.

Did this only happen when mom wasn't there?

Yes. When she was out of town or at the store. Like the kitchen time she'd gone to the store for food.

What did he make your hand do when he put your hand on his private?

I can't remember.

You have said "I can't remember" lots of times. As we've been talking, do you remember the answers to any of those questions? (Questions reviewed).

No.

What would happen if you did remember?

I would tell you.

What did mom say when you told her all this?

She was crying and we left the house right away.

INTERVIEWER'S SUMMARY

Disclosure Summary:

Compelling disclosure of sexual abuse. Victim reported that her stepfather, Tommy Swinson Adams) fondled her and penetrated her vagina with his penis on multiple occasions over a period of several years. Victim appeared to be experiencing memory blocks—not an uncommon occurrence for children who have been traumatized by sexual abuse. Victim was focused and appropriately serious throughout the interview.

Action Taken:

- Report to be made to Lexington County DSS regarding Victim statements about her stepfather's behavior with his stepson, Carlton. The reported behavior could constitute physical abuse and mental injury.
- Recommendation made to DSS and law enforcement that the Dickerson Center conducts a forensic interview with Tessa [REDACTED] and Carlton [REDACTED] (Elizabeth [REDACTED] was interviewed on 4/30/03.)

Recommendations:

- Therapy for Victim with a professional who specializes in working with children who may have been sexually abused.
- Parenting classes for Ms. Adams.

Date(s) of Interview: 4/30/03

Length of Interview: 3 hours

Respectfully Submitted,

Julia Smith, LMSW

Julia H. Smith, LMSW

AGENCY I.D.
SC0190000

INCIDENT REPORT

CASE NUMBER

0,3,0,4,3,1,6

NCIC

INC. N
EXTD. N

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. CDC/W A MINOR/LEWD ACT (11D)		☒ YES ☐ NO	☐ YES ☒ NO	20		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Q1
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE
						40.
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	DISPATCH DATE/TIME
01/01/1999	00:00		12/24/2002	00:00	04/23/02	15:00
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
CARR, MARY,				☒ S O U	B	F
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
W A REEL DR		EDGEFIELD		SC	29824-	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
Victim		SP		☒ S O U	W	F
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
501	90	BLK	BRO			
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
		N AUGUSTA		SC	29860	
VISIBLE INJURY (FAC. I) ☐ YES ☐ NO ☐ EXPLAIN --		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO				
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO				
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐		J—This Jurisdiction. S—State. O—Out of State. U—Unknown				
☐ SUSPECT NAME (LAST, FIRST, MIDDLE)		RACE		SEX	AGE	ETH.
ADAMS, TOMMY, SWINSON		W		M	49	-1
☐ RUNAWAY		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH		
☐ WANTED				602		
☐ WARRANT		ADDRESS		CITY	STATE	ZIP CODE
☐ ARREST				CLARKSHILL	SC	29821
☐ JAIL		SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
☐ SUMMONS		TOTAL # ARRESTED				
I/O RECEIVED A REPORT FROM MARY CARR WITH OSS. THE DSS REPORT STATES THAT Victim HAS BEEN SEXUALLY ABUSED BY STEPFATHER TOMMY ADAMS. REPORT FROM DSS STATES STARTING AROUND 8 YEARS OLD. THE LAST INCIDENT WAS IN 2002. SUBJECT 1 TOMMY ADAMS TRIED TO PULL HIS STEP DAUGHTER Victim PANTS DOWN TWICE ON CHRISTMAN EVE. I/O ALONG WITH MARY CARR WENT TO THE HOME OF CATHY ADAMS TO SPEAK WITH HER DAUGHTER Victim. CATHY ADAMS TOLD I/O AND MS MARY CARR WITH DSS ABOUT SOME INCIDENTS THAT Victim HAD RELAYED TO HER. SHE STATED Victim WAS ASKING QUESTIONS ABOUT HER FATHER AND HIS DEATH WHICH WAS SUICIDE. CATHY ADAMS TOLD HER ABOUT HER NATURAL FATHER AND SAID YOU ARE LICKY YOU HAVE HAD TOMMY, SPEAKING OF TOMMY ADAMS AS A FATHER. ON THIS DATE CATHY ADAMS AND HER CHILDREN HAD GONE TO TO WASH CLOTHES. MR TOMMY ADAMS WAS NOT THERE. MS CATHY ADAMS AND HER CHILDREN CURRENTLY RESIDE AT						
JURISDICTION OF TRIAL LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)		TOTAL VALUE				
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRACTION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY		REPORTING OFFICER(S)		DATE		UNIT NUMBER
INV. VIRGINIA BLEDSOE		04/24/03		S-6		
FOLLOW UP INVESTIGATION ☐ YES ☒ NO		OFFICER		DATE		UNIT NUMBER

AGENCY I.D.
SC0190000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

0304316

NOV

INC. ENTD.
N N☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF _____ PAGES.

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)										VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETW
	☐ VICTIM #											#1	#2	#3						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.														
	☐ RUNAWAY	ADDRESS																		
	☐ WANTED	CITY																		
	☐ WARRANT	STATE																		
	☐ ARREST	ZIP CODE																		
	☐ JAIL	LOCATION NO.																		
	☐ SUMMONS	DAY PHONE																		
	☐	EVENING PHONE																		
☐	☐ VICTIM NO. _____: VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK ☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASUT. ☐ ALONE ☐ EXPLAIN: ☐ NO ☐ YES ☐ DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED ☐ SUBJECT NO. _____: USING ALCOHOL: ☐ NO ☐ YES ☐ USING DRUGS: ☐ NO ☐ YES → TYPE: ☐ UNK																			

NARRATIVE

Victim THEN TOLD HER MOTHER I NEEDED TO TELL YOU SOMETHING. Victim TOLD MOM AROUND THE TIME Victim WAS 8 YEARS OLD THAT HER STEPFATHER TOMMY ADAMS STARTED TOUCHING HER SEXUALLY. THIS WAS AROUND THE TIME CATHY ADAMS WENT ON A TRIP FOR 5 DAYS TO CANADA. I/O ALONG WITH MS CARR SPOKE WITH Victim. Victim STATES SHE CALLS TOMMY ADAMS DADDY. SHE'S BEEN LIVING IN HIS HOME SINCE SHE WAS 4 YEARS OLD. Victim STATES THE FIRST TIME ANYTHING HAPPENED. MOM CATHY ADAMS WAS AWAY ON A TRIP. SHE STATED HER DAD TOMMY ADAMS TOLD HER TO COME IN HIS ROOM AND WATCH TV. THEY WERE LYING ON THE BED, THEY WATCHED T.V. FOR ABOUT FIVE MINUTES. HER STEPFATHER TURNED OFF THE T.V. HER STEP FATHER TOMMY ADAMS THEN TOOK HER CLOTHES OFF, HE TOOK

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCYJURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.
	☐ STOLEN	☐ VEHICLE		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.	STATE
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION	YEAR OF EXPIRATION
	☐ TOWED	☐ LICENSE PLATE	YEAR	MAKE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MODEL	STYLE
	☐ VICTIM	☐ ARTICLE	COLOR	BRAND NAME
			CAUSE	
			SECURITY DATE	
			UNSCALLABLES	

PROPERTY EST.	TYPE (GROUP)										TOTAL VALUE
	STOLEN										
	DAMAGED										
	SURETY										
	RECOVERED										
	SEIZED										

ADMINISTRATIVE	SUBJECT IDENTIFIED	SUBJECT LOCATED	☒ ACTIVE	☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX CLEAR UNDER 18
	☐ YES	☐ YES	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM SECURES COOPERATION. 5. ☐ ALIEN - NO CUSTODY					
	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
	INV. VIRGINIA BLEDSOE	04/24/03	S-6			
	FOLLOW-UP INVESTIGATION ☐ YES ☒ NO					

AGENCY I.D.
 SC0190000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

0304316

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☒ ORIGINAL
☐ MODIFIED
☐ ORIGINAL

☐ SUPPLEMENTAL
☐ CASE STATUS
☐ CHANGE

☐ ADDITIONAL
☐ VICTIMS
☐ ADDITIONAL
☐ OFFENDERS

☐ ADDITIONAL
☐ STOLEN PROPERTY
☐ ADDITIONAL
☐ RECOVERED PROPERTY

PAGE 3 of 3 PAGES.

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH	
	☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ SUBJECT #												
	☐ RUNAWAY												
VICT/SUBJ. I.D. OVERFLOW	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE				
	☐ WARRANT												
	☐ ARREST	☐ VICTIM NO. : VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASH. ☐ ALONE					
	☐ JAIL	EXPLAIN:				DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK.		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED			
VICT/SUBJ. I.D. OVERFLOW	☐ SUMMONS	☐ SUBJECT NO. : USING ALCOHOL: ☐ NO ☐ YES		USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNK.									
	☐												
	☐												
	☐												
NARRATIVE	HIS CLOTHES OFF AND GOT ON TOP OF Victim REMEMBERED SHE HAD ON A GOWN AND UNDERWEAR SHE WAS LYING ON HER BACK. THIS WAS AT Victim REMEMBERS THE LAST TIME ON 12/24/02, HE TOOK HER TO Victim OR TO WRAP HER MOTHERS PRESENT. TOMMY ADAMS TRIED TO TAKE OFF HER PANTS AND PANTIES Victim FOUGHT HIM OFF. SHE REMEMBERED ONE TIME ON TERESSA'S BED ON SPRING HAVEN OR IN THE SUMMER TIME SHE RECALLED HER STEPFATHER TOMMY ADAMS PUTTING HIS HAND INSIDE HER PANTIES. Victim REMEMBERED AN INCIDENT IN THE KITCHEN AT Victim Victim SAID SHE WAS AFRAID IF SHE TOLD HE WOULD BE MAD. HE DID TELL HER NOT TO TELL MOM. Victim SAID HER STEPFATHER TOMMY ADAMS DRINKS ALCOHOL Victim RECALLS WHEN HER STEPFATHER BEAT HER YOUNGER												
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY												
	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY												
	STATUS TYPE ☐ STOLEN ☐ VEHICLE ☐ RECOVERED ☐ GUN ☐ FOUND ☐ BOAT ☐ TOWED ☐ LICENSE PLATE ☐ SUSPECT ☐ SECURITIES/BONDS, STOCKS ☐ VICTIM ☐ ARTICLE												
	VIN AND/OR LICENSE NO. SERIAL AND/OR OWNER APPLIED NO. YEAR OF REGISTRATION YEAR OF EXPIRATION MODEL STYLE COLOR BRAND NAME CALIBER WGT NO. DENOMINATION ISSUER SECURITIES DATE MISCELLANEOUS												
	TYPE (GROUP) STOLEN DAMAGED BURNED RECOVERED SEIZED												
	TOTAL VALUE												
	SUBJECT IDENTIFIED ☐ YES ☒ NO												
	SUBJECT LOCATED ☐ YES ☒ NO												
	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 13 ☐ EX-CLEAR UNDER 13 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER												
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECEIVES COOPERATION. 5. ☐ ADULT: NO CUSTODY													
REPORTING OFFICER(S) INV. VIRGINIA BLEDSOE DATE 04/24/03 UNIT NUMBER S-6 APPROVING OFFICER DATE UNIT NUMBER													
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO OFFICER													

 VEH. / GUN / ETC. 1
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AGENCY I.D.
SC0190000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

0304316

NOV

NO. ENTD.
N N☒ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIM
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 4 of _____ PAGES.

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH.	
	☐ VICTIM #												
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY												
	☐ WANTED												
VICT/SUBJ. I.D. OVERFLOW	☐ WARRANT	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
	☐ ARREST												
	☐ JAIL												
	☐ SUMMONS												
	☐ _____												
VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	DOB	ETH.	
	☐ VICTIM #												
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY												
	☐ WANTED												
VICT/SUBJ. I.D. OVERFLOW	☐ WARRANT	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
	☐ ARREST												
	☐ JAIL												
	☐ SUMMONS												
	☐ _____												

NARRATIVE

BROTHER CARLTON. HE HAS DUNKED CARLTONS HEAD UNDER WATER AND WOKE HIM AT 4:30 ON MORNING AND MADE HIM MOVE ROCKS. HER STEPFATHER HAS ALSO BUSTED A CLOCK ON CARLTONS HEAD. Victim SAID SHE REMEMBERS AT LEAST 15 TIMES SHE HAS HAD SEXUAL CONTACT WITH HER STEPFATHER TOMMY ADAMS. Victim STATED SHE DIDN'T WANT TO STAY WITH HIM ALONE AND THESE INCIDENTS HAPPENED WHEN HER MOTHER WAS ON TRIPS OR OUTSHOPPING. CARLTON WAS VERY SHY AND DIDN'T WANT TO TALK WITH US. HE DID SAY HIS DAO GOT FRUSTATED AND WOULD SEND THEM TO BED. DAO DRINKS ALOT. HE DID FINALLY NAME HIS PRIVATE PARTS. ELIZABETH AND TESSA DIDN'T DISCLOSE ANY ABUSE BUT THEY WERE VERY SHY ABOUT GOOD TOUCH AND BAD TOUCH. I/O ON 4/23/03 WENT TO [REDACTED] TO SPEAK WITH SUBJECT

VEH. / GUN / ETC. 1

STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.
☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.	STATE
☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION
☐ FOUND	☐ BOAT	MODEL	STYLE
☐ TOWED	☐ LICENSE PLATE	COLOR	BRAND NAME
☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	WGT NO.	DENOMINATION
☐ VICTIM	☐ ARTICLE	ISSUER	SECURITIES DATE
MISCELLANEOUS			

PROPERTY EST.

TYPE (GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE	ADJ. CLOSED	ARRESTED UNDER 18	EX-CLEAR UNDER 18
☐ YES	☐ YES	☐ UNFOUNDED		☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ ADJUVENILE - NO CUSTODY					
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
INV. VIRGINIA BLEDSOE	04/24/03	S-6			
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO					

AGENCY I.D.
SC0190000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

0304316

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ENTD. N☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 5 OF 5 PAGES.

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.
	☐ VICTIM #											
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY											
	☐ WANTED	ADDRESS										
	☐ WARRANT	CITY										
	☐ ARREST	STATE										
	☐ JAIL	ZIP CODE										
	☐ SUMMONS	LOCATION NO.										
		DAY PHONE										
	EVENING PHONE											
	☐ VICTIM NO. : VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK ☐ TWO-WAY VEHICLE ☐ DETECTIVE/SPASME ☐ ALONE ☐ EXPLAIN: ☐ NO ☐ YES ☐ DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK ☐ ONE-WAY VEHICLE ☐ OTHER ☐ ASSISTED ☐ SUBJECT NO. : USING ALCOHOL: ☐ NO ☐ YES ☐ USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNK											

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.
	☐ VICTIM #											
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY											
	☐ WANTED	ADDRESS										
	☐ WARRANT	CITY										
	☐ ARREST	STATE										
	☐ JAIL	ZIP CODE										
	☐ SUMMONS	LOCATION NO.										
		DAY PHONE										
	EVENING PHONE											
	☐ VICTIM NO. : VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK ☐ TWO-WAY VEHICLE ☐ DETECTIVE/SPASME ☐ ALONE ☐ EXPLAIN: ☐ NO ☐ YES ☐ DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK ☐ ONE-WAY VEHICLE ☐ OTHER ☐ ASSISTED ☐ SUBJECT NO. : USING ALCOHOL: ☐ NO ☐ YES ☐ USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNK											

1 TOMMY ADAMS. I/O ALONG WITH MS CARR SPOKE WITH HIM. WE EXPLAINED WHO WE WERE AND WHAT AGENCY WE WERE WITH. WE TOLD HIM OF THE ALLEGATIONS OF CHILD SEXUAL ABUSE OF Victim. TOMMY ADAMS DENIED ANY SEXUAL CONTACT. HE DID STATED HE TALKS OPENLY ABOUT SEX WITH THE OLDER CHILDREN. HE IS REFERRING TO Victim, CODY AND TOMMY ADAMS. CODY AND TOMMY ARE HIS CHILDREN BY A PRIOR MARRIAGE. HE SAID HE HAD SAID THINGS LIKE 'TESSA HIS 7 YEAR OLD ALREADY HAD BOOBS. HE WAS SPEAKING OF BREASTS. MR ADAMS STATED HE'D TELL THE KIDS DON'T HAVE SEX UNTIL YOU ARE MARRIED AND YOUR COOTER BELONGS TO YOUR DADDY. IF THEY WANT TO TOUCH YOU TELL HIM TO ASK ME FIRST. HE WAS TALKING ABOUT Victim VAGINA. MR TOMMY ADAMS DENIED ANY SEXUAL CONTACT. HE THEN

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.
	☐ STOLEN	☐ VEHICLE		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.	STATE
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION	YEAR OF EXPIRATION
	☐ TOWED	☐ LICENSE PLATE	MODEL	STYLE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	COLOR	MAKE
	☐ VICTIM	☐ ARTICLE	BRAND NAME	CAUSER
			SECURITIES DATE	
			MISCELLANEOUS	

PROPERTY EST.	TYPE (GROUP)										TOTAL VALUE
	STOLEN										
	DAMAGED										
	BURNED										
	RECOVERED										
	SERIALIZED										

ADMINISTRATIVE	SUBJECT IDENTIFIED	SUBJECT LOCATED	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY				
	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
	INV. VIRGINIA BLEDSOE	04/24/03	S-6		
	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO OFFICER				

AGENCY I.D.
 SC0190000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

0304316

NOC

 NO. 2ND.
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☒ ORIGINAL
☐ MODIFIED ORIGINAL

☐ SUPPLEMENTAL
☐ CASE STATUS
☐ CHANGE

☐ ADDITIONAL
☐ VICTIM
☐ ADDITIONAL
☐ OFFENDERS

☐ ADDITIONAL
☐ STOLEN PROPERTY
☐ ADDITIONAL
☐ RECOVERED PROPERTY

PAGE 6 of _____ PAGES.

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)										VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #											1	2	3	J S E U					
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.														
	☐ RUNAWAY																			
	☐ WANTED	ADDRESS																		
	☐ WARRANT	CITY																		
	☐ ARREST	STATE																		
	☐ JAIL	ZIP CODE																		
	☐ SUMMONS	LOCATION NO.																		
	☐	DAY PHONE																		
	EVENING PHONE																			
	☐ VICTIM NO. ____ : VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES ☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK ☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT. ☐ ALONE ☐ EXPLAIN: ☐ NO ☐ YES ☐ DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED																			
	☐ SUBJECT NO. ____ : USING ALCOHOL: ☐ NO ☐ YES ☐ USING DRUGS: ☐ NO ☐ YES → TYPE: ☐ UNK																			

STATED HIS WIFE CATHY ADAMS INSITGATED THIS REPORT AND **Victim** NEEDS HELP IF SHE HAS MADE THESE ALLEGATIONS. SUBJECT 1 TOMMY ADAMS STATES HE WOULD TAKE A POLYGRAPH. **Victim** AND HER BROTHER AND 2 SISTERS ARE GOING TO LEXINGTON CHILDRENS CENTER FOR A MEDICAL EXAM NEXT WEEK AND **Victim** WILL ALSO BE SET UP FOR A FORENSIC INTERVIEW AT THE CENTER. INVESTIGATION CONTINUES.

NWL

NARRATIVE

JURISDICTION OF THEFT
 LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY
 LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.		
	☐ STOLEN	☐ VEHICLE					
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.				
	☐ FOUND	☐ BOAT	STATE				
	☐ TOWED	☐ LICENSE PLATE	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR	MAKE	TYPE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MODEL	STYLE	COLOR	BRAND NAME	CALIBER
	☐ VICTIM	☐ ARTS/LE	NO. NO.	DENOMINATION	ISSUER	SECURITIES DATE	
	MISCELLANEOUS						

PROPERTY EST.	TYPE (GROUP)					TOTAL VALUE
	STOLEN					
	DAMAGED					
	BURNED					
	RECOVERED					
	SEIZED					

ADMINISTRATIVE	SUBJECT IDENTIFIED	SUBJECT LOCATED	☒ ACTIVE	☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☐ YES	☐ YES	☐ UNFOUNDED		☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH					
	2. ☐ NO PROSECUTION					
	3. ☐ EXTRACTION DENIED					
	4. ☐ VICTIM DECLINES COOPERATION					
5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
INV. VIRGINIA BLEDSOE		04/24/03	IS-6			
				FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		OFFICER

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF LEXINGTON *EDGEFIELD*IN THE COURT OF COMMON PLEAS *EDGEFIELD COUNTY* CASE NO. 2009-CP-*19* 32-0064CLERK OF COURT
SHIRLEY E. NEWBYTommy Adams
PLAINTIFF(S)

2010 DEC -9 AM 11:08

State of South Carolina
DEFENDANT(S)

ORIGINAL

W.F.

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Application for post-conviction relief is denied. Attorney General is to submit an order.

Dated at Lexington, South Carolina, this 2nd day of December, 2010.


 PRESIDING JUDGE

 BETTIE L. JENNINGS
 CLERK OF COURT
 LEXINGTON, SC

2010 DEC 11 38

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

CERTIFICATE OF SERVICE

I do hereby certify that I have served Applicant's Amended Application for Post-Conviction Relief, in the above-referenced case, on counsel for the Respondent by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

A. West Lee
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

This the 19th day of October, 2010, in Columbia, South Carolina.



TERESA L. NORRIS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	
	)	2009-CP-19-00064
Tommy S. Adams, #311901,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 23, 2009. Respondent made its Return on July 7, 2009. An evidentiary hearing into the matter was convened on December 2, 2010 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Teresa Norris, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, Applicant offered the testimony of Dr. Amanda Salas (Dr. Salas), Sharon Adams (Ms. Adams), Tommy [REDACTED], Jr. (Mr. [REDACTED], Jr.), Cody [REDACTED] (Cody [REDACTED]), Leslie Boyce (Ms. Boyce), Henry Rainey (Mr. Rainey), Phoebe Oliphant (Ms. Oliphant), and Warrena Mathis (Ms. Mathis). The State offered the testimony of James Huff, Esquire, (Mr. Huff) Applicant's trial counsel. This Court also had before it the records of the Edgefield County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted at the September 2003, term of the Edgefield County Grand Jury for Lewd Act on a Child Under Sixteen (2003-GS-19-0416), and Criminal Sexual Conduct with a Minor—1st Degree (2003-GS-19-0418). James B. Huff, Esquire, represented him. On October 12-14, 2005, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Few sentenced him to confinement for fifteen (15) years for the Lewd Act on a Child Under Sixteen and thirty (30) years for Criminal Sexual Conduct with a Minor—1st Degree. The sentences were ordered to run consecutively. Applicant filed a Motion for a New Trial on or about June 23, 2006. The Honorable John C. Few issued an Order denying Applicant's Motion for a New Trial on July 10, 2006.

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. Adams, Op. No. 2006-UP-560 (S.C. Ct. App. filed October 10, 2008). The Remittitur was sent on October 18, 2008.

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

1. Ineffective Assistance of Counsel
 - a. Failure to call or interview Mr. [REDACTED], Jr., and Cody [REDACTED] as witnesses to rebut investigator Bledsoe's testimony that Applicant made inflammatory statement;
 - b. Failure to employ psychologist to introduce behavioral evidence to explain typical characteristics of an assault victim as opposed to victim in the present case;
 - c. Failure to call physician who performed initial exam on victim and

- reported no signs of abuse found;
- d. Failure to object to testimony presented at trial of: "your cooter belongs to your daddy;"
 - e. Failure to present rebuttal evidence showing that the comment was made in an innocent context and that there were available witnesses to that;
 - f. Eliciting testimony from investigating officer that she believed the victim, who was thirteen (13) years old at the time of her testimony and the only substantive witness for the State;
 - g. In not advising Applicant to testify, in fact, advising him to the opposite;
 - h. In telling the jury in trial counsel's opening statement that they would hear two different versions of the story, and the jury only heard one, which could only leave the jury wondering why Applicant did not testify;
 - i. Failure to object or request further questioning of jurors and bailiffs after a bailiff disclosed that the jury foreperson had come out of deliberations and asked if they had to be, "one hundred percent;"
 - j. Failure to object to the State's closing arguments that were loud and stern, and went overboard in arguing that Applicant was "dragging his stepdaughter into the bedroom," when there was no evidence to that at trial; and
 - k. Failure to adequately investigate and present favorable defense evidence from non-family witnesses made known to counsel by Applicant.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Dr. Salas's Testimony

At the evidentiary hearing Dr. Salas was qualified by this Court as an expert in the field of forensic child and adolescent psychiatry. (Tr. p.11, lines12-14). Dr. Salas testified she was provided and reviewed the forensic evaluation done at the Dickerson Center for Children, the testimonies of the victim, Ms. Adams, Ms. Boyce, Mr. [REDACTED], Jr., Cody [REDACTED], and Dennis Boyce from trial, copies of the indictments, the Department of Social Service's intake summary report, and the incident report pertaining to the matters in this case. (Tr. p.11, line20 – p.12,

line5). She testified that she has never interviewed the victim and the speculation on the victim's behavior came from only reading the information she was provided above. (Tr. p.22, lines2-8). Dr. Salas testified that the thing to note about abuse behaviors that come subsequently, there is no specific behavioral pattern that says this screams abuse or that is confirmatory. (Tr. p.15, lines5-7). Dr. Salas testified that she did not necessarily agree that the victim had memory blocks. She explained that it could be a symptom of memory block, but it is more commonly an avoidance technique that is utilized by children when they don't want or are uncomfortable answering a question. (Tr. p.15, line19 – p.16, line8). Dr. Salas testified that she would not expect a child victim who had been abused for two to three years, removed from the home and in safety to continue to contact her alleged abuser. (Tr. p.22, lines6-14). Dr. Salas testified that simply because someone asks a leading question to a child, that has allegedly been abused, does not make the answer necessarily not true. (Tr. p.22, lines9-11).

Ms. Adams' Testimony

Ms. Adams testified she was the Applicant's ex-wife. (Tr. p.25, line23). She testified that she was present during a conversation between Applicant's trial counsel and Applicant. Ms. Adams testified that during the conversation trial counsel told Applicant he would not put Applicant on the stand, and that it was clear to her that trial counsel did not want Applicant to testify. (Tr. p.27, line11 – p.28, line3). Ms. Adams testified that she had not spoken with Applicant's trial counsel anytime prior to the day she was told she would testify. (Tr. p.28, lines 21-24).

Mr. [REDACTED], Jr.'s Testimony

Mr. [REDACTED], Jr. testified he was the Applicant's son and that he was fifteen (15) years old

when he attended Applicant's trial, and that he was about two (2) or three (3) years older than the Victim. (Tr. p.29, line22 – p.30, line6). Mr. [REDACTED], Jr. testified that when his father said to the Victim, "Your cooter belongs to daddy," that the Applicant was discussing the birds and the bees story with Mr [REDACTED], Jr., Cody [REDACTED], and the Victim, and that it was taken out of context the way Applicant said it. (Tr. p.30, lines7-17). He testified that he learned he would be a witness at Applicant's trial at the beginning of the first day of the trial. (Tr. p.31, lines17-21). Mr [REDACTED], Jr. testified that it was his impression that Applicant's trial counsel did not want Applicant to testify. (Tr. p. 32, lines7-18).

Cody [REDACTED] Testimony

Cody [REDACTED] testified he was the Applicant's son and that he was fourteen (14) years old when he attended Applicant's trial, and that the age difference between him and the Victim was only a few months. (Tr. p.33, lines15-23). He testified that when his father said to the Victim, "Your cooter belongs to daddy," that the Applicant was talking to him, his brother Tommy [REDACTED], Jr. and the Victim about sex. (Tr. p.33, line24 – p.34, line13). Cody [REDACTED] testified that he was about eleven (11) years old at the time this comment was made and that his sister, the Victim, would have been ten (10) years old close to turning eleven (11) years old. (Tr. p.36, lines15-25). He testified that he learned that he would be a witness at Applicant's trial a few days before the trial. (Tr. p.34, lines7-10).

Ms. Boyce's Testimony

Ms. Boyce testified that the Applicant was her father. (Tr. p.37, lines23-24). She testified that she was present during the closing arguments of Applicant's trial and that the prosecutor was very loud, boisterous, aggressive, and his facial expressions were very stern. (Tr. p.38, lines15-

25). Ms. Boyce testified that she didn't recall at any time leading up to the Applicant's trial any mention by Applicant's trial counsel of Applicant testifying. (Tr. p.40, lines2-9). She testified that it seemed clear to her that Applicant's trial counsel did not want Applicant to testify. (Tr. p.41, lines10-13).

Mr. Rainey's Testimony

Mr. Rainey testified that he met Applicant when they were co-workers at CMC Metal Recycling and that he and Applicant socialized with each other. (Tr. p.43, lines3-6). He testified that he would get together with the Applicant and Applicant's kids once every two (2) to three (3) months. (Tr. p.43, lines21-24). Mr. Rainey testified that Applicant was very protective of his kids. (Tr. p.44, lines7-12). He testified that prior to Applicant's trial no one involved in Applicant's representation called him about his willingness to testify and that had he been asked to testify he would have testified at Applicant's trial. (Tr. p.44, line23 – p.45, line4).

Ms. Oliphant's Testimony

Ms. Oliphant testified she served as a juror at Applicant's trial. (Tr. p.46, lines1-3). She testified that during jury deliberations she asked one of the bailiffs a question, but that she was unable to recall specifically what question she asked. (Tr. p.46, lines13-24). Ms. Oliphant testified that when she asked whether the jury had to be one-hundred percent, she was asking should "all of us agree on doing the same thing?" She testified that they wanted to make sure that everybody agreed on the same thing. (Tr. p.47, lines4-10). Ms. Oliphant testified that she was told by one of the bailiffs, that "its all the jurors, they have to agree on the same thing." (Tr. p.48, lines1-4).

Ms. Mathis's Testimony

Ms. Mathis testified that she served as a juror at Applicant's trial. (Tr. p.49, lines19-21). She testified she remembered hearing the phrase, "We have to be a hundred percent," or something along that line. (Tr. p.50, lines11-13). Ms. Mathis testified that it was her understanding that until everybody agreed they were not leaving. (Tr. p.50, lines14-16).

Applicant's Testimony

Applicant testified that he moved into the Victim's home in June 1995, and that he and the Victim's mother, Kathy, married in 1996. (Tr. p.54, lines14-25). He testified that he did not touch and rub the Victim in a sexual way fifteen (15) to twenty (20) times, and that he did not penetrate her vagina with his penis at least three (3) to four (4) times. (Tr. p.56, lines6-11). Applicant testified that he did not have the Victim perform oral sex on him. (Tr. p.56, lines12-14) He testified that when the agent from DSS visited him, the Victim's mother, Kathy, and he were separated. (Tr. p.56, lines17-24). Applicant testified that he recalled Investigator Bledsoe testifying at his trial about statements Applicant had made about one of Applicant's children having big boobs for her age, but that it was presented out of context at trial. (Tr. p.57, lines6-23). He testified that he told the Victim, "Your cooter belongs to daddy," but that Applicant did not mean anything other than they [my children] had Applicant's protection to keep their virginity. (Tr. p.58, line18 - p.59, line7). Applicant testified that his trial counsel asked Applicant about witnesses that would be willing to testify on the Applicant's behalf. (Tr. p.60, line25 - p.61, line2). He testified that he told his trial counsel that Mr. Henry Rainey, Tommy [REDACTED] Jr., and Cody [REDACTED] would be willing to testify on Applicant's behalf. (Tr. p.61, lines1-25). Applicant testified that his trial counsel told Applicant it was Applicant's decision whether

to take the stand or not, but that trial counsel advised Applicant not to based on these types of trials, and that every time one of trial counsel's clients took the stand trial counsel lost. (Tr. p.62, lines16-20). He testified that trial counsel told Applicant, it was Applicant's decision to testify or not testify. (Tr. p.64, line25 – p.65, line2).

Mr. Huff's Testimony

Mr. Huff testified that he has practiced law for twenty-six (26) years and had experience with criminal sexual conduct cases. (Tr. p.66, line1 – p.67, line3). Additionally, Mr. Huff testified that 75%-95% of his practice in the past ten years has been in criminal law. (Tr. p.66, lines13-25). He testified that he was Appliant's trial counsel and that he met with the Applicant at his office about four (4) to seven (7) times and spoke with Applicant numerous times on the phone. (Tr. p.67, lines14-21). Mr. Huff testified he filed a Rule 5 Brady Motion. (Tr. p.68, lines19-20). He testified that he submitted a witness list to the trial judge, prior to the pulling of the jury, and that Ms. Boyce, Mr. [REDACTED] Jr., Cody [REDACTED], and Ms. Sharon Adams were all on that witness list. (Tr. p.70, lines 16-25). Mr. Huff testified that Mr. Henry Rainey was also on the witness list, but Mr. Huff decided Mr. Rainey's brother, Timothy Rainey was going to be the better witness if "we felt like we needed to call on, as far as a co-worker." (Tr. p.71, lines18-23). He testified that he notified all the witnesses on the witness list, beyond Mr. Rainey, prior to the day of trial that they would be witnesses in Applicant's case. (Tr. p.72, lines3-9). Mr. Huff explained the multiple factors that would be important in deciding whether or not to put the accused on the witness stand. (Tr. p.73, lines12-14). He testified that he went over with the Applicant what the State had presented and discussed the strength of the State's case when the State rested at trial. (Tr. p.74, line 23- p.75, line2). Mr. Huff testified that upon coming back

from court or prior to the break, it was certainly Mr. Huff's intention and understanding that Applicant was always going to testify in this case. (Tr. p.75, lines8-13). He testified that his discussion with a client concerning whether the client should testify or not testify always is: "it is the client's decision, this is what I think is good or bad about the case, this is what you [the client] can add, this is what you [the client] expose yourself to if you testify, and that it is your [the client's] decision." (Tr. p.75, lines8-13).

Mr. Huff testified that he never told the Applicant not to testify nor did Mr. Huff ever tell the Applicant he would not allow Applicant to testify. (Tr. p.75, lines14-17). He testified that Applicant made the decision not to testify. (Tr. p.75, line19). Mr. Huff testified that he did not object to the "cooter" testimony by Investigator Bledsoe because: (1) Mr. Huff did not think it was objectionable as it was a statement of the accused; (2) it was Mr. Huff's intent when the case began that the Applicant was going to testify, so Applicant was going to clear this testimony up when Applicant took the stand; and (3) that Mr. Huff had the ability to argue to the jury about the context and/or real meaning of the statement. (Tr. p.76, line27 – p.77, line25). Mr. Huff further testified that even if he had objected to the "cooter" testimony, Mr. Huff did not believe it would have made a difference in the Applicant's trial. (Tr. p.78, line15 – p.79, line5). Mr. Huff testified that he did not ask the Applicant's children about the "cooter" comment at trial because at that point during the trial Mr. Huff believed it was not the damaging evidence the State was making it out to be. (Tr. p.79, line23 – p.80, line8). He testified that he discussed with Applicant what Applicant's two boys would testify to. (Tr. p.102, lines9-17).

Mr. Huff explained that he did not consult a mental health expert regarding the behavior of a victim, specifically a victim's actions versus what the standard actions would be of a victim

of something like this as it was part of the trial strategy. (Tr. p.80, line16 – p.82, line7). He testified that in regards to the jury foreperson asking the bailiff the question, if it had to be a hundred percent, Mr. Huff discussed with the Applicant about whether or not to do anything about this question or leave it alone, and that he and the Applicant made the decision to just leave it alone. (Tr. p.82, line17 – p.83, line6). Mr. Huff testified that there was no objection to make during the State's closing argument concerning the prosecutor's demeanor, and that Mr. Huff saw nothing that there would be to base any error upon the tone of voice or volume of argument by an attorney making their closing argument to a jury. (Tr. p.83, line19 – p.84, line13).

Mr. Huff testified that he provided effective, competent representation to the Applicant. (Tr. p.84, lines14-19). He testified he did not have any notes in his file in preparation for Applicant to testify on direct examination because Mr. Huff stated that he already knows what his client's testimony is going to be when Mr. Huff calls them to the stand. (Tr. p.88, lines22-25). Mr. Huff testified that his intent in asking Investigator Bledsoe the question concerning her believing the Victim, was that Mr. Huff knew there was a domestic case going on in this matter between the Applicant and Applicant's wife and that the Investigator was going to say that in some of these cases people may tell the truth, in some of them they may tell a lie. (Tr. p.96, line12 – p.97, line22). He testified that he made the decision not to call Mr. Henry Rainey as a witness at trial based on discussions with the Applicant about Mr. Rainey and what Mr. Rainey's testimony would be, and that Applicant and Mr. Huff decided Tim Rainey would be the better witness. (Tr. p.104, line19 – p.105, line 25). Mr. Huff testified that in regards to the Solicitor's closing argument statement concerning the Applicant 'dragging her back there,' that Mr. Huff

believed 'dragging' could imply the Applicant physically dragged her or Applicant was just telling her to go back, similar to dragging family garbage into a family setting; that this statement could have been taken either way or interpreted either way. (Tr. p.108, lines2-18). Mr. Huff testified that in regards to his opening statement to the jury that the jury would hear two different stories he was not telling the jury that the Applicant was going to take the stand, but explained that there was going to be two different versions even if they put up no witnesses at all, the cross-examination would have provided a different version. (Tr. p.111, lines10-17).

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper function 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, Id.

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

- (a) *Applicant’s allegation that trial counsel failed to call or interview Mr. [REDACTED], Jr. and Cody [REDACTED] as witnesses to rebut Investigator Bledsoe’s testimony that Applicant made inflammatory statement.*

This Court finds the Applicant’s allegation that counsel was ineffective for failing to call or interview Mr. [REDACTED] Jr. and Cody [REDACTED] as witnesses to rebut Investigator Bledsoe’s testimony that Applicant made inflammatory statement is without merit. At the PCR hearing Applicant’s trial counsel testified that he and the Applicant discussed what Mr. [REDACTED], Jr. and Cody [REDACTED] testimony would be. (Tr. p.102, lines9-17). This Court finds that Mr. Huff did not call Applicant’s two boys as rebuttal witnesses based on trial counsel’s discussion with Applicant as to what the Applicant’s two boys would testify to and based on trial counsel’s

strategy, and the belief that Investigator Bledsoe's testimony was not the damaging evidence that the State was making it out to be. Mr. Huff did not want to draw further attention to this comment by calling the two boys as rebuttal witnesses and the boys then speculate as to what they thought the Applicant meant. This Court finds that Applicant failed to show that he was prejudiced by counsel's alleged ineffectiveness. Furthermore, our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Applicant's trial counsel articulated valid strategic reasons for not calling Applicant's two boys as rebuttal witnesses. This Court finds that Applicant has not shown that counsel was deficient in that choice of tactics. Therefore, this allegation is denied and dismissed.

(b) Applicant's allegation that trial counsel failed to employ psychologist to introduce behavioral evidence to explain typical characteristics of an assault victim as opposed to Victim in the present case.

This Court finds that Applicant's allegation that trial counsel was ineffective in failing to employ a psychologist to introduce behavioral evidence to explain typical characteristics of an assault victim as opposed to the Victim in the present case is without merit. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Mr. Huff testified that he did not employ a psychologist at

Applicant's trial based, in part, on his 26 years of experience in prosecuting and defending cases that involve rape victims and experts. (Tr. p.81, line1 – p.82, line 7). Additionally, at the PCR hearing Dr. Salas testified that the thing to note about abuse behaviors that come subsequently, there is no specific behavioral pattern that says this screams abuse or that is confirmatory. (Tr. p.15, lines5-7). At trial, Mr. Huff presented evidence in relation to the Victim's behavior after the fact by submitting evidence of holiday cards and gifts that the Victim sent to the Applicant. (Tr. p.82, lines4-7). Applicant's trial counsel articulated valid strategic reasons for not employing a psychologist to introduce behavioral evidence, and thus this Court finds that Applicant has not shown that counsel was deficient in that choice of tactics. This Court, further, finds the Applicant has failed to show that he was prejudiced as Dr. Salas' testimony at the PCR hearing offered nothing more for the defense. Therefore, this allegation is denied and dismissed.

(c) Applicant's allegation that trial counsel failed to call physician who performed initial exam on Victim and reported no signs of abuse found.

This Court finds Applicant's allegation trial counsel failed to call the physician who performed the initial exam on the Victim and reported no signs of abuse found is without merit. At the PCR hearing, Mr. Huff testified that some of the things brought out at trial were that there was no physical evidence of sexual molestation, of penetration of a child. (Tr. p.69, lines4-9). Indeed, Mr. Huff addressed the fact that there was no physical medical evidence of penetration in his opening argument and several times during his closing argument. (Trial Tr. p.123-124; p.136-137; p.141, line 22 – p.142, line 1). The Applicant did not present the physician who performed the initial exam on the Victim as a witness, nor did the Applicant present the records from this initial exam at the PCR hearing. Applicant has failed to show that he suffered any prejudice from counsel's alleged ineffectiveness. Prejudice from trial counsel's failure to interview or call

witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant presented no such witness or records at the PCR hearing. This Court finds Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

(d) Applicant's allegation that trial counsel failed to object to testimony presented at trial of: "your cooter belongs to your daddy."

This Court finds Applicant's allegation that trial counsel was ineffective in failing to object to the testimony presented at trial of: "your cooter belongs to your daddy" is without merit. Mr. Huff did not object because he did not find the comment objectionable as it was a statement of the accused. The full statement presented at trial to the court and jury was, "your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." (Trial Tr. p.67, lines13-17). Additionally, Mr. Huff testified that "anytime you object during a trial, regardless of the ruling you get, it waves somewhat of a red flag to the jury that it must be something important and hurtful to your case or you wouldn't be objecting." (Tr. p.78, lines18-22). Mr. Huff provided a rational explanation as to why he did not object. Mr. Huff also testified that even if he had objected to the statement, it would not have made any difference at trial. (Tr. p.78, line15 -- p.79, line5). This Court accepts Mr. Huff's reasoning as to why he did not object at the time. Furthermore, there has been no showing by the Applicant that the outcome

of his trial would have been different if this objection had been made. This Court finds that Applicant has failed to show that he was prejudiced by counsel's alleged ineffectiveness. Therefore, this allegation is denied and dismissed.

- (e) *Applicant's allegation that trial counsel failed to present rebuttal evidence showing the comment was made in an innocent context and that there were available witnesses to that.*

This Court finds Applicant's allegation that trial counsel was ineffective in failing to present rebuttal evidence showing the comment was made in an innocent context and that there were available witnesses to that is without merit. At the PCR hearing Mr. Huff testified that the context of the comment would be made clear primarily when the Applicant testified and that standing alone, it's not subject to only one interpretation. (Tr. p.78, lines12-14). Mr. Huff further testified that the corrected testimony, as it were, would come out in the Applicant's testimony, but ultimately he chose not to testify, which understandably surprised Mr. Huff. (Tr. p.79, lines2-7). When asked why he did not ask Applicant's children about the 'cooter' comment, Mr. Huff testified that at that point the comment was not the damaging evidence that the State was making it out to be. (Tr. p.79, line23 – p.80, line9). The 'cooter' comment was presented in its entirety by Investigator Bledsoe's testimony at trial, and not presented out of context. Mr. Huff did not wish to draw further attention to the comment because Investigator Bledsoe's testimony was not the damaging evidence that the State was making it out to be. It is generally accepted that trial counsel cannot be held ineffective for failing to anticipate every possible event or outcome. Reasonable efforts and performance are all that is required of trial counsel. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). This Court finds that Mr. Huff had no way of knowing that his client would ultimately choose not to testify and thereby eliminating Applicant's opportunity

to clear up the context of the comment through his testimony. This Court finds that Applicant failed to show that he was prejudiced by counsel's alleged ineffectiveness, because there is not a reasonable probability, that but for counsel's alleged unprofessional errors, the result of the proceedings would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this allegation is denied and dismissed.

- (f) *Applicant's allegation that trial counsel was ineffective in eliciting testimony from investigating officer that she believed the Victim, who was thirteen (13) years old at the time of her testimony and the only substantive witness for the State.*

This Court finds that the Applicant has failed to meet his burden in proving that trial counsel was ineffective in eliciting testimony from the investigating officer that she believed the Victim, who was thirteen (13) years old at the time of her testimony and the only substantive witness for the State. Mr. Huff testified that his intent in asking the question was that there was a domestic case going on in this matter between the Applicant and the Applicant's wife, and that the investigator was going to say that in some of these cases people may tell the truth, in some they may tell a lie. (Tr. p.96, line12 – p.97, line22). The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). This Court finds that Mr. Huff could not know how the Investigating Officer was going to respond to his question, and when the investigating officer did respond Mr. Huff immediately made a motion to strike her response as non-responsive. (Trial Tr. p.70, lines11-22). The Judge removed the jury from the courtroom and the record reflects Mr. Huff's trial strategy in asking this question.

This Court finds that the Judge gave the jury a curative instruction regarding witnesses

not being allowed to testify about of the credibility of the victim (Trial Tr. p.77, line15 – p.78, line10), and that this instruction was adequate to cure the matter. As previously stated, trial counsel cannot be held ineffective for failing to anticipate every possible event or outcome. Reasonable efforts and performance are all that is required of trial counsel. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). This Court finds that the Applicant has not shown that a different approach to cross-examination would have been beneficial nor has the Applicant shown he was prejudiced by this elicited testimony that was subsequently stricken from the record and cured by the Judge. Therefore, this allegation is denied and dismissed.

(g) *Applicant's allegation trial counsel was ineffective in not advising Applicant to testify, in fact, advising him to the opposite.*

This Court finds Applicant's allegation trial counsel was ineffective in advising Applicant whether to testify or not is without merit. This Court finds that Applicant's testimony is not credible. This Court does find Mr. Huff to be credible. Additionally, this Court acknowledges the testimony of Applicant's two sons and ex-wife concerning their impression of Mr. Huff wanting or not wanting Applicant to testify. At the PCR hearing Mr. Huff explained the factors that in his experience are important in deciding whether or not to put the accused on the stand. (Tr. p.73, lines 12-14). Mr. Huff testified that he and the Applicant discussed what the State had presented and the strength of the State's case when the State rested. (Tr. p.74, line23 – p.75, line2). Mr. Huff further testified that when they came back from court or prior to the break, it certainly was Mr. Huff's intention and understanding that the Applicant was always going to testify in this case. (Tr. p.75, lines4-7). Mr. Huff made clear at the PCR hearing that it was the Applicant's decision alone, whether to testify or not, and that Applicant made the decision not to testify. (Tr. p.75, line 19). Furthermore, the Applicant testified that trial counsel told Applicant, it

was Applicant's decision to testify or not testify. (Tr. p.64, line25 – p.65, line2).

This Court finds that the record reflects Mr. Huff and the Applicant discussed Applicant's choice to testify or not testify, and that the Applicant testified to the trial judge it was his decision and not Mr. Huff's decision that Applicant chose not to testify. (Trial Tr. p.113-114). This Court finds that Mr. Huff properly advised Applicant of his rights in deciding whether to testify or not testify and that it was the Applicant's decision not to testify. Therefore, this allegation is denied and dismissed.

(h) *Applicant's allegation that trial counsel was ineffective in his opening statement to the jury, that the jury would hear two different versions of the story.*

This Court finds Applicant has failed to meet his burden in showing that trial counsel was ineffective in his opening statement to the jury, that the jury would hear two different versions of the story. Specifically, Applicant directed this Court's attention to page 35 of the trial transcript. Applicant offered this page as an example of where trial told the jury there is going to be two people saying two different things, which could only leave the jury wondering why Applicant did not testify. This Court does not agree. At the PCR hearing Mr. Huff testified that he has never promised a jury that his client was going to testify and he was not trying to imply that he was promising that Applicant was going to take the stand. (Tr. p.111, line10 – p.112, line11). This Court finds that Mr. Huff indicated the defense's version could be derived from cross-examination and the evidence presented. Mr. Huff provided a rational explanation as to the language he used in this opening statement. It is easy as a lawyer to reflect back on a particular argument and see that he could have stated it differently; and this Court appreciates Mr. Huff's honesty in stating that he believes he misstated himself to some degree in this one comment and

should have used the word “versions” instead of “people.” This Court finds there has been no showing by Applicant that the outcome of his trial would have been different if Mr. Huff had not used the challenged language. Therefore, this allegation is denied and dismissed.

- (i) *Applicant’s allegation that trial counsel failed to object or request further questioning of jurors and bailiffs after a bailiff disclosed that the jury foreperson had come out of deliberations and asked if they had to be, “one hundred percent.”*

This Court finds Applicant’s allegation that trial counsel was ineffective in failing to object or request further questioning of jurors and bailiffs after a bailiff disclosed that the jury foreperson had come out of deliberations and asked if they had to be, “one hundred percent” is without merit. Mr. Huff testified that he discussed with the Applicant whether or not they should they should do anything or leave it alone, and the decision was to just leave it alone. (Tr. p.83, lines1-3). Mr. Huff explained at the PCR hearing that based on his experience and opinion there was no typical action that should have or should not have been taken, such as requesting an Allen charge. (Tr. p.99, lines80-23). The testimony of the two jurors at the PCR hearing fail to show that the jury deliberations were somehow affected or that juror’s changed their minds in response to this question and answer. There has been no showing by the Applicant that the outcome of his trial would have been different if any objections or requests of questioning the jurors and bailiffs had been made. This Court finds the Applicant has failed to show that he was prejudiced by counsel’s alleged ineffectiveness. Therefore, this allegation is denied and dismissed.

- (j) *Applicant’s allegation that trial counsel failed to object to the State’s closing arguments.*

This Court finds Applicant’s allegation that trial counsel was ineffective in failing to

object to the State's closing arguments is without merit. Specifically, Applicant directed this Court's attention to the statement that Applicant was "dragging her back there in that bedroom and molesting her" (Tr. p.108, lines1-7), when there was no evidence to that at trial. The Applicant also alleges that the solicitor's closing arguments were loud and stern, and went overboard. This Court finds that the solicitor's closing arguments must be viewed in the context of the entire record. McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). While the State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence, State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); to be entitled to a new trial for improper closing arguments Applicant must show "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).

After reviewing the entire record, this Court does not find that any comments or questions by the solicitor so infected the trial that a new trial is warranted. This Court is not convinced that the solicitor's arguments even reach the level of being improper, but certainly there is no evidence that Applicant was prejudiced. Additionally, this Court does not find that Mr. Huff was ineffective for failing to object. He provided rational explanation as to why he did not object and this Court accepts Mr. Huff's reasoning as to why he did not object. Therefore, this allegation is denied and dismissed.

(k) Applicant's allegation that trial counsel failed to adequately investigate and present favorable defense evidence.

This Court finds Applicant has failed to show that trial counsel was ineffective in failing to adequately investigate and present favorable defense evidence from non-family witnesses

made known to counsel by Applicant. Mr. Huff met with Applicant at his office around four (4) to seven (7) times and spoke with the Applicant numerous times on the phone. (Tr. p.67, lines14-21). Mr. Huff filed a Rule 5 Brady Motion and obtained discovery which he reviewed with the Applicant. Mr. Huff and the Applicant also prepared for trial and discussed the witnesses and Applicant's testimony (Tr. p.67, line16 – p. 68, line24). At the PCR hearing Mr. Huff testified that he could only know about either Rainey by talking to the Applicant, and Applicant would have told Mr. Huff who the potential witnesses were and what they might offer as testimony. And so in conjunction with that, Mr. Huff testified that he and the Applicant somehow felt Tim Rainey would be the better witness as opposed to Henry Rainey. (Tr. p.104, line19 – p.105, line4). In regards to trial counsel not calling either Rainey to the stand at trial, Mr. Huff testified that sometimes jurors may totally improperly imply that a person who is related has a bias or prejudice and are willing to perjure themselves to help the defendant; sometimes they know that's not the case. (Tr. p.116, lines5-12).

Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Mr. Huff presented testimony from Sharon Adams, Leslie Boyce, Tommy [REDACTED], Jr., Cody [REDACTED], and Wade Boyce (Applicant's son-in-law) that the Applicant was a good dad. This Court finds significant evidence was presented to the court by Mr. Huff of the type of man the Applicant is and the type of loving father that he was. Mr. Huff articulated valid strategic reasons for not calling non-family witnesses, who would not have spent as much time with the Applicant and his children as

opposed to his family members. This Court finds the Applicant has not shown that counsel was deficient in that choice of tactics. This Court further finds that Applicant failed to show that he was prejudiced by counsel's alleged ineffectiveness. Therefore, this allegation is denied and dismissed.

V. CONCLUSION

The Applicant has failed to show that he suffered any prejudice from anything that Mr. Huff may or may not have done in this case. There is no reason to believe the outcome of Applicant's trial would have been different had certain things been handled differently. There is certainly no reason this Court can find to overturn his conviction and grant a new trial.

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. The Applicant's attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this _____ day of _____, 20____.

William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	09-CP-19-00064
	)	
TOMMY S. ADAMS, #311901,	)	
Applicant,	)	
	)	
vs.	)	OBJECTIONS TO PROPOSED
	)	ORDER OF DISMISSAL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

Comes now, the Applicant, Tommy Swinson Adam, through the undersigned counsel, and objects to the proposed Order of Dismissal submitted by Respondent's counsel on May 31, 2011.

Adams objects generally on all claims for relief that the proposed findings of fact and conclusions of law are inconsistent with the facts and law addressed in the hearing and set forth generally in the Final Amended Application for Post-Conviction Relief submitted December 2, 2010. Counsel provided ineffective assistance of counsel on all claims and relief is required. *Strickland v. Washington*, 466 U.S. 668 (1984).

Specifically, without waiving argument on those claims not addressed herein, Adams objects as follows:

1. **Counsel provided ineffective assistance in failing to object to Detective Bledsoe's testimony concerning statements by Adams.**

Detective Bledsoe testified that, while Adams denied the allegations generally, he made "odd statements" when he "mentioned something about he talked frankly with his children—his older children—about sex." Specifically, Bledsoe testified Adams told his step-daughter, the alleged victim

in the case: “Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me.” Record on Appeal (ROA) at 67.¹

While trial counsel was aware of these statements because included in the police report disclosed pretrial, counsel testified that he did not move to exclude these statements or object to this testimony because he “didn’t think it was objectionable. It was a statement of the accused.” PCR Tr. 77. While he gave further testimony that he thought this evidence could be explained in anticipated testimony from Adams and that objecting before the jury could raise a “red flag to the jury,” PCR Tr. 77-78, the bottom line is that he simply did not view the evidence as objectionable but would have preferred to keep the evidence out if possible. PCR Tr. 86. He conceded in his testimony that if the evidence was objectionable, his failure to object “well may warrant . . . a new trial.” PCR Tr. 119.

This testimony, in the form of general comments by Adams, was inadmissible and objectionable because the statements were neither relevant nor material to the crimes charged, *see State v. Nelson*, 331 S.C. 1, 15-16, 501 S.E.2d 716, 723-724 (1998), nor statements that could be construed as conveying an admission of guilt, *see State v. Tufts*, 355 S.C. 493, 499, 585 S.E.2d 523, 525 (Ct. App. 2004). Nonetheless, without objection from the defense, these statements were admitted. “[T]he failure to object to this clearly inadmissible evidence was ineffective assistance of counsel” not explained by a valid trial strategy. *Holman v. State*, 381 S.C. 491, 493, 674 S.E.2d 171, 172 (2009).

The prejudice to the defense is clear as the State relied heavily on these statements in closing argument as “vile” statements indicative of guilt:

¹He also said his youngest daughter had “big boobs for her age.” ROA at 67.

What did he tell Virginia Bledsoe? What a vile thing to say. He's just been talked to by this investigator about allegations of sexual misconduct that he's alleged on this child. And what does he tell the investigator from the Sheriff's Office? "Your cooter belongs to your daddy," because he's using this child as his sexual plaything.

You can bet it belonged to him. He considered it his personal property, because he was using it for his own sexual benefit and lust. Yes, it belonged to him, and he showed that. It didn't belong to anybody else in the world. "If anybody else wants to come and touch you or do anything else, they've got to talk to me, because the cooter belongs to me."

He's even telling this investigator that. What an inappropriate thing, and it shows what's in his heart, malice.

ROA 134-135. *See also* ROA 136 ("It belongs to him").

She could sure tell you exactly when it started, when he started dragging her back there in that bedroom, and molesting her, and using her for his own lust and satisfaction, because it belongs to him.

He couldn't even resist throwing that in in front of this investigator after she's telling him what he's been accused of. That's his attitude. That's his true colors, and it came out right then. He couldn't even cover it up when he was talking to the police, because that's what he believes.

ROA 138. This testimony and argument was improper and prejudicial, especially in light of the complete lack of evidence corroborating the alleged victim's testimony of abuse.

2. Counsel was ineffective in cross-examining Detective Bledsoe in a fashion that elicited her testimony that she believed the alleged victim in this case.

While counsel may not have intended, as he testified, to elicit Bledsoe's testimony that she believed the alleged victim, counsel opened the door to this testimony. *See State v. White*, 361 S.C. 407, 415-416, 605 S.E.2d 540, 544 (2004) ("White argues that Badger [the state expert] improperly testified she believed the victim. We conclude White opened the door to this testimony by cross-examining Badger as to whether she had cases in which she did not believe the alleged victim"). Specifically, counsel asked: "And you assume that what people tell you when they—in one of these type of child sex abuse cases, you're assuming that what they're telling you is true?" The detective

responded: "Yes, sir. And I believe what **Victim** has told me on this case." ROA 70. Although the trial court subsequently instructed the jury to disregard this testimony,² in this context where there is no valid claim of overwhelming evidence of guilt, the prejudice from this improper vouching for the alleged victim's credibility and bolstering of her testimony was prejudicial and requires reversal, as asserted in trial counsel's own motion for new trial. *See Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010); *Ingle v. State*, 348 S.C. 467, 475, 560 S.E.2d 401, 405 (2002); *State v. Barrett*, 299 S.C. 485, 487, 386 S.E.2d 242, 243 (1989).

3. Counsel provided ineffective assistance of counsel in essentially promising the jury in opening statements that Adams would testify.

While counsel testified that he would never tell a jury in opening statements that the defendant will testify, in opening statements in this case, counsel asserted:

And, I am confident that you're going to hear two totally different stories, and you're going to have to sit in judgment. And there's not going to be any DNA. There's not going to be any videotapes. There's not going to be any of that. There's going to be two people saying two different things.

ROA 35. Even though Adams did not testify, counsel highlighted this failure in closing argument by asserting that "[t]his is what we sometimes call a he said-she said type of case" without corroborating DNA or medical evidence. Adams was prejudiced because the jury could only infer from counsel's failure to deliver Adams' story through his own testimony that Adams had something to hide or that counsel did not believe he would be a credible witness.

²The Court instructed: "I am going to instruct you to disregard anything that you may have heard this witness say regarding whether or not she believes or does not believe any other witness. That is a matter for you. It is not for a witness to tell you who they believe. It is for you to decide who you believe." ROA 78.

Counsel conceded that he "misstated" the case in opening and should have said the jury would hear two different "versions" rather than two different "people." PCR Tr. 111. He also conceded that the jury could have understood his statements as a promise that Adams would testify. PCR Tr. 112. Counsel's conduct was both deficient and prejudicial.

4. **Counsel was ineffective in failing to object and in failing to request that the jurors and bailiffs be questioned or the jurors returned to court for proper instructions following improper communications between jurors and the bailiffs during deliberations.**

The following exchange occurred on the record after approximately one and a half hours of deliberation, PCR Tr. 102:

THE COURT: Ma'am, come up front, please. You're Ms. Watson?

MS. WATSON: Yes, sir.

THE COURT: All right, raise your right hand.

(The witness was sworn.)

THE COURT: Okay. Now, something happened back there with the jury asking you a question. Is that what happened?

MS. WATSON: Well, I was standing with the other Bailiff back there, and they came out and asked if it had to be a hundred percent, and she told them yes.

THE COURT: Okay. The other Bailiff, Ms. Scurry, told them yes?

MS. WATSON: We told them yes, uh-huh.

THE COURT: All right. And that was all that was said?

MS. WATSON: That's all.

THE COURT: Okay. And I'll hear from counsel. Anything you want to say?

ROA 153-154. Defense counsel responded only:

Judge, I think Ms. Scurry said what the law is. Of course, it more properly should have been Your Honor. But I'm sure nothing was done intentionally. But we've got no position for that.

ROA 154. No corrective action was taken other than to instruct the bailiffs "that if the jury asks any more questions – and this is the procedure that should always be followed – to tell the foreperson to write the question down and then, without looking at the question, bring it directly to the presiding judge." ROA 154-155. Counsel's conduct was deficient and Adams was prejudiced.

The jury wanted to know if it had to be a unanimous vote, which is indicative that the jury was hung. Indeed, it was even reported in the media that "[t]he jury was deadlocked, we are told, with a nine guilty to three innocent voting" apparently when the question was asked of the bailiffs. See <http://www.edgefielddaily.com/sheriff1015015.html> (Attached). The jury foreperson testified in the hearing that she was asking whether all twelve had to be unanimous. PCR Tr. 47. The bailiff's statement that it had to be "a hundred percent" was related to all the jurors by the foreperson. PCR Tr. 48. The foreperson (and, therefore, the other jurors) understood from this that the jurors were not leaving until everyone agreed. PCR Tr. 48. More specifically, one juror, Warrena Mathis, understood it to mean "we wasn't going to leave until we found him guilty. We were going to stay there." PCR Tr. 50. She changed her vote from not guilty to guilty because of that understanding. PCR Tr. 50.

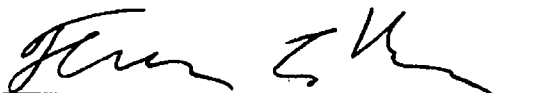
If trial counsel had requested proper inquiry and additional instruction, the jurors would have been provided a proper *Allen* charge instruction informing jurors that they should "approach the evidence with an open mind and consider the opinions of their fellow jurors," in an attempt to reach a verdict, *State v. Williams*, 386 S.C. 503, 510, 690 S.E.2d 62, 65 (2010), but that they should not give up an honestly held opinion and change their mind "if it would do violence to [their]

conscience,” *Green v. State*, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002). See *Blake by Adams v. Spartanburg General Hosp.*, 307 S.C. 14, 16, 17, 413 S.E.2d 816, 817, 818 (1992) (trial judge’s grant of new trial upheld where bailiff “made comments to a juror urging the jury to reach a verdict”; while these comments would have been appropriate if given by the trial court, reversal was required because “in so encouraging jurors, a trial judge [also] has the duty to ensure that no juror feels compelled to sacrifice his conscientious conviction in order to concur in the verdict”). Counsel’s failure to ensure this proper instruction was deficient and prejudicial conduct. *Dawson v. State*, 352 S.C. 15, 572 S.E.2d 445 (2002).

Conclusion

Wherefore, Adams requests that Respondent’s Proposed Order of Dismissal be rejected and relief granted based on the evidence and argument submitted in the Application, the evidentiary hearing, and the foregoing arguments.

Respectfully submitted,



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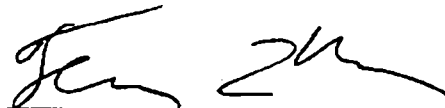
June 16, 2011

CERTIFICATE OF SERVICE

I do hereby certify that I have served Applicant's Objections to the Proposed Order of Dismissal, in the above-referenced case, on counsel for the Respondent by depositing a copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

Kaelon E. May
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

This the 16 day of June, 2011, in Columbia, South Carolina.



TERESA L. NORRIS



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EDGEFIELD – Friday saw the end of the two day criminal sexual conduct trial of Tommy S. Adams, 50, of Clarks Hill. The case, prosecuted by Assistant Solicitor Irvin Maye, was based completely on the testimony of the young girl who made the accusations with the absence of any supporting physical evidence. The case stems from her accusations that molestation had taken place beginning in 1999 through 2002. The girl was seven years old at the time. With the jury reaching a verdict of guilty after four hours of deliberation over two days Judge John Few sentenced Mr. Adams to 45 years in prison, basically a life sentence for Mr. Adams.

The only two witnesses on the stand for the state were the young girl and former Edgefield County Sheriff's CSC Investigator Bledsoe. Rather stoic, but brave in her testimony, the girl recounted serious accusations in rather broad and general terms only getting specific on one claim during her time on the stand.

Three doctors had examined the girl and no evidence of the claims were found. That was a hurdle Assistant Solicitor Maye had to overcome with the nine women, three man jury, who were instructed not to make any conclusion before going to deliberations. Mr. Maye's claimed Mr. Adams had full "intercourse" with the girl during closing arguments which had several of the women on the jury shaking their heads in agreement even though three medical doctors could not support that claim. Mr. Maye said he did not need evidence, just the girl's words. Defense attorney James Huff of North Augusta put several family members on the stand to establish that the accusations did not fit the description families had of Mr. Adams. He insisted the lack of evidence demanded a not guilty verdict.

The jury was deadlocked, we are told, with a nine guilty to three innocent voting on Thursday afternoon. Deliberations were allowed to be taken up again on Friday morning and after just over another hour and a half they reached the verdict of guilty on both counts.

Most observers thought with no physical evidence the best the state could hope for was a conviction of the lewd act on a minor charge and a not guilty verdict on the criminal sexual conduct charge due to the deadlocked jury earlier. Even with the surprise verdict all were stunned when Judge John Few sentenced Mr. Adams to 15 years for the lewd act charge and 30 years on the criminal sexual conduct charge to run consecutively, a life sentence for the fifty year old man.

Mr. Adams' ex-wife and family members wept quietly as the verdict and sentence were read, breaking down after leaving the courtroom. Mr. Adams' oldest daughter wept uncontrollably and had to be supported by her husband.

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OO: EXT

Mr. Adams' attorney, James Huff, said he would be filing an appeal of the conviction within the next ten days in addition to motions involving certain legal matters regarding the trial. We did not seek comment from the victim or her mother after the trial as their privacy is respected though she did e-mail the Editor later in the day.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) 2011 OCT -7 AM 11:14

Tommy S. Adams, #311901,)
Applicant,) 2009-CP-19-00064
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL

WPL #1

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 23, 2009. Respondent made its Return on July 7, 2009. An evidentiary hearing into the matter was convened on December 2, 2010 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Teresa Norris, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, Applicant offered the testimony of Dr. Amanda Salas (Dr. Salas), Sharon Adams (Ms. Adams), Tommy [REDACTED], Jr. (Mr. [REDACTED] Jr.), Cody [REDACTED] (Cody [REDACTED]), Leslie Boyce (Ms. Boyce), Henry Rainey (Mr. Rainey), Phoebe Oliphant (Ms. Oliphant), and Warrena Mathis (Ms. Mathis). The State offered the testimony of James Huff, Esquire, (Mr. Huff) Applicant's trial counsel. This Court also had before it the records of the Edgefield County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted at the September 2003, term of the Edgefield County Grand Jury for Lewd Act on a Child Under Sixteen (2003-GS-19-0416), and Criminal Sexual Conduct with a Minor—1st Degree (2003-GS-19-0418). James B. Huff, Esquire, represented him. On October 12-14, 2005, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Few sentenced him to confinement for fifteen (15) years for the Lewd Act on a Child Under Sixteen and thirty (30) years for Criminal Sexual Conduct with a Minor—1st Degree. The sentences were ordered to run consecutively. Applicant filed a Motion for a New Trial on or about June 23, 2006. The Honorable John C. Few issued an Order denying Applicant's Motion for a New Trial on July 10, 2006.

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. Adams, Op. No. 2006-UP-560 (S.C. Ct. App. filed October 10, 2008). The Remittitur was sent on October 18, 2008.

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

1. Ineffective Assistance of Counsel
 - a. Failure to call or interview Mr. [REDACTED], Jr., and Cody [REDACTED] as witnesses to rebut investigator Bledsoe's testimony that Applicant made inflammatory statement;
 - b. Failure to employ psychologist to introduce behavioral evidence to explain typical characteristics of an assault victim as opposed to victim in the present case;
 - c. Failure to call physician who performed initial exam on victim and

- reported no signs of abuse found;
- d. Failure to object to testimony presented at trial of: "your cooter belongs to your daddy;"
 - e. Failure to present rebuttal evidence showing that the comment was made in an innocent context and that there were available witnesses to that;
 - f. Eliciting testimony from investigating officer that she believed the victim, who was thirteen (13) years old at the time of her testimony and the only substantive witness for the State;
 - g. In not advising Applicant to testify, in fact, advising him to the opposite;
 - h. In telling the jury in trial counsel's opening statement that they would hear two different versions of the story, and the jury only heard one, which could only leave the jury wondering why Applicant did not testify;
 - i. Failure to object or request further questioning of jurors and bailiffs after a bailiff disclosed that the jury foreperson had come out of deliberations and asked if they had to be, "one hundred percent;"
 - j. Failure to object to the State's closing arguments that were loud and stern, and went overboard in arguing that Applicant was "dragging his stepdaughter into the bedroom," when there was no evidence to that at trial; and
 - k. Failure to adequately investigate and present favorable defense evidence from non-family witnesses made known to counsel by Applicant.

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II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Dr. Salas's Testimony

At the evidentiary hearing Dr. Salas was qualified by this Court as an expert in the field of forensic child and adolescent psychiatry. (Tr. p.11, lines12-14). Dr. Salas testified she was provided and reviewed the forensic evaluation done at the Dickerson Center for Children, the testimonies of the victim, Ms. Adams, Ms. Boyce, Mr. [REDACTED], Jr., Cody [REDACTED], and Dennis Boyce from trial, copies of the indictments, the Department of Social Service's intake summary report, and the incident report pertaining to the matters in this case. (Tr. p.11, line20 – p.12,

line5). She testified that she has never interviewed the victim and the speculation on the victim's behavior came from only reading the information she was provided above. (Tr. p.22, lines2-8). Dr. Salas testified that the thing to note about abuse behaviors that come subsequently, there is no specific behavioral pattern that says this screams abuse or that is confirmatory. (Tr. p.15, lines5-7). Dr. Salas testified that she did not necessarily agree that the victim had memory blocks. She explained that it could be a symptom of memory block, but it is more commonly an avoidance technique that is utilized by children when they don't want or are uncomfortable answering a question. (Tr. p.15, line19 – p.16, line8). Dr. Salas testified that she would not expect a child victim who had been abused for two to three years, removed from the home and in safety to continue to contact her alleged abuser. (Tr. p.22, lines6-14). Dr. Salas testified that simply because someone asks a leading question to a child, that has allegedly been abused, does not make the answer necessarily not true. (Tr. p.22, lines9-11).

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Ms. Adams' Testimony

Ms. Adams testified she was the Applicant's ex-wife. (Tr. p.25, line23). She testified that she was present during a conversation between Applicant's trial counsel and Applicant. Ms. Adams testified that during the conversation trial counsel told Applicant he would not put Applicant on the stand, and that it was clear to her that trial counsel did not want Applicant to testify. (Tr. p.27, line11 – p.28, line3). Ms. Adams testified that she had not spoken with Applicant's trial counsel anytime prior to the day she was told she would testify. (Tr. p.28, lines 21-24).

Mr. [REDACTED], Jr.'s Testimony

Mr. [REDACTED], Jr. testified he was the Applicant's son and that he was fifteen (15) years old

when he attended Applicant's trial, and that he was about two (2) or three (3) years older than the Victim. (Tr. p.29, line22 – p.30, line6). Mr. [REDACTED], Jr. testified that when his father said to the Victim, "Your cooter belongs to daddy," that the Applicant was discussing the birds and the bees story with Mr. [REDACTED], Jr., Cody [REDACTED], and the Victim, and that it was taken out of context the way Applicant said it. (Tr. p.30, lines7-17). He testified that he learned he would be a witness at Applicant's trial at the beginning of the first day of the trial. (Tr. p.31, lines17-21). Mr. [REDACTED], Jr. testified that it was his impression that Applicant's trial counsel did not want Applicant to testify. (Tr. p. 32, lines7-18).

Cody [REDACTED]'s Testimony

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Cody [REDACTED] testified he was the Applicant's son and that he was fourteen (14) years old when he attended Applicant's trial, and that the age difference between him and the Victim was only a few months. (Tr. p.33, lines15-23). He testified that when his father said to the Victim, "Your cooter belongs to daddy," that the Applicant was talking to him, his brother Tommy [REDACTED], Jr. and the Victim about sex. (Tr. p.33, line24 – p.34, line13). Cody [REDACTED] testified that he was about eleven (11) years old at the time this comment was made and that his sister, the Victim, would have been ten (10) years old close to turning eleven (11) years old. (Tr. p.36, lines15-25). He testified that he learned that he would be a witness at Applicant's trial a few days before the trial. (Tr. p.34, lines7-10).

Ms. Boyce's Testimony

Ms. Boyce testified that the Applicant was her father. (Tr. p.37, lines23-24). She testified that she was present during the closing arguments of Applicant's trial and that the prosecutor was very loud, boisterous, aggressive, and his facial expressions were very stern. (Tr. p.38, lines15-

25). Ms. Boyce testified that she didn't recall at any time leading up to the Applicant's trial any mention by Applicant's trial counsel of Applicant testifying. (Tr. p.40, lines2-9). She testified that it seemed clear to her that Applicant's trial counsel did not want Applicant to testify. (Tr. p.41, lines10-13).

Mr. Rainey's Testimony

Mr. Rainey testified that he met Applicant when they were co-workers at CMC Metal Recycling and that he and Applicant socialized with each other. (Tr. p.43, lines3-6). He testified that he would get together with the Applicant and Applicant's kids once every two (2) to three (3) months. (Tr. p.43, lines21-24). Mr. Rainey testified that Applicant was very protective of his kids. (Tr. p.44, lines7-12). He testified that prior to Applicant's trial no one involved in Applicant's representation called him about his willingness to testify and that had he been asked to testify he would have testified at Applicant's trial. (Tr. p.44, line23 – p.45, line4).

Ms. Oliphant's Testimony

Ms. Oliphant testified she served as a juror at Applicant's trial. (Tr. p.46, lines1-3). She testified that during jury deliberations she asked one of the bailiffs a question, but that she was unable to recall specifically what question she asked. (Tr. p.46, lines13-24). Ms. Oliphant testified that when she asked whether the jury had to be one-hundred percent, she was asking should "all of us agree on doing the same thing?" She testified that they wanted to make sure that everybody agreed on the same thing. (Tr. p.47, lines4-10). Ms. Oliphant testified that she was told by one of the bailiffs, that "its all the jurors, they have to agree on the same thing." (Tr. p.48, lines1-4).

Ms. Mathis's Testimony

Ms. Mathis testified that she served as a juror at Applicant's trial. (Tr. p.49, lines19-21). She testified she remembered hearing the phrase, "We have to be a hundred percent," or something along that line. (Tr. p.50, lines11-13). Ms. Mathis testified that it was her understanding that until everybody agreed they were not leaving. (Tr. p.50, lines14-16).

Applicant's Testimony

Applicant testified that he moved into the Victim's home in June 1995, and that he and the Victim's mother, Kathy, married in 1996. (Tr. p.54, lines14-25). He testified that he did not touch and rub the Victim in a sexual way fifteen (15) to twenty (20) times, and that he did not penetrate her vagina with his penis at least three (3) to four (4) times. (Tr. p.56, lines6-11). Applicant testified that he did not have the Victim perform oral sex on him. (Tr. p.56, lines12-14) He testified that when the agent from DSS visited him, the Victim's mother, Kathy, and he were separated. (Tr. p.56, lines17-24). Applicant testified that he recalled Investigator Bledsoe testifying at his trial about statements Applicant had made about one of Applicant's children having big boobs for her age, but that it was presented out of context at trial. (Tr. p.57, lines6-23). He testified that he told the Victim, "Your cooter belongs to daddy," but that Applicant did not mean anything other than they [my children] had Applicant's protection to keep their virginity. (Tr. p.58, line18 - p.59, line7). Applicant testified that his trial counsel asked Applicant about witnesses that would be willing to testify on the Applicant's behalf. (Tr. p.60, line25 - p.61, line2). He testified that he told his trial counsel that Mr. Henry Rainey, Tommy [REDACTED] Jr., and Cody [REDACTED] would be willing to testify on Applicant's behalf. (Tr. p.61, lines1-25). Applicant testified that his trial counsel told Applicant it was Applicant's decision whether

to take the stand or not, but that trial counsel advised Applicant not to based on these types of trials, and that every time one of trial counsel's clients took the stand trial counsel lost. (Tr. p.62, lines16-20). He testified that trial counsel told Applicant, it was Applicant's decision to testify or not testify. (Tr. p.64, line25 – p.65, line2).

Mr. Huff's Testimony

Mr. Huff testified that he has practiced law for twenty-six (26) years and had experience with criminal sexual conduct cases. (Tr. p.66, line1 – p.67, line3). Additionally, Mr. Huff testified that 75%-95% of his practice in the past ten years has been in criminal law. (Tr. p.66, lines13-25). He testified that he was Appliant's trial counsel and that he met with the Applicant at his office about four (4) to seven (7) times and spoke with Applicant numerous times on the phone. (Tr. p.67, lines14-21). Mr. Huff testified he filed a Rule 5 Brady Motion. (Tr. p.68, lines19-20). He testified that he submitted a witness list to the trial judge, prior to the pulling of the jury, and that Ms. Boyce, Mr. [REDACTED] Jr., Cody [REDACTED] and Ms. Sharon Adams were all on that witness list. (Tr. p.70, lines 16-25). Mr. Huff testified that Mr. Henry Rainey was also on the witness list, but Mr. Huff decided Mr. Rainey's brother, Timothy Rainey was going to be the better witness if "we felt like we needed to call on, as far as a co-worker." (Tr. p.71, lines18-23). He testified that he notified all the witnesses on the witness list, beyond Mr. Rainey, prior to the day of trial that they would be witnesses in Applicant's case. (Tr. p.72, lines3-9). Mr. Huff explained the multiple factors that would be important in deciding whether or not to put the accused on the witness stand. (Tr. p.73, lines12-14). He testified that he went over with the Applicant what the State had presented and discussed the strength of the State's case when the State rested at trial. (Tr. p.74, line 23- p.75, line2). Mr. Huff testified that upon coming back

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from court or prior to the break, it was certainly Mr. Huff's intention and understanding that Applicant was always going to testify in this case. (Tr. p.75, lines8-13). He testified that his discussion with a client concerning whether the client should testify or not testify always is: "it is the client's decision, this is what I think is good or bad about the case, this is what you [the client] can add, this is what you [the client] expose yourself to if you testify, and that it is your [the client's] decision." (Tr. p.75, lines8-13).

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Mr. Huff testified that he never told the Applicant not to testify nor did Mr. Huff ever tell the Applicant he would not allow Applicant to testify. (Tr. p.75, lines14-17). He testified that Applicant made the decision not to testify. (Tr. p.75, line19). Mr. Huff testified that he did not object to the "cooter" testimony by Investigator Bledsoe because: (1) Mr. Huff did not think it was objectionable as it was a statement of the accused; (2) it was Mr. Huff's intent when the case began that the Applicant was going to testify, so Applicant was going to clear this testimony up when Applicant took the stand; and (3) that Mr. Huff had the ability to argue to the jury about the context and/or real meaning of the statement. (Tr. p.76, line27 – p.77, line25). Mr. Huff further testified that even if he had objected to the "cooter" testimony, Mr. Huff did not believe it would have made a difference in the Applicant's trial. (Tr. p.78, line15 – p.79, line5). Mr. Huff testified that he did not ask the Applicant's children about the "cooter" comment at trial because at that point during the trial Mr. Huff believed it was not the damaging evidence the State was making it out to be. (Tr. p.79, line23 – p.80, line8). He testified that he discussed with Applicant what Applicant's two boys would testify to. (Tr. p.102, lines9-17).

Mr. Huff explained that he did not consult a mental health expert regarding the behavior of a victim, specifically a victim's actions versus what the standard actions would be of a victim

of something like this as it was part of the trial strategy. (Tr. p.80, line16 – p.82, line7). He testified that in regards to the jury foreperson asking the bailiff the question, if it had to be a hundred percent, Mr. Huff discussed with the Applicant about whether or not to do anything about this question or leave it alone, and that he and the Applicant made the decision to just leave it alone. (Tr. p.82, line17 – p.83, line6). Mr. Huff testified that there was no objection to make during the State's closing argument concerning the prosecutor's demeanor, and that Mr. Huff saw nothing that there would be to base any error upon the tone of voice or volume of argument by an attorney making their closing argument to a jury. (Tr. p.83, line19 – p.84, line13).

Mr. Huff testified that he provided effective, competent representation to the Applicant. (Tr. p.84, lines14-19). He testified he did not have any notes in his file in preparation for Applicant to testify on direct examination because Mr. Huff stated that he already knows what his client's testimony is going to be when Mr. Huff calls them to the stand. (Tr. p.88, lines22-25). Mr. Huff testified that his intent in asking Investigator Bledsoe the question concerning her believing the Victim, was that Mr. Huff knew there was a domestic case going on in this matter between the Applicant and Applicant's wife and that the Investigator was going to say that in some of these cases people may tell the truth, in some of them they may tell a lie. (Tr. p.96, line12 – p.97, line22). He testified that he made the decision not to call Mr. Henry Rainey as a witness at trial based on discussions with the Applicant about Mr. Rainey and what Mr. Rainey's testimony would be, and that Applicant and Mr. Huff decided Tim Rainey would be the better witness. (Tr. p.104, line19 – p.105, line 25). Mr. Huff testified that in regards to the Solicitor's closing argument statement concerning the Applicant 'dragging her back there,' that Mr. Huff

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believed 'dragging' could imply the Applicant physically dragged her or Applicant was just telling her to go back, similar to dragging family garbage into a family setting; that this statement could have been taken either way or interpreted either way. (Tr. p.108, lines2-18). Mr. Huff testified that in regards to his opening statement to the jury that the jury would hear two different stories he was not telling the jury that the Applicant was going to take the stand, but explained that there was going to be two different versions even if they put up no witnesses at all, the cross-examination would have provided a different version. (Tr. p.111, lines10-17).

III. APPLICABLE LAW

Wheeler #11
In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper function 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, Id.

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

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- (a) *Applicant's allegation that trial counsel failed to call or interview Mr. [REDACTED], Jr. and Cody [REDACTED] as witnesses to rebut Investigator Bledsoe's testimony that Applicant made inflammatory statement.*

This Court finds the Applicant's allegation that counsel was ineffective for failing to call or interview Mr. [REDACTED], Jr. and Cody [REDACTED] as witnesses to rebut Investigator Bledsoe's testimony that Applicant made inflammatory statement is without merit. At the PCR hearing Applicant's trial counsel testified that he and the Applicant discussed what Mr. [REDACTED], Jr. and Cody [REDACTED] testimony would be. (Tr. p.102, lines9-17). This Court finds that Mr. Huff did not call Applicant's two boys as rebuttal witnesses based on trial counsel's discussion with Applicant as to what the Applicant's two boys would testify to and based on trial counsel's

strategy, and the belief that Investigator Bledsoe's testimony was not the damaging evidence that the State was making it out to be. Mr. Huff did not want to draw further attention to this comment by calling the two boys as rebuttal witnesses and the boys then speculate as to what they thought the Applicant meant. This Court finds that Applicant failed to show that he was prejudiced by counsel's alleged ineffectiveness. Furthermore, our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Applicant's trial counsel articulated valid strategic reasons for not calling Applicant's two boys as rebuttal witnesses. This Court finds that Applicant has not shown that counsel was deficient in that choice of tactics. Therefore, this allegation is denied and dismissed.

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- (b) *Applicant's allegation that trial counsel failed to employ psychologist to introduce behavioral evidence to explain typical characteristics of an assault victim as opposed to Victim in the present case.*

This Court finds that Applicant's allegation that trial counsel was ineffective in failing to employ a psychologist to introduce behavioral evidence to explain typical characteristics of an assault victim as opposed to the Victim in the present case is without merit. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Mr. Huff testified that he did not employ a psychologist at

Applicant's trial based, in part, on his 26 years of experience in prosecuting and defending cases that involve rape victims and experts. (Tr. p.81, line1 – p.82, line 7). Additionally, at the PCR hearing Dr. Salas testified that the thing to note about abuse behaviors that come subsequently, there is no specific behavioral pattern that says this screams abuse or that is confirmatory. (Tr. p.15, lines5-7). At trial, Mr. Huff presented evidence in relation to the Victim's behavior after the fact by submitting evidence of holiday cards and gifts that the Victim sent to the Applicant. (Tr. p.82, lines4-7). Applicant's trial counsel articulated valid strategic reasons for not employing a psychologist to introduce behavioral evidence, and thus this Court finds that Applicant has not shown that counsel was deficient in that choice of tactics. This Court, further, finds the Applicant has failed to show that he was prejudiced as Dr. Salas' testimony at the PCR hearing offered nothing more for the defense. Therefore, this allegation is denied and dismissed.

- WAL #14
- (c) *Applicant's allegation that trial counsel failed to call physician who performed initial exam on Victim and reported no signs of abuse found.*

This Court finds Applicant's allegation trial counsel failed to call the physician who performed the initial exam on the Victim and reported no signs of abuse found is without merit. At the PCR hearing, Mr. Huff testified that some of the things brought out at trial were that there was no physical evidence of sexual molestation, of penetration of a child. (Tr. p.69, lines4-9). Indeed, Mr. Huff addressed the fact that there was no physical medical evidence of penetration in his opening argument and several times during his closing argument. (Trial Tr. p.123-124; p.136-137; p.141, line 22 – p.142, line 1). The Applicant did not present the physician who performed the initial exam on the Victim as a witness, nor did the Applicant present the records from this initial exam at the PCR hearing. Applicant has failed to show that he suffered any prejudice from counsel's alleged ineffectiveness. Prejudice from trial counsel's failure to interview or call

witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant presented no such witness or records at the PCR hearing. This Court finds Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

(d) *Applicant's allegation that trial counsel failed to object to testimony presented at trial of: "your cooter belongs to your daddy."*

WAL #15
This Court finds Applicant's allegation that trial counsel was ineffective in failing to object to the testimony presented at trial of: "your cooter belongs to your daddy" is without merit. Mr. Huff did not object because he did not find the comment objectionable as it was a statement of the accused. The full statement presented at trial to the court and jury was, "your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." (Trial Tr. p.67, lines13-17). Additionally, Mr. Huff testified that "anytime you object during a trial, regardless of the ruling you get, it waves somewhat of a red flag to the jury that it must be something important and hurtful to your case or you wouldn't be objecting." (Tr. p.78, lines18-22). Mr. Huff provided a rational explanation as to why he did not object. Mr. Huff also testified that even if he had objected to the statement, it would not have made any difference at trial. (Tr. p.78, line15 – p.79, line5). This Court accepts Mr. Huff's reasoning as to why he did not object at the time. Furthermore, there has been no showing by the Applicant that the outcome

of his trial would have been different if this objection had been made. This Court finds that Applicant has failed to show that he was prejudiced by counsel's alleged ineffectiveness. Therefore, this allegation is denied and dismissed.

- (e) *Applicant's allegation that trial counsel failed to present rebuttal evidence showing the comment was made in an innocent context and that there were available witnesses to that.*

WHL
#14
This Court finds Applicant's allegation that trial counsel was ineffective in failing to present rebuttal evidence showing the comment was made in an innocent context and that there were available witnesses to that is without merit. At the PCR hearing Mr. Huff testified that the context of the comment would be made clear primarily when the Applicant testified and that standing alone, it's not subject to only one interpretation. (Tr. p.78, lines12-14). Mr. Huff further testified that the corrected testimony, as it were, would come out in the Applicant's testimony, but ultimately he chose not to testify, which understandably surprised Mr. Huff. (Tr. p.79, lines2-7). When asked why he did not ask Applicant's children about the 'cooter' comment, Mr. Huff testified that at that point the comment was not the damaging evidence that the State was making it out to be. (Tr. p.79, line23 – p.80, line9). The 'cooter' comment was presented in its entirety by Investigator Bledsoe's testimony at trial, and not presented out of context. Mr. Huff did not wish to draw further attention to the comment because Investigator Bledsoe's testimony was not the damaging evidence that the State was making it out to be. It is generally accepted that trial counsel cannot be held ineffective for failing to anticipate every possible event or outcome. Reasonable efforts and performance are all that is required of trial counsel. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). This Court finds that Mr. Huff had no way of knowing that his client would ultimately choose not to testify and thereby eliminating Applicant's opportunity

to clear up the context of the comment through his testimony. This Court finds that Applicant failed to show that he was prejudiced by counsel's alleged ineffectiveness, because there is not a reasonable probability, that but for counsel's alleged unprofessional errors, the result of the proceedings would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this allegation is denied and dismissed.

- (f) *Applicant's allegation that trial counsel was ineffective in eliciting testimony from investigating officer that she believed the Victim, who was thirteen (13) years old at the time of her testimony and the only substantive witness for the State.*

Wife #17
This Court finds that the Applicant has failed to meet his burden in proving that trial counsel was ineffective in eliciting testimony from the investigating officer that she believed the Victim, who was thirteen (13) years old at the time of her testimony and the only substantive witness for the State. Mr. Huff testified that his intent in asking the question was that there was a domestic case going on in this matter between the Applicant and the Applicant's wife, and that the investigator was going to say that in some of these cases people may tell the truth, in some they may tell a lie. (Tr. p.96, line12 – p.97, line22). The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). This Court finds that Mr. Huff could not know how the Investigating Officer was going to respond to his question, and when the investigating officer did respond Mr. Huff immediately made a motion to strike her response as non-responsive. (Trial Tr. p.70, lines11-22). The Judge removed the jury from the courtroom and the record reflects Mr. Huff's trial strategy in asking this question.

This Court finds that the Judge gave the jury a curative instruction regarding witnesses

not being allowed to testify about of the credibility of the victim (Trial Tr. p.77, line15 – p.78, line10), and that this instruction was adequate to cure the matter. As previously stated, trial counsel cannot be held ineffective for failing to anticipate every possible event or outcome. Reasonable efforts and performance are all that is required of trial counsel. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). This Court finds that the Applicant has not shown that a different approach to cross-examination would have been beneficial nor has the Applicant shown he was prejudiced by this elicited testimony that was subsequently stricken from the record and cured by the Judge. Therefore, this allegation is denied and dismissed.

(g) *Applicant's allegation trial counsel was ineffective in not advising Applicant to testify, in fact, advising him to the opposite.*

WPH
#18
This Court finds Applicant's allegation trial counsel was ineffective in advising Applicant whether to testify or not is without merit. This Court finds that Applicant's testimony is not credible. This Court does find Mr. Huff to be credible. Additionally, this Court acknowledges the testimony of Applicant's two sons and ex-wife concerning their impression of Mr. Huff wanting or not wanting Applicant to testify. At the PCR hearing Mr. Huff explained the factors that in his experience are important in deciding whether or not to put the accused on the stand. (Tr. p.73, lines 12-14). Mr. Huff testified that he and the Applicant discussed what the State had presented and the strength of the State's case when the State rested. (Tr. p.74, line23 – p.75, line2). Mr. Huff further testified that when they came back from court or prior to the break, it certainly was Mr. Huff's intention and understanding that the Applicant was always going to testify in this case. (Tr. p.75, lines4-7). Mr. Huff made clear at the PCR hearing that it was the Applicant's decision alone, whether to testify or not, and that Applicant made the decision not to testify. (Tr. p.75, line 19). Furthermore, the Applicant testified that trial counsel told Applicant, it

was Applicant's decision to testify or not testify. (Tr. p.64, line25 – p.65, line2).

This Court finds that the record reflects Mr. Huff and the Applicant discussed Applicant's choice to testify or not testify, and that the Applicant testified to the trial judge it was his decision and not Mr. Huff's decision that Applicant chose not to testify. (Trial Tr. p.113-114). This Court finds that Mr. Huff properly advised Applicant of his rights in deciding whether to testify or not testify and that it was the Applicant's decision not to testify. Therefore, this allegation is denied and dismissed.

- (h) *Applicant's allegation that trial counsel was ineffective in his opening statement to the jury, that the jury would hear two different versions of the story.*

WHL #19
This Court finds Applicant has failed to meet his burden in showing that trial counsel was ineffective in his opening statement to the jury, that the jury would hear two different versions of the story. Specifically, Applicant directed this Court's attention to page 35 of the trial transcript. Applicant offered this page as an example of where trial told the jury there is going to be two people saying two different things, which could only leave the jury wondering why Applicant did not testify. This Court does not agree. At the PCR hearing Mr. Huff testified that he has never promised a jury that his client was going to testify and he was not trying to imply that he was promising that Applicant was going to take the stand. (Tr. p.111, line10 – p.112, line11). This Court finds that Mr. Huff indicated the defense's version could be derived from cross-examination and the evidence presented. Mr. Huff provided a rational explanation as to the language he used in this opening statement. It is easy as a lawyer to reflect back on a particular argument and see that he could have stated it differently; and this Court appreciates Mr. Huff's honesty in stating that he believes he misstated himself to some degree in this one comment and

should have used the word "versions" instead of "people." This Court finds there has been no showing by Applicant that the outcome of his trial ^{LIKELY} would have been different if Mr. Huff had not used the challenged language. Therefore, this allegation is denied and dismissed.

- (i) *Applicant's allegation that trial counsel failed to object or request further questioning of jurors and bailiffs after a bailiff disclosed that the jury foreperson had come out of deliberations and asked if they had to be, "one hundred percent."*

This Court finds Applicant's allegation that trial counsel was ineffective in failing to object or request further questioning of jurors and bailiffs after a bailiff disclosed that the jury foreperson had come out of deliberations and asked if they had to be, "one hundred percent" is without merit. Mr. Huff testified that he discussed with the Applicant whether or not they should they should do anything or leave it alone, and the decision was to just leave it alone. (Tr. p.83, lines1-3). Mr. Huff explained at the PCR hearing that based on his experience and opinion there was no typical action that should have or should not have been taken, such as requesting an Allen charge. (Tr. p.99, lines80-23). The testimony of the two jurors at the PCR hearing fail to show that the jury deliberations were somehow affected or that juror's changed their minds in response to this question and answer. There has been no showing by the Applicant that the outcome of his trial would have been different if any objections or requests of questioning the jurors and bailiffs had been made. This Court finds the Applicant has failed to show that he was prejudiced by counsel's alleged ineffectiveness. Therefore, this allegation is denied and dismissed.

- (j) *Applicant's allegation that trial counsel failed to object to the State's closing arguments.*

This Court finds Applicant's allegation that trial counsel was ineffective in failing to

object to the State's closing arguments is without merit. Specifically, Applicant directed this Court's attention to the statement that Applicant was "dragging her back there in that bedroom and molesting her" (Tr. p.108, lines1-7), when there was no evidence to that at trial. The Applicant also alleges that the solicitor's closing arguments were loud and stern, and went overboard. This Court finds that the solicitor's closing arguments must be viewed in the context of the entire record. McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). While the State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence, State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); to be entitled to a new trial for improper closing arguments Applicant must show "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).

WPH
#21
After reviewing the entire record, this Court does not find that any comments or questions by the solicitor so infected the trial that a new trial is warranted. This Court is not convinced that the solicitor's arguments even reach the level of being improper, but certainly there is no evidence that Applicant was prejudiced. Additionally, this Court does not find that Mr. Huff was ineffective for failing to object. He provided rational explanation as to why he did not object and this Court accepts Mr. Huff's reasoning as to why he did not object. Therefore, this allegation is denied and dismissed.

(k) *Applicant's allegation that trial counsel failed to adequately investigate and present favorable defense evidence.*

This Court finds Applicant has failed to show that trial counsel was ineffective in failing to adequately investigate and present favorable defense evidence from non-family witnesses

made known to counsel by Applicant. Mr. Huff met with Applicant at his office around four (4) to seven (7) times and spoke with the Applicant numerous times on the phone. (Tr. p.67, lines14-21). Mr. Huff filed a Rule 5 Brady Motion and obtained discovery which he reviewed with the Applicant. Mr. Huff and the Applicant also prepared for trial and discussed the witnesses and Applicant's testimony (Tr. p.67, line16 – p. 68, line24). At the PCR hearing Mr. Huff testified that he could only know about either Rainey by talking to the Applicant, and Applicant would have told Mr. Huff who the potential witnesses were and what they might offer as testimony. And so in conjunction with that, Mr. Huff testified that he and the Applicant somehow felt Tim Rainey would be the better witness as opposed to Henry Rainey. (Tr. p.104, line19 – p.105, line4). In regards to trial counsel not calling either Rainey to the stand at trial, Mr. Huff testified that sometimes jurors may totally improperly imply that a person who is related has a bias or prejudice and are willing to perjure themselves to help the defendant; sometimes they know that's not the case. (Tr. p.116, lines5-12).

Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Mr. Huff presented testimony from Sharon Adams, Leslie Boyce, Tommy [REDACTED], Jr., Cody [REDACTED], and Wade Boyce (Applicant's son-in-law) that the Applicant was a good dad. This Court finds significant evidence was presented to the court by Mr. Huff of the type of man the Applicant is and the type of loving father that he was. Mr. Huff articulated valid strategic reasons for not calling non-family witnesses, who would not have spent as much time with the Applicant and his children as

opposed to his family members. This Court finds the Applicant has not shown that counsel was deficient in that choice of tactics. This Court further finds that Applicant failed to show that he was prejudiced by counsel's alleged ineffectiveness. Therefore, this allegation is denied and dismissed.

V. CONCLUSION

The Applicant has failed to show that he suffered any prejudice from anything that Mr. Huff may or may not have done in this case. There is no reason to believe the outcome of Applicant's trial would have been different had certain things been handled differently. There is certainly no reason this Court can find to overturn his conviction and grant a new trial.

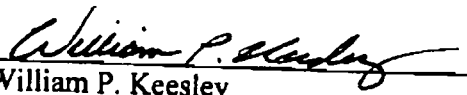
WAL
#23 Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. The Applicant's attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 12th day of Sept., 20 11.


William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

#24 Lexington, South Carolina

464

WITNESSES

Bledsoe

ECSO

ARREST WARRANT NUMBER

H-116900

ACTION OF GRAND JURY

True Bill

James W. Painter

Foreperson of Grand Jury

Date:

8-20-03

VERDICT

Guilty

Donald V. Myers

Foreperson of Petit Jury

Date: *10-14-05*

DOCKET NO. 2003-GS-19- *416*

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

AUGUST TERM 2003

THE STATE

vs.

TOMMY SWINSON ADAMS

CDR# 2468

Indictment for

LEWD ACT ON A CHILD UNDER
SIXTEEN

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
LEWD ACT ON A CHILD UNDER SIXTEEN

At a Court of General Sessions, convened on August 20, 2003 the Grand Jurors of Edgefield County present upon their oath:

That TOMMY SWINSON ADAMS, being over fourteen years of age, did in Edgefield County between September 1, 1999 and December 25, 2002, wilfully and lewdly commit a lewd or lascivious act upon or with the body of Victim [REDACTED], being a child ten years of age, in that the defendant did approximately 15 times during this time frame, place his hands inside the pants and rub his hand back and forth on her vaginal area with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of the said defendant, all in violation of Section 16-15-140 of the Code of Laws of South Carolina, 1976, as amended.

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

J.P. Mizell

ASSISTANT SOLICITOR

466

WITNESSES

Bledsoe

ECSO

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

True Bill

Joanna W. Pfeiffer

Foreperson of Grand Jury

Date:

8-20-03

VERDICT

Guilty

Donald V. Myers

Foreperson of Petit Jury

Date:

10-14-03

DOCKET NO. 2003-GS-19- 418

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

AUGUST TERM 2003

THE STATE

vs.

TOMMY SWINSON ADAMS

CDR# 2468

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR - 1ST DEGREE

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH A MINOR
1ST DEGREE

At a Court of General Sessions, convened on August 20, 2003 the Grand Jurors of Edgefield County present upon their oath:

That TOMMY SWINSON ADAMS did in Edgefield County between September 1, 1999 and December 25, 2002, did engage in sexual battery, to wit: sexual intercourse on more than one occasion, with the victim **Victim**, said victim being less than eleven years of age, in violation of Section 16-15-0140 of the 1976 South Carolina Code of Laws, as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE#:

COUNTY OF EDGEFIELD

STATE VS.

TOMMY SWINSON ADAMS

) 2003 - GS - 19 - 416

AKA:

) A/W# ~~DIRECT # 116900~~ #116900

Race: W Sex: M Age:

) Date of Offense: 9/1/99 - 12/25/02

DOB: SS#

) S.C. Code §: 16-15-0140

Address

) CDR Code #: 2468

City/St., Zip CLARKS HILL, SC 29821

☐ CASE RESTORED

DL#:

SID#

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO Lewd Act on a MinorIn violation of § 16-15-140 of the S.C. Code of Laws, bearing 21468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST-SERIOUS ☐ 17-25-45
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

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center for a determinate term 15 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 ____ 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 given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered PTUP

Total: \$ ____ plus 20% \$ ____

Payment Terms:

☐ set by SCDPPPS

Recipient

*Fine: \$

§ 14-1-206 - (Assessments 107.5%)

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

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

§ 56-5-2995 (DUI Assessment) \$ 12

§ 35.13 (Public Def/Prob) \$ 500

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

§ 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

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

____ Days/hours Public Service Employment

Obtain GED

Attend Voc Rehab. Or Job Corps

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.

Judge Code:

Sentence Date:

10/11/05

469

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

STATE VS.

TOMMY SWINSON ADAMS

AKA:

Race: W Sex: M Age:

DOB: SS#

Address

City/St., Zip CLARKS HILL, SC 29821

DL#: SID#

) IN THE COURT OF GENERAL SESSIONS

) INDICTMENT/CASE#:

) 2003 - GS - 19 - 418

) A/W# - H 116900 DIRECT INFO

) Date of Offense: 4/1/02 - 9/9/02

) S.C. Code §: 16-15-140 16-3-655(1)

) CDR Code #: 2468 0345

) ☐ CASE RESTORED

) SENTENCE

) ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO Criminal Sexual Conduct w/a Minor 1st Degree

In violation of § 16-3-655(1) of the S.C. Code of Laws, bearing 0131815

☐ NON-VIOLENT ☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45

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

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center for a determinate term 30 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 ____ 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: 2003-65-19-416

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

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

PTUP

Total: \$ ____ plus 20% \$ ____

Payment Terms:

☐ set by SCDPPPS

Days/hours Public Service Employment

Obtain GED

Attend Voc Rehab. Or Job Corps

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) (Surcharge) \$ 100

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

§ 56-5-2995 (DUI Assessment) \$ 12

§ 35.13 (Public Def/Prob) \$ 500

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

§ 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 \$

Shirley D. Newby

Clerk of Court/Deputy Clerk

Court Reporter: Rima K. Max

Judge Code:

Sentence Date:

10/11/05

SCCA/217 (6/2003)

The South Carolina Court of Appeals

Tommy S. Adams, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-200566

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

Paul E. Short, Jr.

J.

Paul W. Thomas

J.

Daniel G. Pieper

J.

Columbia, South Carolina

cc: Teresa L. Norris
Kaelon Elizabeth May

FILED

July 1, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 09-CP-19-00064
Appellate Case No. 2011-200566

TOMMY S. ADAMS, #311901

Appellant

v.

STATE OF SOUTH CAROLINA

Respondent

BRIEF OF APPELLANT

Teresa L. Norris
Blume Norris & Franklin Best, LLC
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
(803) 765-1044
Counsel for Appellant

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Statement of Issues on Appeal

- I. Was Adams denied the effective assistance of counsel during trial, in which the state's case relied on uncorroborated testimony of the alleged victim and irrelevant, inadmissible, and prejudicial testimony by a law enforcement officer, due to numerous instances of deficient and prejudicial conduct?
- II. Was Adams denied the effective assistance of counsel during deliberations because counsel failed to object, failed to request that the jurors and bailiffs be questioned, and failed to request that the jurors be returned to court for proper instructions following improper communications between jurors and the bailiffs?

Statement of the Case

Appellant, Tommy S. Adams, was convicted in Edgefield County, South Carolina, of lewd acts on a child and criminal sexual conduct with a minor (1st degree). On October 14, 2005, he was sentenced consecutively to the maximum terms of 15 years for lewd acts and 30 years for criminal sexual conduct. This Court affirmed. Appendix (App.) 199.

Adams filed an Application for Post-Conviction Relief (PCR) on February 9, 2009, App. 200-06, which was amended several times with a Final Amended Application filed on December 2, 2010, App. 247-59. An evidentiary hearing was held on December 2, 2010, before The Honorable William P. Keesley, who denied relief in a Form 4 Order requiring a proposed order by Respondent the same date. App. 404. Following Respondent's submission of a Proposed Order of Dismissal, Adams submitted Objections to the Proposed Order, App. 430-39. The PCR court adopted Respondent's Proposed Order *in toto* on September 12, 2011. App. 441-54. A Notice of Appeal was timely filed and this Court granted the petition for writ of certiorari on July 1, 2013.

Adams, through the undersigned counsel, now requests that this Court grant post-conviction relief and vacate his convictions and sentences.

Statement of Facts

The state's evidence during trial consisted solely of uncorroborated testimony by the alleged victim (hereinafter "AW"), who was thirteen years old at the time of trial, and an investigating officer. AW testified, in an "utterly emotionless, blank" fashion, App. 340, that Adams, her stepfather, sexually molested her beginning in September 1999 when she was seven years old. App. 39. She testified that he committed lewd acts on 15-20 occasions and engaged in sexual penetration 3-4 times. App. 41-42. According to AW, the abuse ended on Christmas Eve 2002, when she was ten years old, because she repeatedly physically resisted Adams' efforts to pull her pants down. App. 43.¹

¹Amanda Salas, M.D., an expert in forensic and child and adolescent psychiatry, testified in PCR that AW's testimony that she physically fought off the abuse when she was in a home alone with Adams was "improbable."

I find it improbable that a child who physically is not at a developmental stage to engage in a physical confrontation would fight back with a lot of physical aggression unless the aggressor had provoked them to that point and initiated the aggression.

App. 277. In particular:

I would not expect it to happen under those circumstances where they knew there was nobody there coming to rescue them save them or make them safe.

App. 278. Likewise, AW's lack of any manifested symptoms consistent with abuse, App. 272, continued behavioral symptoms caused by the trauma of having to physically fight off an abuser, App. 278, and continued voluntary contact with Adams, App. 279, called into doubt the credibility of AW's testimony.

AW's mother separated from Adams in February 2003. App. 47. In April 2003, AW first alleged to her mother that she had been abused and law enforcement was called. App. 50. The allegation was made in the context of AW learning from her mother that her real father had committed suicide. App. 44. When her mother told AW that Adams had been a "good father," AW alleged that he had abused her. App. 45. Her mother took her to her family doctor and she also saw a doctor at the recommendation of the state and law enforcement, App. 50, but neither testified as no evidence of abuse was found. Thereafter, AW sent Adams a Father's Day card expressing her love for him. App. 61.

Virginia Bledsoe, a former investigator for the Edgefield County Sheriff's Office, interviewed AW and Adams. She testified that Adams denied the allegations, but he made "odd statements" when he "mentioned something about he talked frankly with his children—his older children—about sex." Specifically, Bledsoe testified Adams told AW: "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." App. 67. During cross-examination, Bledsoe testified that she believed AW. App. 70.²

Although defense counsel had informed the jury during opening statements that "you're going to hear two totally different stories" and "[t]here's going to be two people saying two different things," App. 35, Adams did not testify. The defense evidence presented was brief testimony from Adams' first wife, Sharon Adams, and his children from the 22-year marriage with her: Leslie Adams Boyce, Tommy [REDACTED], Jr., and Cody [REDACTED].

²At defense counsel's request, the court instructed the jury to ignore Bledsoe's opinion of AW's truthfulness. App. 78.

Ms. Boyce's husband also testified. App. 87-107. The defense witness testimony was generally that Adams is a loving, affectionate father, and no one in the family ever observed any inappropriate conduct or sign of abuse.

As set forth in detail in the argument below, the state's closing argument relied heavily on Bledsoe's testimony concerning Adams' "vile" statements to assert "malice" in Adams' heart, "his attitude," and "his true colors."

The jury began deliberations at 2:58 p.m. While the jury was out, it was disclosed that there had been communication between the jury foreperson and a bailiff, who answered the question of whether "it had to be a hundred percent" affirmatively. App. 153-54. Defense counsel did not object or request any curative action and none was taken. App. 154. Following a jury request to "continue tomorrow," the jury was excused for an overnight recess at 5:14 p.m. App. 155. Deliberations continued from 9:00-10:31 a.m., when the jury returned with verdicts of guilty. App. 162.

Additional relevant evidence will be discussed in the argument section.

Argument

- I. **Adams was denied the effective assistance of counsel during trial, in which the state's case relied on uncorroborated testimony of the alleged victim and irrelevant, inadmissible, and prejudicial testimony by a law enforcement officer, due to numerous instances of deficient and prejudicial conduct.**

In reviewing the Circuit Court's findings, this Court must reverse the PCR judge's decision when there is no evidence of probative value supporting it. *Palacio v. State*, 333 S.C. 506, 512, 511 S.E.2d 62, 65 (1999); *see also Cherry v. State*, 300 S.C. 115, 386 S.E.2d

624 (1989). The Court must also reverse the PCR judge's decision when it is controlled by an error of law. *Pierce v. State*, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000).

The test for a Sixth Amendment claim of ineffective assistance of counsel requires a court to examine the facts of the case to determine “whether counsels’ conduct so undermined the proper functioning of the adversarial process that one cannot rely upon the trial as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The *Strickland* standard is satisfied if a petitioner establishes both that his attorney’s representation “fell below an objective standard of reasonableness” measured “under prevailing professional norms,” *id.* at 688, and that the petitioner was “prejudiced” by his attorney’s substandard performance, *id.* at 692. The focus is upon “reasonable probability,” such that “[t]he result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.” *Id.* at 694. Specifically, Adams must show “there is a reasonable probability that at least one juror would have struck a difference balance.” *Wiggins v. Smith*, 539 U.S. 510, 537 (2003); *Milke v. Ryan*, 711 F.3d 998, 1019 (9th Cir. 2013). See also *Council v. State*, 380 S.C. 159, 179 n.7, 670 S.E.2d 356, 366 n.7 (2008) (holding in ineffective assistance of counsel case: “We cannot say beyond a reasonable doubt that the undiscovered mitigating evidence, taken as a whole, would not have influenced at least one juror to recommend a life sentence”); *Vail v. State*, 402 S.C. 77, 91, 738 S.E.2d 503, 511 (Ct. App. 2013) (holding in ineffective assistance of counsel case: “[W]e cannot find the admission of the inadmissible hearsay was harmless beyond a reasonable doubt”).

Here, counsel was ineffective in numerous respects, as addressed below.

A. Failure to object to admission of Adams' statements that were neither relevant nor material to the crimes charged.

In order to be admissible at trial, evidence must be relevant, meaning that it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." SCRE 401. "Evidence which is not relevant is not admissible." SCRE 402. Even relevant evidence must be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . . ." SCRE 403.

Even statements of the defendant must meet these requirements in order to be admissible in evidence. For example, in *State v. Cheesboro*, 346 S.C. 526, 550, 552 S.E.2d 300, 313 (2001), the Supreme Court held that a capital murder defendant's rap song, which included lyrics referencing no fingerprints or evidence left in a pool of blood, was inadmissible in evidence. These references were "too vague in context to support the admission of this evidence." Whatever, "minimal probative value" this evidence may have had was "far outweighed by its unfair prejudicial impact as evidence of appellant's bad character, i.e. his propensity for violence in general." Likewise, in *State v. Jenkins*, 322 S.C. 414, 416, 472 S.E.2d 251, 252 (1996), the Supreme Court held that a burglary defendant's statement to a police officer that he set up a "school of burglary" in which he taught others to commit burglaries, was inadmissible as the defendant denied involvement in the crime charged and "there was no evidence that the crime petitioner was charged with was in any way related to this scheme."

Here, however, counsel failed to object to Detective Bledsoe's testimony that Adams admitted to telling AW, the alleged victim in the case: "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." App. 67. These general comments were inadmissible because they were neither relevant nor material to the crimes charged, *see State v. Nelson*, 331 S.C. 1, 15-16, 501 S.E.2d 716, 723-724 (1998), nor statements that could be construed as conveying an admission of guilt, *see State v. Tufts*, 355 S.C. 493, 499, 585 S.E.2d 523, 525 (Ct. App. 2004). Nonetheless, without objection from the defense, these statements were admitted.

In *Nelson*, a criminal sexual conduct and lewd act on a minor case involving a three year old child, the trial court admitted evidence that the defendant possessed children's toys, videotapes of children's television shows, children's books, and similar items. An expert testified that pedophiles often possessed these types of items. The trial court admitted the evidence as relevant to a "personality characteristic," i.e., relevant to prove the defendant was a pedophile. For the same reasons, the trial court admitted the defendant's statements to a police officer that he "was uncomfortable around adult women" and that "he had fantasies about children." 331 S.C. at 15, 501 S.E.2d at 723. The Supreme Court found reversible error because "only those parts of a confession or statement made to police which are relevant and material to the crime charged should be received into evidence." 331 S.C. at 16, 501 S.E.2d at 724. The defendant's "general sexual attitudes were not relevant or material to the crime charged because they were admitted to show character." *Id.*

In *Tufts*, a criminal sexual conduct case, this Court distinguished *Nelson*, in holding that the defendant's admission, in context, that "he had a problem with his sexual desires

could be construed as a confession and was there admissible.” 355 S.C. at 496, 585 S.E.2d at 524. The defendant, an orthopedic technician, was questioned by a police officer following an allegation that he had sexually assaulted a patient during a medical examination. The defendant denied the allegation and left. Only minutes later, he returned and informed the police officer that he had previously been arrested on a similar allegation. When the officer responded “that it sounded like he may have a problem, [the defendant] stated that he knew he a problem with his sexual desires.” *Id.* Admission of this statement was not improper because the “statements were not admitted to show his character; instead, they were admitted as a confession to the specific crime charged.” 355 S.C. at 497, 585 S.E.2d at 525. The trial court properly found that the defendant’s “comment regarding his sexual desires was sufficiently related to the officer’s questioning about the specific crime to support the inference that [the defendant] chose to convey his confession in that manner.” 355 S.C. at 498, 585 S.E.2d at 525. As this Court observed in *Tufts*:

[T]here are many ways in which a suspect may choose to implicate himself in a crime. When asked of his guilt, he might simply nod affirmatively, or he might offer a complete recounting of the entire crime.

355 S.C. at 499, 585 S.E.2d at 525. In *Tufts*, the context of the admission of a “problem with his sexual desires” could be determined to be an admission of guilt.

In this case, however, Adams’ statement could not reasonably be interpreted, in context, to be an admission of guilt or wrongdoing. This was clear from Bledsoe’s incident report.

We told [Adams] of the allegations of child sexual abuse of [AW]. Tommy Adams denied any sexual contact. He did stated [sic] he talks openly about sex with the older children. He is referring to AW, Cody, and Tommy

Adams. Cody and Tommy [REDACTED] are his children by a prior marriage. He said he had said things like Tessa his 7 year old already had boobs. He was speaking of breasts. Mr. Adams stated he'd tell the kids don't have sex until you are married and your cooter belongs to your daddy. If they want to touch you tell him to ask me first. He was talking about [AW] vagina. Mr. Tommy Adams denied any sexual contact.

App. 402. Nonetheless, counsel did not move in limine to exclude these statements or object when the state called Bledsoe to testify for the sole purpose of offering these statements. App. 67.

"[T]he failure to object to this clearly inadmissible evidence was ineffective assistance of counsel" not explained by a valid trial strategy. *Holman v. State*, 381 S.C. 491, 493, 674 S.E.2d 171, 172 (2009). Here, counsel did not even purport to have a strategic reason for the failure to object.

I didn't think it was objectionable. It was a statement of the accused. I think both sides get to interpret its meaning as they choose. The jury ultimately has to make that decision.

App. 336. While he gave further testimony that he thought this evidence could be explained in anticipated testimony from Adams and that objecting before the jury could raise a "red flag to the jury," App. 336-37, the bottom line is that he simply did not view the evidence as objectionable.³ He conceded, however, that he would have preferred to keep the evidence out if possible, App. 345, and that the statement was a "[c]onfession of nothing," App. 344. He also conceded in his testimony that if the evidence was objectionable, "[a]s to whether or not it could be a strategic choice to allow it in, I would generally say no." App. 378.

³Even assuming counsel did not object to avoid raising a "red flag" before the jury, counsel's conduct would still be deficient because this issue could have been litigated outside the presence of the jury. See, e.g., *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001); *Vail*, 402 S.C. at 88-89, 738 S.E.2d at 509-10.

Specifically, he conceded that if Adams' statements were not admissible and were "detrimental," his failure to object "well may warrant . . . a new trial." App. 378.

The PCR court, in an order written entirely by Respondent's counsel, simply found that counsel "provided a rational explanation as to why he did not object" to this testimony. App. 455. While it may be "rational" to decline objection when one does not view the testimony as objectionable, counsel clearly misunderstood the very basics of the rules of evidence. As set forth above, simply because a statement is a statement of the defendant does not make it admissible.

Here, Adams' statement that he told AW "your cooter belongs to daddy," was not even arguably a confession to the crimes charged or relevant to them. Admission of this testimony was unquestionably detrimental though, as the state turned this statement into essentially a character assassination in closing statements. Specifically, the state relied heavily on the "cooter" statement to convince the jury that this "vile" statement was indicative of Adams' character and, therefore, his guilt:

What did he tell Virginia Bledsoe? What a vile thing to say. He's just been talked to by this investigator about allegations of sexual misconduct that he's alleged on this child. And what does he tell the investigator from the Sheriff's Office? "Your cooter belongs to your daddy," because he's using this child as his sexual plaything.

You can bet it belonged to him. He considered it his personal property, because he was using it for his own sexual benefit and lust. Yes, it belonged to him, and he showed that. It didn't belong to anybody else in the world. "If anybody else wants to come and touch you or do anything else, they've got to talk to me, because the cooter belongs to me."

He's even telling this investigator that. What an inappropriate thing, and it shows what's in his heart, malice.

App. 134-135. *See also* App. 136 ("It belongs to him").

She could sure tell you exactly when it started, when he started dragging her back there in that bedroom, and molesting her, and using her for his own lust and satisfaction, because it belongs to him.

He couldn't even resist throwing that in in front of this investigator after she's telling him what he's been accused of. That's his attitude. That's his true colors, and it came out right then. He couldn't even cover it up when he was talking to the police, because that's what he believes.

App. 138. *See also* App. 139 ("[T]his child is his plaything, because it belongs to him").

The prejudice is especially clear "[w]here, as here, the very matter as to which defense counsel has been ineffective becomes one of the linchpins of the prosecutor's closing." *Commonwealth v. Alvarez*, 740 N.E.2d 610, 618 (Mass. 2000). Likewise, the prejudice is clear, in light of the complete lack of evidence corroborating the alleged victim's testimony of abuse and the lengthy jury deliberations in this case.

B. Failure to rebut the state's misrepresentation of the nature of Adams' statement.

Alternatively, even assuming Adams' statement of "your cooter belongs to daddy" was relevant and admissible, counsel was ineffective in failing to investigate and to present testimony from Adams' sons, Tommy [REDACTED] Jr., and Cody [REDACTED], establishing, as even Bledsoe's incident report and testimony admitted, that these comments were made only in the parental context of educating his children about sexual matters.

Both Tommy, Jr., and Cody testified during trial, but they were not asked about this statement. In PCR, however, both testified that they were present, along with AW and her mother, for a family discussion when Adams made the statement to AW. As Tommy, Jr., described:

[W]e were discussing the birds and the bees story as some people put it, and it was taken out of context the way that he said it. He didn't mean it as it was his. It was that if anybody was to come to date [AW] or anything like that, that she was supposed to come to him and ask him because he was her father, just like he would do the same with us.

App. 289-90. Cody's recollection was similar:

Daddy was having a talk to us about sex because Daddy had taken me and Tommy to work with him one day and I had found a condom and I didn't know what it was, and he told us that he would sit us down and talk to us about it, and we all sat down in the living room and talked about it.

And when he said that, he was saying it because he doesn't want people to harm [AW]. He didn't want other men to just take control of her. He was protecting her as he was protecting all of us.

App. 293. Cody recalled that he was around eleven years old at the time and AW was around ten. App. 295.

Counsel's conduct was deficient. Even in attempting to explain away his failure to object to Bledsoe's testimony, counsel explained that his intent was to have Adams to testify and clarify the statement. App. 336. Counsel also testified that "we certainly had the ability to argue to the jury or have them understand that it wasn't a statement that [AW's] body was his play thing." App. 336.

The PCR court found that "trial counsel articulated valid strategic reasons for not calling Applicant's two boys as rebuttal witnesses," App. 453, and counsel "had no way of knowing that his client would ultimately choose not to testify and thereby eliminating Applicant's opportunity to clear up the context of the comment through his testimony," App. 456-57.

Counsel's explanations for not presenting this testimony are not valid strategic reasons and, indeed, are explanations that ring hollow. First, the boys did testify for the

defense during trial. They were simply not asked about this topic. Second, counsel's explanations are clearly "hindsight" because counsel advised Adams not to testify and never mentioned Adams' statement in closing. Likewise, even assuming, Adams had testified and counsel had made these arguments, counsel's conduct was still deficient in failing to present this testimony from Tommy, Jr., and Cody on this matter to corroborate the anticipated testimony of Adams or to stand on their own without his testimony. The prejudice from the failure to rebut Bledsoe's testimony and defuse the state's reliance on Adams' statement as evidence of guilt is the same as addressed above.

C. Eliciting testimony from the police investigator that she believed the alleged victim and failing to move for a mistrial.

Testimony from a state expert or law enforcement officer in a criminal sexual conduct case that the alleged victim's symptoms of rape or sex abuse trauma are genuine, *State v. Dawkins*, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989), or that they believe the alleged victim's account of events, *State v. White*, 361 S.C. 407, 415-416, 605 S.E.2d 540, 544 (2004), is unquestionably improper. *State v. Kromah*, 401 S.C. 340, 358-60 & n.7, 737 S.E.2d 490, 500 & n.7 (2013); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); *State v. McKerley*, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012). Counsel's failure to object to testimony of this nature is deficient and prejudicial conduct, especially where "[t]here is no valid claim of overwhelming evidence of . . . guilt." *Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010). When defense counsel actually elicits testimony of this nature, the prejudice or "devastating impact" is heightened because the improper bolstering of the alleged victim's credibility "came in as part of what was supposed to be

petitioner's defense." *Ingle v. State*, 348 S.C. 467, 472, 474, 560 S.E.2d 401, 403, 405 (2002).

Here, in cross-examining Detective Bledsoe, counsel opened the door to her testimony that she believed AW.

Q. Okay. Now, you have investigated other sex abuse cases before, right?

A. Yes, sir, I have.

Q. Okay. And you are aware, based upon your experience, that some of these allegations are true?

A. Yes, sir.

Q. And, you're also aware that some of the allegations are false?

A. Yes, sir.

Q. Okay. And you're also aware that some of these allegations sometimes are made just before or just after a Family Court domestic action is filed, right?

A. Yes, sir.

Q. Okay. Now, you investigated this case based upon what people told you, right?

A. Yes, sir.

Q. Okay. And you assume that what people tell you when they – in one of these type of child sex abuse cases, you're assuming that what they're telling you is true?

A. Yes, sir. And I believe what [AW] has told me on this case.

App. 69-70. Counsel moved to strike the answer as "not responsive" to the question. App.

70. The trial court held, however, that counsel "invited that answer." App. 71. The trial

court did, however, offer a curative instruction. App. 74. Counsel did not object to the instruction and did not move for mistrial. App. 77. The court instructed the jury, as follows:

All right, ladies and gentlemen, let me clear a couple a things up before we move forward. I supposed that it is somewhat obvious that there may be people who on different sets of facts and other situations have made accusations against people that are not people [sic] and that some people have made accusations against other people that are true.

It will be your job in this case to determine what it is that the State has proven beyond a reasonable doubt. That's your job to determine that on the facts of this case.

Now, with regard to the last statement by the witness, I am going to instruct you to disregard anything that you may have heard this witness say regarding whether or not she believes or does not believe any other witness. That is a matter for you. It is not for a witness to tell you who they believe. It is for you to decide who you believe.

App. 77-78.

Counsel's conduct was deficient and prejudicial in eliciting Bledsoe's bolstering testimony and in failing to timely move for a mistrial on this basis. While the PCR court found that counsel "could not know how the Investigating Officer was going to respond to his question," App. 457, this is clearly not supported by the record as the trial court determined that "her answer . . . flows naturally from the line of questioning that you were just following." App. 72. Likewise, the Supreme Court made clear in *White* that cross-examination of a witness "as to whether she had cases in which she did not believe the alleged victim," 361 S.C. at 415-16, 605 S.E.2d at 544, opens the door to this bolstering testimony. Clearly, cross-examination about whether the witness is merely assuming the truth of the allegations, opens this same door.

Moreover, the issue is not simply that counsel elicited the testimony, but that counsel did not seek a mistrial after he stumbled into the improper bolstering. Counsel apparently recognized the deficiency in his failure to move for mistrial because he asserted this ground as a basis for granting a new trial in his post-trial motions. App. 179.

While the jury did receive a curative instruction, it was inadequate to cure the error.

An instruction to disregard incompetent evidence usually is deemed to have cured any error in its admission *unless on the facts of the particular case it is probable that, notwithstanding such instruction, the accused was prejudiced.*

State v. Dempsey, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000) (citing *State v. Johnson*, 334 S.C. 78, 512 S.E.2d 795 (1999)) (emphasis added). “[O]n the facts of [this] particular case,” Adams was prejudiced by Bledsoe’s improper testimony and the curative instruction was inadequate to cure the error. The only proper evidence for the state was the testimony of AW. As addressed above, there was no valid purpose for the state to even present Bledsoe’s testimony, as Adams’ statements to her were not relevant and were improperly used as a character assassination by the state. Adding to that testimony that Bledsoe believed AW, it is unlikely that the jury could unring that bell and properly disregard this testimony. Improper corroboration, in the context of a charge of criminal sexual conduct with a minor stepdaughter and the state’s case is built almost solely on the testimony of the minor alleged victim, has a “devastating impact.” *State v. Barrett*, 299 S.C. 485, 487, 386 S.E.2d 242, 243 (1989).

- D. Advising Adams not to testify after informing the jury that he would testify, or, alternatively, failing to properly advise Adams at all with respect to whether he should testify.**

Counsel provided ineffective assistance in essentially promising the jury in opening statements that Adams would testify and then failing to produce that testimony. Counsel asserted:

I am confident that you're going to hear two totally different stories, and you're going to have to sit in judgment. And there's not going to be any DNA. There's not going to be any videotapes. There's not going to be any of that.

There's going to be two people saying two different things.

App. 35. In PCR, counsel conceded that he "misstated" the case in opening and should have said the jury would hear two different "versions" rather than two different "people." App. 370. He also conceded that the jury could have understood his statements as a promise that Adams would testify. App. 371.

Counsel's conduct was both deficient and prejudicial as Adams did not testify. He asserted in PCR that he did not do so because counsel advised him not to. His family members corroborated this testimony. Specifically, Adams testified that counsel had advised him prior to trial that he did not want him to testify. App. 321. Likewise, Adams, his ex-wife, and his three children from this prior marriage, all testified that counsel told Adams at a recess that he would not call him to testify because he thought Adams would get upset and get "red" in the face. App. 286, 291, 295, 299-300, 321. Adams acknowledged, however, that counsel told him that the decision was Adams' to make, but Adams followed counsel's advice. App. 321.

Counsel, on the other hand, testified: “[I]t certainly was my intention and understanding that Mr. Adams was always going to testify in the case.” App. 334. *See also* App. 332. He expressed being “somewhat surprised that he made the decision not to testify, even though I felt that the State’s case was weak.” App. 334. Counsel acknowledged, however, that he would never respond to a client’s question when asked, “What should I do?” App. 338. Likewise, he has never advised a client that “you should not testify,” or “you should testify.” App. 351. “I never tell them, ‘I’m advising you to do this or that.’ . . . I don’t do that.” App. 352. “I don’t tell them my opinion” App. 353. “I’m not going to tell any client that, . . . ‘In my opinion, you shouldn’t testify.’” App. 355. No exception is made, even if the client is mentally retarded or has a low IQ. App. 354.

Counsel’s conduct was deficient. Counsel’s testimony that he did not advise Adams that he should not testify is simply not credible in light of the contradictory testimony by numerous witnesses. Nonetheless, the PCR court found counsel’s testimony “to be credible” and rejected Adams’ testimony. App. 458.

Assuming that counsel’s testimony on this point was credible and believable, counsel’s conduct was still deficient by his own admission in that counsel did not advise Adams whether he should or should not testify. Likewise, counsel did not assert any trial strategy for failing to advise Adams. He simply does not advise his clients at all on this front.

If there’s any part, I think, of a criminal trial where a lawyer brings a person to the edge of the diving board and then turns around and steps back, it’s at that moment. We don’t push them in the water and we don’t hold them back. We’ve trained them, hopefully, in trial preparation of how to testify. We’ve covered what they intend to testify about. We’ve prepared them. But we’ve

got to let them fly or not fly on their own. To do one or the other, to push them or hold them back, I think a lawyer oversteps his bounds.

App. 354.

Counsel's conduct was deficient by his own admission. Advising the defendant concerning the law and providing the benefit of counsel's training, education, and experience is the essence of what attorneys do in providing the "assistance of counsel." The Sixth and Fourteenth Amendment entitlements to the effective assistance of counsel is "a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is represented by experienced and learned counsel." *Johnson v. Zerbst*, 304 U.S. 458, 462-463 (1938). Failure to advise the defendant or provide any opinion at all "renders meaningless defense counsel's vital function as an adviser." *Alvord v. Wainwright*, 469 U.S. 956, 960 (1984) (Marshall, J., with whom Brennan, J., joined, dissenting). The American Bar Association, Standards of Criminal Justice, which are "guides to determining what is reasonable," *Strickland*, 466 U.S. 688, provide:

After informing himself or herself fully on the facts and the law, the lawyer should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

Standard 4-5.1(a). Likewise, the South Carolina Rules of Professional Responsibility provide:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 2.1, RPC, Rule 407, SCACR. “[I]f counsel believes that it would be unwise for the defendant to testify, counsel may, and indeed should, advise the client in the strongest possible terms not to testify.” *United States v. Teague*, 953 F.2d 1525, 1535 (11th Cir. 1992). Conversely, where counsel believes the defendant should testify, counsel should “advise the client in the strongest possible terms” to do so, because “[a] client is entitled to straightforward advice expressing the lawyer’s honest assessment.” Comment to Rule 2.1, RPC, Rule 407, SCACR. See, e.g., *Carter v. Lee*, 283 F.3d 240, 251 (4th Cir. 2002) (Counsel were not ineffective in advising the defendant that he should testify in his capital trial) (citing *Teague*).⁴

Adams was prejudiced by counsel’s deficient conduct in failing to ensure Adams would testify in this case. First, as trial counsel conceded, there was no real downside to Adams doing so. Counsel believed that Adams was innocent, App. 326, and recognized that the state’s case rested entirely on AW’s “assertion that he did it with nothing to back that up or support it,” App. 328. Second, Adams’ testimony included his specific denial of the allegations. App. 315. Third, Adams’ testimony included his explanation of the “Your cooter belongs to daddy” comment. App. 317. Consistent with the testimony of his sons,

⁴This situation is analogous to situations where the defendant receives a plea offer from the state. It is not enough for counsel simply to inform the client of the offer. Counsel must advise the defendant with counsel’s opinion on whether the offer should be accepted or rejected. See, e.g., *Boria v. Keane*, 99 F.3d 492, 495 (2nd Cir. 1996) (Counsel ineffective in drug case for failing to advise client concerning the advisability of accepting the state’s plea bargain offer even though counsel believed that “his client’s decision to reject the plea bargain was suicidal”). Counsel’s failure to offer his opinions to his client is “extremely troubling,” *Young v. Zon*, 827 F. Supp. 2d 144, 158 (W.D.N.Y. 2011), because “the failure to give any advice [is] entirely contrary to the minimum professional norms of practice,” *id.* at 162 (emphasis in original). See also *Hicks v. Howton*, 675 F. Supp. 2d 1050 (D. Ore. 2009).

Adams testified that the comment was made in the context of sex education or “the birds-and-bees talk” with his sons and AW’s mother present. App. 317. “I didn’t mean any other thing than they had my protection to keep their virginity.” App. 318. He informed Bledsoe of this because she “asked me if my kids knew about sex.” App. 316.

Likewise, in the context of counsel’s promise to the jury in opening that Adams would testify, the prejudice from the failure to testify is heightened. Indeed, counsel highlighted the failure in closing argument by asserting that “[t]his is what we sometimes call a he said-she said type of case” without corroborating DNA or medical evidence. Adams was prejudiced because the jury could only infer from counsel’s failure to deliver Adams’ testimony that Adams had something to hide or that counsel did not believe he would be a credible witness. In other words, despite counsel’s promise in opening that the jury would hear from “two people saying two different things,” App. 35, in this “he said–she said” case, App. 121, only “she” testified. Thus, “he” never got his say and this was due to counsel’s deficient and prejudicial conduct.

“[L]ittle is more damaging than to fail to produce important evidence that had been promised in an opening.” *Anderson v. Butler*, 858 F.2d 16, 17 (1st Cir.1988). See, e.g., *Ouber v. Guarino*, 293 F.3d 19 (1st Cir. 2002) (counsel ineffective in drug trafficking case for promising the jury four times in the opening to call the defendant as a witness, but then failing to keep those promises); *English v. Romanowski*, 602 F.3d 714 (6th Cir. 2010) (counsel ineffective in assault with intent to commit murder case for failing to adequately investigate prior to informing the jury in opening statements that the defendant’s girlfriend would be called as a witness to corroborate the claim of self-defense); *U.S. ex rel. Hampton*

v. Leibach, 347 F.3d 219 (7th Cir. 2003) (counsel ineffective in sexual assault and robbery case for failing to investigate and interview exculpatory eyewitnesses and for making promises in his opening statement to the jury that he did not keep).

II. Adams was denied the effective assistance of counsel during deliberations because counsel failed to object, failed to request that the jurors and bailiffs be questioned, and failed to request that the jurors be returned to court for proper instructions following improper communications between jurors and the bailiffs.

Under the Sixth and Fourteenth Amendments, a defendant in a criminal trial is guaranteed a fair trial by an impartial jury. In order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature. *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990). Not every conversation between a juror and a bailiff will prejudice the defendant, but when there has been such a communication, “a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict.” *State v. Cameron*, 311 S.C. 204, 208, 428 S.E.2d 10, 12 (Ct. App. 1993) (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)).

In this case, the following exchange occurred on the record after approximately one and a half hours of deliberation, App. 360-61:

THE COURT: Ma'am, come up front, please. You're Ms. Watson?

MS. WATSON: Yes, sir.

THE COURT: All right, raise your right hand.

(The witness was sworn.)

THE COURT: Okay. Now, something happened back there with the jury asking you a question. Is that what happened?

MS. WATSON: Well, I was standing with the other Bailiff back there, and they came out and asked if it had to be a hundred percent, and she told them yes.

THE COURT: Okay. The other Bailiff, Ms. Scurry, told them yes?

MS. WATSON: We told them yes, uh-huh.

THE COURT: All right. And that was all that was said?

MS. WATSON: That's all.

THE COURT: Okay. And I'll hear from counsel. Anything you want to say?

App. 153-54. Defense counsel responded only:

Judge, I think Ms. Scurry said what the law is. Of course, it more properly should have been Your Honor. But I'm sure nothing was done intentionally. But we've got no position for that.

App. 154. No corrective action was taken. App. 154-55.

Counsel's conduct was deficient. If inquiry had been made, the court would have learned that the jury wanted to know if it had to be a unanimous vote, which is indicative that the jury was hung. Specifically, the jury foreperson testified in the PCR hearing that she was asking whether all twelve had to be unanimous. App. 306. Indeed, it was even reported in the media that "[t]he jury was deadlocked, we are told, with a nine guilty to three innocent voting" apparently when the question was asked of the bailiffs. App. 258.

If trial counsel had requested proper inquiry and additional instruction following the disclosure that the jury was hung, the jurors would have been provided a proper *Allen* charge instruction informing jurors that they should "approach the evidence with an open mind and

consider the opinions of their fellow jurors,” in an attempt to reach a verdict, *State v. Williams*, 386 S.C. 503, 510, 690 S.E.2d 62, 65 (2010), but that they should not give up an honestly held opinion and change their mind “if it would do violence to [their] conscience,” *Green v. State*, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002). Thus, there is a distinction between the short answer the bailiff gave from the complete instructions the trial court would have given had the court made additional inquiry and properly instructed the jury. *Blake by Adams v. Spartanburg General Hosp.*, 307 S.C. 14, 17, 413 S.E.2d 816, 818 (1992).

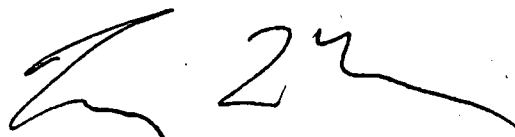
Adams was prejudiced by counsel’s deficient conduct. The jury was hung in this case that hinged solely on the credibility of the minor alleged victim, who testified in an “utterly emotionless, blank” fashion, App. 340, and whose testimony was completely uncorroborated by any other proper evidence. While the bailiff was correct that it had to be “a hundred percent” or unanimous,” “the bailiff’s remarks were not offset by a statement that each juror should not surrender his conscientious convictions merely to reach an agreement.” *Blake*, 307 S.C. at 17, 413 S.E.2d at 818. In these circumstances, there is no assurance that “the communication was harmless and could not have affected the verdict.” *Cameron*, 311 S.C. at 208, 428 S.E.2d at 12. In other words, there is “reason to suppose outside influences” entered into deliberations and impacted the verdict. *Blake*, 307 S.C. at 17, 413 S.E.2d at 818. See also *Weaver v. Thompson*, 197 F.3d 359, 365-66 (9th Cir. 1999). Counsel’s conduct was deficient and prejudicial. *Dawson v. State*, 352 S.C. 15, 572 S.E.2d 445 (2002) (counsel ineffective for failing to object to a coercive *Allen* charge).

In addressing this issue, however, the PCR court concluded: "The testimony of the two jurors at the PCR hearing fail to show that the jury's deliberations were somehow affected or that juror's [sic] changed their minds in response to this question and answer." App. 460. This is simply not true and is directly contradicted by the testimony. The foreperson testified that she related to all the jurors that the bailiff said it had to be "a hundred percent." App. 307. The foreperson (and, therefore, the other jurors) understood from this that the jurors were not leaving until everyone agreed. App. 307. More specifically, one juror, Warrena Mathis, who also testified in the PCR, understood it to mean "we wasn't going to leave until we found him guilty. We were going to stay there." App. 309. After an overnight recess and continued deliberations, she changed her vote from not guilty to guilty because of that understanding. App. 309.

Conclusion

Wherefore, for the foregoing reasons, Petitioner prays this Court will grant his application for post-conviction relief and vacate his convictions and sentences.

Respectfully Submitted,



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