

PETITIONER'S EXHIBIT A

EXHIBIT "A"

The Supreme Court of South Carolina

Michael E. Hamm, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-001052

Lower Court Case No. 2013CP1801859

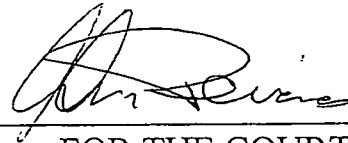
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AUG 04 2016

S.C. SUPREME COURT

ORDER

This matter is hereby reinstated. Any *pro se* response under *Dennison v. State*¹ shall be filed within twenty (20) days of the date of this order.



C.J.

FOR THE COURT

Columbia, South Carolina
July 13, 2016

cc: Rodney Duane Davis, Esquire
James Clayton Mitchell, III, Esquire
Mr. Michael Hamm (with copy of counsel's letter dated June 29, 2016)

¹ 371 S.C. 221, 639 S.E.2d 35 (2006) ("[I]f counsel does not have a good faith explanation to provide pursuant to Rule [243(c), of the South Carolina Appellate Court Rules], counsel shall provide the Court with a letter stating that as an officer of the Court, counsel is unable set forth any arguable basis for asserting the determination by the PCR judge that the PCR application was successive and barred by the statute of limitations was improper. Counsel shall further advise the petitioner by copy of the letter that the petitioner should notify the Court, no later than twenty (20) days from the date of the letter, of any arguable basis the petitioner may wish to assert that the determination that the PCR application was successive and barred by the limitations was improper.").

STATE OF SOUTH CAROLINA
 County of Charleston
 STATE vs.
Michael Hamm
 AKA: _____
 Race: W Sex: M
 DOB: 57
 SSN: _____
 SID#: 98970

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#: 99-GS-18-0316
 CMV#: C-10-03-0012 1-14-03
 Name of Original Offense: Lewd Act upon Child
 Conviction S.C. Code §: 16-15-140
 Conviction CDR Code #: 2, 4, 6, 8
 Date of Original Offense: 11-13-98
 Original Sentence: 3 yrs sus 5 years
ORDER Probation

The above named defendant has been charged with violating the conditions of probation ordered on 6/14/99 in the Court of General Sessions of Durchester County as set forth in the attached warrant or citation. After hearing the evidence and being duly advised, in the (presence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit)
6, 10

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 3 months/years, the remainder of the original sentence, and/or pay \$ _____.
- the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- Additional Conditions ordered by the Court: Revoke 3 years and terminate probation. Credit for 364 days. This is concurrent to new convictions for ind. # 02-GS-10-2468 and 02-GS-10-2469.

- Credit for pre-trial detention time on current probation violation: 364 days
- The defendant has previously served 0 months/years on this sentence. (split sentence time and/or prior partial revocation time)

This 14 day of JANUARY 2001
CHARLESTON SC.

Presiding Judge: [Signature]
 Clerk: [Signature]
 JUDGE: [Signature]
 JUDGE: [Signature]

TRUE COPY
 JULIA ARMSTRONG (SEAL)
 CLERK OF COURT & C.S.

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper, or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature: [Signature] Witnessed by: [Signature]

Signed this 14 day of JANUARY 2001 at CHARLESTON SC

HAMM, Michael E. SCDC # 96922

45 YOA WM

Lewd Act on Child under 16 - 3 years

Original sentence 3 years suspended with 5 years probation. Revoked 1-16-03 due to arrest for indecent exposure.

Victim - [REDACTED] - 3 YOA Female

Officers were called to incident location in reference to victim's mother and subject arguing in their yard. Victim's mother stated that she was ready to kill subject because she caught him masturbating in front of victim.

Arrested 1-16-02 for indecent exposure - exposing himself in front of a 6 YOA female by standing in front of a window with no clothes on. When police questioned him, they asked him how many times he had done this before. He said that he was an "exhibitionist" and was being treated by a doctor and that he hoped that it had not happened more than ten times. He also told police that "just being seen was what gave him the thrill."

Victim told police that subject had exposed himself previously to her and a 10 YOA female who was visiting her.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Michael E. Hamm
AKA: _____

Race: W Sex: M Age: _____

DOB: 1-15-57 SS#: _____

Address: _____

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

02 -GS- 10 - 2469

A/W#: DF

Date of Offense: 4/2/02

S.C. Code §: 16-15-130

CDR Code #: 001911

CASE RESTORED

SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Andrew Edwards

in violation of § 16-15-130 of the S.C. Code of Laws, bearing CDR Code # 0101911

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:

Robert Newberry
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for 364 days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on: W/2002-2468

SPECIAL CONDITIONS: and prob. rev.

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 100%) \$ _____

§14-1-211(A)(1) (Surcharge) \$ 100.00

§14-1-211(A)(2) (Surcharge) \$ _____

§56-5-2995 (DUI Assessment) \$ _____

3% to County (if paid in installments) ... \$ 3.00

TOTAL \$ 103.00

Rebecca Buchanan
Clerk of Court/ Deputy Clerk

Court Reporter: Orville Burns

PRESIDING JUDGE [Signature]

Judge Code: 0101914

Sentence Date: 1-16-03

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
By [Signature]
DEPUTY CLERK

EXHIBIT I

INCIDENT REPORT

SC168600 * Juvenile

DORCHESTER COUNTY SHERIFF'S OFFICE 100 Sears St. • St. George, SC 29477 • (803) 563-0259 212 Daming Way • Summerville, SC 29483 • (803) 832-0300 RAY NASH, Sheriff

CASE NUMBER

98037349

IND. ENTID.

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. LEWD ACT W/ MINOR (90Z)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	20		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Fraternal Inst. <input type="checkbox"/> Governmental <input type="checkbox"/> Relig. Org. <input type="checkbox"/> Soc. Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Qtr.
	2. DOMESTIC (90Z)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	20		

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)
 Bonnie Lane WOOD OAK MHP ZIP CODE 29485

INCIDENT DATE 11-13-98 1900 24 HR. CLOCK TO DATE DATE 24 HR. CLOCK
 DISPATCH DATE 11-13-98 DISPATCH TIME 1913 TIME ARRIVED 1938 OFFICIAL NO. 2136 LOCATION NO. 04

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) HAMM, Cindy Leanie RELATIONSHIP TO SUBJECT SE RESIDENT S O U RACE B SEX F AGE 33 ETH N DAYTIME PHONE 79748 EVENING PHONE 90200

ADOPTED BY Bonnie Lane VICTIM NAME (LAST, FIRST, MIDDLE) Bonnie Lane RELATIONSHIP TO SUBJECT OK RESIDENT S O U RACE H SEX F AGE 3 ETH H DAYTIME PHONE 292 EVENING PHONE SAME

HEIGHT 202 WEIGHT 40 HAIR BLN EYES BLN FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS 1300 Central Ave. Apt. H-3 CITY Summerville STATE SC ZIP CODE 29483 LOCATION NO. 0

VICTIM NO. 13 UBINO: ALCOHOL YES NO UNK DRUGS: YES NO UNK TYPE: COMPLAINT OF ANY NON-VISIBLE INJURIES: YES NO

TWO-WHEELER ONE-WHEELER DETECTIVE/SR. AGENT OTHER ALONE ASSISTED * J - This Jurisdiction, R - State, O - Out of State, U - Unknown

SUBJECT NO. 1 NAME (LAST, FIRST, MIDDLE) HAMM, Michael Eugene RACE W M SEX M AGE 41 ETH N DATE OF BIRTH 08-17-57 HEIGHT 507 WEIGHT 130 HAIR BRN EYES BRN

ADDRESS Bonnie Lane CITY Summerville STATE SC ZIP CODE 29483 LOCATION NO. 04

SUBJECT NO. 1 UBINO: ALCOHOL YES NO UNK ARRESTED NEAR OFFENSE SCENE YES NO DATE/TIME OF OFFENSE DATE/TIME OF ARREST

R/O was dispatched to incident location in reference to the Comp and subject arguing in their yard. Comp advised R/O that she was ready to kill the above subject, because she caught him masturbating in front of the three year old victim. Comp stated that the victim, the victim's mother (maria L. Palma) and Ann Marie Pinckney a friend of hers, was at the residence. Comp stated that the victim was going in and out of the bedroom where the subject (her husband) was sitting alone in the dark. Comp noticed the victim go into the room, but did not return. Comp stated that she became suspicious and went to see

JURISDICTION OF TRAFFIC LAW ENFORCEMENT AGENCY JURISDICTION OF RESIDENT LAW ENFORCEMENT AGENCY

PROPERTY EST.	TOTAL VALUE
TYPE (GROUP)	
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	

SUBJECT IDENTIFIED YES NO SUBJECT LOCATED YES NO ACTIVE ADM. CLOSED UNFOUNDED ARRESTED UNDER 16 ARRESTED 18 AND OVER EX-CLEAR UNDER 16 EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH. 2. NO PROSECUTION. 3. EXTRAJURISDICTION DENIED. 4. VICTIM DECLINES COOPERATION. 5. JUVENILE WITH STUDY

REPORTING OFFICER(S) C.W. Greer DATE 11-13-98 UNIT NUMBER 909 APPROVING OFFICER Sgt. Smith DATE 11-16-98 UNIT NUMBER 402

FOLLOW UP INVESTIGATION YES NO OFFICER Warden DATE 11-16-98 UNIT NUMBER 202

STATEMENTARY REPORT

DORCHESTER COUNTY SHERIFF'S OFFICE
100 Sears St. • St. George, SC 29477 • (803) 543-0250
212 Daming Way • Summerville, SC 29483 • (803) 832-0300
RAY NASH, Sheriff

CASE NUMBER

9.803.7.3.4.9

NCIC

INC. # 010

ORIGINAL REPORT
 MODIFIED ORIGINAL

SUPPLEMENTAL REPORT
 CASE STATUS CHANGE

ADDITIONAL VICTIM
 ADDITIONAL OFFENDERS

ADDITIONAL STOLEN PROPERTY
 ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 2

NARRATIVE

What the Subject was doing. Comp. stated that she looked around the corner into the bedroom and saw the victim and Subject standing in front of each other in the bath room. Comp. stated that the victim was pointing a small flashlight at the Subject, and noticed that the Subject had his pants down. Comp. advised that she went into the room and the Subject moved his hand away from his genital area, and quickly pulled his pants up. R/O notified Det. Waldman to respond to the incident location. R/O spoke with the victim about the incident when R/O asked the victim what the Subject was doing in the bath room, the victim started moving her hand back and forth near her genital area. R/O asked the victim if the Subject touched her anywhere and she stated that he had not. R/O read the Subject his Miranda rights and questioned him about the incident. The Subject advised R/O that he was in the bathroom masturbating and the victim came in by surprise. The Subject stated that when he noticed the victim standing near him, he jumped up from the toilet and pulled his pants up. Det. Waldman questioned the Comp, victim, and Subject about the incident. Comp. wrote a statement about the incident, and advised R/O that the Subject was suspected of sexually misbehaving with children in the past. R/O requested dispatch to check the Subject through NCIC. The Subject had an outstanding warrant for obtaining goods by false pretenses in Charleston County. The Subject was turned over to Charleston County Sheriff's Department.

2003 APR 22 PM 2:27
INMATE RECEIVING OFFICE

ADMINISTRATIVE

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> IS CLEAR (FOR 1A) <input type="checkbox"/> IS CLEAR (FOR 2)		
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION			3. <input type="checkbox"/> SET FAD FOR BIRTH			4. <input type="checkbox"/> VICTIM OBTAINS COOPERATION			5. <input type="checkbox"/> APPEALS - DO CUSTODY	
REPORTING OFFICER(S) C. L. Greer		DATE 11-13-98	UNIT NUMBER 509	APPROVING OFFICER Sgt. Small			DATE 11-16-98	UNIT NUMBER 402	OFFICER Waldman	
FOLLOW-UP INVESTIGATION		YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		OFFICER		DATE		UNIT NUMBER		

EXHIBIT 2

INCIDENT REPORT

SC160000 * *Jacksonville*

DORCHESTER COUNTY SHERIFF'S OFFICE
100 Sears St. • St. George, SC 29477 • (803) 543-0250
212 Daming Way • Summerville, SC 29483 • (803) 832-0300
RAY NASH, Sheriff

CASE NUMBER

98037349

IND.	ENTO.

EVENT

VICTIM NO. 1

SUBJECT NO. 1

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPICAL VICTIM
1. LEWD ACT W/ MINOR (902)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	20		<input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Org. <input type="checkbox"/> Soc. Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
2. DOMESTIC (902)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	20		
3.		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (APARTMENT, APARTMENT AND NUMBER, STREET NAME AND NUMBER)
3 Bonnie Lane

INCIDENT DATE: *11-13-98* 24 HR CLOCK: *1900* TO DATE: *11-13-98* 24 HR CLOCK: *1900*

WOOD OAK MHP ZIP CODE: *29485*

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): *HAMM, Cindy Pennie*

RELATIONSHIP TO SUSPECT: *SE*

RESIDENT: YES NO

RACE: *B* SEX: *F* AGE: *33* ETH: *N* DAYTIME PHONE: *3974* EVENING PHONE: *4200*

VICTIM'S NAME (LAST, FIRST, MIDDLE): *[REDACTED]*

RELATIONSHIP TO SUSPECT: *OK*

RESIDENT: YES NO

RACE: *H* SEX: *F* AGE: *3* ETH: *H* DAYTIME PHONE: *[REDACTED]* EVENING PHONE: *SAME*

ADDRESS: *[REDACTED]* CITY: *Summerville* STATE: *SC* ZIP CODE: *29483* LOCATION NO: *0*

VICTIM NO. 1 IS USING ALCOHOL: YES NO

COMPLAINANT OF ANY NON-VISIBLE INJURIES: YES NO

SUBJECT NAME (LAST, FIRST, MIDDLE): *HAMM, Michael Eugene*

RACE: *WM* SEX: *M* AGE: *41* ETH: *N* HEIGHT: *57* WEIGHT: *130* HAIR: *BRN* EYES: *BRN*

ADDRESS: *Bonnie Lane* CITY: *Summerville* STATE: *SC* ZIP CODE: *29483* LOCATION NO: *04*

SUBJECT NO. 1 IS USING ALCOHOL: YES NO

ARRESTED MEAN OFFENSE SCHEME: YES NO

DATE/TIME OF OFFENSE: *[REDACTED]* DATE/TIME OF ARREST: *[REDACTED]*

him masturbating in front of the three year old victim. She caught

Comp Stated that the victim was going in and out of the bedroom where the subject (her husband) was sitting alone in the dark.

TYPE (GROUP)	STOLEN	DAMAGED	SURBID	RECOVERED	SEIZED

SUBJECT IDENTIFIED: YES NO

SUBJECT LOCATED: YES NO

ACTIVE: ADM. CLOSED: UNFOUNDED:

ARRESTED UNDER 18: ARRESTED 18 AND OVER:

REASON FOR EXCEPTIONAL CLEARANCE: OFFENDER DEATH NO PROSECUTION EXTORTION DEMED VICTIM DECLINES COOPERATION UNABLE TO LOCATE

REPORTING OFFICER(S): *C.W. Greer* DATE: *11-13-98* UNIT NUMBER: *309* APPROVING OFFICER: *Sgt. Small* DATE: *11-16-98* UNIT NUMBER: *302*

FOLLOW-UP INVESTIGATION: YES NO OFFICER: *[REDACTED]* DATE: *11-16-98* UNIT NUMBER: *302*

INCIDENTARY REPORT

DORCHESTER COUNTY SHERIFF'S OFFICE
100 Soars St. • St. George, SC 29477 • (803) 563-0258
212 Deming Way • Summerville, SC 29483 • (803) 632-0300
RAY NASH, Sheriff

CASE NUMBER

98037349

NCIC

NO. ENR.

MODIFIED ORIGINAL

SUPPLEMENTAL REPORT
 CASE STATUS CHANGED

ADDITIONAL VIOLENCE
 ADDITIONAL OFFENSES

ADDITIONAL STOLEN PROPERTY
 ADDITIONAL RECOVERED PROPERTY

PAGE 2 . 2 PAGES

Comp. Stated that she looked around the corner into the bedroom and saw the victim and subject standing in front of each other in the bathroom. Comp. Stated that the victim was pointing a small flashlight at the subject.

the incident when Rlo asked the victim what the subject was doing in the bathroom, the victim started moving her hand back and forth near her genital area. Rlo asked the victim if the subject touched her anywhere and she stated that he had not. Rlo read the subject his Miranda rights and questioned him about the incident. The subject advised Rlo that he was in the bathroom masturbating and the victim came in by surprise. The subject stated that when he noticed the victim standing near him, he jumped

NARRATIVE

13
14

2003 APR 22 PM 2:30
NIGHT REPORTING OFFICER

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		MISDEMEANOR LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> IS CLEAR (SEE 18) <input type="checkbox"/> IS CLEAR (SEE OVER)	
REPORTING OFFICER'S NAME C. L. Greer		DATE 11-13-98	UNIT NUMBER 509	APPROVING OFFICER Sgt. Small		DATE 11-16-98		TIME 4:08	UNIT NUMBER 402
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFICER DEATH 2. <input type="checkbox"/> NO PROSECUTION		3. <input type="checkbox"/> EMPLOYEE RESIGN.		4. <input type="checkbox"/> VICTIM DEVELOPS COOPERATION		5. <input type="checkbox"/> AVAILABLE - NO CUSTODY			
FOLLOW-UP INVESTIGATED		OFFICER		DATE		TIME		UNIT NUMBER	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		WANDERLIPS		11-14-98		7:00			

ADMINISTRATIVE

MENTARY REPORT

DORCHESTER COUNTY SHERIFF'S OFFICE
100 Sears St. • St. George, SC 29477 • (803) 563-0259
212 Deming Way • Summerville, SC 29483 • (803) 832-0300
JOHN Q. SOUTHERLAND, Sheriff

CASE NUMBER

98037349

NCIC

NO. ENTD.

- ORIGINAL REPORT
- MODIFIED ORIGINAL

- SUPPLEMENTAL REPORT
- CASE STATUS CHANGE

- ADDITIONAL VICTIMS
- ADDITIONAL OFFENDERS

- ADDITIONAL STOLEN PROPERTY
- ADDITIONAL RECOVERED PROPERTY

PAGE 1 of 1 PAGES

NARRATIVE

11-14-98 Reporting Officer was on call and was dispatched to the incident location. Reporting Officer met with Deputy C. Bruce who stated that the suspect had been caught standing in front of the victim with his pants down. Deputy Bruce stated that he had read the suspect his Miranda Rights. Reporting Officer again asked the suspect if he understood his rights. The suspect stated he did and that he wanted to tell what had happened. THE SUSPECT STATED THAT HE HAD BEEN IN THE BATHROOM WITH THE DOOR CLOSED MASTURBATING. SUSPECT STATES THAT THE VICTIM WALKED IN ON HIM. SUSPECT STATED THAT WHEN HE STOOD UP, HIS WIFE WALKED IN, WHILE HE WAS PULLING HIS PANTS UP. Reporting Officer then obtained a statement from suspect's wife who was extremely upset, and at one point stated that we (the sheriff's office) needed to make the suspect leave their house before she hurt him. Reporting Officer spoke to the victim who stated that she was playing with a flashlight (that was given to the victim by the suspect - according to the suspect's wife) and that she went into the bedroom and that the suspect was standing near the entrance to the bathroom. Reporting Officer asked what the suspect was doing? Victim replied that he was doing this - (victim made a hand motion back and forth in front of her groin/pelvis area). Victim does not live in suspect's home. Victim visits the next door neighbors house on a frequent basis. Suspect played on friends' marble to the neighbors house and suspected to have no contact with the victim or victim's family. Suspect was checked for outstanding warrants. Suspect wanted by Charleston County via NCIC CONFIRMATION. Suspect transported and returned to Charleston County by Deputy Bruce.

RECORDS SECTION
APR 22 2:05 PM '03

ADMINISTRATIVE

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX CLEAR UNDER 18 <input type="checkbox"/> EX CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTOR.				3. <input type="checkbox"/> EXTRADITION DENIED.		4. <input type="checkbox"/> VICTIM DECLINES COOPERATION.		5. <input type="checkbox"/> JUVENILE - IN CUSTODY	
REPORTING OFFICER(S) T.A. Van Down		DATE 11-15-98	UNIT NUMBER 707	APPROVED OFFICER T.A. Van Down		DATE 11-15-98	UNIT NUMBER 707		
FOLLOW-UP INVESTIGATION				OFFICER					
<input type="checkbox"/> YES <input type="checkbox"/> NO									

EXHIBIT 4

ADDITIONAL REPORT
00000

DORCHESTER COUNTY SHERIFFS OFFICE
100 Sears St. • St. George, SC 29477 • (803) 662-0850
212 Derring Way • Summerville, SC 29483 • (803) 632-0300
JOHN G. SOUTHERLAND, Sheriff

CASE NUMBER 98037349	AGC
ADDITIONAL STOLEN PROPERTY PAGE <u>1</u> OF <u>1</u> PAGES	INCL. ENTR.
ADDITIONAL RECOVERED PROPERTY	

- ORIGINAL REPORT
- SUPPLEMENTAL REPORT
- ADDITIONAL VICTIMS
- ADDITIONAL STOLEN PROPERTY
- ADDITIONAL RECOVERED PROPERTY
- MOVER'S OFFICIAL
- ONE STOP CHANGE
- ADDITIONAL OFFENSES

11-14-98 Reporting Officer was on call and was dispatched to the incident location. Reporting Officer met with Deputy C. [redacted] who stated that the suspect had been caught standing in front of the victim.

The suspect stated he did not know what he wanted to tell what had happened. THE SUSPECT STATED THAT HE HAD BEEN IN THE BATHROOM WITH THE DOOR CLOSED MASTURBATING. SUSPECT STATES THAT THE VICTIM WALKED IN ON HIM. SUSPECT STATED THAT WHEN HE STOOD UP, HIS WIFE WALKED IN.

NARRATIVE

Reporting Officer spoke to the victim who stated that she was playing with a flashlight (that was given to the victim by the suspect - according to the suspect's wife) and that she went into the bedroom and that the suspect was standing near the entrance to the bedroom. Reporting Officer asked what the suspect was doing? Victim replied that he was charging this - (victim made a hand motion back and forth in front of her groin area).

12:05

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> DETECTIVE <input type="checkbox"/> AKA DETECTIVE <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 16 <input type="checkbox"/> ARRESTED 16 AND OVER	<input type="checkbox"/> EX-CL-CL-16 <input type="checkbox"/> EX-CL-CL-16 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> 1. OFFENSES DELETED <input type="checkbox"/> 2. NO PROSECUTION <input type="checkbox"/> 3. EXTRAORDINARY CIRCUMSTANCES <input type="checkbox"/> 4. VICTIM DECLINED COOPERATION <input type="checkbox"/> 5. LIVES-CL-16 EX-CL-CL-16		REPORTING OFFICER (R) <i>T.A. [Signature]</i>	DATE 11-15-98	UNIT NUMBER 707
APPROVED OFFICER <i>T.A. [Signature]</i>		DATE 11-15-98	UNIT NUMBER 707	
FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO				

NUMERICAL

EXHIBIT 5

STATE V. BROCK 335 S.C. 267, 516 S.E.2d 212 (S.C. App. 1999)

In determining whether one crime is a lesser included offense of another, the test is whether the greater of the two offenses includes all of the elements of the lesser offense. If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. *Hope v. State*, 328 S.C. 78, 492 S.E.2d 76 (1997); *State v. Bland*, 318 S.C. 315, 457 S.E.2d 611 (1995); *State v. Sprouse*, 325 S.C. 275, 478 S.E.2d 871 (Ct.App.1996); *State v. Kirby*, 325 S.C. 390, 481 S.E.2d 150 (Ct.App.1996).

Pursuant to S.C.Code Ann. § 16-15-140 (Supp.1995), one is guilty of committing a lewd act upon a minor when "a person over the age of fourteen years ... wilfully and lewdly commit(s) or attempt(s)... any lewd or lascivious act upon or with the body, or its parts, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of the child." [2] The elements of first degree assault with intent to commit CSC on a minor are (1) an assault, (2) with the intent to commit a sexual battery, (3) against a minor under the age of eleven. S.C.Code Ann. §§ 16-3-655(1) and 16-3-656 (1976).

We agree with Brock that neither of the above offenses requires that a sexual battery take place. However, each of the statutes requires proof of an element not required by the other. The lewd act charge requires the victim to be under the age of fourteen, and the perpetrator to be over the age of fourteen. Also, the perpetrator must commit a lewd or lascivious act upon the body of the child and must act "with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires" of the perpetrator or the minor victim. The offense of first degree assault with intent to commit CSC on a minor requires the victim to be under the age of eleven, and provides no minimum age for the perpetrator. Furthermore, an assault must take place, and the perpetrator must act with intent to commit a sexual battery. Because each offense requires

[LAW DEF. - ACT/ENACTMENT - UPON/ON]
 ... ENACTMENT ON THE BODY OF THE CHILD ...

Page 215

proof of an additional element that the other does not, we agree with the trial judge that the lewd act charge is not a lesser included offense of first degree assault with intent to commit CSC on a minor.

II.

Brock also argues that the trial judge erred in allowing Eaton to testify about Lee's statement to her that "Tabetha and Papa are in the bedroom and won't let me in." Brock maintains that Eaton's testimony constitutes inadmissible hearsay.

The admission or rejection of evidence is largely within the sound discretion of the trial judge, and the trial judge's decision will not be disturbed on appeal absent an abuse of discretion. *State v. Aiken*, 322 S.C. 177, 470 S.E.2d 404 (Ct.App.1996).

Rule 803(2), SCRE, provides as follows:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: ... (2) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

Archive

South Carolina Statutes

Title 16. Crimes and Offenses

Chapter 15. OFFENSES AGAINST MORALITY AND DECENCY

Article 1. MISCELLANEOUS OFFENSES

Current through 2011 Act No. 104

§ 16-15-140. Committing or attempting lewd act upon child under sixteen

It is unlawful for a person over the age of fourteen years to wilfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.

A person violating the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

Archive

INCIDENTARY REPORT

DORCHESTER COUNTY SHERIFF'S OFFICE
100 Sears St. • St. George, SC 29477 • (803) 583-0238
212 Deming Way • Summerville, SC 29483 • (803) 633-0300
RAY NASH, Sheriff

CASE NUMBER

9803.7349

NOTE

PAGE 2 OF 2

ORIGINAL REPORT
 MODIFIED ORIGINAL

SUPPLEMENTAL REPORT
 CASE STATUS CHANGED

ADDITIONAL VIO # 48
 ADDITIONAL OFFENSES

ADDITIONAL STOLEN PROPERTY
 ADDITIONAL RECEIVED PROPERTY

PAGE 2 OF 2

NARRATIVE

On stake with the victim about the incidents when RIA asked the victim what the subject was doing in the bath room, the victim started moving her hand back and forth near her genital area. RIA asked the victim if the subject touched her anywhere and she stated that he had not.

13
14

REPORTING OFFICER
PR 22 PM 21

ADMINISTRATIVE

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		ARREST LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSURE <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> IF CLEAR UNDER 18 <input type="checkbox"/> IF CLEAR 18 AND OVER
REPORTING OFFICER'S NAME C. G. Greer		DATE 11-13-98	UNIT NUMBER 409	APPROVING OFFICER Sgt. Small	DATE 11-16-98	UNIT NUMBER 408
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENSES DELETED 2. <input type="checkbox"/> NO PROSECUTION		3. <input type="checkbox"/> NO MATCH FOR OFFENSE		4. <input type="checkbox"/> VICTIM DESIRES COOPERATION		5. <input type="checkbox"/> AVAILABLE - NO CUSTODY
INVESTIGATOR		OFFICER		DATE		UNIT NUMBER
[Signature]		[Signature]		11-14-98		707

EXHIBIT I

ARREST WARRANT

F# 919453

STATE OF SOUTH CAROLINA

County/ Municipality of

THE STATE against

Michael Eugene Hamm

Address: Boone Lane Summerville, SC

Sex: M Race: W Height: 5-7 Weight: 130

DOB: -57 Agency ORI #: 1800

Prosecuting Agency: DCBD

Prosecuting Officer: Det T. Van Doran

Offense: LEWD ACT UPON A CHILD UNDER SIXTEEN

Code/Ordinance Sec. 16-15-140

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

Burley

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge: [Signature] (L.S.) Date: 11-20-98

RETURN

A copy of this arrest warrant was delivered to defendant Michael Eugene Hamm on 1-21-99

Signature of Constable/Law Enforcement Officer: [Signature]

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA County/ Municipality of

Dorchester

Personally appeared before me the affiant being duly sworn and says that defendant

Michael Eugene Hamm

did within this county and state on November 13, 1998

State of South Carolina (or ordinance of County/ Municipality of) violate the criminal laws of

in the following particulars: VIOLATION SECTION 16-15-140 OF THE SOUTH CAROLINA CODE OF LAWS (AS AMENDED), LEWD ACT UPON A CHILD UNDER SIXTEEN.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: see attached affidavit.

Sworn to and subscribed before me on 19 NOV 98

Signature of Issuing Judge: [Signature]

Signature of Affiant: [Signature]

Affiant's Address: 212 Haining City

Affiant's Telephone: Summerville SC 532-0300

STATE OF SOUTH CAROLINA County/ Municipality of

Dorchester

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

appearing from the above affidavit that there are reasonable grounds to believe that

on November 13, 1998 defendant Michael Eugene Hamm

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: VIOLATION SECTION 16-15-140 OF THE SOUTH CAROLINA CODE OF LAWS (AS AMENDED), LEWD ACT UPON A CHILD UNDER SIXTEEN.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge: [Signature] (L.S.) Judge's Address: 212 Denningway Box 11 Summerville SC

Signature of Affiant: [Signature] Issuing Court: [] Magistrate [] Municipal [] Circuit []

ORIGINAL

AFFIDAVIT

Det T. Van Doran

that defendant Michael Eugene Hamm

did within this county and state on November 13, 1998

State of South Carolina (or ordinance of County/ Municipality of) violate the criminal laws of

in the following particulars: VIOLATION SECTION 16-15-140 OF THE SOUTH CAROLINA CODE OF LAWS (AS AMENDED), LEWD ACT UPON A CHILD UNDER SIXTEEN.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: see attached affidavit.

Sworn to and subscribed before me on 19 NOV 98

Signature of Issuing Judge: [Signature]

Signature of Affiant: [Signature]

Affiant's Address: 212 Haining City

Affiant's Telephone: Summerville SC 532-0300

FILED-RECORDED 53 FEB -5 PM 1:56

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE _____ VS. _____

MICHAEL E. HAMM

AKA: _____

Race: W Sex: M

DOB: 157 Age: 41

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

99-GS-18 - 0316

A/W#: F-919453

Date of Offense: NOV. 13 1998

S.C. Code § : 16-15-140

CDR Code #: 2141618

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: LEWD ACT UPON CHILD

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2141618

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: -

Marta Murphy
Solicitor

M Hamm
Defendant

PRO SE
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered

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

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

PTUP _____
_____ 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: mental health counseling

register

PRESIDING JUDGE Philip Bry

Judge Code: 019101

Sentence Date: 6-14-99

*Fine:	\$	_____
§ 14-1-206 - Assessments 100%.....	\$	_____
§ 14-1-211 - Surcharge.....	\$	<u>100.00</u>
(Exceptions: See § 14-1-211)		
§ 56-5-2995 (DUI).....	\$	_____
County (3%).....	\$	<u>3.00</u>
TOTAL.....	\$	<u>103.00</u>

Clerk of Court/Deputy Clerk Joe Stovall

Court Reporter: H Dot Walker

EXHIBIT 2

Archive

South Carolina Statutes

Title 16. Crimes and Offenses

Chapter 15. OFFENSES AGAINST MORALITY AND DECENCY

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