

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

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S.C. Supreme Court

JOSHUA SAMUEL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-206675

APPENDIX

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

STATE OF SOUTH CAROLINA)
STATE,)

v.)

JOSHUA SAMUEL, JR.)

DEFENDANT.)

TRANSCRIPT OF RECORD
06-GS-21-920
January 28, 2008
Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

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Attorney for the State

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Assistant Public Defender
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Circuit Court Reporter

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EXHIBITS**STATE'S:**

No.	Description	ID/EVD
1	Buccal specimen G. McKay	4/125
2	Buccal specimen J. Samuel	4/125
3	Buccal specimen Josh Samuel	4/125
4	Authorization form	4/126
5	Authorization form	4/126
6	Chain of custody form	4/126
7	Chain of custody form	4/126
8	FedEx receipt	4
9	Certificate of Analysis	4/130
10	Booking photo	4/14
11	Miranda card	4/12

1 (WHEREUPON, State Exhibits Nos. 1 through 11 were marked
2 for identification only.)

3 THE COURT: Ladies and gentlemen, before we get started
4 I'm told that one of our jurors has got an issue that has
5 come up during the lunch break and it appears that he —
6 is it a he, Marianne?

7 THE DEPUTY CLERK OF COURT: Yes, sir.

8 THE COURT: That he may not be able to remain as a
9 juror. And I'm gonna get him to come out here and explain
10 it to me in just a minute. It appears that he has some
11 issues or some problems that have arisen with regarding
12 child care. And I don't know any of the details on it,
13 and I don't know if it involves a child under the age of 7
14 or all of these other things, but we do have an alternate
15 so, I mean, that's not a problem other than, other than we
16 begin the trial without an alternate. Again, I don't know
17 what the situation is — Marianne, he didn't say, did he,
18 as far as whether he qualifies under that exemption?

19 THE DEPUTY CLERK OF COURT: No, sir, he didn't.

20 THE COURT: But even if he doesn't qualify under that
21 exemption he has indicated to Marianne that it's a severe
22 enough problem that he absolutely has no other alternative
23 with his child so then it would fall under, you know, just
24 you don't want to have somebody sitting on a jury that has
25 that issue dealing with. So anyway, I just want to make

1 you aware of this. I'm going to bring him out, have him
2 on the record tell me what his issues are and we'll try to
3 save him if we can; but if we can't, I'm probably going to
4 have to excuse him so. And I'm sorry, Marianne, his name?

5 THE DEPUTY CLERK OF COURT: Juror McElveen.

6 THE COURT: Ask Mr. McElveen, juror number 94.

7 (Potential juror McElveen is returned to the courtroom.)

8 THE COURT: Hey, Mr. McElveen, I understand that you've
9 had some issues come up.

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: If you'd share that with me.

12 THE POTENTIAL JUROR: Okay. I find out when, after we
13 went and got some food.

14 THE COURT: Yes, sir.

15 THE POTENTIAL JUROR: And my mother-in-law was picking
16 up my baby. Well, she don't want to pick him up. I don'
17 have no one to pick him up. She's disabled.

18 THE COURT: Now, but your baby is in day care during
19 the day?

20 THE POTENTIAL JUROR: No, he's at school.

21 THE COURT: He's at school?

22 THE POTENTIAL JUROR: He get out 2:00.

23 THE COURT: How old is he?

24 THE POTENTIAL JUROR: 4.

25 THE COURT: Okay. Who normally watches him during the

1 week?

2 THE POTENTIAL JUROR: My wife works at McLeod. We
3 usually for my schedule it kind of varies. I drive trucks
4 and she usually watches him for us, but we're getting
5 ready to change her scheduling because my mother-in-law,
6 she's disabled and scared so we're trying to get that
7 worked out.

8 THE COURT: You don't have any other options this week
9 as far as? I want to accom-- I certainly -- family is
10 important and no question about it; they are the most
11 important.

12 THE POTENTIAL JUROR: Yes, sir. I was trying.
13 Everybody else is working.

14 THE COURT: Yes, sir.

15 THE POTENTIAL JUROR: Everybody else working that I
16 really know will be dependable.

17 THE COURT: Well let me ask you this.

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: Would it help, I mean, if you had a little
20 time like this evening to see if you have any other
21 alternatives?

22 THE POTENTIAL JUROR: I take -- I'm going to work on it
23 tonight.

24 THE COURT: Here's what I thought we could do is --

25 THE POTENTIAL JUROR: Okay.

1 THE COURT: Is your child taken care of today though?

2 THE POTENTIAL JUROR: Yes, sir, for today, uh-huh.

3 Take care of for today.

4 THE COURT: Why don't we leave things as they are for
5 right now.

6 THE POTENTIAL JUROR: Okay.

7 THE COURT: And then we'll go as far as we go today and
8 then we'll break for the evening. See if you can work it
9 out to where you can fulfill your service. But if not, if
10 there's no other option, then you really do need to be
11 excused, you know, then you can let us know in the morning
12 and I'll work something out for you.

13 THE POTENTIAL JUROR: Okay.

14 THE COURT: There's no question your child is most
15 important.

16 THE POTENTIAL JUROR: And I appreciate it.

17 THE COURT: But I do want you to be able, if you can,
18 sir, I want you to be able to do it without having to
19 worry about that.

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Because this is important to the parties in
22 the case and —

23 THE POTENTIAL JUROR: Definitely important, yes, sir.

24 THE COURT: But I want you to focus to be on this if
25 you're going to be here and not have to worry about your

1 child. So if you can get that resolved, great; if not,
2 just let me know in the morning and we'll work with you
3 for sure.

4 THE POTENTIAL JUROR: What time in the morning, same
5 time, 9:30?

6 THE COURT: I imagine.

7 Ms. Parr, just as an aside, typically we start at 9:30.
8 Would that — you anticipate that being the case or have
9 you —

10 MRS. PARR: Yeah. I did talk with that witness and
11 he's going to come this evening .

12 THE COURT: Would he prefer starting at 9?

13 MRS. PARR: If we could.

14 THE COURT: Yeah, that's not a problem. We'll start at
15 9:00 in the morning.

16 THE POTENTIAL JUROR: 9:00, okay.

17 THE COURT: But if you would, if you can just go back
18 and have a seat in the jury room. We'll bring y'all out
19 in just a little bit. I got to take up some matters with
20 the lawyers. But I just want you to know that we're gonna
21 make sure that you're able to take care of that.

22 THE POTENTIAL JUROR: And I'll find out definite
23 tonight where, you know, when I leave and go home.

24 THE COURT: Great.

25 THE POTENTIAL JUROR: Thank you for everything. Thank

1 you for your hospitality.

2 (Juror McElveen was removed from the courtroom.)

3 THE COURT: I wanted to give him every opportunity to
4 serve if he wanted to serve if he can serve. So I felt
5 like if he can resolve those issues this evening, great;
6 if he can't, we can always excuse him in the morning and
7 we'll have the alternate in place so we'll be all right.

8 All right, Ms. Parr, your witness will be coming in
9 this evening and we'll start at 9 then, okay?

10 MRS. PARR: That's correct. And actually, Your Honor
11 what we'll probably do, the other person is from LabCorp
12 as well that's in the chain of, kind of analyze, we're
13 talking about for him to come as well. They'll be coming
14 two separate cases but we will just to both of them.

15 THE COURT: Well, that's fine, we'll do that. So let's
16 go ahead and we'll move on to any — did y'all have an
17 opportunity — I see you've got some—

18 MRS. PARR: I marked some evidence. I don't know if
19 he — you want to look at them.

20 MR. FLOYD: Your Honor, I've examined the ones that
21 have been marked.

22 THE COURT: And they're just marked for identification
23 purposes at this point so. So we need to go forward now
24 with Jackson v. Denno?

25 MRS. PARR: Yes, we can do that, Your Honor. Your

1 Honor, at this time the State would call Michael Robinson
2 to the stand.

3 THE COURT: All right, Ms. Robinson, if you will come
4 around please, ma'am.

5 THE DEPUTY CLERK OF COURT: If you would place your
6 left hand on the Bible and raise your right hand to be
7 sworn.

8 WHEREUPON,

9 MICHAEL ROBINSON,
10 having been duly sworn by the Deputy Clerk of Court,
11 testified as follows:

12 THE DEPUTY CLERK OF COURT: Be seated and state your
13 name for the record.

14 THE WITNESS: My name is Michael Robinson.

15 **DIRECT EXAMINATION**

16 **BY MRS. PARR:**

17 Q Ms. Robinson, where are you employed?

18 A I am employed with the City of Florence Police
19 Department.

20 Q And what do you do for the Florence Police Department?

21 A I am -- work in the investigations division as a
22 criminal investigator.

23 Q Okay. Now how long have you been with the Florence
24 Police Department?

25 A Since 1999.

1 Q And have you had any previous law enforcement
2 experience?

3 A I did. While I was attending Francis Marion I was
4 police officer at the airport.

5 Q Okay. And are you a certified police officer?

6 A Yes, ma'am.

7 Q Okay. And where did you receive your certification?

8 A From the South Carolina Criminal Justice Academy.

9 Q Now what are your present duties?

10 A I am presently assigned to the Investigations Division.
11 My job descriptions are investigating crimes and offenses
12 that occur within the city limits of Florence.

13 Q Okay. Are you familiar with the so-called Miranda
14 warnings on a suspect's criminal rights?

15 A Yes, ma'am.

16 Q Did you have an occasion to advise the suspect of those
17 rights during the course of your work in law enforcement?

18 A Yes, ma'am.

19 Q And as it applies to this particular case that we're
20 in, did you apply – did you advise Joshua Samuels, the
21 defendant, his Miranda warnings?

22 A Yes, ma'am, I did.

23 Q And how was the defendant advised?

24 A I read him his rights from a note card that I keep on
25 me whenever I'm working. It's laminated.

1 Q Okay. And was that done verbally?

2 A It was.

3 Q Okay. Now I'm gonna ask you to identify what's been
4 marked as for identification purposes as State's Exhibit
5 Number 11.

6 A You want me to get it?

7 Q Would you please identify that exhibit and tell us what
8 it is and the number.

9 A It's State's Exhibit Number 11, dated today's date, and
10 it's the suspect rights Miranda warning card that's
11 actually laminated.

12 Q Now are you familiar with that?

13 A Very much so.

14 Q Okay. And how is it that you recognize that exhibit?

15 A Well, I keep one in my desk. I keep one on my person
16 and in my wallet whenever I'm at work.

17 Q And is that an accurate representation of the card that
18 you have?

19 A Yes, ma'am.

20 Q And is that what you used on that particular occasion?

21 A Yes, ma'am.

22 Q Okay. And when did you have an occasion to advise the
23 defendant of those Miranda warnings?

24 A On July the 18th of 2005 when I interviewed him at the
25 Florence County Detention Center.

1 Q Okay. And do you recall what time that was?

2 A It was in the afternoon, but I don't remember exact
3 time.

4 Q Okay. Now how were you brought into this case?

5 A A police report was filed on the second. I think, I
6 have a copy of the record here. It is -- a police report
7 was filed on July 2nd of 2005. That was a Saturday. The
8 Monday was July the 4th; it was a holiday. So I was
9 assigned to investigate this particular CSC incident on
10 the 5th, on July the 5th of 2005. And it was assigned to
11 me by my supervisor to investigate.

12 Q Okay. Now, and you do recognize what's been marked as
13 State's Exhibit Number 11 for identification purposes?

14 A Yes, ma'am.

15 Q Okay.

16 MRS. PARR: Your Honor, the State would offer this
17 exhibit into evidence.

18 THE COURT: Any objection?

19 MR. FLOYD: I don't have any objection to the card,
20 Your Honor, no, sir.

21 THE COURT: All right. So State's 11 without
22 objection.

23 (WHEREUPON, State Exhibit No. 11 was admitted into
24 evidence.)

25 BY MRS. PARR:

1 Q Now would you please read that?

2 A It says, "Suspect's rights, Miranda warning, to be read
3 to all criminal suspects upon arrest. Number one, you
4 have the right to remain silent. Number two, anything
5 you -- anything you say can and will be used against you
6 in a court of law. Number 3, you have the right to talk
7 to a lawyer and have him present with you while you are
8 being questioned. Number four, if you cannot afford to
9 hire a lawyer one will be appointed to represent you
10 before any questioning if you wish. Number five, you can
11 decide at any time to exercise these rights and not answer
12 any questions or make any statements. Number six, do you
13 understand each of these rights as I've explained them to
14 you? And number 7, having these rights in mind do you
15 wish to talk to us now?" And that's the South Carolina
16 Law Enforcement Association -- that's South Carolina Law
17 Enforcement Officer's Association that has a 1-800 number
18 on the bottom of it.

19 Q Okay. Now where were you when you read this to the
20 defendant again?

21 A We were in one of the interview rooms inside the
22 Detention Center in one of the pods.

23 Q Okay. Was anyone else present?

24 A No, ma'am.

25 Q Please describe the defendant's physical appearance.

1 A Well, he was an inmate. He appeared much the way that
2 he appears now. He was cooperative and willing to talk
3 and was curious about why I was there, what I wanted to
4 talk about.

5 Q Now I will ask you to review what's been marked as
6 State's Exhibit Number 10 for identification purposes at
7 this time. Do you recognize that?

8 A Yes, ma'am.

9 Q And would you please state the exhibit number and tell
10 us what that is.

11 A It's State's Exhibit Number 10, and this is a picture
12 of the defendant that I printed on July the 14th of 2005
13 from a secure site from the Florence County Sheriff's
14 Office web site that only law enforcement can get on where
15 you can see the booking photographs.

16 Q Okay. Now was that the defendant that you interviewed
17 that particular day?

18 A Yes, ma'am.

19 Q Okay. And is that a fair representation of the
20 defendant?

21 A Yes, ma'am.

22 Q Okay.

23 MRS. PARR: Your Honor, we would move to enter this
24 into evidence.

25 MR. FLOYD: I don't have any objection to that, Your

1 Honor.

2 MRS. PARR: Your Honor, this is State's Exhibit Number
3 10.

4 THE COURT: State's 10 without objection.
5 (WHEREUPON, State Exhibit No. 10 was admitted into
6 evidence.)

7 MRS. PARR: Beg the Court's indulgence one moment.

8 THE COURT: Yes, ma'am.

9 BY MRS. PARR:

10 Q Have you ever dealt with people in your line of work
11 who are under the influence of any alcohol or narcotics?

12 A Yes, ma'am.

13 Q Did the defendant appear to be under the influence of
14 —intoxicated from alcohol or drugs?

15 A No, ma'am.

16 Q Did the defendant respond to your questions when you
17 read the Miranda warnings to him?

18 A Yes, he did.

19 Q Okay. And was the defendant speech coherent?

20 A Yes, it was.

21 Q Did he appear to understand your questions regarding
22 his rights?

23 A Yes, ma'am, he did.

24 Q And did the defendant respond when asked whether he
25 wanted an attorney before the questioning?

- 1 A Yes, ma'am, he did.
- 2 Q And what was his response?
- 3 A He said that he would talk to me in which he did.
- 4 Q Okay. And did he ever invoke his right to remain
5 silent?
- 6 A No, ma'am.
- 7 Q And did he agree to answer your questions?
- 8 A Yes, ma'am, he did.
- 9 Q Without an attorney present?
- 10 A Yes, ma'am, he did.
- 11 Q Did you promise the defendant anything?
- 12 A No, ma'am.
- 13 Q Did you coerce him into making a statement with threat
14 or any actions?
- 15 A No, ma'am.
- 16 Q To the best of your knowledge was the defendant's
17 statement freely and voluntarily given?
- 18 A Yes, ma'am, it was.
- 19 Q Did the defendant make a statement in response to your
20 questions?
- 21 A He did make a statement.
- 22 Q Okay. And did -- was that statement recorded?
- 23 A It was not recorded.
- 24 Q Okay. And why was that statement not recorded?
- 25 A At the time we did not have like we have now, the

1 digital recorders. They're tape recorders and it was for
2 acoustic records we just didn't use them at the detention
3 center. I've never taken a taped statement until we have
4 the digital recorders there and that was 2007, I believe,
5 that we got the digital recorders.

6 Q Okay. Now, and the defendant did make a statement; is
7 that correct?

8 A He did a verbal statement.

9 Q And would you please tell us what was the statement
10 that the defendant made?

11 A He stated that he and [REDACTED], had had sex
12 approximately four times and that the first time that it
13 occurred that he was — he woke up and she was on top of
14 him.

15 Q Now prior to, before he gave that information, did he
16 say something else in regards to?

17 A He thought that the reason why I was there and
18 interviewing him was for child support reasons. And
19 that's why he, you know, admitted, yes, we did have sex
20 and, yes, there was a possibility that [REDACTED]'s daughter
21 [REDACTED] was his child and that was because he thought that
22 [REDACTED] wanted child support.

23 Q Now at first when you talked with him did he admit
24 having sex with her or —

25 A Not at first.

1 Q Okay. What did he say at first?

2 A At first he denied having sex with [REDACTED]. And after a
3 few minutes the defendant said, yes, well, you know, it
4 this is child support, yeah, it's — if you do paternity
5 testing she, you know, [REDACTED] might be mine.

6 Q Okay, all right. After he made that statement did he
7 consent to a paternity test that day?

8 A He did. He did.

9 Q Did the defendant say, make any other statements?

10 A No, ma'am. He just consented. He said that — I asked
11 him if I could come back and talk to him again and bring
12 the packet with me to do paternity testing and he
13 consented and agreed.

14 Q Okay.

15 A Which is what we did four days later.

16 Q Okay. Would you please answer any questions Mr. Floyd
17 may have for you.

18 A Yes, ma'am.

19 **CROSS-EXAMINATION**

20 **BY MR. FLOYD:**

21 Q Ms. Robinson, you stated you had your conversations
22 with Mr. Samuel on the 18th of July?

23 A Yes, sir.

24 Q Of 2005?

25 A That's correct.

1 Q Okay. And you did that at the Florence County
2 Detention Center?

3 A That's correct.

4 Q All right. Where in the detention center was that
5 conference held?

6 A In his pod. I don't remember the number, or the
7 actually the letter that he was in, but in the interview
8 room in the pod.

9 Q So it was a conference room attached to his pod?

10 A That's correct.

11 Q Okay. And you said that you did not take a recorded
12 statement?

13 A No, sir.

14 Q Okay. And I didn't quite understand your answer. What
15 was the reason for that?

16 A Back then we didn't have the small digital recorders.

17 Q Yes, ma'am.

18 A Can you hear me, okay?

19 Q Yes, ma'am.

20 A Back then we didn't have the small digital recorders
21 that we do now. We had the tape cassettes that you have
22 to carry the tape cassette and an outlet, and sometimes
23 it's very hard to find outlets so those were mainly stored
24 in our offices and so I didn't have anything to record a
25 statement with in my possession at the time.

1 Q So you did not take a recorder with you?

2 A No, sir.

3 Q Where did you record his responses, or how did you
4 record his responses? Are you just testifying strictly
5 from your memory?

6 A No, sir. I took written notes and wrote my
7 supplemental reports and can recall from what my
8 indications were on my supplemental reports.

9 Q Okay. Do you still have your written notes that you
10 took, your original notes?

11 A It's in my -- it would be from my supplemental report.

12 Q Is -- let me show you this just for your -- so you can
13 see what I'm talking about. Is that the supplemental
14 report that you're speaking of?

15 A It appears to be.

16 Q When did you actually do that?

17 A It's dated 7/23/2005 and that would have been five days
18 later, seven days later.

19 Q So it's seven days after; is that right?

20 A Yes, sir. It was the 18th. That sounds right.

21 Q I'm sorry, eight days later. Well, seven days, you're
22 right. Seven days. I'm having a hard time with my
23 arithmetic, Your Honor. Seven days later.

24 THE COURT: I'm bad in math; I appreciate that.

25 MR. FLOYD: Yes, sir. I can divide by three.

1 BY MR. FLOYD:

2 Q Now you're -- you testified about the, earlier about
3 the Miranda rights. I want you to have this because I
4 know you don't have a copy of this in front of you. Does
5 it say in there on the 18th, on your July the 18th note,
6 that he understood his Miranda rights or does it just say
7 that you gave them to him?

8 A It says, "Samuel was read his Miranda rights and agreed
9 to speak with me about the allegations," is what it said.

10 Q Okay. So he did not -- well, earlier you, I believe
11 you testified that he stated he didn't want a lawyer. I
12 mean, is that indicated in your notes?

13 A No, sir. It just says that he agreed to speak with me
14 about the allegations.

15 Q All right. Can you -- I mean, do you have any
16 indication other than what's written in your notes that he
17 actually made that statement he didn't want a lawyer?

18 A No, sir, because he was asked directly and he agreed to
19 talk to me. That was a part of the Miranda rights.

20 Q All right. And you stated at one point you allege that
21 he stated that he had sexual relations with the alleged
22 victim approximately four times; is that correct?

23 A That's correct.

24 Q Okay. Did he ever -- he never stated that on any of
25 those occasions she was underage, did he?

1 A No, he did not.

2 Q And he never stated that he forced her into it, did he?

3 A No, sir, quite the opposite. He stated she initiated
4 it.

5 Q Okay, all right. That's all I have. Thank you.

6 THE COURT: Anything further, Ms. Parr?

7 MRS. PARR: Nothing further for this witness, Your
8 Honor.

9 THE COURT: All right, thank you, Ma'am. You may step
10 down.

11 MRS. PARR: Nothing further, Your Honor.

12 THE COURT: All right. Anything, Mr. Floyd?

13 MR. FLOYD: Your Honor, I would just move to exclude
14 any statement that Mr. Samuel allegedly made at that time
15 based on the fact that, you know, there's no real record
16 of what he said other than a brief mention in these notes
17 that were made two years ago, Your Honor. I don't see any
18 reference to him specifically saying he waived his right
19 to an attorney to be present or anything at the time that
20 are actually detained, written in those notes, Your Honor.
21 Thank you.

22 THE COURT: All right. Ms. Parr.

23 MRS. PARR: May it please the Court, Your Honor, this
24 statement, the supplemental was written two years ago
25 because the officer captured what the defendant said

1 during the time it was occurring. She met with him on
2 July 18th and made notes to what was said. She came back
3 and did a supplement as to what was entered. Your Honor,
4 if you would look and if Mr. Floyd would look, it says,
5 date entered, slash, change. She did a chronological
6 report of everything happened since her involvement of the
7 case. Your Honor, she indicated in her report as she has
8 testified that she read him the Miranda warnings from the
9 card, and he consented to give her a statement. And it's
10 the State's position that that statement was freely given.
11 We would ask it be allowed to be admitted into evidence.

12 THE COURT: All right. I'm gonna allow the statement
13 to come in as been testified to. It doesn't appear that
14 there's anything in the record that would indicate
15 anything other than the fact that Mr. Samuel was informed
16 of his constitutional rights and that those rights were
17 waived and that he did make a statement. Obviously
18 there's issues involving the statement that you can take
19 up on cross-examination, Mr. Floyd, with regards to the
20 veracity of those statements, but it does appear that the
21 statements were given after having his constitutional
22 rights conveyed to him. It does appear from the testimony
23 that he appeared to have understood those rights and the
24 fact that he gave a statement that his action indicated
25 his willingness to waive that right and give a statement

1 and I'm going to allow the statement. There's been
2 nothing in the record to indicate that that statement was
3 in any way coerced or forced, and it does appear that it
4 was a free and voluntary statement.

5 Anything else regarding any other statements? Is that
6 —

7 MRS. PARR: Your Honor, that's the only statement
8 defendant made.

9 THE COURT: All right. Are there any other matters
10 that we need to take up before we proceed with the jury?

11 MRS. PARR: The State does not have any.

12 THE COURT: Anything, Mr. Floyd?

13 MR. FLOYD: Nothing at the time, Your Honor.

14 THE COURT: All right. Let me ask y'all, if there's
15 nothing further we'll go ahead and bring the jury out and
16 we'll swear the jury. Then we'll proceed with the opening
17 statements and the State can proceed with their case.

18 (WHEREUPON, the jury was returned to the courtroom at
19 approximately 2:31 p.m., and the following proceedings
20 commenced in open court.)

21 THE COURT: Good afternoon, ladies and gentlemen, I
22 haven't had a chance to meet you. My name is Tommy Russo.
23 I'm a circuit judge here in Florence. You've met Judge
24 King who is from Sumter. Judge King for the next six
25 months is our chief administrative judge in criminal

1 court, and he had the pleasure of welcoming you this
2 morning along with the rest of the panel. And I will have
3 the honor and the pleasure of presiding over this trial
4 that you're going to be working. With me is my law clerk
5 Jesse Cartrette, and this is my lawyer. You know, I got
6 to keep my lawyer close by to make sure I'm doing things
7 the right way.

8 Ladies and gentlemen, as you know from this morning
9 when you were with Judge King, this case that you are
10 going to be the triers of the facts on is the State of
11 South Carolina versus Joshua Samuel, Jr. Mr. Samuel has
12 been charged under the indictment 2006-GS-21-920 with
13 various charges. Count one is criminal sexual conduct
14 with a minor second degree. Count two, lewd act on a
15 minor. Count three, criminal sexual conduct third degree.
16 Count four, criminal sexual conduct with a minor. And
17 count five, lewd act on a minor.

18 Now at the conclusion of the trial I'll charge you on
19 the law in this case and I'll explain to you on what those
20 various charges, what the elements are, and what the State
21 must prove. But what I'm going to do at this time is I'm
22 going to recognize our clerk, and if you would please give
23 her your attention. She is going to place you under oath
24 for your duty as jurors on this case. So if you would,
25 please rise and give her your attention.

1 **THE DEPUTY CLERK OF COURT:** Please raise your right
2 hand.

3 (WHEREUPON, the jury was sworn at 2:53 p.m.)

4 **THE DEPUTY CLERK OF COURT:** Thank you. You may be
5 seated.

6 **THE COURT:** Now ladies and gentlemen, before we begin
7 the trial I want to tell you that this trial will probably
8 be somewhat different from what you may expect. Many
9 people, most people, do not have the opportunity or the
10 chance to attend actual court sessions as you're doing
11 now. And you may think from watching television or movies
12 or reading books that criminal trials are always full of
13 high drama, intense action, and rivetting circumstances.
14 Now, during the course of this trial all of these things
15 may be true at times or not, but what I want you to
16 understand is that this trial is not for your
17 entertainment. It is a fundamental part of our democracy.
18 It is a search for the truth in an effort to make sure
19 that justice is done between the parties that are before
20 the Court. Searching for the truth and making sure that
21 justice is done is often slow, deliberate, and repetitive,
22 very much the opposite of what you may have seen in books
23 or read on newspapers or seen on the television.
24 This courtroom, ladies and gentlemen, is a place of
25 honor that is dedicated to the protection and the

1 preservation of citizens' rights through what many have
2 called the greatest system of justice ever created. The
3 attorneys who appear before you are advocates for the
4 parties that they represent. But first and foremost,
5 they're officers of the Court sworn to uphold the
6 integrity and the fairness of our judicial system and to
7 help you in your search for the truth. You should expect
8 them to be professional, competent, and ethical in the
9 representation of their client's interest. Remember that
10 you have just taken an oath to try this case and to reach
11 a fair and a just verdict, and so you are also expected to
12 be professional, reasonable, and ethical in the
13 performance of your duties.

14 I want to take this opportunity to thank you for your
15 important responsibility as a juror in this case and for
16 your contribution to our system of justice. What I'm
17 gonna share with you now, ladies and gentlemen, is
18 intended to serve as an introduction to the trial of this
19 case. These remarks are not a charge on the law. I will
20 instruct you on the law applicable to this case at the end
21 of this trial and before you retire to consider your
22 verdict. This is merely an explanation of the procedures
23 that we will follow during this trial so that many of you
24 may be able to understand or better follow what's going
25 on.

1 Now as I indicated to you earlier, Mr. Samuel is
2 charged by an indictment that has been filed with this
3 Court and I read those charges to you that appear on this
4 indictment. And as I told you, I'll explain the elements
5 of those crimes to you when I do give you a charge on the
6 law. Let me tell you this, ladies and gentlemen, this
7 indictment is simply the charge by which this case is
8 brought to court. It is not in any sense evidence of any
9 of the allegations that it contains. The defendant in
10 this case, Mr. Samuel, has pled not guilty to this
11 indictment. The State, therefore, has the burden of
12 proving each of the elements of this indictment beyond a
13 reasonable doubt. It will be your duty, ladies and
14 gentlemen, to decide whether the State has met that
15 burden. Your purposes as jurors is to find and determine
16 the facts of this case. You are the sole judges of the
17 facts of this case. If at any time I make any comment
18 regarding the facts, you please must disregard those
19 comments. You are to determine the facts from the
20 testimony you hear and from other evidence that is
21 introduced during the course of this trial.

22 It is up to you to determine the inferences which you
23 feel may be properly drawn from the evidence in this case.
24 It is especially important that you perform your duty of
25 determining the facts diligently and conscientiously

1 because ordinarily there is no way to correct an erroneous
2 determination of facts by a jury. On the other hand and
3 with equal emphasis, the same law that makes you the
4 judges of the facts makes me the judge of the law. The
5 law as given by the Court is the only law that you may
6 consider. You must accept and follow it even though you
7 may disagree with it. I cannot tell you what the facts
8 are in this case, and you are not allowed to disagree with
9 me about what the law is or what you feel it should be.
10 Your job is to take the law as I give it to you and apply
11 it to the facts as you find the facts to be from the
12 testimony of witnesses and from any other evidence that is
13 introduced. After doing that you will render your
14 verdict, a true and a just verdict, under the solemn oath
15 that you've just taken as jurors.

16 Now until I advise you to begin your deliberations,
17 ladies and gentlemen, you must not discuss this case with
18 anyone, including amongst yourselves. After this case has
19 been submitted to you, you must then discuss it only in
20 the jury room and only with your fellow jurors. Now the
21 attorneys and the parties in this case, they understand
22 that you are jurors in this case and that you have your
23 duty as jurors in this matter. All of these people are
24 fine people and they're very nice people, but you may see
25 them in the elevator or see them in the hall way and they

1 may not speak to you. They're not being rude; they're
2 just doing what they're supposed to do. They're not
3 supposed to have any contact with the members of the jury.
4 So if you see them and they don't say hello or anything,
5 they're not being unfriendly; they're just doing what
6 they're asked to do.

7 During the trial of this case please do not read,
8 listen to, or watch any news reports about this case. I
9 don't know that there would be any; but if there are,
10 please do not read or listen to anything that you may hear
11 outside this courtroom. You must not consider anything
12 that you have heard or read outside this courtroom about
13 this case, whether before or during the trial. It is very
14 important that you keep an open mind and not decide any
15 issue in the case until all of the evidence has been
16 presented, the parties have made their closing arguments,
17 and then I have instructed you on the law in this case.
18 It is your solemn responsibility to determine the guilt or
19 the innocence of the defendant and your verdict must be
20 based solely on the evidence as it is presented to you
21 during the trial of this case and on the law as I instruct
22 to you at the close of this trial.

23 Now in just a moment, Ms. Parr, on behalf of the State
24 will have an opportunity to make what is called an opening
25 statement. In that she will explain to you what the

1 issues are in this case, or at least what she believes the
2 issues are in this case. After that, Mr. Floyd who
3 represents Mr. Samuel, will have an opportunity to also
4 make an opening statement if he chooses to do so. He is
5 not required to do that 'cause as you will hear the
6 defendant is not required to do anything. The burden of
7 proof rests with the State of South Carolina. What I will
8 tell you though, ladies and gentlemen, is what the
9 attorneys tell you in their opening statements is not
10 evidence. It is only their contention as to what they
11 think the issues are. The evidence in this case will be
12 presented to you by the testimony of sworn witnesses from
13 the witness stand and any other exhibits or other, any
14 other evidence that may be introduced during the course of
15 the trial.

16 During the course of this trial from time to time you
17 may hear the attorneys say something along these lines,
18 Your Honor, I believe we've got a question of law or
19 matter of law we need to take up with the Court. Or Your
20 Honor, may we approach the Bench. Now during these times
21 I might find it necessary to excuse you from the courtroom
22 for a short period of time so the attorneys and I can
23 discuss a matter of law. The reason that I may excuse you
24 from the courtroom is because, as I told you earlier, you
25 are the sole judges of the facts in the case. And

1 sometimes when I'm discussing matter of laws with the
2 attorneys it may be necessary for me to make some comment
3 about the facts in connection with a ruling as to whether
4 or not a particular law applies. Now I'm not supposed to
5 tell you what I think about the facts in the case or what
6 the facts are. So to prevent that from occurring I may
7 need to excuse you from the courtroom during those times
8 while I have these discussions with the attorneys so that
9 anything that I say will not influence you with regards to
10 the facts. In determining what the true facts of this
11 case are you must decide whether or not the testimony of a
12 witness is believable. It is my responsibility to rule as
13 a matter of law as to whether certain testimony is
14 admissible at all or not; but once testimony is admitted,
15 whether or not you believe it is solely up to you to
16 determine. In deciding whether to believe a witness you
17 have the right to consider the interest of any witness,
18 the bias of any witness, the prejudice of any witness, the
19 opportunity of the witness to have seen the matters and
20 the things about which they may have testified, the way
21 that a witness acts on the witness stand. You have the
22 right, ladies and gentlemen, to consider anything that is
23 in this record that will help you to evaluate the
24 testimony of witnesses. That means that it is your duty
25 to pay close attention to the witnesses, to observe the

1 witnesses, to listen to the witnesses, and to pay close
2 attention to the attorneys and to the Court. Please do
3 not let your thoughts wander, but give strict attention to
4 the testimony in this case so that at the end of all of
5 the testimony, after all the arguments of counsel and the
6 charge on the law has been given, you will be in a
7 position to retire into your jury room to discuss and
8 deliberate and to determine what the true facts of this
9 case are, to apply the law to those facts, and then to
10 render a verdict in this case. Now that's just an
11 overview of what we're gonna be doing, ladies and
12 gentlemen.

13 As I indicated to you, I'm going to now recognize the
14 attorneys for their opening statements. These statements
15 are not evidence in the case, but please give the lawyers
16 your undivided attention as they give you their opening
17 comments. Before I do that though let me ask, are there
18 any objections or exceptions of the Court's opening
19 comments to the jury?

20 MRS. PARR: The State does not have any, Your Honor.

21 THE COURT: Any from the Defense?

22 MR. FLOYD: None, Your Honor.

23 THE COURT: All right. Thank you, ladies and
24 gentlemen.

25 With that, Ms. Parr, I would recognize you for your

1 opening statements.

2 MRS. PARR: May it please the Court, this is a case
3 about another Florence lifetime original. It is one that
4 can be called stepdaddy's little girl. Good afternoon,
5 ladies and gentlemen of the jury. We believe the evidence
6 will show that this defendant wanted power and control in
7 his house so badly that he would not let anyone stand in
8 his way. That he would not let anyone stand in his way.
9 Whoever was in his household he believed they belonged to
10 him for his own selfish sexual gratification. He did not
11 stop at anything. It was not enough that he had her --
12 had his wife, but he had to have his wife's daughter as
13 well, and that's why we're here, ladies and gentlemen. I
14 believe the evidence will show that over a five year
15 period of time the defendant started flexing his muscles
16 in his house of what he called, termed his house. The
17 defendant had sex repeatedly with [REDACTED] also
18 referred to as [REDACTED]. And you will here her called
19 [REDACTED] because her mother's name is [REDACTED] and so she's
20 called that nickname so there will not be any confusion.

21 He started off by exposing his penis to her when she
22 was like 11 years old. Not only did he expose his penis
23 to her. He would masturbate to the point of ejaculation
24 in front of her. This went on for quite a while. We
25 refer to that as a warmup exercise, or what you may hear

1 later in the trial as grooming, getting her ready for what
2 he wanted to do to her. We believe that the evidence will
3 show that he proceeded to stretch his muscles with [REDACTED]
4 when she became 13 or 14 years of age by putting his
5 fingers in her vagina. We believe the evidence will show
6 that's the next step. First he exposed himself; then he
7 masturbated; then he ejaculated. And now, he is actually
8 touching her with his fingers. We believe the evidence
9 will show that he proceeded to have a full-blown workout
10 with her at [REDACTED]'s expense by having sexual intercourse
11 with her when she was between 13 and 14 years of age.

12 This continued. We believe this continued until he got
13 her pregnant. We believe the evidence will show that
14 he — she had a baby from her stepfather and he did not
15 leave her alone until after the baby was born. These acts
16 were not simply innocent touches. They were intentional
17 sexual acts against his stepdaughter which we believe we
18 will prove beyond a reasonable doubt. [REDACTED] [REDACTED],
19 suffered these vicious attacks on her young body from
20 someone who was supposed to protect her, her mother's
21 husband. But instead of protecting her, he used her for
22 his own purposes.

23 He is charged with criminal sexual conduct with a minor
24 second degree as well as lewd act with a minor and
25 criminal sexual conduct third degree. Justice demands

1 that he be held accountable for his actions. We would ask
2 you at the close of this case when you have heard all of
3 the evidence and you hear Judge Russo's charge, that you
4 find the defendant guilty of all three charges. Thank
5 you.

6 THE COURT: Thank you, Ms. Parr.
7 Mr. Floyd.

8 MR. FLOYD: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, sir.

11 MR. FLOYD: Hi, I'm Scott Floyd and I represent Joshua
12 Samuel in this case. You've all heard the accusations
13 that have been made against him by now, and of course
14 those are not pleasant accusations that you've heard. But
15 it's kind of like, you know, you watch the news at night
16 or you pick up a newspaper, you know, you read things and
17 you hear things about people sometimes on the news report
18 or you read it in the paper and might read it on the
19 Internet. Sometimes, you know, you just tend to believe
20 because you heard it. And that's called, you know, that's
21 the power of accusation. Just because an accusation is
22 made something clicks and sometimes we're predisposed to
23 believe those things that we hear. But in a criminal
24 trial, you know, that power of accusation doesn't really
25 have any place because in every criminal trial the

1 defendant, in this case Mr. Samuel, carries with him a
2 presumption of innocence which means that, you know, the
3 State has a burden to prove those accusations against him;
4 and until they do, to your satisfaction, he's presumed to
5 be an innocent person and that's one of the safeguards
6 that we have in this country. In any criminal trial
7 whether it's something as serious as this or as minor as a
8 traffic violation it's all the same. And of course, in
9 any criminal trial the State carries the burden of proof
10 which means that the defendant doesn't have to prove
11 anything, as the judge stated earlier, doesn't have to say
12 anything, he doesn't have to show you anything.
13 Everything is on the State shoulders to prove, okay. And
14 really and truly, if you think about it, it, makes sense
15 that the State should have that burden because they have
16 resources at their disposal of law enforcement agencies,
17 access to computers and all that sort of thing and they
18 can gather evidence so of course they should have the
19 burden to present. And in addition to that, the burden of
20 proof you also have a standard of proof in a criminal
21 trial which is beyond a reasonable doubt. I don't know if
22 any of you have ever served on a civil jury either here or
23 in magistrate court where people are squabbling over money
24 maybe. Of course, in a case like that the burden in such
25 a case is just like a preponderance of the evidence is

1 what they call it, which just means that the person making
2 a claim has to prove it, just very slightly. But of
3 course in a criminal trial we aren't arguing over money.
4 What we're arguing over possibly is somebody's freedom.
5 And of course, the standard in a case like that, in a case
6 like we have here today is going to be much higher and we
7 would just ask that you keep an open mind throughout this
8 process. We ask that you listen to the evidence, listen
9 to the witnesses, consider their motivations, consider
10 everything that the State presents to you, and at the end
11 just make a fair decision. Thank you very much.

12 THE COURT: Thank you, Mr. Floyd.

13 Mrs. Parr, you may call your first witness.

14 MRS. PARR: Your Honor, at this time we would call
15 [REDACTED] to the stand.

16 THE COURT: Ms. McKay, if you'd please come around.

17 THE DEPUTY CLERK OF COURT: Raise your right hand,
18 place your left hand on the Bible.

19 THE COURT: Raise your right hand, place your left hand
20 on the Bible. Thank you.

21 WHEREUPON,

22 [REDACTED]
23 having been duly sworn by the Deputy Clerk of Court,
24 testified as follows:

25 THE DEPUTY CLERK OF COURT: Please be seated, state

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1 your name for the record.

2 THE WITNESS: My name is [REDACTED]

3 THE COURT: Ms [REDACTED], if I may, ma'am, that
4 microphone, if you could pull it towards you and just
5 speak into it 'cause you're kind of soft spoken and it
6 will amplify your voice and allow the members of the jury
7 to hear.

8 DIRECT EXAMINATION

9 BY MRS. PARR:

10 Q Okay. And [REDACTED] how old are you?

11 A 34.

12 Q Okay. And do you have a nickname that you're called?

13 A [REDACTED].

14 Q And how long have you been called [REDACTED]?

15 A Since I can remember.

16 Q Okay. Now what's your date of birth?

17 A [REDACTED].

18 Q Okay. And where do you live?

19 A [REDACTED].

20 Q Is that —

21 A Florence, South Carolina.

22 Q Okay. Now where did you go to school?

23 A Elementary school?

24 Q Or did you graduate from high school?

25 A Yes.

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1 Q And where did you go?

2 A Wilson High School.

3 Q And what year did you graduate?

4 A '93.

5 Q Today we're here in a case against the defendant. Do
6 you know the defendant?

7 A Yes.

8 Q Okay. And who is that?

9 A My stepfather.

10 Q Now some allegations have been made that he sexually
11 assaulted you; is that correct?

12 A Yes.

13 Q And do you see that person who sexually assaulted you
14 as a child in the courtroom today?

15 A Yes.

16 Q Okay. And would you point that person out.

17 A He's sitting over there (indicating.)

18 MRS. PARR: May it please the Court, will let the
19 record reflect that Ms. [REDACTED] has identified the
20 defendant as the person who sexually assaulted her.

21 THE COURT: All right.

22 BY MRS. PARR:

23 Q Now [REDACTED], let's go back to when you were a little
24 girl. And I know this is difficult so just take a deep
25 breath and let's go back. When you were growing up where

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1 were you living prior to age 11 if you can recall?

2 A With my grandmother.

3 Q And who was your grandmother? Just take your time.

4 A (Witness crying.)

5 MRS. PARR: Just take your time. Your Honor, may we
6 have a brief recess so she can compose herself.

7 THE COURT: Yeah, let's do that. Ladies and gentlemen,
8 I'm going to ask you to retire to your jury room. I am
9 going to ask you if you would recall my earlier
10 instruction that you're not to have any discussion about
11 the case at all until all the evidence is in. So please,
12 when you retire to your jury room you can talk about
13 anything but please don't talk about this case. Let me
14 give you something to talk about while you're back there
15 if may. I'm gonna need for someone to agree to serve as
16 the foreperson of this jury. Let me tell you very quickly
17 about that. The foreperson, ladies and gentlemen, you'll
18 hear me tell you when I give you the instructions on the
19 law that your verdict in this case must be unanimous. All
20 of you are going to have to agree on the verdict so the
21 foreperson's vote carries no more weight than anyone
22 else's. All of you are equal as far as your opinions and
23 the weight your vote has. It's just that the foreperson
24 has a couple of jobs. One is they are the liaison between
25 the jury and the Court. In other words, they're the

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1 contact person between the jury and the Court. If
2 there's -- if the jury has a question and you need to talk
3 to the Court about it, then it's the foreperson that would
4 do that communication.

5 Also, when you retire to your jury room for
6 deliberation purposes the foreperson would be the one one
7 would say, okay, let's go ahead and begin deliberates.
8 They don't rule over deliberations. They don't lord over
9 the deliberations. As I said, all votes in this case, all
10 opinions have equal weight. But you just have to have
11 somebody who says, okay, let's start discussions. Or
12 you'll hear me tell you that if someone has to leave the
13 room, if someone has to use the restroom then
14 deliberations need to cease until that person is back. So
15 then the foreperson would say, okay, let's stop talking
16 about it, let's wait until everybody gets back and then
17 start back. So that's essentially the role of the
18 foreperson.

19 What I'm going to ask you to do is talk back there
20 among yourselves and see if you can either elect or
21 someone would agree to or if y'all can decide as a jury
22 this will be your first task to elect a foreperson to
23 serve as the foreperson for this jury. So if you would
24 retire to your jury room and do that for me but have no
25 discussions about the case, okay.

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1 (WHEREUPON, the jury was removed from the
2 courtroom at 3:21 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: All right, we're gonna take a short recess.
5 Let me say this, and I absolutely understand the sensitive
6 nature of these types of cases and that's okay, no
7 problem. The young man that was in here earlier, is he a
8 witness?

9 MRS. PARR: Yes, Your Honor, he's...

10 THE COURT: Okay. I don't want to him back in this
11 courtroom, okay, until you need him.

12 MRS. PARR: And he does — he actually has told me that
13 he doesn't want to listen to this. He's just going tell
14 what he knows because he...

15 THE COURT: I'm not upset with him at all. I
16 understand it. I'm just saying I can't have anything that
17 would in any way effect the trial in an adverse way so
18 he's certainly welcome to testify when it's time for him
19 to testify but. And I'm not saying — I'd probably feel
20 the same way he does. But if he's not able to control his
21 emotion I need for him to stay outside the courtroom,
22 which is — and he did that. He got up and walked out.
23 And I appreciated him doing that. But let's just do that
24 so we can avoid any problems. Let's — we're gonna take a
25 short recess and we'll start back in just a little bit.

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1 (WHEREUPON, a recess was taken from the proceedings.)

2 THE COURT: Ms. Joe, if you would ask the members of
3 the jury to join us please.

4 (WHEREUPON, the jury was returned to the courtroom at
5 approximately 3:41 p.m., and the following proceedings
6 commenced in open court.)

7 THE COURT: All right, Ms. Paul, congratulations. I
8 think congratulations. Some people think it's not
9 congratulations but for your willingness to serve as our
10 forelady of the jury. And so having said that, if you
11 would always occupy this seat. And, sir, if you would
12 always occupy that seat. Everyone else, you can sit
13 wherever you want to. Now I realize that we're creatures
14 of habit. My wife and I go to church on Sunday morning.
15 If somebody is sitting in our seats we look around like
16 we're lost, what are we gonna to do now. We don't have
17 assigned seats in church, but yet you get used to sitting
18 somewhere. If you're just comfortable with where you are
19 and you got to sit there, that's fine, you can do that.
20 But don't feel like you have to fall over each over to get
21 to a particular seat. If you've got a hankering for the
22 seat you're sitting in, that's where you want to sit, not
23 a problem, go ahead and sit there. But if you don't, and
24 you just want to file in and out and sit wherever you end
25 up, that's fine too. It's kind of like musical chairs.

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1 But Ms. Paul and our alternate will occupy those two
2 seats. Those are the only two assigned seats in the jury
3 pool. All right, ladies and gentlemen, we're going to
4 resume now with Ms. Parr.

5 MRS. PARR: Okay.

6 BY MRS. PARR:

7 Q [REDACTED], going back, I think you were saying you used to
8 stay with your grandmother; is that correct?

9 A Yes.

10 Q And what's your grandmother's name?

11 A Clara Smith.

12 Q And where did you -- did your grandmother stay?

13 A [REDACTED].

14 Q And when do you remember leaving -- how old were you
15 when you left her house?

16 A I think my mom -- I think that's when they was living
17 in Georgia something. That's when they came back and got
18 me. I think I was about 11 or 12.

19 Q Okay. So you were about 11, that would be like around
20 1984 or so?

21 A Yeah.

22 Q Okay. And so who came and got you?

23 A My mom and my stepfather.

24 Q Okay. And that's the defendant?

25 A Yes.

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- 1 Q Okay. And when is the first time you remember the
2 defendant? How old were you?
- 3 A About 11 or 12. I really don't remember that. I tell
4 my mother that I don't remember her till I turned about 11
5 or 12 anyway, but she say — she laugh at it.
- 6 Q All right. And so when they came and got you where did
7 you go, where did you move?
- 8 A We had moved to [REDACTED] Street.
- 9 Q Okay. And who lived at [REDACTED] Street when you all
10 went there when you were 11?
- 11 A My sister stay there.?
- 12 Q And what's her name?
- 13 A Peac-- [REDACTED]
- 14 Q [REDACTED] They call her peaches.
- 15 A Yes.
- 16 Q Okay.
- 17 A And my — both my brothers were there but my older
18 brother left.
- 19 Q Okay. What's your oldest brother's name?
- 20 A Pat.
- 21 Q Okay. And then your other brother?
- 22 A Sugar man.
- 23 Q Okay. What is his real name?
- 24 A Carlos.
- 25 Q Was Carlos in the courtroom earlier?

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- 1 A Yes.
- 2 Q Now who's the oldest?
- 3 A Peaches.
- 4 Q Okay. She's older than you?
- 5 A Yes.
- 6 Q Okay. And then your older brother, how is he, where
7 does he fall in the line?
- 8 A My sister and Pat, then myself and then Carlos.
- 9 Q Okay, all right. Now how much older are you than
10 Carlos?
- 11 A Four years.
- 12 Q Okay. Now at the time you all lived on [REDACTED]
13 Street, would you describe that house if you remember.
- 14 A It was a white house. I think it was trimmed in
15 burgundy. I'm not for sure if it — I think it was
16 burgundy.
- 17 Q And how many bedrooms did it have?
- 18 A It really was two bedrooms, but we made it out of three
19 bedrooms.
- 20 Q Okay. And how did you make it in a three bedroom?
- 21 A In the — where the kitchen was it was a, I guess it
22 was a den or something across from it so we put two single
23 beds in there and just put a curtain and stuff over so
24 nobody could see in it.
- 25 Q Okay. And who stayed in — which bedroom did you stay

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- 1 in?
- 2 A First me and my sister was in that room.
- 3 Q That's the one that you turned into a den, that was
- 4 turned -- that was a den and turned into a bedroom?
- 5 A Yeah.
- 6 Q Okay, all right. Now, and where were the boys staying,
- 7 sleeping?
- 8 A It was a back bedroom beside my mother and them room.
- 9 Q Okay. And at that time was your mother working?
- 10 A Yes.
- 11 Q Okay. And where did she work?
- 12 A I always known her to work at McLeod.
- 13 Q Now what did she do?
- 14 A Nursing.
- 15 Q Now when she worked at nursing what hours did she work?
- 16 A She always worked like 12 hour shift. The night shift,
- 17 like either 7 to 7.
- 18 Q Okay.
- 19 A Like 7 at night, 7 in the morning.
- 20 Q Now at first when during that time when she worked at
- 21 McLeod was she a nurse, or was she -- had she gone to
- 22 school for nursing yet?
- 23 A She was going to school for nursing then.
- 24 Q So at first, when y'all lived on [REDACTED] Street she
- 25 was in school. And when did she go to school, during the

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- 1 day or during the night?
- 2 A Go to school during the day.
- 3 Q Okay. And when did she work?
- 4 A At night.
- 5 Q Okay. Now when she worked at night who stayed home
- 6 with you all?
- 7 A My stepfather.
- 8 Q Now where did he work if he was working at the time?
- 9 A I always known him to work at Superior.
- 10 Q Now do you recall what school you were attending?
- 11 A On [REDACTED] Street.
- 12 Q Yeah.
- 13 A I was at Briggs.
- 14 Q Okay. Now when — after you were 11 years old did
- 15 anything happen with the defendant? What, if anything,
- 16 happened?
- 17 A No, it just little comments. Like when his coworkers
- 18 or something come up where he say — they'll say
- 19 something, yeah, she's fine, something like that but it
- 20 didn't work.
- 21 Q Okay. And so he started making comments about you?
- 22 A Yeah, but it was to his coworkers.
- 23 Q Okay.
- 24 A That was one of those comments that I heard.
- 25 Q Okay. And you were still 11 at that time?

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- 1 A Yes, ma'am.
- 2 Q Okay. And then when, if anything, did you start
- 3 noticing other things other than comments?
- 4 A That when he used to, you know, just, just...
- 5 Q Just take your time.
- 6 A He wasn't touching me at that time. He just used to
- 7 like take his penis out and ejaculate and stuff like that.
- 8 Q And where were you when he would do that?
- 9 A Wherever room I was at at that time.
- 10 Q Okay. Now who would be at home?
- 11 A He never did it when my mom was at home.
- 12 Q Okay. Now were your other -- were your brother and
- 13 sisters at home at the time?
- 14 A My younger brother.
- 15 Q Okay. So what happened to Peaches and Patches -- or
- 16 Pat?
- 17 A My sister had moved out. I believe she started living
- 18 with my grandmother, my great grandmother. And I don't
- 19 know, I think my brother got in trouble and he went to
- 20 jail or something like that. I don't know where he went.
- 21 Q Okay. So it was just, of the children home, just you
- 22 and Carlos?
- 23 A Yes.
- 24 Q Okay. Where would Carlos be? Would he be at home?
- 25 A Yeah, either in his room or he was out playing.

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1 Q Now do you recall the first time the defendant did
2 that?

3 A You mean.

4 Q When he pulled his penis out in front of you and
5 masturbated?

6 A I was in my room and he was at the door.

7 Q Okay. Were you still in the room that had been turned
8 from the den?

9 A No, that's when I moved to the back room and my brother
10 got that middle room.

11 Q Okay, all right. Was your door open or closed?

12 A Open.

13 Q Now where was your mom at that time?

14 A My mother wasn't there. I believe she was working.

15 Q Okay. Now when he came in and did that did he say
16 anything?

17 A No.

18 Q Okay, what did he do when he finished?

19 A He just go to the bathroom and I guess wash up or
20 whatever, I don't know.

21 Q Okay. And he never — he didn't say anything to you?

22 A No.

23 Q Okay. Now how long did that go on?

24 A Until we moved to [REDACTED] Street.

25 Q Okay, all right. Now after you lived on [REDACTED]

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1 Street where did you move?

2 A To the next street over, [REDACTED].

3 Q Okay. And on [REDACTED] Street how old were you at that
4 time?

5 A About 14, 13, 14.

6 Q Okay. And who was -- how many bedrooms did that house
7 have?

8 A Three bedrooms.

9 Q And who lived there?

10 A Me and my younger brother.

11 Q Okay. And then your mother, and was the defendant
12 living there as well?

13 A Yes.

14 Q Where was your mom working at that time?

15 A She was working at McLeod.

16 Q Okay.

17 A Or she work for some nursing agency. She was in the
18 medical field.

19 Q Okay. Now so did she have two jobs or one job?

20 A My mother always kept like two jobs.

21 Q All right. So when she was gone in the evening who
22 stayed home with you and Carlos?

23 A My stepfather did because he -- I think he got off
24 about 5 or 6 or something like that so he be home and he
25 come home and we be home.

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1 Q Did your mom work on the weekends also?

2 A Yes.

3 Q Now what school were you attending at that time?

4 A I was attending Williams Middle School.

5 Q Okay. And what happened during that time period with
6 the defendant?

7 A That's when he fondled me then.

8 Q Okay. When you say he fondled you can you please tell
9 us what he actually did?

10 A Like put your fingers in -- put his fingers in my
11 vagina.

12 Q Okay. Now did he say anything at -- did he start
13 saying anything at that time?

14 A Then he used to, like when he knew I was mad at him or
15 whatever that when he used to buy me a lot of stuff like
16 clothes and jewelry, stuff like that. And my mother used
17 to get mad saying he spent too much money on me.

18 Q Okay. And how often did do this, was he fondling you?

19 A It was several times.

20 Q Pardon me?

21 A It was several times.

22 Q Okay. Did you have any friends come to your house?

23 Were you allowed to have friends at your house?

24 A You mean like...

25 Q When you were during this time period.

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- 1 A I had one friend to come over and she spend the night
2 but she never came back to spend the night.
- 3 Q How old were you at that time?
- 4 A I was about 14.
- 5 Q Okay, so she only came that one time?
- 6 A Yeah.
- 7 Q Okay. Were you -- do you know why she never came back?
- 8 A No.
- 9 Q Did you all remain friends?
- 10 A About a year after that, yeah.
- 11 Q Okay. Now when you came home from school were you
12 allowed to be involved in extracurricular activities?
- 13 A During this time I wasn't -- only thing I did was went
14 to school and come home.
- 15 Q Okay, were you allowed to do anything else?
- 16 A We stayed on punishment a lot.
- 17 Q Now tell me about this punishment. You said you stayed
18 on punishment. Tell us about that.
- 19 A Like if I brought a C home or something like that I
20 stayed on punishment until the next report card come out.
21 Or if he said that we did something we was on punishment.
22 Because she wasn't there so she didn't know so she just
23 put us on punishment.
- 24 Q Okay, and when you stayed on -- when you were on
25 punishment what did that entail?

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- 1 A We couldn't go nowhere; we couldn't talk on the phone.
- 2 Q Okay.
- 3 A That was it.
- 4 Q And how often did that occur for you, as you can
- 5 remember?
- 6 A It most happen to me so much as it did my younger
- 7 brother.
- 8 Q Okay. Now were you allowed to go and visit your
- 9 relatives?
- 10 A Yeah.
- 11 Q Okay. So you could go to visit them. How often were
- 12 you allowed to go visit them?
- 13 A I didn't visit them like, like that. I mean, the last
- 14 time I did visit one of my relatives that's when one of
- 15 her husband's had fondled me and I told my mom and stepdad
- 16 about that.
- 17 Q Okay. And then were you allowed to -- did you go get
- 18 to see any of your aunts or could you go over to their
- 19 house whenever you wanted to?
- 20 A I guess I could have but I didn't.
- 21 Q You didn't, okay. Now at home did they come to visit
- 22 your house?
- 23 A Yeah, they used to come over. Not like every day or
- 24 whatever, not like every day whatever.
- 25 Q Okay. When you were 13 or 14 were you allowed to go to

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1 football games and parties or anything of that nature?

2 A No. I wasn't going to parties or football games.

3 Q Okay. Did you go to any, like to the movies or
4 anything of that nature?

5 A I used to go to the skating ring.

6 Q Okay. And how often were you allowed to go to the
7 skating ring?

8 A I went to the skating ring several times.

9 Q Now after he put his fingers in your vagina you said
10 that happened several times. What, if anything, happened
11 after that?

12 A That's when he start putting his penis inside me then.

13 Q And how old were you at that time?

14 A I was like 14, 15.

15 Q Okay. And where were where you living at that time?

16 A We was on [REDACTED] and then from [REDACTED] Street we
17 moved to [REDACTED] Street.

18 Q Now do you recall the first time he put his penis
19 inside you?

20 A Yeah, I was asleep.

21 Q Okay. And what happened? Tell us about that incident.

22 A That when he, I don't know, that's when he put his -- I
23 was laying on my stomach he put his penis in my vagina and

24 —

25 Q Do you recall what you were wearing?

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- 1 A A pink -- a white and pink gown. It was white but it
2 had pink roses and stuff in it.
- 3 Q Okay. And was it a long gown or short gown?
- 4 A It was to my knees.
- 5 Q Okay. And who was home that night?
- 6 A It was just me, him, and my little brother.
- 7 Q Okay. And your little brother being Carlos?
- 8 A Yes.
- 9 Q Where was Carlos at that time?
- 10 A Sleeping in his bed.
- 11 Q Okay. And so you had -- you had gone to sleep and when
12 did you realize something was happening?
- 13 A When he entered inside me.
- 14 Q Okay. And then what did you do?
- 15 A Nothing.
- 16 Q What could you do?
- 17 A (There was no response.)
- 18 Q Did he say anything?
- 19 A No.
- 20 Q Now when he did that can you describe how you felt when
21 that happened?
- 22 A Hurt.
- 23 Q When you say hurt, was that emotionally or physically
24 or what?
- 25 A Both.

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1 Q And did you -- did you have underwear on when you went
2 to bed?

3 A Yes.

4 Q Okay. And when you woke up and he was on you where was
5 your underwear?

6 A They was on the floor.

7 Q Okay. And what school were you attending at that time,
8 the first time when it happened?

9 A I was attending Williams in the 8th grade.

10 Q And how long did this occur when you were at Williams?

11 A It wasn't that long at Williams because I was about to
12 go to the 9th grade.

13 Q But you were at Williams at that time.

14 A Right.

15 Q So you were like 13, 14?

16 A I was 14.

17 Q Okay. Now when you were at Williams how did that
18 affect your school?

19 A I used to get in trouble a lot. He used to sign me in
20 school because I was scared to call my mom to sign me in
21 school.

22 Q Say that again, I'm sorry.

23 A I was scared to call my mother, tell my mother to sign
24 me in school, so I used to call him for him to sign me in
25 school.

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- 1 Q So was that the first year after this happened that you
2 started getting in trouble?
- 3 A I used to get in trouble a lot at Williams.
- 4 Q At Williams?
- 5 A Yeah.
- 6 Q Okay. Did you try to talk with someone, tell anybody
7 when you were at Williams?
- 8 A No.
- 9 Q Why didn't you tell anyone?
- 10 A Because I felt as though nobody wasn't going to listen
11 to me anyway. They didn't listen to me about my other
12 aunt so why bother going through it again.
- 13 Q And so this continued and you didn't, couldn't tell
14 anyone?
- 15 A No.
- 16 Q All right. And how did you deal with it? How were you
17 able to go through? I?
- 18 A I took all out in anger. So anybody say anything to me
19 whatever, I just ready to fight, period.
- 20 Q Okay. When he would have sex with you did he ever use
21 any type of protection?
- 22 A No.
- 23 Q All right. Had anybody else other than your aunt's
24 husband touched you before?
- 25 A No.

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1 Q Why didn't you tell your mother?

2 A Because he used to say something like you know your
3 mother will kill me, or you know, she done kill her
4 husband. He always used to say that every time they got
5 in argument so whatever and he used to call police on her.

6 Q So you were afraid your mother would have killed him if
7 she knew?

8 A Basically, yeah.

9 Q Now you said that you -- your mother built a house on
10 [REDACTED] Street; is that correct?

11 A Yes.

12 Q You remember when that was?

13 A In '90.

14 Q Okay, in '90. Now when you were in 9th grade did he
15 continue to have sex with you?

16 A Yes.

17 Q Okay. And when did that -- when would that occur?

18 A It always occur at nights because that's when she
19 either be at work or at Bingo.

20 Q Okay. So she used to play Bingo too?

21 A Yes.

22 Q Who would be at home?

23 A Just me and my younger brother.

24 Q All right. Now when he would have sex with you, sexual
25 intercourse with you, did he ever say anything?

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1 A It ain't too much saying anything. Like after he do
2 stuff like that he would buy you something or either give
3 you money or he would just something nice for what he did.

4 Q Okay. Now do you recall how many times a week this
5 would happen that he would have sex you?

6 A He didn't have sex with me every day of the week.
7 Sometimes he'd just jack off.

8 Q Okay. So even when he was hav— even during the time
9 period he was having sex with you he would still just
10 ejaculate in front of you?

11 A Yeah, so I could just watch him.

12 Q Okay. Now would you be in your room when this
13 happened?

14 A Yeah.

15 Q Okay. Could you not close your door? Did you ever
16 close your door?

17 A I did close the door and my mother — I didn't say
18 until someone came in if it was why I close my door,
19 whatever. But he used to pitch a fit with my mother for
20 no reason at all about the door being closed, whatever,
21 and saying that we, me and my brother, we had people in
22 the house having parties, all that type of stuff, so my
23 mother did take the door off the hinges at one point.

24 Q So your door on your bedroom was actually removed?

25 A Okay, saying we was having parties and sneaking people

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- 1 in through the window.
- 2 Q So when you would be in your room and he would be
- 3 ejaculating where would you be?
- 4 A Standing at the door.
- 5 Q So you had no way of closing the door?
- 6 A Right.
- 7 Q And how often or how many times do you recall that
- 8 would happen during a week?
- 9 A Whenever he felt like it.
- 10 Q On average a week what do you think?
- 11 A I'd say two, three times.
- 12 Q Now, and where would Carlos be?
- 13 A In his room.
- 14 Q Where was Carlos' room in relation to yours?
- 15 A On [REDACTED] Street?
- 16 Q Or before [REDACTED] Street where you were staying when he
- 17 first started doing this?
- 18 A Okay. On [REDACTED] he went to the room where me and my
- 19 sister was when she moved out on [REDACTED] Street.
- 20 Q And was that — was that next to your room, was it in
- 21 close proximity to your room?
- 22 A No. Like, my parents room was, was here, and my room
- 23 was across from their room because there was a bathroom.
- 24 And my brother room was further up on [REDACTED]. On [REDACTED],
- 25 his room was in the corner on this side of mine as well.

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1 Next, in the back, and mother and father room was up from
2 us.

3 Q Okay. So they were not close together?

4 A Right.

5 Q On [REDACTED], okay, all right. Now what happened when you
6 moved on [REDACTED] Street?

7 A What do you mean?

8 Q What, if anything, happened sexually with the defendant
9 when you were on [REDACTED] Street?

10 A Yes, that's when I got pregnant with my daughter.

11 Q Okay. What grade were you in at that time?

12 A I was in the 11th grade.

13 Q Okay, all right. Now at any point when you were in
14 high school prior to you getting pregnant there was — was
15 there a period of time when the defendant didn't have sex
16 with you?

17 A It was my whole high school year until after I had my
18 daughter.

19 Q Okay. So he had sex with you the whole time when you
20 were in high school?

21 A Uh-huh.

22 Q Okay. Even in 9th grade?

23 A Yes.

24 Q And where did that always occur?

25 A In my room.

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1 Q It always happened in your room? Now on [REDACTED] Street
2 what time was your mother going to work during that time?

3 A That's when she was working at McLeod on the weekends.
4 She did nursing service during the week.

5 Q Okay. And would she be at home at night?

6 A She always worked night shift.

7 Q Okay. Now when you were in high school were you
8 allowed to date?

9 A I had a boyfriend when I was in high school, but he
10 didn't come over because it was a problem.

11 Q Okay. When you say it was a problem what do you mean?

12 A Because after I had — after I had my daughter.

13 Q Okay. What about before you had your daughter?

14 A He came over maybe like two times the whole time that
15 we was dating.

16 Q Okay. And how long, how long did you all date?

17 A Just a couple of months.

18 Q Just a couple of months? Okay. Now when he — when
19 the defendant would be at home with you did he ever show
20 you pornography?

21 A Yes.

22 Q And when would that be in terms — tell us about that.

23 A He just put the tape in. I mean, I could be there like
24 and he put the tape in, say he just wants to watch.

25 Q Okay. What would you do when he did that?

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- 1 A Nothing, I just sat there.
- 2 Q Okay. Now you said you got pregnant and what grade
- 3 were you when you got pregnant?
- 4 A I was in — I was at the end of my 10th grade year.
- 5 Q Okay. So you were at the end of your 10th grade year?
- 6 A Yeah.
- 7 Q And —
- 8 A When I got pregnant.
- 9 Q Okay. And had you had sex with anybody else but the
- 10 defendant at that time?
- 11 A No.
- 12 Q Okay. Had you ever had sex with anyone?
- 13 A No.
- 14 Q Now what about the boyfriend you said you had?
- 15 A I never had sex with him.
- 16 Q Now when you got pregnant did you tell your mother?
- 17 A No, she — we was going to my uncle funeral. That's
- 18 when she was telling me that I was pregnant; and her and
- 19 my aunt, we went and got one of them tests and —
- 20 Q Which aunt was that?
- 21 A My aunt Sherry Smith.
- 22 Q Okay, all right. And during that time you were
- 23 pregnant did the defendant know you were pregnant?
- 24 A No, I don't believe so.
- 25 Q Okay. But did he eventually find out you were

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- 1 pregnant?
- 2 A Yes.
- 3 Q Were you still staying at home?
- 4 A Yes.
- 5 Q And who was staying in the house with you all at that
- 6 time?
- 7 A Just me and my younger brother.
- 8 Q Okay. Now when you became pregnant did the defendant
- 9 stop having sex with you?
- 10 A No.
- 11 Q Now but he knew you were pregnant; is that right?
- 12 A After my mother had, and my aunt, had took a test,
- 13 yeah.
- 14 Q And how long did he continue having sex during your
- 15 pregnancy?
- 16 A Up until I had her.
- 17 Q Now what did he say, if anything?
- 18 A You mean, like...
- 19 Q Did he ever say anything, make any acknowledgment about
- 20 you being pregnant and still having sex with you?
- 21 A No.
- 22 Q Now when you became pregnant did you ever tell anybody
- 23 that it was the defendant's?
- 24 A No.
- 25 Q And why didn't you tell?

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- 1 A Because I didn't want nobody to know.
- 2 Q Why didn't you want anybody to know?
- 3 A (There was no response.)
- 4 Q How were you feeling?
- 5 A Shame.
- 6 Q Now at one point did an agency come to talk to you
- 7 about it?
- 8 A Yes, ma'am.
- 9 Q Okay. And do you remember when that was?
- 10 A I don't know like the exact day or time or something
- 11 like that, but I know two ladies had came out and asked if
- 12 he ever touch me or, and stuff like that, and I told them
- 13 no.
- 14 Q And was these ladies from the Department of Social
- 15 Services?
- 16 A Yes.
- 17 Q Okay. Now tell us about that, when they came out.
- 18 Where were you in the house and who was at home?
- 19 A My mother and my father and —
- 20 Q When you say your father?
- 21 A Stepfather.
- 22 Q Okay.
- 23 A And we was in the living room.
- 24 Q Okay. Did they take you aside and ask you about it?
- 25 A No.

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1 Q Okay. So who was sitting there when they asked you
2 about it?

3 A My mom and my stepdad, and I was in the room and two
4 ladies had asked if he touched me or tried to have sex
5 with me or anything like that.

6 Q Okay. And what did you say?

7 A I said no.

8 Q And why didn't you tell them?

9 A Because they was in the room.

10 Q Were you afraid of him?

11 A I wasn't so much afraid of him. I was most afraid of
12 what could happen.

13 Q What do you mean?

14 A Like dealing with my mom.

15 Q Now after your baby was born did the defendant try to
16 have sex with you?

17 A Yeah, but nothing else happen because I used to sleep
18 in all my clothes. During then I used to have her in bed
19 with me.

20 Q When you say you slept in all your clothes, what you
21 mean by that?

22 A Whatever I had on for that day I kept on all day, all
23 night until the next morning.

24 Q Okay. Did he try?

25 A He still used to ejaculate in front of me and stuff

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- 1 like that, but I guess that's when I was just fed up at
2 that point.
- 3 Q Now when you were fed up what did you start doing?
- 4 A Fight anyone.
- 5 Q Who did you fight?
- 6 A Anybody.
- 7 Q Did you ever turn your anger on him?
- 8 A We used to argue a lot too.
- 9 Q Okay.. Now you have two aunts? Did you have —
10 Ms. Clara Thomas and Priscilla Zimmerman, did you ever
11 tell them?
- 12 A No.
- 13 Q All right. But did they start coming to you and
14 showing concern?
- 15 A They say they all there for me if I wanted to talk to
16 them, that they will listen to me.
- 17 Q Okay, all right. Now this punishment, how long did
18 this — how long did this punishment go on?
- 19 A You mean for me?
- 20 Q Uh-huh, for you.
- 21 A I mean, it's however long she put us on punishment, if
22 it be a month or two weeks or however long it be. Like
23 which our grades until the next report card so that could
24 be three or four months.
- 25 Q And when you were on punishment where were — were you

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1 confined to the house or home or to a room or anything?

2 A Yeah, you had to be in your room and until you bring
3 your grades up. That's how she was but she did want to be
4 like the intern because interns could change. She want to
5 see the next grade level so she know that you brought up
6 yours.

7 Q Now at what point did you finally move out the house?

8 A I moved out the house with my older brother, but then I
9 moved back in because he got in trouble. But recently, I
10 was out the house maybe a year or so now.

11 Q Now tell me this, when this -- what made you tell this
12 now after all these years?

13 A I didn't really want to tell this. My mother and him
14 was arguing one day and she told my aunt about it, I
15 guess, because me and him had got into it. And I say he
16 pulled the gun and the knife out that time and he -- me
17 and he arguing back and forth and I left and went to my
18 friend house.

19 Q Was that back in July of 2005?

20 A Yeah. So they called me to come back and when I came
21 back he like you see what you did, and I about to go to
22 jail. I was like, I said, I didn't even call the police.

23 Q Okay.

24 A So that's how all this came out again.

25 Q Okay. And when you say it came out though I know you

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1 said there was the gun and all that kind of stuff, but at
2 what point did you disclose or tell that he had been
3 having sex with you all this time?

4 A I never told anybody because somebody ask me I just
5 told them, I just say no.

6 Q Okay. Well, what about on this particular day when
7 this?

8 A That's when my mother was telling me and my aunt was
9 telling me just to go ahead and tell the truth about this,
10 and I still really didn't talk to her about it.

11 Q Who did you talk to about it?

12 A That's when I was talking to officer Michael Robinson
13 about it.

14 Q So when you talked to Michael Robinson was that the
15 first time you told what had been happening to you all
16 those years?

17 A Yes.

18 Q And you never could tell a friend or anything?

19 A No. Until one specific night when me and my boyfriend
20 was — but that's after I told Michael. But me and him
21 was asleep in the bed and he kept telling me I was jumping
22 a lot and all type of stuff like that and crying in my
23 sleep and that's when I told him about it.

24 Q Okay. And had you not tell him before?

25 A No.

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1 Q Had you ever told anybody about it before?

2 A No.

3 Q Now, and so when you first really disclosed that was in
4 July of 2005?

5 A Yes, ma'am.

6 Q Now you ended up -- after you told Investigator
7 Robinson did you have occasion to find out that he was, in
8 fact, the father of your baby?

9 A Yeah, because he had a couple of blood tests and she
10 called up and told me and my mother that it was 99.98 or
11 something like that that he was the father of [REDACTED].

12 Q Now during that time had you ever had sex with anybody
13 else?

14 A At what time?

15 Q During the time when you got pregnant, even prior to
16 that?

17 A No.

18 Q Now I know this has been a difficult road all these
19 years. At some point did your mother get ill?

20 A Yes.

21 Q Okay. And what happened after your mother got ill?

22 A What do you mean?

23 Q When she got ill -- did you move out before she got
24 ill?

25 A No, she was -- she was sick since '95.

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- 1 Q Okay.
- 2 A But when she got cancer I think it was 2000.
- 3 Q Okay. And how old was J[REDACTED]e -- is that, [REDACTED]e is
- 4 your daughter, is that right?
- 5 A Right.
- 6 Q How old was she when you disclosed that he had been
- 7 sexually abusing you, do you recall?
- 8 A In 2005 is when I talked to Michael about it.
- 9 Q Okay. Do you recall how old [REDACTED]e was then?
- 10 A 13.
- 11 Q And where were you and [REDACTED] living at that time?
- 12 A We were staying with my mother at [REDACTED]n Street.
- 13 Q Was the defendant living there too?
- 14 A He was at that time before he went to jail.
- 15 Q Okay. Now did you -- would you leave [REDACTED] with him?
- 16 A Yeah, I did.
- 17 Q You let him babysit [REDACTED]?
- 18 A Yeah, with my mother and him.
- 19 Q Okay.
- 20 A During that time she was sick so she was home.
- 21 Q Okay, so she was at home. But was there ever a time
- 22 you started becoming worried?
- 23 A Yeah, it was -- when they was basically telling me I
- 24 need to watch her, make sure that nobody touching her and
- 25 stuff like that, but I wasn't think that he was going to

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1 touch her. I never thought that he was going to touch
2 her.

3 Q Okay. Why didn't you think he would touch her?

4 A For just some reason I just -- I didn't think that he
5 was gonna touch [REDACTED] because no reason.

6 Q Now recently did you write a statement for him?

7 A Yes.

8 Q Okay. And who -- why did you write this statement?

9 A Because my mother wanted to -- I was no longer in the
10 house, but she needed somebody to take care of her. Which
11 she was preparing meals and you know, help for her with
12 bathroom, and you know, feeding her, stuff like that
13 because she just coming out of the hospital. She was real
14 sick when she came home.

15 Q Okay. Who asked you to write this statement?

16 A My mom.

17 Q Okay. And at that time did you ask that the charges be
18 dropped?

19 A Yes.

20 Q Okay. Was that because it didn't happen?

21 A It's not that it didn't happen. It just that I was no
22 longer in the house. I know I wasn't taking care of my
23 mother anymore.

24 Q Okay. So you wrote the letter because your momma asked
25 you because she needed -- she thought she needed him; is

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1 that correct?

2 A Right.

3 Q Beg the Court's indulgence. Now —

4 THE COURT: Yes, ma'am.

5 THE DEFENDANT: Your Honor.

6 THE COURT: Excuse me?

7 THE DEFENDANT: That's not right. We never did
8 anything.

9 THE COURT: Ladies and gentlemen, I'm going to ask if
10 you'd retire to the jury room please.

11 THE DEFENDANT: It's not right. I promise you, all
12 y'all —

13 THE COURT: Sir.

14 THE DEFENDANT: —in your regard.

15 THE COURT: Sir, that's enough.

16 THE DEFENDANT: It's not right —

17 THE COURT: That's enough.

18 THE DEFENDANT: —you do me like this.

19 THE COURT: That's enough.

20 THE DEFENDANT: I ain't never did anything.

21 THE COURT: Retire to your jury room. Please don't
22 have any discussion about this case.

23 THE DEFENDANT: It's not right, man.

24 (WHEREUPON, the jury was removed from
25 the courtroom at 4:28 p.m., and the following proceedings

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1 commenced in open court.)

2 THE DEFENDANT: Man.

3 THE COURT: Sir.

4 THE DEFENDANT: This messed up, man. I ain't did
5 nothing.

6 MRS. PARR: May it please the Court.

7 THE COURT: Yes, ma'am.

8 MRS. PARR: Your Honor, the whole time when she was up
9 here testifying and when he first came in here he was
10 glaring at her trying to get them not to because the whole
11 time of this he's putting on this big show now, and the
12 whole time it was that they're not gonna testify against
13 him.

14 THE COURT: Okay, here's the thing. Mr. Samuel, you
15 have a right to be present for your trial, but you do not
16 have a right to remain in the courtroom if you're gonna
17 have outbursts like that. And what I will do if you
18 continue to have outbursts and to show this type of
19 emotion in front of this jury panel is I'm gonna have you
20 removed from this courtroom, and your trial will continue
21 without you being present.

22 THE DEFENDANT: Your Honor.

23 THE COURT: You understand that, sir?

24 THE DEFENDANT: Yes, sir, but the way it look I never
25 had a chance from day one. I didn't do anything to be

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1 here. But like I said —

2 THE COURT: That's why you're here today. You're
3 having your day in court. You're having your trial.

4 THE DEFENDANT: But I didn't do anything to be here. I
5 didn't do any of this.

6 THE COURT: That's why you've —

7 THE DEFENDANT: They know I didn't.

8 THE COURT: That's why you've pled not guilty.

9 THE DEFENDANT: I'm telling you, if y'all think you'll
10 railroad me give me the death penalty because I didn't do
11 any of this.

12 THE COURT: Mr. Floyd.

13 MR. FLOYD: Your Honor.

14 THE COURT: I'm gonna take —

15 THE DEFENDANT: This is not right.

16 THE COURT: I'm gonna take a short break.

17 MR. FLOYD: Yes, Your Honor.

18 THE DEFENDANT: This ain't right.

19 THE COURT: Talk to Mr. Samuel, explain to him —

20 THE DEFENDANT: This ain't right. You know it's not
21 right.

22 THE COURT: —that he has the right to be present, but
23 if this continues that I will —

24 THE DEFENDANT: Where my rights at? I been in the
25 service.

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1 THE COURT: I will remove him from the courtroom.

2 MR. FLOYD: Shh, hush.

3 THE DEFENDANT: And served my country.

4 THE COURT: Mr. Samuel, let me tell you something, sir.

5 I'm trying to be very patient and no have that officer
6 take you out of here right now in chains. You make a
7 decision, sir.

8 Scott, talk to Mr. Samuel, explain to him what his
9 rights are. I'm gonna talk to him again but we're gonna
10 take a short recess.

11 MR. FLOYD: Yes, Your Honor. Thank you, Your Honor.

12 MRS. PARR: Your Honor, could we put one thing on the
13 record?

14 THE COURT: Well, when we come back. I mean, does it
15 have to be before we take a break?

16 MRS. PARR: No, the one thing I want Mr. Floyd to
17 caution him. Michael Robinson, investigator, heard the
18 defendant say I'm gonna get you then and Mr. Floyd stopped
19 him.

20 THE COURT: I'll caution him on all of that.

21 MRS. PARR: Okay.

22 THE COURT: But I'm gonna tell you now, Mr. Samuel,
23 you've plead not guilty to these charges. You're saying
24 you're not guilty.

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: This is your day in -- or week in court.
2 This is your time to be in court. You do not have the
3 right to disrupt this trial however you feel. I don't
4 care what -- just talk with Mr. Floyd, okay.

5 THE DEFENDANT: Okay.

6 THE COURT: Just talk with Mr. Floyd and I'll hear from
7 you on the record after you've had a chance to sit down
8 and talk to Mr. Floyd, okay?

9 THE DEFENDANT: Yes, sir. I wasn't saying anything. I
10 was just saying from day one till now nobody hasn't talked
11 to me about my case.

12 THE COURT: I understand, sir.

13 THE DEFENDANT: This the first time I'm hearing it.

14 THE COURT: Well, I just want you to talk with
15 Mr. Floyd and then I'll talk to you after y'all had a
16 chance to talk.

17 THE DEFENDANT: All right, Your Honor.

18 THE COURT: Ma'am, you can step down if you like.
19 You're not allowed to talk about your testimony with
20 anybody, but you can step down if you want to.

21 (WHEREUPON, witness steps down and a recess was taken from
22 the proceedings.)

23 THE COURT: All right. Mr. Samuel, now do you feel
24 like you can control your emotions and remain in the trial
25 of the case, sir?

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1 THE DEFENDANT: Oh, yes, sir. I apologize to you and
2 the Court. I mean, I'm gonna stand up, sir.

3 THE COURT: That's all right, and —

4 THE DEFENDANT: I apologize to you and the Court. I
5 didn't mean to do that outbreak. It just that nobody
6 understand what I been going through for years. I can't
7 do nothing about it. I mean, I'm just in a mess. Like I
8 said, I — no matter what, I won't break out like that
9 again in court. It just that it is — I can't explain it.
10 They know what I'm talking about about. Like I say, it
11 won't happen again. I won't interrupt your court for no
12 reason.

13 THE COURT: Well, and Mr. Samuel, I want you to
14 understand, sir, I — I want to thank you for apologizing
15 to the Court and I certainly accept your apology. What I
16 want to make sure is I don't want you to do anything to
17 hurt yourself.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that's my main concern. It's not, you
20 know, it doesn't offend me. I just want to make sure that
21 you don't do anything that would cause you to have any
22 difficulties during the course of the trial and —

23 THE DEFENDANT: Yes, sir. It just that what I'm
24 saying. I'm gonna stop talking. What it was, I was just
25 saying I just ain't had a time to tell my part, like what

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1 she did to me, that lady did to me or anything like that.
2 I didn't have time to talk to nobody about nothing. I
3 just -- all this hit me at one time. I'm just hearing
4 about everything else, but ain't nobody ever talk to me
5 about nothing. From the day I got arrested to now I
6 haven't even talked to -- see, both my lawyers quit on me.
7 I hadn't even talked to -- this the first one I talked to.
8 I hadn't talked to him yet about it, really, about what's
9 going on. So I'm just out there. And I haven't, you know
10 I mean, like I say, I apologize to the Court. I'm not
11 going to get into a long story. It won't happen again.
12 THE COURT: Again, thank you, sir. And but I do need
13 to make you aware, and I think you do know, that if we
14 have any further outbursts then I'm gonna have to remove
15 you from the courtroom.
16 THE DEFENDANT: Yes, sir, I know.
17 THE COURT: And the trial will continue.
18 THE DEFENDANT: I know, sir.
19 THE COURT: I want you to be present for your trial.
20 And as I said, there'll come a time it'll be up to you and
21 your lawyer and y'all will talk about and I'll give you
22 plenty of time to talk about it. There'll come a time in
23 the trial where you'll decide whether or not you're gonna
24 put up a defense of whatever it is you want to do and
25 you'll have that opportunity.

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1 THE DEFENDANT: Okay.

2 THE COURT: But until that point, just if you could,
3 sir — and don't get me wrong, I understand it's emotional
4 and I understand there's a lot at stake for everybody
5 involved. But as I told the jury when we started the
6 case, my job here and what I'm hoping is gonna occur and
7 what I'm trying to make sure happens, is that this trial
8 ends up being a fair and impartial trial and that nothing
9 occurs that would cause this trial to in any way be
10 decided on any factor other than the facts in the case.
11 It's just like the young man who was in here earlier who
12 ended up leaving. If I think that that in any way is
13 gonna have an adverse effect on the trial, and I do,
14 that's why I told Mrs. Parr I don't want him back in the
15 courtroom until it's time for him to take the stand. And
16 then I'll allow him to come in for the purpose of
17 testifying, but then he's going to have to stay out of the
18 courtroom.

19 THE DEFENDANT: That's the right decision.

20 THE COURT: He lost his right to be here because I
21 don't want anything to disrupt this trial that would cause
22 this jury to render a verdict that was based on anything
23 other than the facts. And that will be the same for
24 anybody and that includes you. So I want everybody to
25 understand that I understand the emotions. I

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1 understand -- I can't tell you I know how you feel because
2 I don't, but I do understand that there's high emotions.
3 There's a lot of emotions, a lot of feelings here. What I
4 want is, I want this trial to be fair for all parties
5 involved, for everybody involved. And so I appreciate
6 your appreciating that and your understanding that and
7 just ask that you please control your emotions. If there
8 is anyone who feels that they're not able to do that, then
9 I ask you to go ahead and leave before it gets to that
10 point but.

11 All right, are we ready to proceed? Mrs. Parr, you
12 ready?

13 MRS. PARR: Yes, Your Honor.

14 THE COURT: Mr. Floyd, you ready?

15 MR. FLOYD: Yes, Your Honor, thank you.

16 THE COURT: All right, Ms. Joe. Oh, wait a minute,
17 Ms. Joe. Mrs. Parr, Mr. Floyd, if there's not any
18 objection, when the jury returns before we start back I'm
19 just gonna say something very brief. And all I'm gonna
20 really say is that -- the obvious, and that is, that
21 obviously a trial such as this there's high emotion on
22 involving everyone and please understand that. And you
23 know, just so that they can -- just want to keep them
24 focused and put it in perspective so.

25 MR. FLOYD: Thank you, Your Honor.

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1 THE COURT: All right.

2 (WHEREUPON, the jury was returned to the courtroom at
3 approximately 4:57 p.m., and the following proceedings
4 commenced in open court.)

5 THE COURT: All right, ladies and gentlemen, thank you
6 for your cooperation. What I did want to say before we
7 started back is, and I guess I'm stating the obvious, this
8 trial and the subject matter of this type of trial is, as
9 you can well imagine, involves a lot of emotion and so
10 please understand that any distractions or outbursts that
11 occur, that happens occasionally and the Court has to
12 just, you know, kind of — all of us need to kind of just
13 step back, refocus, ask you that you completely keep your
14 focus on the evidence in this case. And as I told you
15 when the case started the evidence in the case comes from
16 the witness stand and from any exhibits that may come in
17 during the course of the trial. So please try to maintain
18 your focus on that. Having said that, we'll ask Mrs. Parr
19 to continue with her direct examination.

20 BY MRS. PARR:

21 Q Okay. [REDACTED] going back. When you became, when you
22 became 16 years of age and the defendant was continuing to
23 have sex with him — with you, was that consensual? Did
24 you consent to have sex with him?

25 A No, it would just like usually and...

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1 Q And it was what he did to you?

2 A Yeah.

3 Q And at that time you were still living at home and
4 being supported by him and your mother?

5 A Yes.

6 Q Okay. Were you working at that time?

7 A No.

8 Q Did you have any means to support yourself?

9 A I didn't get a job until after I finished school.

10 Q All right. And so during that time they took care of
11 you; is that correct?

12 A Right.

13 Q And at that time did you think about telling someone
14 what he'd been doing to you?

15 A No.

16 Q And why was that?

17 A Because I just wanted to keep that to myself.

18 Q Okay. And why did you want to keep it to yourself?

19 A Because of -- because of the shame and everything so it
20 was -- it wasn't like -- even though my hardest thing
21 that, you know, think I could talk to them whatever, it
22 was, I never just was the type of person to just open up
23 because it seem like it was like nobody really like they
24 would really listen even though they say they was there
25 but. When the first incident happened with my uncle then

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- 1 I feel as though like withdrawn really from telling
2 someone because my mother and he didn't do anything to
3 that man so why should I tell on that. You understand
4 what I'm saying?
- 5 Q Okay, all right. Did you ever go to him for sex?
- 6 A No.
- 7 Q Okay. 'Cause you heard his statement; is that correct?
- 8 A Yes, ma'am.
- 9 Q Did you ever tell him, no, that you didn't want to have
10 sex with him?
- 11 A I tell him quit touching me or something like that but.
- 12 Q Did he listen to you?
- 13 A No.
- 14 Q Now you said that you got a job and supporting
15 yourself; is that correct?
- 16 A That was first job I had after I finished school. I
17 was working at Burger King then.
- 18 Q That was after you finished high school?
- 19 A Right.
- 20 Q Okay. And you support yourself now; is that correct?
- 21 A Yes.
- 22 Q And you live on your own with your daughter?
- 23 A Right.
- 24 Q And how old is [REDACTED] now?
- 25 A 16.

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1 Q Court's indulgence. And how long have you been working
2 at your current job?

3 A About two years.

4 Q And so you support you and [REDACTED]?

5 A Right.

6 Q Please answer any questions the Defense may have for
7 you.

CROSS-EXAMINATION

8
9 **BY MR. FLOYD:**

10 Q Ms. [REDACTED], you do go by the last name of [REDACTED]; is that
11 correct?

12 A Yes.

13 Q Okay. I want to go through with you again about your
14 living arrangements when you were growing up. You said
15 you lived with your grandmother till you were 10 or 11; is
16 that right?

17 A Yes.

18 Q Okay. And then you moved to [REDACTED] Street; is that
19 correct?

20 A Yeah, we moved to [REDACTED].

21 Q All right. How old were you when you moved to [REDACTED]
22 Street?

23 A 11.

24 Q You were 11. Do you remember how many years you lived
25 there?

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- 1 A We didn't live there that long.
- 2 Q Okay.
- 3 A I don't know if it was, I think I want to say about a
- 4 year, or a year-and-a-half.
- 5 Q Maybe a year, a year-and-a-half?
- 6 A We didn't stay there that long because we moved to the
- 7 next street over.
- 8 Q And that would have been [REDACTED] Street?
- 9 A Yes.
- 10 Q So you were approximately 12 years old when you moved
- 11 to [REDACTED] Street; is that right?
- 12 A Yes.
- 13 Q How many years did you live in that house?
- 14 A We stayed on [REDACTED] Street my whole entire 8th grade
- 15 year.
- 16 Q [REDACTED] Street?
- 17 A Yeah, my — when I was going to Williams so it's like
- 18 7th or 8th grade.
- 19 Q So you would have been — you would have moved in when
- 20 you were 12 or thereabouts. And how old were you when you
- 21 moved out of [REDACTED] Street house?
- 22 A 14.
- 23 Q You were 14. And then you moved in to [REDACTED]; —
- 24 A [REDACTED] Street.
- 25 Q —is that right?

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1 A Yeah, my mother built a house.

2 Q And you lived in that house the whole time you were in
3 high school?

4 A Yes.

5 Q You made a statement about these events previously;
6 didn't you?

7 A Yes.

8 Q Okay. Was that in August of 2005 when you made that
9 statement?

10 A It should have been in July.

11 Q Okay, all right. Well, who did you make the statement
12 to?

13 A The only person I talked to was Michael Robinson.

14 Q That was Detective Robinson? And do you recall if they
15 recorded that statement?

16 A Yes, they did.

17 Q Okay. I want to hand you a copy of that, okay. I want
18 to be certain I'm giving you the right one, okay?

19 MRS. PARR: Your Honor, we would ask that counsel tell
20 us what page he's referring to.

21 MR. FLOYD: I'm not referring to any page yet. I'm
22 just handing her her statement.

23 MRS. PARR: Okay.

24 BY MR. FLOYD:

25 Q Okay. I want you to go to Page 2 of that statement.

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1 Okay? And on the — there's a line there where it says
2 Robinson. It's the second time. It says Robinson at the
3 top of the page.

4 A Uh-huh.

5 Q And it starts off, "okay".

6 A Yes.

7 Q Are you following me?

8 A Yes.

9 Q It says, Tell me more about the time you were 11, 12
10 too on [REDACTED] Street and where you moved. Could you
11 read what your reply to that was.

12 A Anthony and I was about 13. That's when we went to
13 [REDACTED] Street, and my sister stayed with us and then she
14 left. I guess on another — all the time or whatever but
15 we stayed there a good bit, a couple of years. And that's
16 when he used — he used little comments to his coworkers
17 that I was, you know, fine and something when I grow up
18 and all this and that. But I used to go — I used to just
19 bypass it and act like I didn't know or hear of what he
20 was going on or whatever. And I — it didn't happen until
21 I was like 15 when he came to my room.

22 Q Okay. You said it didn't happen until you were like 15
23 when he came to your room. Is that what you told the
24 detective on that date?

25 A Yes.

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1 Q Okay. And what were you referring to when you said it
2 didn't happen?

3 A I have to read the whole thing.

4 Q Okay, take your time.

5 A (Pause.) I'm ready.

6 Q Okay. What were you referring to when you said it
7 didn't happen until I was like 15.

8 A That's when he was actually like penetrating, like, his
9 penis inside me.

10 Q All right. Well, during that statement did you make
11 any references to the detective about anything that he was
12 doing anything before then, other than making comments
13 when you were 13?

14 A No.

15 Q Okay. Well, did you not testify differently earlier
16 today that he was doing other things before then?

17 A Yeah.

18 Q You talked about in your statement when you were 10 or
19 11, is that right? On Page 1 you refer to when you were
20 10 or 11. And you spoke about a weekend that you went to
21 an aunt's house; is that correct?

22 A Yes.

23 Q Is that the only incident of abuse during that time
24 period that you brought up to the detective during that
25 statement?

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1 A Yes. I was telling her about when I got fondled by my
2 aunt husband and I told them nothing happened.

3 Q Okay. Which aunt was that by the way?

4 A My aunt Priscilla Zimmerman.

5 Q All right. And you gave a statement in 2003; is that
6 right?

7 A Yes.

8 Q And that was approximately, I don't know, you were
9 talking about things that occurred, what, 17 years earlier
10 or thereabouts?

11 A Yes. We was trying to remember dates and times and
12 what happened, etc.

13 Q Okay, all right. And that was the first statement that
14 you'd ever given about this incident?

15 A About the whole thing, period.

16 Q All right. But you did talk to DSS investigators a
17 number of years before that?

18 A Yes.

19 Q And but you didn't ever mention any of this to them?

20 A No, I didn't.

21 Q Okay. They specifically asked you about it?

22 A Yes, and I told them that it didn't happen.

23 Q Now you said you never told anybody about it, about
24 your pregnancy, or anything like that. Did you not tell
25 your mother or anybody?

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1 A No, my mother told me that I was pregnant and her and
2 my aunt went and got a pregnancy test and we took it at
3 the house. Then she took me to the health department to
4 make sure that it was positive that was reading on the
5 stick.

6 Q Did you — you never discussed the paternity of the
7 child with your mother?

8 A No, 'cause at that time that's when he was talking to
9 Jeff McCormick so that's when everybody just say that it
10 was his baby so I just went along with that.

11 Q And how old were you then when you became pregnant?

12 A I was 17 when I became pregnant. It was 18 when I had
13 her.

14 Q All right. And what did you name the baby after it was
15 born?

16 A I didn't name her. My mother named her.

17 Q All right. And what was the child named?

18 A [REDACTED].

19 Q Excuse me?

20 A [REDACTED].

21 Q Was there any reason why the child was named [REDACTED]?

22 A Because my mom and my stepfather was going to take
23 custody of her 'cause I was planning on going through the
24 air force.

25 Q Okay. Did you, in fact, give up custody of your child?

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1 A Nope.

2 Q Okay. So you continued to raise her.

3 A (There was no response.)

4 Q Now earlier you testified about your home life when you
5 were in high school. You stated that as far as your
6 dating habits did you say that you didn't go out to date;
7 is that right?

8 A No, I wasn't going out to date. The only place I ever
9 went to was the skating rink.

10 Q All right.

11 A But when I became a senior then after I had Jasmine
12 that's when I used to go to my uncle club, but I couldn't
13 stay long 'cause I had to be home 12:00.

14 Q Okay. But that was after you became ---

15 A Def-- after I had her.

16 Q Okay. As far as letting anyone in the family know
17 about the paternity of the child, you said they assumed it
18 was your boyfriend?

19 A Yes.

20 Q Okay. Did they ever ask your boyfriend about it?

21 A No.

22 Q Okay.

23 A But not to my knowledge, but no.

24 Q Well, okay. But you weren't allowed at that time to
25 even go out with him; is that right?

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1 A Right.

2 Q Your uncle who you made the allegation against when you
3 were 11, what was his name?

4 A William McKoy.

5 Q All right. And he was married to your aunt Priscilla;
6 is that right?

7 A Correct.

8 Q Is that right?

9 A Yes.

10 Q Now you referenced a fight that you had in July with
11 your stepfather, or a fight that was brewing at your
12 house?

13 A Yes.

14 Q Was there an aunt involved in that, one of your aunts?

15 A She came after I left. I mean, I don't know how -- I
16 mean, I don't know why she came there. But after me and
17 him start arg-- stop arguing, that's when I left to go to
18 my best friend house. And then they called me back to
19 come home and that's when he was sitting on the truck
20 telling me, you about to go to jail, you see what you
21 done. And I was like I didn't even call the police.

22 Q And was that your Aunt Priscilla?

23 A Yes.

24 Q And that was in July of 2005; is that right?

25 A Right.

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1 Q After that argument broke out how many people did you
2 talk to about these allegations that you made against
3 Mr. Samuel?

4 A Then it was two officers that came, and they was
5 talking about the -- I don't remember the name -- but they
6 was talking about you either press charges. I don't know
7 who told them about it or whatever, but it came out then
8 and then soon after that that's when Michael Robinson came
9 in and was talking to me about the incident.

10 Q Okay. Did -- but you did tell your mother after the
11 argument of July of 2005?

12 A Like I said, we really didn't even talk about that
13 either. I don't know if she mentioned about that or,
14 however it came out that day.

15 Q All right. Did you have any conversations with your
16 Aunt Priscilla about it after the argument of July of
17 2005?

18 A No, I haven't talked to her about that either.

19 Q All right. Well, who did you talk to about it after
20 July before the investigator contacted you?

21 A Only, only person that I talked to was, not really even
22 talk to, my mother tell me I need to go ahead and talk to
23 somebody and that's when she was telling me I need to talk
24 to Michael Robinson.

25 Q Your mother, okay. All right, well what I'm asking is,

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1 when did you tell your mother that, about these specific
2 allegations?

3 A Me and my mother had never talk about the allegations.
4 She tried to talk to me but I never responded to any of
5 it.

6 Q Well, how did your mother find out about it?

7 A The only way I know that my mother could have found out
8 about it is when the DNA test came back, but I still
9 didn't talk to my mother about that.

10 Q Well, you told someone before you told the
11 investigator, correct?

12 A No, sir.

13 Q The investigator was the first one you told?

14 A She was the only one that sat down with me, and I
15 talked to her then. Other than that, no, I kept that to
16 myself.

17 Q Okay. And that was after the fight?

18 A It was in —it was a argument, yes.

19 Q Okay, well, arguing in July of '05; is that right?

20 A Yeah.

21 Q And that's when you told the investigator?

22 A After I talked to her, yeah, when she came to the
23 house.

24 Q Okay. So it was immediately after that fight—

25 A She came —

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1 Q —or thereabouts?

2 A It wasn't immediately. She came and she spoke to me,
3 and she said for me to come to her office, and that's when
4 me and my sister both talked to her about what was going
5 on.

6 Q Okay. How many days was that after the fight?

7 A I can't pinpoint how many days.

8 Q Well, you had discussed it with your sister before
9 then?

10 A We talked occasionally about it, yeah.

11 Q When you spoke to the investigator and gave her your
12 statement that you have there, did you ever tell her — or
13 is there anywhere in that statement where you reported
14 incidences of abuse when you were 11, 12, or 13 by Mr
15 Samuel?

16 A Not by Michael Robinson, no, I did not.

17 Q All right. And in fact, the first time you mentioned
18 anything like that happening you said, in this statement,
19 you said you were 15; is that right?

20 A Say that again.

21 Q First time you mentioned any sexual contact between you
22 and Mr. Samuel in this statement, did you not say you were
23 15?

24 A Yes, but I'm not talking about the fondling or the
25 ejaculating or anything like that.

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- 1 Q Okay. Now how old are you now, I'm sorry.
- 2 A 34.
- 3 Q 34? What's your date of birth?
- 4 A [REDACTED].
- 5 Q And what's your daughter's date of birth?
- 6 A [REDACTED].
- 7 Q [REDACTED]?
- 8 A Yes.
- 9 Q So you would have been — you would have been 17 when
- 10 the child was born, is that right, or 18?
- 11 A I was 18 when I had her.
- 12 Q When she was actually born? These repeated instances
- 13 of what you said were sexual contact between you and
- 14 Mr. Samuel, during that time why didn't you ever tell
- 15 anyone?
- 16 A Like I said before, nobody ever listen to me the first
- 17 time so why should I go through that again.
- 18 Q Well —
- 19 A Not only that, I was afraid what could have happened to
- 20 either myself or to him.
- 21 Q You still have a brother that was in the house now
- 22 living in the house?
- 23 A At that time? Yes. He's younger than me.
- 24 Q I understand. Never told your brother?
- 25 A No.

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- 1 Q Never told your mother?
- 2 A No.
- 3 Q Never told the teacher?
- 4 A No.
- 5 Q Never told your aunt?
- 6 A No.
- 7 Q You didn't tell DSS when you had an opportunity?
- 8 A I didn't.
- 9 Q Now this pregnancy would have occurred when you were
- 10 living on [REDACTED] Street; is that right?
- 11 A Correct.
- 12 Q And how long did you live there on [REDACTED] Street?
- 13 A I lived there for a while because I moved out and then
- 14 I moved back in, so years.
- 15 Q When was the most recent time you moved out of there?
- 16 A About a year-and-a-half ago, about -- about a
- 17 year-and-a-half.
- 18 Q About a year-and-a-half ago?
- 19 A I know it's over a year, a year and couple of months.
- 20 Q So you actually moved out of the house at one point.
- 21 How old were you when you moved out the first time?
- 22 A I was a teenager then when I first moved out and I
- 23 moved with my brother, my older brother.
- 24 Q But you were, what, 18, 19?
- 25 A Yeah.

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1 Q Something like that?

2 A 19 and going on 20.

3 Q Okay. So you moved out, and then how long did you stay
4 gone?

5 A I stayed with my brother up until he went to jail, and
6 that's when I had to move back in with my mother.

7 Q And how long was that? How old were you when you moved
8 back in?

9 A I had to 21, 21, something. I was in my 20s or either
10 20.

11 Q Mr. Samuel still living at the house?

12 A Yes.

13 Q So you moved back in to the house after you'd been away
14 for two years; is that right?

15 A About a year.

16 Q So you moved back in with a man that you claimed did
17 all that stuff to you when you were 11 and 12 and 13?

18 A Yes.

19 Q Okay. Did you want to stay away from him?

20 A Ain't the point of staying away, I need a room for me
21 and my daughter head.

22 Q So you were afraid to move your daughter back in with
23 him?

24 A No.

25 Q No.

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1 A I wasn't.

2 Q Did you try to make any other arrangements of anywhere
3 else to live before you moved back in with Mr. Samuel?

4 A Yes, I did, and they did told me I couldn't move there
5 because my said I better not move there. As they say, my
6 mother did not want me staying with nobody else so I
7 really didn't have no place to go with me and my daughter
8 so I end up going right back there.

9 Q So you didn't move there because your mother told you
10 not to?

11 A No. My mother was tell -- calling family members for
12 me not to stay with them so I had to go back there.

13 Q I know you had your argument in July of '05; is that
14 right?

15 A Yes.

16 Q Okay. I know you made certain arguments against
17 Mr. Samuel at that time about that argument. You wanted
18 him out of that house; didn't you?

19 A I left the house because the argument had died down. I
20 don't know what brought the argument back up for police to
21 come there after I left. I was not there.

22 Q But you didn't want him living in that house after
23 that, did you?

24 A I didn't want to be in the house.

25 Q But you continued to live there after that; didn't you?

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1 A Yes.

2 Q And who else was living in the house with you then when
3 that argument broke out?

4 A My daughter, myself, my mother, my stepfather. And I
5 can't remember if my nephew was there or not, but I know I
6 had him with me when I was in my —

7 Q Okay. Was your boyfriend living there then?

8 A No.

9 Q No? Did he ever live in the house when Mr. and Ms.
10 (inaudible) were there?

11 A Yes, but that's not the same person that I'm with now.

12 Q I understand. Well, was a boyfriend living with you
13 during that time when the fight broke out, I'll put it
14 that way.

15 A No.

16 MR. FLOYD: Your Honor, could you give me one moment
17 please.

18 THE COURT: Sure.

19 BY MR. FLOYD:

20 Q And Ms. [REDACTED], now when you lived on [REDACTED] Street
21 wasn't Mr. Samuel working nights a lot himself? Didn't he
22 work a lot of night shifts?

23 A No. He worked from 6 in the morning to 5 or 6 in that
24 evening.

25 Q So you don't ever remember him working swing shifts at

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1 all?

2 A I don't remember about swing shifts.

3 Q When he worked -- he was a welder, right?

4 A Yes.

5 Q Worked at Superior?

6 A Yes.

7 Q Here in Florence?

8 A Yes.

9 Q Okay, thank you. I think that's all that I have.

10 THE COURT: Ms. Parr.

11 **REDIRECT EXAMINATION**

12 **BY MRS. PARR:**

13 Q Just a few things. Mr. Floyd had you read from the
14 statement, a portion of the statement, about what you said
15 actually happened, your first memory of anything ever
16 happening. Would you read from here. And I'm referring
17 to Page 2 under [REDACTED], second entry from the bottom.

18 A "That was the first time that he penetrate in. it was
19 times he put his fingers inside my vagina. He did that a
20 couple of times -- well a lot of times, and he just kind
21 of times where he just wanted me to watch him ejaculate,
22 just look at him."

23 Q Okay. And so this was what actually happened before
24 the first time he had sex with you; is that correct?

25 A Yes, ma'am.

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- 1 Q And he -- defense counsel also made reference to when
2 you made the allegations as to how long this had been
3 occurring. I refer you to -- this is Page 4. Your
4 response after Investigator Robinson asked you how many
5 times, how many times a week do you think this happened.
6 A To tell you the truth it happened probably everyday but
7 he wouldn't penetrate me. Every day from penetrate me or
8 fondle me. He wanted me to see him ejaculate.
9 Q Okay.
10 A He was doing something.
11 Q And all this time where would your mother be?
12 A Work or either at their Bingo.
13 Q Okay. And Mr. Floyd asked you why you moved back in.
14 I think you said you needed a roof over your head?
15 A Yes, ma'am.
16 Q And what were you doing to protect yourself from him at
17 that time?
18 A That's when I used to sleep in all my clothes.
19 Q Okay, all right. And where was [REDACTED] at this time?
20 A She was with me.
21 Q Okay. And did you all share the same room?
22 A Yes, ma'am. She never slept in her crib.
23 Q I can't hear you.
24 A I said she never slept in her crib.
25 Q So she always slept in the bed with you?

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1 A With me or she slept with my mom when she was home.

2 Q Okay. Well now, you didn't have a problem when your
3 mother was home sending --

4 A No.

5 Q Okay. So when this occurred it's always when she was
6 not there?

7 A Yes, ma'am.

8 MRS. PARR: Nothing further, Your Honor.

9 MR. FLOYD: I don't have anything further. Thank you.

10 THE COURT: Thank you, Ma'am. You may step down.

11 MRS. PARR: Your Honor, do you want to do another
12 witness?

13 THE COURT: No. Ladies and gentlemen, it's actually a
14 little later than we typically like to go. We try to stop
15 around five if we can, but it's about a quarter till six.
16 We're going to stop for the evening. I'm gonna ask you,
17 if you would, when you leave here try, if you can, to go
18 home and get a good night sleep, get a good meal. Be well
19 rested when you come back in the morning. As you can tell
20 from today, jury service is not physically taxing from a
21 muscular standpoint, but it is from a mental standpoint so
22 it's very important to be well rested.

23 We -- what I'm gonna need to ask you to do something
24 for me and that is this. Sure as you go home there's
25 going to be some family member or loved one or some friend

1 or somebody who's gonna want to know if you got selected
2 for jury service. And it's okay to tell them that you
3 did, but then they're gonna want to know what kind of case
4 is it or who does it involve. And I need for you to tell
5 them in a polite way that you're not allowed to talk about
6 it. You're not allowed to even tell them what kind of
7 case it is. And the reason I tell you that is this. As I
8 told you when you started this trial you got to restrict
9 your exposure to this case to what occurs here in the
10 courtroom, what occurs from the witness stand. That's the
11 evidence in the case. And sure enough, if you go home and
12 you tell somebody what type of case it is or who's
13 involved in it, somebody's gonna make a comment and it may
14 be that it's a comment that affects your ability to be
15 fair and impartial. So it's very important that you have
16 no conversation. Now you can tell your loved ones and
17 your friends and your family that you'll tell them all
18 they want to know when the case is over. You'll tell them
19 everything. But at this point I really need to ask you to
20 please have no conversation about this case. Do not allow
21 people to have conversation with you. If someone does try
22 to talk with you now let them know that you're a juror
23 sitting on this case. If they persist on talking with you
24 after you've told them that, then get their name and let
25 me know who it is and I'll make sure that that doesn't

1 occur in the future. It's very important. When you came
2 in here you didn't know anything about this case. You
3 came in here with your mind being somewhat of a blank
4 slate. It's very important that that slate is only
5 carries information that is obtained during the course of
6 the trial. Please protect that. It's important to the
7 State, it's important to the Defense, that you do not get
8 influenced by anything outside this courtroom. So please
9 honor that.

10 If there's anything in the paper — I don't anticipate
11 there would be — but if there's anything in the paper or
12 anything on television please don't read it, don't watch
13 it. I'm gonna ask you to do me and a favor. I'm gonna
14 ask you to come back tomorrow. Be back in your jury room
15 at 9:00 and we'll start back at 9:00 proceeding with the
16 State's case. When you come back, if you've still got
17 that orange sticker have that on you. If you need a new
18 one let Ms. Joe know and she'll get you one. But it just
19 helps people around the court facility when you're around
20 in the building, it helps them to know that you're a juror
21 sitting on a case and they — the people, the security
22 downstairs, you know, they get you, give you preference in
23 getting in. You know, people just realize that you're a
24 juror and they will respect that, that role.

25 Having said that, you're free to go. If everyone else

1 will please remain in the courtroom while the jury is
2 excused. And we'll see you back here at 9:00 in your jury
3 room tomorrow morning please.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 5:49 p.m., and the following proceedings
6 commenced in open court.)

7 THE COURT: All right.

8 MRS. PARR: We have a matter that, Your Honor, the bond
9 is now no longer in effect and we would ask that the
10 defendant be taken into custody.

11 THE COURT: All right. That will be appropriate;
12 Mr. Floyd, have you got opportunity to talk with
13 Mr. Samuels about that?

14 MR. FLOYD: Your Honor, actually I don't think I ever
15 discussed that with him until -- well, I know, I haven't
16 today. No, sir, I have not.

17 THE COURT: Right.

18 MR. FLOYD: We've been talking about the trial and I
19 really didn't even consider that.

20 THE COURT: Mr. Samuel, once a jury is sworn your bond
21 is satisfied. In other words, you no longer have a bond.

22 THE DEFENDANT: I didn't know that, Your Honor.

23 THE COURT: I'm sorry?

24 THE DEFENDANT: I said I didn't know that, Your Honor.

25 THE COURT: Well, that's the way it is and so you're

1 going to have to be in the custody of the detention center
2 this evening. If you need anything let Mr. Floyd know.
3 If you have family that you need contacted we'll make sure
4 he give you that opportunity to do that.

5 Mr. Floyd, what time you want to Mr. Samuel back over
6 here in the morning?

7 MR. FLOYD: Your Honor, we're gonna start at 8; is that
8 right?

9 THE COURT: Well, we're gonna start at 9.

10 MR. FLOYD: I'm sorry, 9, I apologize.

11 THE COURT: That's okay.

12 MR. FLOYD: So what time do y'all normally start?

13 THE COURT: We'll have him here when you want him here.

14 MR. FLOYD: If you can have him here about 8:30.

15 THE COURT: Yeah, 8:30 then.

16 MR. FLOYD: Yes, sir, thank you.

17 THE COURT: All right. We'll resume in the morning
18 then.

19 (WHEREUPON, the proceedings were concluded for the day to
20 be reconvened on January 29, 2008).

21 THE COURT: All right. Anything this morning from the
22 State?

23 MRS. PARR: The State doesn't have anything, Your
24 Honor.

25 THE COURT: Anything from the Defense before we get

1 started?

2 MR. FLOYD: Your Honor, it's my understanding we're
3 going to go into some DNA testing on the child this
4 morning, the child that was born in 1991, I believe, if
5 I'm not mistaken.

6 THE COURT: Okay.

7 MR. FLOYD: I would just make a motion to exclude any
8 testimony concerning the paternity testing based on the
9 fact that it's time period is outside of the relevant time
10 period for these matters. Thank you.

11 THE COURT: Mrs. Parr.

12 MR. FLOYD: Well, what I'm saying is —

13 THE COURT: Is it relevant —

14 MR. FLOYD: I believe the testimony is she became
15 pregnant when she was 17 years old I believe. And I'm —
16 I, you know, I believe that the — that that's outside of
17 the age parameters—

18 THE COURT: So that taking things most favorable to the
19 State side, even if your client did have sexual relations
20 with her she was 17 at the time and would not have been
21 illegal.

22 MR. FLOYD: Correct, Your Honor, basically.

23 MRS. PARR: Your Honor, I'm not quite sure where he
24 gets that from. Count 3 of the indictment is criminal
25 sexual conduct third degree, and it goes through July

1 24th, 1991 that's alleged in the indictment.

2 THE COURT: All right.

3 MRS. PARR: And this would have occurred within this
4 time period.

5 THE COURT: Okay, all right.

6 MRS. PARR: And so I think it is most relevant.

7 THE COURT: The criminal sexual conduct third degree
8 does appear, Mr. Floyd, to be within the time frame that
9 is set so I would respectfully deny your request.

10 MR. FLOYD: Thank you, Your Honor.

11 THE COURT: All right, anything further before we bring
12 the jury out?

13 MRS. PARR: The State has nothing further.

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: Ms. Joe, if you'd ask the members of the
16 jury to join us please.

17 (WHEREUPON, the jury was returned to the courtroom and the
18 following proceedings commenced in open court.)

19 THE COURT: All right. Ladies and gentlemen, good
20 morning. I hope everyone has had a good evening and ready
21 to go to work this morning. If you recall yesterday we --
22 the State is in the process of presenting their case. You
23 heard from one of their witnesses and we'll now resume
24 with the State's case.

25 Mrs. Parr, you may call your next witness.

1 **MRS. PARR:** Your Honor, at this time we would call
2 Matthew Hill. Your Honor, may we approach for a moment.

3 **THE COURT:** Yeah, sure.
4 (WHEREUPON, counsel approached the Bench for an
5 off-the-record discussion.)

6 **THE COURT:** All right, Mr. Hill, if you will please
7 come around to be sworn, sir.

8 **THE DEPUTY CLERK OF COURT:** Please place your left hand
9 on the Bible, raise your right hand.

10 **WHEREUPON,**

11 **MATTHEW MCKEE HILL,**
12 having been duly sworn by the Deputy Clerk of Court,
13 testified as follows:

14 **THE DEPUTY CLERK OF COURT:** Please be seated and state
15 your full name for the record.

16 **THE WITNESS:** Matthew McKee Hill.

17 **DIRECT EXAMINATION**

18 **BY MRS. PARR:**

19 **Q** Mr. Hill, where you employed?

20 **A** LabCorp.

21 **Q** Okay. And what do you do for LabCorp?

22 **A** I'm a laboratory technologist.

23 **Q** Okay. And in which division are you in?

24 **A** Forensic identity department.

25 **Q** Now would you please tell us your educational

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1 background?

2 A I have a of bachelor of science from the University of
3 North Carolina at Chapel Hill.

4 Q And would you describe your professional experience?

5 A I've worked for LabCorp since 1999. I started in the
6 infectious disease department. Then I transferred over to
7 forensic identity department in 2003 and I've worked there
8 until present.

9 Q And what are your responsibilities in the forensic
10 identity division as a laboratory technologist?

11 A I do forensic analysis on biological samples.

12 Q Now have you had any other experience in forensic
13 identity?

14 A None other than working in the department.

15 Q Now would you please tell us how you became involved in
16 this particular case?

17 A We, LabCorp, received evidence from the Florence Police
18 Department.

19 Q Okay. And upon the receipt of that evidence what did
20 you do?

21 A I received the evidence and I assigned it to a locker
22 in a secure room. And then I assign — I retrieve the
23 evidence from the locker and I inventory the evidence,
24 make cuttings, and then I reassign the evidence to another
25 secure locker in the secured room.

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1 Q All right. Before we go any further I'm going to ask
2 you if you recognize what has been marked as evidence.
3 And if we could go threw each one of these. What's been
4 marked for State's for identification purposes do you
5 recognize this?

6 A Yes, ma'am.

7 Q Okay. And would you please state what exhibit that is
8 and what it is for us for the record?

9 A It's an envelope containing the swabs of [REDACTED]

10 Q And was this one of the pieces of evidence that you
11 inventoried?

12 A Yes, ma'am.

13 Q Okay. And I will show you what's been marked as
14 State's Exhibit Number 2. Can you identify that item?

15 A Yes, ma'am. It's the envelope containing oral swabs of
16 Jasmine Samuel.

17 Q Okay. And do you recognize this?

18 A Yes, ma'am.

19 Q Okay. Was this also contained in that envelope that
20 you received?

21 A Yes, ma'am.

22 Q And I will show you what's been marked for
23 identification State's Exhibit Number 3. Would you please
24 tell us what that is.

25 A Third envelope labeled Joshua Samuel containing oral

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1 swabs.

2 Q Okay. And I will show you what has been marked for
3 identification purposes as State's Exhibit Number 4 and 5.
4 Would you refer to each one of them by number and identify
5 them for me.

6 A State's Exhibit Number 4, it's a authorization form
7 that we use to determine that the evidence was received
8 intact with evidence seals, initials, and dates.

9 Q Okay.

10 A And State's Exhibit Number 5 is also a authorization
11 form that serves the same purpose as the other.

12 Q Okay. And did you initial both of those forms or sign
13 both of those forms upon receipt?

14 A Yes, ma'am.

15 Q And is that your signature on the forms?

16 A Yes, ma'am.

17 Q Okay. And I show you what has been marked for
18 identification as State's Exhibit Number 6 and 7. Do you
19 recognize those?

20 A Yes, ma'am.

21 Q And would you please tell us what those forms are.

22 A They are external chain of custody forms.

23 Q Okay. And was that also included in those packets that
24 you received?

25 A Yes, ma'am.

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1 Q Okay. And would you please tell us in what manner were
2 they received, those forms?

3 A In all likelihood they were received in a sealed
4 envelope that it would have been inventoried, yes.

5 Q And on -- are those forms, do these forms come in
6 triplicates?

7 A Yes, ma'am.

8 Q And the original hard copy, where would those be?

9 A They remain with the original case file.

10 Q Okay. And that's property of LabCorp; is that correct?

11 A Yes, ma'am.

12 Q All right. Now Mr. Hill, after receiving, receiving
13 these two packets and inventory them, what did you do?

14 A I do extraction of the DNA off -- I make cuttings from
15 the swabs. Then I do extraction of DNA. Then I provide
16 the results, the data, to the directors to do the
17 analysis.

18 Q Okay. And this is in the form of raw data?

19 A Yes, ma'am.

20 Q Okay. Now after you do that do you have anymore
21 involvement in the case?

22 A No, ma'am.

23 Q Now where do you put the information from the raw data?

24 A It goes into the case folder and that is placed in the
25 office, and one of the directors will review the case

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1 folder and make the analysis.

2 Q Okay. And now what did you do with the remaining
3 evidence?

4 A After I did the original cuttings of the evidence they
5 go into a secured locker and they remain there until the
6 director is authorized or requested to remove it and
7 return it to the submitting agency.

8 Q Okay. And was that what -- is that the process that
9 was followed in this particular case?

10 A Yes, ma'am.

11 MRS. PARR: Okay. Nothing further for this witness.

12 THE COURT: Any questions?

13 MR. FLOYD: Your Honor, I don't have anything for Mr.
14 Hill.

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

16 MRS. PARR: Your Honor, we would ask permission for
17 this witness to be released.

18 THE COURT: Any objection to this witness being
19 excused?

20 MR. FLOYD: I don't have any objection .

21 THE COURT: Thank you, Mr. Floyd.

22 You're free to go, sir, thank you.

23 MRS. PARR: Your Honor, at this time we could call A.
24 Dwayne Winston to the stand.

25 THE COURT: Mr. Winston, if you would please come

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1 around, sir.

2 THE DEPUTY CLERK OF COURT: Please place your left hand
3 on the Bible, raise your right hand.

4 WHEREUPON,

5 ANTHONY DWAYNE WINSTON,
6 having been duly sworn by the Deputy Clerk of Court,
7 testified as follows:

8 THE DEPUTY CLERK OF COURT: Please be seated and state
9 your name for the record.

10 THE WITNESS: Anthony Dwayne Winston.

11 DIRECT EXAMINATION

12 BY MRS. PARR:

13 Q Okay. Mr. Winston, where are you employed?

14 A At Laboratory Corporation of America and Research,
15 Triangle Park, North Carolina.

16 Q Okay. And would you tell us what do you do for
17 LabCorp.

18 A I am one of the technical directors in the forensic
19 department. We do -- we supervise the technologies and
20 day-to-day operations and processing biological samples
21 for DNA purposes. We do result interpretation, expert
22 witness testimony, marketing, sales, all areas of the
23 department.

24 Q And how long have you been in this particular position?

25 A I've been in this current position as a technical

SW - A. WINSTON - DIRECT

1 director for five years. Three years prior to that I was
2 the laboratory supervisor, and five years prior to that I
3 was senior technologist in the forensic department. And
4 before that I was doing biological clinical testing.

5 Q Okay. Now how long have you been with LabCorp total?

6 A 18 years.

7 Q Now where were you prior to going to LabCorp? Were you
8 employed in this area prior to going to LabCorp?

9 A Before I came to the forensic department I was doing
10 biomedical birth defect testing, biological screening for
11 birth defects. Prior to that I was doing occupational
12 testing for urinalysis drug screening, drug screening.
13 Prior to that I was doing research and development.

14 Q Now would you tell us a little bit about your
15 educational background?

16 A I have a bachelors in science and environment biology
17 at the University of North Carolina, Asheville.

18 Q Okay. Now are you a member of -- have you had any
19 special training for your job?

20 A Yes.

21 Q Now would you tell us some of your training background?

22 A Well, we are accredited forensic DNA testing lab. We
23 are accredited by three different agencies. ASCLAD Lab
24 which is the main godfather accreditation agency for
25 forensic labs. ASCLAD is the American Society of Crime

SW - A. WINSTON - DIRECT

1 Lab Directors. We are also accredited by CAP which is
2 the College of American Pathologists, and by New York
3 State Department of Health. Each one of these agencies
4 have guidelines that you have to meet the requirements for
5 to be qualified as a testifying scientist and also as a
6 laboratory technologist, and I meet all of the
7 requirements set forth by all of those agencies.

8 Q Okay. Now have you had occasion to do presentations?

9 A Yes.

10 Q And would you please tell us some of the presentations
11 you have made and where?

12 A I've done poster presentations at forensic DNA
13 meetings. I've done number of talks on forensic science
14 that I know, forensic technology inside of our company and
15 at other agencies also.

16 Q Now are you a member of any professional organizations?

17 A Yes. I am a associate member of American Academy of
18 Forensic Science and I'm also a member of Southern
19 Association of Forensic Scientists.

20 Q And have you had -- received any special honors for
21 your -- any other particular area?

22 A I've been laboratorian of the year once.

23 Q And was that with Roche Biomedical?

24 A It would be with our company, yes.

25 Q Have you testified previously in court regarding DNA

SW - A. WINSTON - DIRECT

1 analysis?

2 A Yes, I have.

3 Q And how many times?

4 A 34.

5 Q Okay. In what states?

6 A All across the United States. I don't know exact
7 number. But I'd say at least 14 different states I think.

8 MRS. PARR: Your Honor, at this time we would move to
9 have Mr. Winston qualified as an expert in DNA analysis.

10 THE COURT: Any objection?

11 MR. FLOYD: No, I don't have any objection. Thank you.

12 THE COURT: All right. Let me — members of the jury,
13 at this time the witness is qualified to testify as an
14 expert witness. Let me tell you this, and I'll further
15 explain this to you in your charge. The difference
16 between an expert witness and a lay witness is that
17 because of an expert's training, their experience, their
18 education in a particular field they have become well
19 versed in a particular area. They are allowed to testify
20 as to their opinions about a particular topic based on
21 their investigation to that matter, whereas a lay witness,
22 just a regular witness such as you or I, would not be
23 allowed to give opinion testimony. With regards to an
24 expert witness's testimony, as all witnesses in this
25 trial, you give it whatever weight you feel is

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1 appropriate. You are not to give more credence to a
2 witness's testimony simply because they're an expert. You
3 give it whatever weight you feel is appropriate, but that
4 I just wanted to explain to you why we qualify certain
5 witnesses as expert witnesses and why they're treated
6 differently as far as their abilities to give their
7 opinions. So in this case when a witness is qualified and
8 designated as an expert witness you may hear opinion
9 testimony, and whereas, you wouldn't hear that from a lay
10 witness. That's the difference.

11 Mrs. Parr, you may continue.

12 BY MRS. PARR:

13 Q Mr. Winston, what is DNA?

14 A The letters DNA stands for deoxyribonucleic acid. It
15 contains the genetic code for life. It is what makes us
16 human. It's also what makes each one of us human
17 different from one another also.

18 Q Now how is DNA used in criminal cases?

19 A Well, each individual, except for identical twins,
20 should have its own, his or her own unique DNA profile.
21 You can use that DNA profile to match suspects with crime
22 scene samples. You can use it for criminal paternities to
23 exclude or include a mother, a father, or a child as a
24 biological parent or child.

25 Q Did your laboratory receive evidence regarding this

SW - A. WINSTON - DIRECT

1 particular case?

2 A Yes.

3 Q And what did you receive?

4 A We received one sealed envelope containing two swabs

5 listed as from [REDACTED] One sealed envelope

6 containing two swabs listed as from [REDACTED]. And

7 one sealed envelope containing four swabs listed as from

8 Joshua Samuel.

9 Q Okay. And I would ask that, I will show you what's

10 been marked as State's Exhibit Number 1, 2 and 3 for

11 identification purposes. Will you please identify each

12 one of those items if you can.

13 A State's Exhibit 1 is the sealed envelope containing the

14 swabs from [REDACTED] State's Exhibit 2 is the

15 envelope containing the swabs from [REDACTED]. And

16 State's Exhibit 3 is the envelope containing a swab from

17 Joshua Samuel.

18 Q Okay. And do you recognize each one of those exhibits?

19 A Yes.

20 Q And would you please tell the Court how you recognize

21 them?

22 A Once we return the evidence -- well, when the

23 technologists inventory the evidence they put a lab corp

24 specimen sticker on each piece of evidence; and when I

25 return the evidence I seal it with security tape, lab corp

SW - A. WINSTON - DIRECT

1 security tape, with my initials.

2 Q Okay. And does that particular exhibit contain your
3 initials?

4 A Yes.

5 Q Okay. And would you inspect that and tell us whether
6 or not that has been tampered in any way? Is it as you
7 sealed it?

8 A Yes, it is.

9 Q And is that the case with the other two exhibits,
10 State's Exhibit Number 2 and 3?

11 A Yes.

12 MRS. PARR: Your Honor, I will show this to Defense.

13 MR. FLOYD: No, that's fine.

14 MRS. PARR: Your Honor, the State would move to enter
15 into evidence State's Exhibit Number 1, 2, and 3.

16 MR. FLOYD: No objection.

17 THE COURT: All right, without objection State's 1, 2
18 and 3 is admitted.

19 (WHEREUPON, State Exhibits Nos. 1, 2, and 3 were admitted
20 into evidence.)

21 BY MRS. PARR:

22 Q I also ask that you take a look at what's been marked
23 as State's Exhibit Number 4 and, 4, 5, 6 and 7. Do you
24 recognize those exhibits? If you would identify each one
25 of them.

SW - A. WINSTON - DIRECT

1 **A** State Exhibit 4 is our specimen authorization sheet
2 that we send out with our transport kits. This one
3 particular is for the sample submitted for [REDACTED]
4 State Exhibit 5 is another specimen authorization form
5 listed as to for the sample submitted for [REDACTED].
6 And State Exhibit 6 is a copy of our external chain of
7 custody form 206 for the samples from [REDACTED] and
8 [REDACTED]. And State Exhibit 7 is another external
9 chain of custody form 206 for the sample from Joshua
10 Samuel.

11 **Q** Okay.

12 **MRS. PARR:** Your Honor, the State would move to enter
13 into evidence State's Exhibit, 4, 5, 6, and 7.

14 **MR. FLOYD:** No objection.

15 **THE COURT:** All right, without objection.

16 (WHEREUPON, State Exhibit Nos. 4, 5, 6, and 7 were admitted
17 into evidence.)

18 **BY MRS. PARR:**

19 **Q** Briefly describe how cases are accepted into your
20 laboratory?

21 **A** We typically take cases in through phone conversations
22 with a client. We'll get the situation surrounding the
23 case and see if we actually will accept the case or not.
24 We try to stick to criminal cases or clinical significant
25 cases. We try to probably tend to shy away from more

SW - A. WINSTON - DIRECT

1 civil-type cases. Once the cases accepted into the lab we
2 get all the pertinent contact information and we send the
3 kit, transport kit out to the agency. The transport kit
4 contains all the materials that the agency would need to
5 return the samples to us in. It has security tape,
6 prepaid overnight stickers, and packaging. Once we get it
7 into our lab it picks up pretty much, well, Mr. Hill was
8 describing as far as the flow through the lab.

9 Q Now what type of analysis did you perform in this
10 particular case?

11 A We performed DNA analysis. We -- the actual type of
12 DNA is STR's which stands for short tandem repeats. It's
13 the areas of DNA are different between each individual.

14 Q Now quality control, what quality control measures did
15 you institute or did you use here?

16 A Well, we have quality control mechanisms throughout the
17 process. We have external we have reagent positive and
18 negative controls, and we have amplification positive and
19 negative controls. A negative control should be no
20 result. It would tell you if there was a contaminant in
21 your reagents. You shouldn't not have any activity, no
22 results in your negative control. Positive controls are
23 controls that we already know what the results are so we
24 should get the same result over time for that positive
25 control. If there's a problem with the negative or with

SW - A. WINSTON - DIRECT

1 the positive control you would know that there may be a
2 problem with your unknown samples testing also.

3 Q And were there any problems in this particular case?

4 A No, there weren't.

5 Q Now would you tell us about -- do you establish a case
6 file?

7 A Yes.

8 Q And would you please tell us about that process, what it
9 contains in there.

10 A Each case is actually assigned a case number when we
11 accept the case, and that case number follows our --
12 follows the evidence throughout the process. Everything
13 pertaining to that case would go to that individual case
14 file. That would be all the phone conversations, the raw
15 data, the interpretation, and the results.

16 Q And was that done in this particular case?

17 A Yes.

18 Q Now briefly describe the analysis.

19 A For any type of DNA testing the first thing you have to
20 do is to extract or remove the DNA from the sample whether
21 it be a bone or a blood stain or buccal swab. You go
22 through a chemical process inside of a test tube that
23 actually busts the cell wall open and the DNA is out in
24 the solution. You take it through a purification step
25 which clean out all the unneeded cellular material to

SW - A. WINSTON - DIRECT

1 which you have a purified DNA sample. You then take that
2 purified sample and put it through a process PCR which
3 stands for preliminary chain reaction. That makes copies
4 of the regions of DNA that are different between each
5 individual. It sort of makes photo copies, you know, in
6 just a way of looking at it it makes copies of those
7 targeted regions that we know are different between each
8 individual. That amplified product is then put on a
9 machine that would do a detection of that product and give
10 you your final raw data that we use for our
11 interpretations.

12 Q Now were you able to obtain results in this particular
13 case?

14 A Yes, we were.

15 Q Now please explain what those results were?

16 A Well, well the paternity case you -- biological child
17 of two parents you get half of your DNA from your mother
18 and half from your father so a biological child of two
19 parents would have to show characteristics from both
20 parents to be either included or excluded as a biological
21 parent.

22 Q Now I'm gonna show you what has been marked as State's
23 Exhibit Number -- State's Exhibit Number 9. Do you
24 recognize that?

25 A Yes. It is our certificate of analysis or our report

SW - A. WINSTON - DIRECT

1 for the analysis done on this case.

2 Q Okay. And would you -- how are you able -- is that
3 your signature?

4 A Yes.

5 Q And is that an accurate representation of the report
6 that you prepared?

7 A Yes, it is.

8 MRS. PARR: Your Honor, the State would move to enter
9 into evidence what has been marked as State's Exhibit
10 Number 9.

11 MR. FLOYD: Your Honor, no objection.

12 THE COURT: Without objection State's 9 in evidence.
13 (WHEREUPON, State Exhibit No. 9 was admitted into
14 evidence.)

15 BY MRS. PARR:

16 Q Would you please explain what those results were.

17 A Based on the results that we got from the buccal swabs
18 from [REDACTED], and Joshua Samuel, we
19 could not exclude Joshua Samuel as the biological father
20 of [REDACTED].

21 Q Did you calculate a paternity index?

22 A Yes, we did.

23 Q Okay. And what is a paternity index?

24 A The paternity index is the odds of this sample coming
25 from this person being the biological parent of a child

SW - A. WINSTON - DIRECT

1 opposed to a random individual in the general population.

2 Q And can this be translated to a percentage?

3 A Yes.

4 Q And before you give us the percentage would you please
5 tell us what the paternity index was, or is, in this
6 particular case.

7 A The paternity index in the African American population
8 was 900,054 to 1. That number is saying the odds that
9 this is the biological parent, the biological father, the
10 odds of it is 900,054 to 1. So a good way of looking at
11 that is like, say, if you fill the swimming pool up with
12 900,054 marks that were blue, that would be the
13 probability or odds this person is the biological parent;
14 and one yellow marble, that's the odds that it's from
15 somebody else.

16 Q And can this be translated to a percentage?

17 A Yes.

18 Q And what was the percentage?

19 A Based on the paternity index of 900,000 the probability
20 of paternity is 99.99 percent.

21 Q That the defendant is the father?

22 A Is the biological father, yes.

23 Q Now after you made that analysis what did you do?

24 A We prepared the report, and we returned the evidence
25 along with the original report to the submitting agency.

SW - A. WINSTON - DIRECT

1 Q Okay. And who did -- who returned it?

2 A I did.

3 MRS. PARR: The State has no further questions for this
4 witness, will allow Defense.

5 THE COURT: How about Defense?

6 MR. FLOYD: Your Honor, I don't have any questions for
7 Mr. Winston.

8 THE COURT: All right, thank you, sir. You may step
9 down.

10 MRS. PARR: Your Honor, we would ask that Mr. Winston
11 be allowed to leave.

12 MR. FLOYD: That's fine, Your Honor, thank you.

13 THE COURT: All right. No objection. Thank you,
14 Mr. Winston.

15 MRS. PARR: Your Honor, at this time we would call
16 Elizabeth Cook please.

17 THE COURT: Ms. Cook, if you'd please come around.

18 THE DEPUTY CLERK OF COURT: Please place your left hand
19 on the Bible and raise your right hand.

20 WHEREUPON,

21 ELIZABETH COLEMAN COOKE,
22 having been duly sworn by the Deputy Clerk of Court,
23 testified as follows:

24 THE DEPUTY CLERK OF COURT: Please be seated and state
25 your full name for the record.

SW - E. COOK - DIRECT

1 THE WITNESS: Elizabeth Coleman Cook.

2 DIRECT EXAMINATION

3 BY MRS. PARR:

4 Q Ms. Cook, would you please tell us, what is your
5 profession?

6 A I'm a pediatric nurse practitioner.

7 Q And tell me, what is a pediatric nurse practitioner?

8 A I have a Masters degree in nursing; and in the state of
9 South Carolina I'm able to prescribe medicines, diagnose
10 illnesses, admit children to the hospital and care for
11 them while they're there, perform physical exams on them.

12 Q And where are you currently employed?

13 A I'm currently employed in private practice in Conway,
14 South Carolina.

15 Q Okay. How long have you been in private practice?

16 A About one year.

17 Q Prior to going into private practice as a nurse
18 practitioner where were you employed?

19 A At the Durant Children Center in Florence, South
20 Carolina.

21 Q And is that an advocacy center?

22 A That is. It's the Children's Advocacy Center. It's in
23 Florence.

24 Q And how long were you employed there?

25 A About two years.

SW - E. COOK - DIRECT

1 Q Now how long have you been a nurse practitioner?

2 A Four years now.

3 Q And where did you receive your educational training?

4 A I have a bachelors degree in science from Francis
5 Marion University. I have a nursing -- a bachelors of
6 science in nursing from the Medical University of South
7 Carolina, and I have my Masters in nursing from Emory
8 University in Atlanta.

9 Q Now what -- are you -- do you belong to any
10 professional organizations?

11 A I do. The nurse practitioner has a organization called
12 NAPNAP and I'm a member of that. It's a certifying agency
13 for pediatric nurse practitioners.

14 Q Now have you previously testified in court before?

15 A I have.

16 Q How many times?

17 A Many times in criminal court, about four, but many
18 times in family court.

19 Q Okay. And in what states?

20 A South Carolina.

21 Q All right. Now did you have an occasion to become
22 involved in this particular case?

23 A I did.

24 Q Okay. And how did you become involved in this case?

25 A We were asked by the Florence Police Department to

SW - E. COOK - DIRECT

1 assist them.

2 Q Okay. And did you -- how were you -- how did you
3 assist the Florence Police Department?

4 A By obtaining swabs on Jasmine and her mother.

5 Q Okay. Now are you trained to obtain DNA swabs?

6 A Yes. The Children's Advocacy Center in Florence, the
7 Durant Center, is a center that examine children that
8 there is -- children or adults that there are suspected
9 abuse. And so we've done forensic trainings and attended
10 meetings and also go to training in Minnesota so that we
11 did all these trainings and that helped us to be able to
12 assist the police department.

13 MRS. PARR: Okay. The State would move to qualify
14 Ms. Cook as an expert.

15 MR. FLOYD: Your Honor, no objection to Ms. Cooke's
16 qualifications.

17 THE COURT: All right, without objection.

18 BY MRS. PARR:

19 Q Now you indicated that you became involved in this
20 particular case at the request of the Florence Police
21 Department; is that correct?

22 A That's correct.

23 Q Do you recall when you became involved?

24 A I'm not sure. I don't know the date, I'm sorry.

25 Q Okay. I want to show you what has been marked as

SW - E. COOK - DIRECT

1 State's exhibit number, entered into evidence as State's
2 Exhibit Number 4 and 5. Would you please review those.

3 A Yes. These are papers that I filled out.

4 Q Okay. And would you please tell us when you completed
5 those forms?

6 A On July the 22nd of 2005.

7 Q Okay. So is it fair to say that you saw them on that
8 particular day?

9 A It is.

10 Q Okay. And I will show you what has been entered into
11 evidence as State's Exhibit Number 6. Do you recognize
12 that?

13 A I do. I filled this out.

14 Q Okay. And what is that form?

15 A It's a form from LabCorp that was sent to us in order
16 to collect the swabs and so that we could have everything
17 sealed to send back to them.

18 Q Okay, all right. And did you, in fact, do that on that
19 particular day?

20 A I did.

21 Q And would you please go through as to what you, in
22 fact, did when you saw [REDACTED] and [REDACTED]?

23 A I will. The Durant Children Center has a special
24 examination room that's upstairs that's only entered to
25 from one way, and so we would have gone upstairs and I

SW - E. COOK - DIRECT

1 would have collected these samples. I would have done
2 that by using a cue tip that was supplied by LabCorp in an
3 envelope that's specially from their company. And then
4 you follow the instructions. You swab the inside of their
5 mouth with these swabs, and then you have to put it back
6 into the envelope and seal it with the things that LabCorp
7 sends you and then you sign the envelope so that it's
8 sealed. These things are in my possession in this room at
9 the Durant Center until they were sealed and placed back
10 into the box -- the envelope, sorry.

11 Q Now after you completed, followed the instructions and
12 completed it, did you have an occasion to mail that back
13 to LabCorp by Fedex?

14 A I did.

15 Q And when did you send it back?

16 A It would have been on that same day, July, July the
17 22nd of 2005.

18 Q Okay.

19 MRS. PARR: Nothing further for this witness, Your
20 Honor.

21 MR. FLOYD: Your Honor, I don't have any questions for
22 Ms. Cook. Thank you.

23 THE COURT: Thank you, Ma'am.

24 MRS. PARR: Your Honor, we would ask that Ms. Cook be
25 allowed to leave.

SW - E. COOK - DIRECT

1 MR. FLOYD: Without objection.

2 THE COURT: You're free to go, Ms. Cook. Thank you.

3 MRS. PARR: Your Honor, at this time we would call

4 Maureen Nagy to the stand.

5 THE COURT: Ms. Nagy, if you'd come around please.

6 THE DEPUTY CLERK OF COURT: Please place your left hand
7 on the Bible and raise your right hand.

8 WHEREUPON,

9 **MAUREEN NAGY,**

10 having been duly sworn by the Deputy Clerk of Court,

11 testified as follows:

12 THE DEPUTY CLERK OF COURT: Please be seated and state
13 your name for the record.

14 THE WITNESS: My name is Maureen Marie Nagy.

15 **DIRECT EXAMINATION**

16 **BY MRS. PARR:**

17 Q Ms. Nagy, where are you employed presently?

18 A I'm employed at Florence County Detention Center.

19 Q And how long have you been with the Florence County
20 Detention Center?

21 A 14 years.

22 Q And what do you do for the Florence County Detention
23 Center?

24 A I'm in the medical services department there. I am --
25 do their labs, most of their lab work, triage work, and so

SW - M. NAGY - DIRECT

1 forth like that.

2 Q Okay. Now would you please tell us your educational
3 background?

4 A I've got some college in Broward County, Technical
5 College in Florida, and also Florence-Darlington Tech
6 here.

7 Q Now have you had any special training to become a
8 phlebotomist?

9 A Yes, ma'am.

10 Q Okay. First of all, tell us what a phlebotomist is.

11 A Basically a phlebotomist is a person that will draw
12 blood or lab samples on an individual person.

13 Q And are you a certified phlebotomist?

14 A Yes, I am Board certified.

15 Q Okay. And when did you become Board certified?

16 A Back in the late 1980s.

17 Q Okay. And have you maintained your certification since
18 that time?

19 A Yes, ma'am.

20 Q Are you a member of any professional associations?

21 A Just basically the ASCP.

22 Q And would you tell us what that stands for.

23 A That stands for the American Society of Clinical
24 Pathologists.

25 Q Okay. Now did you have an occasion to become involved

SW - M. NAGY - DIRECT

1 in this particular case?

2 A Yes, I did.

3 MRS. PARR: Your Honor, before we move in further to
4 what she did in this particular case we would move to have
5 her qualified as an expert as a phlebotomist.

6 MR. FLOYD: No objection as to her qualifications, Your
7 Honor.

8 THE COURT: Thank you, sir. All right, without
9 objection.

10 BY MRS. PARR:

11 Q All right, Ms. Nagy, would you please tell us how you
12 became involved in this particular case.

13 A The Florence Police Department asked us to obtain a
14 sample from the defendant Joshua Samuel.

15 Q Okay. And was that at the request of Investigator
16 Michael Robinson?

17 A It was.

18 Q Okay. And would you please tell us if you recognize
19 what has been entered into evidence as State's Exhibit
20 Number 7?

21 A Yes. This is the form that -- for the chain of
22 custody, or the sample.

23 Q Okay. And this is for the sample that you and Michael
24 obtained?

25 A Yes, ma'am.

SW - M. NAGY - DIRECT

1 Q Okay. Were you able to identify the defendant?

2 A Yes, ma'am. At that particular day, yes. There was
3 basically on that same day there was three identifications
4 that were done on this one defendant.

5 Q Okay. And what were those three identifications?

6 A The first identification was when the defendant was
7 brought to medical and he was identified as that person.
8 The second time he was identified was right after the
9 collection of the sample. And the third was when the
10 identification was on the envelope, and we asked him to
11 verify that the identification that was put on the
12 envelope was correct and it was his.

13 Q Okay, all right. Now did he have an ID bracelet on to
14 your knowledge, do you recall?

15 A Yes, ma'am.

16 Q Okay. And is that one provided by the Florence
17 Detention Center?

18 A That's — yes, ma'am.

19 Q Okay. Now would you please tell us what steps were
20 done to obtain the sample on the buccal swabs?

21 A Investigator Robinson brought the kit to the medical
22 department. We identified the defendant and with by way
23 of his bracelet. The samples were removed, or the swabs
24 removed from the packet, and I believe at that time
25 Mr. Samuel did not want me to do the collection. He asked

SW - M. NAGY - DIRECT

1 that Investigator Robinson do the collection. So I guided
2 Investigator Robinson through the collection of taking one
3 sample in the mouth and letting that dry and then doing
4 the other sample on the other side of the mouth and
5 letting that dry, putting them both back into the packet
6 and sealing them and I -- the name.

7 Q And then after they were sealed did you give that
8 packet back to Investigator Robinson?

9 A Yes, ma'am.

10 Q Okay. And did you all follow all of the steps as
11 indicated?

12 A Yes, ma'am.

13 Q Okay. And I'll show you what has been identified as
14 State's Exhibit Number 3. I mean, it is sealed, but do
15 you recognize that or can feel it?

16 A Yes, this is the envelope I believe.

17 Q Okay. Would you please answer any questions the
18 Defense may have for you.

19 A Yes, ma'am.

20 **CROSS-EXAMINATION**

21 **BY MR. FLOYD:**

22 Q Ms. Nagy, I was a little confused there. You testified
23 that Mr. Samuel did not want you to take the sample.

24 A Yes, sir. I'm not real sure why he just didn't want me
25 to do that.

SW - M. HILL - CROSS

1 Q Okay. And did he object to the test being done at all?

2 A No, he -- he wanted Investigator Robinson to perform
3 that.

4 Q Okay. And what -- I mean, did you instruct her after
5 he asked for her to do it?

6 A Yes, sir. Step-by-step I talked her through it and
7 watched and observed that it was done properly.

8 Q And you were standing right beside her the whole time?

9 A Yes, sir.

10 Q Okay, all right. And you're saying he didn't have any
11 argument with Detective Robinson?

12 A No, he was cooperative. He was cooperative.

13 Q Okay, all right. Thank you.

14 THE COURT: Anything further?

15 MRS. PARR: The State has no further questions for this
16 witness and we would ask that she be allowed to leave.

17 THE COURT: Any objection to her being released?

18 MR. FLOYD: No objections, Your Honor.

19 THE COURT: Thank you, ma'am, you may be excused.

20 MRS. PARR: Your Honor, at this time the State would
21 call Clara Thomas to the stand.

22 THE COURT: All right, Ms. Thomas, if you would please
23 come around please.

24 WHEREUPON,

25 CLARA THOMAS,

SW - C. THOMAS - DIRECT

1 having been duly sworn by the Court, testified as follows:

2 THE COURT: If you'd please have a seat in the chair,
3 and if you would state your full name for the record and
4 for you to use the microphone and speak direct please.
5 Thank you.

6 THE WITNESS: My name is Clara Thomas.

7 **DIRECT EXAMINATION**

8 **BY MRS. PARR:**

9 Q Ms. Thomas, where do you live?

10 A I live [REDACTED] in Effingham.

11 Q And how long have you lived there?

12 A Since 1986.

13 Q 19 when?

14 A '86.

15 Q Okay. Are you married?

16 A Yes, I am.

17 Q And who are you married to?

18 A Myron Thomas.

19 Q And do you have any children?

20 A I have three children.

21 Q And what is your profession?

22 A I'm a licensed practical nurse inactive status,

23 P0012310 is my license number.

24 Q Okay.

25 A But I'm currently stay at home now.

SW - C. THOMAS - DIRECT

1 Q Okay. Now where did you get your educational training
2 from?

3 A Florence General Hospital School of practical nurses.
4 I graduated in 1979.

5 Q Okay. And how long did you practice as a nurse?

6 A From —

7 Q Before from —

8 A I practiced at a series of Health Care Facilities in
9 the Florence County Area including McLeod, Florence
10 General, and Bruce Hospital from 1979 to 1999.

11 Q Now do you know the defendant in this matter?

12 A Yes, I do.

13 Q And how do you know him?

14 A Josh is my sister's husband.

15 Q Okay. And do you recall when you first met him?

16 A Yes, I do.

17 Q And when was it?

18 A I met Josh in 1979. I was working at McLeod Hospital.
19 I was a LPN and he was working in housekeeping. He was a
20 custodian.

21 Q Okay, all right. And do you recall when he became —
22 what — did he get married to your sister?

23 A In 1980. They've been marry several times but that the
24 first time they got married was in February 1980 because
25 they got married on Valentine's day.

SW - C. THOMAS - DIRECT

- 1 Q Okay, all right. Now do you know [REDACTED]
- 2 A Yes, I know [REDACTED]
- 3 Q And how do you know [REDACTED]
- 4 A That's my niece [REDACTED].
- 5 Q Okay, all right. And how many children does your
- 6 sister have?
- 7 A She has four children. She has Willie, [REDACTED]
- 8 [REDACTED] - [REDACTED] - and Carlos.
- 9 Q All right. And in that order? Who is the baby?
- 10 A The baby is Carlos.
- 11 Q Okay. And then the next child?
- 12 A [REDACTED]
- 13 Q Okay, all right. Now how much - who is the older, you
- 14 or your sister?
- 15 A My sister [REDACTED] is five years older than I am.
- 16 Q Okay, all right. Now did you have an occasion to spend
- 17 much time with her and her children?
- 18 A Yes, I did. She had her first child when she was 14
- 19 years old, and she was married. At that time when she was
- 20 14 she had her husband Willie, who is the father of her
- 21 children, and they were married for - till she was 17.
- 22 And he killed my father so he went to prison and now
- 23 say - [REDACTED] my sister, lived with us throughout that
- 24 period of time. And when the trial came she testified for
- 25 her husband. My father had gone. If I can -

SW - C. THOMAS - DIRECT

1 MRS. PARR: You don't have to go through all of that.

2 MR. FLOYD: Your Honor.

3 BY MRS. PARR:

4 Q But she lived with —

5 A —us until her husband was released. He didn't stay
6 in prison very long because she testified on his behalf
7 against my father. And when he got out she went to live
8 with him and then she killed him while I was sitting in
9 the car —

10 MR. FLOYD: Your Honor.

11 THE WITNESS: —holding her baby.

12 MR. FLOYD: I object to the relevancy of this.

13 THE COURT: None of this is relevant to this trial,
14 Mrs. Parr. Let's move on to what is relevant.

15 BY MRS. PARR:

16 Q So you've had a relationship with his, with those
17 children?

18 A Yes, I've always lived in her shed (ph), always.

19 Q But anyway, and so did you have an occasion — okay,
20 after she moved out and she was living on her own with her
21 children; is that correct?

22 A Uh-huh.

23 Q All right. And you said she got married to the
24 defendant.

25 A She did. He moved in with her first and then they got

SW - C. THOMAS - DIRECT

1 married.

2 Q Okay, all right. And at first did she have all her
3 children with her?

4 A She did. She was working in medical records. She was
5 not a nurse at that time. And she had all been with her.
6 They would come and go in there with my mother or stay
7 over because I was still at home at that time. I hadn't
8 gotten married.

9 Q Okay. And did [REDACTED] stay with your mother for a
10 period of time?

11 A Yes, she did.

12 Q Okay. Now once -- do you recall when [REDACTED] went to
13 stay with her mother and her stepdad?

14 A Yes.

15 Q And when was that?

16 A That she had -- I got married in 1981. I'm trying to
17 think of it. And she went with me to Virginia when she
18 was 9 because Novle gave her to me and said I could have
19 her. And I took her that summer --

20 MR. FLOYD: Your Honor.

21 THE WITNESS: And she --

22 MR. FLOYD: Your Honor, I again, I object to the
23 relevance. I don't understand the relevance of this.

24 MRS. PARR: Your Honor, what I was trying to show, Your
25 Honor, that she has had contact with this, with [REDACTED]

SW - C. THOMAS - DIRECT

1 this whole time so she has been an integral part of her
2 life and followed her.

3 THE COURT: She just testified to that.

4 MRS. PARR: Okay.

5 THE COURT: We don't need the details.

6 THE WITNESS: Okay. Well, I brought her back and she
7 stayed with my mom for just a short while and then she
8 moved in with them. Novle took her back home.

9 BY MRS. PARR:

10 Q Okay, all right. Do you recall who was staying at the
11 house at that time with them and where they were staying,
12 what street?

13 A They lived around the corner from my mother. She lived
14 on -- they lived on Sopkin Avenue and my mother lived on
15 Orange Circle.

16 Q Now do you remember when they lived on -- moved to
17 [REDACTED]?

18 A Yes, I do.

19 Q Okay. On [REDACTED] Street who was living in the house
20 at that time if you recall?

21 A [REDACTED] -- Genovle would be and Carlos was there and
22 Patrick, her son Willie, I'm sorry, I keep getting...

23 Q Okay.

24 A Her son Willie was there just a short while. Then he
25 went in to juvenile detention. And then [REDACTED] was there

SW - C. THOMAS - DIRECT

1 and at some part of the time.

2 Q Okay. And but then did she end up leaving there at
3 well?

4 A She moved from there on to [REDACTED] Street about a year
5 later, or year or two later.

6 Q Okay. Now when she stayed on [REDACTED] Street did [REDACTED]
7 stay there for a long time, if you recall?

8 A She left and —

9 MR. FLOYD: Your Honor, once again, I'm not — I object
10 to relevance of questions about where her sister lived. I
11 mean, I don't understand.

12 MRS. PARR: Okay. Your Honor, the testimony, as you
13 heard yesterday, was that for the majority of the time it
14 was just [REDACTED] and her brother isolated at home as the
15 only children and nobody was there. And Your Honor, we
16 think that this is relevant to show the pattern.

17 THE COURT: All right. Overruled, I'll allow it.

18 BY MRS. PARR:

19 Q During that time they lived on [REDACTED] Street where
20 was your sister working, if you recall?

21 A She worked at the hospital. She worked in medical
22 records. She was not a nurse. She was working at McLeod
23 Hospital.

24 Q Okay. At some point did she go back to school to
25 become a nurse?

SW - C. THOMAS - DIRECT

1 A She did. They moved on [REDACTED] Street and she went back
2 to school then.

3 Q Okay. Now and when she became a nurse what shift was
4 she working?

5 A Mostly 7 p.m. to 7 a.m.

6 Q Okay. And to your knowledge who were the children left
7 with for care?

8 A Josh.

9 Q An who were those children, the children were there?

10 A It would have been [REDACTED] and Carlos.

11 Q Okay. And [REDACTED] you're talking about?

12 A [REDACTED].

13 Q [REDACTED], okay. To your knowledge did they ever go and
14 stay with anyone else in the evening?

15 A Very — not — I can't recall any time that they did.

16 Q Okay, all right. Now to your knowledge were they
17 interacting with the other family members or going to stay
18 with the family members during that time?

19 A They stayed at home. Very seldom did they go anywhere
20 or participate in any activities. They stayed at home,
21 yeah.

22 Q Okay, all right. Now after they moved on from [REDACTED]
23 they were on [REDACTED] Street; is that correct?

24 A Uh-huh.

25 Q Now did you have occasion to go there and visit?

SW - C. THOMAS - DIRECT

- 1 A Yes, I did.
- 2 Q Okay. And how often would you go there?
- 3 A Sometimes, not a whole lot, but it was maybe on usually
- 4 I visit on Sundays because I come into Florence and visit
- 5 everybody on Sundays.
- 6 Q Okay?
- 7 A After church.
- 8 Q Okay, all right. And when you would go there who would
- 9 be at home?
- 10 A Most of the time it would be [REDACTED] and Carlos.
- 11 Q Okay. Where would your sister be?
- 12 A Fayetteville a lot of times.
- 13 Q On Sunday?
- 14 A She would go to Bingo. Any time it was open and she
- 15 was off.
- 16 Q Okay. And did she work on the weekends as well?
- 17 A Sometimes.
- 18 Q Okay. Now and when you would go to the house to visit
- 19 where would the defendant be, or would he be at home?
- 20 A Joshua be at home sometimes. He was coming and going
- 21 'cause he would leave her around come back, leave and come
- 22 back.
- 23 Q Okay. Now what, if anything — did anything make you
- 24 suspicious?
- 25 A When Josh — before, when they were living on Sopkin

SW - C. THOMAS - DIRECT

1 Avenue we got a call and that my sister [REDACTED] and her
2 oldest daughter were fighting and that she had hit her
3 with a bat.

4 Q Well, if you would just kind of stick with what is to
5 this issue.

6 A That's when it came into question about him bothering
7 the children.

8 Q Okay.

9 A And—

10 MR. FLOYD: Your Honor, I believe she's testifying to
11 Hearsay, I mean.

12 THE WITNESS: No, I called the police.

13 THE COURT: All right. What was the —

14 MR. FLOYD: she was talking about a phone call she got
15 from somebody else.

16 THE COURT: All right, sustained.

17 BY MRS. PARR:

18 Q Don't tell me what calls you got from anybody else. I
19 just need for you to testify what you did—

20 A What I —

21 Q —what you saw and heard.

22 A Okay. I called the police because my mother was going
23 around to my sister's house to break up the fight. And
24 the — when she got back my niece couldn't move her arm so
25 I called EMS and they took my niece away to the lighthouse

SW - C. THOMAS - DIRECT

1 after she gone to the hospital because her arm was broken.

2 And it came into question then about him bothering the
3 children and because my niece was saying —

4 Q You can't tell me what your niece said.

5 MR. FLOYD: Your Honor.

6 THE WITNESS: I'm sorry. Because, okay, when you would
7 go to visit them [REDACTED], I'll just stick to [REDACTED].

8 BY MRS. PARR:

9 Q Okay.

10 A She would be in like pajamas and such. And since it
11 had already come up just all through the family through
12 the years that it might have been happening that's the
13 best I can do with that. And I said something is not
14 normal about that so I called DSS and I reported them
15 anonymously at that time and they said that —

16 Q Can you tell me what year was that?

17 A This would have been, God, in — I'm trying to think of
18 the 80s. Probably '82, '83, somewhere in there.

19 Q Okay. So you made anonymous call to DSS?

20 A Yes, I did. And they said that because of — they told
21 me that because of family disputes and such as that that
22 they could not investigate it and because people could
23 make false accusations. So time went on. And I called
24 again a couple of years later because it was just — if it
25 just was — she was being left there by herself and she —

SW - C. THOMAS - DIRECT

1 it just was unnatural that she was all in their bed and in
2 their bedroom.

3 MR. FLOYD: Your Honor, I —

4 BY MRS. PARR:

5 Q Is this what you saw?

6 A This is what I saw.

7 Q Okay.

8 A That's what I saw.

9 Q Okay, Ms. Thomas. All right.

10 A And I said that's unnatural. So I called DSS again and
11 I asked —

12 Q Now was she pregnant at that time?

13 A No, she wasn't. When she finally, when she got
14 pregnant I called DSS and I gave my name because I said I
15 reported to Maxine McLean, the social worker, that up to
16 this point it had just been suspicion but I knew that
17 child never dated and never went out on a date, never left
18 home. And I said, now, there's a baby and I'm sure that
19 baby can be tested. And I reported it and gave my name.
20 Still yet they told me they couldn't investigate it; that
21 they had to have at least two complaints so then I asked
22 my other sister to please call so that they could come out
23 and that's when they finally came out and did that
24 investigation. And then I found that Maxine had come out.
25 She was a friend of my sister's that worked at DSS. So

SW - C. THOMAS - DIRECT

1 that was just it.

2 Q So nothing became of it?

3 A Nothing became of it.

4 Q But in fact [REDACTED] had the baby.

5 A She had the baby.

6 Q Was in fact pregnant?

7 A Yes, she did. My sister did not speak to me for two
8 years. She wouldn't call me. She wouldn't take my calls.
9 She was that mad.

10 Q Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 BY MRS. PARR:

13 Q All right. Ms. Thomas, would you please answer any
14 questions the Defense may have for you.

15 A Yes, ma'am.

16 **CROSS-EXAMINATION**

17 **BY MR. FLOYD:**

18 Q Ms. Thomas, how much time did you actually spend at the
19 house?

20 A I came and went, especially when my sister was sick
21 because every Sunday she could depend on me to come and
22 check on her.

23 Q Well, when you're talking about in '82 and '83 was your
24 sister sick then?

25 A No, she was not sick.

SW - C. THOMAS - CROSS

1 Q All right. So how much time did you spend at the
2 house? That's what I'm asking.

3 A I came and went on Sundays.

4 Q On Sundays?

5 A Sometimes in between.

6 Q Okay. So you visited on Sunday afternoons?

7 A No. Sometimes in between. I visit on Sunday evening.
8 Sometimes I came on other days but I came every Sunday to
9 town to see everybody.

10 Q And other than the Sunday afternoon visits is that, I
11 mean, is that your normal routine as far as visiting in
12 the house.

13 A No. I came several times, but I came every Sunday
14 unless I was sick or something was terribly wrong I always
15 came.

16 Q When you say you visit everybody you mean you visited
17 other family members as well?

18 A Uh-huh, yes.

19 Q So how much time did you spend in their house on Sunday
20 afternoons is what I'm asking?

21 A Sometimes long. If somebody was sick I would stay
22 longer. If they — it just depends.

23 Q All right. Did you ever have any — you didn't have
24 any conversations with Ms. [REDACTED], did you, about — you
25 said you had concerns in '82 or '83. Did you ever have

SW - C. THOMAS - CROSS

1 conversations with her?

2 A I asked her all the time to please say something to let
3 me know I'm here for you.

4 Q All right.

5 A She ran away one night and I picked her up and I kept
6 her with me that night because they were arguing. I said,
7 please, you don't have to go back. Say something to him.

8 Q So in other words, that you said that sometimes they
9 will be there alone; is that right? Isn't that one of
10 your concerns that you had?

11 A Yeah.

12 Q They were there alone?

13 A Yeah.

14 Q So but he wasn't restricting your access to the child.
15 was he?

16 A No.

17 Q He was leaving them alone?

18 A No.

19 Q Okay. All right, thank you.

20 MRS. PARR: Nothing further for this witness, Your
21 Honor.

22 THE COURT: Thank you, Ma'am, you may step down.

23 MRS. PARR: Your Honor, at this time we would call
24 Priscilla Zimmerman to the stand.

25 THE COURT: Please come around.

SW - P. ZIMMERMAN - DIRECT

1 WHEREUPON, PRISCILLA ZIMMERMAN,
2 duly sworn by the Deputy Clerk of Court, testified as
3 follows:

4 THE DEPUTY CLERK OF COURT: Please be seated, state
5 your full name for the record.

6 THE WITNESS: Priscilla Zimmerman.

7 **DIRECT EXAMINATION**

8 **BY MRS. PARR:**

9 Q Ms. Zimmerman, where you employed?

10 A Florence County Sheriff's Office.

11 Q And what do you do for the Florence County Sheriff's
12 Office?

13 A I'm the crime prevention officer and the public
14 relations officer. I act as a liaison back from the
15 Sheriff's Office back to public and also teach youth in
16 crime prevention and any other program that's dealing with
17 crime.

18 Q And how long have you been employed with the Florence
19 County Sheriff's Office?

20 A 17-and-a-half years.

21 Q Okay. And have you had any special training for your
22 job?

23 A Yes, I have.

24 Q Now is this your current position?

25 A Yes.

SW - P. ZIMMERMAN - DIRECT

1 Q Are you a certified law enforcement officer?

2 A Yes, I am.

3 Q Okay. Where did you get your certification from?

4 A The South Carolina Criminal Justice Academy and my
5 crime prevention specialist class was done through the
6 State of South Carolina as crime prevention specialist.

7 Q Now did you — do you know the defendant in this
8 particular case?

9 A Yes, I do.

10 Q And how do you know him?

11 A He's my sister's husband.

12 Q Okay. And do you think [REDACTED] known as [REDACTED]?

13 A Yes, that's my niece.

14 Q Now did you have occasion to become involved in this
15 matter?

16 A Yes, I did.

17 Q Okay. Would you please tell us how you became
18 involved in this matter.

19 A The incident where we got to where he was arrested or
20 all my life because it's been something going on
21 practically all my live since I was a teenager. But the
22 incident where he got arrested is on one Sunday morning
23 —

24 MR. FLOYD: Your Honor, I'm going to object that she's
25 talking about an arrest. It doesn't have any bearing on

1 this.

2 THE COURT: What's the relevance as far as this
3 testimony?

4 MRS. PARR: The arrest has to do with this. This is
5 when he was arrested for. This is part of it. That was
6 of the arrest. That's how —

7 MR. FLOYD: Your Honor, can we —

8 THE COURT: Approach.

9 (WHEREUPON, counsel approached the Bench for an
10 off-the-record discussion.)

11 THE COURT: Ladies and gentlemen, let me get you to go
12 back to the jury room for a moment. Please have no
13 conversations about the case. I've just got to take up
14 this matter of law and we'll start back.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 10:43 a.m., and the following proceedings
17 commenced in open court.)

18 THE COURT: All right. Ms. Parr, the relevance here.

19 MRS. PARR: Your Honor, this is how she became involved
20 in the victim's, alleged sexual assault of this victim on
21 July 2nd of 2005. That's how this came to light and
22 Florence Police Department became involved in it.

23 THE COURT: They were called —

24 MRS. PARR: And Michael Robinson was called.

25 THE COURT: They were called as far as criminal

1 domestic violence?

2 MRS. PARR: And criminal sexual conduct with a minor.

3 THE COURT: So that's what they came out there and made
4 the arrest for?

5 MRS. PARR: And that's what the incident report refers
6 to and Defense counsel has a copy of that.

7 MR. FLOYD: All right.

8 THE COURT: Okay. That was on this day?

9 MR. FLOYD: Well, it says, Your Honor, that he was —
10 they were called out there for criminal domestic violence
11 or having domestic dispute. Apparently there were
12 allegations of a gun being pulled or whatever. And then
13 in the process of investigation apparently the subject
14 about the criminal sexual conduct came up after the call
15 was made. And then warrants were — it says a warrant
16 will be signed from city court on 7/3/05 and I assume
17 that's what they're talking about was the criminal sexual
18 conduct warrant. This incident — I guess the arrest
19 actually happened on the 2nd; is that right?

20 MRS. PARR: I guess they took him in on the 2nd.

21 MR. FLOYD: Yeah, they hay took him in on the 2nd. I
22 just didn't — I didn't know how to begin...

23 THE COURT: All right, I think it's relevant tying it
24 all in there. I'm going to allow it. But let me just
25 ask, you know, we can — are we going down any other paths

1 involving any prior bad conduct or bad act.

2 MRS. PARR: No, we're not going to get into that.

3 THE WITNESS: No.

4 THE COURT: Just want to avoid that.

5 MRS. PARR: Okay.

6 THE COURT: All right, Ms Joe, ask the members of the
7 jury to come back out.

8 (WHEREUPON, the jury was returned to the courtroom at
9 approximately 1:49 p.m., and the following proceedings
10 commenced in open court.)

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13 (Whereupon Defendant Samuel entered a plea.)

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1 **CERTIFICATE OF REPORTER**

2

3

4 **STATE OF SOUTH CAROLINA)**

5 **COUNTY OF FLORENCE)**

6

7 **I, FRANCES BAKIS-RAY, Registered Professional**

8 **Reporter (RPR), court reporter for the State of South**

9 **Carolina, Twelfth Judicial Circuit, do hereby certify that**

10 **the foregoing proceeding is a stenographic report and was**

11 **transcribed through computer-aided transcription; that the**

12 **foregoing transcript contains a true record of the**

13 **proceedings.**

14 **I further certify that I am neither counsel for,**

15 **nor related to nor employed by any of the parties**

16 **connected to the action, nor am I financially interested**

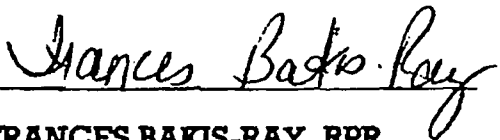
17 **in the action.**

18 **Witness my hand at Florence, South Carolina,**

19 **this 10th day of September, 2009.**

20

21

22 

23 **FRANCES BAKIS-RAY, RPR**

24 **My Commission Expires: 9-13-2014**

25

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

STATE OF SOUTH CAROLINA)

STATE,)

v.)

JOSHUA SAMUEL, JR.)

DEFENDANT.)

TRANSCRIPT OF RECORD
06-GS-21-920
January 29, 2008
Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO, JUDGE

APPEARANCES:

PATRICIA SINGLETON PARR, ESQ.
Assistant Solicitor
Attorney for the State

SCOTT P. FLOYD, ESQ.
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 THE COURT: All right, ready to proceed. This
2 is back on the record in indictment 2006-GS-21-920, State
3 versus Joshua Samuel. Mr. Samuel, I've been informed by
4 your attorney and the State that you have decided to enter
5 a plea of guilty to count one of this indictment, criminal
6 sexual conduct with a minor in the second degree. That
7 charge, sir, carries a maximum penalty of up to 20 years
8 in prison. Do you understand that?

9 THE DEFENDANT: (Nods.)

10 THE COURT: I need you to speak verbally.

11 THE DEFENDANT: Oh, yes, sir.

12 THE COURT: Okay. And, sir, I -- I understand
13 when you nod your head because I'm watching you, but
14 Ms. Ray has to take down everything that's being said and
15 there are times when she's not watching so we need to
16 speak verbally if you would. And Mr. Samuel, you also
17 understand, sir, that with this plea, let's see, well --
18 let me get the attorneys to approach because I don't want
19 to -- I want to make sure I got everything right.

20 (WHEREUPON, counsel approached the Bench for an
21 off-the-record discussion.)

22 THE COURT: Mr. Samuel, you -- I'm just wanting
23 to verify some information because I don't want to tell
24 you anything wrong. Okay?

25 (Attorney confers with defendant.)

1 THE COURT: All right, come on back around.
2 Mr. Samuel, as I indicated to you earlier the charge of
3 criminal sexual conduct with a minor second degree carries
4 a maximum penalty of up to 20 years not more than 20 years
5 in prison. It also, sir, is my understanding that it
6 would require that upon your release that you would be
7 under mandatory GPS monitoring, or global positioning
8 monitoring, for the remainder of your life so that once
9 you've completed whatever active portion of this sentence
10 that you would have to be subject to that global
11 positioning, the GPS monitoring, you understand that, sir?

12 THE DEFENDANT: (Nods.)

13 THE COURT: I need you to answer out loud.

14 THE DEFENDANT: Yes, sir. Yes, sir.

15 THE COURT: All right. Also, that would be
16 the -- you would have to complete and satisfy the
17 requirements under the sexually violent, sexually violent
18 predator act, whatever requirements that they put upon you
19 to complete. You understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. Now also, it is my
22 understanding that you cannot get probation for this case.
23 You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Mr. Samuel,

1 understanding the nature of the charge against you and the
2 possible punishment that falls under that code section,
3 how do you plead to that charge, guilty or not guilty?

4 THE DEFENDANT: I plead guilty, sir.

5 THE COURT: All right.

6 THE DEFENDANT: Your Honor.

7 THE COURT: All right, sir. Mr. Floyd, you
8 represent Mr. Samuel of course.

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: And have you and he had enough time
11 to discuss, as the record reflects we've been in a trial
12 involving these issues for the last day and a half. Have
13 you had enough time to talk with Mr. Samuel about him
14 entering this guilty plea?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right. Have you discussed with
17 him his constitutional rights to continue with his trial
18 as well as the nature of the charges he's pleading to?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: All right, sir.

21 Now Mr. Samuel, before you were coming to court
22 and having to address these issues were you working
23 anywhere, sir?

24 THE DEFENDANT: No, sir. My wife is disabled.
25 I was taking care of her.

1 THE COURT: All right. But when you have
2 worked in the past what type of work have you done?

3 THE DEFENDANT: I'm a professional welder.

4 THE COURT: Okay. Did you receive any time in
5 jail on this charge, sir, before coming in here?

6 THE DEFENDANT: A year and a half.

7 THE COURT: All right. Now Mr. Samuel, I'm
8 going to go over some matters with you, sir. If at any
9 time during my conversation with you you have any
10 questions about anything that I talk to you about, if you
11 need to stop and confer with Mr. Floyd you let me do that
12 and I will -- let me know and I will stop and I'll allow
13 you to do that. Okay, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now as you're aware,
16 because we actually pulled a jury and we've been in the
17 trial of this case, you have the right to a jury trial and
18 you have the right to remain silent. But by pleading
19 guilty you give up that right to remain silent and that
20 your jury trial will stop at this point and your case will
21 be decided here today pursuant to this plea. Do you
22 understand that?

23 THE DEFENDANT: Yes. Yes, Your Honor.

24 THE COURT: All right, sir. Now we've been in
25 this trial and as you heard me tell the members of the

1 jury when we started this case yesterday that they are to
2 consider that you are innocent of these charges. You are
3 presumed to be innocent of these charges, and that places
4 the burden of proof on the State to prove your guilt
5 beyond a reasonable doubt. As you have witnessed as we've
6 gone through the portion of trial that we've gone through,
7 the State -- the way they do that is they bring witnesses
8 into court who testify. You've had the opportunity and to
9 confront those witnesses. Through your lawyer, Mr. Floyd,
10 you've had the opportunity to question those witnesses on
11 the witness stand and that's your right of confrontation
12 under the constitution and you've done that up to this
13 point. But when you plead guilty, as you're doing now,
14 the State, if they had any other witnesses and I believe
15 they had some other witnesses, those witnesses are not
16 required to testify and you no longer have the opportunity
17 to confront those witnesses. Do you understand that, sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right, sir. Now we have not
20 reached this portion of the case; but if this case were to
21 have gone forward, if you were to go forward with your
22 trial, then at some point during this case once the State
23 has rested, you would have the opportunity to put up
24 witnesses in your own defense or you could testify in your
25 own defense. That's only if you wish to do that,

1 Mr. Samuel, because you're not required to do any of that.
2 As I indicated to you the State has the burden of proof.
3 Anyone who is charged with a criminal offense in this
4 country is never required to prove themselves innocent.
5 You could exercise your right to remain silent. You could
6 decide not to call any witnesses or could decide not to
7 testify yourself. And if you would decide -- if you were
8 to go forward and decided to exercise your right to remain
9 silent then I would tell the members of the jury that they
10 could not hold that against you in any way. As a matter
11 of fact, sir, I have begun preparing my charge to the jury
12 in this case so that at the end of the trial I'd be ready
13 to give them the charge on the law. And I'll tell you,
14 that if this case were to have gone forward then I would
15 have told the jury exactly this. I would have told them,
16 if you would have decided to not testify I would have
17 said, I instruct you and emphasize that the fact that the
18 defendant did not testify is not a factor to be considered
19 by you in any way in your deliberation and in your
20 consideration on the question of guilt or innocence of the
21 defendant, it must not be considered by you in any manner
22 whatsoever. A defendant has the constitutional right to
23 remain silent and the assertion of this right must not be
24 considered by you in your deliberations. I repeat, under
25 your oath you are to draw no conclusion whatsoever from

1 the fact that the defendant in the case did not testify.
2 The fact that this defendant did not testify should not
3 even be discussed in your jury room. The burden of proof,
4 as I have stated to you, is on the State. The defendant
5 is not required to prove his innocence. The burden of
6 proof remains on the State to prove guilt beyond a
7 reasonable doubt. So you understand that I would have
8 instructed the jury that in that fashion if you were to go
9 forward with the trial and you decided not to testify; you
10 understand I would have instructed them of what I just
11 told you? You understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Now the State has the burden
14 of proof as we've talked about, and they have to carry
15 that burden to a unanimous verdict. They are required to
16 convince all 12 members of the jury that you're guilty.
17 The only way they can convict you of these charges is that
18 all 12 of them agree that you're guilty. You understand
19 that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: That's a unanimous verdict. The
22 South Carolina law requires a unanimous verdict in a
23 criminal case. Now if you would have gone forward with
24 the trial and if the jury would have found you to be
25 guilty of any of these charges you would have the right if

1 you choose to appeal that guilty verdict to a higher
2 court. Do you understand that, sir?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. And you also
5 understand, sir, that you also have the right to appeal
6 whatever decision this Court makes today pursuant to your
7 guilty plea. If you wish to do that you must do that
8 within ten days of today's date. You understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Now Mr. Samuel, you
11 understand that the jury is back there and they haven't
12 heard any of this. If you decided you wanted to go
13 forward with your trial we could do that. But you
14 understand that if you do decide to go forward with your
15 guilty plea then the trial will end, this jury will be
16 excused, and we will proceed with resolving your case
17 through this plea. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Understanding that do
20 you still want to go forward with your plea?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Now the State has made
23 no recommendations or negotiations other than my
24 understanding is they're accepting this plea to count one
25 of the indictment and the remaining counts on this

1 indictment are being dismissed; is that correct?

2 MRS. PARR: That is correct.

3 THE COURT: All right. Other than the
4 dismissal of those other charges, Mr. Samuel, has anyone
5 promised you anything, held out any hope of reward or
6 threatened you in any way to get you to plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. Now you're represented in
9 this case by Mr. Scott Floyd. Are you satisfied with the
10 representation and the advice that Mr. Floyd has given you
11 during the course of this case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any complaints against
14 him or any member of his office or his staff?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you told Mr. Floyd everything
17 you know, have you shared with him any possible witnesses
18 you may have, or have you just told him everything you
19 know about this case so that he could look into these
20 matters on your behalf and explore any possible defenses
21 on your behalf?

22 THE DEFENDANT: Yes, sir. Yes, sir.

23 THE COURT: All right. Has he done everything
24 you've asked him to do?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is there anything that you've asked
2 him to do that he has not done for you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you satisfied with your
5 attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Samuel, today as you're before
8 the Court are you under the influence of any substance at
9 all that would affect your ability to understand what
10 you're doing?

11 THE DEFENDANT: No, sir, I don't drink
12 anything.

13 THE COURT: All right. Do you have or are you
14 aware of any mental, emotional, or any physical condition
15 that will prevent you from understanding what you're
16 doing?

17 THE DEFENDANT: (No response.)

18 THE COURT: Do you have any condition that
19 you're aware of that would affect your ability to
20 understand what you're doing?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. Do you have any complaints
23 against law enforcement, the Solicitor's Office, or anyone
24 out at the detention center?

25 THE DEFENDANT: I don't want to answer that,

1 Sir.

2 THE COURT: Well, I need you —

3 THE DEFENDANT: I'll leave it like that. I
4 just —

5 THE COURT: Well, I need you, I mean...

6 THE DEFENDANT: No. No, sir, no, I don't.
7 That —

8 THE COURT: And I'm talking about, you know,
9 and I —

10 THE DEFENDANT: 'Cause I can't, I can't — no,
11 I'm not mad with them or anybody else because I can't —
12 if God forgive me, I mean, I can forgive all the other
13 people. I'm not mad with them.

14 THE COURT: All right, sir.

15 THE DEFENDANT: It's not anybody's fault. Like
16 I said, I'm — it's my fault. I married into this family
17 a long time ago. I'm the one that got to pay for this.
18 It ain't nobody fault; it's my fault.

19 THE COURT: All right, sir.

20 THE DEFENDANT: I'm satisfied.

21 THE COURT: Okay. Now Mr. Samuel, the
22 questions that I've asked you during this process have you
23 understood these questions, sir?

24 THE DEFENDANT: Yes, sir. I apologize to you
25 and the Court for taking y'all through this through this

1 this long like this, but I see ---

2 THE COURT: That's no problem.

3 THE DEFENDANT: ---I didn't mean to do that.

4 I should have ---

5 THE COURT: That's okay.

6 THE DEFENDANT: I didn't know nothing about I
7 could plead. I didn't know how I come at first about a
8 plea I would have been plead, but the first lawyer told me
9 I couldn't because I had too much stuff. They had put too
10 much stuff on me, right.

11 THE COURT: Well ---

12 THE DEFENDANT: I would have been plead.

13 THE COURT: Well, don't worry about -- you
14 exercised your right to a jury trial and I don't hold that
15 against anybody. That's your constitutional right and
16 that's fine so please don't let that worry you at all. I
17 just want to make sure that the questions that I've asked
18 you've understood those questions?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And the answers that you've given
21 me to those questions have they been your answers or what
22 someone else told you to tell me?

23 THE DEFENDANT: My answers.

24 THE COURT: And have they been truthful?

25 THE DEFENDANT: Yeah. Yes, Your Honor.

1 THE COURT: Okay. You're pleading guilty to
2 this charge of your own free will, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And are you guilty of this charge,
5 sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. And what I'm going to
8 do is I -- for the record I don't think we need to go
9 through a rendition of the facts other than, Mrs. Parr,
10 the facts that have come out during the course of the
11 trial to this point I'm assuming those are the facts. I
12 mean, you have other witnesses but --

13 MRS. PARR: The other witnesses were to pretty
14 much -- they were corroborating witnesses as opposed to
15 any more factual.

16 THE COURT: So the facts on the record are --

17 MRS. PARR: Right.

18 THE COURT: --essentially -- let me go ahead,
19 and if you would, for the purposes of this plea let me get
20 you to give just a small rendition of the facts so that
21 the --

22 MRS. PARR: Your Honor, the defendant is the
23 stepfather of [REDACTED] who was the daughter of
24 Genovle Samuel. He -- that child lived with them and he
25 sexually assaulted her and it started out with him

1 masturbating and ejaculating in front of her when she was
2 like 11 or 12. Then he moved up to fondling her by way of
3 inserting his finger in her vagina and then he started
4 having full-blown sexual intercourse with her and at a
5 point she had a baby from him that came out.

6 THE COURT: All right.

7 MRS. PARR: While she was still in high school
8 living in their house.

9 THE COURT: And you got any prior record?

10 MRS. PARR: Your Honor, he does have a prior
11 record for.

12 THE DEFENDANT: I don't.

13 MRS. PARR: It's actually-- I had written in
14 there that it was old stuff. Let me see.

15 THE COURT: You don't have any prior record?

16 THE DEFENDANT: I never been in any trouble.
17 When I was 16 years old.

18 THE COURT: No, I'm talking about as an adult.

19 THE DEFENDANT: Oh, no, sir. They had one CDV
20 on me but I never been before a judge for a CDV. My wife
21 just called the police on me and got me out of jail.

22 MRS. PARR: I have unlawful use of vehicle
23 without owner's consent.

24 THE DEFENDANT: I was 15, 16 years old then.

25 MRS. PARR: Okay.

1 THE COURT: Okay.

2 MRS. PARR: And I ---

3 THE COURT: No prior history then of any
4 significance.

5 MRS. PARR: All right.

6 THE COURT: Mr. Samuel, the facts that you've
7 heard during the course of the trial -- now let me qualify
8 this, sir. I'm referring to the facts that make up this
9 charge of criminal sexual conduct with a minor in the
10 second degree. I realize you don't necessarily agree with
11 all the facts you've heard here during this trial, but the
12 facts that make up these, this charge of criminal sexual
13 conduct with a minor, are those facts correct, sir? Did
14 you have this relationship with, Ms. [REDACTED]?

15 THE DEFENDANT: I -- sir, I plead -- I'm
16 pleading guilty to all this. I don't want to go into it
17 because I ---

18 THE COURT: I need to know, this is important,
19 I need to know that you're pleading guilty because you are
20 guilty, not because you just want to get it over with.
21 And that's important, sir, because you got to understand,
22 Mr. Samuel, you -- I don't know what I'm going to do at
23 this point but I just know that you're facing a potential
24 of some substantial jail time. And I don't want you
25 entering a plea on something you say you didn't do or that

1 you don't believe you've done. And I'm not going to
2 accept a plea to something you didn't do 'cause you don't
3 deserve that. Now I'm just -- you need to understand this
4 is very serious.

5 THE DEFENDANT: Can I say something, one thing?

6 THE COURT: Well, I need to know this. And I'm
7 going to allow you to tell me whatever you want to tell me
8 before we get to any sentencing, okay, 'cause I'm going to
9 hear from you fully. But I'm at a point now where you are
10 pleading guilty to criminal sexual conduct with a minor in
11 the second degree and I'm going to tell you what that
12 means. And I'm -- going back to my jury charge. It says
13 that you are charged with criminal sexual conduct with a
14 minor in the second degree. And that means that you have
15 committed a sexual battery; that is, you had either sexual
16 intercourse or any other type of intercourse or intrusion
17 whether it be digitally by your finger or any other thing,
18 into the object of the person -- into of another person
19 into their either their genital or their anal openings.
20 In other words, in this case you've been charged with
21 having some type of sexual activity with Ms. [REDACTED] when
22 she was less than 16 years of age. Now are those facts
23 correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you sure? Because I'm not

1 convinced you're ---

2 THE DEFENDANT: Yes, sir, I was just -- I can't
3 believe it.

4 THE COURT: Let me say this. I know this is
5 not easy. I can't sit here and tell you I understand how
6 you feel where you're standing, but I do know it's not
7 easy. I respect someone who admits when they've done
8 wrong, but what I have to be comfortable with in them is
9 that this charge that you're pleading guilty to, that you
10 are in fact guilty of it, that you admit that it occurred.
11 And if I believe that, if I believe that you're telling me
12 the truth then I can accept your plea and I feel
13 comfortable accepting it. Now again, these other charges
14 are being dismissed. But on this charge of criminal
15 sexual conduct with a minor in the second degree involving
16 Ms. [REDACTED] back when she was at least 14 years of age but
17 less than 16, did you have that type of relationship with
18 her? Did those things occur?

19 THE DEFENDANT: Yes, sir. Yes, sir.

20 THE COURT: All right. I find that the State
21 has provided a substantial factual basis to support the
22 charge that Mr. Samuel has pled guilty to. I find that
23 Mr. Samuel's decision to enter this plea of guilty has
24 been done freely, voluntarily, intelligently. He's had
25 the advice and counsel of an outstanding lawyer in

1 Mr. Scott Floyd. He's gone through a portion of this
2 trial, and I believe he understands his rights regarding
3 his right to a trial; and I believe that his decision to
4 go forward with this plea, as I indicated, has been freely
5 and voluntarily and intelligently made. He has indicated
6 he is satisfied with the representation he's received from
7 Mr. Floyd, and I'm going to accept his plea.

8 Mr. Floyd, I'll be happy to hear from you and
9 from either Mr. Samuel or anyone on his behalf.

10 MR. FLOYD: Thank you, Your Honor. Your Honor,
11 Mr. Samuel is 51 years old currently. I believe he'll
12 turn 52 later on in September. Is that correct? Your
13 Honor, during his working life he was a welder with
14 Superior Machine here in Florence. That's what he did for
15 a number of years. His wife unfortunately became very
16 ill. She has a form of cancer and she was here yesterday
17 actually in the courtroom but she was not able to come
18 back today. It was just too physically taxing for her.

19 THE COURT: I understand.

20 MR. FLOYD: And that's the reason she's not
21 here. She has been under constant care, and I believe
22 that Mr. Samuel and another daughter of hers have been
23 basically taking care of her.

24 THE DEFENDANT: I was sole caretaker.

25 MR. FLOYD: Pretty much around the clock, Your

1 Honor. So we for the last, you know, year or so anyway.
2 it's been a good while. And he's been kind of taking that
3 role. Your Honor, he you know, has expressed, you know,
4 sorrow for being here, sorrow for the pain in this family
5 that you've heard here expressed. Your Honor, he just
6 asks that you be as merciful as possible and I think he
7 wanted -- at one time he said he wanted to speak, but I
8 don't know if he, you know, emotionally can or can't but.

9 THE DEFENDANT: I want to speak.

10 THE COURT: Well, I'm happy to hear from you,
11 Mr. Samuel, in regards to anything you want to report or
12 anyone else who may want to speak on his behalf.

13 THE DEFENDANT: As I said, I'm not mad with
14 anybody in this courtroom; but the truth is, I've never
15 been the kind of man that they made out me to be. And I'm
16 fine with what come out of this; I'm all right. It's just
17 I messed up my life by marrying in that family right
18 there. Those people some crazy people. I mean, I don't
19 want to talk bad about them; I forgive them. I'm sorry, I
20 apologize. But I messed my life up a long time ago, but I
21 never been the type to get in any kind of trouble with the
22 police. I don't even have tickets. I try to stay away
23 from that; I always did. Just that -- dealing like I was
24 it kept me involved with the police like that. I never
25 been no kind of person to get in trouble. I been in

1 service; I serve my country. I'm just not that type of
2 person that it seemed that look like to everybody in here
3 I guess, and I feel good about that because I know in my
4 heart what I really am, I'm what kind of person I am. And
5 I know that I'm going to get closer, closer to God than I
6 am 'cause all I was doing was taking care of my wife. I
7 didn't leave my house. I haven't been in a bed since
8 December of 2006. I sleep in a chair beside her. But
9 I'm, I mean, I'm fine with everything that's went down.
10 Like I said, I appreciate you. And like I said, I
11 remember a speech you give one time in court. I came in
12 you was talking about how young black kids around here
13 going through all these things and stuff life that and
14 they should do this. You know the speech you gave that
15 day. I really enjoyed that speech; I appreciate that.
16 And I never forget that speech. But other than that,
17 there's nothing, like I said, you know, ain't nobody in
18 here -- I'm not mad with anybody in here. I'm fine;
19 everything is fine. I'm, you know, I'm -- when I leave
20 out here today and there's no looking back, I'm happy. I
21 got, you know, I mean, ain't nothing wrong. I'm not mad
22 with nobody.

23 THE COURT: What I -- and I appreciate that,
24 Mr. Samuel. What I -- what's important to me and is
25 important to the State and the victims. It's important to

1 you and your family members. It's important to Mr. Floyd,
2 everybody, all of us involved in this case. And you've
3 shared with me, and I have no doubt at all that you've got
4 no prior run-in with law enforcement; you've got no prior
5 issues prior to this stuff occurring. But what I don't --
6 what I want to try to avoid happening and I can't predict
7 the future, I can't stop things from the future, but what
8 I don't want to have happen is for you to go and get
9 around some of the people at the jail and have them start
10 filling your head with all these thoughts and then next
11 thing I know you're filing an appeal or PCR application --
12 which you're entitled to do -- but where you come back and
13 you allege that you didn't commit this crime, you were
14 forced to plead guilty.

15 THE DEFENDANT: I'm not going to do that.

16 THE COURT: I want -- well, I want you not to
17 do it not because you're not going to do it but because
18 what you're telling me, you're telling me that you're
19 guilty of this crime, of this particular charge. I want
20 to know that you did commit this crime and that you're
21 sorry for that and that that's why you're in front of the
22 Court.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And I realize you have some other
25 issues with the family. I understand that; that happens.

1 But I don't want it to be that I'm pleading guilty because
2 they've railroaded me and I don't have any other options,
3 'cause you do have options. Because the jury system, even
4 though a lot of people think it doesn't work, it does
5 work. I tried a case last week down in Lexington County.
6 A young man accused of assault and battery of high and
7 aggravated nature. The jury deliberated and found him not
8 guilty because the State didn't carry their burden of
9 proof. I think the system works, but I think it works
10 both ways. I think it works that those who are not guilty
11 I think somehow the jury figures that out and they find
12 them not guilty. But the ones who are guilty I think the
13 jury does the exact same thing; I think they do find them
14 guilty. And so I believe in our system of justice. And I
15 don't mean to take this as long as it's taking, but I do
16 want to make sure that I'm not accepting a plea from a
17 young man or gentleman who is -- who is just pleading to
18 get it over with. I want to make sure that the plea that
19 I'm accepting is from a man who has committed the crime
20 and is sorry for it and is now before the Court owning up
21 to it, and you know. That's what I'm hoping that is going
22 on here. Am I correct? Is that what we have here?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And I -- and I
25 appreciate that. Now is there anyone else that?

1 MR. FLOYD: Your Honor.

2 THE COURT: There is a young lady.

3 Ma'am, if you don't mind, can I get you to step
4 around and give me your name for the record.

5 MS. BRUNSON: My name is Ester Brunson.

6 THE COURT: All right, Ms. Brunson, I'll be
7 happy to hear from you, ma'am.

8 MS. BRUNSON: I'm the sister of Joshua Samuel.

9 THE COURT: All right.

10 MS. BRUNSON: And I do give honor to the judge
11 and everyone in the courtroom and I don't stand before you
12 with any excuses because if he say he's guilty I know that
13 he is 'cause he would not say that if it wasn't coming
14 from his heart, and I know he's probably sorry. And I'm
15 not trying to make any excuses, and speak for him on
16 behalf of myself and my sisters and my mother who is not
17 able to be here and. But if I was to give him, one, he
18 has never been shown the love that we have with my mother
19 because he simply named (ph) after my father. And I don't
20 know what made it happen. Only thing I can ask from you
21 and the Court that you have mercy on him because even
22 though this act was committed, he is now sorry and I do
23 feel like in some kind of way even though you might put
24 him in another prison he is in his own prison now because
25 he's dedicated himself to taking care of his wife. And

1 maybe to me that's the punishment from God, but maybe you
2 have another one. But he sits there daily, and I don't
3 think, and I'm not telling you -- this is the truth. He
4 sits there daily. He hasn't slept in a bed since she got
5 out of the hospital, taking care of her. He won't take
6 time to get a hair cut which I beg him to do. Now like I
7 said, I'm not making excuses, but I'm just showing you he
8 has had some kind of atonement to reach his sorrowness.
9 And you know, you might give him another prison. He has
10 created his own prison; and all I can say is for me and my
11 family and my mother, please have mercy on him.

12 THE COURT: All right, thank you. Thank you
13 for being here, I appreciate it.

14 Ms. Parr, is there anything?

15 MRS. PARR: I'm going to let Ms. Robinson
16 address the Court first and then.

17 INVESTIGATOR ROBINSON: Your Honor, I
18 appreciate you allowing me to address the Court.

19 THE COURT: Sure.

20 INVESTIGATOR ROBINSON: There are a couple of
21 things that did not come out in the trial that I think
22 that you should hear and be aware of. There was a second
23 victim in the case when I initially and there were second
24 warrants that were signed against the defendant
25 Mr. Samuels. [REDACTED]'s sister, [REDACTED] -- her name

1 is Peaches -- she also gave a very detailed disclosure of
2 repeated sexual abuse against Mr. Samuels for many, many
3 years. She was in the courtroom yesterday. She has
4 chosen not to testify. She, as matter of fact said in the
5 courtroom yesterday no matter what he did he's still my
6 daddy. And so she has chosen not to testify, but I do
7 have her taped statement where she disclosed many, many,
8 many years of sexual abuse against Mr. Samuels well. That
9 information did not come out in the trial.

10 There is also another child, and there is still
11 an active investigation on Mr. Samuels as you'll tell my
12 case file nothing is closed. There is another child who
13 is five months old, met her two days ago. She's beautiful
14 and very sweet. And it is [REDACTED], the defendant's
15 grandchild. It's [REDACTED]'s daughter. And when Mr. Samuel
16 was released from jail he returned back to the family home
17 at [REDACTED]; and while residing in that home for
18 the first three or four weeks he was also residing there
19 with Ms. Samuel -- with Ms. [REDACTED], the victim in this
20 case, and his biological daughter [REDACTED]. During that
21 month [REDACTED] conceived a baby. The entire case, this
22 entire case was initiated from a mother who said I
23 couldn't stand up for myself, I was a child, but I'm
24 afraid my own child is being molested by this man so
25 that's why I'm standing up. So from during those months

1 during that 3 or 4 weeks that's when [REDACTED] conceived a
2 baby. The baby is now born and there is DNA outstanding
3 to determine whether Mr. Samuels is the father of that
4 child as well.

5 THE DEFENDANT: Come on now. Now you know --
6 that's dirty there, Your Honor. That's wrong there, Your
7 Honor. She know better than that.

8 MR. FLOYD: Please, Your Honor, I asked her on
9 the stand on the witness stand about her qualms about him
10 being around that child and she testified on the stand she
11 didn't have any, I mean.

12 THE DEFENDANT: That's right. You lie today.

13 MR. FLOYD: Where this is coming from I have --
14 this is the first I've heard of it. I mean, I have no
15 idea but regardless.

16 THE DEFENDANT: She -- Your Honor, she's a big
17 lie. She lie today about my DNA test. She give me my
18 DNA.

19 MR. FLOYD: Shh, shh.

20 THE COURT: Now listen, that's the intention of
21 the State if that test comes back -- just hypothetical --
22 to show that he is the father?

23 INVESTIGATOR ROBINSON: There would be possibly
24 existing more charges.

25 THE COURT: Okay. I'm not going to accept this

1 plea under these conditions because was that disclosed to
2 Mr. Samuel before ---

3 THE DEFENDANT: No, sir.

4 THE COURT: ---he decided to plead guilty?

5 MRS. PARR: No, because we didn't know ---

6 THE COURT: We're not going to do that. We're
7 going to, you know -- we're not going to set somebody up
8 to plead guilty to even to something he did ---

9 MRS. PARR: We but ---

10 THE COURT: ---and then turn around and hit
11 him -- please listen to me when I'm talking to you.

12 MRS. PARR: I apologize.

13 THE COURT: We set a man to plead guilty to
14 something he did do. He admitted to doing it, and he's
15 willing to admit that. Knowing that we're going to come
16 back and hit him with some more warrants? That's not
17 right. That's injustice, and we're not up here to do
18 that. We're going to take a recess and I'm going to
19 figure out what's going to go on here because this -- this
20 isn't going to happen.

21 (Investigator Robinson and Mrs. Parr confer.)

22 THE COURT: I'm not going to set this man up to
23 get hammered again. I'm not condoning what he did, but
24 I'm also not going to allow him to get ambushed. We're
25 not doing that.

1 MRS. PARR: That's fine.

2 THE COURT: Now I'll go forward and I'll take

3 -- I'll accept this plea and we'll resolve this matter.

4 And I'm not trying to run the Sheriff's Department or the

5 Police Department but we do things with full disclosure.

6 We don't do things like this, and so I'm going to excuse

7 this jury to go to lunch. And well, I don't know I'm

8 going to do. Right now I'm just going to take a recess.

9 (WHEREUPON, a recess was taken from the proceedings.)

10 THE COURT: Mr. Floyd, Mr. Samuel, are y'all

11 wanting to proceed? Now let me get you to come back up

12 here. I've -- it is my understanding that, so you're

13 clear Mr. Samuel, it is my understanding having talked

14 with your attorney and with Mrs. Parr that if I accept

15 this plea today and go forward with the plea, that as far

16 as any conduct that you're alleged to have participated in

17 prior to today there will be no for-- there will be no

18 other charges coming forward. In other words, this plea

19 will resolve all issues. Now --

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'm not talking about if

22 Investigator Robinson finds out you were involved in a

23 murder, you know, that obviously that doesn't count. I'm

24 talking about involving this sexual activity and this

25 family. In other words, this plea resolves all those

1 issues. Even though there may be other issues that this
2 resolves those issues so there won't be any other charges
3 coming. If they found out you were involved in a crack
4 cocaine ring, that's different, they're going to bring
5 some more charges. You know what I'm saying?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And Investigator Robinson, you
10 understand, I'm not precluding you guys from doing your
11 job if he's found to be involved in other type, other
12 crimes.

13 But this would -- I want you to understand that
14 if you want to go forward with your plea that this will
15 resolve all of these issues involving this, this family
16 and these allegations of sexual misconduct. All right?

17 THE DEFENDANT: Yes, sir.

18 MRS. PARR: Your Honor, we will also nol pros
19 indictment 05-1206 too.

20 THE COURT: Okay. And that's another
21 indictment that's pending that will be dismissed pursuant
22 to this plea and this plea will resolve all those issues.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. You understand that?

25 THE DEFENDANT: What?

1 MRS. PARR: That was the CDV.

2 MR. FLOYD: That was the indictment for the CDV
3 high and aggravated nature.

4 THE DEFENDANT: Oh.

5 THE COURT: Right. Now understanding that and
6 let me say this: I want to make this clear for the
7 record, and I want to apologize to Investigator Robinson.
8 I think I might have caught you off-guard a little bit
9 with that question because I don't know that you and Mrs.
10 Parr had an opportunity to talk.

11 INVESTIGATOR ROBINSON: We had not.

12 THE COURT: She's an outstanding investigator;
13 she's doing her job. And so obviously her response to the
14 question was that if the charges, if those allegations are
15 proven to be correct that they would pursue that but --

16 THE DEFENDANT: That's fine.

17 THE COURT: --unfair to her she had not had
18 opportunity to confer with Mrs. Parr about that so as un--
19 and I apologize to everybody. I tend to pull the trigger
20 too quick on stuff. I just want to make sure, and this is
21 my -- I have a very much, very much of a passion for what
22 I do because I believe in justice and that it be done in
23 this courtroom, at least when I'm presiding. And I want
24 you to understand that if I go forward and accept your
25 plea it's going to be on this charge and this charge only

1 and there are no other charges coming down the pipe. You
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding that, Mr. Samuel, do
5 you still want to go forward with your plea?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Now is there anything
8 else? Is there anything else from the State?

9 MRS. PARR: State doesn't have anything else.

10 THE COURT: Ms. Braddock, anything from the
11 victims that they wish to have anything to say regarding
12 sentencing or anything else that they wish to say?

13 You're not required to; I'm just giving you the
14 opportunity.

15 THE VICTIM ADVOCATE: She doesn't have anything
16 she wants to say.

17 THE COURT: Okay. This is a tragic situation,
18 and there are many victims in this case. Obviously
19 Ms. [REDACTED] is the obvious victim, but then there's the
20 other members of family. There's the members of your
21 family, Mr. Samuel, your wife who's not here today.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: There's -- this reaches so far
24 beyond just this one act. There's this child that was
25 born that it just -- well, it just goes, it's like an

1 iceberg. We see this much but under the surface of the
2 water it's this big. I think the State in dismissing
3 these other matters and agreeing to not pursue any further
4 matters has been very gracious. I'm wanting to and I'm
5 going to consider the fact that you have admitted your
6 guilt, Mr. Samuel, that you've stepped forward and not
7 blamed anyone else but taken on the responsibility of your
8 own actions. I'm going to consider that.

9 The sentence of the Court with regards to
10 2006-GS-21-920, count one of that indictment, criminal
11 sexual conduct with a minor second degree, is that you be
12 committed to the State Department of Corrections for a
13 period of 15 years. I'm going to give you credit for any
14 time that you have served up to this point and then any
15 other conditions that the court -- or that the law
16 requires regarding registry on the sex offender registry,
17 GPS monitoring, any of those matters, Sexually Violent
18 Predator Act. Anything that comes into play regarding
19 those departments obviously are a condition, another
20 condition of this sentence. Good luck to you, sir.

21
22 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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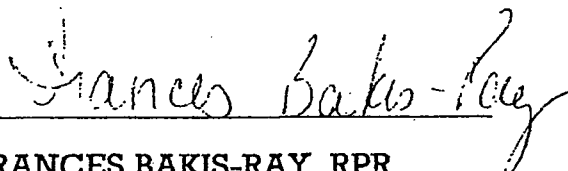
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional
Reporter (RPR), court reporter for the State of South
Carolina, Twelfth Judicial Circuit, do hereby certify that
the foregoing proceeding is a stenographic report and was
transcribed through computer-aided transcription; that the
foregoing transcript contains a true record of the
proceedings.

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

Witness my hand at Florence, South Carolina,
this 23rd day of March, 2009.


FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of FLORENCE)

Joshua Samuel #096996)

Full name and prison number, if any, of applicant)

v.)

STATE OF SOUTH CAROLINA)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2011 CP 21-40

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Evans Correctional Inst. 610 Hwy. 9 West, Bennettsville,
South Carolina 29512
2. Name and location of Court which imposed sentence General Sessions Florence Co.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 06-GS-21-920 - CSC(1st degree), Lewd Acts w/minor, CSC(3rd degree).
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 29, 2008 - Fifteen (15) years S.C.D.C.
 - (b) _____
 - (c) _____

CERTIFIED: A TRUE COPY
 Linda Felt Sherrin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

5. Check whether a finding of guilty was made
- (a) after a plea of guilty xxx 11-9 114:00
- (b) after a plea of not guilty 11-9 114:00
- (c) after a plea of nolo contendere 11-9 114:00
6. Did you appeal from the judgment of conviction or the imposition of sentence? No.
7. If you answered "yes" to (6), 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. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) Counsel failed to advise applicant of appeal rights.
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel.
- (b) Guilty plea illegally induced and coerced.
- (c) Guilty plea unlawfully entered.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SEE ATTACHMENTS.

(b) SEE ATTACHMENTS.

(c) SEE ATTACHMENTS.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No.

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No.

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No.

(d) any other petitions, motions or applications in this or any other Court?

No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

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. 1997 JAN -9 PM 4:00
- ii. JOHN P. FEL-SHE, JR.
- iii. SOCP & GS
- iv. FLORENCE COUNTY, SC

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Initial PCR.
- (b) _____
- (c) _____

16. 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 application with respect to this conviction, which you filed? _____

2004 CP 21

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Mr. Scott P. Loyd, Esquire - Florence, S.C.
 ii. CCP & GS
 iii. FLORENCE COUNTY, SC

(b) the proceedings at which each such attorney represented you:

- i. Guilty plea.
 ii. _____
 iii. _____

18. State clearly the relief you seek in filing this application.

Revoke guilty plea, New Trial.

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

No.

2021 CP 21-10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLCRENCE)

VERIFICATION

JAN 21 4:00

I, Joshua Samuel, #096996, being duly sworn upon my oath, depose and say that I have subscribed to the following 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.

Joshua Samuel
 Joshua Samuel

Sworn to and subscribed before me

This 07 day of JAN, 2009

Cheryl B. W. L.S.

Notary Public for South Carolina

My Commission Expires: 05-06-2009

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Joshua Samuel
 Applicant

Sworn to and subscribed before me

This 07 day of JAN, 2009

Cheryl B. W. L.S.

Notary Public for South Carolina

My Commission Expires: 05-06-2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

JULIAN-9 PM 4:00

2021 000000

Joshua Samuel, #096996,

FEL-SHEA ATTACHMENT TO POST CONVICT-
CCCP & GS ION RELIEF APPLICATION
FLORENCE COUNTY, SC

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

10. State precisely and in the same order the facts which support each of the grounds set out in (9):

(a) INEFFECTIVE ASSISTANCE OF COUNSEL. The applicant alleges that his counsel provided ineffective assistance violating his sixth and fourteenth amendment rights in numerous errors committed by counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2254 (1984). The errors are as follows:

1. Counsel failed to consolidate the numerous offense "closely connected offenses."
2. Counsel failed to conduct adequate pretrial investigations.
3. Counsel failed to interview potential witnesses.
4. Counsel failed to object to the duplicity of the indictments.
5. Counsel failed to request an independent examination of evidence.
6. Counsel failed to fully inform applicant of appeal rights.

(b) GUILTY PLEA ILLEGALLY INDUCED AND COERCED. The applicant contends his guilty plea is illegally induced and coerced due to counsel's ineffective assistance and erroneous advice to plead guilty. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). The errors of counsel are as follows:

1. Counsel's failure to conduct a reasonable pretrial investigation to ascertain critical facts and evidence rendered counsel's advice to plead guilty prejudicial to applicant's defense.
2. Counsel's failure to interview potential witnesses hindered applicant's ability to adequately prepare his defense.
3. Counsel's failure to obtain an independent examination of evidence interfered with counsel's advice concerning entering the guilty plea.

(c) GUILTY PLEA UNLAWFULLY ENTERED. The applicant contends his guilty plea was unlawfully entered due to counsel's ineffective assistance. *30yRln 1-4:00*

Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969).

SEL-SHE
CP & GS
FLORENCE COUNTY, SC

sh. [Signature]
Joshua Samuel

2009 CP 21 HD

CERTIFICATE OF SERVICE

I certify that I have mailed the Post Conviction Relief application to the Florence County Clerk of Court by depositing it in the United States mail, postage prepaid on this 6th day January 2009, placing it in an envelope with sufficient postage affixed thereto for first class delivery, addressed: 180 N. Irby Street, MSC-E, Florence, S.C. 29501.

sh. [Signature]
Joshua Samuel

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2009-CP-21-40
	)	
Joshua Samuel, SCDC No. 096996,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 9, 2009, 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 Florence County Clerk of Court. The Applicant was indicted at the June 2006 term of the Florence County Grand Jury for two counts of criminal sexual conduct, second degree; two counts of lewd act on a minor; and one count of criminal sexual conduct, third degree. (2006-GS-21-920). He was represented by Scott Floyd, Esquire. On January 29, 2008, the Applicant pled guilty to one count of criminal sexual conduct, second degree. The Honorable Thomas A. Russo sentenced the Applicant to fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

- a. Ineffective assistance of counsel;
- b. Guilty plea illegally induced and coerced;
- c. Guilty plea unlawfully entered.

III.

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where 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, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies 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, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. at 117,

386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). 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." Id. at 117-18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 689). With respect to guilty plea counsel, the applicant must show 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, 59 (1985). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation 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, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Respondent interprets Applicant's allegations "b" and "c" to be allegations that his plea was not freely and voluntarily entered. The Respondent asserts these assertions are without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999). A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id.

Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Roddy v. State, 339 S.C. 29, 33-34, 528 S.E.2d 418, 421 (2000). A guilty plea is a solemn, judicial admission of the truth of the charges against the accused. Statements made during the plea should be considered conclusive unless the Applicant presents reasons why he should be allowed to depart from the truth of those statements. Edmonds v. Lewis, 546 F.2d 566, 568 (4th Cir. 1976). When determining issues relating to guilty pleas, the court will consider the entire record, including the guilty plea transcript and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000).

Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel

and the voluntary nature of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. at 265, 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

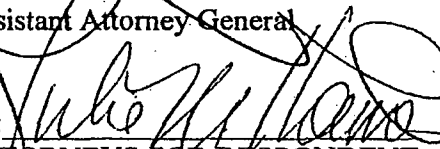
Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

4/22, 2009.

STATE OF SOUTH CAROLINA

)

) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

2009-CP-21-40

Joshua Samuel, 096996,

)

Applicant,

)

)

vs

) AFFIDAVIT OF SERVICE BY MAIL

)

State of South Carolina,

)

)

Respondent.

)

)

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

Ray Coit Yarborough Jr., Esquire

P.O. Box 4198

Florence, SC 29502

DATED this 22nd day of April, 2009.

BEN

Benjamin de Castrique, Clerk

For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2009-CP-21-0040
	)	
	)	
	)	
Joshua Samuel	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
<u>RESPONDENT</u>	)	September 9, 2011
		Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

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

THURMOND BROOKER, ESQ.
Attorney for the Applicant

DAVID SPENCER, ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Joshua Samuel

Mr. Brooker	9		36	

Mr. Spencer		29		

Scott Floyd

Mr. Brooker	37		53	

Mr. Spencer		42		

Certificate of Reporter

1 THE COURT: Mr. Spencer, you recognize.

2 MR. SPENCER: Thank you, Your Honor. This is
3 Joshua Samuel vs. State 2009-CP-21-40. This is an
4 application for post conviction relief filed January 9th
5 2009. Your Honor, Mr. Samuel was indicted for two counts
6 of criminal sexual conduct in the second degree, two
7 counts of lewd act on a minor and one count of criminal
8 sexual conduct in the third degree. He proceeded to
9 trial. Part way into the trial, he decided to plead
10 guilty. And he pled guilty on January 29th of 2008 to one
11 count of criminal sexual conduct in the second degree. He
12 was sentenced by Judge Russo to 15 years imprisonment. He
13 did not appeal his conviction or sentence. Your Honor,
14 he's represented here today by Mr. Thurmond Brooker. On
15 the onset, I understand that Mr. Brooker may be moving for
16 a continuance which we'll be objecting, but I would let
17 him make his motion if he so desires right now.

18 THE COURT: All right. Mr. Brooker, you
19 recognize.

20 MR. BROOKER: Thank you, Your Honor. Your
21 Honor, we're making a motion for a continuance. And, of
22 course, this is based upon at least my conversation with
23 Mr. Samuel. And, of course, I try to at least give you a
24 little bit of background information that might further
25 explain as to why he is asking me to ask for a continuance

1 of this particular period of time. This is a -- the
2 allegations, I think, that's contained in the indictment,
3 of course, of sexual misconduct that occurred I think in
4 the early 1980's something like from 1983, '84 up until
5 '89. The Department of Social Services got involved in
6 this case I think in 1991 investigated the case. And, of
7 course, the Department of Social Service, I think,
8 determined that the allegations of sexual misconduct was
9 unfounded. And I think law enforcement was involved at
10 that particular period of time. And, of course, he is
11 asking me to ask for a continuance is that part of his
12 argument of ineffective assistance is what he's explain to
13 me is based upon the fact that during the course of his
14 trial at the time in which he had the trial, that the
15 attorney failed to subpoena the Department Social Services
16 in order to refute the testimony of the young girl. I
17 mean, because she had previously testified to the
18 Department of Social Services that there had been no
19 sexual conduct at that particular period time between the
20 two. And then, of course, she testified to some facts
21 surrounding that that he contends was false.

22 Now, of course, that's part of his basis is for
23 alleging is that counsel was ineffective because the
24 Department of social Services or the Department of Social
25 Services file was never subpoenaed to use to impeach those

1 witnesses. And, of course, now he wants me to subpoena
2 the Department of Social Services personnel that was
3 involved in that investigation into '99. And, of course,
4 he wants the Court to hear them as apart of his
5 post-conviction relief petition. And, of course, that's
6 the basis of him asking for a continuance that in order to
7 have Department of Social Services bar here so that they
8 can testify with respect to what they would have
9 potentially testified to at trial.

10 THE COURT: All right. Mr. Spencer, be glad to
11 hear from you.

12 MR. SPENCER: Thank you, Your Honor. Just to
13 reply, Your Honor. Quite frankly, the victim who had
14 testified at the trial prior to the plea had admitted that
15 DSS had talked to her and she had denied it at that point
16 in time, so that's already in the record, Your Honor. So
17 there be no prejudice from going forward. I ask that the
18 continuance be denied. This is a 2009 application. And
19 quite frankly I don't think that this witness is necessary
20 to the action.

21 THE COURT: Okay. All right. Mr. Brooker, is
22 that true did that come into evidence?

23 MR. BROOKER: It is my understanding that, yes,
24 that the victim in that case testified in 2009 that she
25 had given inconsistent statement to DSS.

1 THE COURT: So really having someone from DSS
2 would really be a duplication and really wouldn't add
3 anything to it; would it? She admitted it; didn't she?

4 MR. BROOKER: She did admit it. His only
5 other -- and I explain that to him. I think, and, of
6 course, his only other statement was is is that she
7 alleges that she gave the inconsistent statement in '91
8 because the Department of Social Services ask her that
9 question in front of him. Of course, he's alleging that
10 DSS will contradict that fact. And, of course, he was not
11 present when that question was asked of her, so that she
12 had lied on the stand when she testified in court that the
13 reason she gave that false statement was is because when
14 the Department of Social Services question her that he was
15 sitting there and saying that he was not -- so she was
16 free to tell the truth and didn't in '91.

17 THE COURT: Okay. Well, I'm going to deny the
18 continuance. I'm going to allow you great leeway with
19 regard to explaining what you put on the record through
20 your client. And if your client contends that he was
21 there, he can testify to that. I don't think there's any
22 prejudice in that regard. I don't think it's going to add
23 anything to it. We're going to give you great leeway in
24 his testimony.

25 MR. BROOKER: Thank you, Your Honor.

1 THE COURT: Very good. And you recognize,
2 Mr. Brooker, you may call your first witness.

3 Anything further, Mr. Spencer?

4 MR. SPENCER: I just ask that Mr. Brooker set
5 out the allegations for the record.

6 THE COURT: Say that again?

7 MR. SPENCER: I would just ask that Mr. Brooker
8 set out the allegations for the record.

9 THE COURT: All right.

10 MR. SPENCER: Give us a road map so to speak.

11 THE COURT: Very good.

12 Mr. Brooker, obviously, there's been an
13 application filed here and it sets out what the grounds
14 are. You've had an opportunity to confer with your
15 client. Could you set forth the grounds that you intend
16 to go forward with today?

17 MR. BROOKER: Thank you, Your Honor. Yes, he is
18 alleging ineffective assistance of counsel. And, of
19 course, from what at least was contained in these
20 allegations excuse me -- contained in his application and
21 also what he has explain to me is that the grounds for
22 consistence will be based upon the fact is that he is
23 alleging to me that proper preparation -- prior to the
24 trial that at least he is ---

25 THE COURT: We'll get to hear all of his

1 allegations. I don't want to hear an argument with regard
2 to them, that's one category ineffective assistance of
3 counsel. Is there anything else?

4 MR. BROOKER: The other one would obviously be
5 underneath the umbrella of duress or coercion is what he's
6 alleging in that his plea was not knowingly and
7 intelligently given.

8 THE COURT: Okay. All right. I will allow you
9 to proceed forward. You may call your witness.

10 MR. BROOKER: Thank you, Your Honor. We call
11 Joshua Samuel.

12 THE COURT: Mr. Samuel, if you could please come
13 forward. I'm going to ask you to watch your step.
14 There's a step up there, don't trip. Place your left hand
15 on the Bible and raise your right as the clerk administers
16 the oath.

17 THE CLERK: Do you swear the testimony you give
18 in this case will be the truth, the whole truth and
19 nothing but the truth so help you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Be seated and state your name for
22 the record.

23 THE COURT: Mr. Samuel, I'm going to ask you to
24 have a seat in the witness chair there. I'm going to ask
25 you to pull up close to that microphone speak, loudly,

1 clearly and slowly in order that we can hear everything
2 that you got to say and pay very close attention as
3 Mr. Brooker poses the questions to you.

4 Mr. Brooker, you recognize.

5 MR. BROOKER: Thank you, Your Honor.

6 WHEREUPON,

7 Joshua Samuel,

8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROOKER:

11 Q Mr. Samuel, you were convicted in this case I think
12 in 2001; is that correct -- 2008; is that correct?

13 A Yes, sir.

14 Q And when were you effectively charged with the
15 charges, this brings us to this post-conviction relief?

16 A Could you repeat that question?

17 Q Was you charge back in 2005 for these charges?

18 A Yes, sir, after I was locked up, they brought these
19 charges on me while I was in jail -- I had another charge
20 on me appointing and presenting a firearm.

21 Q And the charges that's contained in your indictment
22 were sexual conduct with a minor second degree, lewd act
23 upon a minor, criminal sexual conduct with a minor and
24 criminal sexual conduct -- a second criminal sexual
25 conduct with a minor and a second lewd act with a minor.

1 Are those charges you were charged with back in 2005?

2 A Yes, sir.

3 Q Now, when you were charged back in 2005, were you
4 appointed to the public defender's office? Were you
5 appointed to the public defender's office?

6 A Sir, back up a minute. 2006 is when they brought
7 these charges on me two months later after I was jail. I
8 was charge in 2005 on pointing and presenting a firearm.

9 Q Okay.

10 A These charges came up which was 17 years old.

11 Q Were you appointed with the public defender's office?

12 A Yes, sir, but I ain't never meet my lawyer.

13 Q Okay. Who was the first attorney you were appointed
14 to in the public defender's office back in 2005 -- 2006?

15 A Mr. Deberry.

16 Q Okay. And how many times did you meet with
17 Mr. Deberry?

18 A We never met.

19 Q How long was Mr. Deberry your attorney?

20 A I can't really say. I know it was over a year when
21 the second one. I seen on this Rule 5 where they ask for
22 my Rule 5 that Ms. Parrott signed for him cause I never
23 met him.

24 Q Who was your second attorney?

25 A Mr. Craig Brown.

1 Q Okay. And when did he take over?

2 A It was over a year after that.

3 Q And how many times did you meet with him?

4 A Once at the jail and once in this courtroom.

5 Q And the first time you met with him, how long did
6 your conversation last or your meeting last to the best of
7 your recollection?

8 A I guess it had to be about ten minutes.

9 Q Now, you said you met a second time here at the
10 courthouse. How long did that conversation last?

11 A About five minutes.

12 Q And what was the basis of that -- the discussions
13 during those conversations?

14 A We didn't have good to say -- he had told me I was
15 facing tripple life.

16 Q Did you have a third attorney thereafter?

17 A Yes, sir, but -- yes ---

18 THE COURT: He had Deberry who he never met.

19 Who is the second one?

20 A Mr. Craig Brown. The third one was Mr. Floyd right
21 there.

22 Q And when did you meet Mr. Floyd?

23 A I didn't -- it was right after. I didn't know Craig
24 Brown had quit. When I guess the next court term came up
25 and they told me that he was my new lawyer Mr. Scott.

1 Floyd, but we didn't talk. So when court started, we came
2 in the courtroom and I asked him I said you my lawyer now
3 and he say yeah. I said we never talk. But court started
4 right then. We never had a chance to talk about anything.

5 Q When you say court started then?

6 A In general session, it started. They picked a jury
7 and all that, but me and him we never talked. We never
8 had a chance to talk about anything. I tried to talk
9 during the trial, but he wouldn't let me talk to him.

10 Q Okay. The first time you talk with him was it before
11 or after jury selection?

12 A We never talk. We talk during -- I was trying to
13 talk during trial, but he told me I had to be quiet in the
14 courtroom. I was trying to tell him that -- I object to
15 different things and to let me tell him what happened to
16 me and all kinds of stuff like that, but he wouldn't -- it
17 was the wrong time, I guess, because court was starting.
18 I'm not saying he was wrong or anything I don't got
19 anything against him. I just saying to what happened.

20 Q Okay. So you're saying you never discussed your case
21 with him prior to the actual trial?

22 A No, sir.

23 Q Did y'all talk about any defenses?

24 A No, sir.

25 Q You talk about any potential witnesses prior to the

1 trial?

2 A No, sir.

3 Q Did y'all talk about the charges on the actual nature
4 of the charges and what they carried?

5 A No, sir.

6 Q What did you talk about with him?

7 A We never talked about anything. The only time we
8 talked is when court started and I seen that he wasn't
9 doing anything I was asking him. I asked him what about
10 getting DSS into it, but he wouldn't listen right. He was
11 telling me -- guess was the wrong time to talk like that
12 and court was starting and I apologize. But he wouldn't
13 listen, so I stood up in the courtroom and I told the
14 judge I say, Your Honor, if you're going to give me time
15 today, give me the death penalty if you're going to send
16 me to prison for nothing. And that's when they stop the
17 court and we went in the room. And he told me that it
18 would be best that I plead him and my sister came in there
19 with him. They told me it be best to plead because I was
20 looking at 50 years or better. So I was crying through
21 the whole trial.

22 Q Did you start your trial that day?

23 A We was in the middle of trial.

24 Q So you did start your trial?

25 A Yes, sir.

1 Q How long did the trial go before you made the
2 decision -- the decision that it was stopped?

3 A That was the second day. We was into the second day.

4 Q How did you feel about preparation for the trial?

5 A Didn't have any. I couldn't find nobody to help me.
6 I was begging for help wouldn't no lawyers help me.

7 Q Did your lack of preparation of trial by counsel did
8 that in any way play any role in your decision to stop the
9 trial and plead guilty?

10 A Yes, sir.

11 Q And could you explain why that somehow affected your
12 decision?

13 A When he say I was facing 50 years or better and my
14 sister was right there with him, she was talking with him.
15 All three of us was sitting down and I figured that I
16 probably would get less time if I did. Nobody didn't
17 offer me any lesser time. I just figured I would if I did
18 cause even though I didn't do the crime. I just felt like
19 it was the best thing to do, so I pleaded.

20 Q Now, when you pled guilty, you were asked the
21 question in reference to Mr. Floyd's representation
22 whether or not you were satisfied with him. Did you
23 answer that you were satisfied with him?

24 A Yes, sir, because before then, I told the judge at
25 least five times that I didn't want to plead to something

1 I didn't do, but nothing would happen. So I said it about
2 five times. It was off record though. I apologize, Your
3 Honor. It was off record though I think. And after a
4 while, I see he was just going to wait on me to plea, so I
5 went on and said I will plea to it. I say, yes, sir, I'll
6 go ahead and plea. So I had to say everything for him to
7 take my plea then.

8 Q Did you talk with Mr. Floyd or either any of your
9 previous attorneys in reference to your guilt or
10 innocence?

11 A No, sir, but -- no.

12 Q No one ever ask you or you ever discussed your guilt
13 or innocence with your lawyer?

14 A No, sir.

15 Q Now, besides the fact you felt that the trial was not
16 fair and I think you testified that you met with your
17 attorney I think the morning of the trial. Is there any
18 other factor that influenced your decision to plead
19 guilty?

20 A Yes, sir, I seen -- I know we don't have time to talk
21 about all the things that happen to me now in jail and
22 everything else, but I see I didn't have a chance. I
23 didn't have a possible chance with nobody trying to help
24 me. I was begging for help, I couldn't get any help. So
25 I figured the best thing for me to do is to plead I would

1 get a lighter sentence, but I didn't -- I mean, I
2 apologize, Your Honor.

3 THE COURT: No problem take your time.

4 A I just said I didn't have any kind of help. I was
5 begging for help. Nobody wouldn't would help me. All the
6 lawyers were just -- they act as though all they seen was
7 they was condemning me to be guilty from the jump and I
8 wasn't.

9 Q Now, you've already said that you felt as if your
10 counsel was not prepared to go forth with your case on
11 that date. What are the things that you thought that he
12 had failed to do that you thought was necessary in order
13 to properly defend your case that day?

14 A Lots of things. He didn't do any pretrial hearing --
15 I mean, any pretrial investigation or anything like that
16 not that I know of. If he did, I don't know anything. He
17 didn't never tell me anything and we never talk. He
18 didn't know what kind of person I was or anything. I
19 guess, he knew my name from looking at the charts, but
20 that's it. We never talked.

21 Q Did you have any witnesses that you thought were
22 important with your case?

23 A Yes, sir, I wanted DSS and then -- I wanted him to
24 talk to DSS and know exactly what happened back in those
25 days about 17 years ago when they did an investigation on

1 it. They found the case unfounded.

2 Q You heard that I think during our previous motion for
3 a continuance is is that it's my understanding is that the
4 victim in that case I think testified on the stand that
5 she had given an inconsistent statement to DSS. So if the
6 witness testified that she had given an inconsistent
7 statement to DSS, then why else do you believe it's
8 important to have DSS present?

9 A Because they would have been able to tell that that's
10 not their procedure. They don't do that. They don't ask
11 a victim anything in front of the defendant like that
12 because that didn't happen. They had separated and I
13 don't know what they ask her. They ask me by myself. My
14 wife in one room just like that. They didn't ask the
15 victim anything in front of -- that's not their practice.

16 Q Was there any other witnesses that you thought were
17 important that you didn't have an opportunity to advise
18 your attorney?

19 A No, my wife and the other victim was on my side.
20 They was going to testify against me, but my wife got so
21 sick the next day then that victim had to stay there with
22 her. My wife couldn't come back the next day. At court,
23 they was going to testify on my behalf, but that didn't
24 work out. Like I said, and she died three months after
25 this happen to me. She had cancer bad. That's what I was

1 doing taking care of her. But they was going to testify
2 for me her and the victim. Like I had letters, that the
3 prosecution hid didn't show the judge before trial that
4 both victims and my wife and all that was trying to get
5 the charges dropped. But the prosecution didn't show
6 those letters.

7 Q Now, when the trial was actually stopped during the
8 middle of it and I think you pled guilty, you pled guilty.
9 What was your emotional state at that particular period of
10 time?

11 A I wasn't thinking straight at all. I was just crying
12 the whole time. I cried through the whole trial because I
13 seen where I didn't have a possible chance. I wasn't
14 thinking at all. I was confused. I couldn't get myself
15 together because I was just -- I didn't see no avenue. It
16 just -- I just knew. And I was worrying about my wife at
17 the time too. I know how sick she was and I was going
18 through all this cause all this happen for nothing. And
19 at the end of the trial, the victim jumps up in the
20 courtroom, which is off record again I apologize, but she
21 told the courtroom -- everybody in the courtroom that the
22 prosecution and investigator made her lie on me, that I
23 didn't do any of the charges, but it was off the record.
24 It was after they gave me the time and I was standing in
25 the hallway with a policeman. I had three sisters in the

1 courtroom that day too. Everybody in the courtroom knew
2 that's the truth that happen, but that's not on the
3 record. It's not on my transcript, but my sister those
4 was telling me that that's why she come out the courtroom.
5 I was wondering why ---

6 MR. SPENCER: Your Honor, I object to the
7 hearsay whatever his sister said.

8 THE COURT: I'll give him some leeway in that
9 regard.

10 BY MR. BROOKER:

11 Q Now, at any time prior to your pleading guilty, did
12 you discuss the decision to plead guilty with Mr. Floyd?
13 I'm talking about prior to your making the decision to
14 plead.

15 A Yes, sir, when the judge told us to go in that room
16 when I had stood up and told him to give me the death
17 penalty, we went in that room like that right there.

18 Q I'm sorry go ahead.

19 A It was a room like that in the courtroom and he told
20 him in there.

21 Q What did y'all discuss about pleading guilty?

22 A That it would be best that I plead because I was
23 facing 50 or better.

24 Q Did you profess your innocence at that time?

25 A No, sir, I was just crying listening -- I had enough

1 nobody didn't help me. I was begging for help and
2 wouldn't no lawyers wanted to help me. All they was
3 saying was I was automatically guilty. Like Mr. Craig
4 Brown, he wouldn't listen either.

5 Q How long did y'all talk about the decision to plead
6 guilty prior to your actually -- that conversation you had
7 with Scott Floyd how long did that take place about the
8 decision to plead guilty?

9 A Not that long. When we came about -- it wasn't even
10 five minutes when we came back out. They went in the
11 chambers, the judge and Mr. Floyd and Mrs. Parr and I
12 think the investigator too. They went in chambers and
13 talk. I was just sitting out there. I didn't go with
14 them. I was sitting right there and they came back. And
15 they went on and ask me was I ready to go ahead proceeding
16 pleading and I did -- like I said, they didn't -- I just
17 did. I went on and plead. I was confused. Like I said,
18 I didn't know no better and I plead.

19 Q Did they discuss any potential defenses that you
20 might be giving up by pleading guilty?

21 A After I started pleading, the judge told -- I think
22 he instructed me. I really didn't -- it didn't dawn on me
23 what he was saying. I was out of it because when he said
24 I was just going to get 20 years that didn't dawn on me
25 that any -- none of that registered I was thinking of the

1 tripple life, the 50 years all that cause like I said I
2 never stop crying. I was just crying the whole time.

3 Q Now, the charges that you pled guilty -- the charges
4 that you were indicted were those charges for two separate
5 victims?

6 A Yes, sir.

7 Q And one of the victims were [REDACTED] is that
8 correct?

9 A Yes, sir.

10 Q And who was the second victim that was contained in
11 the indictment charges?

12 A [REDACTED].

13 Q Now, these events in which they alleged the criminal
14 sexual conduct second degree with a minor on one of the
15 victims and, of course, the other criminal sexual conduct
16 on the other victims, did those events allegedly occur at
17 the same time?

18 A No, sir, they never occurred at all.

19 Q So these were separate events?

20 A Yes, sir.

21 Q Go ahead.

22 A The way they got it on the thing they was saying they
23 happen different times, but it never happen at all.

24 Q Were these matters tried together during the trial?

25 A Yes, sir.

1 Q Did you talk with your attorney or did your attorney
2 talk with you about the bifurcation in the case so that
3 one separate charge wouldn't prejudice you on the other?

4 A No, sir.

5 Q Bifurcation. These events happen, I think, in the
6 1980's; right?

7 A That's what they allege happen, yes, sir.

8 Q And, of course, you were indicted was it 2005 or
9 2006?

10 A 2006.

11 Q Okay. It's roughly 17 years between the time in
12 which the alleged charge took place and the actual
13 indictment?

14 A Yes, sir.

15 Q Did your attorney or you have a conversation with
16 your attorney in reference to the defense of
17 pre-indictment delay?

18 A No, sir.

19 Q Now, the indictment for the charges was contained on
20 one indictment; is that correct?

21 A Yes, sir.

22 Q And that indictment was for -- and I think he
23 testified that these were separate events?

24 A Yes, sir.

25 Q But they were indicted together?

1 A Yes, sir.

2 Q Was there any conversation in reference to that
3 potential defect in the indictment?

4 A No, sir.

5 Q Between you and your attorney?

6 A No, sir.

7 Q Now ---

8 MR. BROOKER: Can you indulge me for just a
9 second, Your Honor.

10 (WHEREUPON, a pause in the proceedings.)

11 BY MR. BROOKER:

12 Q Is there any other defenses in which -- which you can
13 think of that -- after the fact that you think now that
14 would influence your decision not to plea on that
15 particular day that you and your attorney didn't discuss?

16 A Yes, sir, lots of things that -- all of the evidence
17 happen in the courtroom that was -- was new to me. I
18 don't know if it was new to him or not, but it was new to
19 me. I never seen any of it. I didn't know the witnesses
20 that was going to be against me because they use a
21 statement on a yellow piece of paper and said I gave it.
22 I didn't give no statement to anybody. And I wanted him
23 to question that, but he wouldn't object to it. He said
24 it was irrelevant and the warrants -- I wanted him to look
25 over the warrants somebody sign my signature on all the

1 warrants. I never sign no warrants, but somebody put a
2 signature on all the warrants. And all of the statements
3 that I got none of those been sign. I mean, all of my
4 paperwork it's not right. We never talked about anything.
5 I couldn't -- he never said anything to me about it
6 whether he know of it or not. We never talk.

7 Q Okay. Is there anything else that you can think of
8 that influence -- that you think unduly influence your
9 decision to plead guilty that day when you otherwise would
10 not have?

11 A Yes, sir. Like I said, he didn't question any of the
12 things that happen to me. I felt like he if he would have
13 ask for a motion to dismiss or suppress the evidence and
14 stuff like that what the investigator did to me and all
15 that, but none of that came up because how my DNA was
16 taken everything. I mean, when they bought the warrants
17 to me, they read the warrants to me in front of the whole
18 jail cell everything that they said to the entirety. The
19 policeman did that stuff like that. I mean, I never had a
20 chance to even tell him that, you know what I mean, for
21 him to elaborate on. But it's lots of things that happen
22 like that. And the way the nurse just said on my
23 transcript the nurse told the judge that she just sit back
24 and let the investigator do her job that day and she still
25 has her job. None of that was question and they didn't

1 interject to it or nothing like that. I couldn't
2 understand none of that, that's why I felt like I say,
3 well, I don't have a choice but to plead. I say I'm going
4 to jail any way you look at it.

5 Q When I read the plea transcript in this particular
6 case, there was a point in time in which the judge stopped
7 the proceedings and I think continued the plea I think
8 after he release the jury -- were you having a problem
9 admitting that you were guilty of the offense?

10 A Yes, sir. I told him five times I said, Your Honor,
11 Lord knows I don't want to plead to something I didn't do.
12 He said, well, I can't take your plea with you saying
13 that. Like I say, I said it about five times, Your Honor.
14 Again, Your Honor, apologize I don't think it was on
15 record because it's not on my transcript. I'm not saying
16 anything about the court reporter. I don't think it just
17 wasn't on the transcript. I mean, it was off record it
18 had to be because this was just before my plea. I told
19 him I say I don't want to plead, but he kept saying that
20 he can't take my plea with me saying that. Then I decided
21 to go ahead. And when he would ask me, do I think was the
22 lawyer all right and all that, I hesitated cause I didn't
23 really want to say that. Then when they ask me about the
24 police department -- did the people at the police
25 department and investigator did anything to me, I told him

1 I didn't want to answer that that's on my transcript. I
2 said I didn't want to answer that because they did. They
3 did a lot of things to me at the jailhouse wasn't right.
4 I just went with it. I just had to convince him to take
5 me plea.

6 Q At the conclusion of your plea when you were exiting
7 the courtroom, did you continue to confess your innocence?

8 A Could you please ---

9 Q Did you profess your innocence after you had been
10 pled guilty and sentence before you left the courtroom and
11 while you were leaving the courtroom?

12 A No, sir, I didn't say anything else. I just -- he
13 get the judge to read up everything to me and then gave
14 him my time. That's why I was saying I ran out of the
15 courtroom. I mean, I went out the courtroom with the
16 policeman and that other stuff happened.

17 Q And I want to be absolutely certain is that we
18 covered everything. Is there anything we did not cover at
19 that influence your -- you think dually influence your
20 decision to pled guilty that day?

21 A Like I said, I didn't have any help because I seen
22 where the lawyers wouldn't help me and all that. If I
23 knew what I know now, which I don't know much about the
24 law at all. I'm no lawyer by a long shot, but what I know
25 a little now like the statute I was charge under. I don't

1 see that affected me and they charge my date of offenses
2 from 1980 to 1981 I got charged under a statute that was
3 repeal in 2005. And I'm sort of like doing the new under
4 the new law and the old law. It's kind of awkward. I
5 never had anybody explain it to me. I was trying to read
6 it myself, you know, and stuff like that. It's a lot of
7 things that he could have help me with and he ain't try to
8 help me.

9 Q Are you making reference to the ex post facto law
10 defense?

11 A Yes, sir.

12 Q Okay. How did you know that you were charged with
13 the new statute oppose to the law that's in existence ---

14 A Cause I ---

15 Q Let me finish my question.

16 A Excuse me. I apologize.

17 Q How do you know that you were charged with the law
18 that was in existence at that particular time and your
19 charge in 2006 oppose to the law that existed in 1980's
20 when these defenses allege took place?

21 MR. SPENCER: Your Honor, I object to any -- the
22 ex post facto is allegations not in the application.

23 THE COURT: I will sustain the objection.

24 MR. SPENCER: Thank you.

25 MR. BROOKER: May I explain at least the reasons

1 why we're mentioning it, Your Honor? The only reason
2 we're mentioning it is that underneath his applications,
3 and I know it's a broad umbrella of ineffective assistance
4 of counsel, I think he's alleging that's one of the
5 defenses that wasn't discussed with his attorney on that
6 would have influenced his decision if he had known it then
7 not to plead guilty at that particular period of time.

8 THE COURT: I think your point is well taken.
9 We can move on.

10 MR. SPENCER: And, Your Honor, I would object to
11 that even if -- in terms of ineffective assistance of
12 counsel that's -- I mean, that's really a more cause of
13 action than a specific claim and the application requires
14 facts to be set out and there's nothing indicating a
15 potential ex post facto issue is raised in the
16 application. So I would still have the same objection,
17 Your Honor.

18 THE COURT: Very good. The objection is noted.

19 BY MR. BROOKER:

20 Q Anything else, Mr. Samuel?

21 A About the ex post facto?

22 Q I think the judge has already ruled.

23 THE COURT: Anything else?

24 A Yes, sir, the last lawyer that I had Mr. Yarborough
25 that came up with the things we talking about now. And I

1 submit two different attachments and the judge at the last
2 PCR told me on the record that because he stood up and he
3 said he wanted a motion to dismiss hisself. And that I
4 ask him to get my -- have my attachments clocked and
5 stamped. And he promise the judge he was going to do
6 everything I ask him that day, Your Honor, and he never
7 did. He didn't do it. I know this ain't nothing to do
8 with the lawyer today, but that should have been on record
9 too about what we was talking about now. But I got that
10 on my attachments. I got two different attachments, which
11 wasn't clocked and stamped and sent to me. I still got
12 copies of them myself. I save copies of them too in my
13 papers over there.

14 THE COURT: Anything further, Mr. Brooker?

15 MR. BROOKER: No further questions.

16 THE COURT: Any cross-examination?

17 MR. SPENCER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. SPENCER:

20 Q Mr. Samuel, the victim in this case was [REDACTED] was
21 your stepdaughter; is that right?

22 A Yes, sir.

23 Q Okay. And you actually did have sex with her; right?

24 A Yes, sir.

25 Q And she had a child and that child is your child; is

1 that correct?

2 A Yes, sir.

3 Q Okay. And that had already come up at trial; right?

4 A Did that come up at trial?

5 Q Right. The victim testified and she testified to
6 that; correct?

7 A Yes, sir.

8 Q And you had sex with the victim how many times?

9 A Just once.

10 Q You saying just once?

11 A Yes, sir.

12 Q Okay. And she testified four times?

13 A That's what the prosecution testified.

14 Q If you had gone through with your trial, were you
15 going to testify?

16 A Were I going to?

17 Q Were you going to testify if you went through with
18 your trial?

19 A Yes, sir.

20 Q And you decided instead to pled guilty and not tell
21 your side of the story?

22 A Yes, sir, because I didn't have anyone helping me.

23 Q Okay. When did you tell Judge Russo that Mr. Floyd
24 was not helping you?

25 A When did I tell him that?

1 Q Right.

2 A He didn't ask me. He was when I was pleading. The
3 only time he ask me that was when I was pleading. I had
4 to convince him to take my plea, so I told him what he ask
5 me was -- well, was I satisfied with my lawyer today and I
6 said, yes. I had to say that for him to take my plea.

7 Q Okay. So what you are saying is you lied to Judge
8 Russo about being satisfied with Mr. Floyd's service?

9 A I was confused at the time. I was crying the whole
10 time. And I knew he had -- I had want to plead because I
11 see I had no avenue. I had to plea to get lesser time.

12 Q Okay. You're confused, but the truth of the matter
13 is you were not satisfied with Mr. Floyd's service?

14 A No, sir.

15 Q And you told Judge Russo you were; is that correct?

16 A Yes, sir, for him to take my plea.

17 Q And so that's a lie; right?

18 A Not really, no, sir, because I was confuse.

19 Q What's the difference between a truth and a lie?

20 A Like the other side of a dime, it's plead to differ.

21 Q What point did you tell Judge Russo you did not want
22 to plead guilty?

23 A When it must be was off the record because it was
24 just before I pleaded because it's not on my transcript?

25 Q You understand by pleading guilty that was going to

1 send you to prison. There was no two ways about it.

2 Pleading guilty would send you to prison; right?

3 A Yes, sir.

4 Q And so you were lying to go to prison that day;
5 right?

6 A I had no choice.

7 Q You had no choice but to lie to go to prison.

8 A No, I had no choice, but to try to save myself from
9 getting 50 years or better like the lawyer told me.

10 Q So you pled guilty to avoid harsher punishment? You
11 pled guilty to try to avoid harsher punishment?

12 A Yes, sir, either way I seen I was going to prison
13 either way you look at it.

14 Q Mr. Floyd told you you might as well go and finish
15 your trial; isn't that right?

16 A No, sir.

17 Q You're denying that?

18 A Yes, sir.

19 Q Okay. Are you denying that just like you told Judge
20 Russo that you were satisfied with Mr. Floyd's services?

21 A No, sir -- Mr. Floyd didn't tell me to go on with the
22 trial. He told me to plead.

23 Q Okay. Are you telling the truth today?

24 A Yes, sir.

25 Q You're telling the truth and you're hoping to get a

1 new trial; right?

2 A Yes, sir.

3 Q So you can get exonerated of the charges?

4 A Yes, sir.

5 Q So what you're saying is you're telling the truth
6 today to get out of jail?

7 A Yes, sir.

8 Q And you're lying to go to prison when you pled guilty
9 before Judge Russo?

10 A If I would have had a lawyer to help me, I would have
11 told the truth then all the way through court. I wouldn't
12 have ever pleaded if I had a lawyer to stand and help me,
13 but wouldn't nobody help me. I'm on my seventh lawyer
14 now.

15 Q And you're saying you never met Mr. Floyd until after
16 the trial started?

17 A No, sir.

18 Q Did you tell Judge Russo that?

19 A Yes, sir, I told him that it's in my transcript.

20 Q It's in your transcript that you never met with your
21 attorney?

22 A Yes, sir. It's in my transcript.

23 MR. SPENCER: Beg the Court's indulgence.

24 (WHEREUPON, a pause in the proceedings.)

25

1 BY MR. SPENCER:

2 Q And the day of trial you were actually only being
3 prosecuted for the charges that related to [REDACTED], is
4 that right?

5 A I didn't know that until after I started pleading.
6 They told me that when I started pleading. I thought I
7 was pleading to pointing and presenting a firearm and all
8 the other five charges with the other victim too.

9 Q You only pled to one charge; right?

10 A Yes, sir, but I didn't know that until after
11 everything was over. I didn't know what I was pleading.
12 I thought I was pleading to everything. Nobody didn't
13 tell me any different.

14 THE COURT: Anything further, Mr. Spencer?

15 MR. SPENCER: Yes, Your Honor.

16 BY MR. SPENCER:

17 Q You complained about Mr. Floyd not calling a witness
18 for DSS. I want to make sure -- I'm not sure I caught it.
19 Were there any other witnesses you were asking about that
20 you wanted Mr. Floyd to subpoena?

21 A I'm saying ---

22 Q If you could just answer yes or no and then you can
23 explain.

24 A Yes. Yes, sir, I sort of thought it would have
25 been -- I was putting myself in his shoes if I was the

1 lawyer and he was the client or whatever. I would have
2 sort of tried to show his character and whatever. I would
3 have had people come like doctors involved. It wasn't no
4 doctors or nothing involved in my case. No expert
5 witnesses on my behalf. And I would have did something
6 stuff like that and DSS the whole works, but it wasn't any
7 in my case. It was no medical protocol.

8 Q What's your complaint about what the investigator did
9 was that he read the warrant to you out loud while you
10 were in the jail?

11 A That was the police officer did that. The
12 investigator took my DNA without a proper warrant or
13 anything. And the nurse was sitting right there. The
14 nurse that had suppose to do it, they told the judge
15 that -- the nurse told the judge that that day that I told
16 her. And my wife was a nurse for 30 something years.
17 That I told her I didn't want her do my DNA I wanted the
18 investigator to do it, but I didn't do that.

19 Q You admit the child is yours any way?

20 A Yes, sir, but that's not the issue. The issue was
21 they was trying to say it happen when the allege victim
22 was underage, but that's not true.

23 MR. SPENCER: Okay. Thank you. I have no
24 further questions.

25 THE COURT: Any redirect, Mr. Brooker?

1 MR. BROOKER: Just one question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BROOKER:

4 Q And you were asked about having a relationship or sex
5 with [REDACTED] I think you said it was once. How old was
6 she at that time?

7 A She was 17.

8 MR. BROOKER: No further questions, Your Honor.

9 THE COURT: All right. Very good. You may step
10 down.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: Anything further, Mr. Brooker?

14 MR. BROOKER: The only other person we would
15 call -- no, Your Honor.

16 THE COURT: Mr. Spencer, you recognize.

17 MR. SPENCER: Thank you, Your Honor. I would
18 call Mr. Floyd to the stand.

19 THE COURT: All right. Mr. Floyd, please come
20 forward and place your left hand on the Bible and raise
21 your right hand as the clerk administers the oath. You
22 swear to tell the truth, the whole truth, and nothing but
23 the truth so help you God?

24 THE WITNESS: I do.

25 THE COURT: Have a seat in the witness chair,

1 pull up real close to that microphone, speak loudly,
2 clearly and slowly.

3 Mr. Spencer, you recognize.

4 MR. SPENCER: Thank you, Your Honor.

5 WHEREUPON,

6 Scott Floyd,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SPENCER:

10 Q Mr. Floyd, how soon before the trial were you
11 appointed?

12 A Well, I came on board with the public defender's in
13 September of 2007 I think and I inherited Craig Brown's
14 files. That was one of the files I inherited.

15 Q Okay. Beg the Court's indulgence. Did you meet with
16 Mr. Samuel before the trial?

17 A Yes, I did.

18 Q Was it the day of trial you first met with him or was
19 it earlier?

20 A Well, I met with him a few times before the trial
21 certainly.

22 Q Were you prepared for trial?

23 A Yes.

24 Q If you were not prepared for a trial, would you have
25 moved for a continuance?

1 A I certainly would have.

2 Q Was that necessary in this case?

3 A No.

4 Q Whose decision was it to plead guilty?

5 A That would be Mr. Samuel's decision.

6 Q Was that consistent with your advice?

7 A No, it was not.

8 Q Did you advise him to continue the trial?

9 A He told me after he had a private talk with his
10 sister, which he requested, that he wanted to plead
11 guilty. I told him that if he was looking for some
12 benefit from pleading guilty after we already started the
13 trial not to expect any. And so the decision was his, but
14 I did not advise him to plead guilty.

15 Q What was the defenses you were pursuing at trial?

16 A Well, Mr. Samuel basically admitted that he had had a
17 sexual encounter with Ms. [REDACTED], but it was after she
18 reached the age of 17, okay. And he admitted that they
19 had a child as a result of that sexual encounter. He
20 denied having had sex with her prior to that time. So his
21 defense was he didn't do it.

22 Q And was he going to deny the lewd acts too?

23 A Yes.

24 Q And the State's case was that that had started, I
25 believe, when the victim was 13?

1 A I believe so somewhere in there. It may have been
2 prior to 13 actually maybe 12.

3 THE COURT: At any rate when she was a minor?

4 MR. FLOYD: Certainly.

5 BY MR. SPENCER:

6 Q And I think we heard testimony he was -- there was
7 some charges concerning not only the victim -- well, there
8 were two victims that he was charged with having?

9 A That's correct.

10 Q And how many of those victims were being tried -- let
11 me rephrase. Were the second victims charges being tried
12 that day?

13 A No, he was on trial that day for three counts, okay.
14 When Judge Russo got the indictment, he said to -- when
15 read he out the charges on the indictment he said he went
16 through Count 1, Count 2, Count 3, Count 4, Count 5. He
17 reference the other two counts, but he did not give any
18 specifics about who the victim was or even what the
19 specific allegations were. I think he didn't -- I mean,
20 he just start reading it and didn't check himself. He
21 said he's being charged with like Count 1 criminal sexual
22 conduct second degree. Count 2 lewd act. Count 3
23 criminal sexual conduct third degree. And then he named
24 the last two, but that's what he said. But he didn't go
25 into specifics about it it was a different victim or the

1 dates involved or involve anything like that. So when Pat
2 Parr gave her opening argument, she specifically lited it
3 to the allegations of the first three counts and only made
4 references to those counts. You know, the way the judge
5 said it since he didn't read anything specific about it, I
6 didn't really feel that it was that great of an idea to
7 bring it up -- to have him bring it up to the jury to try
8 and correct it quite frankly because I didn't think it was
9 something they would really pay too much attention to.

10 Q And, of course, when the charges were submitted to
11 the jury to consider the verdict, if you would have made
12 sure the other charges regarding the second victim would
13 have been redacted?

14 A Certainly.

15 Q You heard testimony about supposedly possibly
16 subpoenaing witnesses from DSS. Did you see any potential
17 benefit that would have warranted subpoenaing any DSS
18 witnesses?

19 A Well, given the fact that the victim admitted on the
20 stand that DSS had investigated the case and that she had
21 always denied that there was any impropriety between --
22 well, committed by the -- Mr. Samuel. She admitted all
23 that on the stand. No, I didn't see any real benefit to
24 it.

25 MR. SPENCER: Beg the Court's indulgence.

1 (WHEREUPON, a pause in the proceedings.)

2 BY MR. SPENCER:

3 Q Did Mr. Samuel ever talk about whether he was guilty
4 or innocent of the charges with you?

5 A He did on a couple of occasions.

6 Q Did he admit to anything -- well, let me rephrase.
7 He admitted the child was his, but he denied everything
8 else?

9 A Well, at one point.

10 Q And did he change -- did that story change later?

11 A Yes, it did.

12 Q And did he tell you he'd done all the conduct that
13 was alleged?

14 A Well, before he entered his plea, he told me that he
15 was guilty.

16 MR. SPENCER: Beg the Court's indulgence.

17 (WHEREUPON, a pause in the proceedings.)

18 BY MR. SPENCER:

19 Q Now, Mr. Samuel gave a statement to police; didn't
20 he?

21 A Yes.

22 Q And you actually had a Jackson vs. Denno hearing to
23 try and suppress that statement?

24 A I believe we did.

25 Q And the judge ruled it was admissible?

1 A Yes, I believe so.

2 Q And do you recall in the statement that he admitted
3 to the police that he had had sex with the victim four
4 times?

5 A That's what the officer testified to I believe.
6 There was no recording of that statement. It was -- but
7 that was her recollection I believe from her notes.

8 MR. SPENCER: Beg the Court's indulgence again.

9 (WHEREUPON, a pause in the proceedings.)

10 MR. SPENCER: Your Honor, I have no further
11 questions.

12 THE COURT: We'll stand at ease for about five
13 minutes.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Cross-examination, Mr. Brooker.

16 MR. BROOKER: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. BROOKER:

19 Q Mr. Floyd, when did you first meet with Mr. Samuel?

20 A I really can't tell you the date. I know Mr. Samuel
21 was always very conscientious about showing up for roll
22 call. And he was up on the 11th floor sitting out in the
23 gallery very religiously when we had general sessions
24 going on. And I spoke to him a number of times in the
25 conference room up there, but I can't tell you the date.

1 Q I think you testified I think that you spoke with him
2 about four times?

3 A It's something like that probably.

4 Q Each time y'all met roughly how many times -- how
5 long did y'all talk about this case?

6 A You know, the first time we sat down we talked about
7 it. Of course, I had notes in there from the
8 investigators like the first time he was interviewed and
9 then I had Craig Brown's note. You know, I had a lot of
10 different notes from different people. And the first time
11 we talked -- I mean, we took a good bit of time and went
12 through all of that together. So, you know, the first
13 time it was probably, you know, around an hour maybe a
14 little over an hour. I mean, I can't be certain of that,
15 but, you know, the other times, you know, I don't remember
16 an exact amount of time.

17 Q Okay. Did y'all discuss witnesses that he may
18 wanted -- witnesses that he thought that might be
19 important to his case prior to the actual trial dates?

20 A I don't remember him giving me any witnesses that he
21 wanted specifically to call for that trial. He did tell
22 me that at one point that the victim did not want the
23 charges pursued and that he understood that they had
24 contacted the solicitor's office and ask that that not
25 happen but...

1 Q Are you talking about [REDACTED] -- the one victim
2 that?

3 A I don't know.

4 Q Did y'all discuss potential defenses?

5 A Well, the defense that we discussed was that he did
6 not have a sexual relationship with her when -- while she
7 was underage that was his defense.

8 Q He always consistently told you that she was --
9 [REDACTED] the one he tried 17 at the time they first had
10 sex?

11 A Up until a certain point, yes.

12 Q Okay. What do you mean when you said up until a
13 certain point?

14 A Up until the day he decided to plead guilty.

15 Q Okay. The date that he decided to plead guilty did
16 he tell you -- he saying that you told him something
17 different about [REDACTED]'s age when the first conduct
18 started?

19 A Yes.

20 Q And what did he tell you on the day of the trial
21 about the age of [REDACTED]?

22 A He told me she was younger than 16 when he first had
23 a sexual relationship with her.

24 Q And when -- at what point, did he tell you that
25 during the plea?

1 A He told me that in that conference room right through
2 that door before he actually came out here in the
3 courtroom and pled guilty.

4 Q Is anyone else in the conference but you and him?

5 A No, sir.

6 Q Just you and him?

7 A Just me and him. Now, he had been in there with his
8 sister just then by themselves, but she was not in there
9 when I went in there with him.

10 Q I got you. Now, the Department of Social Services
11 you didn't subpoena them to come and testify; is that
12 correct?

13 A I did not.

14 Q Did you think they were not necessary in order to
15 testify and contradict any statement that DSS might make?

16 A No, I did not, not given the fact that she had
17 admitted on the stand that she had already told DSS that
18 they had not had any sexual relationship prior to her
19 being of age.

20 Q Okay. Did she also testify that the reason why she
21 said that was because Mr. Samuel was present when DSS ask
22 that question?

23 A She might have if it's in the transcript then, yeah,
24 that's what she said. If you will show it to me, I'll
25 tell you.

1 Q At least at that particular period of time, you would
2 have no knowledge with respect to what DSS -- what she
3 would have testified to and at the time she would be
4 preparing for your trial?

5 A If you're asking me if I knew for certain what she
6 was going to say about DSS before the trial, no, I didn't
7 know for certain what she was going to say. I knew there
8 had been an investigation. And in fact, our office had
9 subpoenaed records from DSS back in 2006. I knew what the
10 outcome of that investigation was. I mean, and if I had
11 needed them on my case, I certainly had time to go get
12 them. They're right over there on Jody Road.

13 Q Now, did you also talk about the defense of
14 pre-indictment delay with Mr. Samuel?

15 A No, I did not.

16 MR. SPENCER: Your Honor, I do not recall any
17 issue as to pre-indictment delay being raised in the
18 application, so I would ask to strike any testimony or
19 objected to any testimony regarding the allegation of
20 pre-indictment delay.

21 THE COURT: All right. Could that be construed
22 as ineffective assistance of counsel?

23 MR. SPENCER: Going back kind of to my prior
24 objection, that's really just a cause of action, that
25 doesn't give us any facts to put us on notice of, you

1 know, unpossibly claim something bring under ineffective
2 assistance.

3 THE COURT: I'm going to sustain the objection
4 and in addition to that there -- the South Carolina case
5 laws is full of cases where there's plenty of delay that's
6 been sustained; is that correct?

7 MR. SPENCER: Yes, Your Honor.

8 THE COURT: There is no statute of limitations?

9 MR. SPENCER: There's no statute of limitations?

10 THE COURT: There's old old cases have been
11 tried.

12 MR. SPENCER: State vs. Hazel -- not Hazel
13 State vs. Brazelle dealt with that State vs. Lee. You
14 have to -- it's a very stringent standard actually be
15 looking nationally there's been because of a requirement
16 of showing substantial actual prejudice, there's very very
17 few cases where they found pre-indictment delay that the
18 constitution warranting that.

19 THE COURT: All right. Well, in view of that in
20 view of the state of law and the facts of this case and
21 the fact that it's not set forth in the application. I
22 will sustain the objection. You can move forward.

23 MR. BROOKER: If I can just add, Your Honor, is
24 that in State vs. Lee the only reason we mention it is
25 because in State vs. Lee, which is almost a case that's

1 identical to this one, I think a South Carolina case
2 pretrial pre-indictment delay defense was actually found
3 and reviewed by the Supreme Court. I think if I can
4 remember correctly that it was upheld. But I think it was
5 found in that State vs. Lee, if I can remember correctly.

6 THE COURT: Mr. Spencer.

7 MR. SPENCER: In that case, basically for
8 reasons rely unknown the State didn't prosecute back, I
9 think, it was a 12 year delay roughly. And in this case,
10 she denied it that's why it was unfounded and they came
11 back later and got new information, so that's what
12 distinguishes this very readily from State vs. Lee.

13 THE COURT: All right. Very good. Your
14 objection is noted. However, I'm going to sustain the
15 objection, but your position is noted.

16 MR. BROOKER: Thank you, Your Honor.

17 BY MR. BROOKER:

18 Q Okay. As part of your preparation, did y'all talk
19 about any other defense?

20 A No.

21 Q Did y'all talk about the issue with respect to the
22 indictment and part -- any defect in the indictment?

23 A No.

24 Q Okay. As a part pre-trial preparation, why don't you
25 just tell me in your own words what did y'all do as part

1 of pretrial preparation with the defendant?

2 A What did ---

3 Q What did you do as a part of your pretrial
4 preparation for the defendant's trial?

5 A Okay. Well, there were some statements in the file
6 that I reviewed. I believe, there was a good bit of
7 material notes from the investigator at the time who, I
8 believe, was Mr. Frank white. Craig Brown notes. Your
9 know, I review statements in the file and the discovery.
10 And, of course, I mean, I spoke with Mr. Samuel and that's
11 what I did.

12 Q At the time of the plea had Mr. Samuel I think told
13 you or tell you prior to pleaing, I think, he testified I
14 think previously on five occasions that he stated in open
15 court that he was not guilty of the offense that that
16 event took place?

17 A That did not happen.

18 Q Now, did you additionally discuss the elements of
19 criminal sexual conduct second degree with a minor with
20 Mr. Samuel the evidence that had to be proven.

21 A I believe we went over that if he ask me specifically
22 to go over that with him, I would have. I mean, I don't
23 remember if he ask me to do that or not when I talk to
24 him. But if he would have ask me, I would have.

25 Q Do you know whether or not the specific elements or

1 do you remember whether or not the specific elements was
2 covered in the before colloquy before the judge with
3 respect to one of the specific elements that had to be
4 satisfied in order to prove criminal sexual conduct second
5 degree with a minor?

6 A You know, I really don't remember if Judge Russo
7 covered each one of those or not. I do recall that he
8 told him what specific count that he was pleading to. But
9 I don't remember if he specifically went over each element
10 of that count with him or not.

11 Q Would you agree that it would be important at least
12 for his decision to decide whether or not he would have
13 plead guilty to a particular count that would be important
14 for him to know the actual elements of that account in
15 order to make that assessment?

16 A Certainly, if he will ask what the elements were he
17 would need to know absolutely. And the factual scenario
18 that he gave to me before he plead guilty indicated to me
19 that he met the elements.

20 Q Now ---

21 THE COURT: Let me just ask, Mr. Brooker, so we
22 can expedite this a little bit. I think probably the
23 State did in fact go over the facts that were being
24 alleged. And I'm absolutely certain that Judge Russo and
25 I think the record reflects ask him if those facts were

1 true; isn't it?

2 MR. BROOKER: That's correct.

3 THE COURT: We can move on.

4 BY MR. BROOKER:

5 Q Now, Mr. Samuel I think testified that as he was
6 leaving the courtroom that the victim in this case
7 [REDACTED] think made a statement in open court or yelled
8 in court that he had not done those things and was
9 actually innocent of those things and that she yelled that
10 out in open court. Did that event took place?

11 A If she did that, I was not in the courtroom when she
12 did it. I didn't hear her do it. And I never heard
13 anyone in the courtroom telling me that she had done it.

14 MR. BROOKER: You indulge me for just a second,
15 Your Honor?

16 (WHEREUPON, a pause in the proceedings.)

17 MR. BROOKER: I will be finish in less than a
18 minute, Your Honor.

19 BY MR. BROOKER:

20 Q After the plea was over, did Mr. Samuel indicate to
21 you that he wanted to appeal the plea?

22 A No, he didn't.

23 Q Did you ask him whether or not he wanted to appeal
24 the plea?

25 A When we were in the conference room and he indicated

1 to me that he wanted to plea initially and when I had
2 conversation with him about whether or not it would be any
3 benefit to him to plea at that point, one of the things I
4 specifically told him was, you know, we can go ahead with
5 the trial. You know, win or lose. I mean, if you win,
6 you know, obviously you walk out the door. If you lose,
7 you may have appellate grounds, but if you plead, you're
8 certainly not likely to have anything to appeal if you
9 plead guilty. And I did have that conversation with him.
10 And his words to me were basically you not going to hear
11 anything more out of me about this.

12 Q So he never ask for ---

13 A He never ask me to appeal.

14 Q One more thing and, of course, this is a question
15 that he just ask me to ask you and we should be finished.
16 I know you already discussed Jackson vs. Denno. I think
17 you said that there was a Jackson vs. Denno hearing that
18 took place in reference to some sort of statement; is that
19 correct?

20 A That's correct.

21 Q And was that the statement -- was that a verbal
22 statement by the officer?

23 A I believe that's correct. I don't believe that
24 statement was on tape.

25 Q Was there a written statement also on a legal pad or

1 something like that that had his signature on it that he
2 contested or denied that it was his signature?

3 A I don't remember that. I don't.

4 Q So was there any hearing in reference to that?

5 A No, there was not.

6 MR. BROOKER: I don't have any further
7 questions, Your Honor.

8 THE COURT: Any redirect examination?

9 MR. SPENCER: Briefly.

10 REDIRECT EXAMINATION

11 BY MR. SPENCER:

12 Q I think the question about having a hearing on the
13 DNA evidence was the fact that Mr. Samuel is the father of
14 the child the contested fact?

15 A No.

16 MR. SPENCER: Beg the Court's indulgence. I
17 think that's it.

18 (WHEREUPON, a pause in the proceedings.)

19 THE COURT: Let me just ask you an academic
20 question. With regard to any trial issues, aren't those
21 really kind of obviated by the plea?

22 MR. SPENCER: I would argue Wexle vs. State.
23 You waive your defenses.

24 THE COURT: Very good.

25 MR. BROOKER: The only reason why we waiving,

1 Your Honor, is I think it is -- it's his contention is
2 that the lack of preparation is part of the coercion lack
3 of -- I think that's what his contention was.

4 THE COURT: Very good. All right.

5 MR. SPENCER: Your Honor, I apologize I was just
6 going to say I have no further questions.

7 THE COURT: Very good. You may step down,
8 Mr. Floyd. You free to leave.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Anything further with regard to this
12 case?

13 MR. SPENCER: No, that would be the State's
14 case, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. BROOKER: None, Your Honor.

17 THE COURT: Mr. Samuel, I'm going to take an
18 opportunity to review all of the -- this packet. I'm
19 going to review the transcript and go over my notes. It's
20 a very important decision. I'm going to take an
21 opportunity to review that and I will make a decision here
22 shortly and your lawyer will be in touch with you with
23 regard to my ruling and the order. Good luck to you.

24 MR. SAMUEL: Thank you, sir.

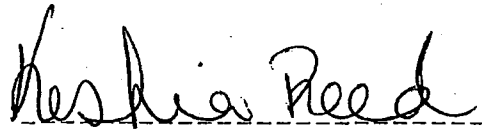
25 END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 55, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Florence
County, South Carolina, on the 9th day of September, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 9th day
of June 2012.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Joshua Samuel, SCDC No. 096996,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) TWELFTH JUDICIAL CIRCUIT

) 2009-CP-21-40

)

)

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ORDER

FILED
2012 JAN -5 AM 11:24
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief

filed January 9, 2009. The State made its return on April 22, 2009. An evidentiary hearing was convened at the Florence County courthouse on September 9, 2011. Applicant was present and represented by Thurmond Brooker, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. His plea and trial counsel, Scott P. Floyd, Esquire, also testified. This Court also had before it the transcript of the trial and guilty plea proceedings, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application, and the State's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2006 term of the Florence County Grand Jury for two counts of criminal sexual conduct, second degree; two counts of lewd act on a minor; and one

count of criminal sexual conduct, third degree. (2006-GS-21-920). He was represented by Scott Floyd, Esquire. On January 29, 2008, after about a day and a half of trial, Applicant pled guilty to one count of criminal sexual conduct, second degree. The Honorable Thomas A. Russo sentenced the Applicant to fifteen years imprisonment. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

Applicant alleges that his guilty plea was involuntary due to his counsel's lack of preparation and because he pled guilty under coercion and duress.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80

L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). 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); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) (citations and internal quotations omitted).

Applicant alleges that his counsel did not meet with him and failed to adequately prepare for trial. In contrast, counsel testified he was prepared for trial and would have moved for a continuance if he was not prepared. Counsel further testified that he met with Applicant several times and discussed trial strategy. This Court finds counsel's testimony credible and gives it great weight. In contrast, this Court finds Applicant's not believable. I specifically find counsel met with Applicant on several occasions, and conducted an exhaustive review of discovery, statements, and the DSS files. The transcript of the guilty plea proceeding clearly establishes that Applicant understood the elements of the offense, potential penalties, and the ramifications of Applicant's guilty plea. Further, the transcript indicates that Applicant was satisfied with counsel's representation. Applicant acknowledged his guilt during the guilty plea proceedings. Further, counsel testified that Applicant acknowledged his guilt prior to the plea.

As to Applicant's allegations that he was coerced into pleading guilty, both the evidence at the PCR hearing and the guilty plea transcript establish Applicant was not coerced. Applicant's trial was under way when Applicant decided to plead guilty. Counsel testified that it was Applicant's decision to plead guilty. Indeed, it was at Applicant's insistence that he discontinue his jury trial and plead guilty. At the PCR hearing, Applicant admitted on cross-examination that he pled guilty in hopes of avoiding harsher punishment. This Court notes that the plea court engaged in extensive colloquy to ensure that Applicant was pleading guilty because he was guilty of the charges, which culminated with the Court addressing Applicant as follows:

And I don't mean to take this as long as it's taking, but I do want to make sure that I'm not accepting a plea from a young man or gentleman who is – who is just pleading to

get it over with. I want to make sure that the plea that I'm accepting is from a man who has committed the crime and is sorry for it and is now before the Court owning up to it, and you know. That's what I'm hoping that is going on here. Am I correct? Is that what we have here?

Tr. p. 24, lines 14-22. Applicant responded affirmatively to the plea court's question.

This Court finds Applicant's claims without merit and denies the PCR application.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

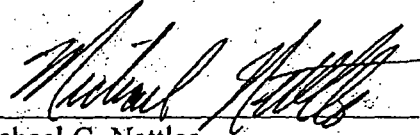
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (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), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this day of Jan 4, 2012



Michael G. Nettles
Presiding Judge
12th Judicial Circuit

Florence, South Carolina

FID

Robinson

PROS:

PSP

D/O:

02-24-1980-02-23-1985

01-01-1987-07-24-1991

ARREST WARRANT NO.

I303856 (1); I303858 (2); I303857 (3);

I303859 (4); I303860 (5).

ACTION OF GRAND JURY

TRUE BILL



Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

The State of South Carolina,

County of FLORENCE

PSP

COURT OF GENERAL SESSIONS

JUNE

TERM

2006

THE STATE

vs.

JOSHUA SAMUEL, JR.

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR
(SECOND DEGREE) (TWO COUNTS),
LEWD ACT ON A MINOR (TWO COUNTS)
AND CRIMINAL SEXUAL CONDUCT
(THIRD DEGREE)

FILED A TRUE COPY
JUL 13 2006
COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

CRIMINAL SEXUAL CONDUCT WITH MINOR
 (SECOND DEGREE) (TWO COUNTS), LEWD ACT ON
 MINOR (TWO COUNTS) AND CRIMINAL SEXUAL
 CONDUCT (THIRD DEGREE)

At a Court of General Sessions, convened on JUNE 8, 2006, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH MINOR (SECOND DEGREE)

That JOSHUA SAMUEL, JR. did in FLORENCE County on or between January 01, 1987 through November 24, 1989, violate Section 16-03-0655(3) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully commit, or attempt to commit, a sexual battery in and upon one _____, a child who is at least fourteen years of age but who is less than sixteen years of age, to wit: penetrated the vagina of _____, date of birth _____, with his fingers and penis and JOSHUA SAMUEL, JR. was in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the said _____ y.

COUNT TWO - LEWD ACT ON A MINOR

That JOSHUA SAMUEL, JR. did in FLORENCE County on or between January 01, 1987 through November 24, 1989, violate Section 16-15-0140 of the Code of Laws of South Carolina (1976), as amended, in that he who is a person over the age of fourteen years, did wilfully and lewdly commit, or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to-wit: penetrated the vagina of _____, date of birth _____ with his fingers and penis and also ejaculated in front of said minor with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of himself.

COUNT THREE - CRIMINAL SEXUAL CONDUCT (THIRD DEGREE)

That JOSHUA SAMUEL, JR. did in FLORENCE County on or between November 25, 1989 through July 24, 1991, violate Section 16-03-0654 of the Code of Laws of South Carolina (1976), as amended, in that he did commit, or attempt to commit, a sexual battery in and upon _____ by using force and/or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or by knowing or having reason to know that the said _____ y is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

CERTIFIED: A TRUE COPY

Carrie Red Spain
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH MINOR (SECOND DEGREE) (TWO COUNTS), LEWD ACT ON A MINOR (TWO COUNTS) AND CRIMINAL SEXUAL CONDUCT (THIRD DEGREE) WITH THE AFORESAID NAME(S) OF JOSHUA SAMUEL, JR. SHOWN THEREON:

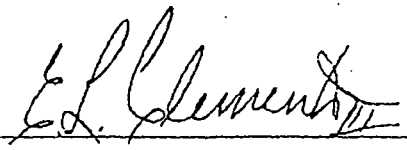
COUNT FOUR - CRIMINAL SEXUAL CONDUCT WITH A MINOR

That JOSHUA SAMUEL, JR. did in FLORENCE County on or between February 24, 1980 through February 23, 1985, violate Section 16-03-0655(B) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully commit, or attempt to commit, a sexual battery in and upon one _____ on a child who is fourteen years of age or less but who is at least eleven years of age, to-wit: penetrated the vagina of _____, date of birth _____, with his fingers and penis.

COUNT FIVE - LEWD ACT ON A MINOR

That JOSHUA SAMUEL, JR. did in FLORENCE County on or between February 24, 1980 through February 23, 1985, violate Section 16-15-0140 of the Code of Laws of South Carolina (1976), as amended, in that he who is a person over the age of fourteen years, did willfully and lewdly commit, or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to-wit: penetrated the vagina of _____ with his fingers and penis with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of himself.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
 STATE VS.
Joshua Samuel
 AKA _____
 Race: P Sex: M Age: _____
 DOB: _____ SSN: _____
 Address _____
 City, State, Zip: Florence, SC
 DL# _____ SID# _____

INDICTMENT/CASE#: OGS-21-920
 A/W#: 1303856
 Date of Offense: 2/24/80 - 7/24/91
 S.C. Code §: 16-3-655 (C)
 CDR Code #: 0397

SENTENCE SHEET

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

TO: Ch 1 CSC w/ minor and

in violation of § 16-3-655 (C) of the S.C. Code of Laws, bearing CDR Code # 0397

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

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

ATTEST:

[Signature]
 Solicitor

[Signature]
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ 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 _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, w
 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

PTUP _____

days/hours Public Service Employment

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

Payment Terms: _____

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

☐ set by SCDPPPS _____

May serve W/E beginning _____

Recipient: _____
 *Fine: \$ _____
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §35.13 (Public Def/Prob) \$500 \$ _____
 §73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
 §33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 §50-21-114(BUI Breath Test Fee) \$50 \$ _____
 §58-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fun

Other: _____

☐ Appointed PD or appointed other counsel. §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: _____

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

WITH AN APPENDIX ON THE REFORMATION OF CONSTITUTIONS

COORR SUMMARY REPORT DATED 01/29/09

CONFIDENTIAL - FBI # 13143274 DTG 3000235494 P000 # 004294

[illegible]

DECLASSIFICATION : 14-05 0000 1997

REF ID: A570259 R

REF ID: A66087

NAME.....; 2 SEX.....: 4

DEAR ENCLAVE SENT... : 15 199 0 403 0 075

9901 MAY0117 DATE: 01/28/2017

CENTRAL CONTROLLING : 401

PRNL PAROLE DATE: 10/27/2011

SECURITY MATTER

FIVE YEARS: NO INCREMENT FOR

FOUO PGM.: 40 HOUR ETHIC PROGRAM

INTEREST PROGRAM...: 00 CURRENT PROGRAM

FILE LEVEL : 0 SEC LEVEL :

PAGE 02 PAGE OF 0008...

ASSIGNMENT... GENERAL DETAIL IN

1975/11/18 11:20:00

24 NO PREVIOUS NUMBERS 24

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/VU CATEGR
CRIM SEX COND. W/MINOR(2N	15 0 0 FLORENCE	1/28/20 B N 4
	SENTENCE	SENTENCE

PREVIOUS SCDC OFFENSES (COMPLETE)	YRS	MOS	DYS	COUNTY	START	U/NU	CATED:
UNAUTHORIZED USE-VEHICLE	0	6	0	HARION	4/ 5/1979	U	2

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

RETAINERS (HOLD DANGER NOT (FY):

CODE NOT IN FARE

7:47

120

PAGE: 3

ESCAPES:

400) ESCAPE HISTORY:

CONTINUAL CHARGES:

AND CRIMINAL CHARGES HISTORY:

ASSAILTIVE DISCIPLINARIES:

AND ASSAULTIVE DISCIPLINARY HISTORY:

NON-ASSAULTIVE DISCIPLINARIES:

AND NON-ASSAULTIVE DISCIPLINARY HISTORY:

HISTORY OF MOVEMENTS:

07/ 5/ 8	EVANS	INCARCERATED	ADMINISTRATIVE
1/31/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION
8/ 1/79	UNK	RELEASE	EXPIRATION OF SENTENCE
4/29/79	BOCC FACILITY-U	INCARCERATED	NEW ADMISSION
6/29/79	HARION CO PN DE	INCARCERATED	ADMINISTRATIVE

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	END
ADMINISTRATIVE	09/30/59	1/31/ 6	INSUFF. FUNDING	END

HISTORY OF EARNED EDUCATION CREDITS:

FEC	START DATE	END DATE	TERMINATION REASON
0680127114			

DATE: 11/29/1988 BY: J. J. J. J. J.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/30/09
OMCOMITA RELEASE DATE SCREEN C040481
SCDC# > 096996 LOC: EVANS
SAMUEL, JOSUHA - SCDC CLASSIFICATION...: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: PENDING
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ...: N
015-00-000 CURRENT SENT START DATE: 01/28/2008
PROJECTED COMPLETION DATES
MAXOUT DATE: 01/28/2017 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
YOA SIX YEAR DATE: / / CURRENT BEC ..: NOT CURRENTLY EARNING BEC
INITIAL PAROLE DATE: 10/27/2011 NEXT PAROLE HEARING DATE: 10/27/2011

TOTAL GT DAYS EARNED: 000240 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000362

PFKEYS: 5: HISTORY OF DATE CHANGES

4-®

1 Sess-1 167.7.50.33

SCDC1603

3/11

Sept. 20, 2011

RECEIVED
9/20/11

Joshua Samuel #096996
E.C.I. F5D235
610 Hwy. 9 West
Bennettsville, S.C. 29512

Brooker Law Firm
Thurmond Brooker, Esq.
P.O. Box 1450
Florence, S.C. 29503

IN RE: PCR/59(e) and Notice of Appeal

Mr. Brooker,

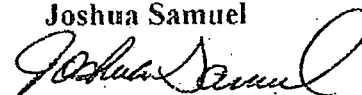
I have received your letter concerning the Judge's decision, denying my application for PCR. First, let me commend you on a job well done. I greatly appreciate the hard work that you put forth in this case, you have certainly done your part. I cannot thank you enough.

There are two (2) things I would like to ask of you - when you receive the Judge's formal order, please send me a copy and if necessary, prepare a 59(e) and (2). I do want to file a Notice of Appeal in this matter.

Again, I would like to thank you for your time and diligent effort in this matter.

Respectfully,

Joshua Samuel



State of South Carolina
County of Florence

In the Court of Common Pleas
Twelfth Judicial Circuit

Joshua Samuel, SCDC 96996
(Applicant)

CA# 2009-CP-21-40

vs.

PROOF OF SERVICE

State of South Carolina
(Respondent)

I, Joshua Samuel, applicant, declare under penalty of perjury that the following is true and correct, see 28 U.S.C.A. ss 1746.

I affirm that I have on this day forwarded & filed (1) original of my 59(E), Motion to Alter, Amend the Judgement. Cover letter and this Proof of Service was deposited in the U.S. Mail at Evans Corr. Inst. Applicant claims protection of Houston vs. Lack, 108 S.Ct., 2379 (1988) and all it's progeny.

The following party has been served at the address below:

La Nella DuRant
SCCID
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

RECEIVED
AUG 7 2012
SC OFFICE OF
APPELLATE DEFENSE

Joshua Samuel



Sworn to and Subscribed before me

This 3 day of August, 2012

Notary Pamela D. Riggins

Expires, August 18, 2013

Joshua Samuel, SCDC # 96996
Evans C.I. F-5-D-235
610 Hwy '9' West
Bennetttsville, SC 29512-2130

JULY, 31 2012.

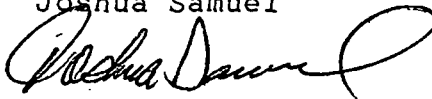
RE: COPY OF 59 (e)

I am writing concerning the recent 59 (e) concerning a denial of PCR in Florence County (2009-CP-21-40). I am asking for a copy of the 59 (e) that I file sent your office. I have sent copies to the South Carolina Attorney General's Office, Supreme Court of South Carolina, my Lawyer, and , The Clerk of Court for Florence County, i.e! Honorable Michael G. Nettles, Judge. I am humble asking for you to send a copy of said 59 (e). I want to thank you for your thoughtful consideration in this matter.

With Kind Regards...I am.

Sincerely, Yours,

Joshua Samuel



CC: A/W
M/G/N
S/C
FILE

State Of South Carolina	)	IN THE COURT OF COMMON PLEAS
County Of Florence	)	TWELFTH JUDICIAL CIRCUIT
Joshua Samuel, SCDC No. 096996,	)	C/A No.: 2009-CP-21-40
Applicant,	)	
vs.	)	P R O O F O F S E R V I C E
State Of South Carolina,	)	
Respondent.	)	

I, Joshua Samuel, SCDC# 096996, Applicant; declare under the penalty of perjury that the following is true and correct. See 28 U.S.C.A. § 1746.

I, Joshua Samuel, Applicant; affirm that I have this day forwarded & filed one (1) original of Applicant's 59 (E) Motion to Alter or Amend the Judgment, Cover Letter and this Proof of Service by depositing the same in the U.S. Mail (By and through the Evans Correctional Institution's - LEGAL MAIL SYSTEM). Applicant claims the protection of Houston v. Lack, 108 S.Ct. 2379 (1988) and all it's progeny.

The following Party has been served at the below address:

- 1) Honorable Michael G. Nettles, Judge
c/o Connie R. Bell
Clerk of Court
City-County Complex
180 N. Irby St., MSC-E
Florence, S.C. 29501

SWORN to and SUBSCRIBED before me

This 13 day of January, 2012

Notary: Pamela Suggs McDowell

Expires: August 18, 2018

131 Joshua Samuel
Joshua Samuel

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FILED
CLERK OF COURT
JUDICIAL CIRCUIT
FLORENCE, S.C.

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State Of South Carolina
County Of Florence

Joshua Samuel, SCDC No. 096996,
Applicant,

vs.

State Of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C/A No.: 2009-CP-21140

APPLICANT'S, 59(E) MOTION
TO ALTER OR AMEND THE
JUDGMENT.

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COMMON PLEAS COURT
FLORENCE COUNTY, S.C.

FILED

The above named Applicant comes now before this Honorable Court as pursuant to Rule 59(e) of S.C.R.Civ.P. for the purpose of altering or amending the judgment as it relates to the Order of Dismissal in the above mentioned case. In support of this Motion and the importance of it being granted, the Applicant would respectfully show this Court the following;

Applicant received a copy of the PCR Court's Order of Dismissal in the above captioned case signed by the Honorable Judge Michael G. Nettles, dated January 4, 2012, filed with the Clerk's Office on January 6, 2012; on January 12, 2012. Applicant received his copy of the Order directly from his attorney Thurmond Brooker by way of United States Mail.

However, Applicant make(s) known here within this Motion that the Order is said to consist of six (6) pages but page four (4) of the Order is entirely missing. Applicant urges the missing page of the Order detrimentally crippled his right under Pruitt v. State, 423 S.E.2d. 127, to review the Final Order and rectify any error's within the Final Order.

Furthermore, Applicant acknowledges that the Order of Dismissal fails as pursuant to S.C. Code Of Law Statute § 17-27-80 to state a specific finding of fact and conclusion of law relating to all the issues Applicant presented at the

Hearing.

Applicant's Order of Dismissal fails to state a specific finding of fact pertaining in relation to the following issues Applicant brought before the Court at his hearing. A.) Applicant requested a continuance of his hearing due to the fact [REDACTED] [REDACTED] the actual victim in Applicant's case requested to be present at his Hearing but was never Supoena and or informed by Applicant's counsel as to the date and time of the Hearing.

Further, Applicant requested DSS persons responsible for conducting the investigation of his case present at the Hearing but was denied the right to have these witnesses present at his Hearing. B.) The Order fails to state a specific finding of fact on Applicant's Pre-Indictment delay issue, C.) Applicant's ex post facto issue, D.) Applicant's Defective Indictment issue, E.) Applicant's DNA Test / Chain of Custody issue.

Wherefore, Applicant urges as pursuant to Garner v. State, 636 S.E.2d. 860(S.C.2006), there can be no Final Order unless and until PCR Court makes a specific finding of fact on all issues raised by Applicant at his Hearing. Thus, in Applicant's case there is no Final Order as mandated by the South Carolina Supreme Court in Garner, supra. Let the record so reflect the same.

Respectfully Submitted,

/s/ 
Joshua Samuel, SCDC #096996

cc: file

On July 2, 2005 Appellant (Joshua Samuel) was arrested by Florence City Police Department on charges of three (3) counts of pointing and presenting a firearm, a charge which was fabricated by the Appellant's Sister-In-Law (Pricilla Zimmermann) a County Deputy Sheriff for Florence County. A charge that was so constructed and bogus; there were no Warrants and the evidence that was supposedly seized on that day, were never taken to the Police Station on the July 2, 2005 Police Report. The Appellant's Sister-In-Law was a start of many acts of conflict of interest involved in this case which should have been addressed before Trial by Appellant's counsel but was not. According to the (ABA) American Bar Association a paid or a Public Defender has an obligation to give his all in the fight for a defendant's rights, and also he/she has an ethical obligation to advise the Court promptly when a conflict of interest arises during the course of the Trial, or when a conflict is discovered. State v. Munn, 574 F.3d. 1147. Appellant also asserts counsel never filed a Brady Motion, failed to object to bureen shifting instruction on elements of the alleged crime, that alone constitutes ineffective assistance. The Appellant's Warrants were even signed by someone other than himself, which should have rendered the Plea on the Indictment invalid. Summerall v. State, 294 S.E.2d. 344(1982) §17-23-130 & 140. Appellant should have been advised of Double Jeopardy claim and make conscious and calculated decisions to waive it and plead guilty. Appellant should also have been advised of any lesser included offenses which the

Jury would be instructed on if he went to Trial. Kerrigan v. State, 304 S.C. 561, 406 S.E.2d. 160 (1991). Appellant asserts that counsel's failure to object at Trial to sentencing is a violation of Double Jeopardy and waives objection in Post Conviction Relief unless it is offered to support a claim of ineffective representation. Hyman v. State, 278 S.C. 50, 299 S.E.3d. 330. USCA Constitution Amend. 6 Code 1976 §17-27-10 to §17-27-120; Wood v. Georgia, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d. 220 (1981). Appellant was True Billed on October 2005 for the pointing and presenting of a firearm. The Appellant was visited at the Detention Center by an Investigator by the name of Mrs. M. Robinson, an investigator for the Florence Police Department. On that day Appellant was questioned by Mrs. Robinson without being properly versed on his Miranda Rights. Then approximately later Mrs. Robinson came back to the Detention Center and took the Appellant's DNA without a Court Order or any kind of Warrant. Appellant asserts that his Due Process and Equal Protection of the Law were violated for the pre-indictment delay of over fifteenth (15) years in the Indictment of 1980 to 1991 which was served in June 2006. State v. Lee, 602 S.E.2d. 113, Weaver v. Gramham, 101 S.Ct. 960, 67 L.Ed.2d. 17(1981), Stoner v. Graddick, 751 F.3d. 1535 (1985), U.S. v. Burns, 990 F.2d. 1426,1435 (4thCir.), Miller v. Florida 107 S.Ct. 2446, U.S. v. Marion, 404 U.S. 307, 92 S.Ct. 455, U.S. v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044, Elmore v. State, 409 S.E.2d. 397, Plyler v. Moore, 129 F.3d. 728,734 (4thCir.1997) are Ex Post Facto violations. Appellant asserts

that he was illegally incarcerated from the very start. Appellant also asserts that even on (ROA Tr.p.21 ln. 17-23) Mrs. Robinson admitted herself that it was seven (7) days later when CSC was first reported; so then how could it be on the Police Report on July 2, 2005 with the Pointing and Presenting a Firearm in which the victim also state at (ROA Tr.p.98 ln. 1-25 and Tr.p.99 ln. 6-7) that she never mentioned anything about the CSC until days later. Appellant filed for a Speedy Trial on March 2006, which was never acknowledged. Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d. 101(1972), Pitts v. N.C., 395 F.2d. 182,185 (4thCir.1968), U.S. v. Bracy, 67 F.3d. 1421,1427 (9thCir.).

Appellant was taken from his Jail Cell to the Detention Infirmary on a date that was not even clear by Mrs. Robinson herself, as stated before. DNA was taken illegally by the Investigator Mrs. Robinson herself in which she was not in compliance with §23-3-630, §23-3-640, §23-3-650, Roe v. Doe, 417 S.E.2d. 641, §15-3-555(A)(B) and Title §17-13-140 which is also a violation of Chain of Custody Procedures.

Appellant states that on (ROA Tr.p.22 ln. 19-21) speaks about the Miranda Rights had been given. Appellant asserts that he told Mrs. Robinson that he did not want to talk to her without a lawyer present, so then Appellant gave Mrs. Robinson a number to the Law Firm of Chambers Johnson of Charleston, S.C. with his assistant Ms. Hunt, lawyers that he had on a Tort Claim. Mrs. Robinson ignored Appellant's request and proceeded with the questioning. Her actions were done in the presence of

the Infirmary Nurses and Ofc. Floyd, the officer that took the Appellant from the cell to the Infirmary, which was never mentioned in Court. The Eighth (8th) Amendment states that Prison Officials also have a duty to protect inmates from violent treatment by other guards and Police Officials in tumultuous situations. Ware v. Jackson County, 150 F.3d. 873,884 (1998), U.S. v. Russell, 685 F.Supp. 1245. Appellant's counsel should have objected to the DNA Evidence because Mrs. Robinson was not a Certified Phlebotomist or any other Professional that are mentioned in §23-3-630. The actual Phlebotomist for the Detention Center was a nurse whose name was Mrs. Nagy, which she qualified on (ROA Tr.p.141 ln.5) as an Expert but yet testified (ROA Tr.p.141-142) about talking Mrs. Robinson through during the test step by step, an act she herself was not qualified to give someone else permission to take DNA for Court use. Appellant also asserts that he was entitled to an Evidentiary Hearing to determine whether he was prejudiced before and after Trial. Counsel was constitutionally ineffective for not investigating and/or failed to secure "DSS" testimony, where in the alleged victim stated on Direct "when asked why she told "DSS" that nothing happened back in 1991, she stated that she was afraid because "DSS" asked her in front of him (the defendant). Had DSS been subpoenaed to testify, they would have refuted the victim's assertion of their practice in questioning alleged victims and could have seriously questioned her credibility, for purposes of False Swearing Statute. A line exist between cases of Impeachment which can be any diminution

of the credibility of a witness and knowing and willfully False Swearing, which when material is perjury and the only testimony which is willfully and knowingly false. O.C.G.A. §24-9-850.

Secondly "DSS" found the allegations to be "unfounded" back in 1991 according to the State §20-7-650 S.C. Code Ann. and §63-7-930 to §63-7-1430. The States case was not properly put to the test because counsel's failure to subpoena said witness, which would have also been qualified as an Expert Witness and would have brought the State Expert Witness findings into question. Appellant plead guilty when during Trial, counsel failed to subpoena "DSS" for his defense (ROA Tr.p.69 ln. 1-12).

In effect at the time of the alleged offenses, the State retroactively applied §16-3-655(2) to him. The Assistant Attorney General said at the PCR Hearing that the charges were not retroactively applied, but how can they not be when on the Indictment it says date of offense 1980 to 1991. The State moved to qualify "Mrs. Cook" as an Expert Witness but they never stipulated in what field. Martinez v. State, 304 S.C. 39, 403 S.E.2d. 113(1991). This was improper because counsel should have (A) raised questions as to her qualifications and (B) objected as to in what field she was being qualified as an "Expert Witness" in which, when an Expert Witness testifies, they must keep their answers to a Medical Degree of certainty to the field they were qualified in (ROA Tr.p.136 ln. 13-17) counsel was also constitutionally ineffective for not objection and/or not moving the Court for a Lyle Hearing in that the

Solicitor mentioned to the Jury about five (5) charges, "The State was in effect letting the Jury know that there were other charges, a Lyle Hearing would have prevented the State from making such prejudicial comments, such comments permeated the province of the Jury". A Lyle Hearing would have first turned on Substantial Evidence Rule and then it substantiated the Court would have weighted probative vs. prejudicial standard of introducing "Prior Bad Acts". State v. McCellan, 323 S.E.2d. 772, not the subject of conviction. Lyle, State v. Lyle, 118 S.E.2d. 323 (S.C.1997) evidence of other crimes must be put to a rather severe test before admission. The Acid Test of admissibility is the logical relevancy of the crimes. The Trial Judge must clearly perceive the connection between the other crimes and the crimes charged, Lyle Supra. Counsel was again constitutional ineffective in not filing the "Notice of Appeal" when a Criminal Defendant ask counsel to Appeal and under this circumstance a reasonable defendant would want to Appeal. Roe v. Flores-Ortega, 528 U.S. 470, 478-80 (2000). Appellant asserts that counsel never talked to him until the start of Trial and still there were no strategy or any defenses at all. Trial counsel's failure to investigate and to adequately conduct pretrial preparations was not strategic and requires relief. Id. Turner v. Ducan, 158 F.3d. 449 (9thCir.1998). Furthermore counsel necessarily should have challenged the witnesses particularly the nurse's testimony of the Florence Detention Center as unreliable and should have called an Expert in the field of Medicine rather than let the Jury receive testimony

that was no Qualified Medical Evidence of an Expert. The failures described, show counsel's representation left Appellant in a situation that appeared bleak and likely would have resulted in a conviction as counsel was not properly prepared as described herein. Appellant did not know anything about Trial Proceedings, Rules of Evidence, calling Witnesses or the Criminal Process. When Appellant plead guilty, he did so under significant duress, after being brought to Trial in which he testified under Oath that he was innocent, because counsel failed to represent him and provide reasonably effective assistance, in that counsel used scare tactics and truthless threats to induce Appellant to plead guilty unknowingly and unintelligently. Appellant has presented a claim of ineffective assistance of counsel that rises to the level of a violation of Appellant's Sixth Amendment Right to the effective assistance of counsel as guaranteed by the Constitution of the U.S. of America and the S.C. Constitution Act. State v. Gunn, 313 S.C. 124,130, 437 S.E.2d. 75,78 (1993). Appellant asserts that the only difference in the lesser included offenses and the degrees of the crime is in the nature of the circumstances surrounding the commission of sexual battery. The Statutes for the date of offenses were different, even the age of the victims in the Statutes were different at the allege time of offense and the time of the Appellant's conviction. State v. Summers, 274 S.E.2d. 427, State v. Mathis, 340 S.E.2d. 538, State v. Outlaw, 304 S.C. 347, 404 S.E.2d. 516 (S.C.App.1991). Appellant's Parole was taken from him on 1/28/11, because of the 1/1/96 Act

"No Parole Offense" which should be a violation when the Appellant's Indictment and Sentencing Sheet clearly states date of offense 1980 to 1991, clearly before the 1996 Act. The Court was without jurisdiction to impose sentence, also there exist evidence of material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice and Parole unlawfully revoked. Appellant asserts that his CSC Indictment was defective in numerous ways, even certain elements of the Statutes were changed. Each count of an indictment must stand on it's own, but if one count incorporated paragraphs too may be considered in determining whether a count properly charges an offense. Fed.Practice Digest Key 99 CA.4 (Md.1995), also an Indictment cannot change the required elements of a Statutory Offense, Key 107.1 CA.6 (Kyl1999), U.S. v. Coward, 669 F.2d. 180,184 (4thCir.1982), U.S. v. Floresca, 38 F.3d. 706. The Appellant's Trial consist of mainly coerced lies and hearsay, at (ROA Tr.p.112 ln. 7-25), counsel (Mr. Floyd) made a Motion to Exclude Any Testimony concerning the paternity testing based on the fact that its time period is outside of the relevant time period for those matters. The Prosecutor (Mr. Parr) speaks about Counts of the Indictment of CSC Third Degree, which kept the preceedings moving forward, another violation and vindictive move to force Appellant to plead to the Second Degree Charge. The Appellant claims that he was also prejudiced by charges impermissibly joined and fundamentally unfair as in Bourgeois v. Whitley, 784 F.2d. 718.

Appellant asserts that his Guilty Plea Transcript as well as the evidence at the PCR Hearing should have been considered. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d. 360 (1984). Counsel (Mr. Floyd) failed to assert a meritorious Motion To Suppress Evidence at the Trial but did not, which makes the proceedings fundamentally unfair. Sikes v. State, 448 S.E.2d. 500, Appellant contends that the ex post facto prohibition which forbids the imposition of punishment assigned by law when the act to be punished occurred, critical to relief under the clause is not the individuals right to less punishment but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated. U.S.C.A. Art. I § 10 cl. Appellant asserts that his indictment was multiplicitious and duplicitious thereby making it defective. U.S. v. Nash, 115 F.3d. 1431, 118 S.Ct. 1054.

Appellant wish to be able to adopt the saving clause: as in Dover v. Gold Kist Inc., 314 S.C. 235, 442 S.E.2d. 598 (1994); Carter v. State, 327 S.C. 355, 362, 495 S.E.2d. 773, 777 (1998). The Appellant would have insisted on going all the way through Trial with a little help from his counsel (Mr. Floyd). Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985), Alexander v. State, 303 S.C. 248, 513 S.E.2d. 100 (1999), Cherry v. State, 386 S.E.2d. 624 (S.C.1989), Holland v. State, 322 S.C. 111, 470 S.E.2d. 378 (1996). Appellant contends that six of his given counsel's quit on him without any type of written or verbal notice, one quit in front of the Judge at the 1st PCR

Hearing (Mr. Yarbarborough) and was told by the Judge on Record to do everything that the Appellant asked of him. Appellant only request was for counsel (Mr. Yarborough) to please have his two Briefs clocked and stamped and send back to him after amending them to his PCR, but counsel still never complied with the Judges Order's. Appellant asserts that his 4th, 5th, 6th, 8th and 14th Amendment Rights were violated. SCRC Appellant Court Rules states that lawyers should be in compliance with Rules 1.1 Competence to 1.4 Communication. Lawyers should be in compliance to the Rule DR-1-102, Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), O.C.G.A. § 24-9-85(b), Davis v. State, 238 GA.App. 84,89 (7), 517 S.E.2d. 808 (1991), McCant v. State, 234 GA.App. 433,436, 506 S.E.2d. 917 (1998), Tarvestad v. State, 261 GA. 605,606, 409 S.E.2d. 513 (1991). Appellant asserts that the Court did not have subject matter jurisdiction to convict him. State v. Gentry, 363 S.C. 93, 610 S.E.2d. 494 (2005). Appellant also contends that joinder of offenses in his indictment was improper State v. Tate, 334 S.E.2d. 289, and that his Statutes should have been under the Grandfather Clause. A mere citation to the applicable statute does not give the defendant notice of the ~~n~~ature of the offense. An indictment that must rely on a Statutory Citation does not "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. See Hamling v. U.S., 418 U.S. 87,117, 94 S.Ct. 2887,2907-08, 41 L.E.2d. 590 (1974). Furthermore, a statutory citation does not ensure that the

Grand Jury has considered and found all essential elements of the offense charged. It therefore fails to satisfy the Fifth Amendment guarantee that no person be held to answer for an infamous crime unless on indictment of a Grand Jury. See Hooker, Supra, U.S. v. Pupo, 841 F.2d. 1235 (4thCir.1988).

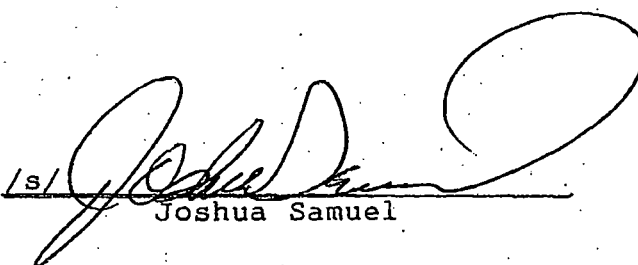
An indictment must (1) contain the elements of the offense charged and fairly inform a defendant of the charge against him, and (2) enable him to plead double jeopardy in defense of the future prosecutions for the same offense. Hamling v. U.S., 418 U.S. 87, 94 S.Ct. 2887,2907-08, 41 L.Ed.2d. 590 (1974), Russel v. U.S., 369 U.S. 749,763-64, 82 S.Ct. 1038,1046-47, 8 L.Ed.2d. 240 (1962). These principles are embodied in Federal Rules of Criminal Procedure 7(c)(1) which requires that: The Indictment....shall be a plain concise and definite written statement of the essential facts constitution the offense charged.

Appellant also asserts that there was evidence used at Trial against him that was not in his Rule 5, such as the alleged Statement of the Defendant used at Trial, all of the State's Witnesses. There were never any Medical Protocol Kit even in this case or any Medical Doctor's Examination Records period. Vernon v. Harley Mutual Casualty Company, 135 S.E.2d. 84 (1964). Applicant asserts that the joinder made the Jury more likely to convict him and that it prejudice his case a great deal. State v. Hines, 39 F.3d. 74,79 (4thCir.1994), Hines v. U.S., 516 U.S. 1156, 116 S.Ct. 1038 (1996), State v. Smith, 322 S.C. 107,109, 470 S.E.2d. 364,365 (1996), Rule 243(i),

White v. State.

Appellant asserts that he was denied a guaranteed fair piece of the apple, equal protection of the law, denied protection against double jeopardy and was never informed of the defectiveness, and the wrong statutes

In all fairness we would like the Court's in this matter to acknowledge and admit to their wrong doing and to give this Appellant the proper Relief.


/s/ Joshua Samuel

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Judge

Case No. 2009-CP-21-40

Joshua Samuel, SCDC No. 096996,

Appellant,

v.

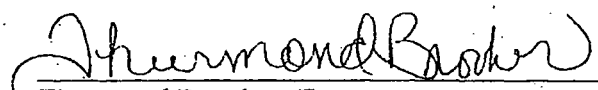
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Joshua Samuel, SCDC No. 096996, appeals from the order of the Honorable Michael G. Nettles, dated January 4, 2012. Appellant received written notice of entry of this order on January 9, 2012.

January 10, 2012



Thurmond Brooker, Esq.
P. O. Box 1450
Florence, SC 29503-1450
(843) 679-0056
Attorney for Appellant

Other Counsel of Record:
David Spencer, Esq.
South Carolina Attorney General's Office
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Columbia, SC 29211

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SCDC & CS
FLORENCE COUNTY, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Judge

Case No. 2009-CP-21-40

Joshua Samuel, SCDC No. 096996,

Appellant,

v.

State of South Carolina,

Respondent.

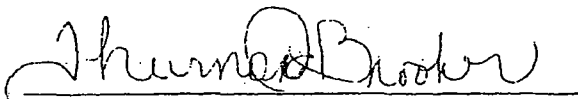
PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2012, addressed as follows:

State of South Carolina
c/o David Spencer, Esq
Office of SC Attorney General
P. O. Box 11549
Columbia, SC 29211

Honorable Connie Reel-Shearin
Florence County Clerk of Court
City-County Complex
180 N. Irby St., MSC E
Florence, SC 29501

January 10, 2012



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