

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Post-Conviction Relief

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Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

Appellate Case No.: 2014-001640

Bobby Russell, Jr., ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX

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State of South Carolina) In the Court of General Sessions
County of Dorchester) First Judicial Circuit
2009-GS-18-00990, 01097 & 01275

State of South Carolina,)
Plaintiff,)
vs.)
Bobby Russell,)
Defendant.)

Transcript of Record

November 8, 2010
St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

Harrison Bell, Esquire
Attorney for the Plaintiff

Paul Uricchio, Esquire
Chad Fuller, Esquire
Attorneys for the Defendant

Bonnie H. Kelly
Circuit Court Reporter

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- NO EXHIBITS -

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1 BOBBY RUSSELL, JR. Having
2 been first duly sworn, testifies as follows:

3 THE COURT: (To the defendant) All right. You are
4 Bobby Russell, Jr.?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. And you are represented by Mr.
7 Uricchio?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: (To Mr. Uricchio) Counsel, have you advise
10 your client regarding the nature of these offenses; the
11 maximum possible penalty; and his constitutional rights,
12 including his right to have all of these indictments
13 submitted to the grand jury; and his right to a jury trial?

14 MR. URICCHIO: Yes, Your Honor. Mr. Fuller and I have
15 been over this case for many, many times.

16 THE COURT: All right. And in your opinion, does he
17 understand the nature of these offenses, the maximum
18 possible penalty, and his rights?

19 MR. URICCHIO: Yes, Your Honor. He does.

20 THE COURT: All right. Tell me how he wishes to
21 proceed regarding the grand jury.

22 MR. URICCHIO: He wishes to plead guilty.

23 THE COURT: And how -- very well. How does he -- very
24 well. Now, I'm gonna hand you back the -- just the
25 sentencing sheet. He's initialed it, but he initialed it -

1 - he actually initialed it in a good place. He initialed
2 it by the statement of lewd act instead of CSC first. But
3 that's not where the form wants the initials.

4 (Mr. Uricchio confers with the defendant.)

5 THE COURT: All right. Very well. Now, if your
6 client wishes to waive the presentment -- and how does he
7 wish to plead to each of these three offenses?

8 MR. FULLER: Guilty, Your Honor.

9 THE COURT: Very well. And do you concur with your
10 client's decision?

11 MR. FULLER: I do, Your Honor.

12 THE COURT: All right. And from your investigation of
13 the facts and circumstances of your client's case, do you
14 believe that the State could produce sufficient evidence to
15 convict and establish your client's guilt beyond a
16 reasonable doubt, and if he was to stand trial, that his
17 conviction would be probable?

18 MR. FULLER: I do, Your Honor.

19 THE COURT: Very well. All right.

20 DIRECT EXAMINATION BY THE COURT:

21 Q Mr. Russell, I have many questions to ask of you. If
22 you do not understand my question, don't answer it. But
23 let me know you don't understand my question, and if you
24 need to take a break and speak with your attorneys, I want
25 you to feel free to do that. Okay?

- 1 A Yes, ma'am.
- 2 Q All right. Tell me how old you are.
- 3 A 36.
- 4 Q How far did you go in school?
- 5 A High school, graduated; and two years of college.
- 6 Q Okay. How long have you been locked up?
- 7 A 21 months I believe.
- 8 Q Before you were locked up, where did you work?
- 9 A I'm self-employed as a mechanic.
- 10 Q Have you ever been treated for alcohol, drug abuse, or
- 11 mental health issues?
- 12 A Mental health issues, yes ma'am.
- 13 Q And what mental health issues?
- 14 A I've been diagnosed with bipolar disorder.
- 15 Q And when?
- 16 A I can't remember the exact dates.
- 17 Q Okay. Do you take medication for that?
- 18 A Yes, ma'am.
- 19 Q And what do you take?
- 20 A Here I take Risperdal. When -- Seroquel on the
- 21 street.
- 22 Q All right. Have you had your Risperdal yesterday?
- 23 A Yes, ma'am. And this morning.
- 24 Q And this morning?
- 25 A Yes, ma'am.

1 Q Okay. And is there anything about the Risperdal or
2 the manic-depressive/bipolar condition that might or could
3 keep you from knowing what you're doing here today?

4 A No, ma'am.

5 Q All right. Now, are you married?

6 A Ma'am? No, ma'am. No, ma'am.

7 Q Okay. Do you have kids?

8 A No, ma'am.

9 Q All right. Are you aware of any problem that you have
10 that you can think of that might or that could keep you
11 from knowing exactly what you're doing here today?

12 A No, ma'am.

13 Q All right. Let's talk about these charges, Mr.
14 Russell. Lewd act, committing or attempting a lewd act
15 upon a child under the age of 16 carries up to 15 years in
16 prison; do you understand that?

17 A Yes, ma'am.

18 Q And do you understand that you can be caused to
19 register as a sex offender?

20 A Yes, ma'am.

21 Q And that it, in and of itself, has its own
22 consequences, its own statutory provisions. If you move,
23 you have to notify the Sheriff, you have to register at
24 least once a year; and -- and there are many other
25 requirements associated with being a registered sex

1 offender; do you understand that?

2 A Yes, ma'am.

3 Q All right. And do you also understand that -- that
4 each -- well, each of these offenses -- lewd act -- lewd
5 act upon a child under 16 -- and there appear to be three
6 of these.

7 A Yes, ma'am.

8 Q So that your exposure here today, if you will, is --
9 is 45 years in prison.

10 A Yes, ma'am.

11 Q Okay. Very well. Do you also understand that there's
12 something called the "Sexually Violent Predator Act"? Do
13 you understand that?

14 A Yes, ma'am. I've -- I've heard of it.

15 Q Yes. And -- it is a procedure and there is a
16 committee that reviews folks who are coming out of SCDC or
17 otherwise, and they make a determination regarding whether
18 or not they believe there's probable cause that this
19 individual is a sexually violent predator.

20 If they believe that that individual is a sexually
21 violent predator, then they send it to a circuit court
22 judge to confirm or not confirm probable cause to believe
23 that someone is a sexually violent predator. And in the
24 event that that occurs, then there's an evaluation. And in
25 the event that the evaluation comes back and there is a

1 determination that that person has a mental abnormality
2 that -- that causes them to be a sexually violent predator,
3 then ultimately they -- that person can stand trial.

4 And if it is determined that that person is a sexually
5 violent predator, then they are forcibly held and treated
6 until such time as the abnormality and risk to the
7 community no longer exists. Do you understand that?

8 A Yes, ma'am.

9 Q All right. Very well. And there's some discussion
10 about whether or not the abnormality goes away, but for
11 sure, the risk to the community has to go away. You
12 understand?

13 A Yes, ma'am.

14 Q Okay. Now -- very well. Do you also understand that
15 there -- there's something called "Megan's Law," and under
16 Megan's Law, you can be required to be monitored under GPS
17 monitoring for the rest of your life?

18 A Yes, ma'am.

19 Q Okay. All right. Now, finally, with regards to this
20 offense, whatever sentence -- and I know that this is a
21 negotiated sentence, but I want you to be aware that you
22 need to count on serving day for day your sentence; do you
23 understand that?

24 A Yes, ma'am.

25 Q Okay. Very well. All right. Are you on probation or

1 parole at this time?

2 A No, ma'am.

3 Q Okay. Now, understanding then the nature of thes
4 offenses and the maximum possible penalty and consequences,
5 tell me how you plead to lewd act upon a child or attempt
6 to commit a lewd act upon a child under 16 years old?

7 A Guilty.

8 Q And how do you plead to -- there's a second -- there's
9 a second charge of lewd act committing or attempting a lewd
10 act upon a child under 16.

11 A Guilty.

12 Q And there is a third one.

13 A Guilty.

14 Q All right. Let me also say, though, as I understand
15 with regards to the first lewd act -- let me give the --
16 the -- the indictment: 2009-GS-18-990. Do you understand
17 that -- that obviously this started out and was indicted as
18 criminal sexual conduct with a minor in the first degree.

19 And it is being pled down to lewd act. And do you
20 understand that the charge of lewd act committing or
21 attempting a lewd act upon a child, but this particular
22 indictment has not been to the grand jury for a
23 determination whether or not it is a lewd act?

24 A (No audible response.)

25 Q It's been there for criminal sexual conduct with a

1 minor in the first degree, which was true billed, but not
2 lewd act.

3 A I don't think --

4 Q Yeah. Let me see if I can help you a little bit.

5 One of your constitutional rights --

6 A Uh-huh.

7 Q -- is that you are entitled to have the grand jury
8 pass upon each and every indictment. And the grand jury
9 answers two questions: Whether or not it's likely the
10 crime was committed; and is it likely that you are the
11 person who committed the crime.

12 Now, the investigation or the inquiry that is made by
13 the grand jury is unexplained and unopposed evidence, which
14 means that law enforcement shows up.

15 A Uh-huh.

16 Q And tells the grand jury what they maintained has
17 occurred. If the grand jury finds that it is more likely
18 than not, if there's probably cause to believe that a crime
19 was committed and you are the person who committed the
20 crime, they true bill the indictment.

21 A Okay.

22 Q Okay? And what that does is it gives you notice of
23 the charge that you are to face, and it gives the Court
24 notice of the charge that you are facing.

25 If the grand jury no bills the -- the indictment, then

1 that means that the charges are dismissed.

2 A Yes, ma'am.

3 Q Now, let me tell you that this -- that the indictment
4 for criminal sexual conduct with a minor in the first
5 degree -- see where it says "true bill"?

6 A Uh-huh.

7 Q That one was true billed.

8 A Uh-huh.

9 Q The lewd act upon a child under 16 is not a lesser
10 included offense, and because -- meaning that all of the --
11 it has different elements, a lewd act does. And therefore,
12 it -- you're entitled to have this indictment for lewd act
13 be presented to the grand jury.

14 And my question to you is: Would you like me to send
15 the indictment for lewd act to the grand jury, and have
16 them review and pass upon it? Or do you wish to waive
17 presentment and proceed here today?

18 A I'll waive.

19 Q All right. And have you told me by initialing the
20 sentencing sheet?

21 A Yes, ma'am.

22 Q Okay. I would find that Mr. Bobby Russell's 36 years
23 old, has a high school diploma and two years of college;
24 was gainfully employed before he was pre-trial detained.
25 And while he does have some mental health issues, he has

1 medication for those, and doesn't believe it will interfere
2 with his ability to proceed here today.

3 And I would concur and find that he has freely,
4 voluntarily, knowingly, and intelligently waiving his right
5 to presentment.

6 As to this indictment -- and I've asked on the other
7 two, but as to this indictment, lewd act, 2009-GS-18-990,
8 how do you plead?

9 A Guilty.

10 Q All right. Do you understand that when you plead
11 guilty you give up certain important constitutional rights?

12 A Yes, ma'am..

13 Q We're gonna talk about some of them, not all of them.

14 You give up the right to remain silent, the right
15 against self-incrimination, the presumption of innocence;
16 you give up your right to require the State prove you
17 guilty beyond a reasonable doubt if they can; you give up
18 your right to cross-examine -- have your lawyers cross-
19 examine witnesses who would testify against you; you give
20 up your right to summon witnesses to come testify in your
21 defense; you give up your right to present defenses; he
22 give up your right to challenge any incriminating
23 statements that you may have made in your case; you give up
24 your right to a jury trial.

25 And there are other rights which are preserved for you

1 at trial, and you waive them when you plead guilty. Do you
2 understand your rights?

3 A Yes, ma'am.

4 Q Do you understand that if you wanted to have a trial,
5 there would be a trial?

6 A Yes, ma'am.

7 Q Do you understand that at that trial, it would be up
8 to you to determine if you wanted to testify or not to
9 testify?

10 A Yes, ma'am.

11 Q And do you understand that that is your Fifth
12 Amendment right to decide if you went to trial whether or
13 not you wish to testify?

14 A Yes, ma'am.

15 Q And if you went to trial and you decided that you did
16 not wish to testify, the judge would tell the jury that
17 they could not consider your decision not to testify. In
18 fact, the judge would tell the jury that they could not
19 even discuss your decision not to testify in the jury room.
20 Do you understand that?

21 A Yes, ma'am.

22 Q All right. Now, there are other rights that we have
23 not specifically talked about that one -- you -- gives up
24 when you plead guilty. Do you understand your rights?

25 A Yes, ma'am.

1 Q All right. Understanding your constitutional rights,
2 do you understand that they are preserved for you at trial
3 and you waive them when you plead guilty?

4 A Yes, ma'am.

5 Q And is that what you want to do?

6 A Yes, ma'am.

7 Q Do you clearly understand that when you plead guilty
8 you give up your right to have a jury determine if you're
9 guilty or not guilty; you understand?

10 A Yes, ma'am.

11 Q And do you understand that if I accept your plea, I
12 will sentence you?

13 A Yes, ma'am.

14 Q All right. Now, here's what you've told me: That you
15 understand the nature of these offenses, the maximum
16 possible penalty, the consequences, and now your
17 constitutional rights. Keeping all these in -- matters in
18 the forefront of your mind, do you still wish to continue
19 with your plea?

20 A Yes, ma'am.

21 Q All right. Let me tell you what happens next. I need
22 to know what happened. So Mr. Bell is going to go over the
23 facts with me. And when he is finished, I am simply going
24 to ask you: Is that what happened?

25 You need to correct anything that needs to be

1 corrected, to be sure that I have an accurate picture of
2 what occurred.

3 A Yes, ma'am.

4 THE COURT: Mr. Bell. Take them one at the time.

5 MR. BELL: Thank you, Your Honor. As to -- I believe
6 it's Indictment 2009-GS-18-1275, if that's the correct
7 number, that occurred on November 2, 2008. It occurred
8 between 2 a.m. and 3 a.m. at ---, which is
9 just outside the Town of Summerville, in Dorchester County.
10 That's the residence of Ms. Melissa Jordan and Wesley
11 Adams, who are the parents of the victim I #1 And
12 they're seated in the courtroom on the Court's right,
13 second row on the -- on the aisle.

14 THE COURT: Okay.

15 MR. BELL: On that evening, there was a -- a friend of
16 theirs who was staying over, who was sleeping on the couch.
17 She was awakened between those times with Mr. Russell
18 coming from the bedroom area of their residence, not coming
19 in through the door, but coming from the interior of the
20 residence.

21 Everybody was awakened. Everybody had been asleep,
22 but everybody was awakened. He was apparently intoxicated.
23 And Mr. Adams at some point ushered him out. He gave the
24 excuse that there was somebody breaking into the house or -
25 - I'm sorry -- at that time, he wanted to apologize for

1 something -- an incident that had happened about a week
2 ago.

3 They went in and they -- everybody had gotten up and
4 he was eventually ushered out of the house, and the --
5 Lenora Mount -- the victim who was 4 years old, just about
6 to turn 5 at the time, they started talking with her and
7 said that -- she eventually told her parents that he had
8 touched her inappropriately -- had touched her about her
9 vagina and -- and her anal area.

10 While they were doing this, they heard a commotion in
11 the bedroom of -- of the little girl. And I believe Mr.
12 Adams went in and saw him trying -- saw him halfway in the
13 window. Didn't know what he was trying to do, but he was
14 halfway in the window.

15 They again ushered him out, then called the police.

16 Having disclosed about what -- what happened, the
17 sexual assault on the -- ~~the~~ #1, they eventually took
18 her to the Dorchester Children's Center, where she, after
19 forensic interview, disclosed that she had been touched
20 about her vagina and her anal area.

21 They also noticed -- after all this commotion going
22 on, a couple hours afterwards, they also realized that the
23 clothes that she was wearing, she would put on shorts --
24 was not what she'd gone to bed with and they found her
25 pajama bottoms in the bedroom, that they'd somehow gotten

1 changed in between going to bed and waking up when all this
2 occurred.

3 They did send some items to SLED. They -- they were
4 not able to find anything other than they had a presumptive
5 test for saliva, I think, on -- on one of her items of
6 clothing is all they could find out of that.

7 And that's what occurred as to that incident, Your
8 Honor.

9 THE COURT: All right.

10 MR. BELL: You want me to go on or ...

11 THE COURT: Let me stop and ask.

12 DIRECT EXAMINATION BY THE COURT:

13 Q Is that what happened on this ---

14 A Yes, ma'am.

15 Q --- occasion? Yes. All right.

16 MR. BELL: As to the other two indictments, there are
17 the same incident with two different victims, Your Honor,
18 which occurred between May 9th or 10th of 2009 and May 22,
19 2009. This one occurred . . . which again is
20 just outside the Town of Summerville, in Dorchester County.
21 And that's the residence of Ms. Angel Llewelyn and Mr.
22 Gathers, I believe. Is that correct? Seated on the
23 Court's left. The mother of the victims #2 [phonetic]
24 and #3 I believe, are the two victims there.

25 #3 as a 5-year-old male at the time, and #2

1 [phonetic] was a 2-year-old female at the time.

2 Mr. Russell had come to stay with those individuals
3 for various reasons during that period of time. After some
4 point, around May 22nd, Ms. Llewelyn happened to spot some
5 child pornography on her laptop. She stated that then the
6 realization that her daughter -- 2-year-old daughter had
7 been saying that her crotch area hurt her, that she'd gone
8 back to bed-wetting and that she -- which she had not been
9 doing for a while and had some pot -- potting training.

10 She kind of put two and two together, called the
11 police. They took both #3 the 5-year-old brother, and
12 #2 [phonetic] to the Dorchester Children's Center,
13 where the 2-year-old disclosed that he had touched her
14 vagina and the 5-year-old stated that -- male -- that he'd
15 pulled his pants down and fondled his penis. The 5-year-
16 old also stated that he saw him touch the 2-year-old
17 sister.

18 And those are the basis for those two charges.

19 THE COURT: I understand.

20 DIRECT EXAMINATION BY THE COURT:

21 Q Is that what happened?

22 A Yes, ma'am.

23 Q All right. Very well. Has anyone promised you
24 anything or held out any hope of a reward to get you to
25 plead guilty?

1 A No, ma'am.

2 Q Has anyone tried to force, threaten, pressure, or
3 intimidate you to make you plead guilty?

4 A No, ma'am.

5 Q Have you had enough time to make up your mind that
6 this is what you want to do?

7 A Yes, ma'am.

8 Q Are you pleading guilty freely and voluntarily?

9 A Yes, ma'am.

10 Q And are you pleading guilty because you are in fact
11 guilty?

12 A Yes, ma'am.

13 Q Are you satisfied with the services of your attorneys?

14 A Yes, ma'am.

15 Q Have you and your attorneys fully discussed the
16 charges against you?

17 A Yes, ma'am.

18 Q Have you spoken with your lawyers for as many times
19 and as often as you believe appropriate for them to
20 properly represent you?

21 A Yes, ma'am.

22 Q Have you spoken with them for as long a period of time
23 on each of those occasions as you believe appropriate for
24 them to properly represent you?

25 A Yes, ma'am.

1 Q Do you need any more time to talk to them?

2 A No, ma'am.

3 Q Have you understood your talks with them?

4 A Yes, ma'am.

5 Q Have your lawyers done everything for you that you
6 believe they should have done or could have done to
7 properly represent you?

8 A Yes, ma'am.

9 Q Have they done anything in their representation of you
10 that you believe they should not have done?

11 A No, ma'am.

12 Q All right. And have you had an opportunity to go over
13 the discovery, to go over the information that the State
14 has available to present at trial to prove your guilt?

15 A Yes, ma'am.

16 Q All right. Have your lawyers giving you copies of
17 that information?

18 A Yes, ma'am.

19 Q And have your lawyers investigated -- meeting spoken
20 with -- and done all the investigation that you have asked
21 them to do?

22 A Yes, ma'am.

23 Q Have they left anything undone that you believe they
24 should have done?

25 A No, ma'am.

1 Q All right. And have your lawyers done anything in
2 their representation of you that you think they should not
3 have done?

4 A No, ma'am.

5 Q Are you completely, completely satisfied with your
6 lawyers services?

7 A Yes, ma'am.

8 Q Have you understood my questions?

9 A Yes, ma'am.

10 Q All right. Now, has anyone associated with your case
11 -- your lawyers, the solicitor, any of the police officers
12 involved in your arrest or any of the employees at the
13 detention facility -- has anyone associated with your case
14 missed treated you in any way?

15 A No, ma'am.

16 Q All right. Now, do you have any questions of me about
17 what we had just been over?

18 A No, ma'am.

19 Q All right. Do you understand that you have a right to
20 appeal your guilty plea?

21 A Yes, ma'am.

22 Q Do you understand that if you wish to appeal, you or
23 an attorney on your behalf must appeal within 10 days?

24 A Yes, ma'am.

25 Q All right. And with respect to -- with respect to

1 each and every answer that you have given me here today,
2 have you been absolutely candid and truthful?

3 A Yes, ma'am.

4 Q And have your answers in your answers?

5 A Yes, ma'am.

6 Q Has anyone told you how to answer my questions?

7 A No, ma'am.

8 Q Your answers have been your own answers?

9 A Yes.

10 Q All right.

11 THE COURT: I find that there is a substantial factual
12 basis for each -- for this plea; I find that the decision
13 of Mr. Russell to plead guilty is freely, voluntarily,
14 knowingly, and intelligently made; that he's had advice of
15 counsel with whom he tells me he is satisfied; and I'll
16 accept the plea of Mr. Russell to 2009-GS-18-990, 1097, and
17 1275.

18 All right. Record.

19 MR. BELL: Only -- only prior record he has -- excuse
20 me -- is a public disorderly conduct from 2002, which he
21 was convicted. I don't see any sentence, Your Honor.

22 THE COURT: Okay.

23 MR. BELL: And I don't know if Ms. Jordan, Mr. Adams,
24 Ms. Llewelyn, or Mr. Gathers would like to address the
25 Court.

1 THE COURT: Happy to hear from them if they would wish
2 to do that.

3 (Several people come forward.)

4 MR. BELL: (To people) State your name, please, for
5 the record.

6 MS. LLEWELYN: Hyapatia Llewelyn.

7 THE COURT REPORTER: Could you spell it, please?

8 MS. LLEWELYN: H-y-a-p-a-t-i-a.

9 THE COURT: Yes, ma'am.

10 MS. LLEWELYN: I'm the mother of the two smaller
11 children, the 5 year old and the -- he was 4 at the time it
12 occurred. Just turned 5. And my 2 year old.

13 I'm just asking that there is no leniency whatsoever
14 taken on him, because these are three children that's
15 actually spoken up. You know, never mind the ones that it
16 may have occurred to that didn't speak up or had nobody to
17 go to.

18 My children have had to go through extensive
19 counseling, which is brought out a lot of other factors
20 that they're having to suffer from. This is not something
21 they can just let go of. I mean, when he gets out, he gets
22 to walk away. My kids are having to live and suffer this
23 each day of their life at a young age, and I don't feel
24 that's fair for them or any other children out on the
25 street he may do this to. So I feel that there's no

1 leniency taken on him ---

2 THE COURT: You understand that there is a negotiated
3 sentence.

4 MS. LLEWELYN: I do.

5 THE COURT: Okay. And ---

6 MS. LLEWELYN: My -- I was curious why it's under the
7 age of 16 when all three children are under the age of 5?

8 MR. BELL: That's the statute.

9 MS. LLEWELYN: That's the statute. I was not sure
10 about that, that's why I was asking.

11 THE COURT: Good.

12 MS. LLEWELYN: Because they were younger children, all

13 ---

14 THE COURT: Good for you for asking.

15 MS. LLEWELYN: --- three of them. And I just feel
16 that everything that could possibly be sentenced to him as
17 far as the discussion goes, that he's registered. I mean,
18 I just -- it's hard for me to stand up here and not want to
19 take actions under my own hands. You know, I'm trying to
20 let the system do that. But to see my children suffer and
21 go through what they've had to go through as far as
22 counseling goes. And what has come out in counseling is.
23 very hard for them. You know, and people think it's okay,
24 it's not.

25 THE COURT: Well, it's clearly not okay.

1 MS. LLEWELYN: Well, certain people seem to think that
2 it is, and that my children are the bad people for this
3 occurring to them.

4 THE COURT: Who in the world would say such a thing to
5 you?

6 MS. LLEWELYN: Just comments that were made previous
7 court hearing that -- when it got continued, that I was
8 faced with. And --

9 THE COURT: Who are you talking about?

10 MS. LLEWELYN: Just family members making comments
11 when they came by, making it out like we're the -- you
12 know, we're the bad people, when in fact we're the victims.

13 They ---

14 THE COURT: Completely. Yeah.

15 MS. LLEWELYN: The support should be on -- be into the
16 children, not the person who did it.

17 THE COURT: Without question.

18 MS. LLEWELYN: It's not justified by no means.

19 THE COURT: Absolutely.

20 MS. LLEWELYN: Whatever, it does not justify when it
21 comes to a child.

22 THE COURT: Without question.

23 MS. LLEWELYN: I just want to make sure --

24 THE COURT: Is -- is Mr. Russell somehow in your
25 family?

1 MS. LLEWELYN: His brother actually dated my mother.

2 THE COURT: His brother dated -- I gotta sort of put
3 this -- his brother dated your mother, which is why you
4 knew him at all.

5 MS. LLEWELYN: There was mutual family, you know,
6 knowing each other and ---

7 THE COURT: So when he needed -- when he needed
8 shelter, that was the connection.

9 MS. LLEWELYN: Yes, ma'am.

10 THE COURT: I understand completely.

11 Was your mother in the home at the time ---

12 MS. LLEWELYN: No, ma'am. We have our own home.

13 THE COURT: I understand. You just had the
14 availability for the shelter.

15 MS. LLEWELYN: Right.

16 THE COURT: And you did that out -- out of you grace.

17 MS. LLEWELYN: Yes, ma'am. Which will never happen
18 again.

19 THE COURT: Well, you know, and -- and the -- the --
20 the sadness is is that out of your kindness and out of
21 your grace, this is what occurs? I mean, isn't that just
22 such a tragedy?

23 MS. LLEWELYN: Yes, ma'am.

24 THE COURT: I mean, you know, it just -- you -- you
25 want people to be giving and loving and help people.

1 MS. LLEWELYN: Yes, ma'am.

2 THE COURT: You know, and then when this happens, it's
3 -- it -- as horrible as it is, it came -- the access came
4 from your intention to be kind.

5 MS. LLEWELYN: Yes, ma'am.

6 THE COURT: And that's gotta make -- that's just gotta
7 send you crazy signals. You know, you're told your whole
8 life to be compassionate and kind and giving and loving.
9 And -- and so you do that and this is what -- this happens
10 to you, that the number one people in the world that you
11 protect, this is what happens? I mean, it's just -- you --
12 just as you said, this will probably be the last time in
13 your whole life that you ever consider that -- you know --

14 MS. LLEWELYN: Yes, ma'am.

15 THE COURT: Yeah. That -- what do they say, no good
16 deed goes unpunished. That's be it for you, I'm sure.

17 MS. LLEWELYN: Yes, ma'am.

18 THE COURT: Yeah. Such a tragedy.

19 MS. LLEWELYN: Yes, ma'am.

20 THE COURT: Such a tragedy. Well, let me -- let me
21 just say to you -- well, let me just say to you, these
22 children, boy, are they lucky to have a tiger for a mom.

23 Seriously, because, you know, it's not easy. I mean,
24 it's not easy to -- to do all the things that you have
25 done, but it's so critically important, not only for our

1 community, but for those babies.

2 MS. LLEWELYN: Yes, ma'am.

3 THE COURT: I mean, to have a mom that's willing to do
4 what it takes. You know, and it's not pleasant. There's
5 not one moment of it that's pleasant. But thank God
6 they've got you, would sort of be my comment.

7 MS. LLEWELYN: Thank you.

8 THE COURT: You know, well, they -- they're gonna be
9 protected. They are protected.

10 MS. LLEWELYN: Yes, ma'am.

11 THE COURT: Yeah. Okay. Thank you.

12 Anyone else on behalf of the State? All right.

13 MR. BELL: I don't believe the other -- Ms. Jordan and
14 Mr. Adams want to address the Court.

15 THE COURT: I certainly understand. Very well. All
16 right.

17 (To Defense Counsel) Which one of you gentlemen is
18 going to speak on behalf of Mr. Russell?

19 MR. FULLER: I will, Your Honor.

20 THE COURT: Yes.

21 MR. FULLER: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. FULLER: This is a case we've actually spoken with
24 you a couple of times in chambers with Mr. Bell present as
25 well.

1 THE COURT: Yes.

2 MR. FULLER: As the Court has noted, Mr. Russell has
3 previously been diagnosed with bipolar disorder. He is
4 currently 36 years of age.

5 Prior to this he had -- the only thing on his record
6 was a disorderly conduct charge.

7 He has been incarcerated for approximately 21 months,
8 almost going on 22, Your Honor.

9 Additionally, Dr. Burke has met with both myself, Mr.
10 Uricchio, and Mr. Russell on a couple of occasions. And
11 during those conversations, Dr. Burke felt competent that
12 should he be released into the community, under Dr. Burke's
13 supervision, that he was someone that could be adequately
14 monitored and treated within the community.

15 Additionally, present here today are Bobby's parents,
16 Ms. Holcombe and his -- Mr. and Mrs. Holcombe. They're
17 here today to support their son, and they've supported him
18 throughout the entire time. He will not be released into
19 the community when it's the appropriate time to do so
20 without the -- the family support being present there.

21 Prior to this, he did work kind of as a freelance
22 mechanic, and he lived with his mother. Additionally, he
23 has lined up a job as a welder in a custom motorcycle shop
24 in Harleyville when he is able to start working.

25 And we would just ask that you accept this plea.

1 MR. BELL: Your Honor, I would also state that I know
2 one of the conditions -- a condition we put up there was no
3 contact with the victims. That wasn't the only one, we
4 know, Your Honor, but I think that was a point of emphasis.
5 I know from both victims that we want absolutely no contact
6 with the victims.

7 THE COURT: Certainly. Of course. Absolutely.

8 MR. BELL: Wanted to emphasize that.

9 THE COURT: Sure. Let me see you guys a minute.

10 (Bench conference between the Court and all counsel.)

11 THE COURT: What -- what I would say to the victims'
12 parents is that this is a negotiated sentence. Let me have
13 -- let me look at them. I don't want to talk to a vacuum.
14 Let me see mama and papa. Let me see --

15 (Parents come forward.)

16 THE COURT: Hello. Thank you for doing this for me,
17 because I need -- I need to make some eye contact with
18 these folks, because I need for you to know, first of all,
19 my heart's just breaking for you, first and foremost.

20 PARENT: Thank you.

21 THE COURT: Just absolutely broken for you, and I need
22 you guys to understand that with a negotiated sentence,
23 it's a thumbs up or thumbs down. In other words, it is an
24 acceptance or a rejection of the sentence. Do you
25 understand what I'm saying?

1 PARENT: Yes, ma'am.

2 THE COURT: And of course, I had Mr. Bell come up here
3 one more time with counsel, because I wanted to be sure
4 that I understood the parameters as I decide whether to
5 accept the negotiations or not.

6 And he shares with me that he's taken the -- the
7 sentence, the negotiated sentence takes in everything. It
8 takes in the age of these babies and their ability to
9 testify, as opposed to the treatment that -- that will be
10 imposed, as opposed to the other parts of the sentence that
11 will be imposed.

12 And I don't -- I believe, just based on my experience,
13 that he is going to have to deal with whether or not he is
14 a sexually violent predator. I think he's going to meet
15 the test prima facie, based on what I see here today. And
16 I think our State will do that evaluation, and hopefully
17 get him the appropriate treatment that he needs.

18 But I wanted you guys to understand that, okay?

19 PARENT: Yes, ma'am.

20 THE COURT: And you know, I'm always mindful on -- on
21 these sentences, I'm always mindful that there are many,
22 many factors that gotta be taken into account. And -- and
23 one of them is what is the likelihood of -- what is the
24 likelihood of conviction, not meaning it didn't happen at
25 all. Obviously we know it happened, he just told me it

1 did, right?

2 PARENT: Yes, ma'am.

3 THE COURT: But when you -- you know, when you get
4 little tiny ones before a jury and -- and -- and my
5 goodness, just as you balance all of these factors -- so I
6 just wanted you guys to know that -- that -- that for me it
7 is a thumbs up or thumbs down. I wanted you to understand
8 that.

9 I know that Mr. Bell has taken all these different
10 issues into account. Okay. And I certainly want you guys
11 to know that.

12 I can assure you that I'm gonna -- of course, I'm
13 gonna hear from counsel, but treatment is important.

14 PARENT: Yes, ma'am.

15 THE COURT: Treatment is -- and supervision is
16 critical. You know, and not only do you babies going have
17 to do that, but certainly he's going to have do his work
18 for a lifetime. Your babies will heal, because they've got
19 wonderful parents who care, who are tigers for them. You
20 are advocates for them. They are blessed. All right.

21 But I did want you guys to know, to understand that.

22 PARENT: Yes, ma'am.

23 THE COURT: Come on -- y'all come on, sit over here
24 (indicates.) Because I -- I -- I certainly want to -- if
25 you all have any questions about -- about what I'm doing, I

1 want you to be able to ask those. Because it's important
2 for -- that you guys -- you know, that -- I know you got
3 the tour of the solicitor's office and wonderful victim's
4 advocate.

5 (To defense counsel) Yes, sir. Anything else you all
6 want to tell me?

7 MR. URICCHIO: Nothing, Your Honor.

8 MR. FULLER: Nothing, Your Honor.

9 THE COURT: All right.

10 MR. BELL: Your Honor, Ms. Jordan's just told me she'd
11 like to say something to you.

12 THE COURT: Absolutely.

13 MS. JORDAN-MOUNT: I just wanted to let you know that,
14 like you said, we understand ---

15 THE COURT REPORTER: I need your name.

16 MS. JORDAN-MOUNT: --- we understand the plea ---

17 THE COURT REPORTER: I need your name for the record.

18 MR. BELL: I'm sorry.

19 MS. JORDAN-MOUNT: I'm sorry. My name is Melissa --
20 it's really Mount. My name's been changed since the
21 sentencing. But anyway, it's Jordan-Mount.

22 But that we understand the plea. And the reason we
23 took -- the reason we went with this, you know, the
24 solicitor and so forth, is because we are the victims. And
25 that we want everybody to know, like Ms. Llewelyn said,

1 that we're protecting our children doing this, so that they
2 don't have to come up here and testify. And that we just
3 want, you know, him and his family to know that we don't
4 have anything to hide just because we're protecting our
5 children.

6 THE COURT: Absolutely.

7 MS. JORDAN-MOUNT: And that's why we're doing this.

8 THE COURT: Absolutely.

9 MS. JORDAN-MOUNT: And I just, you know, want them to
10 know --

11 THE COURT: Absolutely.

12 MS. JORDAN-MOUNT: -- and you to know that that's why
13 we went forward with this.

14 THE COURT: And they're so tiny. They are entitled to
15 that protection.

16 MS. JORDAN-MOUNT: Right.

17 THE COURT: They are 100 percent entitled to that
18 protection.

19 You know, when you start thinking and balancing that
20 you have to be guided by what you believe in your heart is
21 in the best interest of those children.

22 MS. JORDAN-MOUNT: That's right.

23 THE COURT: You have to.

24 MS. JORDAN-MOUNT: And that's -- that's why I just
25 want everybody to know, you know.

1 THE COURT: Well, see, I'm so glad to hear you say
2 that because ---

3 MS. JORDAN-MOUNT: Because I could not put them
4 through this.

5 THE COURT: --- that's the hard piece of all of this.
6 That's the hard piece of all of this, to balance
7 appropriately --

8 MS. JORDAN-MOUNT: Right.

9 THE COURT: -- you know. And you hate to put -- you
10 hate to put at the foot of babies that prosecution.

11 MS. JORDAN-MOUNT: Right.

12 THE COURT: That's why -- oh, that's why you're so
13 right. And -- and -- and I think it will make sense to
14 you. But here's the goal, we have a goal here.

15 MS. JORDAN-MOUNT: Right.

16 THE COURT: And the goal is here: If this man can do
17 all that I'm about to tell him he's going to be responsible
18 for doing, I believe he will heal himself. I do.

19 MS. JORDAN-MOUNT: Right.

20 THE COURT: If he doesn't, he just gets to spend 15
21 years in prison.

22 MS. JORDAN-MOUNT: Right.

23 THE COURT: It's up -- but we lay that at his feet.

24 MS. JORDAN-MOUNT: Right.

25 THE COURT: We want him to be healed.

1 MS. JORDAN-MOUNT: Right.

2 THE COURT: The sadness is is that when you begin to
3 peel back the layers of abuse, you've -- what you so often
4 learn is he's been abused. It's almost like the horrible "
5 "Invasion of the Body Snatchers."

6 MS. JORDAN-MOUNT: Right.

7 THE COURT: We as a society have made a determination
8 that it must stop.

9 MS. JORDAN-MOUNT: Right.

10 THE COURT: And it will stop with him.

11 MS. JORDAN-MOUNT: Right.

12 THE COURT: And that he's gonna have choices to choose
13 treatment, and there are some pretty sophisticated things
14 that he can do.

15 Dr. Burke, who's in Dorchester County -- there's --
16 interestingly enough, what I've learned is that there's one
17 system nationwide that they think works. And it's the one
18 that he has incorporated his practice from a -- it was
19 created by a guy in Atlanta. And he incorporates it, and
20 the way that he does that is he doesn't play, basically.

21 MS. JORDAN-MOUNT: Yes, ma'am.

22 THE COURT: And he puts on a polygraph periodically,
23 he puts them on a plesmograph periodically, and he's got a
24 psychiatrist on staff that if somebody needs medication to
25 kind of lower libido in general --

1 MS. JORDAN-MOUNT: Right. Yes, ma'am.

2 THE COURT: -- so be it. In other words, he's pretty
3 -- he's pretty -- he doesn't play.

4 And it's impressive -- I want to tell you what's
5 impressive about his lawyers is it is impressive that they
6 -- to me, that instead of coddling him, that they took him
7 to the "mouth of the beast," if you will. They took him to
8 Burke.

9 And so I believe that this man has some appreciation,
10 genuinely, for his circumstance.

11 MS. JORDAN-MOUNT: Yes, ma'am.

12 THE COURT: But it -- at the end of the day, it's up
13 to him.

14 MS. JORDAN-MOUNT: Right.

15 THE COURT: Your babies -- you got the love in here
16 (indicates.)

17 MS. JORDAN-MOUNT: Right.

18 THE COURT: You've got it, and you didn't ask for it
19 and it isn't right. And you are -- you are as victimized
20 as those -- you know, it was Aristotle that said that the
21 worst crimes are the ones that are of violence and they are
22 visited upon the truly innocent. And you tell me who's
23 more innocent than a little child and the parents? No one.

24 So here's what you have: You have you guys; didn't
25 ask for it and yet you're here. But again, from where I

1 sit, thank God they've got you, because these babies, I
2 believe have got every opportunity to be healed, so that --

3 MS. JORDAN-MOUNT: Right.

4 THE COURT: -- that -- that we don't have to worry
5 "Invasion of the Body Snatchers" with these little angels.
6 Okay.

7 MS. JORDAN-MOUNT: Yes, ma'am.

8 THE COURT: This man, his lawyers have taken him to
9 the place and shown him: You can -- you can yourself be
10 healed, or you can go to prison. This man, I believe, at
11 least for this moment, has chosen the path of being
12 punished and being healed. If he stays with that, his life
13 will be sweeter.

14 MS. JORDAN-MOUNT: Right.

15 THE COURT: And the children of the world will be
16 safer.

17 MS. JORDAN-MOUNT: And that's all we want also.

18 THE COURT: If he doesn't, he gonna go -- he's gonna
19 go to prison for 15 years. And let me just tell you, in
20 the South Carolina Department of Corrections, being a
21 registered sex offender of children, he won't survive. I
22 mean, that's the cold, hard reality. This man goes to SCDC
23 with these charges for 15 years, he doesn't come out of
24 there. So he's up against it, too.

25 MS. JORDAN-MOUNT: Right.

1 THE COURT: But this is -- the positive part is that
2 he's choosing to be healed, right?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You're choosing to be better. And -- but
5 -- but the person that he's choosing is -- is the tough
6 guy. He isn't -- he isn't -- I've been to other places in
7 the State where the treatment is like -- come on. You need
8 to come on down ---

9 MS. JORDAN-MOUNT: That's all we want also. We don't
10 want any more ---

11 THE COURT: If your babies are healed and they go on
12 to the life they're entitled to and this man is healed and
13 his life becomes sweet again, then we will all dance in the
14 sunshine. Right?

15 MS. JORDAN-MOUNT: Yes, ma'am.

16 THE COURT: You will see that that's -- you know, that
17 that's what we will work towards. That's what this
18 sentence does.

19 And you're so correct. There are so many things that
20 go into it, is he -- ought he to spend 45 years in prison?
21 Sure. Of course.

22 MS. JORDAN-MOUNT: Yes, ma'am.

23 THE COURT: Absolutely. But, but this is better for
24 the babies.

25 MS. JORDAN-MOUNT: Yes, ma'am.

1 THE COURT: I -- if I didn't believe that, I wouldn't
2 -- I wouldn't be doing it.

3 MS. JORDAN-MOUNT: Right. Thank you.

4 THE COURT: And I'm still gonna be around, you know.
5 All right.

6 All right. Now, Mr. Russell, this will be the
7 sentence of the Court. I'm going to commit you to the
8 State Department of Corrections for a period of 15 years,
9 which I'm going to suspend on the service of 3 years and 5
10 years of probation.

11 As special conditions of your probation, be mindful of
12 the following: You will give back to the community 500
13 hours of you time in community service. There will be --
14 you will receive substance abuse counseling, random drug
15 and alcohol testing, and you must take your prescribed
16 medications for your bipolar condition and stay in
17 treatment for that.

18 With regards to whether or not you are allowed to
19 drink alcohol, you are not allowed to drink alcohol while
20 you're on probation. You are not allowed to use illegal
21 substances while you're on probation. I certainly -- it's
22 a little bit different, because I'm telling you to take the
23 medicine that you're prescribed for your manic depressive
24 disorder, your bipolar, but nothing else.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: And you must register as a sex offender.
2 And I do want you in treatment with Bill Burke. You know
3 that that's serious treatment, because you've been around
4 him and he doesn't play.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: That treatment will set you free, though.
7 You -- you know, I'm so hopeful because of the contact
8 you've already had with him, and because of his -- because
9 you're in -- you're embracing it. You know that's a part
10 of this.

11 And yet, you're embracing that. And I must tell you,
12 that that gives me real hope, because I think -- I don't
13 know what's in your background, but I -- I bet you there's
14 some sadness in there. There's some reason for this in
15 your background.

16 This will heal you going forward, and -- and return
17 you to a life that you also ought have.

18 Now, I do not want you in the presence of minor
19 children --

20 THE DEFENDANT: Uh-huh.

21 THE COURT: -- while you're on probation. That means
22 the mall, that means movie theater, that means -- Dr.
23 Burke's got a whole list as you know --

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: -- about all of that.

1 And you must -- let me say to you, as you progress in
2 your treatment, there is -- I know that Dr. Burke has
3 supervisors who go through training to supervise. That's
4 available for you through the folks with probation as you
5 progress, as it becomes appropriate in your treatment. And
6 then you may come back to the Court and talk about that,
7 talk about your treatment, let these people know how your
8 treatment is progressing.

9 And they know who in your world has had treatment or
10 has had their own counseling to supervise. And then maybe
11 you can return to your house of worship where there are
12 children and things like that. Do y'all understand what
13 I'm saying?

14 (Several people respond affirmatively.)

15 THE COURT: In other words, Dr. Burke actually has
16 training for supervisors. Right now he can't go -- he
17 can't go to his house of worship if there are gonna be
18 children there, you see?

19 But once he's progressed in his treatment, where
20 there's somebody that can received supervisory training,
21 which means you don't play, then that can be changed so --
22 so that he can go to his house of worship, so long as he's
23 supervised by somebody who's been to Burke, and understands
24 you can't play. See what I'm saying?

25 All right. Now, obviously, I do want you to complete

1 the treatment with Dr. Burke, which I don't mind telling
2 you, the fact that you have embraced this and you -- your
3 strength and being willing for this is why I'm accepting
4 this -- this -- this plea.

5 And you've got to comply with all the dictates of
6 Megan's Law. You know, they might change it on a daily
7 basis. But you must do that as well.

8 Got to register -- we've been through all of that. So
9 register as a sex offender.

10 With regards to 2009-GS-18-1275, same conditions. I'm
11 going to commit you to the State Department of Corrections
12 for 15 years, provided on the service of 3 years and
13 probation for 5 years, the same conditions will apply.

14 With regards to 2009-GS-18-1097, likewise I'm gonna
15 commit you to the Stat Department of Corrections for a
16 period of 15 years, provided that upon the service of 3
17 years and probation for 5 years, all the conditions will
18 apply.

19 Also, I think it is appropriate that you be placed on
20 the Central Registry of Child Abuse, but with the sexual --
21 Sex Offender Registry, I think they -- I think it goes
22 there in any event. But -- but that would be appropriate
23 under these circumstances.

24 These sentences will run concurrent, and you are -- by
25 statute, you receive credit for the time that you have

1 already served.

2 And again, I want you -- I want you to know that if --
3 that I've accepted this negotiated sentence really for two
4 reasons: Because the -- because of what I know is reality
5 for these little ones; because I believe that they're going
6 to be -- they're gonna be fine. They coming back to the
7 sunshine with these parents.

8 But also because of your commitment already to show to
9 the Court your -- your willingness to accept your
10 responsibility and do something about it. And you --
11 you've had wonderful, wonderful advice from your lawyers.
12 They haven't let you make the easy way out, but yet,
13 because of that, I think you -- I think you will heal. And
14 I am very hopeful.

15 If you do not, Mr. Russell, here's the bad news, I'm
16 here. We're not traveling much. We'll meet again, and I
17 will send you to prison for the remainder of the sentence
18 in about 35 seconds. So that's the down side.

19 So if you are tempted to be around a child, if you are
20 tempted to drink, if you are tempted not to show up for any
21 of your treatment, just know that, okay?

22 THE DEFENDANT: Okay.

23 THE COURT: Zero tolerance for any violations of
24 probation.

25 MR. BELL: Your Honor, what about no contact with --

1 THE COURT: No contact with these victims --

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: -- indirect or direct, unless -- with this
4 caveat: If at some time in these children's treatment that
5 it becomes necessary that your -- not his -- your therapist
6 says, "We believe that it is appropriate that he
7 apologize," either by letter or however your therapist --
8 and you agree that that is a good thing, in that event,
9 then he will have contact with those children, but only --
10 or with you -- but only for that. Do you know what I'm
11 saying?

12 (No audible response.)

13 THE COURT: Sometime -- I -- I don't know how -- it
14 used to be -- it used to be all the rage that the offender
15 apologize to the children and told the children, "You did
16 nothing wrong. It's all me. I'm bad. I'm wrong."

17 Your children, though, are so little and so tiny, so
18 young, I don't know that that's appropriate.

19 But that would be the only caveat. And -- and you own
20 that, not him. You understand?

21 (No audible response.)

22 THE COURT: And you would contact the probation folks.
23 But that would be the only reason why there would ever be
24 any contact, because of the treatment that the children are
25 receiving, that their therapist and you believe that that's

1 appropriate. Does that make sense? Do you have any
2 questions about that?

3 MS. JORDAN-MOUNT: No, ma'am.

4 THE COURT: Because he doesn't control that, you guys
5 do. Okay? Wonderful? Yes?

6 MS. JORDAN-MOUNT: Thank you, Judge.

7 THE COURT: Thank you. Good luck to y'all. Good luck
8 to all of you.

9 You know, I'm gonna write that down and then we'll be
10 done with this matter.

11 And let me make one other -- I've got down here (as
12 read): "No contact, directly or indirectly."

13 I don't know if we have family members. Obviously,
14 Mr. Russell, you have people who love you. I don't know
15 and I don't want to get into the circumstance that happened
16 when this young woman came to court, Ms. Llewelyn.

17 But be mindful, that your family members, out of love
18 and respect for you, must not contact these folks, because
19 that's gonna be an indirect contact of you. You're gonna
20 suffer. Okay.

21 THE DEFENDANT: Uh-huh.

22 THE COURT: If they choose to do something that's rude
23 and terrible, you with me, you're gonna be the person to
24 suffer for that. So there will be no indirect or direct
25 contact. And good luck to you.

1 THE DEFENDANT: Thank you.

2 THE COURT: All right.

3 MR. URICCHIO: Thank you, Your Honor.

4 MR. FULLER: Thank you, Your Honor.

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6 --- END OF TRANSCRIPT OF RECORD ---

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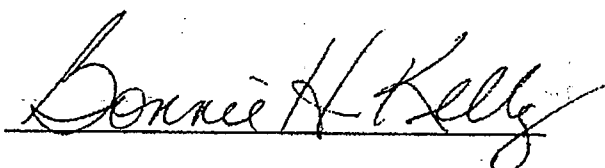
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 8th day of November, 2011.

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



Bonnie H. Kelly,
Court Reporter

Columbia, South Carolina

January 2, 2012

COUNTY OF
STATE 0050

Dorchester

VS.

Bobby Russell Jr

AKA:

Race: Sex: M Age: 35

DOB: SS#:

Address: 149 Dantzler Ln
Summerville, SC 29483

DL#: SID#:

In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16

INDICTMENT/CASE#: 2009GS18-0990

A/W#: M118482

Date of Offense: 5/9/2009

S.C. Code §: 16-15-140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury: BK (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: D.A. RUM 7667 Defendant x. Bobby Russell Jr Attorney for Defendant 76970 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years and/or payment 5
of \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/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: 11-8-2010 § 24-13-40 to be calculated and applied
☒ The Defendant is to be given credit for time served pursuant to S.C. Code
by the State Department of Corrections.
☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTSP
Total: \$ 500 plus 20% fee: \$ 100 days/hours Public Service Employment
Payment Terms: Obtain GED
☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing

Recipient: \$

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47-12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Cheryl HanamCourt Reporter: Bonnie LillySCCA/217 (06/2009) X NO CONTACT with victims or their family* May Not be in the presence of minor children* Must successfully complete treatment (court order)with Bill Burke PhD * Must comply with 18 USC lawPRESIDING JUDGE GroneJudge Code: 11-8-2010Sentence Date: 11-8-2010* Must take prescribed medicine or be placed in jail
* Must register with sex offender
* Must pay \$500 to Clerk during probation.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2009GS18-0990

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINOR FIRST DEGREE

That in Dorchester County, South Carolina, on or about May 9, 2009, the
Defendant, Bobby Russell Jr, did willfully and unlawfully assault the
victim, #2 with the intent to commit a sexual
battery described as digitally penetrated the female victim age 2, and the said
victim was less than 11 years old. This offense being in violation of Section 16-3-
655, of the 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.

B. H. Bell

Harrison Bell, Solicitor

WITNESSES

T Morgan

Dorchester County Sheriff

090-4681

ARREST WARRANT NUMBER

M118482

Arrested: May 30, 2009

ACTION OF GRAND JURY

TRUE BILL

DATE

7/30/09

Foreperson of Grand Jury

Date: July 30, 2009

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009CS16-0990

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

August 3, 2009 TERM

THE STATE

vs.

Bobby Russell Jr

Indictment for

CRIMINAL SEXUAL CONDUCT WITH
MINOR FIRST DEGREE

SC Code: 16-3-655(1)

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDED
2009 JUL 31 AM 10:10
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

BR

M-118482

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

THE STATE
against

Bobby Russell, Jr

Address: 149 Dantzler Ln

Summerville, SC 29483-

Phone: _____ SSN: _____
Sex: M Race: _____ Height: 5 10 Weight: 160

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0180000

Prosecuting Agency: Dorchester County Sheriff

Prosecuting Officer: T Morgan - 7963

Offense: Sex / Criminal sexual conduct with minor or
attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Bobby Russell, Jr.
May 30th, 2009Sgt. L. Walsh
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
101 Ridge Street
St. George, SC 29477

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/☐ Municipality of

Dorchester

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant T Morgan

being duly sworn deposes and says that defendant Bobby Russell, Jr

did within this county and state on or about 05/09/2009 - 5/20/09

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

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:Bobby Russell Jr. digitally penetrated the vagina of 2 year of age female at 117 Center St. The victim disclosed to her mother by
physically demonstrating that "Bobby" had put his fingers into her vagina, after her mother found child pornography on 05/22/09
on a computer that Russell had been using. While at MUSC on 05/23/09, the victim indicated that he did it when it was dark outside
and in her bedroom. The victim's mother provided a statement indicating that the victim's behavior had changed drastically a few
days after Russell started staying at their home around 05/09/09. She began to wet her bed after having been fully potty trained for a
yr, and refused to go to the bathroom when he was present. She refused to take baths or showers, which she had previously enjoyed.
She also started holding her vaginal area stating that "it hurts". The victim's mother also found a baby photo album of the victim out
in the bedroom that the defendant was staying in. Russell has a history of CSC with a Minor 1st degree.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

Affiant's Address 100 Sears Street

Saint George, SC 29477-

Affiant's Telephone

ARREST WARRANT

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

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

on, or about 5/9/2009

defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of:

☒ County/☐ Municipality of

Dorchester

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, 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
Sworn to and subscribed before me

on 05/23/2009

Signature of Issuing Judge

Janice Y. Simmons

Judge Code: 7094

Judge's Address Troy Knight Judicial Complex

Summerville, SC 29483-4707

Judge's Telephone (843)832-0370

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

15 years sup. - yes p. 25 years p. 20 years - no more w/ 15 years

50 years

000054

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
STATE VS.
Bobby Russell Jr
AKA:
Race: Sex: M Age: 35
DOB: SS#:
Address: 149 Dantzer Ln
Summerville, SC 29483
DL#: SID#:

INDICTMENT/CASE#: 2009GS18-1097
A/W#: M118615
Date of Offense: 5/9/2009
S.C. Code § 16-15-140
CDR Code #: 2468

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
APPEARED: B. Harrison RMY 7867 Defendant x Bobby Russell Attorney for Defendant 76970 SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 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 of 3 days/months/years and/or payment 5
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ 500 plus 20% fee: \$ days/hours Public Service Employment
Payment Terms: Obtain GED
☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.
Recipient: May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:
Appointed PD or appointed other counsel, §47.12
requires \$500. be paid to Clerk during probation.

Table with 2 columns: Description and Amount. Rows include assessments, surcharges, and fees totaling \$122.90.

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Bannu Kelly
SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]
Judge Code: 211-8-2010
Sentence Date: 11-8-2010

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

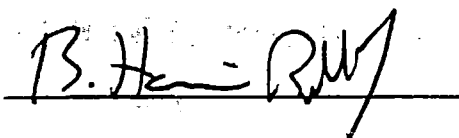
INDICTMENT
2009GS18-1097

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

**LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD
UNDER 16**

That in Dorchester County, South Carolina, on or between May 9, 2009 and May
20, 2009, the Defendant, Bobby Russell Jr, being over the age of 14 years old,
did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon
the body or its parts of #3 a child under the age of sixteen (16) years
with the intent of arousing, appealing to, or gratifying the lust or passions or
sexual desires of himself or the child. This offense being in violation of Section
16-15-140, of the 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.


Harrison Bell, Solicitor

WITNESSES

T Morgan

Dorchester County Sheriff

ARREST WARRANT NUMBER
M118615

Arrested: June 8, 2009

ACTION OF GRAND JURY

TRUE BILL

DATE

7/30/09

Foreperson of Grand Jury
Date: July 30, 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009GS18-1097

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

August 3, 2009 TERM

THE STATE
vs.

Bobby Russell Jr

Indictment for

LEWD ACT, COMMITTING OR
ATTEMPTING LEWD ACT UPON CHILD
UNDER 16

SC Code: 16-15-140

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

Defendant

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

Defendant

Witness:

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

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2009 JUL 31 AM 10:10

FILED-RECORDED

950000

ARREST WARRANT

M-118615

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

THE STATE
against

Bobby Russell, Jr

Address: 149 Dantzler Ln

Summerville, SC 29483-

Phone: SSN:
Sex: M Race: Height: 5 10 Weight: 160

DL State: SC DL #:

DOB: Agency ORI #: SC0180000

Prosecuting Agency: Dorchester County Sheriff

Prosecuting Officer: T Morgan - 7963

Offense: Sex / Lewd Act, committing or attempting lewd act
upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant BOBBY RUSSELL JR.on 06/08/2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
101 Ridge Street
St. George, SC 29477

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

Personally appeared before me the affiant T Morganbeing duly sworn deposes and says that defendant Bobby Russell, Jrdid within this county and state on or about 05/09/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Dorchester)

in the following particulars:

DESCRIPTION OF OFFENSE

Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

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:

Between the dates of 05/09/09 and 05/20/09 Bobby Russell Jr. committed a lewd act on a 5 year old male at 117 Center Street, Summerville. In that he pulled the victims pants down and started to fondle the victim's penis with his hand. The victim's 2 year old sister had been sexually assaulted by the suspect, so the victim was scheduled for an interview at the Dorchester Children's Center. During the forensic interview he disclosed that the suspect had pulled down his pants and "played" with his penis using his hand. The defendant has a history of Criminal Sexual Conduct with a Minor 1st degree in November, 2008.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

Affiant's Address 100 Sears StreetSaint George, SC 29477-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 5/9/2009defendant Bobby Russell, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Dorchester

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, 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

Sworn to and subscribed before me

on 06/01/2009

Signature of Issuing Judge (L.S.)

Frederick J. Newton

Judge Code: 7173Judge's Address Troy Knight Judicial ComplexSummerville, SC 29483-4707Judge's Telephone (843)832-0370Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

FILED RECORD

2009 JUN 22 AM 10:50

CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

10 Sup. 2403 Sup. prob. N. Carolina / J. V. M.

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

000058
Dorchester
STATE VS.
Bobby Russell Jr
AKA:
Race: Sex: M Age: 35
DOB: SS#: 1263
Address: 149 Dantzler Ln
Summerville, SC 29483
DL#: SID#:

INDICTMENT/CASE#: 2009GS18-1275
A/W#: 2009DOR10
Date of Offense: 11/2/2008
S.C. Code §: 16-15-140
CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act, Committing or Attempting Lewd Act Upon Child Under 16

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

A TEST: Bell, Harrison SC Bar# 1263 x Bobby Russell Attorney for Defendant SC Bar# 76970

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 3, provided that upon the service of probation for 5
of \$; plus costs and assessments as applicable*; the balance is suspended with

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: 11-8-2010
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ 500 plus 20% fee: \$ PTUP 500 days/hours Public Service Employment
Payment Terms: Obtain GED
☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.
Recipient: 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: SET 2009 GS-18-992
☐ Appointed PD or appointed other counsel, §47:12 requires \$500 be paid to Clerk during probation.

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 2.90
TOTAL	\$ 135.90

Clerk of Court/ Deputy Clerk Cheryl Graham
Court Reporter: Bonnie Kelly
SCCA/217 (06/2009)

PRESIDING JUDGE Judge Code: 211-11-12
Sentence Date: 11-8-2010

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2009GS18-1275

000059

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of
Dorchester County present upon their oath:

**LEWD ACT, COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD
UNDER 16**

In Dorchester County, on or about November 2, 2008, the Defendant,
Bobby Russell Jr, being over the age of 14 years old, did willfully and lewdly
commit or attempt to commit a lewd or lascivious act upon the body or its parts of
#1 a child under the age of sixteen (16) years with the intent of
arousing, appealing to, or gratifying the lust or passions or sexual desires of
himself or the child. This offense being in violation of Section 16-15-140 of the
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.

B. A. - RUM
Harrison Bell, Solicitor

WITNESSES

DOCKET NO. 2009GS18-1275

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

The State of South Carolina

County of DORCHESTER

Defendant

COURT OF GENERAL SESSIONS

August 3, 2009 TERM

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

ARREST WARRANT NUMBER
2009DOR10

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

DATE 7/30/09

Foreperson of Grand Jury

Date: July 30, 2009

VERDICT

THE STATE
vs.

Bobby Russell Jr

Defendant

Witness:

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

Indictment for

LEWD ACT, COMMITTING OR
ATTEMPTING LEWD ACT UPON CHILD
UNDER 16

SC Code: 16-15-140

Foreperson of Petit Jury

Date:

FILED - RECORDED
2009 JUL 31 AM 10:10
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

0900000

1 STATE OF SOUTH CAROLINA
2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2006-CP-38-0859

3
4 BOBBY RUSSELL, JR.,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Respondent..

8
9 Post Conviction Relief Hearing

10 Heard on Tuesday, May 21, 2013

11 Orangeburg, South Carolina

12
13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON

15
16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
Tommy A. Thomas, Esq.

18
19 Counsel on Behalf of the Respondent, State of SC:
Megan A. Harrigan, Esq.

20
21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232

25

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Applicant's case:

BOBBY RUSSELL

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MAR ADM

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1	Forensic interview report, 5 pgs	47
---	----------------------------------	----

1 ON TUESDAY, MAY 21, 2013 AT 9:57 A.M.:

2 MS. HARRIGAN: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: Your Honor, the next matter is Bobby
5 Russell, Jr., versus the State of South Carolina. Docket
6 Number 2011-CP-18-2240.

7 The Applicant is presently housed within the South
8 Carolina Department of Corrections in the sexually violent
9 predator program. Applicant was indicted during the
10 August 2009 term of the Dorchester County Grand Jury for
11 two counts of committing or attempting to commit a lewd
12 act upon a child and criminal sexual conduct with a minor
13 in the first degree. Applicant was represented by Paul
14 Uricchio and Chad Fuller.

15 On November 8th, 2010, Applicant appeared before
16 the Honorable Diane Goodstein and pled guilty to three
17 counts of committing or attempting to commit a lewd act
18 upon a child. Pursuant to plea negotiations, Judge
19 Goodstein sentenced Applicant to 15 years imprisonment
20 suspended upon the service of three years imprisonment
21 followed by five years probation.

22 No direct appeal was taken. Applicant filed a
23 timely application for post conviction relief on November
24 7, 2011, alleging that counsel was ineffective and his
25 guilty plea was involuntary. He's represented in this

1 action by Tommy Thomas. The State made its return on
2 January 18th, 2012.

3 And at this time I'll turn it over to Mr. Thomas
4 and ask that he set forth his specific allegations for the
5 record.

6 THE COURT: Good morning, Mr. Thomas.

7 MR. THOMAS: Your Honor, if it please the Court.

8 THE COURT: Yes, sir.

9 MR. THOMAS: We do intend to go forward on the
10 issues of ineffective assistance of counsel as well as
11 involuntary guilty plea.

12 THE COURT: Okay.

13 MR. THOMAS: Your Honor, the issues are going to be
14 basically that whether or not my client was -- he wanted
15 to go to trial, whether he was properly advised with
16 regards to the plea and his request to go to trial.

17 The second portion of that is that he is now in the
18 sexually violent predator program. He's going to testify
19 to what advice was given to him by counsel and also that
20 he had been evaluated by Dr. Bill Burke in Summerville.

21 And that it was his understanding, Your Honor, that he
22 was not going to be eligible for the sexually violent
23 predator program.

24 And we would also indicate to the Court or bring to
25 the Court's attention there is some statements in the

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1 transcript itself which would tend to support the fact
2 that he would be treated by Dr. Burke on an out-patient
3 basis, Your Honor.

4 THE COURT: All right, sir. Mr. Thomas, are you
5 ready to call your first witness?

6 MR. THOMAS: I am, Your Honor. If it please the
7 Court. We call Mr. Russell to the stand.

8 THE COURT: Mr. Russell, if you would raise your
9 right hand and...

10 BOBBY RUSSELL, having been duly sworn, was examined
11 and testified as follows:

12 THE COURT: If you'd have a seat, please, sir, and
13 get comfortable.

14 MR. THOMAS: If it please the Court.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION:

17 BY MR. THOMAS:

18 Q. Mr. Russell, you're currently in the sexually
19 violent predator program?

20 A. Yes.

21 Q. And prior to that you were in the South Carolina
22 Department of Corrections?

23 A. Yes.

24 Q. And how long were you in the Department of
25 Corrections?

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- 1 A. A little over a hundred days.
- 2 Q. All right, sir. And this was pursuant to a plea?
- 3 A. Yes.
- 4 Q. And what did you plead to?
- 5 A. I pled to, I think it was attempted lewd act on a
- 6 minor three -- I think it was three counts.
- 7 Q. Three counts?
- 8 A. Yes.
- 9 Q. All right, sir. And what kind of sentence did you
- 10 receive for that?
- 11 A. It was 15 suspended to three with five years
- 12 probation.
- 13 Q. And had you been in the county jail prior to --
- 14 A. Yes, sir.
- 15 Q. And how long had you been in the county jail?
- 16 A. Over two years. Or right at two years, I believe
- 17 it was.
- 18 Q. All right, sir. So and that would explain why you
- 19 did such a, and I say small time --
- 20 A. Yes.
- 21 Q. -- a small time in the Department of Corrections?
- 22 A. Yes.
- 23 Q. Now you're asking for post conviction relief and
- 24 you understand that you're asking for a new trial?
- 25 A. Yes, sir.

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1 Q. Do you understand that you have exposure should the
2 Court decide to grant you your post conviction that you
3 would go back in the position that you were prior?

4 A. Yes, sir.

5 Q. And that you could potentially be tried on these
6 charges and get more time?

7 A. Yes, sir.

8 Q. You're willing to accept that risk?

9 A. Yes, sir, I am.

10 Q. Now, as far as an active sentence with the
11 Department of Corrections you have no further active
12 sentence with them?

13 A. No, no, sir.

14 Q. But you do have a 15 suspended to the five years
15 probation?

16 A. Yes, sir. I got some probation.

17 Q. When will that probation start?

18 A. It's, I guess -- I'm assuming what I've been told
19 it's running now.

20 Q. It's running now?

21 A. Yes, sir.

22 Q. Okay. So at some point in time you're going to max
23 that out --

24 A. Yes.

25 Q. -- that probationary period?

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1 A. It started March 1st.

2 Q. And then you would have no further obligations to

3 the State of South Carolina?

4 A. No.

5 Q. All right. When are you going to be released from

6 SVP?

7 A. There's no telling. No one knows. I'm; I --

8 Q. What is your category or classification at SVP?

9 What is your status there now?

10 A. They've got me on red level because of this. I

11 couldn't take the program so I've been basically punished

12 for a little over 19 months.

13 Q. And why is that?

14 A. Because if I would, if I signed their paperwork it

15 keeps -- I can't take anything to court because it's

16 admitting guilt. It's doing everything. And it would

17 have ruined my chances of this.

18 Q. So they're asking you to admit that you're guilty

19 of these crimes?

20 A. Yes, specific in the contract to where you have to

21 admit guilt to this crime and crimes that happened. They

22 call it off-the-record victims. They say everybody has

23 off-the-record victims that's not accounted for. And I'm

24 not going to sign anything like that so basically I'll

25 never get out.

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1 Q. So if you sign that paper and they're asking you to
2 admit to these crimes or other crimes, would you be
3 truthful in doing that?

4 A. No, sir.

5 Q. They're asking you to lie?

6 A. They're asking me to lie, yeah. They make
7 everybody do it when they get there.

8 Q. All right. Now, you were arrested roughly when?

9 A. November 2nd, 2008. I know.

10 Q. All right. And you had an attorney?

11 A. At the time I didn't have. They give a public
12 defender.

13 Q. And then did you retain counsel?

14 A. Yes.

15 Q. And who did you retain?

16 A. Mr. -- Uricchio Law Firm.

17 Q. Who was representing you from that firm?

18 A. The only person I dealt with at first was
19 Mr. Fuller and then Mr. Uricchio came in later and, I
20 guess, kind of took over.

21 Q. Did you have an opportunity to sit down and discuss
22 with him how they were going to -- what their
23 representation was going to be, how they were going to
24 defend you?

25 A. At first I was -- yes, sir. We talked about going

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1 to trial because the evidence didn't, you know -- they
2 had, I guess, nothing. And we, I was under the
3 impression, I was told we would win, we were going to go
4 to trial.

5 Q. And you were contending all along that you were not
6 guilty of these crimes; is that correct?

7 A. Yes, sir. I did everything that they asked.

8 Q. All right. And did you see the discovery? Do you
9 understand what I'm talking about as far as discovery?

10 A. I seen some of it. A lot of it I couldn't
11 understand. I mean, I'm not an attorney and some of the
12 terms I didn't, I didn't understand.

13 Q. But you did sit down --

14 A. I did see some of that.

15 Q. -- and see some of that with them?

16 A. Yes, sir.

17 Q. Now, you also took a polygraph?

18 A. Yes, sir.

19 Q. What were the results of the polygraph?

20 A. I passed the polygraph.

21 Q. And was a private investigator hired?

22 A. Yes.

23 Q. And who hired the private investigator?

24 A. I believe my mother and the Uricchio Law Firm, I
25 guess. I'm not --

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1 Q. And also, I guess, Dr. Bill Burke was retained?

2 A. Yes.

3 Q. Or he was consulted?

4 A. Yes, sir.

5 Q. Okay. And did Dr. Burke do an evaluation for you?

6 A. Yes, sir.

7 Q. And were you going to be treated by Dr. Burke?

8 A. That was part of my plea, I had to go to Dr. Burke.

9 Q. All right. Now, how long did it take this case
10 roughly to come forward to the plea? Was it a long period
11 of time between when you were arrested?

12 A. Yes, sir, it was. Well, I didn't -- I think it was
13 two years.

14 Q. Yeah.

15 A. I think I was arrested 2008 November 2nd. I
16 believe I went to trial -- I mean, to court November 10th,
17 2010. So it was a long time.

18 Q. All right. During that period of time, what all
19 was done to -- your case was always being prepared for
20 trial?

21 A. I was assuming so. Yes, sir.

22 Q. And, were you able through your counsel to
23 determine what evidence that they had against you?

24 A. Do what now?

25 Q. What evidence did they have against you of

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1 potential guilt in this case? Did you talk about that
2 with your attorneys?

3 A. Yeah, I talked about that.

4 Q. Okay. Was there any DNA?

5 A. No, sir.

6 Q. Okay. Was there -- were there any fingerprints?

7 A. No, sir.

8 Q. Did -- are you aware there was a forensic interview
9 with one of the victims?

10 A. Yes, sir.

11 Q. And what were the results of that interview?

12 A. From what I could gather out of it, it was that she
13 was told what to say by her parents.

14 Q. Okay. And as far as them being able to make a
15 determination, it was difficult for them to determine --

16 A. Yes.

17 Q. -- whether this actually happened or not?

18 A. Yes, sir.

19 Q. Now, did you give a statement?

20 A. No, sir. I mean, well, I talk about, you know, me
21 and him argued about the dog but it was no statement
22 about.

23 Q. Okay. And you said about the dog. Were -- the
24 dogs played a part in this?

25 A. Yes, sir. He's got a bunch of pit bulls that he

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1 lets run wild and they got after me in the yard and I've
2 got animals and they got after them. And I confronted him
3 about the dogs and the rest is just history.

4 Q. But they were saying that you had broken into the
5 house?

6 A. Yes, sir.

7 Q. And they had pit bulls?

8 A. Yes, sir. Three of them in the house.

9 Q. And there was no evidence that the pit bulls were
10 barking?

11 A. No.

12 Q. And this was important to you?

13 A. Sir?

14 Q. This was important to you as far as you trying to
15 show that you were not guilty of this crime?

16 A. Yes, sir. I mean, I actually went in the house and
17 sat and talked with him about his dogs.

18 Q. How about, there were two separate incidents; is
19 that correct?

20 A. Yes, sir.

21 Q. And in the separate incident I think it was alleged
22 that the way that this was discovered was that there was
23 some sort of pornography on the computer?

24 A. Yes, sir.

25 Q. And is that where the private investigator comes

1 in?

2 A. Yes, sir.

3 Q. What was the private investigator able to
4 determine?

5 A. That the stuff had been there years before I met
6 them.

7 Q. And I think that the allegations were that they
8 discovered the pornography and then it went from there
9 that they then discovered or --

10 A. At first I was arrested because they said I had
11 done the child -- that the pornography on the computer.
12 And that was what I -- I was under the impression I was
13 originally arrested for.

14 Q. Right.

15 A. And when it came down to it, when they finally got
16 around to analyzing the computer it turned out that that
17 stuff was on there a long time before I'd ever met the
18 people. So that got dropped and then I got hit with --

19 Q. So the evidence in the second case that got the
20 ball rolling basically turned out to be not true?

21 A. Exactly.

22 Q. Okay. And all of this put you in a situation to
23 where you wanted to try this case?

24 A. Yes, sir.

25 Q. But you were offered a plea?

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1 A. I was, yes, sir.

2 Q. And when were you offered this plea?

3 A. I, I think when I first got the plea is when I went
4 and seen Dr. Burke, I think, the second or third time and
5 he kind of -- they kind of -- he put me in a corner and
6 scared me into taking a plea.

7 Q. Because a plea was the deal?

8 A. If I had been guilty it was an excellent deal.

9 Q. Because basically it was, what was presented to you
10 is a turn around?

11 A. I'd be home by the weekend. I was told I would be
12 home by the weekend, don't worry about it, let's get you
13 out of jail, you'll be home by the weekend.

14 Q. You had been how long in the county jail?

15 A. Right at two years.

16 Q. Okay. And this was presented to you by
17 Mr. Uricchio?

18 A. Mr. Uricchio, yes.

19 Q. That you would go to the Department of Corrections?

20 A. He said I would go up there, get a number and be
21 home by that weekend.

22 Q. So you were going to get it?

23 A. I was going to be -- yeah, we were already making
24 arrangements for my family to come get me that weekend.

25 Q. Okay. Now, as far as paying for counsel you paid

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1 Mr. Uricchio?

2 A. Yes. My mother and father, they paid everything.

3 Q. Did you pay -- was it broken down into, like, a
4 plea or a trial, different fees?

5 A. I was -- I think it was paid at first to retain him
6 to handle the case. And it was extra if I went to trial
7 and I had, you know, I wanted to go to trial so we paid
8 the money for trial because I was, you know, we were going
9 to go.

10 Q. So you paid for a trial?

11 A. Yes, sir.

12 Q. Now the Court asked you on page -- Your Honor, may
13 I approach?

14 THE COURT: You may.

15 MR. THOMAS: I'm sorry. This is the only
16 transcript I have. Your Honor, this is a transcript of
17 the plea. It's going to be pages 14 and 15. And it's
18 lines four through five on 14, and seven through nine on
19 15. I just want you just to look at that.

20 THE APPLICANT: Yes, sir.

21 MS. HARRIGAN: What pages (verbatim) on 15?

22 MR. THOMAS: Seven through nine.

23 Q. Now the Court is asking you that you understand
24 that you're waiving your right to trial.

25 A. Yes, sir.

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. And that's what Judge Goodstein is asking you?

4 A. Yes, sir.

5 Q. And she's saying that if you elect to go forward on
6 this plea that you're going to give up this right for
7 trial?

8 A. Yes, sir.

9 Q. And you told her that you were waiving these
10 rights?

11 A. Yes, sir.

12 Q. And why were you doing that?

13 A. Because I was under -- I was advised by my lawyers
14 to do that.

15 Q. Okay. Because it was a good deal?

16 A. Yes, sir.

17 Q. And because you were going to be turning around and
18 coming home?

19 A. Yes, sir. The Judge actually told me I'd be home
20 by the weekend.

21 Q. Now --

22 A. Actually she said I was maxed it.

23 Q. Maxed out?

24 A. Yeah, that's what she said.

25 Q. Now, this plea was offered to you in essence

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1 because they felt like that they didn't have a strong
2 case?

3 A. I really don't understand why it was done that way.
4 Up until the last second, I was under the impression we
5 were going to trial. And then Mr. Uricchio came to the
6 county jail and told me we weren't going to trial, he
7 wasn't going to take it to trial, I should take the plea.
8 Don't worry about it, it's just like me grabbing a
9 15-year-old girl in the butt. It'd be no big deal. I'd
10 be home by the weekend, let's get you out of jail.

11 Q. Well, how did you feel about all of that?

12 A. I was mad. I was aggravated. I was upset. But, I
13 had never been in trouble before and I got --

14 Q. At the time they asked you this question: What was
15 your prior record?

16 A. I had a disorderly conduct back in 2000.

17 Q. And what happened to you for that disorderly?

18 A. I paid a fine.

19 Q. In magistrate's court?

20 A. Yes.

21 Q. Now, what was your understanding of the plea? And
22 I'll be honest, when I first got involved in this case it
23 seemed complicated because you got all of these people all
24 over the place, but basically we're talking about two
25 separate incidents, right?

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1 A. Yes, sir.

2 Q. So the first incident involves one minor?

3 A. Yep.

4 Q. The second incident allegedly involved two minors?

5 A. Yes. And we completely disproved the second case
6 and even had the family disproving the second case. And
7 that's when, I guess, Mr. Uricchio told the family that
8 they couldn't help me because it would upset his deal.

9 Q. And you're talking about Mr. Lewellen?

10 A. Mr. Lewellen.

11 Q. And as a matter of fact, his daughter in the
12 transcript makes reference to the family involved?

13 A. Uh-huh.

14 Q. Okay. Now, when you were presented this plea for
15 you to think about, it was your understanding that you
16 were pleading to the first set --

17 A. And that --

18 Q. -- first charge or the second?

19 A. Just the first. That was it.

20 Q. Because the second involved Mr. Lewellen's family?

21 A. Uh-huh. And I was told that that case was gone,
22 don't worry about it. And then at the last minute at the
23 plea I was told that she threatened to go to the press and
24 I was having to plead to all three or the deal was off the
25 table. And I assume ...

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1 Q. So the first one was the place where they said you
2 broke into the home with the pit bulls?

3 A. Exactly.

4 Q. And the second one was Mr. Lewellen and there was
5 some ability to discredit that story?

6 A. Yes, yes, sir.

7 Q. Is that the one that also supposedly had the
8 pornography on the computer?

9 A. That's the one that had the pornography. Yes, sir.

10 Q. So you ended up pleading to both sets?

11 A. Yes.

12 Q. And three victims?

13 A. Yep. Yes, sir.

14 Q. Okay. And you didn't know that until you got to
15 court?

16 A. I didn't know -- I think -- I think -- I can't
17 remember exactly. I think they came the same, the day
18 before we went to court or a few days before and that's
19 when I was told that it was going to be three instead of
20 one and that was it.

21 Q. Okay. Now, you told me that you wanted to do an
22 Alford plea?

23 A. That's what I was told it was going to be at
24 first. There's no admission of guilt. That's what it was
25 going to be.

1 Q. Did you understand North Carolina versus Alford?

2 A. I got -- my lawyers explained it to me as best they
3 could, was that they didn't have anything against me but
4 the circumstantial evidence would, could possibly convict
5 me. So it was best to take a plea and be done with it,
6 you know, saying that, not admitting guilt. That's what I
7 was told.

8 Q. Right. Did you offer an Alford plea? Did you
9 actually --

10 A. I think that was taken off the table at the last
11 minute too.

12 Q. Okay. Did you discuss this plea deal with your
13 family?

14 A. I didn't have a chance. They didn't even get
15 notified to come to court until I made the lawyer notify
16 them. I mean, it was -- me and my mother had discussed
17 going to trial, and we were adamant about going to trial.
18 And then the last minute, you know, they hit me with the
19 plea. I think I might have wrote her or something but,
20 it -- they were upset. And I, you know, rightly so.

21 Q. Why were they upset?

22 A. Because, I mean, the incident didn't happen and me
23 having to admit something that didn't happen. I mean, it
24 was hard for me to swallow but at the time I had done been
25 in jail so long and that's a place I don't ever want to go

1 back again. I just wanted to go home.

2 Q. Which is the same situation that you're in now?

3 A. Exactly.

4 Q. Because if they took the Alford plea off the table
5 you had to admit guilt --

6 A. Yes.

7 Q. -- in your plea?

8 A. Yes, sir.

9 Q. You admitted that you did these things?

10 A. Yes, sir. I had to admit. That was with Dr. Burke
11 when I went to see him. That's when he tried to get me to
12 come to him and told me if I didn't admit it that he would
13 testify against me and the Judge would believe him over
14 me, so.

15 Q. And he was telling you that you had to admit as
16 part of this treatment --

17 A. Yeah. I had to admit in court so I could come to
18 him, and if I didn't admit guilt he would testify against
19 me.

20 Q. Okay. Were you going to participate in Dr. Burke's
21 program?

22 A. Well I discussed that with my lawyers too and they
23 said, don't worry about that yet, we'll just get you out
24 of jail.

25 Q. Okay. Now, were you told to file a post conviction

1 relief in this case?

2 A. Yes.

3 Q. And who told you that?

4 A. Mr. Fuller did.

5 Q. And why did he tell you that?

6 A. I guess he was upset with the deal like I was.

7 Q. But he is the one that suggested --

8 A. Yes, sir, because I didn't even know anything about
9 a post conviction or PCR or anything.

10 Q. When did you find out about SVP?

11 A. In the -- basically in the courtroom that day.

12 Q. Okay.

13 A. I mean, you heard inmates talking about civil
14 commitment but that's all they -- I mean, in the jail but
15 I didn't know what it was.

16 MR. THOMAS: Your Honor, may I approach again?

17 THE COURT: You may.

18 MR. THOMAS: Thank you, sir.

19 Q. Mr. Russell, if I may, I'm going to show you page
20 eight of the transcript. We're going to be dealing with
21 page eight of the transcript and page nine of the
22 transcript. And specifically beginning on line 11 through
23 line 25 of page eight, I want you to just look at that.

24 A. (Complying). Yes, sir.

25 Q. All right. Who's -- you're familiar with that?

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1 A. Yeah. Well -- yes.

2 Q. And who's asking you questions?

3 A. Judge Goodstein.

4 Q. And she's asking you about SVP?

5 A. Yes, sir.

6 Q. And she tells you basically what the process is?

7 A. Yes, sir.

8 Q. That if there is probable cause then you're going
9 to be evaluated?

10 A. Yes, sir.

11 Q. Okay. And you indicated to her at that point in
12 time that you understood this or knew this?

13 A. Well, yes, sir.

14 Q. All right. And at that point were you concerned
15 about SVP?

16 A. No, sir.

17 Q. And how come?

18 A. I was told by my attorneys I didn't meet the
19 criteria.

20 Q. All right. So, was it your understanding that you
21 didn't meet the criteria for SVP?

22 A. I was told it was for repeat offenders. I didn't
23 meet the criteria. That is why I was going to be sent to
24 Dr. Burke.

25 Q. Did you understand and you may -- I'll ask you if

1 you know this -- the importance of the second set of
2 victims that you had one or more?

3 A. No, sir, I didn't.

4 Q. Do you understand that today?

5 A. I do now. Yes, sir.

6 Q. What did that second set or that second group of
7 people do to you?

8 A. It made me where I'm at now. It put me in --

9 Q. Part of the SVP requirements?

10 A. Yes, sir.

11 Q. Okay. And you believed that you were going to be
12 treated by Dr. Burke?

13 A. Yes, sir. I had already went to him with my
14 attorneys and he was, I guess, basically setting it up at
15 the time before I took the plea.

16 Q. Okay. So you thought all of this was worked out?

17 A. I -- yes, sir. Just like I said, I was under the
18 impression I would be home by the weekend.

19 MR. THOMAS: Okay. Your Honor, may I approach
20 again?

21 THE COURT: You may.

22 BY MR. THOMAS:

23 Q. I want to show you page 30 of the transcript,
24 specifically lines nine through 14. Who's --

25 A. That's Judge Goodstein again.

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1 Q. No. Look at the top.

2 A. Oh, okay. It is Mr. Fuller.

3 Q. Okay. By your attorney, Mr. Fuller?

4 A. Yes, sir.

5 Q. And, he is telling the Court, what?

6 A. That Mr. Burke felt I could be safe to be released,
7 I guess. That's what Mr. Burke told me too.

8 Q. Right. That they had consulted with Dr. Burke --

9 A. Yes, sir.

10 Q. -- and that it was going to be his recommendation
11 that you could be safely released --

12 A. Yes.

13 Q. -- into the community to be treated?

14 A. Yes. And I --

15 Q. Specifically 13 and 14: Someone that could be
16 adequately monitored and treated within the community?

17 A. Yes, sir. Because he told me I was very low risk.

18 Q. And that's what your understanding was?

19 A. Yes. That's why I was under the impression I
20 didn't meet the criteria for this program here.

21 MR. THOMAS: Your Honor, if I could beg the Court's
22 indulgence. I just got a couple more cites in the
23 transcript and I can move on.

24 THE COURT: You're doing well. Thank you.

25 BY MR. THOMAS:

1 Q. I want to show you page 32, specifically lines 14
2 through 17.

3 A. Yes, sir.

4 Q. And that's Judge Goodstein?

5 A. Yes. Judge Goodstein.

6 Q. And she's talking about probable cause?

7 A. Yes, sir.

8 Q. And she actually indicates that she believes that
9 there's probable cause --

10 A. Yes.

11 Q. -- for you to be evaluated?

12 A. Yes, for me to be evaluated.

13 Q. Were you concerned about being evaluated?

14 A. Yes, sir. I spoke to, I think it was Mr., I think
15 it was both Mr. Uricchio and Mr. Fuller and I asked them
16 about that and that's when they told me again, don't worry
17 about it, I don't meet the criteria.

18 Q. And this was during the plea?

19 A. This was, yeah, I think I got in trouble because I
20 was talking to my lawyers in the courtroom and I believe
21 it brought the attention of somebody but, yeah, I did ask
22 right in the middle of the plea.

23 Q. Okay. It's not indicated in the transcript but
24 this is something that you were doing while the Judge was
25 speaking?

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1 A. Yes.

2 Q. I want to show you in the transcript page 37, lines
3 15 through 20.

4 A. Yes, sir. I remember that.

5 Q. All right. And is this Judge Goodstein again?

6 A. Yes.

7 Q. And she's talking about Dr. Burke?

8 A. Yes.

9 Q. And she's familiar with Burke?

10 A. Yes, because she made a big statement about I went
11 into the belly of the beast, or some kind of statement
12 like that, to get evaluated and she commended me on that.
13 And I think --

14 Q. Here she's talking about his program.

15 A. Uh-huh.

16 Q. And she's saying that the program that he's adopted
17 is one that's been shown to be somewhat successful?

18 A. Yes. I think it's been proven to work.

19 Q. Okay. And that's the program that you thought that
20 you were going to be going into?

21 A. Yes, sir.

22 MR. THOMAS: Your Honor, I'm going to make
23 reference to -- the last question is going to be about the
24 sentencing conditions and they're in the transcript on
25 page 41 and 42.

1 THE COURT: Okay.

2 BY MR. THOMAS:

3 Q. The Judge sentenced you to 15 suspended to three?

4 A. Three years.

5 Q. And five years probation?

6 A. Five years probation.

7 Q. Now did she put other conditions on you?

8 A. Yes, sir. One of them was I had to go see

9 Dr. Burke.

10 Q. Okay.

11 A. I think I got 500 hours of community service. I
12 couldn't go -- I think, something about I couldn't go to
13 church.

14 Q. And be around children?

15 A. Yes, sir.

16 Q. And random drug and alcohol testing?

17 A. Yes, sir.

18 Q. Take any kind of prescribed medication for any
19 mental illness that you might have?

20 A. Yes, sir. But I was on some medication but DMH has
21 taken me off of it.

22 Q. She explained to you that you had to register as a
23 sex offender?

24 A. Yes, sir.

25 Q. And she said that she wanted you in treatment with

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1 Bill Burke?

2 A. Yes, sir.

3 Q. Okay. Now, Bobby, you and I have talked about this
4 case a lot?

5 A. Yes, sir.

6 Q. And you understand that for all practical purposes
7 you're finished with this case?

8 A. Yes.

9 Q. So, you really didn't have a lot of exposure
10 because you're asking for all of this to start all over
11 again?

12 A. Yes, sir.

13 Q. Why are you asking that?

14 A. Because I want the truth to come out. I mean, I'm
15 being punished and punished and punished and it's -- I'm
16 being punished for something that didn't happen and I have
17 evidence and proof that it didn't happen, but I didn't get
18 to -- I didn't get to prove that. I was denied that, you
19 know, ability.

20 Q. Okay. Do you feel that, that you had the knowledge
21 that you knew about what you were entering into when you
22 entered into this plea?

23 A. Now that I look back, no, I don't because I was
24 told that none of this would happen. And I would be, like
25 I said, I'd be home, don't worry about it. And that

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1 didn't happen. I basically feel like I was almost tricked
2 into it, just ending it and taking a plea.

3 Q. Okay. I want to ask you this question. This is
4 not because I think that we've forgotten something by any
5 means. I don't mean to imply that you need to be thinking
6 about something --

7 A. Uh-huh.

8 Q. -- but this is the day that you've waited a long
9 time to be in court.

10 A. Yes, sir.

11 Q. Is there anything else that you feel like it's that
12 important that I haven't brought to the attention of the
13 Court that you would like to the bring to the attention of
14 the Court?

15 A. Not right off the top of my head. I'm so nervous
16 and, because like I've said, I've been waiting on this for
17 a long time and having to suffer through a lot of things
18 to get here that I'm pretty blank right now as far as, you
19 know, asking questions.

20 Q. Okay. But you can't think of anything?

21 A. Not right now. No, sir.

22 MR. THOMAS: Your Honor, I have no further
23 questions.

24 THE COURT: All right. Ms. Harrigan?
25

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CROSS-EXAMINATION

BY MS. HARRIGAN:

Q. May it please the Court. Mr. Russell, you were represented by two different attorneys, correct?

A. Yes.

Q. Okay. How many times did you meet with your attorneys before your guilty plea?

A. Four or five.

Q. Only four or five times?

A. Uh-huh.

Q. How long did they represent you before your guilty plea?

A. I don't know exactly when they were hired but it was a good while. I think I only used a public defender, that's for my bond hearing and that was it.

Q. And after that?

A. Yes, ma'am.

Q. And only four or five times you recall meeting?

A. Yes. I think that's about it. It wasn't very many. I mean, they would come about every three or four months.

Q. Do you recall how long these meetings would last? Were they brief?

A. About 30, 45 minutes.

Q. Do you recall reviewing the discovery with your

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1 attorneys?

2 A. No, ma'am.

3 Q. They never went over any of the statements,
4 evidence with you?

5 A. Just a couple little small things but nothing in
6 total, not the whole thing itself. They sent it to me in
7 the county jail and I went through it the best I could.

8 Q. So they did send it to you?

9 A. Yeah.

10 Q. Do you recall discussing a possible defense with
11 your attorneys?

12 A. Nope.

13 Q. I believe you stated before you thought this was
14 about a dispute between pit bulls and your dogs?

15 A. It started as a dispute, the pit bull. And I
16 actually went home that night and didn't get arrested
17 until the next day.

18 Q. So you did discuss this dispute over pit bulls as a
19 possible defense with your attorneys?

20 A. No, not that. The only defense that we discussed
21 was Mr. Lewellen coming to court and Mr. Uricchio told
22 Mr. Lewellen not to show up because it was too
23 inflammatory to his deal.

24 Q. What possible defenses did you have for these two
25 separate incidents?

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1 A. The first one they had no evidence, nothing. They
2 had a statement, that's it.

3 Q. Your defense was just there was no evidence?

4 A. There's nothing. I mean, it was a lie and --

5 Q. Did you give your attorneys any leads or potential
6 witnesses to investigate and discuss?

7 A. There wasn't none.

8 Q. Did you discuss any plea offers made by the State
9 with your attorneys?

10 A. There was none of those until the last minute.

11 Q. But when there was a plea offer, you did discuss
12 that with your attorneys?

13 A. One time, I think, something like that.

14 Q. This was a negotiated plea, correct?

15 A. Yes, ma'am.

16 Q. So you knew exactly how long you'd be getting when
17 you came into court that day and pled guilty?

18 A. I knew I was -- yeah. I was told I was going home.

19 Q. You knew that the plea offer was for 15 years
20 suspended upon the service of three years followed by five
21 years probation, correct?

22 A. Yes, ma'am.

23 Q. And that's what you were sentenced to by Judge
24 Goodstein, correct?

25 A. Yes.

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1 Q. And the SVP program you're in is a separate action,
2 a civil commitment, correct?

3 A. Yes, it was.

4 Q. Do you recall telling Judge Goodstein that you
5 wanted to plead guilty?

6 A. No, ma'am.

7 Q. Would you dispute the transcript where you indicate
8 to Judge Goodstein that you wanted to plead guilty?

9 A. I knew I was informed by my lawyer to go ahead and
10 say yes.

11 Q. And you did in fact admit to Judge Goodstein on
12 page 20 that you are guilty of these three separate
13 instances?

14 A. I was told by my lawyer to say that, yes.

15 Q. You do recall under oath saying you were guilty?

16 A. Yes, ma'am, because under the advisement of
17 Mr. Burke, he was the main one.

18 Q. And your action today isn't against Mr. Burke
19 because he's not an attorney, correct, it's against
20 Mr. Fuller and Mr. Uricchio?

21 A. He was the one that told me if I didn't plead that
22 he would testify against me and he basically --

23 Q. Why did he say he would testify against you?

24 A. Because he wanted me -- I had to go to his
25 treatment program. And if I didn't plead I couldn't go to

1 his treatment. I don't know. Really and truly, it was a
2 mess.

3 Q. So, you did testify -- you did state under oath
4 that you were guilty during your guilty plea, correct?

5 A. Under --

6 Q. Under the advice of your lawyers?

7 A. At the advice of my lawyers; yes, ma'am, I did.

8 Q. So you lied under oath during your guilty plea?

9 A. I didn't lie. I was under the advice -- no,
10 ma'am. I was doing what I was told to do by my attorneys.

11 Q. So here today while you're under oath you're saying
12 you're not guilty of these three counts?

13 A. Yes, ma'am.

14 Q. Okay. Do you recall agreeing with the facts as
15 presented by the solicitor during your guilty plea?

16 A. Again, I was told to do that.

17 Q. Again, you were told to lie under oath?

18 A. Well I was told by my lawyers to go ahead --

19 Q. To be untruthful, to lie under oath?

20 A. If that's what you call it. I was told by my
21 attorneys that I had to say yes, I had to say no, and in
22 order to get the plea to go home that weekend I had to
23 admit to everything.

24 Q. Do you recall telling Judge Goodstein that you were
25 satisfied with your attorneys' representation?

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1 A. Yes, ma'am.

2 Q. Do you recall telling Judge Goodstein that your
3 attorneys had both advised you about the sexually violent
4 predator program?

5 A. I don't remember that, but if that's what it says,
6 again, I was told to say that.

7 Q. And Judge Goodstein herself advised you about the
8 SVP treatment program, correct?

9 A. We -- yes, ma'am. I asked the attorneys, they said
10 I didn't meet the criteria.

11 Q. Judge Goodstein stated during this plea that she
12 thought you met the basic standards to be screened for the
13 SVP program, correct?

14 A. To be screened. Yes, ma'am.

15 Q. And you thought you'd just be going to Dr. Burke
16 for treatment while on probation, correct?

17 A. Yes, ma'am.

18 Q. But you state today that you're not guilty of these
19 three crimes?

20 A. No, ma'am.

21 Q. If you're not guilty, why would you need treatment?

22 A. That was part of the plea. I couldn't plead
23 without treatment.

24 Q. And you stated during your direct examination that
25 you were concerned about being evaluated for the SVP

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1 program, correct?

2 A. Yeah. I asked my attorneys about it and that's
3 when they told me, don't worry, I wouldn't meet the
4 criteria.

5 Q. Why were you so concerned about being evaluated if
6 you're not guilty of these three sex crimes against
7 minors?

8 A. I was told it was a potential life sentence.

9 Q. In the SVP program?

10 A. You got people there that's been in 12, 14 years.

11 Q. Civil commitment, not a life sentence from the
12 Department of Corrections or through general sessions?

13 A. Judge Stevenson -- Warden Stevenson, he controls
14 everything that we do.

15 Q. Through the Department of Mental Health?

16 A. Through the Department of Corrections, yeah. We're
17 in the old lockup, the old death row building.

18 Q. And you stated during your direct you have evidence
19 and proof that this didn't happen, correct?

20 A. Yes, ma'am.

21 Q. What evidence do you have?

22 A. Well, the DNA results for one. I didn't get that
23 in my discovery. I just got it, basically I think
24 Mr. Thomas sent it to me.

25 Q. And these were late reports that the children came,

1 the minor victims came forward after the incident had
2 occurred, correct?

3 A. Yeah, I guess.

4 Q. So your proof that this didn't happen is that there
5 was no DNA?

6 A. Well, they said they had my DNA done -- what's his
7 name, Mr. Bell said that he had my DNA.

8 Q. And that was stated on the record?

9 A. That was told by -- Mr. Uricchio told me that. And
10 I denied it and that's when I got the paperwork and it
11 said that they didn't have my DNA. It was their DNA.

12 MS. HARRIGAN: Court's indulgence, Your Honor.

13 THE COURT: Take your time.

14 BY MS. HARRIGAN:

15 Q. Mr. Russell, you stated during your direct exam
16 that the second incident involving two minor children
17 stemmed from child pornography found on the computer,
18 correct?

19 A. Yes, ma'am.

20 Q. But you were never charged with having child
21 pornography?

22 A. That's what I was originally arrested for.

23 Q. But you're not -- you didn't serve any time, you
24 weren't sentenced for any child --

25 A. No, that got dropped and it got changed to a lewd

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1 act.

2 Q. Okay. For a separate instance?

3 A. Well, I don't know. I was never indicted on that.

4 Q. Okay. You were never indicted for child
5 pornography?

6 A. I was never indicted on any of it. At the last
7 minute in the courtroom, that's when Judge Goodstein asked
8 me if I wanted to waive my right to the grand jury or
9 something. So, I don't know. I was completely at a loss
10 for all of that because, like I said, I'm not an
11 attorney. I don't understand it.

12 Q. But you were indicted by the Dorchester County
13 Grand Jury in August of 2009 for two counts of committing
14 or attempting to commit a lewd act upon a child and for
15 criminal sexual conduct with a minor in the first degree,
16 correct?

17 A. That's what my paperwork said, but Judge Goodstein
18 actually said that I wasn't indicted because --

19 Q. For one of the counts because you pled to three
20 counts.

21 A. I don't know. I don't know.

22 Q. Okay. Were you aware that you were indicted for
23 three separate counts?

24 A. No, ma'am.

25 Q. You stated during your direct that Judge Goodstein

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1 said you were maxed out and would be going home this
2 weekend.

3 A. She grabbed the mic and looked at me and said I was
4 maxed out.

5 Q. Do you know where that is in the record, where she
6 says you'd be going home this weekend?

7 A. No. My lawyers said I was going home by the
8 weekend, but Judge Goodstein -- when they went up to the
9 desk and eventually talked to her, she looked at me and
10 said I was maxed out.

11 Q. Okay. But that's not in the transcript.

12 A. No, ma'am.

13 Q. And you stated during your direct you've never been
14 in trouble before and then corrected yourself and said you
15 did have a previous public disorderly conduct; correct?

16 A. I didn't correct myself. I said I never had a
17 felony before. I mean, that's a misdemeanor like a
18 traffic ticket.

19 Q. And you also stated Ms. Lewellen, the mother of two
20 of the minor victims, made comments that they supported
21 you during your affiliation --

22 A. No, her daddy did.

23 Q. Okay. Where in the transcript is their family
24 support of you --

25 A. Do what now?

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1 Q. -- for your guilty plea because the only --

2 A. Mr. Uricchio told them not to come to court because
3 they wouldn't accept his deal.

4 Q. Were you aware that Ms. Lewellen did address the
5 Court --

6 A. Yeah.

7 Q. -- during the guilty plea? And she stated that she
8 had been harassed by other family members implying that
9 her family and her children were bad people --

10 A. Do what now?

11 Q. -- that they had done something wrong? Do you
12 recall that happening during your guilty plea?

13 A. No, ma'am. I remember her standing and talking
14 but, yeah.

15 Q. And do you recall Judge Goodstein advising that you
16 met a prima facie test to be screened for the program?

17 A. And I asked what that meant because I didn't
18 understand that and I don't speak Latin. That's when my
19 lawyers told me I didn't meet the criteria, I didn't have
20 to worry about it.

21 Q. But your attorneys did advise you before your plea
22 of the sexually violent predator program, correct?

23 A. In the holding cell before we went in the courtroom
24 and I was again told I didn't meet the criteria because I
25 even asked them about the ankle monitor, the GPS monitor

BOBBY RUSSELL, JR - REDIRECT

1 and I was told I didn't have to worry about that either.

2 MS. HARRIGAN: No further questions, Your Honor.

3 THE COURT: Thank you. Anything, Mr. Thomas?

4 MR. THOMAS: Your Honor, if I may. Just one or
5 two.

6 THE COURT: Sure.

7 MR. THOMAS: May I approach, Your Honor?

8 THE COURT: You may.

9 REDIRECT EXAMINATION

10 BY MR. THOMAS:

11 Q. Mr. Russell, counsel asked you about Ms. Lewellen
12 being in the courtroom and addressing Judge Goodstein. I
13 want to show you page 26 of the transcript specifically
14 lines one through 12?

15 A. Uh-huh.

16 Q. I'd like for you to read that. Not out loud, just
17 read it to yourself.

18 A. Yeah. I have read it.

19 Q. Okay. Now, she was talking about her family giving
20 her a hard time?

21 A. I, I guess that her family -- it's what I -- I
22 don't know because, like I said, I didn't --

23 Q. Do you know why the family was giving her such a
24 hard time?

25 A. Because she lied. I mean, she's done this multiple

BOBBY RUSSELL, JR - REDIRECT

1 times to multiple people. She accuses them of molesting
2 her children and they go to jail. I think she even did it
3 to her own daddy.

4 Q. And that's Mr. Lewellen?

5 A. That's Mr. Lewellen. She's had him arrested for
6 several times for child molestation too.

7 Q. And he was the one who was going to come to your
8 court --

9 A. And testify for me, yes.

10 Q. And he was told by Mr. Uricchio not to --

11 A. Don't show up, it would upset his deal.

12 Q. That it would tip the apple cart --

13 A. Yeah.

14 Q. -- basically? And that is the second incident,
15 right?

16 A. Yes, sir.

17 Q. We're talking about the first incident, second
18 incident?

19 A. Uh-huh.

20 Q. Now, counsel also asked you about probable cause,
21 that Judge Goodstein had talked with you about probable
22 cause and that there was probable cause for you to be
23 evaluated.

24 A. Yes, sir.

25 Q. And part of that probable cause was the fact that

BOBBY RUSSELL, JR - REDIRECT

1 you were pleading to both of these sets --

2 A. Yes, sir.

3 Q. -- which created more than one victim?

4 A. More than one, yeah, that's it.

5 MR. THOMAS: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. THOMAS:

8 Q. This is the -- can you identify that document?

9 A. Yes, sir. Yes.

10 Q. What is that?

11 A. It's a forensic interview report.

12 Q. For, about who?

13 A. Lenora Mount.

14 Q. And who is that person?

15 A. That's the alleged first victim.

16 Q. All right. Were you shown that report?

17 A. I think I got pieces of it.

18 Q. Prior to your plea?

19 A. Yes, sir.

20 Q. And as far as the conclusion of that report --

21 MS. HARRIGAN: Do you have an extra copy? We don't
22 have a copy of that report. I've never seen it.

23 MR. THOMAS: Do you want to see it?

24 THE COURT: We can make copies, even in Orangeburg.

25 MS. HARRIGAN: That would be great. If you don't

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1 mind, Your Honor, could we get a copy?

2 THE COURT: Sure.

3 (Pause. Copies of document made.)

4 MS. HARRIGAN: Thank you.

5 MR. THOMAS: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. THOMAS:

8 Q. All right. I'm going to ask you if you'll look at
9 the document you've identified as the Dorchester
10 Children's Center Forensic Interview Report.

11 A. Yeah.

12 Q. And to look at concerns.

13 A. Okay.

14 Q. And what were the concerns?

15 A. That she had been told what to say by her parents.
16 That's what I was told.

17 Q. And is that report consistent with that?

18 A. Yes, sir.

19 Q. And is it your opinion after reading that report
20 that her testimony -- there was some suspect to her
21 testimony?

22 A. Yes, sir. I mean, she said a lot. I remember
23 reading it now. I remember going over it with Mr. Fuller,
24 and had a bunch of stuff in it that was, was, was, you
25 know --

1 Q. All right. So, your concern based upon the report
2 was that, and we're talking about the two incidents, we
3 had Ms. Lewellen that you said that you didn't commit that
4 crime and she was also receiving problems with the family,
5 and Mr. Lewellen was willing to come testify for you?

6 A. Yes, sir. He was going to testify for me.

7 Q. And the report, the forensic report for the first
8 incident saying that there was some concerns --

9 A. Yes, sir.

10 Q. -- about the victim's testimony?

11 A. Yeah, it was just all over the place. Me and -- I
12 mean, it didn't even, it doesn't make sense. I mean --

13 Q. Okay. Your Honor, we'd like to move this if we may
14 as Applicant's one?

15 MS. HARRIGAN: Without objection.

16 (Applicant's Exhibit No. 1, 5-page Forensic
17 Interview Report, received into evidence.)

18 MR. THOMAS: I have no further questions.

19 THE COURT: Anything on recross?

20 MS. HARRIGAN: No, Your Honor.

21 THE COURT: You may step down. Thank you, sir.

22 Mr. Thomas, are you prepared to call your next witness?

23 MR. THOMAS: Yes, Your Honor. we would call

24 Mr. Russell's mother to the stand.

25 GLORIA JEAN HOLCOLM, having been duly sworn, was

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GLORIA JEAN HOLCOLM - DIRECT

1 examined and testified as follows:

2 THE COURT: If you'd have a seat, please, ma'am.
3 And when you get comfortable, would you state your full
4 name for the record?

5 THE WITNESS: Gloria Jean Holcolm.

6 THE COURT: Your witness, Mr. Thomas.

7 MR. THOMAS: If it please the Court.

8 DIRECT EXAMINATION

9 BY MR. THOMAS:

10 Q. Ms. Holcolm, you are Bobby Russell's mom?

11 A. Yes, I am.

12 Q. And you understand that you're sworn to tell the
13 truth today?

14 A. Yes, sir.

15 Q. And is that what you intend to do?

16 A. Yes, sir.

17 Q. You're not here to reward or help anyone?

18 A. No, sir.

19 Q. You understand that there are penalties for not
20 telling the truth?

21 A. Yes, sir.

22 Q. And you're telling the truth?

23 A. Yes, sir.

24 Q. Okay. Ms. Holcolm, you were involved with your son
25 in regards to preparation for trial and making a decision

1 for trial?

2 A. Yes, sir.

3 Q. What were you encouraging your son to do?

4 A. Well, we wanted a trial. When I first went to the
5 Uricchio Law Firm is because of Mr. Fuller. He had spoke
6 with me on the phone and asked he to come in the office
7 and talk with him. And he knew how I stood. I wanted a
8 trial because I just couldn't see with all the evidence we
9 had how they could find him guilty.

10 So, you know, Mr. Fuller was very honest and
11 straight forward telling me, you know, you never know how
12 a jury's going to decide but we did have a 50-50 chance,
13 you know, to win.

14 Q. And you felt strongly about this?

15 A. Yes, sir. I did.

16 Q. You feel strongly about the case today?

17 A. Yes, sir. I do.

18 Q. Were you part of any conversations with your son
19 and the attorneys in regards to SVP?

20 A. No, sir.

21 Q. Okay. So you don't know?

22 A. No, sir. The first time I heard about that was
23 after the plea deal. We went outside, and Mr. Uricchio
24 was sitting outside and I was very upset with him about
25 the plea deal.

GLORIA JEAN HOLCOLM - DIRECT

1 Q. Yes, ma'am.

2 A. I just told him he had thrown us away and threw us
3 under the bus. And he mentioned something about an
4 evaluation. And I looked at Mr. Fuller because he had
5 always explained it better to me, and Mr. Fuller said
6 there was an evaluation that Bobby would have to go
7 through but he should be fine.

8 Q. Right.

9 A. So I didn't worry about it.

10 Q. And, was he fine?

11 A. No, sir.

12 Q. Did he come home?

13 A. No, sir. And the first I heard of the plea deal
14 was Bobby called me because he was very upset. And of
15 course he got me upset. And I called Mr. Uricchio to make
16 sure he was in the office and my husband and I got in our
17 car and we drove probably 45 miles one way to his office
18 because I wanted to talk to him about this plea deal. And
19 when we got there, he knew I was upset, but all he wanted
20 to do was look on the computer about Judge Goodstein,
21 about her husband.

22 Q. Well, we don't need to talk about that.

23 A. Well, something -- anyway. And we sat there for a
24 little while and I told him we don't want a plea deal, I
25 want to go to trial. And all he kept telling me was let's

GLORIA JEAN HOLCOLM - CROSS

1 just get him home. All he has to do is go to Columbia and
2 get an SCDC number, an inmate number and he'll be home the
3 next day. Let's just get him out. Let's bring him home.
4 And I asked him before I left and said, is this the best
5 you could do for your own child is just bring him home and
6 him having to, you know, register as a sexual deviant or
7 whatever you have to do, because that wasn't good enough
8 for me. I wanted my son's name cleared because we had
9 plenty of evidence to show he did nothing.

10 Q. Okay. So you thought he was coming home?

11 A. Yes, sir.

12 MR. THOMAS: Your Honor, I have no further
13 questions.

14 THE COURT: All right.

15 MS. HARRIGAN: Just briefly, Your Honor.

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MS. HARRIGAN:

19 Q. Were you present for all the meetings with your son
20 and his attorneys?

21 A. No, ma'am. That was held in the jail and I
22 couldn't go in.

23 Q. Okay. Do you recall how many -- do you know how
24 many meetings your son had out of your presence with his
25 attorneys?

GLORIA JEAN HOLCOLM - CROSS

1 A. Just a few. It wasn't very many.

2 Q. You don't know what was discussed at these
3 meetings?

4 A. Only what Mr. Fuller would maybe tell me what they
5 talked about. Now if you're asking me to remember
6 everything, I can't tell you.

7 Q. Because you weren't present at these meetings.

8 A. No, ma'am, but Mr. Fuller kept me pretty much
9 informed.

10 Q. Were you present for your son's guilty plea?

11 A. Yes, I was.

12 Q. Did you hear him admit his guilt to Judge
13 Goodstein?

14 A. Well, no, I couldn't hear him say it because he
15 didn't want to say it. So I never really heard him say
16 it.

17 And the thing about that the plea deal was, we
18 didn't even know it was going on that day. Mr. Uricchio
19 called me and we were, I was in the bed. I didn't even
20 know a plea deal was going on. And he told me I didn't
21 even have to come so, but I told him we were going to be
22 there. And we had planned to say something on Bobby's
23 behalf and he wouldn't let me say anything.

24 Q. So your testimony is you had no idea the plea would
25 be going forward that day, correct?

GLORIA JEAN HOLCOLM - CROSS

1 A. No, ma'am. No, ma'am, because I would have been
2 there. They would have had to wait for me to get there.

3 Q. But you drove down to his office. I don't believe
4 you said how long, days or weeks, before to discuss the
5 plea offer with him?

6 A. Well, I wanted to talk about a plea deal he said he
7 was wanting us to take to let him know we didn't want a
8 plea deal and I paid him for a trial.

9 Q. When you say we didn't want a plea deal, you know
10 it was your son's decision?

11 A. Exactly but, you know, we discuss things together.
12 Of course I would have stood by him, you know, whatever he
13 wanted to do but we just felt that he had a strong case
14 and that we would be okay going to trial.

15 Q. I hear you saying multiple times plenty of evidence
16 and strong case, what evidence?

17 A. Well, let's see, I hired a private detective, a
18 forensic scientist to do -- he found the pornography on
19 the hard drive.

20 Q. And your son was not charged with child
21 pornography.

22 A. I know, but the mother said it was because of the
23 pornography that made her know that my son touched her
24 children, but that pornography was on there a year before
25 my son was even around that computer.

GLORIA JEAN HOLCOLM - REDIRECT

1 And also the SLED report that there was absolutely
2 no human DNA on that little girl. There was no
3 fingerprints on the screwdriver he supposedly used to open
4 the window with. It was the homeowner's fingerprints on
5 the screwdriver. And, Wesley Adams was the homeowner.
6 We've known him probably over 30 years. Bobby and he grew
7 up together. They've always been in each other's house.

8 And, I've lost my train of thought. I'm sorry.

9 Q. That's fine. Take your time.

10 A. I've got such a headache today.

11 He came to our house three times to say, I will do
12 whatever I can to help Bobby because I know he didn't do
13 anything. And I believed him.

14 Q. And you love your son, correct?

15 A. Of course I do.

16 Q. You don't want to see him in the SVP program, do
17 you?

18 A. No, ma'am, because of the way they treat him.

19 MS. HARRIGAN: No further questions.

20 THE WITNESS: It's not --

21 MS. HARRIGAN: I'm sorry. Finish your statement.

22 THE WITNESS: It's not really a program. All it is
23 punishment. Punish, punish you, if you say something
24 like -- you're punished if you're out of your room one
25 minute after, you know, you're supposed to. He has to be

GLORIA JEAN HOLCOLM - REDIRECT

1 at nine in the bed every night, you know, and everything
2 is punish him, punish him, punish him. Now I'm being
3 punished because I can't even go see him and he can't even
4 call me so we're both being punished.

5 MS. HARRIGAN: No further questions, Your Honor.

6 THE COURT: Thank you. Anything on redirect?

7 MR. THOMAS: Your Honor, if I may. Just one
8 question. May I approach, Your Honor?

9 THE COURT: You may.

10 REDIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q. I want to show you a copy of the transcript, page
13 19.

14 A. Okay.

15 Q. And I've marked lines three through 11.

16 A. Okay.

17 Q. This is the solicitor, Mr. Bell --

18 A. Uh-huh.

19 Q. -- who was addressing the Court.

20 A. Harrison Bell.

21 Q. Yes, ma'am. I want you to just read that to
22 yourself.

23 A. Okay. (Complying.) Okay.

24 Q. All right. Mr. Bell is telling the Court, now
25 we're talking about the second incident which is

1 Lewellen.

2 A. Right.

3 Q. And he's telling the Court that all of this got
4 started, how?

5 A. With the child pornography.

6 Q. On the laptop?

7 A. Exactly.

8 Q. And you said that you had hired a --

9 A. A forensic scientist that does, can go on a hard
10 top, on a computer on the hard drive and see things that
11 were on there that were erased.

12 Q. And it was determined if there was pornography it
13 was put on there, when?

14 A. A year before Bobby was even around the computer.

15 Q. And then it says that she, being Ms. Lewellen, put
16 two and two together and that's how all of this got
17 started?

18 A. Yes, sir.

19 MR. THOMAS: Okay. Your Honor, I have no further
20 questions.

21 THE COURT: Any on recross?

22 MS. HARRIGAN: No, Your Honor.

23 THE COURT: You may step down.

24 MR. THOMAS: Your Honor, may I beg the Court's
25 indulgence just for a second?

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1 THE COURT: Sure. (Pause.)

2 MR. THOMAS: Your Honor, if it please the Court.
3 That's the Applicant's case.

4 THE COURT: Just out of curiosity, is Mr. Lewellen
5 subpoenaed to be here?

6 MR. THOMAS: Your Honor, he was asked to be here.
7 He came to, he came to see me last week and we sat down
8 and talked about it. He had indicated and I didn't feel
9 like we needed a subpoena, Your Honor, because he assured
10 me and the family assured me that he was going to be here,
11 and he is not here.

12 THE COURT: Okay.

13 MR. THOMAS: Your Honor, may I beg the Court's
14 indulgence just for a second?

15 THE COURT: Sure. (Pause.)

16 MR. THOMAS: Your Honor, it's my understanding that
17 the family actually went to get him this morning and that
18 he indicated to them or the daughter indicated to them
19 that he was sick this morning and was in bed and was
20 unable to attend. Thank you, Your Honor.

21 THE COURT: Okay. Thank you. Ms. Harrigan?

22 MS. HARRIGAN: The State would call Chad Fuller.

23 CHAD FULLER, having been duly sworn, was examined
24 and testified as follows:

25 THE COURT: Get comfortable, please, sir. And

CHAD FULLER - DIRECT

1 Ms. Harrigan, your witness.

2 DIRECT EXAMINATION

3 BY MS. HARRIGAN:

4 Q. Mr. Fuller, how long have you been practicing law?

5 A. Since, it would have been -- graduated 2007. I
6 took the bar exam that July. I passed it. So, what,
7 2008, I guess.

8 Q. Okay. And you were retained for this case,
9 correct?

10 A. Correct, my firm was. Both myself and
11 Mr. Uricchio, yes.

12 Q. And where were you working at that time?

13 A. Uricchio Law Firm.

14 Q. Do you recall the approximate date you were
15 retained?

16 A. I do not. I'm sorry.

17 Q. Had you had any prior experience representing
18 clients charged with sex crimes against minors before?

19 A. I had.

20 Q. How many previous clients?

21 A. At this particular instance I think this might have
22 been my second or third.

23 Q. Do you recall whether Mr. Uricchio had prior
24 experience in these type of cases?

25 A. Yes, he did. He had been practicing for longer

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1 than I have.

2 Q. Do you have an approximate number of how many
3 possibly?

4 A. I couldn't guess on his behalf.

5 Q. How many times did you meet with Mr. Russell prior
6 to his guilty plea?

7 A. A few occasions. I did meet with him at the
8 detention facility on, I want to say, at least three or
9 four different occasions. Then I want to say we met with
10 him off of Trolley Road at least twice at Dr. Burke's
11 office and then we obviously met with him at the holding
12 cell prior to the plea.

13 Q. And who is Dr. Burke?

14 A. He was -- actually we had originally hired
15 Dr. Burke to conduct a sexual deviancy test. And at that
16 point in time we used that test to determine that we
17 needed to go ahead and find out what further we could do
18 to assist Bobby, whether it was for either a plea or a
19 trial. We were originally hoping that he would be able to
20 testify that Bobby was not a risk to society.

21 Q. What was the result of the sexual deviant's test?

22 A. There were some indicators that he was a moderate
23 risk. He responded to a couple different sexual stimuli
24 that Dr. Burke deemed to be inappropriate. We'd actually
25 gone and met without Bobby being present, both myself and

1 Mr. Uricchio, to see the stimulus our self. The test
2 consisted of auditory stimulus and visual stimulus and a
3 couple of his highest stimulus were of an inappropriate
4 nature but he also responded well to regular stimulus that
5 we would expect a normal male to.

6 Q. Do you recall, without being too graphic for the
7 Court, what age range the stimulus that was inappropriate
8 was?

9 A. The largest stimulus was that it was a role playing
10 auditory stimulus of a young child that was going to a
11 neighbor and the -- it started out with going and the
12 child was wanting help with her homework on -- from the
13 neighbor. And then it talked about -- the neighbor began
14 talking about anatomy and then taking an inappropriate
15 course.

16 Q. And Mr. Russell did show that he had some sexual
17 deviance based on the test in Dr. Burke's opinion,
18 correct?

19 A. Correct, but he did state that he could be
20 monitored.

21 Q. At that point did you advise your client about the
22 results of his test?

23 A. We did. We did. And we actually supplied a copy.
24 I believe I gave one to Ms. Holcolm and I believe I gave
25 one to Bobby as well when I met with him at the jail.

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1 Q. What was Mr. Russell's response to these results?

2 A. He was obviously disappointed and frankly I was
3 disappointed too because I really believed him in and
4 believed we could take the case to trial.

5 Q. How did that shift your preparation of the case
6 after you received these results?

7 A. It obviously complicated matters because now we had
8 a situation that we had to confront in a courtroom
9 setting, and there were already a number of allegations
10 against our client at that point in time. And it was
11 going to make our job more difficult. We were kind of
12 hoping to hit, frankly, a home run on it and show where he
13 had no deviant sexual stimuli and that's not what we got.

14 Q. During his testimony Mr. Russell stated that
15 Dr. Burke indicated to him he would testify against him if
16 he came, if the matter went to trial. Can you shed some
17 light on that report?

18 A. I don't know that -- I believe the way that is
19 being characterized is being mischaracterized because I
20 think that based on that meeting he did say that he would
21 come into court and testify, but it goes back to the
22 sexual deviance test. I believe that is the nexus of it,
23 where the testimony against Bobby would come against him
24 because he was our expert. He was somebody that we were
25 wanting to work with us to assist Bobby but he was not

1 going to make any misrepresentations to the Court and that
2 was obviously a concern.

3 Q. And you expressed to Bobby it would be a concern if
4 you went to trial?

5 A. Yeah, essentially our own expert could be used
6 against us.

7 Q. Did you advise your client about the sexually
8 violent predator program?

9 A. We had had a short discussion prior to the plea.
10 When I arrived at the detention facility and I think that
11 it's important to note that I actually left Uricchio Law
12 Firm during the course of this case. I took another job
13 with McGrath and Daniels who's my current employer to run
14 our South Carolina offices.

15 And it was my understanding that we were headed
16 towards a trial and I was going to be there to assist with
17 a trial and any other work that was necessary and still
18 had continuing communications with the mother. It was --
19 Ricky called me -- Mr. Uricchio, we always called him
20 Ricky. -- called me and said that Bobby indicated he
21 wanted to take a plea. Prior to that we had several
22 meetings in chambers. I want to say we had, like, three
23 or four meetings with Judge Goodstein in chambers and
24 Harrison Bell was present, the prosecutor in this
25 particular case, and we had attempted an Alford plea.

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1 Judge Goodstein was not willing to do that. The best that
2 Ricky ended up getting was a negotiated plea which was
3 surprising to me because I did not understand why we were
4 going forward with the plea.

5 Q. Where you prepared to go to trial with the facts?

6 A. We had done everything to get ready for trial. We
7 had already spent a lot of time and a lot of man hours to
8 get ready for the trial, yes.

9 Q. Could you summarize for the Court what you had done
10 to prepare for trial?

11 A. Numerous meetings with Dr. Burke. I met with Bobby
12 on several different occasions. I can't tell you the
13 exact number of times I met with him. I can remember at
14 least two lengthy meetings where we went over all the
15 discovery. I remember having problems with correctional
16 officers that wouldn't let him keep his discovery in the
17 jail and we had to make some calls about that. We had
18 talked to witnesses. We had talked to Mr. Lewellen. We
19 had hired Streater and Byrd who are private
20 investigators. Actually Ms. Holcolm hired them at our
21 request. And they had done an investigation.
22 Additionally Kenny McLean was hired who is a computer
23 forensic analyst and that is where the child pornography
24 that was found on the computer, that predated Bobby's
25 arrival to that particular house for the second incidence.

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1 Q. You stated that you spoke with Mr. Lewellen. Do
2 you recall a brief summary of those discussions for the
3 Court?

4 A. I had a few conversations with Mr. Lewellen. It
5 was always very short conversations. I believe he and
6 Ricky had a longer relationship that even predated this
7 case and so a lot of times when he was talking he was
8 talking to Mr. Uricchio. I believe they had actually been
9 friends for quite a while. I think they had done martial
10 arts or something together years ago.

11 Q. Was he a possible defense witness?

12 A. Yes, he was. He was a possible defense witness.
13 He would have been used more or less to show lack of
14 credibility for the second, second case.

15 Q. Was that the primary defense you'd go forward with
16 for that second set of incidence for the two minor
17 children in the Lewellen home?

18 A. That would have been one of them, one of the
19 tactics. The other thing is the victims involved in these
20 cases, two were female, one was male. That was something
21 that always concerned me because in talking to Dr. Burke
22 it's rare that you see someone that, that gravitates
23 towards children gravitate toward both sexes. And so to
24 me it was always a little disconcerting that in this
25 particular instance there was -- the second instance there

1 was both a girl victim and a boy victim.

2 Q. And what defenses would you have set forth at trial
3 for the first incident that I believe Mr. Russell said
4 started from a pit bull dispute?

5 A. Primarily that there was no physical evidence. I
6 mean, there was some stuff there but there was nothing
7 directly tying him to the crime. Everything was
8 circumstantial and, frankly, on all three cases all the
9 evidence was circumstantial. The way we were able to
10 actually, according to Ricky, get the plea that was in
11 place, because Harrison had wanted a much tougher
12 sentence, was using the evidence that Kenny had found as
13 well as Dr. Burke's testimony.

14 Q. I believe you stated you've hired a forensic
15 computer analyst as well as a private investigator?

16 A. Yeah, the private investigators were David Byrd and
17 Cambo Streater.

18 Q. And was there evidence they uncovered favorable to
19 Mr. Russell or favorable to the state?

20 A. It was really inconclusive. They even went with
21 the sheriff's department and talked with several people
22 there. They were former law enforcement. We were hoping
23 we could turn something more up but we never got much we
24 could work with.

25 Q. Did Mr. Bell approach you and Mr. Uricchio with

1 plea negotiations or did Mr. Russell request you to on his
2 own behalf?

3 A. On several occasions Harrison would come to us with
4 plea offers, all of which we typically would reject. He
5 had talked about an Alford plea. We had proposed that and
6 Bobby indicated maybe that would be something that he
7 would consider. After presenting that to Judge Goodstein
8 she indicated that she would not allow that. So we were
9 kind of back to square one on that particular instance.

10 Q. Do you recall any of the State's previous offers
11 before the offer Mr. Russell ended up accepting?

12 A. There were several. I mean, it started with a very
13 high sentence and kind of shaved years off here and there,
14 but the majority of them were rejected.

15 Q. Did you communicate these offers to your client?

16 A. Yes.

17 Q. Did you advise him of the consequences of a plea
18 once he decided to accept the State's negotiation?

19 A. That's correct. And if I recall correctly, when I
20 showed up at the detention facility Mr. Uricchio was
21 meeting with Bobby when I arrived. And during that
22 meeting several things were discussed including talking
23 about the guilty plea. I don't recall the sexually
24 violent predator being addressed at that particular
25 meeting, but, yeah, there were several different --

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1 Q. You don't recall it being addressed at that meeting
2 but I believe you testified prior that you do recall
3 discussing it with Mr. Russell.

4 A. I do. I do recall discussing it with him. And
5 I -- but I don't believe it was discussed at length.

6 Q. Do you recall what was discussed? I know it was
7 quite a few years ago.

8 A. It was so long ago I'd be frankly speculating
9 because those were conversations that were a long, long
10 time ago.

11 Q. Do you recall if when you advised Mr. Russell of
12 the sexually violent predator program he stated he didn't
13 understand that he would be screened for this?

14 A. I don't recall that.

15 Q. Did you or Mr. Uricchio explain to Mr. Russell that
16 this was a negotiated sentence?

17 A. Yes, we did. It was that the Judge either had to
18 accept it or deny it, that the Judge couldn't, you know,
19 modify the sentence in any way. And that was one of the
20 reasons that we also had Dr. Burke meet with Bobby prior
21 to the case because we wanted to make sure that we could
22 let the Judge know that Dr. Burke was willing to accept
23 him in that program if she would agree to the plea.

24 Q. Judge Goodstein had several conditions of
25 probation, correct?

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1 A. Correct.

2 Q. Was one of those meeting with Dr. Burke?

3 A. Yes, it was.

4 Q. Whose decision was it ultimately to enter the
5 guilty plea?

6 A. I'd have to say Bobby's. I mean, like I said, you
7 know, we were under the impression that we were going to
8 trial and then, you know, at the last minute got a plea.

9 MS. HARRIGAN: Court's indulgence.

10 THE COURT: Take your time.

11 BY MS. HARRIGAN:

12 Q. Mr. Fuller, in your two or three previous clients
13 involving sexual crimes with minors, had you previously
14 advised clients about the SVP program?

15 A. Yes.

16 Q. So you're familiar with the program and the
17 screening process?

18 A. Correct.

19 Q. Did you feel confident advising Mr. Russell about
20 the SVP program?

21 A. Yeah. I mean, through the course of representation
22 I tried to make sure everything was put in the proper
23 light and the proper perspective. I wanted to make sure
24 that whatever decision was made was his decision.

25 Q. Do you recall Judge Goodstein advised him about the

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1 SVP program during his guilty plea?

2 A. I think it's somewhere in the transcript. I mean,
3 I don't recall independently of the transcript.

4 Q. Do you recall Mr. Russell during his guilty plea
5 indicating to you he didn't understand the SVP program or
6 he didn't want to go forward with his plea after Judge
7 Goodstein advised him of the program?

8 A. I don't recall that.

9 MS. HARRIGAN: No further questions, Your Honor.

10 THE COURT: Mr. Thomas?

11 MR. THOMAS: Yes, Your Honor.

12 THE COURT: Yes, sir.

13 MR. THOMAS: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q. Mr. Fuller, both you and Mr. Uricchio were kind of
18 co-counsel on this?

19 A. Correct.

20 Q. And you said that you had left the practice by the
21 time that this case was called for plea?

22 A. Correct. That is correct.

23 Q. And that it was your understanding that you were
24 coming back to represent him before trial?

25 A. That was my understanding when I left, yes.

1 Q. Okay. And you also said that you had met with
2 Dr. Burke at least once or twice in regards to
3 Mr. Russell?

4 A. I believe it was at least twice.

5 Q. At least twice. And was it your understanding that
6 Dr. Burke was saying that he could be treated on an
7 out-patient basis?

8 A. Yeah, that was Dr. Burke's recommendation.

9 Q. That there -- the Sexually Violent Predator Act is
10 kind of multi-phased. I mean, you know, more than one
11 victim, you know, you got a personality disorder or a
12 mental abnormality. But it basically comes down to
13 whether or not you can be, you need to be securely
14 confined or you can be released and treated on an
15 out-patient basis?

16 A. Correct.

17 Q. And it was Burke's opinion even after all the
18 testing that he could still be treated on an out-patient
19 basis?

20 A. Yes. I believe that's in the transcript as well.

21 Q. Okay.

22 A. I made that representation to the Court.

23 Q. And as a matter of fact, if you read the transcript
24 as a whole, even the comments made by Judge Goodstein, it
25 leads you to believe that this is what's going to happen,

CHAD FULLER - CROSS

1 that he's going to be treated on an out-patient basis with
2 Bill Burke?

3 A. That was our intention.

4 Q. That was your intention. And anything that had
5 shown up in regards to testing by Bill Burke if he had had
6 a high score on certain parts of the testing, that really
7 wasn't going to come into play until SVP, was it?

8 A. It depends on if we went into trial too. I mean,
9 that was obviously going to be something if we had to put
10 Dr. Burke on the stand, it could definitely could have
11 come in at trial.

12 Q. Right. And what could Burke testify at trial to?

13 A. I mean, it would really question whether or not we
14 put him on the stand. Obviously we wanted to put him on
15 the stand to talk about whether there was any sexual
16 deviance that was there and that he had been tested and
17 not found sexually deviant, and that wasn't the case.

18 Q. But you couldn't prove through Burke whether he
19 committed the crime or not.

20 A. Right, correct, but we were hoping to use Burke to
21 create reasonable doubt in the jury's mind.

22 Q. Right. Now, and you said that you had met with
23 Judge Goodstein a couple of times?

24 A. I did, several occasions, yes.

25 Q. And this was in regards to trial or plea or what

1 was going on at that time?

2 A. All of the above.

3 Q. All of the above?

4 A. Yeah, it was -- there were times when we would meet
5 about trials. There was times we would meet about the
6 Alford plea. And prior to this plea, Ricky had informed
7 me that he met with Goodstein and Harrison Bell as well.

8 Q. Okay. And you said that you had learned at the
9 point that there was going to be a negotiated plea and I
10 think your statement was that you didn't understand why he
11 was going to plead?

12 A. Yeah, because, I mean, the whole time he had
13 espoused his innocence and there was circumstantial
14 evidence against him but I still felt positive about the
15 case.

16 Q. About taking it to trial?

17 A. Yeah, yeah. I mean, I couldn't guarantee
18 anything. And I told him that much but if he wanted to
19 take that risk that was certainly his choice.

20 Q. So what he's saying today about being not guilty of
21 these crimes is really not inconsistent with what he was
22 telling you prior to the plea?

23 A. That's pretty much what he said the whole time that
24 I represented him.

25 Q. Yeah. Now, about Mr. Lewellen, and did you see

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1 that part of the transcript about her addressing Judge
2 Goodstein and saying that her family had been giving her a
3 hard time?

4 A. No, I didn't see that.

5 MR. THOMAS: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. THOMAS:

8 Q. I want to direct you to page 26 of the transcript.
9 If you just want to look over that.

10 A. (Complying). Okay.

11 Q. And you had met with Mr. Lewellen?

12 A. I met with him a couple of different occasions but
13 frankly the conversations I had with him didn't really
14 pertain to this particular case.

15 Q. Okay. And were you -- had you prepared to use
16 Mr. Lewellen if y'all went to trial?

17 A. Yeah, I mean, he was obviously going to be able to
18 attack the credibility of his daughter which was the
19 mother of the two alleged victims of the second instance.

20 Q. And were you aware that she had made allegations
21 against him?

22 A. I knew that he had had a couple physical
23 alterations (verbatim) with them. I do not recall if
24 there were any allegations of sexual inappropriateness.
25 That very well may have been. I know that there was

1 definitely some bad blood between the father and the
2 daughter.

3 Q. And she was basically saying on page 26 that her
4 family was giving her a hard time, she was having to deal
5 with that.

6 A. She did say her family, yes, on that transcript.

7 Q. Okay. You felt like there were viable defenses for
8 both incidences and I've just, it's easier for me to think
9 about them like incident one and incident two.

10 A. Yeah.

11 Q. Although there are two victims in incident two?

12 A. Yeah.

13 Q. And the final offer from the State was a result of
14 weaknesses in the case?

15 A. Yes.

16 Q. So it's just not a strong case?

17 A. I mean, there was definitely evidence to go both
18 ways --

19 Q. Yeah.

20 A. -- from what I can independently recall. And with
21 each client I represented both prior to this and after
22 this I've always let them know what the maximum that
23 they're looking at is if we take it to trial and lose. I
24 know we had done that to Bobby as well and even then he
25 indicated that he did not want to accept the plea.

1 Frankly -- and this is just an assumption -- I assumed as
2 we got closer to the trial date that he indicated he
3 wanted to take a plea and that's what we did.

4 Q. Did you tell him at any point to file a post
5 conviction relief?

6 A. I did. I did. I did not tell him. I told his
7 mother.

8 Q. All right. And why did you tell him to file a post
9 conviction?

10 A. The reason I told him that was, frankly, if they
11 were upset with the job that myself or Ricky had done, I
12 do not have a problem with anybody holding me accountable.

13 Q. Right.

14 A. If I made a mistake, it's not a problem. I mean, I
15 want to make sure that if I made a mistake it's corrected
16 but if I didn't make a mistake I want to make sure that
17 the person that feels I made a mistake has the opportunity
18 to have their day in court too.

19 Q. Certainly. And the previous offers from the State
20 were rejected because of you wanted to go to trial?

21 A. That was what Bobby had indicated and that was his
22 decision to make.

23 Q. And is your testimony that you didn't discuss
24 really at length the SVP program with Bobby?

25 A. Not at length, no.

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1 Q. Okay. In the transcript there's question about
2 Judge Goodstein about -- to Bobby as to whether or not he
3 understands that he's going to be on the sex offenders'
4 list. She explains to him about probable cause for
5 sexually violent predator and she does a good job about
6 explaining the sexually violent predator program.

7 A. Yes, I do recall that in the transcript.

8 Q. His answers would be consistent with someone --
9 he's testified that he wasn't concerned about SVP because
10 Mr. Uricchio had advised him that he would not be a
11 candidate for that program.

12 A. I was not present for any of those conversations.
13 If Mr. Uricchio advised him of that it would have been
14 without me being present.

15 Q. But if he had advised him of that, his answers
16 would be consistent with the answers that he gave Judge
17 Goodstein?

18 A. I can't answer that question because, once again,
19 you're asking me to think about what Bobby's thinking and
20 I can't do that.

21 Q. Right.

22 MR. THOMAS: Your Honor, if it please the Court.

23 THE COURT: Yes, sir.

24 BY MR. THOMAS:

25 Q. Judge Goodstein as a condition of the plea required

1 Bobby to attend counseling with Bill Burke?

2 A. That is correct.

3 Q. And she also ordered him to do 500 hours of
4 community service?

5 A. That is correct.

6 Q. As well as other certain conditions of the
7 probation?

8 A. That is correct.

9 Q. Those would be indicative of him coming -- doing
10 the turn around and coming back home?

11 A. Yeah. I would assume that's what Judge Goodstein
12 was thinking. I will tell you this, that during the
13 Alford plea one of the reasons -- the basis that she would
14 not take the Alford plea was if he ended up going to the
15 sexually violent predator program that he would have to
16 admit to his guilt once he was placed into that program,
17 and she wanted the first step for that to be at the guilty
18 plea.

19 MR. THOMAS: Your Honor, I have no further
20 questions.

21 MS. HARRIGAN: Briefly, Your Honor.

22 REDIRECT-EXAMINATION

23 BY MS. HARRIGAN:

24 Q. Mr. Fuller, Judge Goodstein had no involvement in
25 his civil commitment to the SVP program?

CHAD FULLER - REDIRECT

1 A. Not to my knowledge.

2 Q. So her conditions of probation were just based on
3 his sentence he was receiving that day, correct?

4 A. Correct. And, frankly, after that court date, you
5 know, other than the conversations I had with Bobby's
6 mother I haven't had any more involvement with the case.

7 Q. Was it Mr. Russell's decision to plead guilty that
8 day?

9 A. Yes.

10 Q. And he received a favorable offer from the State,
11 correct?

12 A. I thought it was a very, very good offer. I mean,
13 granted it was a good offer for someone who thought that,
14 that they were guilty. Yes, I mean, that would have been
15 a very good offer because roughly it was just about a
16 time-served sentence.

17 Q. Significantly less than the previous plea offers
18 he'd received from Mr. Harrison?

19 A. Very significant.

20 Q. Mr. Bell.

21 A. Yeah.

22 Q. And you were prepared to go to trial?

23 A. We were. We had done a lot of work.

24 Q. Do you know if Mr. Uricchio discussed the SVP
25 program with Mr. Russell?

CHAD FULLER - RECROSS

1 A. I don't know. I know that they had had a couple
2 meetings amongst themselves but my involvement in this
3 particular case became less after I left the firm.

4 Q. But you still stayed in contact with Mr. Uricchio
5 about this case, correct?

6 A. Yeah, and other cases. I told them when I left the
7 firm that I would stay on on all the cases in which I was
8 currently counsel.

9 MS. HARRIGAN: No further questions, Your Honor.

10 THE COURT: All right. Anything on recross?

11 MR. THOMAS: Your Honor, just one.

12 RECROSS-EXAMINATION

13 BY MR. THOMAS:

14 Q. But you were surprised about the plea?

15 A. When we were going for the plea?

16 Q. Yes, sir.

17 A. Yes, I was.

18 Q. Because you thought it was going to be a trial?

19 A. I anticipated that, frankly, from day one in
20 meeting with Bobby's mother.

21 MR. THOMAS: Thank you, Your Honor.

22 THE COURT: Before you step down, I've got a couple
23 questions. On redirect you said that you thought it was
24 a good offer because you believed it was essentially a
25 time-served sentence?

CHAD FULLER - RECROSS

1 THE WITNESS: It was just about a time-served
2 sentence. He had spent a good bit of time in jail. He
3 had been released after the first case and then picked up
4 on the second case. I had actually done a bond
5 modification hearing, and I believe that was in front of
6 Judge Goodstein which was denied. So he spent a fair
7 amount of time in jail.

8 THE COURT: Okay. So your understanding from doing
9 the plea was essentially he was going to go up and come
10 back?

11 THE WITNESS: We understood that he was going to be
12 processed through SVP, but we were confident that he could
13 return, yes.

14 THE COURT: Okay. Do you recall when Judge
15 Goodstein was going through her questions about SVP
16 whether Mr. Russell questioned Mr. Uricchio or you about
17 why she was going through that?

18 THE WITNESS: I don't recall that. I recall during
19 the plea I was to the right of Mr. Russell and
20 Mr. Uricchio was to the left, but I don't recall being
21 interrupted.

22 THE COURT: You don't remember any questions from
23 him during that?

24 THE WITNESS: Not that I can recall as I sit here
25 now.

CHAD FULLER - RECROSS

1 THE COURT: Okay. Bear with me one second.

2 THE WITNESS: Okay.

3 THE COURT: Now, did you all make Mr. Russell aware
4 that he would be subject to an SVP evaluation as a result
5 of this plea?

6 THE WITNESS: Prior to the actual plea, yes.

7 THE COURT: You did?

8 THE WITNESS: Yes. That was done in the holding
9 cell.

10 THE COURT: So he was aware of that?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Now, did -- thank you, sir. All
13 right. Ms. Harrigan, do my questions lead the State to
14 have any other questions?

15 MS. HARRIGAN: No, Your Honor.

16 THE COURT: Mr. Thomas?

17 MR. THOMAS: Nothing further, Your Honor.

18 THE COURT: All right. Thank you, sir. I
19 appreciate it.

20 THE WITNESS: Thank you.

21 THE COURT: Ms. Harrigan, call your next witness.

22 MS. HARRIGAN: Your Honor, the State does not have
23 any additional witnesses. However, we would like to put
24 on the record that unfortunately Mr. Uricchio passed away
25 last year and he's obviously not available to render any

1 testimony in regards to this matter.

2 THE COURT: All right. So that will conclude the
3 case. I'll review the documents. I'll get back to y'all
4 with my decision. Okay?

5 MS. HARRIGAN: Thank you, Your Honor.

6 THE COURT: We're going to take about a 10-minute
7 break.

8 MR. THOMAS: Your Honor, if it please the Court.
9 In regards to Mr. Lewellen, and I apologize because he had
10 assured me that he was going to be here and I didn't see
11 the need to have him subpoenaed to be here. If the Court
12 considers or wishes to hear from Mr. Lewellen, I'll be
13 more than happy if the Court wishes to hold this open to
14 provide him in front of the Court, Your Honor.

15 THE COURT: Well, let me think about that. I'll
16 review my notes and decide whether I'll require any
17 further testimony. Okay?

18 MR. THOMAS: All right. Thank you.

19 THE COURT: Thank you all.

20 END OF CASE: 11:56 A.M.

21 ***

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25

1 CERTIFICATE OF REPORTER

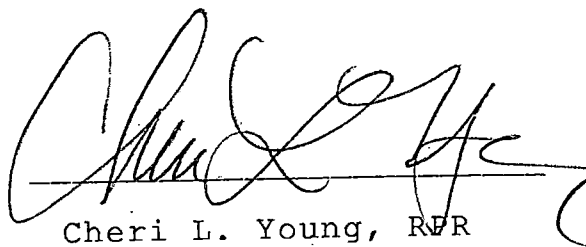
2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)

5 I, Cheri L. Young, Registered Professional Reporter
6 and Official Court Reporter for the State of South
7 Carolina, Second Circuit-At Large, do hereby certify that
8 the foregoing proceedings were written stenographically by
9 me using computer-aided translation; further, that the
10 foregoing is a true, accurate and complete record, to the
11 best of my skill and ability, of all the proceedings had
12 and evidence introduced in the hearing of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Orangeburg County, on the 21st day of May, 2013.

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

17 I have hereunder set my hand this 19th day of
18 December, 2014.

19
20 
21 Cheri L. Young, RPR
22 Official Court Reporter
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CALHOUN) FIRST JUDICIAL CIRCUIT

2011-CP-18-2240

Bobby Russell, Jr.,)

Plaintiff,)

v.)

Transcript of Record)

State of South Carolina,)

Defendant.)

October 8, 2013
St. Matthews, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Megan Harrigan, Esquire
Attorneys for the State

Tommy A. Thomas, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter

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1 THE COURT: Y'all be seated. Thank you.

2 MR. THOMAS: I need my client.

3 THE COURT: Yes, sir.

4 All right. This is Bobby Russell verses State of South
5 Carolina; is that correct?

6 MS. HARRIGAN: Yes, Your Honor. We're here for the
7 second hearing in this matter. Bobby Russell verses the
8 State of South Carolina, Docket Number 2011-CP-18-2240. He
9 was indicted during the August 2009 term of the Dorchester
10 County Grand Jury for criminal sexual conduct with a minor
11 in the first degree, and two counts of committing or
12 attempting to commit a lewd act with a minor. He was
13 represented by Claude Ricco and Todd Fuller. On November 8,
14 2010, he appeared before the Honorable Diane S. Goodstein,
15 where he pled guilty to two counts of lewd act and to an
16 additional count of a lewd act is a lesser included offense
17 of the criminal sexual conduct with a minor, first degree,
18 charge. Pursuant to negotiations between Mr. Russell and
19 the state, Judge Goodstein sentenced him to 15 years
20 imprisonment, suspended upon the service imprisonment,
21 followed by five years probation, for all three charges to
22 run concurrently. He did not appeal his conviction or
23 sentence. He did, however, file timely application for post
24 conviction relief on November 7, 2011, alleging various
25 allegations of ineffective assistance of counsel in an

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1 involuntary guilty plea. The state's made it's return on
2 January 18, 2012. He's represented in this action by Tommy
3 Thomas. We had an initial hearing before Your Honor on May
4 21, 2013 and the record was left open to take additional
5 testimony from another witness and we're here today for that
6 purpose.

7 THE COURT: Thank you, ma'am. I have my notes from that
8 date, that first hearing. And Mr. Thomas?

9 MR. THOMAS: Yes, Your Honor.

10 THE COURT: Are you ready?

11 MR. THOMAS: Yes, Your Honor. Please the Court. We
12 would call Mr. John Lewellen to the stand.

13 THE COURT: All right. You said John Lewellen?

14 MR. THOMAS: Llewellyn, Your Honor. It's L-e-w-e-l-l-
15 e-n.

16 THE COURT: All right. Mr. Lewellen, before you sit
17 down, raise your right hand, please, sir.

18 (WHEREUPON, John Lewellen, was
19 sworn to tell the truth.)

20 THE COURT: All right, sir. If you'd get comfortable,
21 please, sir. And once you get comfortable Mr. Thomas is
22 going to start examining you.

23 MR. THOMAS: Thank you, Your Honor.

24 THE COURT: Go ahead.

25 MR. THOMAS: May it please the Court.

1 THE COURT: Yes, sir.

2 JOHN LEWELLEN - DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q Mr. Lewellen, you're familiar with the case of Bobby
5 Russell?

6 A I -- somewhat.

7 Q All right, sir. Have you had any contact with Mr.
8 Russell?

9 A No, sir, I haven't.

10 Q Okay. And --

11 THE COURT: Hold on a second. We like to listen to the
12 train as it goes by. This is the nice thing about being in a
13 small town, right next to the courthouse, the courthouse is
14 right next to the railroad tracks. We can enjoy a different
15 time in life.

16 If you'll just bear with us. I want to make sure that
17 the court reporter can hear everything and that I can hear
18 everything.

19 MR. THOMAS: Yes, sir.

20 THE COURT: I don't think it will be too long.

21 MR. THOMAS: A real piece of trivia, Your Honor. I'm a
22 musician in my other life and play bass, and I've always
23 wondered what cord that was because it's a set of three.
24 I've never found anybody that could answer.

25 A My answer is --

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1 THE COURT: Is the train still going -- go ahead.

2 A My answer was I'm somewhat familiar with the case, but
3 I have not communicated with Mr. Russell. I have known him
4 in my previous life and I don't really know him now.

5 BY MR. THOMAS:

6 Q All right, sir.

7 A He had written me once. I did not respond.

8 Q Yes, sir.

9 A I think once. Other than that, I don't --

10 Q All right, but you do know Angel Lewellen?

11 A Yes, sir, I do. That's my oldest daughter.

12 Q Okay, and you do know that Angel Lewellen is the mother
13 of the alleged victims in this second case against Mr.
14 Russell?

15 A Angel's always been a victim.

16 Q Yes, sir. And has Angel made any allegations of this
17 nature before?

18 A As you see the thickness of the file up here. This is
19 just some of what I have. I have another two shelves of
20 stuff at my house of allegations made by her, her mother and
21 stepmother. You have to understand the situation when we
22 got divorced she was brought up in. Her mother is, for lack
23 of a better term, a spoiled rich girl, and her mother bought
24 her a house and that house turned into a party shack where
25 everybody stays and everybody parties. You go against them

1 and you are their enemy. Once again I've got records, I know
2 it's not documented, it never happened, so I brought a lot
3 of documentation here today that will prove if you go
4 against them they will say anything about you.

5 Q And you actually brought a custody action against her
6 mom and you were awarded custody of the children?

7 A Yes, sir. It an enormous battle in Dorchester County
8 Family Court, three weeks, took a week off and went back for
9 two more weeks. I represented myself, I stood on the truth
10 and I let the documents speak for themselves.

11 Q All right. So you have how many children?

12 A I have full custody of my children.

13 Q How many is that?

14 A I have three of them and I'm still a single parent.

15 I've had them the last five years, actually, I've have them
16 for six.

17 Q And your -- Angel is how old?

18 A Angel is 27.

19 Q Right. And how old are the other children?

20 A 12, 14 and 16.

21 Q Okay. And from your custody, Angel moved out. So
22 she's living on her own?

23 A Yes, sir.

24 Q Just trying to set up the background as far as where
25 she was?

1 A I won custody of Angel also when she was younger. We
2 had a nice home, and we were pretty much living the American
3 dream, I guess you could say. We -- my wife, in the
4 meantime got with some other members, which we run a boxing
5 gym along with after school programs and stuff. Some people
6 -- and then ended up bringing a stolen truck to my home.
7 She was seven months pregnant. I pled on charges. She
8 later wrote a letter, I have a copy of it if you'd like to
9 see it, to the Governor admitting that she was at fault, she
10 brought it, she did that. I made the judge mad, I was
11 standing up. He told me to sit down. I said, no, it was me.
12 He told me to sit down. I smarted off and I shouldn't have.
13 I said, Your Honor, with all due respect your job is to
14 enforce the law not to interpret it. That's my
15 responsibility. He said, you've got it.

16 Q And that was the beginning of the problems?

17 A Yes, sir, that was the beginning of the problems.

18 Q And who did she make allegations against with regards
19 to molestation?

20 A Angel had made, if I can remember right, she made one
21 that she, herself, was molested against a guy by the name of
22 -- Profit was his last name.

23 Q Was that -- what happened with that allegation?

24 A Lori later said that it didn't happen because it was
25 her friend and --

1 THE COURT: I hate to interrupt you here, but who is
2 Lori?

3 MR. LEWELLEN: Lori is Angel -- my ex-wife. My ex-wife.

4 THE COURT: Okay. Angel's mom?

5 MR. LEWELLEN: Yes, sir.

6 THE COURT: All right.

7 MR. LEWELLEN: Well, step-mom. Her step-mother.

8 THE COURT: Okay. Thank you. I'm sorry. I just lost
9 the train of --

10 MR. THOMPSON: Oh, no, sir. Certainly.

11 BY MR. THOMPSON:

12 Q So nothing every came of those allegations?

13 A That's why I was away. I got 18 months. While I was
14 away she went from my church family, and I praise God, they
15 stood beside me. My wife didn't -- she went from teaching
16 Sunday School to strip pole. Lori did.

17 Q Right.

18 A And then she led Angel to the same strip pole. And
19 they went -- this is something I never comprehended, she had
20 no bills. Everything was taken care of. She had no reason
21 to be there other than partying, other than drugs.

22 Q To your knowledge, did Angel have an addiction problem?

23 A I don't know.

24 Q Okay.

25 A She would always present to me that she didn't even

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1 smoke a cigarette, but I have pictures here that was brought
2 to me that shows different.

3 Q Right. Did she have -- ever have anybody arrested for
4 allegedly molesting the children?

5 A She had -- I'm trying to think. There were so many --

6 THE COURT: Is this Angel?

7 MR. THOMPSON: Angel, yes, sir.

8 A There's so many different allegations that she's made
9 against different people. If I can -- I'm trying to think
10 where it would be in my file. There were several of these
11 young girls together. She had a cheerleading team. When
12 say she, Lori had a cheerleading team. I believe today's
13 time she would have been charged with trafficking, because
14 these young cheerleading girls would go on the internet now
15 and pull up some of their names and see what they've become
16 and what they're doing.

17 BY MR. THOMAS:

18 Q And they were living at Angel's house; is that correct?

19 A Well, Angel was living with Lori.

20 Q Right.

21 A And there was also at least three convicted pedophiles
22 in the house at the same time.

23 Q And you know this of your own knowledge?

24 A Yes, and I have a copy of their record and I have a
25 copy of, I guess, when you pull it up on the web and it

1 shows convicted pedophile and pictures and stuff. I have
2 those, also.

3 Q Okay.

4 A They were were. I just -- you know, her life was
5 pretty much set out for her in this situation. I'm not
6 giving her any excuse, but there was no responsibility for
7 any actions and it ended up becoming to a point where they
8 were both busted for methamphetamine there. The house next
9 door was, the house across the road was, and Angel and her
10 step-brother Stevie Barnham (sp) and Lori worked as
11 confidential informants. That was also in my divorce case
12 because I called them on the stand and I questioned and I
13 got them to reveal why they got PTI at least twice. This
14 was supposedly why they were given so many breaks and then I
15 also subpoenaed the convicted drug dealers and asked them,
16 who turned you in, who set you up.

17 Q And it turned out to be them?

18 A Absolutely. It was six different times. A minimum of
19 six different times, and they still do what they want and do
20 their partying. Again, I am very concerned on that note, I
21 don't know if I can ask the judge or you or make it
22 publically known in the court record now. I have nothing to
23 do with these people. I haven't seen them in five years.
24 By me sitting on this stand, today, I'm putting my children
25 and myself -- because she will get notice of this -- I've

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1 already had to confront some of these thugs.

2 Q You're talking about Angel, she being Angel?

3 A Angel, absolutely, and her boyfriend. They are known
4 drug dealers. What she's done for the last five years, I
5 don't know, but I know before that five years, and I know
6 that she's on trespass notice on my property. I don't have
7 only my children that I worry about, I also have 27 members
8 of our gym that people come to our gym that I train. A
9 bullet has no conscience. They ride by and shoot at my gym,
10 you know, I don't know if I can ask for a restraining order
11 or what --

12 MS. HARRIGAN: Your Honor, may we approach.

13 THE COURT: Sure.

14 (Off the record bench conference with counsel and the
15 Court.)

16 BY MR. THOMPSON:

17 Q Mr. Lewellen, I understand your concern. We've talked
18 about that. What I'd like to know, kind of keep it focused
19 to -- Do you know Mr. Uricchio?

20 A Yes, sir, I do.

21 Q And Mr. Uricchio was Bobby Russell's former lawyer?

22 A Yes, sir.

23 Q Did you give this information to Mr. Uricchio?

24 A Uricchio is a personal friend of mine. Ricky allowed
25 me to study his law books.

1 THE COURT: Is this Mr. Uricchio?

2 MR. LEWELLEN: Yes, sir.

3 THE COURT: Okay. I want to make sure we've got it on
4 the record, straight.

5 MR. THOMPSON: Yes, sir.

6 A He allowed me to use his law library and to study to
7 prepare myself for Court to try to get my children.

8 Somewhere along the trial in subpoenaing witnesses for my
9 trial Mr. Russell was one of the witnesses that I had on my
10 witness list under subpoena along with several others.
11 Certain ones were really shunned by -- they didn't tell me a
12 lot of information and I have to say honestly I never got to
13 question Mr. Russell. I really wish I would have got to
14 because I believe I would have got some helpful information,
15 but Ricky came to me, Mr. Uricchio --

16 BY MR. THOMAS:

17 Q Yes, sir.

18 A -- and told me, he said we may have a conflict of
19 interest. I said what do you mean. He said a client came to
20 him to represent him, to represent the client and that
21 client was accused of touching my grandchildren.

22 Q And during that time Mr. Uricchio was aware of the
23 background and the information you had provided him about
24 Angel Lewellen?

25 A How much of what he was aware of? I can't comment on

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1 what he was aware of or what he wasn't aware of.

2 Q Okay.

3 A I mean, we talked about some of my case and he directed
4 me in what paths I should go with my case, what books I
5 should look at, what rule is here or there. As far as
6 sharing everything in my case, I just kind of like a
7 surprise attack when I got into the courtroom. That way
8 nobody could have a defense against what I had or make a lie
9 up. So I kept a lot of stuff to myself.

10 Q Let me ask you this, you would have been available to
11 testify at Bobby Russell's trial?

12 A I can say yes. You know, I don't know how it works. I
13 think at the same time he was being tried my court case was
14 going on, too. Like I said, it was three weeks, a week off,
15 and then two weeks after that. How the court could have
16 worked around that, I imagine it could have. I don't know.

17 Q Okay, but if the schedule had worked for you then you
18 would have been available to testify?

19 A Well, if the subpoena got to me, yeah, I would have
20 done it. Yes, sir.

21 Q And you would have been able to testify in regards to
22 Angel Lewellen, about her credibility, about her past?

23 A Absolutely.

24 Q Okay. And you would have been able to testify about
25 the fact that she made allegations of a similar nature

1 against other people?

2 A Absolutely.

3 Q Okay. All right.

4 A She actually brought charges and stuff against me on
5 some things. That's why she's on trespass notice. I had a
6 jury trial and everything where she said she was assaulted
7 by me.

8 Q Was she successful with those allegations?

9 A Oh, absolutely not. She was given the come ups by the
10 judge and that's why I got my restraining order against my
11 property and stuff.

12 Q And she had filed false police reports in the past?

13 A Yes, sir, absolutely what she did.

14 Q And she had actually been convicted of filing a false
15 police report?

16 A I don't know. I think she was convicted of it. I
17 don't know how far it all went. What I know is this
18 incident, she said she got attacked when she was made to
19 leave our property. She started trouble. And the cops told
20 her that she had to leave. What she done is she left
21 Dorchester County, in the same story, the same incident,
22 went to Berkeley County, called Berkeley County police and
23 said it happened in her step-mother, Gloria Lewellen's yard.
24 That I beat her up in that yard. So now, I'm looking at
25 Berkeley County wanting a warrant wanting to arrest me for

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1 beating her up, and they make a phone call, as she makes the
2 report, I answered the call. I said, here, let me help
3 clear this up for you. I hand the phone to the police
4 officer in Dorchester County who was still at the gym that
5 came there to take the report and decided to work out. So
6 he --

7 Q So it would have been impossible for you to be in
8 another county?

9 A Right. So those two officers got together and the
10 officers brought the charges against her for filing a false
11 police report. So how far that went, I don't know, but I
12 know I have a copy of the police report where she was -- it
13 was entered dual -- whatever.

14 Q How truthful is Ms. Angel Lewellen?

15 A You know, at this time I can't answer that. I haven't
16 known her in five years. I would like to think that she
17 went out and she found out -- I would like to think that she
18 went back to the Bible. You know, the Bible says, if you
19 bring them up in it they won't flee far from it. They will
20 come back. I would like to think that that has happened. I
21 can't tell you because I've had no contact with her in at
22 least five years. Before that --

23 Q All right. The time you did have contact with her?

24 A Before that -- the documentation will show that if she
25 told me it was raining outside I wouldn't believe a word she

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1 says. It's what benefits Angel and Laurie. You don't
2 interrupt the party.

3 MR. THOMAS: I'd like to beg the Court's indulgence just
4 for a second.

5 THE COURT: Sure.

6 MR. THOMAS: Your Honor, I have no further questions.

7 THE COURT: Ms. Harrigan, before you ask any questions,
8 may I ask a couple of questions?

9 MS. HARRIGAN: Certainly, Your Honor.

10 THE COURT: All right.

11 Mr. Lewellen, you said that you have not talked with
12 her or known what she is doing in five years?

13 MR. LEWELLEN: Somewhere about that length of time, not
14 exactly.

15 THE COURT: Can you give me a date, an approximate date.
16 It doesn't have to be a year, summer or spring, but a year?

17 MR. LEWELLEN: I think the last time that I spoke to
18 Angel was the day in Court -- that I was found innocent in a
19 jury trial.

20 THE COURT: Okay, when was that?

21 MR. LEWELLEN: Could I --

22 THE COURT: Yes, sure.

23 MR. LEWELLEN: I forgot the Court --

24 THE COURT: It doesn't have to be exact.

25 MR. LEWELLEN: Yes, sir. The filing of the false police

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1 report and stuff took place on the same day. That incident
2 occurred on the -- September 2008, and it probably took
3 about a year to get to court. She was served with a no
4 trespassing notice in April of 2008. So I would say around
5 -- I know it's vague, but I would say '09 to '10. Somewhere
6 around that time was the last time that I saw her.

7 THE COURT: Somewhere around 2009 to 2010?

8 MR. LEWELLEN: Yes, sir.

9 THE COURT: That's only three or four years.

10 MR. LEWELLEN: Yes, sir. I'm not sure when.

11 THE COURT: Now --

12 MR. LEWELLEN: Yes, sir.

13 THE COURT: -- a couple more questions. I know we've
14 been talking about Angel, but do you know a child by the
15 name of #1?

16 MR. LEWELLEN: No, sir.

17 MS. HARRIGAN: #1 I believe, Your Honor.

18 THE COURT: Okay. You know #1?

19 MR. LEWELLEN: No, sir.

20 THE COURT: How about #2 (sp)?

21 Do you know that child?

22 MR. LEWELLEN: I know I have -- Your Honor, with all due
23 respect, think my daughter has about five kids. I've only
24 got to see two of them. One of them is named #2

25 THE COURT: Okay.

1 MR. LEWELLEN: I don't know her whole name.

2 THE COURT: Okay.

3 MR. LEWELLEN: It's with different people.

4 THE COURT: Okay. How about ~~that~~ #3

5 MR. LEWELLEN: #3 is my grandson.

6 THE COURT: #3 is your grandson?

7 MR. LEWELLEN: Yes, sir.

8 THE COURT: Okay. All right. Thank you, sir.

9 MR. LEWELLEN: I haven't gotten to see him.

10 THE COURT: All right. Ms. Harrigan.

11 JOHN LEWELLEN - CROSS - EXAMINATION

12 BY MS. HARRIGAN:

13 Q Mr. Lewellen, you discussed on direct your prior
14 conviction for receiving a stolen vehicle; correct?

15 A Excuse me?

16 Q You discussed on direct examination your conviction or
17 you pled guilty to receiving possession of a vehicle;
18 correct?

19 A It was receiving stolen goods, possession of a stolen
20 motor vehicle and possession of private property or
21 something like that, along the same lines.

22 Q A chop-shop violation, does that sound familiar?

23 A No, that does not sound --

24 Q You were convicted or pled guilty to another kind of
25 receiving stolen goods in 2001; correct?

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1 A I know I received a pardon for something I bought a
2 long time ago.

3 Q But you don't recall as to whether or not you were
4 convicted or pled guilty of receiving stolen goods in 2001,
5 aside from your --

6 A Like I said, I know I received a pardon for something
7 that happened way back in 2000 -- 2001?

8 Q You are a convicted felon; correct?

9 A Yes, ma'am. No, no --

10 Q Did Mr. Uricchio represent you on those charges?

11 A No, he did not.

12 MS. HARRIGAN : Court's indulgence.

13 Q I believe you testified you weren't sure how much Mr.
14 Uricchio was aware of Angel's previous allegations; correct?

15 A I can't -- peer into his mind. I can't answer that.

16 Q I think the wording or phrasing you used was, he liked
17 surprise attacks to you kept a lot of that information to
18 yourself; correct?

19 A I like.

20 Q Yes. You kept it to yourself instead of sharing it?

21 A Some. Some of my stuff I kept to myself.

22 Q And your custody proceeding was going on around the
23 time that Mr. Russell was accused of --

24 A I believe -- I believe it was. Actually, I think I had
25 Mr. Russell subpoenaed. I think he was -- had just been

1 arrested or something. I don't know. I'm not familiar with
2 his case. I know the process server had to serve him in
3 Dorchester County, I think.

4 Q And in regards to Mr. Thomas's questions about how
5 truthful Angel is you said that you couldn't tell because
6 you hadn't had contact with her in quite a number of years;
7 correct?

8 A Quite a few years. I can't tell you anything about her
9 since this court date, since we went to court.

10 Q I think in regards to the Court's questions the latest
11 would have been 2009, 2010; correct?

12 A The last time. Yes, ma'am. My tendency to -- I think
13 Roberto Duran's mother said the best boxer -- you are the
14 company you keep. So I keep very far from that company.

15 Q And are you aware that these allegations involving your
16 grandchildren were in May of 2009; correct?

17 A I have -- no, ma'am, I did not. I have no allegations
18 -- I'm pretty much stupid what the case held or who said
19 what or what. I don't know Mr. Russell. I can't tell you
20 anything about the case one way of the other. I can only
21 tell you what I know about my daughter during that time.

22 Q And I believe you testified or answered the Court's
23 questions that you haven't met either of the children that
24 are the cases; correct?

25 A No, ma'am, I did not say that.

1 Q You have met the two children that were victims?

2 A I said, no, ma'am. What I said was #3's my
3 grandson and I have a granddaughter named #2 I don't
4 know about all the other names. Then she has three more, I
5 think by different men.

6 Q Have you met the two that are the minor victims in this
7 case, #3 and #2

8 A Like I said, I don't know who the victims are.

9 Q If the Court records reflected it's #3 and #2
10 have you met these two children before?

11 A Yes, they're my grandchildren. If #2 is -- I
12 thought her last name was #2 (sp). So this may be
13 another one.

14 MS. HARRIGAN: Court's indulgence.

15 A I'm only certain about #3 I still stay in
16 contact with his father who is away in Seminary in Michigan.
17 He sends me scripture every day and hasn't seen his son in
18 about six years.

19 MS. HARRIGAN: No further questions, Your Honor.

20 THE COURT: Anything on redirect?

21 MR. THOMAS: Yes. Please the Court, just a couple.

22 JOHN LEWELLEN - REDIRECT EXAMINATION

23 BY MR. THOMAS:

24 Q Mr. Lewellen, you said that you've had some problems in
25 the past. You've received a pardon for that?

1 A Yes, sir.

2 Q And you've been arrested since then?

3 A No, sir. Well, with the exception of Angel having me
4 arrested.

5 Q Okay.

6 A Angel had me arrested and I was innocent of that.

7 Q Yes, sir.

8 A And there were previous arrests in the past for
9 fighting. I used to work as a bouncer and every time I
10 throw somebody out I would get arrested, but --

11 Q Now, you said Uricchio was a person friend of your?

12 A Yes, sir, I did.

13 Q And as that you had discussed the situation, he knew
14 about Angel?

15 A Well, he knew about Angel, yeah, he knew about my
16 daughter, about how she was. Absolutely.

17 Q Right. And I think --

18 A Matter of fact, to be honest with you, I remember
19 breaking down and crying on time in his office about my
20 wife, having my daughter on the strip pole. And the way
21 that -- you know, because he was a friend.

22 MS. HARRIGAN: Your Honor, I object. This has nothing to
23 do with Ms. Lewellen's credibility regarding her occupation.
24 I object.

25 THE COURT: And I sustain it.

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1 MR. THOMAS: I'll move on, Your Honor.

2 THE COURT: Okay.

3 BY MR. THOMAS:

4 Q The -- you said you spoke with Angel, the last contact
5 you had with her was when you were in court on the family
6 court matter; around that date?

7 A No, sir, I didn't say that.

8 Q Okay,

9 A But you're absolutely right. You brought that to my
10 memory. Yes, sir, you're absolutely right. That is the
11 last time I spoke to my daughter. She was a witness in my
12 case in the family court case.

13 Q All right.

14 A She was subpoenaed and she turned out to be a great
15 witness for me.

16 Q Okay. And I think you also said this was about the same
17 time -- the family court case was going on about the same
18 time Mr. Russell was arrested?

19 A Yes, sir, absolutely.

20 Q Okay. So the knowledge that you have about Angel at
21 that time would have been current?

22 A Oh, it was.

23 Q It's not current today?

24 A It's not current today, but it was absolutely current
25 then.

1 Q Then.

2 A Like is said, she ended up being a very -- because of
3 her credibility, because of her strip pole, because of her
4 drugs, because of her brain, because of sitting on that
5 stand and getting caught in about 50 different lies, it
6 really destroyed her mother along with it. So, you know, I
7 praise God and walked out of that courtroom. We all know
8 South Carolina is when men winning custody, especially one
9 who went to prison. I walked out with full custody of my
10 children.

11 Q She just didn't have any credibility?

12 A No, sir. None at all. She has credibility to be un-
13 credible.

14 Q Yes, sir.

15 MR. THOMAS: No further questions, Your Honor.

16 THE COURT: Anything on recross?

17 MS. HARRIGAN: Yes, Your Honor, briefly.

18 JOHN LEWELLEN - RE-CROSS - EXAMINATION

19 BY MS. HARRIGAN:

20 Q Mr. Lewellen, you discussed that you were pardoned, do
21 you know which offense you were pardoned for?

22 A No, I don't. I really don't. I know that I haven't
23 been in any kind of trouble since then.

24 Q But you were only pardoned on one offense, not all of
25 the offenses which you've been convicted of; correct?

1 A I don't know if they were together or not, but I am
2 currently seeking a pardon on all of them.

3 Q But you did testify that you are a convicted felon; is
4 that correct?

5 A Absolutely. Absolutely.

6 MS. HARRIGAN: No further questions, Your Honor.

7 THE COURT: Thank you. You may step down. I appreciate
8 it.

9 MR. LEWELLEN: Thank you.

10 THE COURT: All right, Mr. Thomas, anybody else?

11 MR. THOMAS: Your Honor, please the Court, we would call
12 Mr. Russell, very briefly, to the stand.

13 THE COURT: Okay. Didn't he already testify?

14 MR. THOMAS: He did. I was just going to ask him a
15 couple of questions in light of Mr. Lewellen's testimony.

16 THE COURT: Okay. If you limit to that, I'll let him --

17 MR. THOMAS: Yes, sir.

18 THE COURT: Mr. Russell, before you sit down, if you'll
19 raise your right hand, as best you can.

20 (WHEREUPON, Bobby Russell was sworn
21 to tell the truth.)

22 THE COURT: All right, Mr. Russell, you were under oath
23 last time, I just figured I'd do it one more time.

24 MR. RUSSELL: Okay.

25 THE COURT: Thank you, sir.

1 All right. Mr. Thomas.

2 MR. THOMAS: Please the Court.

3 THE COURT: Limited examination.

4 MR. THOMAS: Yes, sir.

5 BOBBY RUSSELL - DIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q Mr. Russell, you've heard Mr. Lewellen testify?

8 A Yes, sir.

9 Q Okay. Did you know, when did you know or did you know
10 the depth of what Mr. Lewellen knew about Angel Lewellen?

11 A Basically, I believe when I got Mr. Uricchio as an
12 attorney, because he was telling me, basically, that the
13 case wouldn't even go forward, that it would be thrown out,
14 because they knew it was a lie. I believe Mr. Lewellen had
15 told Mr. Uricchio some things about how his daughter was.
16 So that was the extent of me knowing about it.

17 Q And did you discuss with Mr. Uricchio the use of Mr.
18 Lewellen as a witness in these events?

19 A Yes, sir.

20 Q Then why did you plead to this charge?

21 A Because he came to me, I think -- I can't remember how
22 many days it was before going to court. I was under the
23 impression we were going to trial. He said he wasn't going
24 to call any -- he said, Mr. Lewellen, he said his testimony
25 would upset his deal. He said it would upset my deal and

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1 I'm not going to use him as a witness, I can't use him and
2 that's when Mr. Fuller -- I believe they were both -- we
3 were in the visitation room in Dorchester County Detention
4 Center. That's when they kept telling me they're not going
5 to put the children on the stand because they can't do that
6 and they can't do this. It just basically all crumbled at
7 the last second and they talked me into a plea.

8 Q Okay. And did you understand at the time that you
9 entered into this plea that this second case with Angel
10 Lewellen would put you in a position for SVP under the
11 statute?

12 A I was told that wasn't even a worry. I didn't have no
13 worries about -- Mr. Fuller told me that I'd be evaluated
14 but I wouldn't be found as a sexual violent predator.

15 Q Okay. And in the first case you had one victim?

16 A One.

17 Q Second case gave you two more?

18 A Two. See, that's --

19 Q One more question, this plea, the deal that he worked
20 out was basically a turn-a-round?

21 A Yes, sir. I was promised I'd be home by the weekend.

22 Q And that turn-a-round was that you'd serve -- you'd
23 serve time in the County Detention Center?

24 A It would be time served. Judge Goodstein grabbed the
25 microphone and looked at me and she said, you're maxed out.

1 And I believe -- I can't remember which side Mr. Fuller was
2 standing on, but I asked him what does that mean, that's
3 when he told me I'd be home by the weekend. I would go to
4 Lieber, get my hair cut, that I would go to Kirkland, I'd
5 get a number, I'd be home by the weekend. I believe I
6 called my family. They were already expecting to come pick
7 me up.

8 Q All right.

9 A And that's when --

10 Q Right.

11 MR. THOMAS: No further questions, Your Honor.

12 MS. HARRIGAN: Briefly, Your Honor.

13 BOBBY RUSSELL - CROSS-EXAMINATION

14 BY MS. HARRIGAN:

15 Q Mr. Russell, you testified that as soon as you retained
16 Mr. Uricchio you knew that Mr. Lewellen would be a possible
17 witness; correct?

18 A Well, I didn't know the exact date, because I don't
19 think I met with him. I believe my family met with him for a
20 few weeks and then he came to see me. That's when he told
21 you, you know, don't worry about, you know, the case, we
22 know it's not true. You'll have no worries, her father is
23 willing to testify for you.

24 Q He told you this was because the children's mother made
25 allegations like this previously; correct?

1 A Yes, in the past. That's who I knew about it was Mr.
2 Uricchio. He knew about all the cases because he had them
3 in front of him, about all the allegations -- I don't want
4 to say all of them, but he had a lot of paper work about Ms.
5 Lewellen showing that she had done this to people before.

6 Q And Mr. Uricchio told you that Mr. Lewellen would be a
7 possible witness if you went to trial?

8 A He told me he would be my -- basically, my star witness
9 in the case. He was going to be, I guess, my only witness,
10 because I didn't have anybody. I mean, it was a one-on-one
11 crime. You don't have a witness.

12 Q And he would be a witness only to the case involving
13 the two minor Lewellen grandchildren; correct?

14 A Yes, ma'am. But we already had all the evidence to
15 prove the other one didn't happen, but when the second case
16 popped up I couldn't win any because -- is why I was
17 supposed to take a plea because there was so much against
18 me, but I was still willing to go to trial. I begged to go
19 to trial.

20 Q And your testimony was that either Mr. Fuller or Mr.
21 Uricchio did explain the SVP program to you; correct?

22 A The day of Court in the courtroom standing at the
23 bench.

24 Q Do you recall Judge Goodstein going over the SVP
25 program twice?

1 A No.

2 Q You don't recall that during --

3 A It's in the transcript. I don't recall. I can never
4 -- I've even asked my family and they don't remember her
5 saying anything.

6 Q So you dispute the --

7 A There's a lot of stuff in the transcript that she
8 didn't say.

9 MS. HARRIGAN: No further questions, Your Honor.

10 THE COURT: Anything on redirect?

11 MR. THOMAS: Your Honor, just one.

12 BOBBY RUSSELL - REDIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q Mr. Russell --

15 A Yes.

16 Q -- you said the SVP was explained to you. Was it
17 explained to you in a manner in which you understood that
18 you were going -- that you were a potential candidate for
19 SVP?

20 A I was told I not a candidate, would not be a candidate.
21 It was explained to me that even though I went to Dr. Hurt,
22 that even he didn't feel I needed to be there. I was told
23 it was a no-brainer. I would not go. I was told about 15
24 minutes before we went in the courtroom, in the little
25 attorney room. They told me, they assured me again I

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1 wouldn't go. Ms. Goodstein started talking about it and I
2 asked again, and they told me I wasn't going. They said it
3 was not a possibility.

4 MR. THOMAS: No further questions.

5 THE COURT: Thank you.

6 Anything on recross?

7 MS. HARRIGAN: Just briefly.

8 BOBBY RUSSELL - RECROSS EXAMINATION

9 BY MS. HARRIGAN:

10 Q Mr. Russell, you just testified that Judge Goodstein
11 started discussing SVP; correct, but before you said you
12 don't recall her discussing SVP at all during your plea, so
13 which one is it?

14 A She didn't explain nothing to me. She said something
15 about it. I remember that's what peaked my interest to ask
16 them about it. She never explained it to me, she didn't say
17 I was eligible, she didn't say anything. She said a bunch
18 of stuff, like I said, in Latin. I have no clue what that
19 is and my lawyer explained it to me when I asked. He told
20 me don't worry about it, you're not eligible. Just say yes
21 ma'am and no, ma'am. That's what I was told to do.

22 MS. HARRIGAN: No further questions, Your Honor.

23 THE COURT: Thank you.

24 You may step down.

25 MR. THOMAS: Your Honor, please the Court, that's the

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1 applicant's case.

2 THE COURT: Okay.

3 MR. THOMAS: I just want to thank the Court for allowing
4 us to bring Mr. Lewellen today.

5 THE COURT: Okay.

6 MS. HARRIGAN: The state would briefly like to call Chad
7 Fuller in a limited capacity dealing with Mr. Lewellen's
8 testimony.

9 THE COURT: Okay.

10 Mr. Fuller.

11 (WHEREUPON, Chad Fuller was sworn
12 to tell the truth.)

13 THE COURT: Please get comfortable.

14 All right, Ms. Harrigan.

15 CHAD FULLER - DIRECT EXAMINATION

16 BY MS. HARRIGAN:

17 Q Mr. Fuller, when did you first meet John Lewellen?

18 A If memory serves me correctly it was prior to us being
19 retained by Mr. Russell. He was friends with Mr. Uricchio.
20 The nature of the friendship dates back to marshal arts or
21 boxing or something along those lines, but he and Mr.
22 Lewellen were friends. The first couple of times I met him
23 he was coming in to meet with Ricky.

24 Q Were you aware of his prior record?

25 A Not until this particular case. I really only knew Mr.

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1 Lewellen as Ricky's friend prior to this case and him
2 potentially becoming a witness.

3 Q Do you recall what prior -- in regards to this
4 particular case and him testifying, was there ever a
5 discussion between yourself and Mr. Uricchio as to whether
6 or not he could be impeachable with these prior offenses?

7 A Yeah. Prior to today I couldn't remember what the
8 actual offenses were. I just remember they were crimes of
9 moral turpitude, and that the solicitor, Harrison Bell, was
10 aware of Mr. Lewellen and aware of the crimes of moral
11 turpitude and that would obviously present some impeachment
12 issues during the course of the trial.

13 Q When you say Harrison Bell was aware of these crimes of
14 moral turpitude, can you expound on what he said?

15 A He obviously had access, we had notified him that Mr.
16 Lewellen would be a potential witness for us to attack
17 Angel's credibility, specifically going back to the forensic
18 interviews and possibly of having some of the children
19 coached or persuaded by outside influences, it was obviously
20 going to be our defense that it was Angel who was coaching
21 them as she had done in the past with Mr. Lewellen in his
22 case.

23 Q So you and Mr. Uricchio anticipated calling him as a
24 witness at trial?

25 A He wasn't a definite witness. Essentially the game

1 plan was was to see how the trial was going to go. To see
2 what type of evidence would come up and specifically how
3 credible the witnesses were as the trial progressed and then
4 if it was necessary to call Mr. Lewellen we would call him
5 at that time. However, because of the potential for
6 impeachment we were concerned about calling him as a
7 witness. So he was not a guaranteed witness.

8 Q And Mr. Lewellen's credibility wouldn't have been a
9 defense to the past charge, correct?

10 A Correct.

11 Q In that case he was found wandering in the minor
12 victim's home; isn't that correct?

13 A (No response.)

14 Q In the Malphus (sp) case he was found wandering in the
15 minor victim's home; correct?

16 THE COURT: Which case?

17 MS. HARRIGAN: The Malphus case.

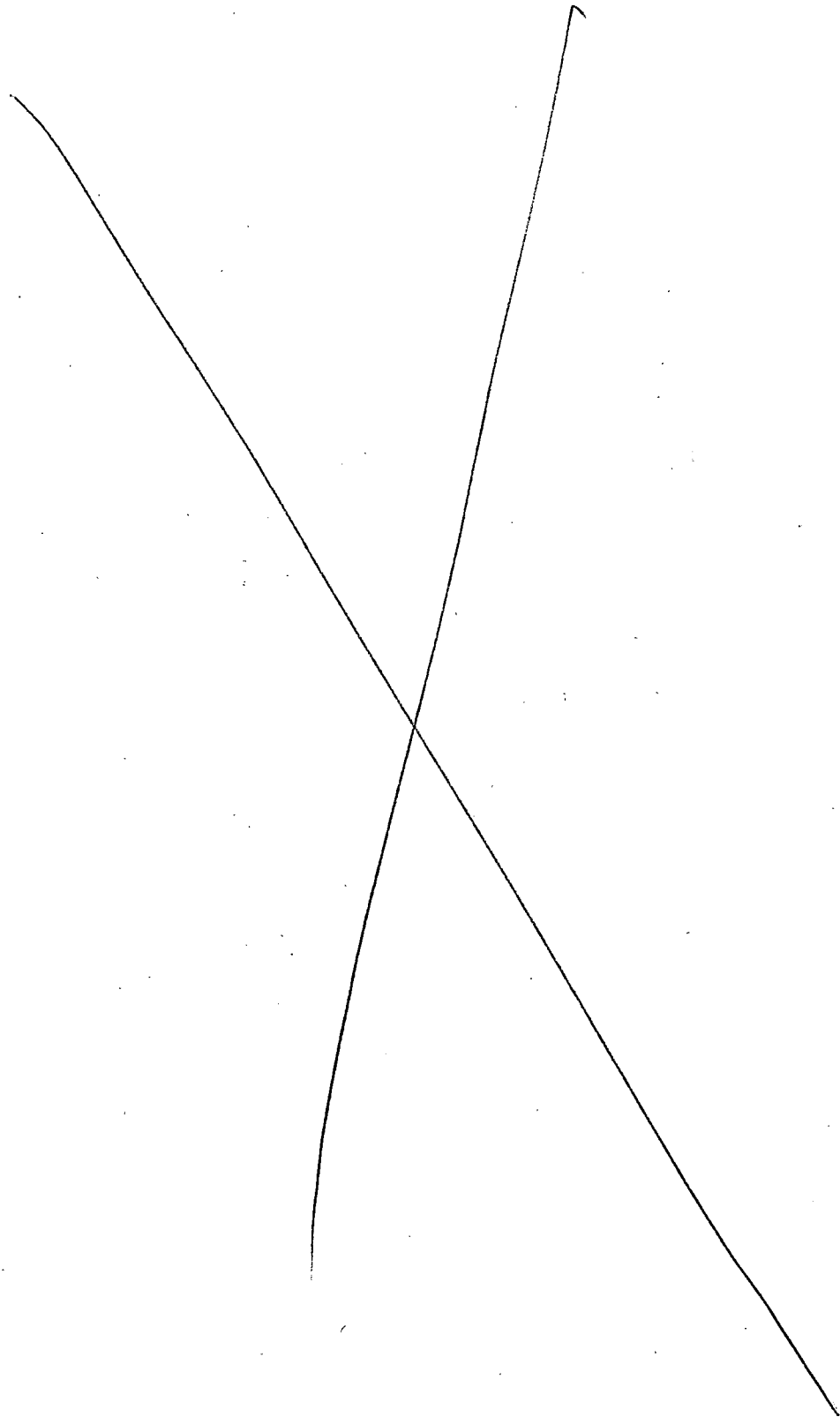
18 A He wasn't wandering in the home. It was alleged that
19 he was coming into a window -- yeah, I don't think he was
20 actually kind of wandering.

21 MS. HARRIGAN: Court's indulgence.

22 BY MS. HARRIGAN:

23 Q There was some testimony prior regarding Mr. Russell's
24 evaluation by Dr. Hurt; correct?

25 A Yes.



1 Q He was evaluated; correct?

2 A Yes.

3 Q Was that sexual deviants test performed on him?

4 A Not -- I'm confused as to the question. Are you asking
5 -- which visit to Dr. Hurt, the one where I was present or
6 visits prior?

7 Q Either one.

8 A Okay.

9 Q Did he have a sexual deviants test performed?

10 A Yes, he had a sexual deviants test performed, not while
11 I was present. He was present with Dr. Hurt with a sexual
12 deviants test with both myself and Mr. Uricchio and Mr.
13 Russell.

14 Q Do you recall what the results of that test was?

15 A It showed that he did have some inclinations in sexual
16 deviants, I believe was the term that was used.

17 MS. HARRIGAN: No further questions, Your Honor.

18 THE COURT: Mr. Thomas.

19 MR. THOMAS: Your Honor, please the Court.

20 THE COURT: Yes, sir.

21 CHAD FULLER - CROSS-EXAMINATION

22 BY MR. THOMAS:

23 Q Mr. Fuller, I think you said that you had some concern
24 or you made the statement that Angel was coaching the
25 victims, that was your impression that was what was going

1 on?

2 A It was suggested in the forensic interview, so to erode
3 the state's case and create reasonable doubt in the jury's
4 mind, was to give them an alternative as to how those
5 allegations were to have occurred.

6 Q Okay, and that was actually a finding in the forensic
7 interview that was performed on the children?

8 A Correct.

9 Q Okay. And that would be consistent with what we've
10 heard with Mr. Lewellen's testimony today --

11 A Correct.

12 Q -- with Angel's behavior?

13 A Correct.

14 Q Okay. So the concern I guess you would have had with
15 putting Mr. Lewellen on the stand was any prior record that
16 he may have had?

17 A That was -- I think so -- and if you don't mind I'd
18 like to expand.

19 Q Oh, yes, sir.

20 A The easiest way to say this is it's a very complicated
21 picture to paint to a jury during the course of this case.
22 You're almost trying cases inside cases, inside cases to get
23 to this deceitful manner that we had some concerns that we
24 would lose the jury at some point.

25 Q Okay. Now, when this plea was entered into you

1 believed it was going to be a turn-a-round?

2 A I knew he had maxed out, and we had described to him
3 the SVP program and we had assertions from Dr. Burk that he
4 was going to be able to be released and be able to be
5 supervised within the community.

6 Q So given that, for lack of a better term it was a sweet
7 deal?

8 A Well, yeah, if you look at the crimes as they were
9 indicted and what Mr. Russell pled to. I believe he was
10 given a very favorable sentence by the Court.

11 Q Okay. And counsel asked you about the allegations
12 about him coming in the window, that was just Angel's
13 allegations; is that correct?

14 A No, that was in the first case.

15 Q Okay. But his part of the story is he had actually
16 come in the front door and was talking to one of the
17 gentlemen in the home?

18 A Correct, correct.

19 Q So he didn't admit that he was coming in the window?

20 A No, he denied that. That was the testimony of another
21 individual. That was actually one of his childhood friends
22 who said he caught him coming in -- trying to come in the
23 young girls room.

24 MR. THOMAS: Your Honor, beg the Court's indulgence.

25 THE COURT: Sure.

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1 MR. THOMAS: I have no further questions, Your Honor.

2 THE COURT: Anything on redirect?

3 MS. HARRIGAN: No, Your Honor.

4 THE COURT: Thank you, sir.

5 All right. Ms. Harrigan, any other witnesses?

6 MS. HARRIGAN: No, Your Honor.

7 THE COURT: All right. I've got my notes from the other
8 one. I'll get back to y'all. Let me ask you a question, he
9 was sentenced back in 2010 to three years, he is still in
10 jail and he's still in jail why?

11 MR. THOMAS: Your Honor, it was a turn-a-round. He did
12 come back prior to his released, an SVP action was
13 initiated, and so he was detained pursuant to the act. He
14 then was committed to the program. So since his -- I guess
15 his being in the detention center he has not --

16 MR. RUSSELL: Since March 1, 2011, I left the prison. I
17 went back to Dorchester Detention Center and stayed there
18 until November 10, 2011 and went to Columbia. I've been at
19 Broad River Correctional Institute ever since.

20 MS. HARRIGAN: And, Your Honor, I have specific dates in
21 regards to the SVP action.

22 THE COURT: Yes, ma'am.

23 MS. HARRIGAN: The petition was filed by our office on
24 February 12, 2011. Your Honor, actually signed the probable
25 cause order on February 23, 2011. March 1, 2011, is when

1 Mr. Russell should have been released. According to our
2 office's records the order for evaluation was signed by
3 Judge Goodstein on March 7, 2011. A jury trial was held
4 before Judge James on October 31, 2011 and he has been in
5 SVP program since that time.

6 THE COURT: He had a jury trial?

7 MS. HARRIGAN: Before Judge James.

8 THE COURT: Back in?

9 MS. HARRIGAN: October 31, 2011, and I believe the
10 records reflect he waived his most recent annual review
11 hearing.

12 THE COURT: Okay.

13 MS. HARRIGAN: His SVP appeal has concluded.

14 THE COURT: Okay. Thank you, ma'am.

15 MR. THOMAS: Your Honor, just one other piece of
16 information for the Court.

17 THE COURT: Okay.

18 MR. THOMAS: Due to the fact he's filed post conviction
19 for whatever reason we've not be able to determine he's not
20 been allowed to participate in any of the counseling
21 programs or treatment programs at mental health. It's an
22 odd situation. Part of that treatment program is you have
23 to admit to the crimes, you have to sign something in
24 writing that you admit to these crimes. He has been
25 unwilling to do that, to enter that admission and as a

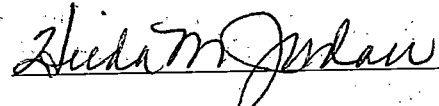
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR CALHOUN COUNTY, SOUTH CAROLINA, ON THE 8 DAY OF OCTOBER, 2013.

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



Hilda M. Jordan, CVR-M

September 25, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

BOBBY RUSSELL, JR.

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-18-

2240

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Sexual Violent Predator Unit, at Broad River Correctional
2. Name and location of Court which imposed sentence 4460 Broad River Road
Columbia, SC 29210
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-18-0990 - Lewd Act, Committing or Attempting Lewd Act Upon Child
Under 16
 - (b) 2009-GS-18-1097 - Sex/Lewd Act committing or attempting lewd act upon child
under 16,
 - (c) 2009-GS-18-1275 - Lewd Act, Committing or Attempting Lewd Act Upon Child

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 8, 2010 - 15 years Suspended to 3 years and 5 years Probation
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

(b) _____

0000188

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Involuntary guilty plea

(c) _____

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

0000190

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Paul N. Uricchio, III, Esq., 147 Wappoo Creek Drive, Charleston, SC 29412

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. plea

ii. _____

iii. _____

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

New Trial

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

000191

County of Richland

I, Tommy A. Thomas, Attorney for Bobby Russell, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 4th
day of November, 2011.

Jaqueline E. Miller (L.S.)
Notary Public

My Commission Expires: 5/1/16

FILED - RECORD
2011 NOV -7 PM 5:01
CLERK
DORCIS

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2011-CP-18-2240

Bobby Russell, Jr.,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 7, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted for Criminal Sexual Conduct ("CSC") with a Minor (2009-GS-18-0990) and two (2) counts of Lewd Act or Attempting Lewd Act Upon Child Under 16 (2009-GS-18-1097 & 1275). He was represented by Paul Uricchio, Esquire, and Chad Fuller, Esquire. On November 8, 2010, the Applicant pled guilty before the Honorable Diane S. Goodstein. Pursuant to a negotiated sentence, he was sentenced to concurrent terms of fifteen (15) years imprisonment, provided that upon the service of three (3) years, the balance would be suspended with five (5) years probation. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction(s) and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999).

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

Jan. 18, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Bobby Russell, Jr,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-18-2240

ORDER OF DISMISSAL

CERTIFIED COPY
JUL 14 PM 4:29
CLERK OF COURT
DORCHESTER COUNTY

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed November 7, 2011. The Respondent made its Return on January 18, 2012, requesting an evidentiary hearing be held. Evidentiary hearings into the matter were convened May 21, 2013, at the Orangeburg County Courthouse and October 18, 2013 at the Calhoun County Courthouse. Applicant was present at the hearing and was represented by counsel, Tommy A. Thomas, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

Applicant was indicted during the August 2009 term of the Dorchester County Grand Jury for two counts of Committing or Attempting a Lewd Act upon a Child (2009-GS-18-1097, -1275) and Criminal Sexual Conduct with a Minor in the First Degree (2009-GS-18-9990). Applicant was represented by Paul N. Uricchio, III, Esquire, and Chad W. Fuller, Esquire. On November 8, 2010, Applicant appeared before the Honorable Diane Goodstein and pled guilty to three counts of Committing or Attempting to Commit a Lewd Act upon a Child.¹ Pursuant to plea negotiations between Applicant and the State, Judge Goodstein sentenced Applicant to

¹ Two counts were as indicted, and the remaining count was pled to in place of the Criminal Sexual Conduct with a Minor in the First Degree charge after Applicant waived presentment to the Dorchester County Grand Jury.

fifteen years imprisonment suspended upon the service of three years imprisonment followed by five years of probation for each count, with all three sentences to be served concurrently. No direct appeal was taken.

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully based on claims of:

1. Ineffective assistance of counsel; and
2. Involuntary Guilty plea.

Applicant did not set forth the facts to support each ground, as required (See Application for Post-Conviction Relief Question No. 11), but indicated at the first evidentiary hearing that he was proceeding forward on the following grounds:

1. Counsel failed to explain the Sexually Violent Predator Act to Applicant and that he would likely be screened for the civil commitment pursuant to the Act; and
2. Counsel failed to call witnesses on his behalf at his guilty plea proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the evidentiary hearing convened May 21, 2013, Applicant testified on his own behalf and presented testimony from his mother, Gloria Jean Holcombe. The State presented testimony from plea counsel, Chad Fuller, Esquire.² At the subsequent hearing convened October 8, 2013, Applicant presented testimony from John Lewellen, as well as testified again on his own behalf. The State presented testimony from Fuller again.

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

² Applicant was also represented by Paul N. Uricchio, III, Esquire, who passed away in 2012. Fuller was an associate at Uricchio's law firm and both represented Applicant jointly.

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would

not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony, along with the testimony of Applicant's witnesses, is lacking credibility. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to explain the Sexually Violent Predator Act

Applicant asserts that counsels were ineffective for failing to explain the Sexually Violent Predator Act (SVPA)³ to him and advise him that he would be screened for the possible civil commitment pursuant to the Act based on his guilty pleas. Applicant testified that counsel had mentioned the Sexually Violent Predator Program to him before his guilty plea, but did not explain what the program was or how he would be screened for the program based on his guilty plea. Applicant testified that he would not have pled guilty if he had been aware of this program and that he would be screened for entry based on his pleas. However, Applicant acknowledged that Judge Goodstein advised him about the Sexually Violent Predator Act and civil commitment pursuant to the Act during his plea and that he would be screened for entry based on these pleas.

Fuller testified multiple times that Applicant was "definitely advised about the Sexually Violent Predator Program" and was aware that he would be screened for civil commitment pursuant to the Act based on his guilty pleas. He testified that Applicant was not concerned about the program, but rather, was glad to accept the State's extremely favorable offer that

³ S.C.Code Ann. §§ 44-48-10 to -170 (Supp.2004), which is a civil commitment procedure for the long-term care and treatment of sexually violent predators.

amounted to essentially a time served sentence rather than risk a much harsher sentence if convicted at trial.

This Court finds that this allegation is without merit, as it is refuted by Fuller's testimony and the transcript from Applicant's guilty plea proceeding. Fuller's credible testimony reveals that he and Uricchio reviewed the Sexually Violent Predator Act and civil commitment pursuant to the Act with Applicant before his guilty plea and advised him that he would be screened for the program based on his guilty pleas. This Court finds that counsel's performance was in accordance with "professional norms" and that Applicant has failed to establish any deficiency of counsel. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, although this Court finds that counsel did inform Applicant of the Sexually Violent Predator Act and possible civil commitment pursuant to the Act, this Court notes that counsel is under no obligation to inform a client of the civil commitment process under the Sexually Violent Predator Act. See Page v. State, 364 S.C. 632, 637, 615 S.E.2d 740, 742 (2005) ("We conclude Petitioner's counsel had no duty to inform him about the civil commitment process under the SVPA. Although eligibility for civil commitment under the SVPA is triggered by conviction of a "sexually violent offense," civil commitment can be imposed only after testing, evaluation, a probable cause hearing, and a trial by either the court or jury. No one can be civilly committed as a "sexually violent predator" unless the State proves beyond a reasonable doubt the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexual violence if not confined in a secure facility. Consequently, a person may be convicted of a predicate offense, and yet not be committed under the SVPA because the evidence is not sufficient to find that his or her present mental condition creates a likelihood of future sexually

violent behavior. Thus, any possible civil commitment of Petitioner would not flow directly from his guilty plea, but rather from a separate civil proceeding as a collateral consequence.”)

Furthermore, this Court finds that Applicant has failed to establish any resulting prejudice from counsel’s alleged deficiency. Although Applicant testified that he was not fully advised about the SVPA and possible civil commitment, this Court is ultimately not convinced that this alleged deficiency prejudiced Applicant. During his plea, Applicant admitted his guilt and stated that he was pleading guilty because he was in fact guilty. Tr. p. 20. Additionally, he stated under oath that he was fully satisfied with counsels’ services and that they had fully explained everything to him, which notably was after the trial court had advised him about the SVPA and other collateral consequences of his plea, such as lifetime GPS monitoring. Tr. p. 8-9; p.20-22. The trial court clearly informed him of the SVPA and civil commitment pursuant to the Act, and Applicant stated that he was aware of the program. Tr. p. 8-9. The trial court thoroughly informed Applicant of his constitutional rights, and this Court is satisfied that his waiver of those rights was voluntary. The Court does not believe that the result of the proceeding would have been different absent plea counsel’s alleged errors. Therefore, this allegation must be denied and dismissed with prejudice.

Counsels’ alleged failure to call witnesses on his behalf

Applicant asserts that counsels were ineffective for failing to present favorable witnesses on his behalf at his guilty plea proceeding. In support of this allegation, Applicant presented testimony from John Lewellen, the grandfather of two of the minor victims.⁴ Lewellen testified that his daughter, the minor’s mother, has a history of filing false police reports and making false accusations of abuse, including allegations against him. He testified that he was friends with

⁴ Applicant pled guilty to three counts of Committing or Attempting to Commit a Lewd Act upon a Child, each stemming from one or more instances with a different minor child.

Uricchio and told him that he was willing to testify on Applicant's behalf. He acknowledged that he has a prior criminal record. Applicant argues that counsel was ineffective for failing to call Lewellen as a witness at his guilty plea proceeding.

Fuller testified that he was aware of Lewellen and his willingness to testify. He testified he and Uricchio had concerns regarding calling Lewellen as a witness at trial, such as his prior record, which included impeachable offenses, and the possibility of losing the jury by bringing in an otherwise unrelated witness to attack the credibility of the minor victims' mother. He elaborated that once Applicant elected to accept the State's favorable plea offer, there was no need to subpoena Lewellen to testify. He testified that Lewellen had no involvement or knowledge regarding the third incident with an unrelated minor victim.

This Court finds that Applicant has failed to meet his requisite burden of proof and that this allegation must be denied and dismissed with prejudice. This Court finds that counsel's performance was not deficient, as there was no need to call any witnesses to refute the State's allegations when Applicant was voluntarily accepting guilt and admitting to the allegations as presented by the State. Furthermore, this Court finds that Applicant cannot establish prejudice, as there is no reasonable likelihood that the result would have been different absent this alleged deficiency. Applicant pled guilty pursuant to an extremely favorable plea negotiation that he entered into with the State and the trial court sentenced Applicant according to these negotiations. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

CONCLUSION

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 that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall be remanded to and remain in the custody of the Respondent.

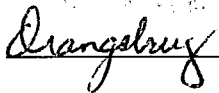
AND IT IS SO ORDERED this 30th day of June, 2014.



EDGAR W. DICKSON

Presiding Judge

First Judicial Circuit



, South Carolina.