

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY

The Honorable Larry B. Hyman Jr., Circuit Court Judge

Appellate Case No: 2016-001990

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S.C. SUPREME COURT

BILLY SHANE MILLER,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	Case No(s) : 2008GS4202592;
	)	2008GS4202593;
State of South Carolina,	)	2008GS4202594
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Billy Miller,	)	
	)	
Defendant.	)	

April 12-13, 2011
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, Judge.

A P P E A R A N C E S:

ABEL GRAY, Esquire
Assistant Solicitor

ANDREA PRICE, Esquire
Attorney for the Defendant

Reported by: Mary DiGirolamo
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS			
S-1	Statement	6	112
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P R O C E E D I N G S

(WHEREUPON, State's Exhibits 1 and 2 are marked for identification purposes.)

(WHEREUPON, the proceedings begin on the 12th day of April, 2011 at approximately 10:14 a.m.)

THE COURT: All right. The first matter is Billy Shane Miller.

MRS. PRICE: Yes, Your Honor. As you have heard back in chambers, there is an issue to Mr. Miller's counsel.

THE COURT: What's the issue?

MRS. PRICE: The issue is is that when Mr. Miller and Mr. Miller's sister hired Tim Ray in this matter as of yesterday.

THE COURT: Well, where is Mr. Ray?

MRS. PRICE: Well, Your Honor, Mr. Allen has gone and called Mr. Ray. He has spoken to someone, Mr. Ray's paralegal. Apparently, he's on the way to the office now.

THE COURT: No notice of appearance filed by Mr. Ray in this case?

MR. GRAY: No, sir, Your Honor.

THE COURT: Okay. Well, then he's not his lawyer.

MRS. PRICE: Thank you, Your Honor.

1 MR. GRAY: Your Honor, I believe there is
2 one matter before we start. Mr. Miller has not
3 been arraigned on the CSC 3rd charge: I
4 believe that's Indictment number 08-GS-42-2593.

5 MRS. PRICE: That's correct, Your Honor.
6 He was directly indicted for CSC 3rd in this
7 matter.

8 THE COURT: Okay. Uh, you have been
9 previously charged in Indictments 2008-2594
10 with Criminal Sexual Conduct with a minor in
11 the second degree. Uh, do I understand he's
12 already been arraigned on that charge?

13 MR. GRAY: Yes, sir.

14 MRS. PRICE: Yes, sir. He's already been
15 arraigned on the CSC 2nd and the --

16 MR. GRAY: Contributing.

17 MRS. PRICE: Yes, Your Honor.

18 THE COURT: Also, Indictment 2008-2592,
19 charged with Contributing to the Delinquency of
20 a Minor, for which he has also already been
21 arraigned. Mr. Miller, the third indictment
22 that you have pending against you is Indictment
23 2008-2593. It charges you with Criminal Sexual
24 Conduct in the third degree.

25 The State alleges in this indictment that

1 you did on or about March the 31st of 2008
2 engage in a sexual battery upon MINOR
3 They specifically allege that you had sexual
4 intercourse with her without her consent and by
5 use of force or coercion and/or you knew or had
6 reason to know that she was mentally
7 incapacitated at the time of the sexual
8 battery. If convicted of that crime, you could
9 receive a potential sentence of up to 10 years
10 in jail. You understand what the charge is?

11 MR. MILLER: Yes, sir.

12 MRS. PRICE: You need to speak up so they
13 can hear you.

14 MR. MILLER: Yes, sir.

15 THE COURT: Sir?

16 MR. MILLER: Me and my lawyer, I talked to
17 her maybe 15 minutes since I been --

18 THE COURT: Well, I'm explaining it to
19 you. I'm reading the indictment. You didn't
20 understand what I said?

21 MR. MILLER: Yes, sir.

22 THE COURT: All right. That indictment
23 charges you of Criminal Sexual Conduct with a
24 Minor or Criminal Sexual Conduct in the third
25 degree. They allege you had sexual intercourse

1 with MINOR and that you knew at the
2 time that you had that sexual intercourse,
3 which is a sexual battery, that she was
4 mentally incapacitated or that it was done
5 through force or it was done through force or
6 coercion. And if convicted of that crime, it
7 carries up to 10 years in jail. Do you
8 understand what I'm saying?

9 MR. MILLER: Yes, sir.

10 THE COURT: All right. Do you wish to
11 enter a plea of guilty or not guilty as to that
12 charge?

13 MR. MILLER: I'm not guilty.

14 THE COURT: All right. We'll enter a plea
15 of not guilty. All right. Any other matters
16 we need to address before the jury is brought
17 around?

18 MRS. PRICE: No.

19 MR. GRAY: Not at this time, Your Honor.

20 THE COURT: All right. We will need to
21 clear the jury seats there. Bring the panel
22 around please.

23 MRS. PRICE: Your Honor, may we approach?

24 THE COURT: Yes, sir.

25 (WHEREUPON, a bench conference is held off the

1 record.)

2 THE COURT: Mrs. Price, do you have a
3 witness list?

4 MRS. PRICE: Yes, sir, Your Honor.

5 (WHEREUPON, the jury enters at approximately
6 10:27 a.m.)

7 THE COURT: Good morning, Ladies and
8 Gentlemen of the jury panel. Uh, my name is
9 Derham Cole. I'm a resident judge here in the
10 7th Judicial Circuit and presiding over a term
11 of General Sessions Court, which, as you
12 probably know, is the criminal side of the
13 Circuit Court. I'll be in this courtroom this
14 week presiding over that term.

15 The first case we have here in this
16 courtroom that's going to require some of your
17 participation is the case of the State versus
18 Billy Shane Miller. Mr. Miller has been
19 charged by the State through the 7th Judicial
20 Circuit Solicitor with having committed three
21 separate and distinct crimes although they are
22 alleged to have arisen out of one particular
23 event or course of events which the State
24 alleges occurred back on March the 31st of
25 2008.

1 When a person is accused of a crime that's
2 brought into this court for disposition, it's
3 brought here by way of a document called an
4 indictment. And the indictment is simply the
5 charging paper. The indictment states the
6 charge that has been brought against the
7 person. Of course, it serves to put them on
8 notice as to what crime the State claims they
9 have committed.

10 In this particular case, the defendant, Mr.
11 Miller, has been charged with three separate
12 and distinct offenses, as I've indicated,
13 although they are alleged to have arisen out of
14 one course of the events. One indictment
15 charges the defendant with Criminal Sexual
16 Conduct with a Minor in the second degree. The
17 State alleges by way of this indictment that
18 the defendant, Billy Shane Miller, did here in
19 Spartanburg county on or about March the 31st
20 of 2008 commit the crime of Criminal Sexual
21 Conduct with a Minor in the second degree in
22 that he did commit a sexual battery upon MINOR
23 who was, at the time, less than 16
24 years of age, she was at least 14 years of age
25 and Mr. Miller was older than was she.

1 The second indictment charges Mr. Miller
2 with the crime of Criminal Sexual Conduct in
3 the third degree. The State alleges again, by
4 way of this indictment, that Mr. Miller did
5 here in Spartanburg county on or about March
6 the 31st of 2008, engage in a sexual battery
7 upon MINOR They specifically allege
8 that that sexual battery consisted of sexual
9 intercourse with the victim and that that
10 sexual battery was done without her consent by
11 the use of force or coercion or it was done by
12 the defendant who had reason to know that the
13 victim was mentally incapacitated at the time
14 of the sexual battery.
15 And the remaining indictment charges a
16 defendant with Contributing to the Delinquency
17 of a Minor. Again, the State alleges that Mr.
18 Miller did here in Spartanburg county on or
19 about March the 31st of 2008, knowingly and
20 willfully encourage, aid or cause or did an act
21 which caused MINOR a minor under the
22 age of 17 years to violate a law or an
23 ordinance or to deport herself so as to
24 willfully injure or endanger her morals or
25 health and to violate any law or ordinance and

1 to engage in any occupation which was a
2 violation of the law or to associate with
3 immoral or vicious persons or to so deport
4 herself as to willfully injure her morals or
5 health or the morals or health of others.
6 They specifically provide or allege that Mr.
7 Miller did provide MINOR with illegal
8 drugs in violation of a particular code
9 section.

10 So those are the allegations. Those are
11 the charges that have been made by the State
12 against the defendant. Now, as to those
13 charges and as to those allegations, the
14 defendant has entered a plea of not guilty.
15 The plea of not guilty, therefore, places upon
16 the State the burden of proving the allegations
17 that have been set forth in those indictments
18 the burden of proving each of the essential
19 elements of the crimes that have been alleged
20 against the defendant. And, therefore, the
21 burden is on the State to establish the
22 Defendant's guilt to the satisfaction of twelve
23 jurors beyond a reasonable doubt before any
24 burden of guilty can be returned as to any of
25 the separate indictments.

1 So we are going to be selecting twelve of
2 you. There will be twelve primary jurors and
3 one additional juror to serve as an alternate.
4 You are going to be selected to participate in
5 a trial. By way of your participation, you are
6 going to be called upon to listen to testimony
7 that will be elicited from witnesses testifying
8 from the witness stand and to consider any
9 other evidence that might be introduced during
10 the course of the trial. At the trial's
11 conclusion, the jury will be called upon to
12 carefully consider all that evidence. Based
13 upon your consideration of that evidence, you
14 will determine what you believe to be the true
15 facts as they relate to this controversy.

16 Once you decide those facts, you will then
17 apply the law that I will have provided you.
18 And you will determine whether or not the
19 Defendant's guilt has been proven as to a
20 particular indictment beyond a reasonable
21 doubt. If it has been proven beyond a
22 reasonable doubt, then your verdict will be
23 guilty as to that charge. If it has not been
24 proven to your satisfaction beyond a reasonable
25 doubt, then your verdict will be not guilty as

1 to that particular charge.

2 Now, before we begin with jury selection in
3 the case, I've got a number of questions that
4 I'm going to be asking you. The purpose of the
5 questions is to determine whether or not there
6 is some reason why any one of you particular
7 jurors should not be selected to, uh, serve as
8 a juror in this particular case. As these
9 questions are asked, should they apply to you
10 and you need to respond, I will simply ask that
11 you please stand and I will address those
12 responses with you.

13 The first thing I'm going to do is to
14 introduce some people to you. I'll be
15 introducing the defendant. I'll be introducing
16 the person who is alleged to have been the
17 victim. I will be introducing the lawyers and
18 I'll be introducing any other potential
19 witnesses that might be called to testify
20 during the trial.

21 The purpose of making these introductions
22 is to find out if you know anybody in any way
23 whatsoever who is involved in the trial of this
24 case. In other words, are you related to any
25 of these people by blood or marriage? Do you

1 socialize with any of these people? Do you
2 work with these people? Do you go to church
3 with these people? Do you attend school with
4 these people? Did you grow up with these
5 people? Are they neighbors of yours? Have you
6 met them somewhere? Do you simply know who
7 they are?

8 So as these introductions are made, should
9 you know any person who is introduced to you or
10 named as a potential witness, I'll ask that you
11 please stand and then we'll address what that
12 connection is and whether or not it will affect
13 your decision in the case. First of all, as

14 I've told you, the defendant, the person who is
15 accused of having committed these crimes is
16 Billy Shane Miller.

17 Mr. Miller, if you will, stand and face the
18 jury panel. You need to turn so the crowd on
19 this side can see you too. All right. You can
20 have a seat.

21 Mr. Miller is being represented in this
22 matter by Andrea Price. She is his lawyer.
23 She will be assisting him in the trial of the
24 case.

25 The person who is alleged to have been the

1 victim of these events is MINOR Ms.
2 Victim if you will, please stand and face the
3 jury panel. You will need to turn so this
4 group can see you also. Okay.

5 In this case, the State is being
6 represented by Abel Gray. He is an Assistant
7 Circuit Solicitor for the 7th Judicial Circuit.

8 Potential witnesses in addition to any who
9 have already been introduced would include
10 Brenda Lawson, Joe Lawson, Stephanie Maddox.
11 She is apparently not present, but her name is
12 Stephanie Maddox. So if you happen to know
13 somebody by that name, if you will stand, we'll
14 try to narrow down the identifications. I also
15 have Michael Kimbrell. Michael Kimbrell. He
16 is not present, but if you know somebody by
17 that name, stand and we will try to narrow down
18 the identification. Tracy Moss, from the
19 Spartanburg County Sheriff's Department. Bryan
20 Wright with the Spartanburg County Sheriff's
21 Department and also Shadon Miller Horn.

22 All right. Any other witnesses on behalf
23 of the State?

24 MR. GRAY: No, sir, Your Honor.

25 THE COURT: The defendant?

1 MRS. PRICE: No, Your Honor.

2 THE COURT: All right. Does any member of
3 the jury panel know any of those people that
4 have been introduced to you? And let me also
5 include in that number of people, I need to
6 know if any member of the jury panel knows any
7 person who is employed in the 7th Judicial
8 Circuit Solicitor's office or employed in the
9 7th Judicial Circuit Public Defender's office.
10 You know anyone employed in the Solicitor's
11 office or the Public Defender's office as well
12 as those who have already been introduced and
13 identified? If so, please stand.

14 All right. I have two jurors standing.
15 I'll start with my right. If you will, give me
16 your name and juror number please, sir.

17 THE JUROR: Brandon Bishop, number 9. Uh,
18 Mrs. Price is my attorney.

19 THE COURT: All right. You know Mrs.
20 Price?

21 THE JUROR: Yes, sir.

22 THE COURT: And would that have any
23 bearing upon your decision in this case?

24 THE JUROR: No, sir. And Rick Burgess is
25 my uncle by marriage.

1 THE COURT: All right. Rick Burgess works
2 in the Solicitor's office?

3 THE JUROR: Yes, sir.

4 THE COURT: And he is your uncle by
5 marriage?

6 THE JUROR: Yes, sir.

7 THE COURT: Would that have any bearing
8 upon your decision?

9 THE JUROR: No, sir.

10 THE COURT: All right. Thank you. Be
11 seated.

12 Yes, sir.

13 THE JUROR: Mark Yerkes, 174. Tracy Moss,
14 through her husband.

15 THE COURT: You know Tracy Moss through
16 her husband?

17 THE JUROR: Yes, sir.

18 THE COURT: Would that have any bearing
19 upon your decision in this case?

20 THE JUROR: No, sir.

21 THE COURT: All right. Thank you. Be
22 seated. Anyone else know any of the persons
23 who have been identified?

24 THE JUROR: I may know Mrs. Horn.

25 UNIDENTIFIED SPEAKER: I know --

1 THE COURT: Ms. Horn, I'm not asking you
2 to speak.

3 All right. Tell me your name and number
4 please.

5 THE JUROR: Workman, number 170.

6 THE COURT: Yes, sir.

7 THE JUROR: She used to work or still
8 works at Allegra Printing.

9 THE COURT: All right. Ms. Horn, do you
10 work at Allegra Printing?

11 UNIDENTIFIED SPEAKER: Yes, sir.

12 THE COURT: That's the same person.

13 THE JUROR: I don't --

14 THE COURT: It wouldn't have any bearing
15 upon your decision?

16 THE JUROR: No, sir.

17 THE COURT: Okay. Thank you. Be seated.

18 Anyone else? (No response.)

19 Now, these are crimes that are alleged to
20 have occurred back on March the 31st of 2008 as
21 I told you and as they are described by reading
22 the allegations in the indictment or
23 indictments. Is there any member of the jury
24 panel who believes that you might have heard,
25 seen or read anything that relates to this

1 particular case? In other words, have you been
2 exposed to any type of information that's
3 related to the case from any source? If so,
4 please stand. (No response.)

5 Is there anything about the nature of the
6 charges themselves, that is, just what has been
7 alleged? Is there anything about the nature of
8 the charges themselves that would prevent any
9 juror from being able to be fair and impartial
10 to both sides in the case? If so, please
11 stand. (No response.)

12 Has any member of the jury panel or any
13 member of your immediate family -- and I'm
14 going to define an immediate family member as a
15 parent, a spouse, a child or a sibling.
16 Parent, spouse, child or sibling. Have you or
17 any members of your immediate family, as I just
18 defined it, ever been the victim of any type of
19 sexual assault or have you ever -- you or a
20 family member ever been accused of having
21 committed any type of sexual assault? So I
22 need to know if you or a family member has been
23 the victim of such or if you or a family member
24 has ever been accused of having committed such
25 an offense. If so, please stand.

1 All right. I have three jurors standing.
2 Now, you can answer the question standing where
3 you are if you would like. I don't mind. If
4 you would prefer not to respond to the
5 questions in front of an audience, you can step
6 down here and I'll discuss it. That will be
7 fine.

8 THE BAILIFF: 107.

9 (WHEREUPON, the following bench conferences are
10 held.)

11 THE JUROR: My little boy has been
12 sexually assaulted by a 15-year-old in 2009.

13 THE COURT: Your son?

14 THE JUROR: Yes, sir.

15 THE COURT: And is that a case that is
16 pending, ma'am?

17 THE JUROR: No, it's not.

18 THE COURT: Nobody was charged?

19 THE JUROR: No, he went to court but he
20 wasn't charged with it. They just dropped the
21 case.

22 THE COURT: You went to Family Court?

23 THE JUROR: I went to --

24 THE COURT: A juvenile case?

25 THE JUROR: Yes.

1 THE COURT: Uh, but it was dismissed. Is
2 there anything about that circumstance that
3 would prevent you from being fair in this case?

4 THE JUROR: No, sir.

5 THE COURT: Okay. Thank you.

6 THE JUROR: You're welcome.

7 THE COURT: You can be seated.

8 THE BAILIFF: Number 150, Your Honor.

9 THE COURT: Okay.

10 THE JUROR: Yes, sir.

11 THE COURT: Okay.

12 THE JUROR: I had a niece who was molested
13 by her dad when she was, I want to say around
14 12 or 15. Somewhere in that age.

15 THE COURT: And was somebody -- was he
16 charged with it?

17 THE JUROR: Yes, sir. He was..

18 THE COURT: Has the case come to court?

19 THE JUROR: Uh, I'm not sure. He may have
20 gotten a year for it. I'm not sure. It was
21 like a plea deal.

22 THE COURT: So he came to court?

23 THE JUROR: Yes, sir.

24 THE COURT: Is there anything about that
25 event or circumstance that would prevent you

1 from being able to be fair in this case?

2 THE JUROR: I don't believe so, no, sir.

3 THE COURT: Okay. Thank you.

4 THE BAILIFF: Number 40, Your Honor.

5 THE COURT: Okay.

6 THE JUROR: My father. He charged and not
7 guilty.

8 THE COURT: He was charged with a sexual
9 assault and found not guilty?

10 THE JUROR: Yes, sir.

11 THE COURT: How long ago was that?

12 THE JUROR: I want to say 10 years ago or
13 more.

14 THE COURT: Okay. Is there anything about
15 that event or that circumstance that would
16 prevent you from being able to be fair in this
17 case?

18 THE JUROR: Yes, sir.

19 THE COURT: Okay. I'm going to excuse you
20 from service in this case. Just have a seat.
21 Okay.

22 (WHEREUPON, the bench conferences are
23 concluded.)

24 THE COURT: Uh, any other jurors need to
25 respond to that question? (No response.)

1 All right. Juror Number 40 is excused from
2 serving in this case..

3 THE BAILIFF: Stay seated.

4 THE COURT: Yeah, don't leave yet. Is any
5 member of the jury panel, uh, a member of or do
6 you contribute time or money to any type of
7 organizations that might be characterized or
8 classified as a victims' rights organization or
9 law enforcement support types of organization?
10 Some of those might include organizations like
11 Mothers Against Drunk Drivers or Citizens
12 Against Violent Crimes or any rape crisis
13 organization or any other similar types of
14 organization. Do you belong to any or do you
15 contribute time or do you contribute money to
16 any of those types of organizations? If so,
17 please stand. (No response.)

18 Is any member of the jury panel or any
19 member of your immediate family as I've already
20 defined that term for you, are you or an
21 immediate family member now or have you ever
22 been employed as a law enforcement officer,
23 whether it be civilian or military? Have you
24 been employed as a law enforcement officer or
25 an immediate family member so employed? If so,

1 please stand.

2 All right. Got nine standing. I'm going
3 to start to my right. I'll work to my left.
4 If you will give me your name and your juror
5 number please, sir, then tell me how that
6 question relates to you.

7 (WHEREUPON, this portion of the hearing can not
8 be transcribed due to a malfunction with the court
9 reporter's equipment during the proceeding.)

10 THE COURT: Would that have any bearing
11 upon your decision?

12 THE JUROR: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 THE JUROR: Number 15. My father is
16 retired from the Navy.

17 THE COURT: All right. Would that have
18 any bearing upon your decision?

19 THE JUROR: No, sir.

20 THE COURT: All right. Next row, we'll
21 start with 170.

22 THE JUROR: Yes, sir. 170. My mother is
23 a former Spartanburg County Sheriff's Deputy.

24 THE COURT: And would that have any
25 bearing upon your decision?

Jury Qualification

27

1 THE JUROR: No, sir.

2 THE COURT: Thank you. Be seated.

3 THE JUROR: Sharon Reeves, 130. My
4 sister-in-law is a Spartanburg city police
5 officer.

6 THE COURT: Would that have any bearing
7 upon your decision?

8 THE JUROR: No.

9 THE COURT: Thank you. Be seated.
10 Yes, ma'am.

11 THE JUROR: My sister-in-law is a police
12 officer with Spartanburg county.

13 THE COURT: Would that have any bearing on
14 upon your decision?

15 THE JUROR: No.

16 THE COURT: Thank you. Be seated. Yes,
17 sir.

18 THE JUROR: My cousin is a retired captain
19 from the New York police.

20 THE COURT: Would that have any bearing
21 upon your decision?

22 THE JUROR: No, sir.

23 THE COURT: Thank you. Be seated.

24 Any member of your immediate family ever
25 been involved in a case that was being handled

1 by the 7th Judicial Circuit Solicitor's Office?
2 Anyone ever been involved in a case where the
3 7th Judicial Circuit Solicitor been involved in
4 the prosecution of that case? Let me include
5 in that question -- you can go ahead and stand.
6 Let me include in that question if anybody's
7 ever been called as a witness to testify in a
8 criminal case, either for the state or for the
9 defendant? Have you been called to testify as
10 a witness?

11 All right. Yes, ma'am.

12 THE JUROR: 80. Uh, I was a victim of a
13 mugging and assault.

14 THE COURT: Okay. All right. And the
15 Solicitor's office handled that case?

16 THE JUROR: Yes, sir.

17 THE COURT: And would that affect your
18 judgement in this one?

19 THE JUROR: No, sir.

20 THE COURT: Thank you. Be seated. Yes,
21 ma'am.

22 THE JUROR: Witness for an assault.

23 THE COURT: And did you testify for the
24 State or for the defendant?

25 THE JUROR: The defendant.

1 THE COURT: And would that have any
2 bearing upon your decision in this case?

3 THE JUROR: No.

4 THE COURT: Thank you. Be seated.

5 THE JUROR: I have one case pending
6 against my daughter where I'm a victim where
7 she had stole my car.

8 THE COURT: Okay. And that's pending now?

9 THE JUROR: Yes.

10 THE COURT: Here?

11 THE JUROR: Yes, sir.

12 THE COURT: Would that have any bearing
13 upon your decision in this case?

14 THE JUROR: No, sir.

15 THE COURT: Thank you. Be seated.

16 THE JUROR: But there were two charges.
17 One, she's already -- it's done with.

18 THE COURT: Okay.

19 THE JUROR: So...

20 THE COURT: Thank you.

21 THE JUROR: Natroysha Nesbitt; 114. I
22 wasn't a victim or anything, but my uncle was
23 killed by his brother and I think Barnette, he
24 represented me.

25 THE COURT: All right. Would that have

1 any bearing upon your decision in this case?

2 THE JUROR: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 THE JUROR: Number 29. My son was charged
6 with some drug charges and receiving a stolen
7 car.

8 THE COURT: And would that have any
9 bearing upon your decision in this case?

10 THE JUROR: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, sir.

13 THE JUROR: (inaudible)

14 THE COURT: All right. Would that have
15 any bearing upon your decision in this case?

16 THE JUROR: No, sir.

17 THE COURT: Thank you. Be seated.

18 All right. Understanding who the defendant
19 is, understanding who the alleged victim is,
20 understanding who the lawyers are,
21 understanding who the potential witnesses are
22 and understanding what the case is basically
23 about, does any juror know of any reason
24 whatsoever why you could not be fair and
25 impartial if you were called upon to serve as a

1 juror in this case? If so, please stand. (No
2 response.)

3 All right. None responding. Any other
4 questions requested by the State?

5 MR. GRAY: No, sir, Your Honor.

6 THE COURT: By the defendant?

7 MRS. PRICE: No, Your Honor.

8 THE COURT: All right. We're going to
9 select a jury. Have all of you already
10 participated in a jury selection this week? So
11 you know what to do? Okay. Just come forward
12 as your name is called. You will be instructed
13 further.

14 THE CLERK: Juror Number 85, Elizabeth
15 Kistler.

16 What says the State?

17 MR. GRAY: Please present the juror.

18 THE CLERK: What says the Defendant?

19 MRS. PRICE: Excuse Ms. Kistler from this
20 matter.

21 THE CLERK: Juror Number 72, Tiffany
22 Hughes.

23 What says the State?

24 MR. GRAY: Please excuse the juror.

25 THE CLERK: Juror Number 13, Linda Bobo.

1 THE BAILIFF: This way, ma'am.

2 THE CLERK: What says the State?

3 MR. GRAY: Please present the juror.

4 THE CLERK: What says the defense?

5 MRS. PRICE: Please seat the juror.

6 THE CLERK: Juror Number 130, Sharon

7 Reeves.

8 What says the State?

9 MR. GRAY: Please present the juror.

10 THE CLERK: What says the defense?

11 MRS. PRICE: Please seat the juror.

12 THE CLERK: Juror Number 3, Donald Arthur.

13 What says the State?

14 MR. GRAY: Please present the juror.

15 THE CLERK: What says the defense?

16 MRS. PRICE: Please seat the juror.

17 THE CLERK: Juror Number 62, Patsy Harris.

18 What says the State?

19 MR. GRAY: Please present the juror.

20 THE CLERK: What says the defense?

21 MRS. PRICE: Please excuse the juror from

22 this matter.

23 THE CLERK: You said?

24 MRS. PRICE: Excused.

25 THE CLERK: Juror Number 150, Billy

1 Steadman.
2 What says the State?
3 MR. GRAY: Please present the juror.
4 THE CLERK: What says the defense?
5 MRS. PRICE: Please excuse the juror from
6 this matter.
7 THE CLERK: Juror Number 173, Edward
8 Yager.
9 What says the State?
10 MR. GRAY: Please present the juror.
11 THE CLERK: What says the defense?
12 MRS. PRICE: Please seat the juror.
13 THE CLERK: Juror Number 183, Keith
14 Martindale.
15 What says the State?
16 MR. GRAY: Please present the juror.
17 THE CLERK: What says the defense?
18 MRS. PRICE: Please seat the juror..
19 THE CLERK: Juror Number 181, Sharon
20 Harris.
21 What says the State?
22 MR. GRAY: Please present the juror..
23 THE CLERK: What says the defense?
24 MRS. PRICE: Please seat the juror.
25 THE CLERK: Juror Number 47, Lisa Foster.

1 What says the State?

2 MR. GRAY: Please present the juror.

3 THE CLERK: What says the defense?

4 MRS. PRICE: Please seat the juror.

5 THE CLERK: Juror Number 86, Rebeka Koza.

6 What says the State?

7 MR. GRAY: Please present the juror.

8 THE CLERK: What says the defense?

9 MRS. PRICE: Please seat the juror.

10 THE CLERK: Juror Number 103, Gail

11 Millward.

12 What says the State?

13 MR. GRAY: Please present the juror.

14 THE CLERK: What says the defense?

15 MRS. PRICE: Please seat the juror.

16 THE CLERK: Juror Number 153, Howard

17 Sturgill.

18 What says the State?

19 MR. GRAY: Please present the juror.

20 THE CLERK: What says the defense?

21 MRS. PRICE: Please seat the juror.

22 THE CLERK: Juror Number 108, Larry

23 Morgan.

24 What says the State?

25 MR. GRAY: Please present the juror.

1 **THE CLERK:** What says the defense?
2 **MRS. PRICE:** Please excuse the juror from
3 this matter.
4 **THE CLERK:** Juror Number 127, Randy
5 Pucetas.
6 What says the State?
7 **MR. GRAY:** Please present the juror.
8 **THE CLERK:** What says the defense?
9 **MRS. PRICE:** Please seat the juror.
10 **THE CLERK:** Juror Number 1, Tyler
11 Abernathy.
12 What says the State?
13 **MR. GRAY:** Please present the juror.
14 **THE CLERK:** What says the defense?
15 **MRS. PRICE:** Please seat the juror.
16 **THE COURT:** This will be for the
17 alternate.
18 **THE CLERK:** Juror Number 69, Shannon Hill.
19 What says the State?
20 **MR. GRAY:** Please present the juror.
21 **THE CLERK:** What says the defense?
22 **MRS. PRICE:** Please seat the juror.
23 **THE COURT:** All right. Those who have
24 been selected, please go with the bailiff to
25 the jury room. I'll bring you back in just a

1 few minutes.

2 (WHEREUPON, the jury exits at approximately
3 11:03 a.m.)

4 THE COURT: Are there any matters that
5 need to be addressed regarding jury selection
6 by the State?

7 MR. GRAY: No, sir, Your Honor.

8 THE COURT: By the defendant?

9 MRS. PRICE: No, Your Honor.

10 THE COURT: All right. Those who have not
11 be selected, I will ask you to please go with
12 the bailiff back down to the jury assembly
13 room. I will determine if your services are
14 needed by any of the other judges in the other
15 courtrooms. If not, you will be excused and
16 informed as to when you need to either report
17 back or call back for that information. So
18 please go with the bailiff and I will let you
19 know that in just a few minutes. Thank you for
20 your participation.

21 (WHEREUPON, the jury panel exits at
22 approximately 11:05 a.m.)

23 THE COURT: All right. Are there any
24 matters I need to address prior to the jury
25 being sworn?

1 MR. GRAY: Yes, sir, Your Honor.
2 Initially, my victim said she needs to use the
3 restroom.

4 THE COURT: Okay.

5 MR. GRAY: Uh, there is a lineup. That
6 will be State's Exhibit number 2. It's been
7 premarked. There's a motion in limine. Served
8 it on defense counsel for rape -- compliance
9 with rape shield statute, Your Honor. My
10 understanding coming from Mrs. Price, there
11 will be no mention of anything that would
12 violate that.

13 MRS. PRICE: Your Honor, I readily
14 acknowledge that as defense counsel. I told
15 Mr. Gray, I would only address anything on
16 cross-examination that he go into. We already
17 had that discussion.

18 THE COURT: Okay.

19 MR. GRAY: I believe the only thing left
20 that I believe would be the Jackson v. Deno.
21 The defendant gave a statement.

22 MRS. PRICE: I won't be challenging the
23 Defendant's ability to freely give that
24 statement.

25 MR. GRAY: Will be?

1 MRS. PRICE: Won't be.

2 MR. GRAY: That's it for the State, Your
3 Honor.

4 THE COURT: All right. Mrs. Price, you
5 and Mr. Miller are in agreement that any
6 statement he made was freely and voluntarily
7 made?

8 MRS. PRICE: Yes, Your Honor.

9 THE COURT: With no coercion, no threats,
10 no pressure, no promises?

11 MRS. PRICE: No, Your Honor. Not that I
12 can see.

13 THE COURT: All right. Mr. Miller, do you
14 agree with your lawyer's assessment?

15 MR. MILLER: Yes, sir.

16 THE COURT: She claims you made a
17 statement or they tell me you made a statement
18 to law enforcement after you were arrested. Is
19 that true?

20 MR. MILLER: Yes, sir.

21 THE COURT: Did they advise you of your
22 rights?

23 MR. MILLER: Yes, sir.

24 MRS. PRICE: You need to speak loudly so
25 the Court Reporter can hear you.

1 MR. MILLER: Oh, yes, sir.

2 THE COURT: Is there anything about the
3 circumstances of that interrogation that, uh,
4 caused you to give a statement against your
5 will?

6 MR. MILLER: I was intoxicated, but...

7 THE COURT: Did you understand what you
8 were doing at the time?

9 MR. MILLER: Yes.

10 THE COURT: Was there anything that was
11 not voluntary about the statement?

12 MR. MILLER: They wrote the statement for
13 me. They asked me -- I told them what
14 happened.

15 THE COURT: I understand. Did you know
16 what you were doing when you provided that
17 statement?

18 MR. MILLER: Yes, sir.

19 THE COURT: Did they trick you into giving
20 a statement?

21 MR. MILLER: Well, not -- well, yeah.

22 THE COURT: They tricked you into it?

23 MR. MILLER: I told them what happened.
24 They asked me what all went on. I told them
25 what happened. Then they tell me the girl's

1 age. Yes, sir.

2 THE COURT: What I'm trying to get at is,
3 I understand you gave law enforcement a
4 statement after you were arrested or taken into
5 custody. What I want to know is was there
6 anything that law enforcement did that caused
7 you to give that statement against your own
8 good judgement or against your own will. Did
9 they force you into it? Did they pressure you
10 into it? Did they coerce you into it? Did
11 they trick you into it? Did they promise you
12 something if you would give a statement?

13 MR. MILLER: They told me -- asked me what
14 happened.

15 THE COURT: Okay. Well, did you
16 understand my question? Did anybody in law
17 enforcement, in getting you to give them a
18 statement, did they force you into it in any
19 way?

20 MR. MILLER: No, they didn't force me to.

21 THE COURT: Did they threaten you in any
22 way?

23 MR. MILLER: No.

24 THE COURT: Did they coerce you into
25 giving a statement?

Remarks

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1 MR. MILLER: I had -- I dealt with Bryan
2 Wright a few times in the past. He told me
3 that -- asked me about making a statement of
4 what went on with this girl.

5 THE COURT: Okay. Well, my question is
6 was you coerced. Do you know what that means?

7 MR. MILLER: No, sir.

8 THE COURT: That means were you forced in
9 any way.

10 MR. MILLER: Oh, no, sir.

11 THE COURT: No. Uh, did they promise you?
12 Did they do something for you or give you
13 something if you'd give a statement?

14 MR. MILLER: No, sir.

15 THE COURT: So you did give a statement
16 knowingly and voluntarily?

17 MR. MILLER: Yeah.

18 THE COURT: Okay. Thank you. You can
19 have a seat.

20 Anything else?

21 MR. GRAY: Your Honor, I do have one
22 issue. May we approach?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference is held off the
25 record.)

1 (WHEREUPON, a recess is taken.)

2 THE COURT: Any matters that need to be
3 addressed prior to the jury being sworn?

4 MR. GRAY: No, sir, Your Honor.

5 MRS. PRICE: No, Your Honor.

6 THE COURT: Okay. Bring them in. Ask,
7 uh, Ms. Millward to take the foreperson's seat.
8 She is number 103.

9 (WHEREUPON, the jury enters at approximately
10 11:32 a.m.)

11 THE COURT: All right. Ladies and
12 Gentlemen, we are ready to begin with the trial
13 of the case for which you have been selected.

14 Ms. Millward, I'm going to ask you to serve
15 as the foreperson of this jury. As the
16 foreperson, you'll have three specific duties
17 that none of the other jurors will have. Number
18 one, you will be asked to serve as the
19 spokesperson for the jury. And so if during the
20 trial, something arises that needs to be brought
21 to my attention, that is, you or a fellow juror
22 has some difficulty, problem or question, you
23 let me know and I'll address those issues or
24 answer those questions.

25 Secondly, you will also be called upon to

1 preside over the jury deliberations when the
2 time comes at the trial's conclusion. That, of
3 course, will not be until the end of the trial
4 after all the evidence has been received and
5 I've instructed you on the law that's applicable
6 in the case. But when the time does come for
7 jury deliberations, it will be you who will
8 preside over that process in the jury room
9 simply to ensure that those deliberations are
10 carried out in some orderly fashion.

11 And thirdly, you'll be called upon to
12 actually write the decision of the jury,
13 whatever that decision might be. And you will
14 do that on a verdict form that I will provide
15 you at the trial's conclusion on which you will
16 indicate the jury's unanimous decision as it
17 relates to each of the separate indictments.

18 Now, the foreperson has those duties that
19 I've just indicated. That does not, however,
20 mean that she is any more important than any of
21 you other jurors because any decision that a
22 jury reaches is the unanimous consensus opinion
23 of all twelve jurors. So all of you are going
24 to have an equal say and an equal vote in what
25 the ultimate decisions will be in this case.

1 Someone simply has to be delegated those
2 responsibilities that I've just indicated. And
3 I have delegated those to Ms. Millward in
4 appointing her as the foreperson. But all of
5 you jurors are equally important so far as the
6 ultimate decisions in the case are concerned,
7 because as I've stated, the verdict has to be
8 unanimous. All of you must be in agreement.

9 Ms. Hill, you've been selected as an
10 alternate juror. The function of an alternate
11 juror is to take the place of one of the
12 original twelve jurors if during this trial one
13 of these twelve can not continue to serve for
14 some reason. And if one is unable to, you would
15 take that person's place. You would become the
16 12th juror.

17 So it is important that you pay just as
18 careful attention as we ask of all of the jurors
19 in the case because it does occur from time to
20 time, for one reason or another, one of these
21 original twelve may be unable to continue. In
22 that event, you become the 12th. We, of course,
23 do appreciate your participation as an alternate
24 juror just as we appreciate the participation of
25 each of you jurors who have been selected for

1 the purpose of deciding the verdicts in this
2 particular case.

3 Uh, you may swear the panel.

4 **THE CLERK:** Will you all please stand and
5 raise your right hand? Do each of you solemnly
6 swear or affirm in the case about to be tried,
7 to truly try the issues adjoined in this case
8 and a true verdict render according to the law
9 and the evidence so help you God?

10 (WHEREUPON, each juror responds.)

11 **THE CLERK:** Okay. Thank you.

12 **THE COURT:** As you know, you've been
13 selected to decide the verdicts in the case of
14 the State versus Billy Shane Miller. As you
15 also know, he's been accused of having committed
16 three separate and distinct offenses although
17 they are alleged to have arisen out of one
18 particular event or course of events which the
19 State alleges occurred back on March the 31st of
20 2008. But he's charged with three separate and
21 distinct criminal offenses.

22 You'll be called upon to render three
23 separate and distinct verdicts as to those
24 separate charges. And, of course depending upon
25 your determination of fact in the case and your

1 application of law, your verdicts may be the
2 same as to all three or they may be different.
3 That, of course, as I say, will depend upon your
4 determination of fact as it relates to a
5 particular charge and then your application of
6 law to those facts as you determine those facts
7 to be.

8 Mr. Miller has been accused of having
9 committed the crime of Criminal Sexual Conduct
10 with a Minor in the second degree with Criminal
11 Sexual Conduct in the third degree and with
12 Contributing to the Delinquency of a Minor. As
13 you also know, as to each of those charges, he's
14 entered a plea of not guilty. As I've already
15 told you, that plea of not guilty places upon
16 the State the burden of proving the allegations
17 that they have set forth in each of those
18 indictments. The burden is upon the State to
19 prove each of the essential elements of the
20 crimes that are alleged against the defendant.
21 Therefore, the burden is upon the State to
22 establish the Defendant's guilt to your
23 satisfaction beyond a reasonable doubt before a
24 verdict of guilty could be returned as to any
25 particular indictment.

1 Every person accused of a crime under the
2 constitution and the laws of this State and of
3 every state, as far as I know, is presumed to be
4 innocent of the charge. That presumption of
5 innocence remains with any defendant as it does
6 with this defendant from the time that he's
7 placed under arrest throughout the course of the
8 criminal process and even throughout the course
9 of the actual trial in the case.

10 That presumption of innocence will be with
11 Mr. Miller even at the trial's end when you go
12 back to begin with your deliberations of the
13 case. That presumption of innocence will be
14 with him in that jury room. It will be with him
15 forever unless you twelve jurors determine that
16 he's no longer entitled to that presumption of
17 innocence.

18 In other words, after you've carefully
19 considered all the evidence of the case and from
20 that evidence you determine what you believe to
21 be the true facts as they relate to a particular
22 indictment, and upon deciding those facts, you
23 apply the law that relates to that indictment,
24 if you twelve jurors unanimously determine that
25 his guilt as to a particular charge has been

1 proven beyond a reasonable doubt, then he would
2 no longer be entitled to the presumption of
3 innocence as it relates to that charge. But
4 it's only if, unless and until you are satisfied
5 of his guilt beyond a reasonable doubt that the
6 presumption of innocence will no longer be
7 applicable to that particular indictment.

8 Now, the way the trial will proceed is that
9 in a moment, the lawyers are going to address
10 you in what are called opening statements.

11 There are two occasions in the trial of a case
12 where lawyers are permitted to address the jury.

13 And that is at the beginning of the trial,
14 before any evidence has been introduced. Then
15 again, they'll address you at the conclusion of
16 the trial after all the evidence has been
17 received.

18 Keep in mind, however, that lawyer's
19 statements are not to be considered by you as
20 evidence in the case. In other words, you are
21 not to construe a statement by a lawyer as being
22 some evidence of a fact that has to be
23 established. That is because lawyers aren't
24 witnesses to anything. They don't know anything
25 about this case of their own personal knowledge

1 or experience like a witness will testify to.
2 They are not going to be placed under oath and
3 be subjected to direct and cross-examination
4 like each of the witnesses will be. So what the
5 lawyers tell you in their statement is not to be
6 considered by you as any evidence upon which you
7 will base your decision.

8 You should listen to what the lawyers have
9 to say because those statements do serve a
10 purpose. The opening statements afford the
11 lawyers an opportunity to tell you what they
12 believe the case is about from the perspective
13 of the State as well as of the defendant so you
14 will have some context in which to place the
15 evidence that we're going to be receiving
16 shortly thereafter.

17 The closing statements occur after all of
18 the evidence has been received. Again, while
19 those statements are not evidence, it does
20 afford the lawyers an opportunity to discuss
21 with you the evidence that you have seen and
22 heard during the trial of the case. And through
23 that discussion, each will have an opportunity
24 to try to persuade you or to convince you that
25 that evidence does or does not support a

1 particular decision.

2 It's in between the opening and the closing
3 statements of the lawyers that we actually
4 receive the evidence upon which you will base
5 your decision. The State, as I told you, has
6 the burden of proof. The State has to prove a
7 Defendant's guilt beyond a reasonable doubt.

8 Therefore, the State must present evidence.

9 Because if they don't present any evidence, then
10 there's nothing for you to base a decision upon.

11 The State does have an obligation and a duty to

12 present evidence. They have the burden of

13 disproving the Defendant's guilt beyond a

14 reasonable doubt, so they go forward first.

15 Once the State has concluded in their
16 presentation of evidence, a defendant has the
17 same opportunity to testify and to call

18 witnesses and to introduce evidence. But a
19 defendant in a criminal trial is never under any
20 obligation to present any evidence or to testify
21 in the case. That's because a defendant doesn't
22 have any burden in a criminal trial.

23 The burden is on the State to prove his
24 guilt. It's not upon a defendant to prove his
25 innocence. In some cases, that might not even

1 be possible. However, the defendant is afforded
2 an opportunity to testify and present evidence
3 should he or she wish to do so. But in the
4 event a defendant does not testify or doesn't
5 call any witnesses or produce any evidence,
6 that's not a fact or circumstances that you may
7 allow to weigh in the slightest degree against a
8 defendant. That's because he doesn't have a
9 burden to prove anything. And should a
10 defendant not testify or present evidence, you
11 can't hold that against him. You can't consider
12 that in any way whatsoever in your deliberations
13 or in your determination as to whether or not
14 his guilt has been proven beyond a reasonable
15 doubt. But he is afforded that opportunity
16 should he wish to do so.

17 So after all the evidence has been received
18 and you hear the final summations of the
19 lawyers, I will then instruct you fully on the
20 law as it relates to the criminal law in general
21 and as it relates to these specific crimes
22 particularly, after that, you will be asked to
23 go back and begin with your deliberations.
24 Through that process, you're simply going to be
25 called upon through the exercise of good

1 judgement and common sense conscientiously
2 applied to the testimony and evidence in the
3 case to decide what you believe to be the true
4 facts of the matter.

5 Once you decide the facts, you will apply
6 the law that I will have provided you and you
7 will determine whether or not the Defendant's
8 guilt as to a particular charge has been proven
9 beyond a reasonable doubt. If it has, then your
10 verdict is guilty as to that charge. If it has
11 not, then your verdict is not guilty as to that
12 particular charge.

13 Now, all that we're going to ask for you to
14 do is pay careful attention throughout the
15 course of the trial. It's important to pay
16 attention from the first witness until the last
17 witness. You never know when the most important
18 testimony or evidence is going to be revealed.
19 And one of your prerogatives in the case is to
20 evaluate and assess the credibility of witness
21 testimony. And you can't do that if you haven't
22 been paying attention to the witnesses as they
23 testify. It's important that you do so so that
24 when you do go back to begin your deliberations,
25 you'll be in a proper position to be able to

1 fairly assess the credibility of a witness'
2 testimony, in light of not just that witness'
3 testimony but in light of all the testimony and
4 all the evidence received during the trial of
5 the case.

6 And, of course, it's also important that
7 you keep an open mind throughout the course of
8 the trial. And that just means that you are not
9 to begin making up your minds or formulating
10 your opinions as to what you think the decision
11 ought to be in the case until after all the
12 evidence has been received, I've instructed you
13 on the law and you've been asked to begin with
14 your deliberations. That is a process that is
15 designed for you twelve jurors to arrive at a
16 fair and just decision in the case.

17 So I do want to thank you in advance for
18 your participation, as well as for your careful
19 attention. I will ask that you please give the
20 lawyers your attention now as they give you
21 their opening statements.

22 Mr. Gray.

23 MR. GRAY: Thank you, Your Honor.

24 Good morning, Ladies and Gentlemen. My
25 name is Abel Gray. I'm with the Solicitor's

1 office here in Spartanburg County. It's my job
2 today to present the cases to you involving
3 MINOR I say present the cases to you,
4 Ladies and Gentlemen, because it's your decision
5 whether or not the defendant is guilty or not.
6 Based upon testimony and evidence, it's your
7 decision.

8 What we're alleging as the State, law
9 enforcement, sheriff's office is that March
10 31st, 2008, the defendant provided some illegal
11 drugs to a then 14-year-old MINOR Then
12 went to his home, where he lived at the time and
13 continued to receive some illegal drugs. At
14 some point, an almost 30-year-old man had
15 intercourse with that 14-year-old girl. It
16 didn't stop there. During the day, he kept
17 providing her drugs. She kept consuming the
18 drugs in different forms. Uh, there was more
19 intercourse and sex of various natures with this
20 defendant.

21 It's going to be difficult testimony to
22 hear. But Ladies and Gentlemen, once you hear
23 this testimony, you will see that all the
24 elements of these crimes have been met even
25 though it all happened on one day. The Criminal

1 Sexual Conduct second degree with a minor, that
2 would mean that she was 14 to 16 years old.
3 There was some type of sexual battery, be it
4 digital penetration, oral sex, intercourse.

5 Also Contributing to the Delinquency of a
6 Minor, she was under 16 years old. Did he do
7 something to her to affect her morals or cause
8 her to act in some way? The providing of the
9 methamphetamines for obviously seven hours.

10 And also the Criminal Sexual Conduct third
11 degree. It does not depend on her age. It
12 doesn't matter if you are a minor. If you
13 provided her enough drugs to where she couldn't
14 do anything, not consent or submit or say no and
15 he knew she was in that kind of condition and he
16 had sex with her, be it oral, digital
17 penetration or whatever, he is guilty of that
18 crime.

19 That is why we can have three crimes
20 arising out of one situation. I don't want to
21 mislead you into thinking that she came over to
22 his house for a few minutes and left. This was
23 a long process.

24 Ladies and Gentlemen, I won't lie to you.
25 It's going to be some complicated testimony.

1 Please pay attention. Please listen. Ladies
2 and Gentlemen, I believe at the end of the day,
3 after the presentation of our case, you will
4 find that he is guilty of Criminal Sexual
5 Conduct second degree with a minor, Contributing
6 to the Delinquency of a Minor and Criminal
7 Sexual Conduct third degree. Thank you.

8 MRS. PRICE: Good morning, Ladies and
9 Gentlemen. On behalf of Mr. Miller, I'd like to
10 thank you for your service today. I can't do my
11 job, Mr. Gray can't do his job without y'all
12 coming in here to sit here and hear all the
13 evidence and testimony in this case. I know
14 it's been kind of a long morning, but this is my
15 first opportunity to speak to you about what I
16 think the evidence will show on behalf of Mr.
17 Miller in this case.

18 And on behalf of Mr. Miller, at the end of
19 the day, you will know one thing. That one
20 thing is that MINOR was, before March
21 31st, 2008, a liar, a meth addict by her own
22 admission and the fact that she was telling the
23 world via the internet that she was 18 years of
24 age. At the end of my closing statement, I will
25 tell you how this all culminates together.

1 But mistake of age, also known as a Romeo
2 clause, but the legal term in court is mistake
3 of age. If you think that somebody --
4 reasonably believed that somebody is 18 years of
5 age, then they are old enough to consent.

6 You will hear evidence that Victi [REDACTED] was,
7 as I said before, telling everybody on MySpace
8 that she was 18. You will also hear testimony
9 about the way that she looked, the way that she
10 behaved. You will also hear that Victi [REDACTED]
11 voluntarily took drugs from Mr. Miller. Nobody
12 held a gun to her head. She already was a drug
13 addict before March the 31st of 2008.

14 At the end of the day, Ladies and
15 Gentlemen, you will find Mr. Billy Miller, Mr.
16 Billy Shane Miller not guilty. Thank you.

17 THE COURT: Mr. Gray.

18 MR. GRAY: Thank you, Your Honor. The
19 State calls the first witness, Ms. MINOR

20
21 THE CLERK: Come forward and be sworn.
22 Place your left hand on the Bible and raise your
23 right.

24 MINOR

25 having first been sworn, testifies as follows:

1 DIRECT EXAMINATION

2 BY MR. GRAY:

3 Q Good morning, Victim [REDACTED].

4 A Morning.

5 Q What I'm going to need you to do is get a
6 little bit closer and speak into the microphone. I
7 need you to speak as clearly as possible. Can you do
8 that for me please?

9 A (Nods head.)

10 Q Got to speak up.

11 A Yes.

12 Q Thank you, ma'am. [REDACTED] how old are
13 you now?

14 A 17.

15 Q On March 31st of 2008, how old were you
16 then?

17 A 14.

18 Q When is your birthday?

19 A [REDACTED]

20 Q What is your full name?

21 A MINOR

22 Q MINOR

23 A Yes, sir.

24 Q On March 31st, 2008, did you have occasion
25 to meet up with Mr. Billy Miller?

1 A (Nods head.)

2 Q Speak up.

3 A Yes.

4 Q How did that happen?

5 A I called him to hang out. It was the first
6 day of spring break.

7 Q Did Mr. Miller call you?

8 A No.

9 Q You called Mr. Miller?

10 A Yes, sir.

11 Q Why did you call Mr. Miller to hang out?

12 A It was just the first day of spring break.

13 Q Why Mr. Miller?

14 A No reason.

15 Q Did, uh, you go to his home eventually?

16 A Yes, sir.

17 Q How did you get there?

18 A He came and picked me up.

19 Q Did you tell your mother where you were
20 going?

21 A No, sir.

22 Q Did you tell your father?

23 A No, sir.

24 Q When you got in the car with Mr. Miller,
25 what happened in the car ---

1 A He hand --

2 Q --- on the way to his house?

3 A He handed me, uh, pieces of meth and told
4 me to eat them.

5 Q Did you do that?

6 A Yes, sir.

7 Q Did he threaten you at this time?

8 A No, sir.

9 Q As far as you know, in 2008, how old was
10 Mr. Miller at the time?

11 A I'm not sure. I know he was older.

12 Q He was older?

13 A Yes.

14 Q Was he over 21?

15 A I'm guessing.

16 Q You're guessing?

17 A Uh-huh.

18 Q All right. He was driving the car?

19 A Yes, sir.

20 Q How long did it take to get from your home
21 to his house?

22 A Uh, maybe 30 minutes.

23 Q Were you consuming drugs the entire time?

24 A Just what he handed me.

25 Q Did you take any drugs with you from your

MINOR

- Direct Examination by Mr. Gray

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1 home?

2 A (Shakes head.)

3 Q So any drugs you consumed came directly
4 from Mr. Miller?

5 A Yes, sir.

6 Q Had you known Mr. Miller before this date?

7 A Yes.

8 Q How long had you known him before?

9 A I had known him one time before.

10 Q One time before?

11 A (Nods head.)

12 Q Now, once you got to Mr. Miller's home,
13 were you alone with Mr. Miller?

14 A No.

15 Q Who else was present?

16 A Mikey Kimbrell.

17 Q Mikey who?

18 A Kimbrell.

19 Q Kimbrell. Was anyone else there?

20 A Huh-uh.

21 Q Excuse me?

22 A No, sir.

23 Q Do you know where Mr. Miller's house was
24 located at that time?

25 A It was past Fing -- it was in Fingerville.

1 Q Fingerville. Once you went to the home
2 with Mr. Miller and Mr. Kimbrell, did you stop taking
3 drugs?

4 A No.

5 Q Who provided the drugs at Mr. Miller's
6 home?

7 A Shane Miller.

8 Q The defendant?

9 A Uh-huh.

10 Q Excuse me?

11 A Yes.

12 Q Thank you. What kind of drugs did he
13 provide you at his home?

14 A Meth.

15 Q So you're saying that the pieces he gave
16 you in the car were meth?

17 A Yes.

18 Q What type of pieces or whatever did he give
19 you in the house?

20 A The same, except we smoked it.

21 Q Smoked it in the house?

22 A Uh-huh.

23 Q In the car, you were eating it?

24 A Uh-huh.

25 Q Why would you change from eating it to

MINOR

- Direct Examination by Mr. Gray

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1 smoking it in the house?

2 A I'm not sure. In the car, he said it would
3 hit me faster.

4 Q All right. Did it?

5 A Yes.

6 Q What happened to your, uh, perception once
7 you started smoking the meth?

8 A I was just getting high.

9 Q How long did you smoke methamphetamines
10 with Mr. Miller?

11 A About the whole time I was there.

12 Q And how long was that?

13 A I told him I had to be home by 3:00 because
14 my dad would be getting off work and I wasn't home
15 til 6:00.

16 Q And what time did you get picked up?

17 A I'm not sure.

18 Q Was it morning or afternoon?

19 A It was in the morning at 10:00, around
20 10:00.

21 Q So from 10:00 to 6:00, ---

22 A Yes, sir.

23 Q --- you did methamphetamines. Was there
24 ever a break from doing the drugs?

25 A Not unless...

1 Q Please continue.

2 A Only whenever we were having sex.

3 Q Only when you were having sex. Did you
4 have sex with Mr. Miller?

5 A Yes, sir.

6 Q Where did that happen?

7 A The first time, in his bedroom.

8 Q Was it just you and Mr. Miller?

9 A Yes, sir.

10 Q Were you under the influence of the
11 methamphetamine that he had given you?

12 A Yes, sir.

13 Q Was Mr. Kimbrell in the bedroom with you?

14 A No, sir.

15 Q When you went to the bedroom with Mr.
16 Miller, what exactly happened?

17 A Uh, we were smoking. He started fingering
18 me inside my pants on his bed.

19 Q Okay. What do you mean by -- what do you
20 mean by he was fingering me?

21 A He was playing with me.

22 Q Where?

23 A In my vagina.

24 Q Did he insert his finger in you?

25 A Yes, sir.

1 Q Was that the only thing he did that first
2 time?

3 A Yes, sir.

4 Q Did you two stay clothed?

5 A Yes.

6 Q Did you two remove any clothing at all from
7 the bedroom?

8 A I --- I --

9 Q Did you two have sex in the bedroom the
10 first time?

11 A No.

12 Q Now, you said you did have sex or you
13 didn't have sex in the bedroom the first time?

14 A We did. I'm not sure if we did in the
15 bedroom. I know that he did bother me though.

16 Q You do know that he did put his finger
17 inside you?

18 A Yes, sir.

19 Q How long was that experience?

20 A Not long.

21 Q After he did that, uh, did you do anything
22 to him?

23 A No.

24 Q After that experience was over, did he take
25 you home?

1 A No, we went into the living room.

2 Q What happened in the living room?

3 A We continued smoking meth.

4 Q Who was there when you were smoking meth?

5 A Mikey Kimbrell.

6 Q Was anyone else there?

7 A Not at the time.

8 Q How long did you smoke meth with Mr.
9 Kimbrell and the defendant?

10 A A couple -- maybe two hours. We were
11 sitting in the living room just talking.

12 Q During this time, did anyone make any
13 threats to you?

14 A No, sir.

15 Q Did anyone tell you you had to perform any
16 kind of physical or sexual acts?

17 A No, sir.

18 Q Anyone offered to stop giving you
19 methamphetamine?

20 A No.

21 Q How old was Mr. Kimbrell?

22 A I'm not sure.

23 Q Did you ever tell either of these
24 gentlemen, either of these people how old you were?

25 A Yes, I had told Shane.

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- Direct Examination by Mr. Gray

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1 Q Who is Shane?

2 A (Pointing).

3 MR. GRAY: Let the record reflect that she
4 pointed to the defendant in the blue shirt.

5 THE COURT: Well, can you just state his
6 last name?

7 THE WITNESS: Miller.

8 THE COURT: Shane Miller?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. That's the defendant.

11 MR. GRAY: Thank you, Your Honor.

12 BY MR. GRAY:

13 Q So you told Billy Shane Miller how old you
14 were?

15 A Yes.

16 Q How old did you tell him you were?

17 A 14.

18 Q When did you tell him this?

19 A Not that day, but the time before I had
20 come over with Stephanie Maddox. She also told him.

21 Q So you never told him personally that you
22 were ---

23 A No.

24 Q --- 18 years old?

25 A No, I didn't.

1 Q Personally, you told him you were 14?

2 A Yes.

3 Q So when he picked you up that day on March
4 31st, 2008, he knew you were 14?

5 A Yes, sir.

6 Q Now, you were smoking meth. Did you ingest
7 meth in any other form, by eating or smoking or
8 anything else that day?

9 A No, sir.

10 Q Did you inject methamphetamine?

11 A No, ma'am.

12 Q Smoking and eating?

13 A Yes, sir.

14 Q Did anyone else come to the home while you
15 were there?

16 A Yes, uh, Jeremy Miller.

17 Q All right. Once Mr. Miller got there, what
18 happened?

19 A Uh, he asked if we knew anybody that wanted
20 to buy marijuana.

21 Q Did you consume any marijuana?

22 A No. I told him I smoked it but that was
23 it.

24 Q How much longer after Mr. Miller got there
25 did you continue to smoke?

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- Direct Examination by Mr. Gray

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1 A We continued to smoke with him. That's
2 when I was pretty out of it. Shane Miller had took
3 my pants off of me.

4 Q Did you take your pants off?

5 A No, I did not.

6 Q Was this in the bedroom again?

7 A This was in the living room with all three
8 of them.

9 Q They were in the room with Mr. Miller when
10 Mr. Miller took your pants off?

11 A Yes, sir.

12 Q Did Mr. Miller remove any more clothing?

13 A No.

14 Q Who removed -- did you have panties on?

15 A (Nods head.)

16 Q Who removed the panties?

17 A Shane.

18 Q Mr. Miller took off your panties also?

19 A Yes, sir.

20 Q Did you remain half naked or were more
21 items removed?

22 A That was it that I know of.

23 Q Now, did you have any sexual acts with Mr.
24 Miller, Shane Miller?

25 A Yes.

1 Q What were those?

2 A All three of them had sex with me at that
3 time.

4 Q Intercourse?

5 A Yes.

6 Q Including Mr. Miller?

7 A Yes.

8 Q And the other two gentlemen also had
9 intercourse with you?

10 A Yes.

11 Q Did they do anything else of a sexual
12 nature?

13 A Yes. Jeremy Miller and I think Mikey
14 Kimbrell had put their penis in my mouth.

15 Q Did Mr. Shane Miller ever do that?

16 A Not that I know of.

17 Q Did Mr. Shane Miller ever perform oral sex
18 with you?

19 A No, sir.

20 Q But he did have intercourse with you?

21 A Yes, sir.

22 Q During this time, did all three of these --
23 it was three at this time?

24 A Yes, sir.

25 Q -- gentlemen and you performed sexual acts.

1 Did you yell for help?

2 A No.

3 Q Did you scream? Did you try to run away?

4 A No, sir.

5 Q Why not?

6 A Because I was high on the drugs. I felt
7 numb and I couldn't do anything.

8 Q The drugs that who provided?

9 A Shane Miller.

10 Q Where did you go? Excuse me, did you stay
11 there the entire time and did you keep initiating
12 these sex acts or reinitiating them?

13 A No, after that, I don't know what happened.
14 I know that I came to on the couch and it was just
15 Mikey Kimbrell and I asked him to take me home.

16 Q Did you ever ask to initiate these sexual
17 acts with Mr. Miller?

18 A No.

19 Q Did Mr. Miller force himself on you?

20 A No, sir.

21 Q But Mr. Miller is the one who provided you
22 with methamphetamine for four or five hours?

23 A Yes, sir.

24 Q Did you feel that you had the ability to
25 stop yourself from these sex acts?

1 A No, sir.

2 Q What did you do during these sex acts?

3 A I just let it be.

4 Q Who took you home after this was over at
5 Mr. Miller's house?

6 A Mikey Kimbrell.

7 Q When you got home, did you tell anyone what
8 had happened to you?

9 A No, my dad was looking for me. When he
10 found me, he seen that Mikey was there. He asked him
11 for his license so he could write things down about
12 him because he didn't know where I was at.

13 Q Did you tell anyone where you had been that
14 day?

15 A No, sir.

16 Q Did you ever tell your father what had
17 happened that day?

18 A No.

19 Q Did you tell your mother what had happened
20 that day?

21 A No.

22 Q Did you eventually tell your mother?

23 A Yes.

24 Q Was it the same day or another?

25 A It was later whenever they had called the

1 ambulance.

2 Q But it was that same day?

3 A Yes, sir.

4 Q You say an ambulance was called?

5 A Yes, sir.

6 Q You went to the hospital?

7 A Yes.

8 Q And who went to the hospital with you?

9 A My mom and my dad.

10 Q Now, you say during this entire ordeal that
11 these gentlemen, including Mr. Miller, did you, uh,
12 -- I don't know how to ask this exactly. You say you
13 felt out of it maybe?

14 A Yes.

15 Q Or high? When everything was over, the
16 sexual event, did you immediately come off that high?

17 A No, sir.

18 Q How long did that high last?

19 A A while. I went to the hospital three
20 times in five days.

21 Q You were in there the entire time still
22 feeling the effects of the methamphetamine?

23 A Yes, sir.

24 Q I'm going to show what's marked as State's
25 Exhibit number 2 and ask you if you recognize that.

1 A Yes.

2 Q And is that a lineup?

3 A Yes, sir.

4 Q And who showed you that lineup?

5 A Tracy Moss.

6 Q Is she a detective with Spartanburg County
7 Sheriff's Office?

8 A Yes, sir.

9 Q And did you pick somebody out of that
10 lineup?

11 A Yes, sir.

12 Q Why did you pick somebody out of that
13 lineup?

14 A To see if I knew who it was.

15 Q All right. Is the person you picked out of
16 that lineup the same individual that provided you
17 with methamphetamine?

18 A Yes, sir.

19 Q Is that the same individual that had
20 digital penetration of your vagina on March 31st?

21 A Yes, sir.

22 Q Is that the same individual who had
23 intercourse with you on March 31st with other
24 individuals also?

25 A Yes, sir.

1 Q Did you pick that individual out of that
2 lineup?

3 A Yes, sir.

4 Q And who is the individual you picked out of
5 the lineup?

6 A Shane Miller.

7 Q That's the same individual here today,
8 correct?

9 A Yes, sir.

10 MR. GRAY: One moment, Your Honor.

11 (Pause.)

12 Thank you very much. At this time, Your
13 Honor, we'd like to introduce State's Exhibit 2
14 into evidence.

15 MRS. PRICE: Without objection, Your
16 Honor.

17 THE COURT: It's admitted.

18 (WHEREUPON, State's Exhibit 2 is admitted into
19 the record.)

20 MR. GRAY: I'm through asking questions
21 for the time being. Please answer any questions
22 that Ms. Price may have for you, ma'am.

23 CROSS-EXAMINATION

24 BY MRS. PRICE:

25 Q Ms. Lawson, do you remember giving

1 statements to the police in this case?

2 A Yes, ma'am.

3 Q How many did you give? Do you know?

4 A Three.

5 Q Three. Three different statements. **Victi**

6 **[REDACTED]** I'm going to take you back to March the 31st^m
7 of 2008. Your testimony today is that you called Mr.
8 Miller to go hang out?

9 A Uh-huh.

10 Q And you didn't know how old he was. You
11 just knew he was older than you, right?

12 A Yes.

13 Q Uh, but you didn't tell your parents, did
14 you?

15 A No.

16 Q And you didn't tell your parents because
17 you had an inkling of hanging out with an older guy
18 they wouldn't approve of, is that right?

19 A Yes, ma'am.

20 Q Okay. And you readily admit that you had
21 used methamphetamine before Mr. Miller gave it to
22 you, is that right?

23 A Yes, ma'am.

24 Q And you had been using methamphetamine for
25 about a year at this point, right?

1 A Yes, ma'am.

2 Q And you had been using meth since you were
3 13 years old?

4 A I wouldn't say it was a whole year, but
5 yes, ma'am.

6 Q Okay. All right. And it's your testimony
7 here today that you had only met Mr. Miller one time
8 before March 31st of '08, is that right?

9 A Yes, ma'am.

10 Q You told the police you had been there
11 three or four times though, isn't that right?

12 A No, ma'am.

13 Q You didn't tell them that?

14 A No, ma'am.

15 Q I have a copy of your statement. Would you
16 like to read it?

17 A Yeah.

18 Q Okay.

19 A (Reading). I don't remember that. I only
20 met him twice.

21 Q You only met him twice?

22 A Yes.

23 Q And that says before --

24 A I seen what it says.

25 Q Okay. You gave this statement when? Do

1 you remember?

2 A No, ma'am. It was probably after the fact.

3 Q After the fact. Okay. A few days later?

4 One day later? Do you know?

5 A It was the day I got out of the hospital.

6 Q Okay. Which would be April 1st, you said?

7 A Probably.

8 Q But it was closer in time to this incident
9 than we are?

10 A Yeah, I was still high on drugs.

11 Q Okay. Uh, you're high on drugs, yet you
12 gave three different statements to cops?

13 A Yes.

14 Q And these statements were pretty detailed,
15 weren't they?

16 A Uh-huh.

17 Q They described sexual relationships?

18 A Uh-huh.

19 Q They described oral sex?

20 A Uh-huh.

21 Q They described you smoking a whole bunch of
22 methamphetamine?

23 A Yeah.

24 Q But no where in this statement, this first
25 statement that you gave, did you say that you ever

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- Cross-Examination by Mr. Price

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1 tried to fight Mr. Miller off, did you?

2 A No.

3 Q Nowhere in this statement did you ever say
4 that, uh, Mr. Miller forced himself on you?

5 A Nope.

6 Q And in fact, uh, you went to Mr. Miller's
7 house and he had two other people show -- well, Mikey
8 was already there, isn't that right?

9 A Uh-huh.

10 Q And at some point, a guy named Jeremy
11 Miller shows up, isn't that right?

12 A Uh-huh.

13 Q You remember how you referred to Jeremy in
14 your statements?

15 MR. GRAY: Objection, Your Honor.
16 Relevance.

17 MRS. PRICE: Your Honor, uh, I'm trying to
18 introduce her second statement.

19 (WHEREUPON, a bench conference is held off the
20 record in the presence of the jury.)

21 BY MRS. PRICE:

22 Q When did you figure out Mr. Jeremy Mill--
23 excuse me -- Jeremy's name? Did you know Jeremy's
24 name?

25 A No, I didn't.

1 Q Okay. Do you remember how you referred to
2 him in your statements?

3 A No, I don't.

4 Q You just described him, right?

5 A Yeah. I picked him out the picture.

6 Q Okay. You picked him out of the picture.

7 But do you remember what you called him in your
8 statement?

9 A No, I don't.

10 Q Okay. Can I approach again?

11 A Yes.

12 Q Okay. About two-thirds of the way down.

13 A (Reading)...

14 Q Starting right here.

15 A What was you talking about?

16 Q Do you remember what you referred to Jeremy
17 as when you gave your statements?

18 A What did I refer him as?

19 Q Refer to him as. You didn't call him by
20 his name, did you?

21 A No..

22 Q You just referred to him as some black guy?

23 A Yeah.

24 Q So you got three guys here and you don't
25 even know the name of one of them?

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1 A No.

2 Q And you're having sex with them?

3 A Not because I wanted to.

4 Q You never said that in your statement
5 though, did you, Victi [REDACTED]

6 A Well, I'm sorry that I'm high on drugs.

7 Q Victi [REDACTED], you were voluntarily high on
8 drugs, weren't you? Nobody held a gun to your head.
9 Nobody put a knife to your throat and said take these
10 drugs.

11 A No, they didn't.

12 Q In fact, you called Mr. Miller to say come
13 get me and I'm not going to tell my momma and daddy
14 because they wouldn't want me hanging out.

15 A No, I didn't ask for them to, uh, have sex
16 with me.

17 Q You didn't fight them either, did you?

18 A You expect me to win with three guys?

19 Q Please answer my question, Victi [REDACTED].

20 A What?

21 MR. GRAY: Objection, Your Honor.
22 Badgering the witness.

23 THE COURT: Overruled.

24 BY MRS. PRICE:

25 Q Victi [REDACTED] you said here in your testimony

1 today that you had sexual intercourse with Billy
2 Miller, is that right?

3 A Yes.

4 Q And that you said that he, quote, unquote,
5 fingered you?

6 A Uh-huh.

7 Q And by that, you testified that he
8 digitally penetrated your vagina, is that right?

9 A Uh-huh.

10 Q You didn't tell that in your statement
11 either, did you?

12 A Well, I'm sorry.

13 Q No, just yes or no.

14 A No.

15 Q Okay. Uh, now, when you said Mr. Miller
16 had sex with you, did he use a condom?

17 A I don't know.

18 Q You don't know. Okay. Uh, is it your
19 testimony here today that you haven't performed any
20 other sexual acts except, uh, sexual intercourse and
21 the oral sex that you talked about these other two
22 gentlemen, not my client?

23 MR. GRAY: Objection, Your Honor. May we
24 approach?

25 (WHEREUPON, a bench conference is held off the

1 record in the presence of the jury.)

2 BY MRS. PRICE:

3 Q Okay. Is it your testimony today, ^mVicti
4 ■■■■■n, that the only sex acts that you had, did that
5 day were intercourse and oral sex, is that right?

6 A Yes.

7 Q There was no stripping going on?

8 A No.

9 Q You remember making a second statement in
10 this case, ^mVicti ■■■■■

11 A No.

12 Q You don't? May I approach?

13 A Uh-huh. (Reading).

14 Q Take as long as you need.

15 A Yeah, and I said no.

16 Q But then you proceeded to strip, didn't
17 you?

18 A No, I did not.

19 Q You didn't?

20 A No, I did not. He took my pants off of me.

21 Q Okay. And you let him, didn't you?

22 A Yes, I did.

23 Q Okay. But, uh, this gentleman, Jeremy, he
24 did leave you some marijuana, right?

25 A Uh-huh.

1 Q After this happened?

2 A Uh-huh.

3 Q Okay. Now, Victim [REDACTED], you, in your direct
4 examination of Mr. Gray, talked about how you, quote,
5 unquote, came to on the couch and you felt numb, is
6 that right?

7 A Yes.

8 Q That's not in this statement either, is it?
9 Any of them?

10 A It's not?

11 Q No, it's not.

12 A Okay.

13 Q Is it?

14 A No.

15 Q That's what I'm asking you.

16 A No.

17 Q Okay. So you never talked about this
18 feeling numb or this coming to or being on the couch
19 until today?

20 A Okay.

21 Q Did you?

22 A No.

23 Q And you testified today that you didn't
24 smoke any marijuana on this particular day, did you?

25 A No.

1 Q And you -- at some point, you came to be
2 riding in the car with Mikey, didn't you?

3 A Uh-huh.

4 Q And while you were riding down the road
5 with Mikey --

6 A Yes, we did smoke on the way home, when he
7 was taking me home.

8 Q And who was rolling the cigarettes?

9 A Rolling cigarettes?

10 Q Yeah, blunts?

11 A I did.

12 Q You did and you are 14 years old?

13 A Yes.

14 Q You know how to roll a marijuana cigarette?

15 A Yes.

16 Q You did it, didn't you?

17 A Yes.

18 Q Okay. Who is Judy?

19 A That is their neighbor.

20 Q Judy is their neighbor. Okay. Am I
21 understanding your testimony correct today that Mikey
22 took you home?

23 A Yes.

24 Q Is that at the house where you live with
25 your mother and daddy?

1 A No, he didn't take me to my house.

2 Q Okay. Where did he take you?

3 A He took me to Judy's.

4 Q He took you to Judy's. Okay. And what
5 happened -- at Judy's house, you actually took
6 Valium, didn't you?

7 A Yes.

8 Q And you took that voluntarily?

9 A Yes.

10 Q Okay. And it was at that time that your
11 dad, Mr. Lawson, found you?

12 A Uh-huh.

13 Q Okay. And at that point, you went to the
14 hospital, right?

15 A Uh-huh.

16 Q And while you were at the hospital, uh, you
17 had some folks come in the exam room, is that right?

18 A Yes.

19 Q And to your knowledge, you had what is
20 commonly called a rape kit done, is that right?

21 A Yes.

22 Q Sexual assault kit?

23 A Uh-huh.

24 Q Pelvic exam and all that fun stuff?

25 A Yes.

- 1 Q Uh, Victim [REDACTED] do you have a MySpace page?
- 2 A Did.
- 3 Q You did?
- 4 A Yeah.
- 5 Q Did you have one on March 31st of 2008?
- 6 A Yeah.
- 7 Q You did. Okay. Do you remember, uh, --
- 8 the information that you put on your MySpace page,
- 9 that was information that you entered when you set up
- 10 your page, right? You remember how old you put that
- 11 you were?
- 12 A I put I was 18.
- 13 Q You put you were 18.
- 14 A I didn't know him on that.
- 15 Q Okay. So you put that you were 18 years
- 16 old?
- 17 A Yes, I did.
- 18 Q And you weren't 18 years old?
- 19 A No, I was not.
- 20 Q You were lying about your age?
- 21 A Yeah, and I had to to get a MySpace page.
- 22 Q Miss -- Victim [REDACTED], you lied and said you
- 23 were 18?
- 24 A Yes, I did.
- 25 Q And you were 14?

1 A Yes, I did.

2 Q And Victim [REDACTED], you posted a picture of
3 yourself on here, didn't you?

4 A Uh-huh. I sure did.

5 Q Can you describe how you looked?

6 A You going to show me?

7 Q Well, sure.

8 A Okay.

9 Q Okay.

10 A Is there anything inappropriate with that?

11 Q I just asked you to look at this picture.

12 Can you describe to the jury how you looked? Is
13 this --

14 A It's, uh, my face and my hair.

15 Q Really? Uh, and your hair is wavy.

16 A Uh-huh.

17 Q And you have kind of a puckered lip look,
18 right?

19 A Uh-huh.

20 Q And your hair looks to be colored blonder
21 than it is now, is that right?

22 A Yeah.

23 Q Okay. Does this fairly and accurately
24 depict what you looked like on, uh, March 31st, 2008?

25 A No, I had brown hair then.

1 Q You had brown hair then?

2 A Yes, I did.

3 Q This how you wore your makeup?

4 A I had that thing for a long time.

5 Q That's not what I asked you, Victim [REDACTED]

6 A Well, yeah. That's what was on there.

7 Q That's what was on there.

8 A Yeah.

9 Q This is what you had on there when you were
10 advertising to the world that you were 18 years old?

11 A Yeah.

12 Q So this is you?

13 A Yeah, that's me.

14 Q Okay. And Victim [REDACTED] in addition to your
15 MySpace page, you had some more information about
16 that on there, didn't you?

17 A I guess.

18 Q You guess. Okay. Well, you had a little
19 profile box off to one side that tells a little bit
20 about you, where you live, your birthday, that kind
21 of stuff. Is that right?

22 A Yes.

23 Q Okay. And you had -- there is a little
24 point over there about do you smoke and do you drink,
25 is that right?

1 A Uh-huh.

2 Q You remember what you put down?

3 A Huh-uh.

4 Q Can I approach?

5 A Yeah.

6 Q Sure. Right here.

7 A (Reading).

8 Q Do you remember what you wrote now?

9 A I see it.

10 Q What did you write?

11 A You don't have to write that on there.

12 Q Oh, so this just magically appeared?

13 A I don't know. I have not got on that thing
14 for years.

15 Q M [REDACTED]

16 A What?

17 Q Are you always so disdainful?

18 A No, but you are getting me that way.

19 Q Oh, so it's my fault that you are behaving
20 that way?

21 A Yes, it really is.

22 Q It is. You don't have any self-control, do
23 you? Everybody else does things to you just like you
24 accused my client of doing today. Nothing is your
25 fault.

MINOR

- Cross-Examination by Mr. Price

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1 A It ain't accused. He did.

2 Q Oh, really?

3 A He's 30-something years old.

4 Q He called you and said come on over, let's
5 smoke some meth?

6 A I called him, yes, I did. But he's ---

7 Q Yes, you called him.

8 A --- 30-something years old. Don't you
9 think he'd know?

10 Q He'd know what? How old that an 18-year-
11 old girl would look like on this?

12 A He didn't even know me on this. So how did
13 he --

14 Q This is how you presented yourself.

15 A I told him I was 14 years old. I told him.

16 THE COURT: Excuse me. Excuse me. Hang
17 on. Just a minute. We've got a Court Reporter
18 here.

19 THE WITNESS: Do I have to talk to her?

20 THE COURT: Uh, yes, ma'am. And you need
21 to listen to me right now. We have a Court
22 Reporter taking down the testimony. She can't
23 take it down when y'all are talking at the same
24 time. Mrs. Price, this is for you too.

25 MRS. PRICE: Yes, sir.

1 THE COURT: So y'all are going to take
2 turns with the questions and answers.

3 BY MRS. PRICE:

4 Q So **Victi** [REDACTED], in your three statements
5 that you gave to police, you don't tell them until
6 your third statement that you are 14 years old. It's
7 not in your first statement, it's not in your second
8 statement, is it?

9 A I don't know.

10 Q Would you like to see them again?

11 A No.

12 Q Okay. So it's also your testimony here
13 today -- let's just make sure I've got this straight.
14 You called him. He didn't call you.

15 A Yes, ma'am.

16 Q You didn't deny the drugs when he gave them
17 to you?

18 A No.

19 Q You have a cell phone, **Victi** [REDACTED].

20 A No, I don't.

21 Q Okay. But you still were basically
22 sneaking out of your house to get with this guy?

23 A That one day, yes, I did.

24 Q But you also freely admit that you had been
25 smoking meth before?

1 A Yes.

2 Q And you took it from him and you didn't say
3 no?

4 A Yes.

5 Q And he didn't beat you over the head and
6 say take this?

7 A No.

8 Q He didn't take a knife to your throat or
9 threaten you with any harm or anything like that, did
10 he?

11 A No.

12 Q You voluntarily took it?

13 A Yes.

14 Q And you also, uh, were doing these
15 activities with some other people that were there
16 that day, weren't you?

17 A Yes.

18 Q And you went to the hospital. At the
19 hospital -- when you went to the hospital, you
20 weren't beat up or anything, were you?

21 A Not physically.

22 Q But you took the stuff voluntarily?

23 A Yeah, but I didn't want him or his friends
24 in me.

25 Q You didn't want him and his friends but you

1 called him?

2 A To go over there, not to come have sex with
3 me.

4 Q Victi [REDACTED], you voluntarily --

5 A Okay. Yeah.

6 Q You voluntarily took drugs?

7 A Yes.

8 Q Okay. And you said that you -- your
9 testimony today is that you said that you felt numb?

10 A Uh-huh.

11 Q And you didn't know what you were doing?

12 A Uh-huh.

13 Q Yet, you gave three -- a multi-page
14 statement, is that right?

15 A Yeah. The next day.

16 Q Okay. But you still gave multi-page
17 statements?

18 A Yes, I did.

19 Q And in this, you talk about all this
20 activity that you testified here today?

21 A Yeah.

22 MRS. PRICE: Uh, Your Honor, I neglected
23 to do this a few moments ago when I was asking
24 her. I think she has authenticated this. This
25 was her in 2008. I would like permission to

1 publish to the jury and have this marked as an
2 exhibit.

3 THE COURT: Show that to Mr. --

4 MRS. PRICE: I have, Your Honor.

5 THE COURT: Any objection?

6 MR. GRAY: No. She's moving it into
7 evidence?

8 THE COURT: Yeah.

9 MRS. PRICE: Yes, Your Honor.

10 MR. GRAY: No objection.

11 THE COURT: All right. It's admitted.

12 MRS. PRICE: Defendant's 1 please.

13 (WHEREUPON, Defendant's Exhibit 1 is marked for
14 identification and admitted into the record.)

15 MRS. PRICE: And permission to publish,
16 Your Honor.

17 THE COURT: You may.

18 MRS. PRICE: And that's all the questions
19 I have for Victim [REDACTED].

20 MR. GRAY: Your Honor, redirect, Your
21 Honor?

22 THE COURT: You may.

23 MR. GRAY: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. GRAY:

1 Q How old did you tell the defendant that you
2 were?

3 A 14.

4 Q Did you ever ask for any methamphetamines?

5 A I didn't ask.

6 Q Who provided the methamphetamine?

7 A Shane Miller.

8 Q The defendant. Who sexually assaulted you?

9 A Shane.

10 Q I'm going to ask you something. May I
11 approach? I'm going to ask you if you recognize
12 this. What is that?

13 A This is a picture. You can put things on
14 it to make it look like that.

15 Q Is that you in the picture?

16 A This is me, yes.

17 Q Would you please point an arrow to you?

18 A (Drawing).

19 MRS. PRICE: Without objection. Without
20 objection, Your Honor.

21 MR. GRAY: This will be State's Exhibit
22 number 3, I believe.

23 (WHEREUPON, State's Exhibit 3 is marked for
24 identification and admitted into the record.)

25 BY MR. GRAY:

MINOR

- Redirect Examination by Mr. Gray

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1 Q What are you doing in that picture?

2 A Sticking my tongue out.

3 MR. GRAY: Permission to publish this to
4 the jury, Your Honor?

5 MRS. PRICE: Without objection, Your
6 Honor.

7 BY MR. GRAY:

8 Q Was your MySpace page set to private?

9 A Yes, it was.

10 Q So you weren't communicating with Mr.
11 Miller at all?

12 A No, I didn't. I never even knew about him.

13 Q You never --

14 A Never talked to him on it, never seen him
15 on it, nothing.

16 Q You never --

17 A No.

18 Q Like she said you lied to him about your
19 age?

20 A Uh-huh.

21 Q You told him you were 14?

22 A I did. I told him out of my mouth to his
23 face.

24 Q All right. Thank you. Nothing further.

25 MRS. PRICE: Recross, Your Honor, briefly.

RECROSS-EXAMINATION

2 BY MRS. PRICE:

3 Q When did you tell the police that you told
4 Shawn, uh, Shane how old you were?

5 A The day before that even happened. It was
6 before that even happened.

7 Q Okay. Uh, you told him personally.
8 yourself?

9 A Yes, I did.

10 Q Okay.

11 **A** And she also did.

12 Q Okay. And you put this in a statement
13 when?

14 . Q. A. I'm not sure.

15 Q Okay. Now, statement number 1, statement
16 number 2 and statement number 3.

17 A Uh-huh.

18 Q You remember giving three statements?

19 | A Yes, I do.

20 Q At what point did you tell the police that
21 Shane knew how old you were?

22. A I'm not sure.

23 Q You can read all three of these if you'd
24 like. Would you like to review these?

25 **A** That's fine.

MINOR

- Recross Examination by Mrs. Price

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1 Q Okay.

2 A (Reading). Uh-huh.

3 Q Okay. Do you remember giving that
4 statement?

5 A Yes, I do.

6 Q And do you remember it was about the 4th
7 day of April, 2008?

8 A Uh-huh.

9 Q Okay. And in this statement, you actually,
10 uh, claim that Shane asked how old you were and
11 somebody else told him, is that right?

12 A Well, I had also, but yes.

13 Q But you didn't put that in here?

14 A Huh-uh.

15 Q And you didn't put it in here?

16 A Huh-uh.

17 Q And you didn't put it in here?

18 A Huh-uh.

19 Q And it only became an issue later?

20 A Uh-huh.

21 Q Is that true?

22 A Yeah.

23 Q Okay. That's all I have.

24 MR. GRAY: Nothing further, Your Honor.

25 THE COURT: You may step down.

1 MR. GRAY: The State calls Brenda Miller.
2 Excuse me, Brenda Lawson.

3 THE CLERK: Place your left hand on the
4 Bible and raise your right.

5 BRENDA LAWSON

6 having first been sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. GRAY:

9 Q Please state your name, ma'am.

10 A Brenda Dodd Lawson.

11 Q How are you related to MINOR

12 A That's my daughter.

13 Q What is MINOR's birth date?

14 A [REDACTED]

15 Q On March 31st of 2008, how old would she
16 have been?

17 A She was 14 at that time.

18 Q How old is she now?

19 A She's 17 now.

20 Q On March 31st of 2008, was she being
21 supervised at that time I guess is the question.

22 A Her father and I are separated. She went
23 to her father's for the spring break. He works. She
24 was old enough to be left home by herself. So she
25 was by herself that day.

1 Q Did she ever tell you what happened to her
2 on March 31st of 2008?

3 A After it happened.

4 Q Was it that day or some time later?

5 A No. It was -- we went to the hospital.
6 And they done the rape exam, the kit. I didn't know
7 nothing until after.

8 Q Was it a day after, two days after or the
9 same day?

10 A Bits and pieces came together a few days,
11 you know, I guess as it came to her.

12 Q Now, I want to ask you about that. As it
13 came to her? What was her initial demeanor when you
14 saw her on March 31st?

15 A When her father called me and I went to the
16 house, she was at the kitchen table. She was holding
17 her head like this. (Demonstrating). I tried to
18 talk to her. She really couldn't respond. She
19 didn't know -- she knew where she was at. She knew
20 her dad. She knew me. But that was about it. So I
21 got her to lay on the couch. I got up. I got a wet
22 washcloth. I thought maybe that might help her. She
23 just -- she was out of it. She didn't know nothing.
24 So at that time, we called the police.

25 Q You eventually took her to the hospital?

1 A Yes.

2 Q Now, did you go to the hospital just one
3 time?

4 A No, we went three times within five days.

5 Q Now, you say she was out of it this first
6 day. Why did you take her back three times over this
7 five-day period?

8 A She wasn't herself. Her throat swelled up.
9 She couldn't swallow. She couldn't eat. She
10 couldn't drink nothing. She couldn't even swallow or
11 spit. I had to hold a trash can to her because she
12 had to spit. I didn't know if she had a disease or
13 what it was. They told me it was her coming off of
14 drugs.

15 Q How long did it take her to come off of the
16 drugs?

17 A It took over a week. It was -- it was --
18 it was several weeks before she was really herself as
19 I know her.

20 Q Initially, you're saying from March 31st
21 until April 7th maybe ---

22 A Yes.

23 Q --- it took her to come down off of drugs?

24 A Yes. I never seen anything like this.

25 Q Is that the time during which she was

1 giving multiple statements to police?

2 A Yes.

3 Q While she was still under the influence?

4 A Yes.

5 Q Nothing further. Please answer any
6 questions Mrs. Price would have.

7 CROSS-EXAMINATION

8 BY MRS. PRICE:

9 Q Mrs. Lawson, when you first saw your
10 daughter, you remember what time it was?

11 A It was later in the evening. I don't know
12 what time it was when he called me.

13 Q But you never saw her at the time -- you
14 were not present at Mr. Miller's home?

15 A No. I know nothing about him or where he
16 lives or nothing.

17 Q Okay. That's all. Thank you.

18 THE COURT: You may step down.

19 You got a brief witness?

20 MR. GRAY: Yes, sir.

21 THE COURT: Okay.

22 MR. GRAY: Mr. Joe Lawson.

23 THE CLERK: Place your left hand on the
24 Bible and raise your right.

25 JOE LAWSON

1 having first been sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. GRAY:

4 Q Good afternoon, Mr. Lawson.

5 A Good afternoon.

6 Q Mr. Lawson, what is your full name?

7 A Joe Bill Lawson..

8 Q Where do you live, sir?

9 A ADDRESS ADDRES

10 Q How is MINOR related to you?

11 A She is my daughter.

12 Q Do you remember the events of March 31st,

13 2008?

14 A Yes.

15 Q Tell me about it.

16 A Spring break. My daughter was supposed to

17 be at home. Monday. I come in from work. She

18 wasn't at home. Of course, I started worrying and

19 trying to get in touch with her. I called around

20 some of her friends trying to find her. Had no luck.

21 I even went out riding around looking for her. So I

22 found a number that was dialed off the phone. I

23 called it. Couldn't get no answer. I left a message

24 saying, you know, I'm trying to get in touch with

25 MINOR I didn't know who it was or whatever, but I

1 did leave a message telling them she was only 14
2 years old and she needed to get home.

3 Then, later, some neighbor had come to the
4 house and said my daughter was at a lady's house
5 named Judy. I don't know her last name. So my
6 stepson was there with me. So we went up there.
7 They told me she was pretty messed up before I got
8 there. I was pretty angry. Some guy had brought her
9 up there.

10 So I got up there. My stepson, we had a
11 baseball bat. We didn't do anything. I talked to
12 the guy. He said, nah, I just gave her a ride. I
13 had to find my daughter. She was all messed up.
14 Scared. So I got her. I told the guy I wanted his
15 driver's license. I wanted to find where he lived
16 and everything. I got that from him. I said if
17 anything's happened to my daughter, cause she's
18 underage, I will come after you.

19 Q What was that gentleman's name?

20 A Michael Kimbrell.

21 Q Uh, did you ever see your daughter that
22 day?

23 A Not before that.

24 Q After that, did you see her?

25 A Yes. My daughter.

1 Q What was her physical condition?

2 A She was pretty messed up. She was scared.
3 Uh, I called my wife. I didn't know what to do. She
4 was pretty messed up. My wife talked -- she told my
5 wife what happened. She talked to my wife. So we
6 called the police. Then took her to Spartanburg to
7 the hospital.

8 Q You say pretty messed up, what do you mean?

9 A Uh, she wasn't herself. She was groggy. I
10 don't know. More or less, you know, she didn't know
11 what was going on much. She was scared to death.

12 Q Just kind of high, I guess.

13 Q How long did that last?

14 A It seemed like forever. We were at the
15 emergency room at 2:00 or 3:00 o'clock in the
16 morning. She was still messed up then. Then we went
17 to the room after they let us go in to see her. She
18 still didn't feel good. She was having cramps and
19 stuff in her stomach. They ran tests and everything
20 on her. Then we got to take her home. Took her
21 home. Then that night, she started hurting -- that
22 morning -- excuse me -- that morning, she was still
23 hurting. So the next day, we carried her back to the
24 emergency room.

25 Q Was she still having pain and grogginess?

1 A Uh, yes. She was still having complaints.
2 I don't know what it was.

3 Q How long before she was back to herself as
4 you knew her?

5 A Probably about a day or so. I was pretty
6 upset.

7 Q Thank you, sir. No further questions.
8 Please answer any questions Mrs. Price may have.

9 MRS. PRICE: I don't have any for Mr.
10 Lawson.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 MR. GRAY: May we approach, Your Honor?

14 (WHEREUPON, a bench conference is held off the
15 record in the presence of the jury.)

16 THE COURT: All right. Ladies and
17 Gentlemen, we're going to have to -- excuse me.
18 We're going to break for lunch. We'll do that
19 now. Let me caution you that at no time during
20 the course of the trial or while the trial is in
21 progress are you to ever discuss the case with
22 anybody including your fellow jurors. You are
23 only permitted to talk about the case at the
24 trial's conclusion during your deliberations
25 when you make your decision.

1 So during the lunch recess, don't discuss
2 the case with anybody, including your fellow
3 jurors. Don't allow anyone to discuss it with
4 you. Don't conduct any research. Don't do your
5 own investigation into any issue that might
6 arise during the trial. All right. So we'll
7 break for lunch. Please report back to your
8 jury room at 2:30. 2:30 this afternoon, report
9 to the jury room. If you will, just leave those
10 there. The bailiff will get those.

11 Mr. Seay, get those exhibits please on the
12 rail. No, on the rail. Just give them to her.

13 THE BAILIFF: Just give that to who? Sorry.

14 (WHEREUPON, the jury exits at approximately
15 12:50 p.m.)

16 THE COURT: All right. Court's in recess
17 until 2:30.

18 (WHEREUPON, a lunch recess is taken from
19 approximately 12:51 p.m. to 2:33 p.m.)

20 THE COURT: All right. We ready for the
21 jury?

22 MR. GRAY: Yes, Your Honor.

23 MRS. PRICE: Yes, Your Honor.

24 THE COURT: Bring them in please.

25 (WHEREUPON, the jury enters at approximately

1 2:35 p.m.)

2 THE COURT: Good afternoon, Ladies and
3 Gentlemen. As you know, we recessed for lunch.
4 The State was in the midst of their
5 presentation. So we will continue with that
6 presentation this afternoon.

7 Mr. Gray.

8 MR. GRAY: The State calls Detective Tracy
9 Moss to the stand.

10 TRACY MOSS

11 having first been sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. GRAY:

14 Q Please state your name, ma'am.

15 A Tracy Moss.

16 Q Where do you work?

17 A Spartanburg County Sheriff's Office.

18 Q How long have you worked there?

19 A Since June 2005.

20 Q What are your primary duties and
21 responsibilities now?

22 A To investigate cases involving children and
23 adults involved in sexual assaults and child abuse
24 cases.

25 Q How long have you had that responsibility?

1 A Since 2005.

2 Q All right. Uh, did you have an occasion to
3 investigate a case involving Ms. MINOR

4 A Yes, sir, I did.

5 Q Uh, when you got involved in that case,
6 where was the first place you met Victi [REDACTED]

7 A At Spartanburg Regional.

8 Q And what was Victi [REDACTED] doing there?

9 A She was brought into the hospital. It
10 actually originated from some drugs initially.

11 Q All right. Once you saw Victi [REDACTED], what
12 was her condition?

13 A She appeared to be intoxicated on something
14 with some type of drug. At the time when I got
15 there, I was uncertain what type that she had
16 ingested.

17 Q Did you respond on the same day as the
18 incident in question?

19 A Yes, I did.

20 Q What was that date again?

21 A It was April 1st. Actually, I responded
22 April 1st at 1:30 in the morning. But it happened
23 March 31st. Everything kind of just transpired to
24 that time period when she was brought to the
25 hospital.

1 Q So April 1st at 1:30 in the morning, she
2 still appeared intoxicated?

3 A She still -- yes, she did still appear to
4 be intoxicated.

5 Q Okay. Did you get any statements from her
6 at that time?

7 A I did not.

8 Q Did you develop a suspect or suspects at
9 that time?

10 A The officer that responded to the hospital
11 before I got there, actually, he was the one who
12 determined the possible suspects involved.

13 Q Who were the possible suspects?

14 A Shane Miller was listed on the report as
15 well as a Michael Kimbrell.

16 Q Did you go interview Mr. Kimbrell?

17 A I did not.

18 Q Did you follow up on your investigation and
19 interview Mr. Miller?

20 A I did.

21 Q When did you interview Mr. Miller?

22 A I interviewed Mr. Miller on April 3rd.

23 Q I'll show you what's been marked as State's
24 Exhibit 1 and ask if you recognize that?

25 A Yes, sir. It is our preinterrogation

1 waiver form and also our voluntary statement form.

2 MR. GRAY: Your Honor, at this time, I
3 believe there is no objection. I would like to
4 admit that into evidence.

5 MRS. PRICE: Without objection.

6 THE COURT: It's admitted.

7 MR. GRAY: Thank you.

8 (WHEREUPON, State's Exhibit 1 is admitted into
9 the record.)

10 BY MR. GRAY:

11 Q Now, you went through the process of
12 interviewing Mr. Miller. What did that entail?

13 A Uh, prior to interviewing Mr. Miller, we
14 read him his rights. We have a form that we, uh, --
15 that we actually fill out, have them witness and also
16 initial beside each one. It basically reads out
17 their rights that is told to them. We read it to
18 them. I also had another officer that was present
19 with me during the preinterrogation waiver form when
20 it was filled out. Like I said, he will sign it.
21 We'll have it witnessed and notarized.

22 Q During your investigation, did you
23 determine the age of the defendant?

24 A We did.

25 Q What was his age?

1 A 30.

2 Q Did you determine the age of the victim in
3 this case?

4 A We did.

5 Q What was that age?

6 A She was 14.

7 Q MINOR was 14 at the time of this
8 incident?

9 A Yes, sir.

10 Q And what were the allegations in this
11 incident?

12 A When she got to the hospital, she told the
13 nurse there that she had had sex with the men that
14 were at this location, this incident location.

15 Q Speaking of which, where is the incident
16 location?

17 A It's ADDRESS --- ADDRESS
18 And that's in Inman, which is the Fingerville area,
19 which is in Spartanburg County.

20 Q That is in Spartanburg County?

21 A Yes, sir.

22 Q Okay. Now, this entire incident took place
23 at the home of Mr. Billy Shane Miller?

24 A Yes, sir.

25 Q After you mirandized him and he waived his

1 rights, did he give you a written statement?

2 A He did. I actually wrote the statement for
3 him. I had asked if I could write it as he was
4 telling his story.

5 Q Did you write that statement for him?

6 A Yes, sir. I did.

7 Q Did he sign that statement?

8 A Yes, he did.

9 MR. GRAY: Your Honor, at this time,
10 request permission for her to publish this to
11 the jury.

12 THE COURT: She may.

13 THE WITNESS: This statement is being
14 written by Detective Tracy Moss at Billy Shane
15 Miller's request and at his direction. On
16 Monday, around 11 a.m., I picked up MINOR from
17 her house. She started calling me the night
18 before and before I picked her up. She said
19 she wanted to hang out. She was flirting with
20 me one other night while her boyfriend,
21 Jonathan Isom, and Stephanie were at the house.

22 I picked her up. We were heading to my
23 house. She was wanting to do some dope, but I
24 did not have a bowl. I had some dope in my lap
25 and she grabbed the dope, meth, and we both ate

1 it.

2 We went to my house -- we went through
3 Burger King drive-thru to get a drink. We went
4 to my house. Mikey was at my house. The three
5 of us started smoking the dope. I only had a
6 gram of dope. I got up and went to the mailbox
7 and she followed me down there with the bowl.
8 She asked me to put the dope in the bowl. I
9 went in and chopped the dope in three lines and
10 snorted. All three of us snorted.

11 Jeremy Miller, a black male, came over to
12 my house. Jeremy spoke to MINOR and they were
13 talking like they knew each other. Jeremy
14 asked MINOR if she would strip for us. She
15 asked Jeremy what he would pay her. He told
16 her whatever she wanted. During this time,
17 Jeremy had brought some marijuana and joints
18 were being rolled and a bowl was being passed
19 around.

20 She started pulling her shirt off and
21 showing us her belly ring. She took off all of
22 her clothes herself. Mikey had oral sex with
23 her. She started by dancing and dancing up on
24 us. Me and Jeremy went looking for rubbers.
25 Jeremy did have a rubber. I then went outside.

1 When I came back in and she was laying on
2 the floor giving Mikey oral sex and Jeremy was
3 having sex with her. I asked her what she was
4 doing. She asked me to kiss her. I leaned
5 over. She pulled me to and I kissed her on the
6 lips. I went and sat on recliner. She started
7 giving me oral sex. She got on top of me but
8 my stuff wouldn't get up. She got up and gave
9 Mikey head and Jeremy was having sex. She came
10 back over to me four or five times giving me
11 oral sex and somebody else would be having sex
12 with her. This was going on for an hour.

13 I left and went to Grant's to look at a
14 Mercury Cougar. Mikey and MINOR were still
15 having sex. Jeremy left before I did. I saw
16 Jeremy on Peachtree Road. He was with Talley
17 Jolly. We pulled over and he said he forgot
18 his phone.

19 When I got home, Mikey was not there.
20 Melissa and a friend of hers were there.
21 Melissa told me Mikey and MINOR were asleep on
22 the couch. MINOR told me that she needed to
23 be home by 3 p.m. before her dad gets home.
24 Mikey told me he took her to some woman's house
25 and they were smoking weed and MINOR took a

1 Valium. Mikey told me that her dad and brother
2 pulled up. Jeremy did go to my house with
3 Talley to get his phone after I saw him on
4 Peachtree Road.

5 Talley told me the next day that I was
6 going to get caught by my girlfriend if I keep
7 messing around her. I asked what she was
8 talking about. She said I saw the girl walking
9 around the house naked. I left \$10 in the car
10 for MINOR to get home. MINOR did take the
11 weed Jeremy left for her.

12 There was no force used. No one was trying
13 to force themselves on her. I wish this did
14 not happen. I did not know she was 14.

15 BY MR. GRAY:

16 Q Thank you. During the statement or
17 questioning or interviewing, did the defendant ever
18 say he tried to stop this sexual situation?

19 A No, sir.

20 Q Did he ever try to say he tried to call the
21 police about this sexual situation that was going on?

22 A No, sir.

23 Q Did he ever try to remove the other two
24 gentlemen from the home?

25 A No, sir.

1 Q Did he ever do anything to stop this
2 situation?

3 A No, sir.

4 Q And he was there, at least according to the
5 statement, some or all of the time during the sexual
6 interaction between himself and the victim?

7 A Yes, sir.

8 Q Did he appear to, uh, -- did he ever say
9 where the drugs came from, the methamphetamine?

10 A Not that I recall. He did not.

11 Q All right. Thank you very much. Please

12 answer any questions for Miss -- excuse me -- the
13 defense attorney may have.

14 CROSS-EXAMINATION

15 BY MRS. PRICE:

16 Q Detective Moss, you responded to the
17 hospital during the early morning hours of April
18 Fools Day, 2008, right?

19 A Yes, ma'am.

20 Q And you saw Victi. [REDACTED]

21 A Yes, ma'am.

22 Q And you continued with your investigation,
23 of course, for several days, is that right?

24 A Yes, ma'am.

25 Q That included taking statements from Victi.

1 **Victim**

2 **A** Yes, ma'am.

3 **Q** That's something that you do in the regular
4 course of your job as a police officer?

5 **A** Yes, ma'am.

6 **Q** **Vict** gave you three different
7 statements, is that right?

8 **A** She did.

9 **Q** In her first statement, she tells what
10 allegedly happened at this house with Mikey, Shane
11 and she said something about Jeremy, but Mikey and
12 Shane were the main two, is that correct?

13 **A** Yes, ma'am.

14 **Q** In her second statement, she finally said
15 something that she was doing some things with Jeremy,
16 is that right?

17 **A** Yes, ma'am.

18 **Q** But she didn't have that in the first
19 statement, did she?

20 **A** No, ma'am.

21 **Q** In her third statement -- excuse me. In
22 her first two statements, did she say anything about
23 being forced into having sex.

24 **A** In her first statement?

25 **Q** Uh-huh. If you remember.

1 A Can I look over it real quick?

2 Q Sure. Absolutely.

3 A (Reading). No, she did not.

4 Q Okay. Also, in her statements, did she say
5 anything about being forced to take drugs?

6 A No, ma'am.

7 Q When you saw her at the hospital, did she
8 appear to have any physical signs of being beaten up
9 or having her mouth held open or anything of that
10 nature?

11 A No, ma'am.

12 Q That's all I had.

13 MR. GRAY: Nothing on redirect.

14 THE COURT: You may step down.

15 MR. GRAY: That would be the State's
16 showing, Your Honor. The State rests.

17 THE COURT: All right. Ladies and
18 Gentlemen, that's all the testimony or evidence
19 to be offered by the State at least in their
20 case-in-chief. Before we go further, I need to
21 discuss some matters with the lawyers. I'll do
22 that during the break. Please go to your jury
23 room. Do not yet discuss the case. I'll bring
24 you back shortly.

25 (WHEREUPON, the jury exits at approximately

1 2:47 p.m.)

2 THE COURT: I thought you had another
3 witness that was being transported from
4 somewhere.

5 MR. GRAY: I did, Your Honor. I
6 interviewed him again. There was some issues
7 with his testimony.

8 THE COURT: Mrs. Price, you talked with
9 your client about his right to testify?

10 MRS. PRICE: I have, Your Honor. Yes,
11 Your Honor.

12 THE COURT: Does he indicate to you a
13 preference?

14 MRS. PRICE: He is not going to, Your
15 Honor. And I'm not putting up any witnesses for
16 the defense.

17 THE COURT: Mr. Miller, your lawyer tells
18 me you are not going to testify, you're not
19 going to take the witness stand. That's a right
20 that you have. Any time you are charged with a
21 crime, nobody can make you take the witness
22 stand and testify during the trial. But at the
23 same time, this is the only opportunity that you
24 will have to do so if you wish to provide this
25 jury with any additional information. Do you

1 understand you have an absolute right to remain
2 silent?

3 MR. MILLER: Can I --

4 MRS. PRICE: You have to speak up.

5 MR. MILLER: Can I talk to her for one
6 second?

7 THE COURT: Sure.

8 (WHEREUPON, Mr. Miller consults with Mrs.
9 Price.)

10 THE COURT: Mr. Miller, do you understand
11 that you have an absolute right to remain
12 silent?

13 MR. MILLER: Yes, sir.

14 THE COURT: Do you also understand that if
15 you wish to testify, if you wish to tell this
16 jury anything they have not heard already, now
17 is the only opportunity that you will have to do
18 so?

19 MR. MILLER: Yes, sir.

20 THE COURT: In other words, you can't wait
21 until the jury reaches a decision and if it
22 doesn't go to suit you, complain about the fact
23 that you didn't testify during the trial. You
24 have to make that decision now. It's your
25 decision. I can't make it for you. Your lawyer

1 can't make it for you. Nobody else can make it
2 for you. It's your decision. You have to
3 decide if you're going to testify or not. Do
4 you understand that you have a right to?

5 MR. MILLER: Yes, sir.

6 THE COURT: Do you understand that only
7 you can decide whether you will or won't?

8 MR. MILLER: Yes, sir.

9 THE COURT: Have you and your lawyer
10 discussed the advantages and disadvantages of
11 your testifying as well as your not testifying?

12 MR. MILLER: Can I talk to her for a
13 second again?

14 THE COURT: Yes.

15 (WHEREUPON, Mr. Miller consults with Mrs.
16 Price.)

17 MR. MILLER: I understand my rights, sir.

18 THE COURT: Well, do you understand the
19 advantages and disadvantages of testifying as
20 well as not testifying?

21 MR. MILLER: Yes, sir.

22 THE COURT: And have you made a decision
23 about whether or not you will testify?

24 MR. MILLER: Yes, sir.

25 THE COURT: And what is it?

1 MR. MILLER: Not to testify.

2 THE COURT: And is that a decision that
3 you made of your own free will and accord?

4 MR. MILLER: Yes, sir.

5 THE COURT: Did anybody else suggest that
6 to you?

7 MR. MILLER: No, sir.

8 THE COURT: It was your decision?

9 MR. MILLER: Yes, sir.

10 THE COURT: You satisfied with it?

11 MR. MILLER: Yes, sir.

12 THE COURT: You have any other witnesses
13 you want Mrs. Price to call on your behalf?

14 MRS. PRICE: He wants to know if you want
15 any more witnesses, called.

16 MR. MILLER: No.

17 THE COURT: All right. Be seated.

18 All right. Y'all have any instruction
19 requests?

20 MR. GRAY: Yes, Your Honor.

21 (WHEREUPON, there is a pause.)

22 THE COURT: Do you have any requests, Ms.
23 Price?

24 MRS. PRICE: Yes, Your Honor. I have one,
25 and that is that mistake of age is a defense.

1 THE COURT: You have a copy of that
2 portion of the statute because I don't have it.

3 MRS. PRICE: I don't believe I brought
4 mine with me, Your Honor. If Your Honor will
5 indulge me for one moment, I can run over to the
6 small office and look it up right now.

7 THE COURT: Okay.

8 (WHEREUPON, a bench conference is held off the
9 record.)

10 THE COURT: Okay. Any other matters we
11 need to address before the jury is brought in?

12 MRS. PRICE: I don't think so, Your Honor.

13 THE COURT: All right. We ready for the
14 jury?

15 MR. GRAY: Yes, sir, Your Honor.

16 MRS. PRICE: Yes, Your Honor.

17 THE COURT: All right. Bring them in.

18 (WHEREUPON, the jury enters at approximately
19 3:05 p.m.)

20 THE COURT: All right. Ladies and
21 Gentlemen, as you know, the State has rested, so
22 we will proceed with any additional evidence to
23 be offered by the defense, if any.

24 Mrs. Price?

25 MRS. PRICE: Your Honor, the State rests.

1 Excuse me. The defense rests.

2 **THE COURT:** All right. That's all the
3 evidence that's going to be presented. What
4 remains to be done are the lawyers' final
5 summations. After which, I will give you the
6 legal instructions. Then you can begin with
7 your deliberations. So please give the lawyers
8 your attention as they give you their final
9 summations.

10 Mrs. Price.

11 **MRS. PRICE:** Thank you, Your Honor.

12 Ladies and Gentlemen, this is my final
13 chance to get to talk to you on behalf of Mr.

14 Miller. I would like to thank you for your
15 attention. You may have thought it was a very
16 short case timewise, but I'm pretty sure that
17 every case I try in here is important to my
18 client and to the State. We would like to thank
19 you for your kind attention today.

20 One thing I -- just a few things that I
21 want you to keep in mind as you begin to go back
22 into the jury room and begin your deliberations.
23 This is where my job really stops and yours
24 start as you get back there. I just want you to
25 remember one thing. That is the word no. You

1 never ever heard that word during the course of
2 this trial.

3 This young lady was on Facebook, excuse me,
4 MySpace saying that she's 18 years old. Y'all
5 saw the pictures of herself that she put on
6 Facebook. You also heard testimony from her on
7 the stand that she put down smoke, yes, drink,
8 yes, on her MySpace page.

9 Now, Mr. Miller has told you, excuse me --
10 Mr. Miller's position is that he did not know
11 how old this girl was. Smoking and drinking, as
12 you know, are not 14-year-old behaviors. You
13 can't buy tobacco until you're 18. Can't drink
14 until you're 21. We all know that. In
15 addition, you heard **Victi** [REDACTED] sit up here on
16 the stand and confess to knowing how to roll
17 marijuana cigarettes at the ripe old age of 14.
18 Is this 14-year-old behavior? Is this something
19 that 14-year-olds know how to do? Smoking meth
20 at 13. Calling up older guys on spring break.

21 She pursued him, Ladies and Gentlemen. She
22 went over to his house and she got herself in
23 this situation. She voluntarily took drugs from
24 him. This wasn't the first time she had ever
25 gotten high, put stuff in her body like this.

1 You never heard her say I tried to fight back, I
2 tried to run away, I said no, I don't want to
3 take these drugs, no, I don't want to have sex
4 with you. Never ever heard that.

5 You also heard from Victi [REDACTED] that she
6 had, uh, a sexual relationship with my client
7 vaginally, but you never heard about any
8 physical evidence that came from that. You also
9 heard from the stand by Victim [REDACTED] three
10 different statements that she gave to the
11 police. The first one, she implicates Mr. Shane
12 Miller and Mikey. She doesn't say anything
13 about Jeremy until her second statement.
14 Finally leaves him out. Not quite sure why.
15 She just refers to him as the black guy that
16 came over. She doesn't even know his name,
17 Ladies and Gentlemen.

18 You also heard something that I talked to
19 her about on the stand is that she said she,
20 quote, came to on the couch and that she felt,
21 what she called numb. But when I talked to her
22 about her statements, she never told police this
23 in any of her statements. This is something new
24 that she said when she came into court today.
25 So what do we have here, Ladies and Gentlemen?

1 We have a girl who's calling an older guy
2 to pick her up on the first day of spring break.
3 She doesn't tell her mom and dad where she's
4 going because she readily admitted they wouldn't
5 have liked that. What did she do when she first
6 gets in the car with them? Start chewing meth.
7 Go over to his house and have sex, oral sex,
8 vaginal, whatever else, take her clothes off,
9 getting marijuana for it with three guys.
10 Doesn't even know one of them's name.

11 Ladies and Gentlemen, you have not heard
12 anything here that would indicate that, number
13 one, this girl reasonably appeared to be below
14 16 years of age. She said she was 18. Put it
15 all over the world on the internet. You also
16 have not heard anything until today that she
17 felt incapacitated, unable to fight, unable to
18 say no in any way, shape or form. She knew
19 exactly what was going on to the extent she was
20 able to give three different police statements.

21 And even her own mom on the stand said
22 that, excuse me, her dad said she was coming
23 down off of a high and that she seemed groggy
24 and scared but she was back to normal after,
25 quote, a day or so. Ladies and Gentlemen,

1 actually, she was giving all of these
2 statements. If she's too incapacitated to say
3 no or not be able to consent to sex, then how in
4 the world could she come up with all of this
5 stuff that's in these statements that we talked
6 about all day? Ladies and Gentlemen, she knew
7 exactly what was going on.

8 The State is also alleging that he's
9 contributing to -- that my client, by giving her
10 drugs, was contributing to the delinquency of a
11 minor. I'm not going to stand up here and say
12 doing drugs is okay. It's not. It messes you
13 up. It makes you do stupid things. She never
14 said no. She took it voluntarily. The
15 delinquency comes in when you say this person's
16 behavior influenced this person's behavior. But
17 she's already doing this stuff. She is already
18 doing these things, Your Honor -- excuse me,
19 Ladies and Gentlemen.

20 Your Honor's going to instruct you on all
21 this a little later. I just want you to keep in
22 mind that what you heard today, what you heard
23 from this witness stand, what you didn't hear
24 from this witness stand and then, at the end,
25 find Mr. Shane Miller guilty. Thank you.

1 THE COURT: Mr. Gray.

2 MR. GRAY: Thank you, Your Honor.

3 Mrs. Price.

4 Ladies and Gentlemen of the jury, uh,
5 that's the victim. She's not on trial. He's on
6 trial. She was 14. He gave her meth. Got her
7 so messed up, the next day the hospital could
8 detect from years and years of experience that
9 she was still high. She doesn't have a dog in
10 this fight. 1:30 in the morning. He picked her
11 up at 11:00. She was still high in the hospital
12 at 1:30 from the meth that he gave to her
13 period. Contributing to the Delinquency of a
14 Minor.

15 Secondly, this mistake of age. It's on
16 Facebook. It says I'm 18. MySpace, it says I'm
17 19 or 20. If you believe that, he got to
18 believe it also. She told you on the stand when
19 she got face-to-face with him, I'm 14. He
20 didn't care. She says under oath on that stand.
21 She got up there and took the heat and told you
22 I told that 30-year-old man, I'm 14. I never
23 talked to him on Facebook. I never talked to
24 him on MySpace. I talked to him face-to-face
25 and told him I'm 14. That's smoke and mirrors.

1 Even if you go to that, under the Criminal
2 Sexual Conduct with a Minor second where mistake
3 of age is a defense, under the Criminal Sexual
4 Conduct third degree it's not a defense.
5 Mistake of age is not a defense. It says she
6 was so incapacitated, she couldn't say nothing.
7 He knew it and still had sexual acts with her.
8 It doesn't say if you're 14 or 40. It doesn't
9 say that. It says basically if somebody gives
10 you meth or marijuana or you are mentally
11 retarded or mentally limited and somebody takes
12 advantage of you and has sex with you to the
13 point where you can't say no, that's a problem.
14 It doesn't matter what age you are.

15 So when you have a time span of she was so
16 high from swallowing meth to snorting meth at 11
17 o'clock one day to possibly the next day at 1:30
18 a.m. or a day and a half because her father says
19 -- or up to a week because they had to go back
20 to the hospital three times because she was so
21 high from the drugs he gave her. Does that say
22 we're going to blame the victim? That's the
23 game? We're going to blame her because he gave
24 her meth? Because he had sex with her? Because
25 he sent her home with somebody else? He had no

1 problem picking her up. Pops was waiting on him
2 when he took her home.

3 I really don't know how much to stress
4 this. It's not her fault. She's not on trial.
5 He stayed in the room while two other guys and
6 he performed whatever sexual acts on her. Took
7 a break. Went to someone else's house. They
8 fell asleep. She needed to be home. He left to
9 take a break and go look at some stuff in a
10 shop. Then came back. Thought she was in the
11 house still with those other two gentlemen.
12 Gave her some money to go home.

13 Criminal Sexual Conduct with a Minor second
14 degree, Criminal Sexual Conduct third degree and
15 Contributing to the Delinquency of a Minor. You
16 have a 14-year-old girl, and that 30-year-old
17 man had sex with her. Plain as day.

18 **THE COURT:** Madam forelady, Ladies and
19 Gentlemen of the jury, you, of course, have now
20 heard and seen all the evidence as well as the
21 final summations of the lawyers. Therefore, it
22 now becomes my duty and obligation to instruct
23 you on the law that's applicable and then you'll
24 be asked to go back and begin with your
25 deliberations. Through that process, you will

1 examine the evidence, decide the facts, apply
2 the law and arrive at a fair and just decision
3 in the case.

4 It is your exclusive duty to determine what
5 the facts are. You do that through your own
6 common sense, examination and evaluation of all
7 the testimony and the other evidence received
8 during the trial of this case. You twelve
9 jurors alone will decide what weight, value and
10 effect to give to any particular testimony or
11 other evidence. Your sole objective is to
12 simply reach the truth in the matter. By doing

13 that, you will have fulfilled your obligations
14 as jurors and that is to simply give both the
15 State and the defendant a fair and impartial
16 trial.

17 Now, in this case, as you are well aware,
18 the defendant is charged with three separate and
19 distinct criminal offenses. Those offenses are
20 set forth in separate indictments. You will be
21 called upon to render separate and distinct
22 verdicts as to each of the separate indictments.

23 Madam forelady, you are going to have these
24 indictments in the jury room during your
25 deliberations. They are not evidence of

1 anything. They are not proof of anything. They
2 do not establish anything. I have previously
3 told you the indictments serve to put a
4 defendant on notice as to what crime the State
5 claims they committed and it is the legal means
6 by which a person is brought into this court and
7 formerly accused of a crime.

8 Now, the indictments will be in the jury
9 room. As I say, they are not evidence of
10 anything but they will be there for the purpose
11 of serving as the verdict forms. It will be on
12 the back of each indictment that you will
13 indicate the jury's unanimous decision as it
14 relates to that particular charge. As I told
15 you, those decisions may be the same or they may
16 be different. That will depend, of course, upon
17 your determination of fact and then your
18 application of law as it relates to the separate
19 charges.

20 Now, in this case, the defendant is charged
21 with Criminal Sexual Conduct with a Minor in the
22 second degree. He's also charged with Criminal
23 Sexual Conduct in the third degree. He is also
24 charged with Contributing to the Delinquency of
25 a Minor.

1 As to each of those indictments and as to
2 the allegations contained in each of those
3 indictments, the defendant has entered a plea of
4 not guilty. As I told you, the plea of not
5 guilty has placed upon the State the burden of
6 proving the allegations that they have set forth
7 in the indictment, the burden of proving each of
8 the essential elements of the crimes that are
9 set forth in each of those indictments. And
10 therefore, the burden is upon the State to
11 establish the Defendant's guilt to the
12 satisfaction of you twelve jurors beyond a
13 reasonable doubt before any verdict of guilty
14 could be returned as to a particular charge.

15 Every person that's accused of a crime is
16 presumed to be innocent. As I told you, that
17 presumption of innocence remains with any
18 defendant as it does with this defendant from
19 the time that he is placed under arrest and
20 throughout the course of the criminal process
21 and even throughout the course of the actual
22 trial in the case. That presumption of
23 innocence will be with the defendant as you go
24 back to begin with your deliberations in this
25 case. That presumption of innocence will be

1 with him in that jury room and it will be with
2 him forever, unless you twelve jurors determine
3 that he's no longer entitled to that presumption
4 of innocence. In other words, after you've
5 carefully considered all the evidence in the
6 case and from that evidence, you've decided what
7 you believe to be the true facts.

8 After deciding the facts, you will apply
9 the law that I have provided you as it relates
10 to a particular indictment. If you twelve
11 jurors unanimously determine that his guilt as
12 to a particular charge has been proven beyond a
13 reasonable doubt, then he would no longer be
14 entitled to that presumption of innocence as it
15 relates to that charge. But it is only if,
16 unless and until you are satisfied of his guilt
17 beyond a reasonable doubt that the presumption
18 of innocence would no longer be applicable as it
19 relates to a particular indictment.

20 Now, while the State does have the burden
21 of proving a Defendant's guilt beyond a
22 reasonable doubt, that does not mean that the
23 State has to prove the Defendant's guilt beyond
24 all doubt or beyond any possible doubt. It does
25 require, however, that the State prove his guilt

1 to your satisfaction beyond a reasonable doubt.
2 The term "reasonable doubt" should be given
3 its plain and ordinary meaning. A reasonable
4 doubt is the kind of doubt that would cause a
5 reasonable person to hesitate to act upon the
6 information provided. And a defendant in a
7 criminal trial is entitled to any reasonable
8 doubt that arises from the evidence or lack of
9 evidence in the case. And if upon any factual
10 issue essential to a finding of a verdict of
11 guilty, you have some reasonable doubt as to how
12 that issue should be resolved, it would be your
13 duty to resolve that reasonable doubt in favor
14 of the defendant.
15 And therefore, if, upon your consideration
16 of the whole case as it relates to a particular
17 charge, if you have a reasonable doubt as to the
18 Defendant's guilt, it will be your duty to
19 resolve that doubt in his favor and return a
20 verdict of not guilty as it relates to that
21 charge. At the same time, after you've
22 carefully considered all the evidence in the
23 case and decided the facts and applied the law,
24 if you have no reasonable doubt as to the
25 Defendant's guilt as it relates to a particular

1 charge, then it would be your corresponding duty
2 to find him guilty of any charge that you find
3 has been proven beyond a reasonable doubt.

4 The same law that provides that you are the
5 judges of the facts also provides that I am the
6 judge of the law. That simply means that no one
7 is going to tell you how to arrive at your
8 determination of fact in this case. You do
9 that, as I've already stated, through the
10 exercise of good judgement and common sense
11 conscientiously applied to the testimony and
12 evidence received during the trial.

13 You must, however, under your oath as a
14 juror, accept the law as I provide it to you as
15 being the law that you are to apply in the case.
16 In other words, you are never to concern
17 yourself with what you thought the law was
18 before you came to serve as a juror this week or
19 what you think the law ought to be. Under your
20 oath as a juror, you must simply accept the law
21 as I provide it to you as being the law that is
22 to be applied in this case. Then you simply
23 take that law and you apply to the facts as you
24 twelve jurors have determined those facts to be
25 based upon your common sense examination and

1 evaluation of all the testimony and other
2 evidence received during the trial.

3 You are the sole judges of the facts in
4 this case. And you are, therefore, necessarily
5 the sole judges of the credibility and the
6 believability of each witness that has testified
7 during the course of the trial. Because you
8 judge the witness' credibility, there are
9 several factors which you should take into
10 consideration in arriving at your assessment as
11 to a particular witness' credibility.

12 I'm going to list those factors for you.

13 You should consider the demeanor of the witness,
14 that is, how the witness appeared to you as the
15 witness testified from the witness stand. Was
16 the witness straightforward in responding to
17 questions or was the witness hesitant or evasive
18 in responding to questions that were asked of
19 that witness? Simply put, did the witness
20 appear to you to be telling the truth and to
21 have knowledge of the facts to which that
22 witness has testified? You should also consider
23 whether or not the testimony of a witness is
24 consistent or is it inconsistent with that
25 witness' own testimony as well as any statement

1 made by that same witness outside of court. You
2 may also consider whether or not the testimony
3 of a witness is consistent or is it inconsistent
4 with other witnesses' testimony or other
5 evidence received during the trial.

6 You should also consider how the witness
7 came to know the facts to which that witness has
8 testified to. In other words, what was that
9 witnesses' opportunity and ability to perceive
10 the existence of those facts to which that
11 witness has testified by having previously used
12 his or her senses and then what is that witness'
13 ability to be able to come into court and to
14 accurately recollect to you as to what they have
15 previously perceived.

16 You should also consider any bias,
17 prejudice or interest that a witness might have
18 in a case. In other words, do you find some
19 reason that a particular witness would testify
20 one way or another to help or to hurt one side
21 or the other. And you may consider any interest
22 that a witness might have in the outcome of the
23 case if you determine that a witness does have
24 such an interest and you find that that interest
25 would bear upon that witness' credibility. You

1 should also consider whether or not the
2 testimony of a witness is strengthened or is it
3 weakened by other testimony or other evidence
4 received during the trial.

5 Now, you, as the finders of the fact, and
6 you, as to credibility of each witness, are
7 permitted to believe as much or as little of
8 what a witness has testified to as you deem is
9 appropriate. Therefore, you may believe
10 everything that a witness testified to. You may
11 choose to believe none of it. You may believe
12 one portion of a witness' testimony and reject
13 some other portion of that same witness'
14 testimony. You may believe one witness as
15 opposed to several or several as opposed to one
16 in a given case. But whatever your good
17 judgement and common sense tells you is the most
18 believable and credible testimony is the
19 testimony you should accept. You should reject
20 any testimony or other evidence that you find
21 not to be credible or believable. Again, your
22 sole objective is to simply reach the truth in
23 the matter and it should not matter from what
24 source that truth may come.

25 Now, while there are various forms of

1 evidence such as testimony, photographs,
2 documents, charts and other types of physical
3 exhibits, there are really only two types of
4 evidence. Either or both of those types of
5 evidence may be used to prove any fact at issue.
6 The two types of evidence are direct evidence
7 and circumstantial evidence.

8 Now, direct evidence is the testimony of a
9 person who testifies from actual knowledge of a
10 fact. It is testimony by a person who has
11 perceived the existence of some fact by means of
12 his or her senses and then that person comes
13 into court and testifies as to what they have
14 previously perceived.

15 Circumstantial evidence, on the other hand,
16 is the proof of some other fact or set of facts,
17 which taken either singularly or collectively,
18 may prove the existence of a fact in question as
19 a necessary consequence, that is, by an
20 inference. An inference is simply a deduction
21 of fact that may logically and reasonably be
22 drawn from the proof of some other fact or set
23 of facts. In other words, it's not a fact
24 proven by the direct testimony of a witness
25 based upon personal perception, but it is a

1 conclusion which might reasonably be drawn from
2 the proof of other facts.

3 In other words, you may have heard that a
4 particular event occurred or that a particular
5 fact exists based upon the proof of sufficient
6 factual circumstances which would reasonably
7 warrant your arriving at such a conclusion. The
8 law does not make any distinction between the
9 weight or value to be given to direct evidence
10 as opposed to circumstantial evidence. Nor is a
11 greater degree of certainty required of
12 circumstantial evidence as opposed to direct
13 evidence.

14 Whatever the type of evidence used to prove
15 any fact at issue, you should consider all the
16 evidence presented during the trial. After
17 carefully considering all that evidence and
18 weighing it in your minds, if you are not
19 convinced of the guilt of the defendant beyond a
20 reasonable doubt as it relates to particular
21 charge, then you must resolve that doubt in his
22 favor and return a verdict of not guilty as to
23 that charge.

24 Now, in this case, as you know, the
25 defendant is charged with three separate

1 offenses. They are all statutory offenses. In
2 other words, the legislature meets every year
3 from January to June and they pass a lot of
4 laws; rules and regulations. They are contained
5 in these blue books. And some of those laws are
6 criminal offense -- criminal offenses are
7 described in those laws. It just prohibits us
8 from engaging in conduct in violation of that
9 particular statute. And if we are found to have
10 engaged in the conduct which has been prohibited
11 by the legislature, then it provides some form
12 of punishment or penalty for a violation of that
13 statute.

14 Please understand, however, that you are
15 never to be concerned with any punishment or
16 penalty that might result from any verdict that
17 you render. Your obligation and duty is solely
18 to determine whether or not a person's guilt has
19 been proven beyond a reasonable doubt as it
20 relates to a particular criminal offense. You
21 are to make that determination without any
22 regard to any consequence of that decision.

23 Now, there are three specific statutes that
24 I'm going to be referencing based upon the three
25 separate charges. I'm going to start with, uh,

1 the indictment charging Criminal Sexual Conduct
2 with a Minor in the second degree. Then I will
3 instruct you on the law as it relates to the
4 separate charge of Criminal Sexual Conduct in
5 the third degree. Then I'll instruct you on the
6 law as it relates to the criminal offense known
7 as Contributing to the Delinquency of a Minor.

8 Section 16-3-655, subsection B of that
9 statute provides that a person is guilty of
10 criminal sexual conduct with a minor in the
11 second degree if the actor engages in sexual
12 battery with a victim who is at least 14 years
13 of age but who is less than 16 years of age and
14 the actor is older than the victim. This
15 statute also provides that, however, a person
16 may not be convicted of a violation of this
17 section based upon the age of the victim if the
18 actor was reasonably mistaken as to the victim's
19 age and believed her to be 16 years of age or
20 older. So in order for the defense of mistake
21 as to age to be made out, it must be shown that
22 the circumstances are such that the defendant
23 believed that victim was at least 16 years of
24 age or older and that such a belief was
25 reasonable.

1 Within the meaning of that statute, an
2 "actor" is defined as the person accused of
3 criminal sexual conduct. In this case, that
4 would be Billy Shane Miller. The "victim" is
5 defined as the person alleged to have been
6 subjected to criminal sexual conduct. In this
7 case, that would be MINOR.

8 A "sexual battery" is defined as sexual
9 intercourse, cunnilingus, fallacio, anal
10 intercourse, or any intrusion, however slight,
11 of any part of a person's body or of any object
12 into the genital or anal openings of another
13 person's body. "Fallacio" is defined as oral
14 stimulation of the male genitalia.
15 "Cunnilingus" is defined as oral stimulation of
16 the female genitalia.

17 Therefore, based upon the language of this
18 statute, there are three essential elements
19 which must be established beyond a reasonable
20 doubt before the defendant can be found guilty
21 of criminal sexual conduct with a minor in the
22 second degree. First, it must be proven that
23 the defendant, Billy Shane Miller, did engage in
24 a sexual battery, as that term has been defined,
25 with MINOR Miller. Secondly, it must be proven

1 that at the time of the commission of any sexual
2 battery, MINOR was at least 14 years of
3 age, but was less than 16 years of age and that
4 the circumstances are such that the defendant
5 knew or reasonably should have known that the --
6 let me say it again -- and the circumstances are
7 such that the defendant knew or reasonably
8 should have known that the victim was less than
9 16 years of age. Thirdly, it must be proven
10 that the defendant, Billy Shane Miller, was
11 older than the victim.

12 You are further instructed that with regard
13 to Criminal Sexual Conduct with a Minor in the
14 second degree, that consent is not an issue with
15 respect to such a charge. Under the law of this
16 state, a child under the age of 16 years is not
17 legally capable of voluntarily consenting to a
18 sexual battery committed by an adult.

19 So while the law does not require that the
20 testimony of a minor claiming to have been the
21 victim of a sexual conduct be corroborated, the
22 law does require that the three elements that I
23 just explained to you be proven beyond a
24 reasonable doubt. So if after considering all
25 the testimony and the evidence received during

1 the trial of this case, any one or more of the
2 three elements that I just described have not
3 been proven to your satisfaction beyond a
4 reasonable doubt, then your verdict must be for
5 the defendant and he be found not guilty of that
6 particular charge.

7 The second indictment that I referenced is
8 the indictment for Criminal Sexual Conduct in
9 the third degree. That's a statutory provision
10 set forth in 16-3-654. And that statute
11 provides that a person is guilty of criminal
12 sexual conduct in the third degree if the actor,
13 in this case, that would be the defendant,
14 engages in sexual battery, as I previously
15 defined the term "sexual battery" for you, with
16 the victim, in this case, that would be MINOR

17 and one or more of the following
18 circumstances are proven: first, the actor used
19 force or coercion to accomplish any sexual
20 battery but there were no aggravating
21 circumstances; secondly, the actor knew or had
22 reason to know that the victim is mentally
23 defective or mentally incapacitated, or
24 physically helpless.

25 And the remaining statute is set forth in

1 16-17-490. And that's the offense charging
2 Contributing to the Delinquency of the minor --
3 of a minor. And that particular section
4 provides that it shall be unlawful for any
5 person over the age of 18 years to knowingly and
6 willfully encourage, aid or cause or to do any
7 act which shall cause or influence a minor to
8 violate any law or any municipal ordinance. And
9 you are instructed that possession of
10 methamphetamine is a Schedule II drug and
11 possession of marijuana is a Schedule I drug and
12 it is against the law and violation of state law
13 to possess either of those substances.

14 And further, it would be unlawful for any
15 person over the age of 18 years to knowingly and
16 willfully encourage, aid or cause or to do any
17 act which would cause or influence a minor to so
18 deport herself as to willfully injure or
19 endanger her morals or health or the morals or
20 health of others.

21 Now, Ladies and Gentlemen, I further
22 instruct you and I emphasize to you that the
23 fact that a defendant does not testify during
24 the course of a criminal trial is not a fact
25 which may be considered by you twelve jurors in

1 any way whatsoever during your deliberations or
2 in your determination as to whether or not his
3 guilt has been proven beyond a reasonable doubt.
4 You may not permit such a fact to weigh in the
5 slightest degree against a defendant.

6 As I've stated, the burden is always upon
7 the state to prove a Defendant's guilt beyond a
8 reasonable doubt. The burden is never upon a
9 defendant to prove that he is not guilty or to
10 prove that he is innocent. Therefore, you are
11 not to draw any inference or reach any
12 conclusion from the fact that a defendant does
13 not testify during a trial. Nor may that fact
14 even be discussed by you while you are engaged
15 in your deliberations in the jury room.

16 Now, Ladies and Gentlemen, I am not in any
17 way concerned with what your decisions are. But
18 you are instructed that any decision you reach
19 has to be unanimous. All twelve jurors must be
20 in agreement.

21 Madam Forelady, as I told you, you are
22 going to have these three indictments in the
23 jury room with you. They will simply be there
24 to serve as the verdict forms. On the back of
25 each indictment, you will see in the lower

1 lefthand corner of the indictment, the word
2 "verdict". It is beneath that word that you
3 will indicate the jury's decision. On these
4 indictments, in that space that you are to write
5 the decision.

6 There is the clerk's stamp, a time stamp.
7 That shouldn't be there, so just ignore it.
8 Just write through it. Write your verdict in
9 the space provided and then sign your name as
10 the foreperson and place the appropriate date.
11 You are the only juror, Madam Forelady, who
12 needs to sign the verdict form. But the
13 decision has to be unanimous. All twelve has to
14 be in agreement.

15 Now, with respect to each of the separate
16 indictments, you have two possible verdict
17 forms. Those two possible verdict forms are
18 guilty and not guilty. Whatever that decision
19 is, insert it in the space provided and sign
20 your name as a foreperson. Date it and then
21 notify the bailiff that you've reached a
22 decision and we'll bring you back to receive
23 that verdict.

24 You hold on -- Madam Forelady, you will
25 hold on to the verdict forms. Don't give to the

1 bailiff when you come in. You just hold on to
2 them. I'll receive them from you after you are
3 seated here in the courtroom.

4 Now, during the course of your
5 deliberations, there may come a time where you
6 have some question about the testimony or the
7 evidence in the case. You might even wonder if
8 there's some other type of evidence that's out
9 there that you think will assist you in
10 resolving the case. All of the evidence that's
11 going to be presented in this case has been
12 presented. So even if you think there's
13 something out there that might help you and you
14 wonder if it exists and if you can have it, the
15 answer is you can't have it even if it does
16 exist because the case is closed now that you
17 are going to back to deliberate.

18 So I can't discuss any matters about the
19 evidence with you or answer any questions that
20 relate to the facts. You have to decide the
21 facts based upon your review of the evidence.
22 If, however, there ever comes a time where you
23 have some question about the testimony of a
24 particular witness and you think that question
25 can be answered by having testimony replayed, I

1 can bring you back into the courtroom to have a
2 witness' testimony replayed in whole or in part.
3 But you will have to come back out into the
4 courtroom to have that done.

5 So should that arise, Madam Forelady, just
6 let me know. Anytime you need to direct
7 something to me, if you will, just write it on a
8 piece of paper, give it to the bailiff, he'll
9 provide it to me and I'll respond to any
10 question or issue that you might have. If you
11 need to hear testimony, let us know who it is or
12 what it is, unless you want to hear it all;
13 because you can just hear a portion if you just
14 need a portion of it. Just let us know about
15 that.

16 As far as, uh, questions about the law that
17 is applicable, I am permitted to answer those
18 questions. So if I need to reinstruct you just
19 as I've already done, I'll be happy to do so.
20 If you need an explanation of some particular
21 point of law, I can provide you with that
22 explanation. If you need to clarify some point
23 of law that I've provided you, I can also
24 provide that clarification hopefully.

25 So if you have a question about the facts,

1 I can't respond to it. If you need to hear
2 testimony, you can. If you have a question
3 about the law that you are to apply, I am
4 permitted to answer those questions and I will
5 do so.

6 Now, I'll ask the twelve primary jurors to
7 go back with the bailiff to your jury room, but
8 do not begin deliberations. I need to address
9 some matters with the lawyers. If I don't need
10 to bring you back for any reason, I'll send word
11 by way of the bailiff that you can begin
12 deliberations. In that event, he'll bring any
13 exhibits that have been introduced.

14 And to you, Madam Forelady, he will also
15 bring the ver -- the indictments which will
16 serve as the verdict forms. So please retire to
17 your jury room but do not begin deliberations
18 until the bailiff instructs you to do so.

19 Ms. Hill, you can just stay here with me.
20 (WHEREUPON, the jury exits at approximately
21 3:46 p.m.)

22 THE COURT: Ms. Hill, as you know, you
23 can't participate in jury deliberations. So
24 that's going to conclude your service for the
25 trial of the case. I do thank you for your

1 participation. You are excused for the balance
2 of the afternoon. It might be that you'll need
3 to be reporting in the morning. So in order to
4 find that out, I'll simply ask you, if you will,
5 please call back to the number that you have to
6 receive juror information reporting. Call that
7 number after six o'clock this evening. Okay.
8 Have a good evening.

9 (WHEREUPON, the alternate juror exits at
10 approximately 3:47 p.m.)

11 THE COURT: Are there any exceptions taken
12 to the instruction or request for additions to
13 the instruction by the State?

14 MR. GRAY: No, sir.

15 THE COURT: By the defendant?

16 MRS. PRICE: No, Your Honor.

17 THE COURT: All right. Let me ask y'all
18 to verify the exhibits please.

19 MRS. PRICE: One, two, three.

20 MR. GRAY: That's it.

21 MRS. PRICE: Okay. That's it.

22 THE COURT: All right. All the exhibits
23 are accounted for. Tell the jury to begin
24 deliberations and notify us when they've
25 concluded. We'll be at ease while the jury is

1 deliberating.

2 (WHEREUPON, the jury deliberation begins at
3 approximately 3:48 p.m.)

4 (WHEREUPON, the Court resumes at approximately
5 4:20 p.m.)

6 THE COURT: All right. The jury wants to
7 have some testimony reheard and also wants to be
8 reinstructed. So we'll bring them back and let
9 them listen to the testimony first and I will
10 reinstruct them on the law. All right. Bring
11 them in.

12 (WHEREUPON, the jury enters at approximately
13 4:28 p.m.)

14 THE COURT: Madam Forelady, I understand
15 that you and your fellow jurors want to have,
16 uh, reheard the testimony of MINOR so
17 the Court Reporter will play that for you.

18 THE JUROR: Thank you.

19 THE COURT: Now, she was a little soft-
20 spoken at times and the testimony is going to be
21 replayed from that computer that you see at the
22 witness chair and the microphone is near it. So
23 when it's replayed, if for some reason you can't
24 hear it, uh, let us know. We can try to make a
25 better arrangement. But I think that's as good

1 as we're going to be able to do. But you let me
2 know if you can't understand it for some reason.

3 Once we conclude with the replaying of that
4 testimony, I'll reinstruct you on the law. Now,
5 do you want from start to finish or do you want
6 the three separate offenses? What is it that
7 you are looking for?

8 THE JUROR: Uh, I think we would like it
9 from start to finish.

10 THE COURT: Start to finish... Okay. I'll
11 do it start to finish.

12 THE JUROR: I think we'll listen very,
13 very carefully.

14 THE COURT: Okay. I'll slow it down.

15 (WHEREUPON, the testimony MINOR is
16 replayed for the jury.)

17 THE JUROR: Thank you, first, for playing
18 that back for us. We do need to hear kind of
19 the highlights of the law as it applies. And if
20 you wouldn't mind starting with Contributing to
21 the Delinquency of a Minor, if you could read
22 the law on that first and then the second charge
23 which is the Criminal Sexual Conduct with Minor
24 second degree and finish up for us with the
25 third degree.

1 THE COURT: Okay. Let me ask you this.
2 It's after five o'clock. We can do that now or
3 we can do that in the morning. I will leave it
4 up to you whichever you prefer. All right. Let
5 me do this. Let me ask y'all to go back to your
6 jury room. Y'all talk about whether you want to
7 do it tonight or come back in the morning and
8 continue. And you come back and let me know.

9 THE JUROR: Okay. And just so -- we will.
10 And the third thing, if you could also give us
11 again the highlights on reasonable doubt and the
12 instructions that you gave us.

13 (WHEREUPON, the jury exits at approximately
14 5:12 p.m.)

15 (WHEREUPON, there is a pause.)

16 THE COURT: All right. Bring the jury
17 back in.

18 (WHEREUPON, the jury enters at approximately
19 5:20 p.m.)

20 THE COURT: Madam Forelady, do I
21 understand that what the jury wishes to have
22 done is for me to go ahead and give you the
23 instruction tonight, but then you want to retire
24 and resume deliberations in the morning?

25 THE JUROR: Yes, sir.

1 THE COURT: Okay. All right. I'm going
2 to begin with the reasonable doubt instruction.
3 While the State does have to prove a defendant
4 guilty beyond a reasonable doubt, that does not
5 require that the State prove a defendant's guilt
6 beyond all doubt or beyond any possible doubt.
7 But it does require the State to prove his guilt
8 to your satisfaction beyond a reasonable doubt.

9 The term "reasonable doubt" should be given
10 its plain and ordinary meaning. A reasonable
11 doubt is the kind of doubt that would cause a
12 reasonable person to hesitate to act upon the
13 information provided. And a defendant is
14 entitled any reasonable doubt that arises from
15 the evidence or lack of evidence in the case.

16 If, upon any factual issue essential to a
17 finding of a verdict of guilty, you have some
18 reasonable doubt as to how that issue is
19 resolved, it will be your duty to resolve that
20 reasonable doubt in favor of the defendant.
21 Therefore, if upon your consideration of the
22 whole case as it relates to a particular charge,
23 you have a reasonable doubt as to the
24 Defendant's guilt, it will be your duty to
25 resolve that doubt in his favor and to return a

1 verdict of not guilty as to that charge.

2 At the same time, after you've carefully
3 considered the evidence and decided the facts
4 and applied the law, if you have no reasonable
5 doubt as to the Defendant's guilt as it relates
6 to a particular charge, then it will be your
7 corresponding duty to find him guilty of that
8 charge where you have been convinced of his
9 guilt beyond a reasonable doubt.

10 Regarding the request for an instruction as
11 to the credibility of witness testimony. You
12 are instructed that you are the sole judges of
13 the facts in this case and, therefore, you are
14 the sole judges of the credibility of each
15 witness that has testified. In order to assess
16 and to evaluate a witness' credibility, there
17 are several factors which you should take into
18 consideration.

19 Number one, you should consider the
20 demeanor of the witness, that is, how the
21 witness appeared as the witness testified from
22 the witness stand. Was the witness
23 straightforward in responding to questions or
24 was the witness hesitant or evasive in
25 responding to questions? Simply put, did the

1 witness appear to you to be telling the truth,
2 and to have knowledge of the facts to which that
3 witness has testified? You should also take
4 into consideration whether or not the testimony
5 of a witness is consistent or is it inconsistent
6 with that testimony provided during their time
7 on the witness stand, as well as whether or not
8 that testimony is consistent or inconsistent
9 with other statements that might have been made
10 by that witness whether they are in court or
11 outside of court.

12 You should also consider whether or not the
13 testimony of a witness is consistent or is it
14 inconsistent with other witnesses' testimony or
15 with other evidence received during the trial.
16 You should also consider how the witness came to
17 know the facts to which a witness has testified.
18 In other words, what was that particular
19 witness' opportunity and ability to perceive the
20 existence of those facts to which they have
21 testified by having previously used his or her
22 senses and then what is that witness' ability to
23 be able to come into court and to accurately
24 recollect to you as to what they have previously
25 perceived.

1 You should also consider any bias or
2 prejudice or interest that a witness might have
3 with respect to a case. In other words, do you
4 find some reason a particular witness would
5 testify one way or another to help or to hurt
6 one side or the other. And you may consider any
7 interest that a witness might have in the
8 outcome if you determine that a witness does
9 have such an interest and you find that that
10 interest would bear upon that witness'
11 credibility. And you may also consider whether
12 or not the testimony of a witness is
13 strengthened or is it weakened by other
14 testimony or other evidence received during the
15 trial.

16 And because you are the judges of the facts
17 and you are the judges of the credibility of
18 each witness, you are permitted to believe as
19 much or as little of what a witness has
20 testified to as you deem is appropriate. And
21 therefore, you may believe everything that a
22 witness testified to. You may choose to believe
23 none of it. You may believe some portion of a
24 witness' testimony and reject some other portion
25 of that same witness' testimony. You can

1 believe one witness as opposed to many or many
2 as opposed to one in a given case. But whatever
3 your good judgement and common sense tells you
4 is the most credible testimony is the testimony
5 you should accept. You should reject any
6 testimony that you find not to be credible or
7 believable.

8 Now, you've also requested an instruction
9 on the three offenses that have been brought
10 against the defendant. You requested that they
11 be provided you in the order of Contributing to
12 the Delinquency of a Minor first, followed by
13 Criminal Sexual Conduct with a Minor in the
14 Second degree second and Criminal Sexual Conduct
15 in the third degree as the last.

16 Uh, Contributing to the Delinquency of a
17 Minor is a statutory offense. The statute that
18 describes that criminal offense is set forth in
19 16-17-490 of the Code of Laws. And that code
20 section provides that it shall be unlawful for
21 any person over the age of 18 years to knowingly
22 and willfully encourage or aid or cause or to do
23 any act which shall cause or influence a minor
24 to violate any law or any municipal ordinance
25 and possession of illegal drugs such as

1 methamphetamine and marijuana are violations of
2 state law or also to encourage, aid or cause or
3 to do any act which shall cause or influence a
4 minor to so deport herself as to willfully
5 injure or endanger her morals or health.

6 All right. The next offense that you've
7 requested instruction on is Criminal Sexual
8 Conduct with a Minor in the second degree. That
9 offense is described and set forth in section
10 16-3-655, subsection B. And that section
11 provides that a person is guilty of criminal
12 sexual conduct with a minor in the second degree
13 if the actor engages in sexual battery with a
14 victim who is at least 14 years of age but who
15 is less than 16 years of age and the actor is
16 older than the victim.

17 And this section goes on to provide that a
18 person may not be convicted of a violation of
19 this particular section of law based upon the
20 age of the victim if the actor was reasonably
21 mistaken as to the victim's age and believed her
22 to be 16 years of age or older. In order for
23 the defense of mistake of age to be made out, it
24 must be shown that the circumstances were such
25 that the defendant believed that victim was at

1 least 16 years of age and that such a belief was
2 reasonable.

3 For the purpose of that statute, there are
4 several definitions provided in a separate
5 section of law. But an "actor" is defined as
6 the person accused of criminal sexual conduct.
7 In this case, that's the defendant, Billy Shane
8 Miller. "Victim" is defined as the person
9 alleged to have been subjected to criminal
10 sexual conduct. In this case, that would be
11 MINOR

12 A "sexual battery" is defined as sexual
13 intercourse, cunnilingus, fallacio, anal
14 intercourse or any intrusion, however slight, of
15 any part of a person's body or of any object
16 into the genital or anal openings of another
17 person's body.

18 Therefore, based upon the language of this
19 statute, there are three essential elements
20 which must be established beyond a reasonable
21 doubt before the defendant can be found guilty
22 of criminal sexual conduct with a minor in the
23 second degree. First, it must be proven that
24 the defendant, Billy Shane Miller, did engage in
25 a sexual battery, as that term has been defined,

1 with MINOR Miller. Secondly, it must be proven
2 that at the time of the commission of any sexual
3 battery, the victim, MINOR was at least
4 14 years of age, but was less than 16 years of
5 age and the defendant knew or reasonably should
6 have known that the victim was less than 16
7 years of age. Thirdly, it must be proven that
8 the defendant, Billy Shane Miller, was older
9 than the victim.

10 And you are also instructed that consent is
11 not an issue in the trial of this case or any
12 case where a person is charged with Criminal
13 Sexual Conduct with a minor under the age of 16
14 years. Under the law of this state, a child
15 under the age of 16 years is not legally capable
16 of voluntarily consenting to a sexual battery
17 committed by an adult.

18 And while the law does not require that the
19 testimony of a minor in a case with Criminal
20 Sexual Conduct with a Minor in the second degree
21 who claims to have been the victim of criminal
22 sexual conduct, while the testimony does not
23 have to be corroborated, the law does require
24 that the three elements I have just explained to
25 you are proven beyond a reasonable doubt.

1 Therefore, after considering all of the
2 testimony and all of the evidence received in
3 the trial of this case, including any evidence
4 relating to a reasonable mistaken belief by the
5 defendant as to the age of the victim, if any
6 one or more of the three elements required to be
7 proven is not proven to your satisfaction beyond
8 a reasonable doubt, then your verdict must be
9 for the defendant and he be found not guilty of
10 Criminal Sexual Conduct with a Minor in the
11 second degree.

12 The remaining offense contained in the
13 third indictment is Criminal Sexual Conduct
14 third degree. That section prohibiting that or
15 establishing that criminal offense is set forth
16 in 16-3-654. And that code section provides
17 that a person is guilty of criminal sexual
18 conduct in the third degree if the actor
19 engages in sexual battery with the victim and
20 the actor knew or had reason to know that the
21 victim was mentally incapacitated or physically
22 helpless at the time of the sexual battery.

23 The term "mentally incapacitated" means
24 that the victim was rendered temporarily unable
25 to evaluate and control her conduct due to a

1 condition of mental and/or physical incapacity.
2 Such condition may have been caused by an
3 illness, a defect, the influence of intoxicating
4 substances or some other cause.

5 All right. I think that covers everything
6 you requested.

7 THE JUROR: Thank you.

8 THE COURT: All right. Now, y'all want to
9 be excused now for the afternoon and come back
10 in the morning?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Let me instruct
13 you and caution you that as you leave, during
14 the overnight recess, you are not permitted in
15 any way whatsoever to talk about this case with
16 any person whatsoever. And that's because your
17 decision has to be based upon what you see and
18 hear during the trial.

19 You are never to be influenced by any
20 outside consideration or extraneous information.
21 So you can't talk about the case with anybody at
22 all during the overnight recess. You also are
23 not permitted to conduct any research or do your
24 own investigation in any fashion whatsoever or
25 in any manner whatsoever. You've got to base

1 your decision, as I say, upon what you see and
2 hear and receive during the trial. You can not
3 supplement your knowledge by conducting outside
4 sources.

5 I don't know that there's any media
6 coverage. But in the event something were to
7 appear on television or radio or newspaper, you
8 are to avoid it. Don't watch it. Don't listen
9 to it. Don't read it. You've got to base your
10 decision upon what has occurred only during the
11 trial and not to be influenced by any outside
12 consideration. Now, with that, you are excused
13 for the afternoon. Have a good evening. Please
14 report to your jury room at 9:30 in the morning.

15 (WHEREUPON, the jury exits at approximately
16 5:37 p.m.)

17 THE COURT: Are there any exceptions taken
18 to that additional instruction by the State?

19 MR. GRAY: No, sir, Your Honor.

20 THE COURT: By the defendant?

21 MRS. PRICE: No, Your Honor.

22 THE COURT: Okay. Court's in recess until
23 9:30 in the morning.

24 (WHEREUPON, the Court recesses for the day at
25 approximately 5:39 p.m.)

Verdict

171

1 P R O C E E D I N G S

2 (WHEREUPON, the proceeding resumes on the 13th
3 day of April, 2011 at approximately 9:30 a.m.)

4 (WHEREUPON, jury deliberation resumes at
5 approximately 9:30 a.m.)

6 (WHEREUPON, the Court resumes at approximately
7 11:52 a.m.)

8 THE COURT: All right. I understand the
9 jury has reached a decision in the Miller case.
10 We're ready to receive if?

11 MR. GRAY: Yes, sir, Your Honor.

12 MRS. PRICE: Yes, Your Honor.

13 THE COURT: Okay. Bring them in please.

14 (WHEREUPON, the jury enters at approximately
15 11:55 a.m.)

16 THE COURT: All right. Good morning,
17 Ladies and Gentlemen. Madam Forelady, I
18 understand you and your fellow jurors have
19 reached your decisions in the case?

20 THE JUROR: Yes, we have.

21 THE COURT: Have you indicated each of
22 those decisions on the back of the respective
23 indictments?

24 THE JUROR: Yes, I have.

25 THE COURT: And have you signed your name

1 as the foreperson?

2 THE JUROR: Yes.

3 THE COURT: And placed the appropriate
4 date?

5 THE JUROR: Yes, I have.

6 THE COURT: If you will, please hand those
7 verdict forms up by way of the bailiff.

8 (WHEREUPON, the verdict forms are passed up.)

9 THE COURT: You may publish the verdict.

10 THE CLERK: The State of South Carolina,
11 county of Spartanburg, court of General
12 Sessions, State versus Billy Shane Miller on
13 Indictment 2008-GS-42-2594, indictment for
14 Criminal Sexual Conduct with a Minor Second
15 degree, the jury finds Billy Shane Miller
16 guilty. Signed by the foreperson, Gail Millward
17 on today's date, 4/13/2011.

18 On Indictment 2008-GS-42-2593, the State
19 versus Billy Shane Miller, indictment for
20 Criminal Sexual Conduct Third degree, the jury
21 finds Billy Shane Miller guilty. Again, signed
22 by Gail Millward on 4/13/11.

23 On Indictment 2008-GS-42-2592, the State
24 versus Billy Shane Miller, Contributing to the
25 Delinquency of a Minor, the jury finds Billy

Jury Poll

173

1 Shane Miller guilty. Again, signed by Gail
2 Millward, 4/13/11.

3 Ladies and Gentlemen of the jury, is this
4 your verdict and still your verdict? If so,
5 please raise your right hand.

6 (WHEREUPON, each juror responds.)

7 THE CLERK: So say you all.

8 THE COURT: Does the defendant wish to
9 have the jury polled?

10 MRS. PRICE: Yes, Your Honor.

11 THE COURT: All right. Poll the jury:
12 please, ma'am.

13 THE CLERK: Ladies and Gentlemen of the
14 jury, I'll be asking you a question and that
15 question is, is this your verdict and still your
16 verdict. When I call your jury name and number,
17 if you would, just answer yes or no.

18 Juror Number 13, Linda Bobo.

19 THE JUROR: You want me to stand?

20 THE CLERK: Is this your verdict and still
21 your verdict?

22 THE JUROR: Yes. Uh-huh.

23 THE CLERK: Thank you.

24 THE JUROR: Uh-huh.

25 THE CLERK: Juror Number 130, Sharon

Jury Poll

174

1 Reeves.
2 THE JUROR: Yes.
3 THE CLERK: Juror Number 3, Donald Arthur.
4 THE JUROR: Yes.
5 THE CLERK: Juror Number 173, Edward
6 Yager.
7 THE JUROR: Yes.
8 THE CLERK: Juror Number 183, Keith
9 Martindale.
10 THE JUROR: Yes.
11 THE CLERK: Juror Number 181, Sharon
12 Harris.
13 THE JUROR: Yes.
14 THE CLERK: Juror Number 47, Lisa Foster.
15 THE JUROR: Yes.
16 THE CLERK: Juror Number 86, Rebeka Koza.
17 THE JUROR: Yes.
18 THE CLERK: Juror Number 103, Gail
19 Millward.
20 THE JUROR: Yes.
21 THE CLERK: Juror Number 153, Howard
22 Sturgill.
23 THE JUROR: Yes.
24 THE CLERK: Juror Number 127, Randy
25 Pucetas.

1 THE JUROR: Yes.

2 THE CLERK: Juror Number 1, Tyler
3 Abernathy.

4 THE JUROR: Yes.

5 THE CLERK: The jury has been polled.

6 THE COURT: All right. Are there any
7 other matters that need to be addressed with the
8 jury present?

9 MR. GRAY: No, sir, Your Honor.

10 MRS. PRICE: No, Your Honor.

11 THE COURT: All right. Thank you, Ladies
12 and Gentlemen, for your participation. Uh, you
13 are going to be excused for the balance of
14 today. We do ask that you please call back
15 after six o'clock this evening to receive
16 further recorded information. Call back to the
17 number that you have in order to receive
18 recorded information. Call back after six
19 o'clock this evening to receive that
20 information. Thank you again for your
21 participation..

22 (WHEREUPON, the jury exits at approximately
23 11:57 a.m.)

24 THE COURT: All right. Any matters to
25 address prior to the imposition of sentence?

1 MRS. PRICE: Yes, Your Honor. At this
2 time, on behalf of Mr. Miller, I would like to
3 have a motion for a new trial.

4 THE COURT: All right. That motion is
5 denied.

6 MRS. PRICE: Thank you, Your Honor. All
7 right.

8 THE COURT: All right. Anything further
9 on behalf of the State?

10 MR. GRAY: Yes, sir, Your Honor. Briefly.
11 Just for the Court, Mr. Miller's criminal
12 history is a 1997, Possession of Marijuana and
13 Habitual Traffic Offender, DUS second; 1999,
14 Resisting Arrest, Possession of Cocaine; 2004,
15 Possession of a Controlled Substance; 2008,
16 Malicious Injury to Personal Property and he has
17 four pending office -- excuse me -- four pending
18 charges in our office, a vehicle charge,
19 distribution of meth, failure to stop and
20 possession of drugs.

21 THE COURT: All right. Ms. Price.

22 MR. GRAY: Thank you, Your Honor. On
23 behalf of Mr. Miller, as you heard his criminal
24 record, Mr. Miller definitely has a drug problem
25 and has had one for several years, Your Honor.

1 You've heard the facts in this case. Obviously,
2 I disagree, but the jury found differently. Mr.
3 Miller wanted to come to trial because he always
4 maintained that he did not know Vict [REDACTED]
5 age. To that end, they felt differently. Also
6 on my client's behalf, his mother and sister are
7 present and they would like to speak on his
8 behalf before sentencing, Your Honor.

9 THE COURT: All right.

10 UNIDENTIFIED SPEAKER: My brother, yes, he
11 has a drug problem. He's had a drug problem for
12 years. When he was 18 years old, my cousin fell
13 off a four wheeler and Shane was on the back of
14 it. He was decapitated. He held him while he
15 was dead. Ever since then, he's done drugs to
16 escape reality, just to help him just to cope
17 with that. There's no doubt that he has a drug
18 problem, but he's never really been given the
19 opportunity to get help.

20 My brother has a 10-year old daughter. I'm
21 a mother of four children. Three of them are
22 girls. I know my brother. Without a doubt, he
23 would never touch anybody that he thought was
24 under the age of 18. He's definitely guilty of
25 drugs. Anything to do with drugs -- I'm --

1 standing here today, I know that anything drugs
2 he's guilty of because he has the drug problem.
3 He needs help for it. He is not a criminal
4 sexual -- he is not a pedophile. He's took my
5 children to the movies, to skating.

6 In 2004, my ex-husband tried to kill me
7 with a shotgun and beat me up really bad. My
8 brother was the only reason I felt safe. He is
9 a good person. He just has a drug habit. It's
10 not -- I promise you, I swear, let God strike me
11 dead right now if I think that he would ever
12 physically harm anybody of any sexual nature
13 whatsoever. He's not -- my mom and dad raised
14 us properly. He is guilty of drugs by all
15 means.

16 He has a drug problem. He's had a drug
17 problem for years. I can honestly say if I
18 would have held somebody that was decapitated
19 and dead in my arms, it would have messed me up
20 mentally. I know he is not a pervert. He's
21 watched my children. He's watched our older
22 brother's children. He would never do anything
23 like that. He is not a sexual pervert.

24 **SPEAKER:** I'm Sharon Miller, Shane's
25 mother. He is a good boy. He's got a good

1 heart. And the only reason that girl was at his
2 house was because my nephew, who was working for
3 the police trying to set him up, brought that
4 14-year-old girl to his house. And her daddy's
5 live-in girlfriend, Stephanie Maddox, who was a
6 stripper, who was 29, was with them the first
7 time they come over. They all swore to Shane
8 that she was 18 years old and she claimed to be
9 a stripper too. That's why on that thing she
10 was stripping for them. They thought she was a
11 stripper. Nobody knew this girl was this age.

12 And the ones who should be on trial should
13 be them. They are bad parents. They have a 13-
14 year-old strung out on meth for a year. Where
15 was the parent? My -- I know he has a drug
16 problem. He'll tell anybody he's an addict.
17 But this would have never happened had they been
18 doing their job. They should be on trial. They
19 should be on trial. Jonathan should be on
20 trial. He knew how old that girl was. He swore
21 to Shane she was 18. I've got it on the cell
22 phone where he told Shane she was 18. Nothing
23 was done to Jonathan. They had a warrant for
24 him but they threw it away because he was
25 working with the police. They knew about

1 Jonathan. He's 25, divorced, married, got two
2 kids.

3 MINOR thought she was pregnant when she
4 come to Shane's house. My other nephew was
5 there when she was there. He said that her and
6 Jonathan told him that she was pregnant. Then
7 her daddy even admitted that she thought she was
8 pregnant by Jonathan. He allowed her to go off
9 with the 25-year-old man. He knowed she was
10 coming to Shane's house. He sent her and
11 Jonathan there to buy drugs... Yes, you did.

12 THE COURT: Ma'am, I thought you were
13 addressing your comments to me. You can't talk
14 to anybody else.

15 SPEAKER: I'm sorry. But this is not
16 right. There should be more people in trouble
17 than just the ones who really was the victims.

18 THE COURT: Well, that may be so, but
19 right now we're just dealing with Mr. Miller's
20 case because that's the only one I have before
21 me.

22 SPEAKER: Okay. I'm sorry. I'm sorry.
23 But he is a good boy. He's got a little girl
24 that's 10 years old. He would never hurt
25 nobody's child. If he had known that girl was

1 14; he wouldn't have had her there. She
2 wouldn't have been allowed at his house. It
3 wouldn't have never happened. It was a mistake
4 of age. And then she looked a lot older then
5 than she does now. She drove her daddy's car.
6 She drove her -- Okay. I'm sorry. Thank you.

7 THE COURT: Thank you, ma'am. Anything
8 further on behalf of the defendant?

9 MRS. PRICE: Your Honor, with the
10 sentences, he is being sentenced to multiple
11 offenses. I would just request to the Court
12 that it be run concurrently.

13 THE COURT: Mr. Miller, anything you want
14 to add?

15 MRS. PRICE: Stand up when you talk to the
16 judge.

17 MR. MILLER: Just ask the Court to have
18 mercy on me, sir. This is mistake of identity.
19 I swear to you. I got a beautiful little girl.
20 She's 10 years. I've got a beautiful mom and
21 dad. I've got a beautiful sister. I've got a
22 loving family. This would have never happened
23 -- I swear this never would have happened if
24 that girl hadn't never drove to my house. I
25 would have never thought in a million years that

1 she was 14 because my cousin is 25 and dating
2 this girl.

3 She drove her dad's truck to my house. She
4 drove her uncle's truck to my house numerous of
5 times. She was driving Jonathan around. I
6 thought she was 18 years old. They said she was
7 18. She said she was pregnant by Jonathan. I
8 went off of Stephanie Maddox with her. Then all
9 this happened. I mean, I told the police what
10 happened. I didn't lie in my statement. I
11 mean, I didn't know the girl was 14 years old.

12 I swear I thought the girl was 18 years old.

13 I got a family that loves me and I love
14 them. I miss them. I don't want to miss them
15 forever. I'm 33 years old. I don't want to go
16 -- I don't want to come out an old man. I
17 swear. I mean, if I could go back and change
18 something, I wouldn't have never -- that girl, I
19 thought she was 18 years old. I just ask you to
20 have mercy on me. Thank you.

21 MRS. PRICE: Your Honor, one thing I
22 forgot to mention is he had served 431 days on
23 these charges.

24 THE COURT: Okay.

25 MRS. PRICE: Thank you.

1 THE COURT: On Indictment 2008-2594,
2 that's the indictment for Criminal Sexual
3 Conduct with a Minor in the second degree
4 wherein you have been found guilty by the jury
5 of that offense, the sentence of the Court is
6 you, Billy Shane Miller be confined to the South
7 Carolina Department of Corrections for a period
8 of 20 years. That sentence is suspended upon
9 the service of 12 years. Place on probation for
10 three years. A condition of the sentence is you
11 are to register pursuant to 23-3-430. Give you
12 credit for any time you are entitled to.

13 Indictment 2008-2593, that's the indictment
14 for Criminal Sexual Conduct third degree wherein
15 you have been found guilty by the jury of that
16 offense, the sentence of the Court is you, Billy
17 Shane Miller, be confined to the South Carolina
18 Department of Corrections for a period of 10
19 years. Indictment 2008-2592, Contributing to the
20 Delinquency of a Minor, the sentence of the
21 Court is you, Billy Shane Miller, be confined to
22 the South Carolina Department of Corrections for
23 a period of three years.

24 The sentences are concurrent. He's to be
25 given credit for any time he's entitled to. The

1 registration is also required pursuant to 23-3-
2 430 on Indictment 2008-2593, Criminal Sexual
3 Conduct third degree.

4 Now, Mr. Miller, you have a right to appeal
5 the verdicts of the jury and the sentences of
6 the Court. You must file any notice of your
7 intention to appeal those decisions within 10
8 days of today's date. Okay.

9 MR. GRAY: Thank you, sir.

10 (WHEREUPON, the Court recesses at approximately
11 12:16 p.m.)

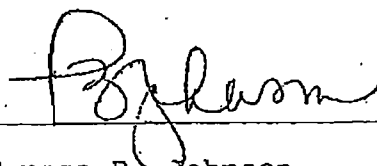
CERTIFICATE

185

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg, South Carolina, on this 3rd day of October, 2011.

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



Teresa B. Johnson

Official Court Reporter

RECEIPT FOR EXHIBITS

uplnbrg
No. 108 - 2592 - 94
Plaintiff State of SC
Defendant Billy Shane Miller
Date trial started 4-12-11

Judge Cole
Plt's Attorney Abel Gray
Def's Attorney Andrew Price
Date ended 4-13-11

Plaintiff's Exhibits:

1. Statement
2. photo lineup
3. photo
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____

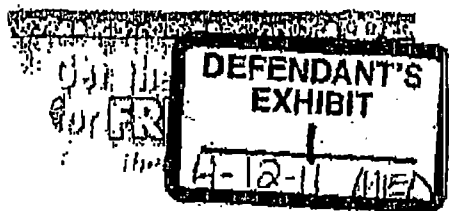
Defendant's Exhibits:

1. My Price page
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. Court's
21. Question
22. Question
23. _____
24. _____
25. _____

Received from Mary DiGudano Court Reporter, for the above case.

4-13-11 (date)

By Kamrynna de la Serna
Clerk of Court's Office



as, u6666, u66666666 | m6666 | 20066666

♥ Victim
 nicole ♥
 jonathc



18
 LA
 No
 Un

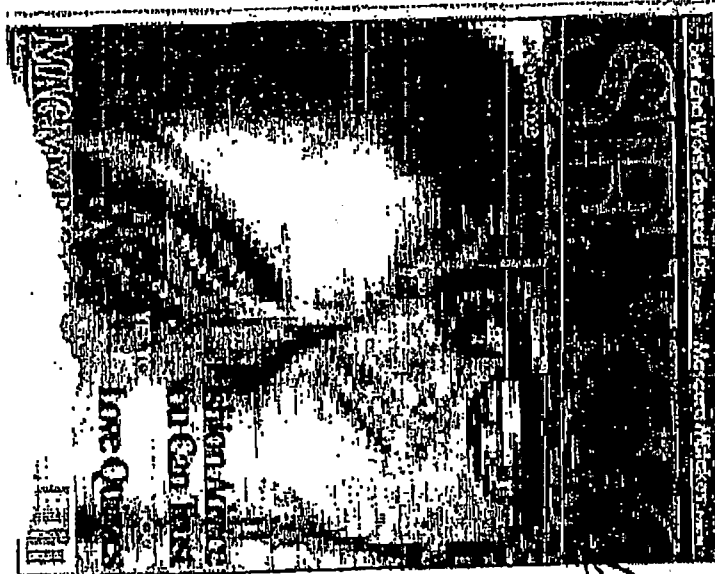
View My Page 1 of 1000

- contacting ♥ Joanna Nicole
- ☒ Send Message ☐ Fr
- ☒ Add to Friends ☐ Ai
- ☒ IM / Call ☐ Bl
- ☒ Add to Group ☐ IL

Myspace URL:
<http://www.myspace.com/123456789>



♥ Joanna Nicole ♥ Jonathc
 general It a
 2 added up message
 nicoleps love kysatul p.c.w
 hallrodayauls c.c
 myholcomment



Victim

♥ Joanna Nicole ♥ Jonathc
 status in a relationship
 one-to-one single
 12/12/11 L 12/12/11
 zodiac sign cancer
 smoke / drink yes / yes
 children 3 or more

Court

GS

RECEIPT FOR EXHIBITS

County SpilbergCase No. 08-2592-94Plaintiff State of SCDefendant Billy Shane MillerDate trial started 4-12-11Judge ColePltfs. Attorney Abel GrayDef's Attorney Andrew PriceDate ended 4-13-11

Plaintiff's Exhibits:

1. statement
2. photo lineup
3. photo
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
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21. _____
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24. _____
25. _____

Defendant's Exhibits:

1. MySpace page
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. Court's
21. Question
22. Question
23. _____
24. _____
25. _____

Received from Mary DiGiuliano Court Reporter, for the above case.4-13-11 (date)By: Kamrynne de la Serna
Clerk of Court's Office

we would like the jury to hear

we would like to hear the jury's
testimony again



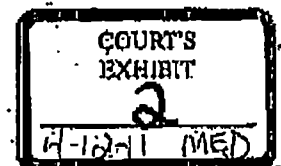
Please read

that conditions must be met to return guilty
verdict for each

Reasonable Doubt

Credibility of witness

+ then finish tomorrow



SPARTANBURG COUNTY SHERIFFS DEPARTMENT
Spartanburg, South Carolina

PRE-INTERROGATION WAIVER FORM

CASE NUMBER

2008040083

Name Billy Sharpe Miller Address 144 Colony Pike Rd Shuman, SCAge 30 (11/24/77) Date 4/3/08 Time 1416Location Sheriff's Office

- SM 1. I have the right to remain silent.
- SM 2. Anything I say can and will be used against me in a court of law.
- SM 3. I have the right to talk to a lawyer and to have him present with me while I am being questioned.
- SM 4. If I cannot afford to hire a lawyer, one will be appointed to represent me before any questioning, if I so wish.
- SM 5. I have the right to stop answering questions at any point in the questioning.

The above rights have been read to me by Pless

I have read same and I understand my rights fully.

Witness

Signed

I waive (give up) my rights as explained above and agree to talk to officer Plessin reference to Criminal Sexual Conduct in Minor, and my statement that I may make is of my own free will, without fear, threat or promise or favor or reward of any kind.I am able to read and write the English Language and finished 8 years in school.

Witnessed

Signed

Notarized

Expiration Date

9/15/13

STATE'S
EXHIBIT

4-15-11 MED

CASE#	200804003		VOLUNTARY STATEMENT		PAGE	of 1
STATEMENT OF:	Biley Shame Miller		AGE:	20	DATE:	4/3/08
ADDRESS:	144 Colony Pike Rd. Jaman, SC					
PHONE #	092.9226	DOB:	11/24/77	SSN:	850-49-1668	

this statement is being written by Detective T. Noy at Biley Shame Miller's request & at his direction.

On Monday around 11:00am I picked up Joanna from her house. She started calling me the night before & before I picked her up. She said she wanted to hang out. She was flirting with me one other night while her boyfriend, Jonathan Isom, & Stephanie were at the house. I picked her up & we were heading to my house. She was wanting to do some dope but I did not have a bowl. I had some dope in my lap & she grabbed the dope, Meth, & we both ate it. We went to my house but went through Burger King drive thru to get a drink. We went to my house Mikey was at my house. The three of us started smoking the dope. I only had a gram of dope. I got up & went to the mailbox & she followed me down there with the bowl. She asked me to put the dope in the bowl. I went in & I chopped the dope in three lines & smoked. All three of us smoked. Jeremy Nicker, B/M, came over to my house.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 2:54 P. M. on the 3rd day of April 2008.

WITNESS:

Shame Miller

Signature of person giving voluntary statement

SWORN to before me this 3rd

day of April 2008

Notary Public of South Carolina

(Seal)

My Commission expires: 7/15/13

SH104

CASE# 800000003	VOLUNTARY STATEMENT		PAGE 2 of 2
STATEMENT OF: Kelly Shome Miller	AGE: 30	DATE: 4/3/08	
ADDRESS: 144 Colony Pike Rte. 1, Chman, SC			
PHONE# 803.9226	DOB: 11/24/77	SSN: 850-49-1668	

Jeremy spoke to Joanna & they were talking like they knew each other. Jeremy asked Joanna if she would strip for us. She asked Jeremy what he would pay her. He told her whatever she wanted. During this time Jeremy had brought some marijuana & joints were being rolled & a bowl was being passed around. She started pulling her shirt off & showing us her belly ring. She took off one of her clothes herself. Mikey had oral sex with her. She started by dancing & dancing up on us. Me & Jeremy went looking for rubbers. Jeremy did have a rubber. When we went outside when I came back we saw she was laying in the floor giving Mikey oral sex & Jeremy was having sex with her. I asked her what she was doing. She asked me to kiss her & I leaned over & she pulled me to her & I kissed her on the lips. I went & sat in the recliner & she started giving me oral sex. She got on top of me but my stuff wouldn't get up. She got up & gave Mikey head & Jeremy was having sex. She came back over to me 4 or 5 times during me oral sex & someone else would be having sex.

I have read this statement consisting of 3 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 3:54 P. M. on the 3rd day of April 2008

WITNESS: Ellen

Signature of person giving voluntary statement

SWORN to before me this 3rd

day of April, 2008

By: [Signature] (Seal)
Notary Public of South Carolina

My Commission expires 7/15/13

SH104

CASE#	2008040003	VOLUNTARY STATEMENT		PAGE 3 of 4
STATEMENT OF:	Billy Shane Miller	AGE:	30	DATE: 4/2/08
ADDRESS:	144 Colony Pike Kol Inman SC			
PHONE #	852.9226	DOB:	11/24/77	SSN: 250-49-1668

with her. This was going on for an hour I left & went to Grant's to look at a Mercury Cougar. Mikey & Joanna were still having sex. Jeremy left before I did. I saw Jeremy in Peachtree Rd. He was in Tally Ho. We pulled over & he said he forgot his phone. When I got home Mikey was not there. Melissa & a friend of hers were there. Melissa told me Mikey & Joanna were asleep on the couch. Joanna told me that she needed to be home by 3:00 pm before her Dad gets home. Mikey told me he took her to some woman's house & they were smoking weed & Joanna took Valium. Mikey told me that her Dad & brother pulled up. Jeremy did go to my house with Tally to get his phone after I saw him on Peachtree Rd. Tally told me the next day that I was going to get caught by my girlfriend if I keep messing around her. I asked what she was talking about & she said I saw the girl walking around the house naked. I left \$10 in the car for Joanna to get home. Joanna did take the weed Jeremy left for her. There was no force used. No one was trying

I have read this statement consisting of 4 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 3:54 P. M. on the 3rd day of April 2008.

WITNESS:

Ellen

Shane Miller
Signature of person giving voluntary statement

SWORN to before me this 3rd

day of April, 2008.

Notary Public for South Carolina (Seal)

My Commission expires:

7/15/13



AFFIDAVIT OF PHOTOGRAPH IDENTIFICATION

Case Number: 2008040003

Date: 4-13-08

Time: 2:04 PM

Location: Sheriff's Office

I, Joanna Lawson, have viewed a group of 6
photographs this 3rd day of April, 2008, from which I have
positively identified photograph number 1579166 displayed
to me by T. Moss of the Spartanburg Sheriff's Office
as the person who Gave me Meth to smoke and had sex with me.

on the 3rd day of March, 2008.

Signature:

Print Name:

Address:

Phone:

SWORN to before me this 3rd day of
April, 2008.

Notary Public for South Carolina
My commission expires 2-2-2014

photold,aff

STATE'S
EXHIBIT

4-12-11 MED

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Page 1 of 1

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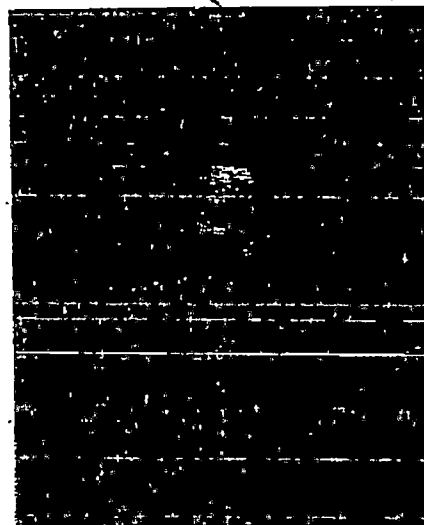
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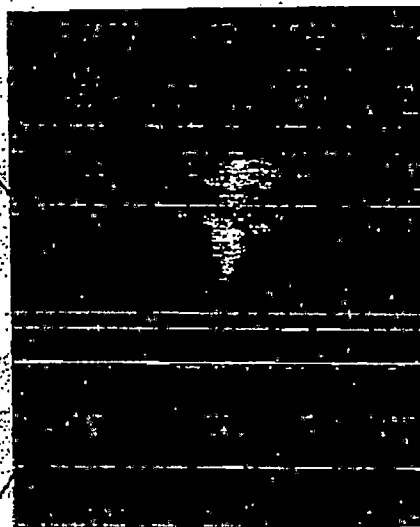
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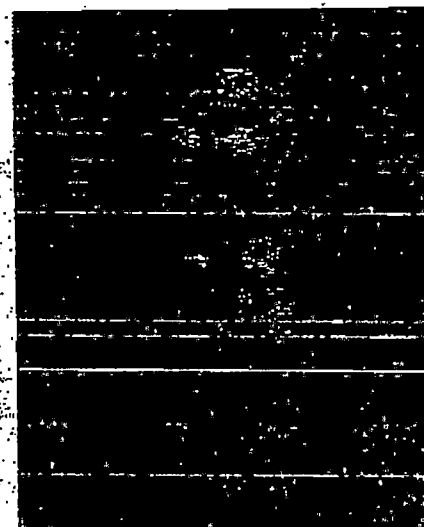
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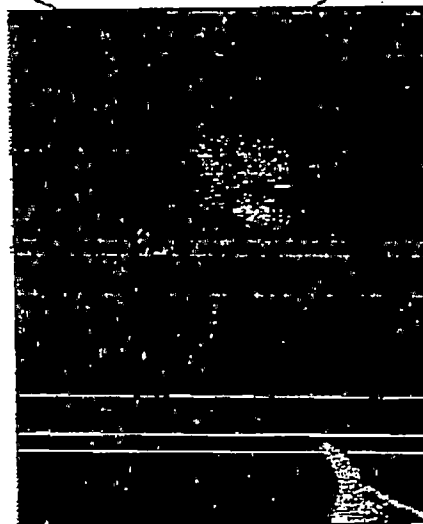
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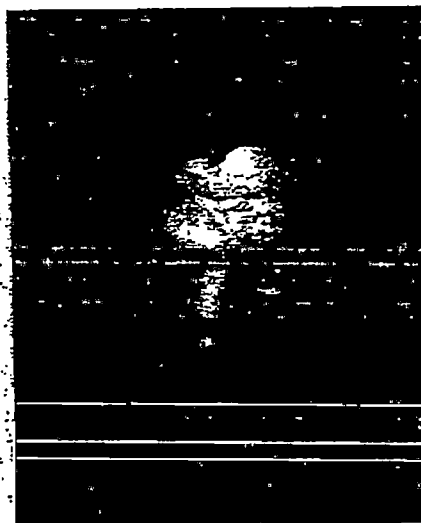
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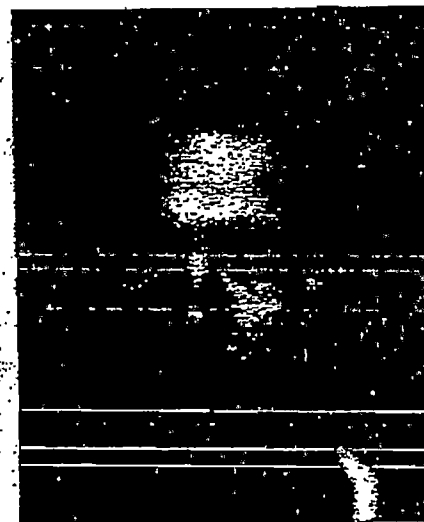
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY MILLER,

APPELLANT

ANDERS BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

- I. Did the trial court err in refusing to grant Appellant's motion for a new trial where the solicitor's comment about the defense blaming the victim so infected the trial with unfairness as to make the resulting conviction a denial of due process?

STATEMENT OF THE CASE

On May 19, 2008, Appellant Billy Shane Miller was indicted by the Spartanburg County Grand Jury for: (1) criminal sexual conduct (CSC) with a minor, second degree; (2) CSC with a minor, third degree; and (3) contributing to the delinquency of a minor. R. 196 – 201.

On April 12, 2011, Appellant proceeded to trial before the Honorable J. Derham Cole and a jury. R. 1. Appellant was represented by Andrea Price, and the State was represented by Assistant Solicitor Abel Grey. R. 1.

On April 13, 2011, the jury found Appellant guilty as charged. R. 172, l. 10 – 173, l. 6. Judge Cole sentenced Appellant to: (1) twenty years imprisonment suspended to the service of twelve years imprisonment followed by three years probation on the CSC with a minor, second degree, conviction; (2) ten years imprisonment on the CSC with a minor, third degree, conviction; and (3) three years imprisonment on the contributing to the delinquency of a minor conviction. R. 183, ll. 1-25. The sentences were to run concurrently. R. 183, l. 24.

This appeal follows.

STATEMENT OF FACTS

Minor Child

At trial, Minor Child was seventeen years old. R. 58, ll. 12-14. Minor Child maintained that on March 31, 2008, when she was fourteen years old, she “called [Appellant] to hang out.” R. 59, ll. 4-6. Minor Child recalled that she had only met Appellant “one time before” and that she knew that “[Appellant] was older.” R. 60, l. 1 – 61, l. 9. Minor Child further claimed that she went to Appellant’s home and that she voluntarily “ate” and smoked methamphetamine with Appellant. R. 60, l. 3 – 63, l. 3; 93, ll. 12-13.

Minor Child maintained that Mikey Kimbrell and Jeremy Miller were also at Appellant’s home. R. 61, ll. 15-16; 68, ll. 14-16. Minor Child claimed that she told Appellant she was fourteen years old. R. 66, l. 23 – 68, l. 5. Minor Child further stated that she had sex with Appellant, Kimbrell, and Miller. R. 69, l. – 70, l. 24. Minor Child noted that Kimbrell took her “home”¹ and that her dad asked Kimbrell for his driver’s license because “he didn’t know where [she] was at” and was worried. R. 72, ll. 4-15.

Furthermore, Minor Child stated that she subsequently went to the hospital because she was so intoxicated. R. 73, ll. 1-7. Minor Child also recalled that Tracy Moss, a detective with the Spartanburg County Sheriff’s Office, showed her a lineup and that she picked Appellant out of that lineup. R. 74, l. 2 – 75, l. 6.

On cross-examination, Minor Child admitted that she had been using methamphetamine for approximately one year. R. 76, l. 20 – 77, l. 5. Minor Child, however, claimed that she did not remember the inconsistencies defense counsel pointed out

¹ Minor Child stated that Kimbrell took her “Judy’s house” (a neighbor). R. 85, ll. 1-7.

in her three statements to the police because she "was still high on drugs" when she gave the statements. R. 77, l. 6 – 78, l. 10. Minor Child further claimed that she didn't even remember giving a second statement to police. R. 83, ll. 8-11.

Additionally, Minor Child admitted that "on the way [to a neighbor's house]," she rolled and smoked blunts (i.e., cigars filled with marijuana) while in Kimbrell's car. R. 85, ll. 1-15. Minor Child also stated that she voluntarily took a valium when she arrived at the neighbor's house and that her "MySpace page" indicated that she was eighteen years old. R. 86, l. 4 – 87, l. 13. Minor Child further admitted that not only did her "MySpace page" falsely present her age, it also indicated that she smoked and drank. R. 89, l. 9 – 90, l. 3.

Brenda Lawson

Brenda Lawson stated at trial that Minor Child is her daughter, she is separated from Minor Child's father, and that Minor Child was left at home alone while her father went to work. R. 100, ll. 9-25. Ms. Lawson recalled that Minor Child "was out of it" when she first saw her and that she eventually took Minor Child to the hospital. R. 101, l. 12 – 102, l. 1. Ms. Lawson maintained that the doctor told her Minor Child was "coming off of drugs." R. 102, ll. 13-14.

Joe Lawson

Joe Lawson testified at trial that Minor Child is his daughter and that he was worried when he came home from work and could not find her. R. 104, ll. 16-25. Mr. Lawson stated that Minor Child "was pretty messed up" when he first saw her. R. 105, ll. 3-9. Mr. Lawson maintained that he confronted Kimbrell and recorded Kimbrell's driver's license information. R. 105, ll. 10-18. In short, Mr. Lawson's testimony mirrored Ms. Lawson's testimony.

Tracy Moss

Tracy Moss of the Spartanburg County Sheriff's Office recalled that he saw Minor Child at the hospital and that "[s]he appeared to be intoxicated on . . . some type of drug. R. 110, ll. 13-16. Moss maintained that he interviewed Appellant on April 3, 2008, and that the State then entered Appellant's statement into evidence. R. 111, l. 18 – 112, l. 9. Moss subsequently read Appellant's statement to the jury. R. 114, l. 13 – 117, l. 14. Notably, in his statement, Appellant denied knowing that Minor Child was fourteen years old. R. 117, l. 14.

On cross-examination, Moss admitted that Minor Child's three statements contained inconsistencies. R. 119, l. 6 – 120, l. 3.

Closing Argument

After the close of the State's case, Appellant decided not to testify and defense counsel presented her closing argument to the jury. R. 120, l. 16 – 130, l. 1. During the State's closing argument, the solicitor stated:

[Minor Child] was so high from swallowing meth to snorting meth at 11 o'clock one day to possibly the next day at 1:30 a.m. or a day and a half . . . because they had to go back to the hospital three times because she was so high from the drugs [Appellant] gave her. *Does that say we're going to blame the victim? That's the game? We're going to blame her because he gave her meth? Because he had sex with her?*

R. 132, ll. 15-24 (emphasis added).

Motion for a New Trial

After the jury found Appellant guilty as charged, defense counsel moved for a new trial. R. 172, l. 10 – 176, l. 3. The trial court subsequently denied defense counsel's motion for a new trial. R. 176, ll. 4-5.

ARGUMENT

The trial court erred in refusing to grant Appellant's motion for a new trial because the solicitor's comment about the defense blaming the victim so infected the trial with unfairness as to make the resulting conviction a denial of due process.

During closing arguments, the solicitor stated, "*Does that say we're going to blame the victim? That's the game? We're going to blame her because he gave her meth? Because he had sex with her?*" R. 132, ll. 21-24 (emphasis added). After the jury found Appellant guilty as charged, defense counsel moved for a new trial. R. 172, l. 10 – 176, l. 3. The trial court subsequently denied defense counsel's motion for a new trial. R. 176, ll. 4-5.

A solicitor's "argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." *State v. Rudd*, 355 S.C. 543, 549, 586 S.E.2d 153, 156 (Ct. App. 2003) (citation omitted). "The appropriateness of a solicitor's ... argument is a matter left to the trial court's sound discretion." *Id.* at 548, 586 S.E.2d at 156. "An appellate court will not disturb a trial court's ruling regarding [a solicitor's] argument unless there is an abuse of that discretion." *Id.* "Improper comments do not require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004).

"On appeal, an appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." *Rudd* at 550, 586 S.E.2d at 157. "The appropriate determination is whether the solicitor's comment so infected the trial with unfairness as to

make the resulting conviction a denial of due process.” *Id.* Additionally, a trial court's denial of a new trial motion will not be disturbed on review absent a showing of an abuse of discretion which results in prejudice to the defendant. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998).

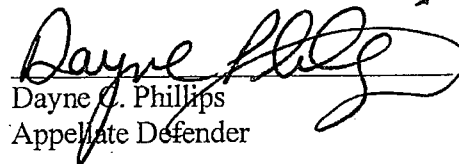
In this case, the solicitor's comments during his closing argument were calculated to arouse the passions of the jury and were not a reasonable inference within the record. *See Rudd*, 355 S.C. at 549, 586 S.E.2d at 156. The solicitor's comments were prejudicial because the comments were to intentionally elicit sympathy for the Minor Child and to bolster the Minor Child's assertion that she told Appellant she was fourteen years old. R. 132, ll. 21-24. *See State v. Shuler*, 344 S.C. 604, 545 S.E.2d 805, *cert. denied*, 534 U.S. 977, 122 S.Ct. 404 (2001) (noting “a solicitor: cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony....”) (citations omitted).

Accordingly, the trial court erred in refusing to grant Appellant's motion for a new trial because the solicitor's comment about the defense blaming the victim so infected the trial with unfairness as to make the resulting conviction a denial of due process.

CONCLUSION

For the foregoing reasons, Appellant Billy Shane Miller's convictions should be reversed and remanded to the Spartanburg County Court of General Sessions for a new trial.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of August, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY MILLER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Billy Miller states:

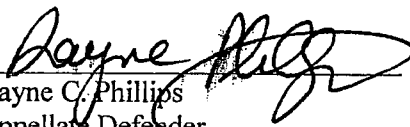
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on April 13, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Billy Miller.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

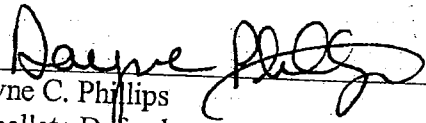
ATTORNEY FOR APPELLANT

This 17th day of August, 2012.

CERTIFICATE OF COUNSEL

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

August 17th, 2012


Dayne C. Phillips
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

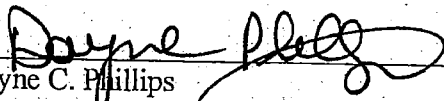
V.

BILLY MILLER,

APPELLANT

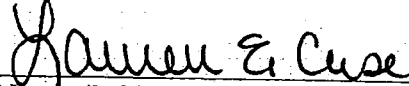
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Record on Appeal have been served on Billy Miller, #259358 at Kershaw Correctional Institution, this 17th day of August, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of August, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

The South Carolina Court of Appeals

close
RECEIVED

The State, Respondent

SEP 24 2012

v.

ATTORNEY GENERALS
OFFICE

Billy Miller, Appellant.

Trial Court Case No. 2008GS4202592, 2008GS4202593,
2008GS4202594

Appellate Case No. 2011-190846

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed.

This case is REMITTED to the Clerk of Court for Spartanburg County.

FILED
JAS 9/21/12

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Dayne C. Phillips

~~Salley W. Elliott~~

The Honorable Hope Blackley

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

BILLY SHANE MILLER (#00259358))
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-42-3190

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County Courthouse
Seventh Judicial Circuit, 180 Magolia Street, Spartanburg SC 29306
3. Name(s) of co-defendant(s) (if any) Jeremy Miller and Michael C. Kimbrell
(2008GS4204985)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008GS4202594 (M021315) - Criminal sexual conduct with minor - victim under 16 years of age - second degree
 - (b) 2008GS4202592 (M021316) - Contributing to the delinquency of a minor
 - (c) 2008GS4202593 - Criminal Sexual Conduct - third degree

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CLERK
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M. H. BLACKLEY

Revised 3/2003

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 13, 2011 - 20 years suspended to 12 years and 3 years of probation concurrent CFTS Sex Offender Registry
- (b) April 13, 2011 - 3 years concurrent CFTS
- (c) April 13, 2011 - 10 years concurrent CFTS
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Dismissed on September 21, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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COURT
CLERK
M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Failure to investigate
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed to ask for not guilty verdict and in fact asked for guilty verdict and failed to call important witnesses to testify.
- (b) Failure to investigate and interview witnesses
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:

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COUNTY
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H. HOPE BLACKLEY

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is Petitioner's first application for Post-Conviction Relief

(b) _____

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 COUNTY
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 M. HOPE BLACKLEY

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Andrea Price, Seventh Judicial Circuit Public Defender's Office, 366 North Church Street, Suite 3000, Spartanburg SC 29303
 - ii. Dayne C. Phillips, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia SC 29201
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Andrea Price, attorney for the trial and sentencing
 - ii. Dayne C. Phillips, attorney for the appeal
 - iii. _____
19. State clearly the relief you seek in filing this application:
Petitioner seeks to be granted a new trial
20. Are you now under sentence from any other court that you have not challenged?
No

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CLERK OF COURT
SPARTANBURG COUNTY
2013 AUG 12 PM 1:08
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, Billy Shane Miller, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Billy Shane Miller

SWORN to and subscribed before me this 22
day of February, 2013.

Catherine A. Amador (I.S.)
Notary Public

My Commission Expires: _____

My Commission Expires: _____

FILED
JULY COURT
JULY COUNTY
2013 AUG 12 PM 1:08
M. HOPE BLACKLEY

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

I, Billy Shane Miller, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Billy Shane Miller
Applicant

SWORN or affirmed to and subscribed before me this
22 day of February, 2013.

Catherine A. Cameron
Notary Public

My Commission Expires: My Commission Expires 02/28/2015

FILED
CLERK OF COURT
HARRIS COUNTY
2013 AUG 12 PM 1:09
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

BILLY SHANE MILLER

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: TIMOTHY M. RAY

Address: 184 N. DANIEL MORGAN AVENUE
SPARTANBURG, SC 29306

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP -

2013-CP-42-3190

SC Bar #: 70498
Telephone #: (864) 542-2800
Fax #: (864) 585-0068

Other:

E-mail: timray@youhaverights.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

☒ **NON-JURY TRIAL** demanded in complaint.

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
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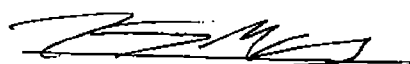
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Submitting Party Signature: 

Date: 3/5/2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FILED
2013 AUG 12 PM 1:08
M. HOPE BLACKLEY
CLERK OF COURT
COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Billy Shane Miller, #259358,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

) 2013-CP-42-3190

) RETURN

)
)
) Respondent, making its Return to the application for post-conviction relief (PCR) filed
) August 19, 2013, 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 Spartanburg County Clerk of Court. He was indicted at the May 2008 term of the Spartanburg County Grand Jury for contributing to the delinquency of a minor (2008-GS-42-2592), criminal sexual conduct – 3rd degree (2008-GS-42-2593), and criminal sexual conduct with a minor – 2nd degree (2008-GS-42-2594). The Applicant was represented by Andrea Price, Esquire. On April 12, 2011, the Applicant proceeded to trial, where he was convicted of the charges by a jury. The Honorable J. Derham Cole sentenced Applicant to concurrent sentences of three years for contributing to the delinquency of a minor, ten years for criminal sexual conduct – 3rd, and twenty years for criminal sexual conduct with a minor – 2nd degree.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), Applicant

voluntarily withdrew his appeal, and the South Carolina Court of Appeals dismissed the appeal. The Order of Dismissal and Remittitur were filed on September 21, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to investigate properly,
 - ii. Counsel failed to call witnesses important to Applicant's defense,
 - iii. Counsel failed to ask for a verdict of "not guilty",
 - iv. Counsel asked for a verdict of "guilty".

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper 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, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 10, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Billy Shane Miller,

) 2013-CP-42-3190
)

) Applicant,
)

) v.
)

) CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Timothy M. Ray, Esquire
184 N. Daniel Morgan Avenue
Spartanburg, South Carolina 29306



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 10th day of July, 2014.

1 State of South Carolina)
2 County of Spartanburg) Court of Common Pleas, PCR
3 2013-CP-42-3190

4 Billy Shane Miller)
5 vs.) Transcript of Record
6 State of South Carolina)
7 DEFENDANT)

8 November 9, 2015
9 Spartanburg, South Carolina

10
11
12 B E F O R E:

13 Honorable Larry B. Hyman, Jr., Judge

14
15 A P P E A R A N C E S:

16 Alicia A. Olive, Assistant Attorney General
17 Attorney for the State

18
19 Timothy M. Ray, Esq.
20 Attorney for the Defendant

21
22
23 Joy E. Holston
24 Official Court Reporter

25

INDEX OF WITNESSES

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(DW) - Denotes Defense Witness

(PW) - Denotes Petitioner's Witness

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(PW) ShaDon Miller

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(PW) Sharon Miller

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(PW) Jonathan Isom

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E X H I B I T SPetitioner

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1 MS. OLIVE: Your Honor, this is the case of Billy
2 Shane Miller versus the State of South Carolina. This is
3 2013-CP-42-3190. Mr. Miller filed this application for
4 PCR August 19, 2013. He was indicted in May of 2008 for
5 contributing to the delinquency of a minor, criminal
6 sexual conduct in the third degree and criminal sexual
7 conduct with a minor in the second degree. Ms. Price, Ms.
8 Andrea Price represented him on those charges. On April
9 the 12th of 2011 he proceeded to trial where he was
10 convicted of charges by a jury. Judge Cole sentenced him
11 to concurrent sentences of 3 years for contributing to the
12 delinquency of a minor, 10 years for criminal sexual
13 conduct third, and 20 years for criminal sexual conduct
14 with a minor second degree.

15 THE COURT: And he was tried as charged, is that
16 right?

17 MS. OLIVE: Yes, Your Honor.

18 MR. RAY: Yes, sir.

19 THE COURT: And, Mr. Miller, have you been advised
20 that if I were to grant your relief your charges don't go
21 away, you would be retried. Do you understand that?

22 MR. MILLER: Yes, sir.

23 THE COURT: And you would be retried on the same
24 charges, I imagine, there was no reduction from what I am
25 told. What was the potential sentence on the criminal

1 sexual conduct with a minor. The one that he was
2 convicted of.

3 MS. OLIVE: Your Honor, I apologize, I don't have
4 that right in front of me.

5 MR. RAY: Judge, he was convicted of both, the CSC's.
6 It was the 20 years suspended to 12 on the CSC second. 20
7 suspended to 12 and 3 years of probation, a concurrent 10
8 year sentence on the CSC third and a concurrent 3 years.

9 THE COURT: The reason I ask that, Mr. Miller, is I
10 want to make sure that you understand that on a retrial I
11 think the CSC second is, that was the max, was 20?

12 MR. RAY: Yes, sir.

13 THE COURT: And your sentence was 20 suspended to 12?

14 MR. MILLER: Yes, sir.

15 THE COURT: That you may in fact, on a retrial, if
16 you are convicted be sentenced, is the whole nine yards.
17 Do you understand?

18 MR. MILLER: I understand.

19 THE COURT: The sentencing Court would not be bound
20 by the sentences you received, Judge Kelly?

21 MR. RAY: Judge Cole.

22 THE COURT: Judge Cole. Do you understand that?

23 MR. MILLER: Yes, sir.

24 THE COURT: And that is the risk that you have, you
25 do understand that?

1 MR. MILLER: Yes, sir.

2 THE COURT: Okay. And you want to go forward?

3 MR. MILLER: Yes, sir.

4 MR. RAY: Your Honor, my first witness, I would call
5 Mr. Miller.

6 BILLY SHANE MILLER, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Ray:

10 Q State your full name for the record?

11 A Billy Shane Miller.

12 Q Most people call you Shane, is that right?

13 A Yes, sir.

14 Q Now, Shane you had a trial, when was your trial date?

15 A It was April the 12th of 2011 but we went through
16 with it April the 13th of 2011.

17 Q And that was here in Spartanburg, is that right?

18 A Uh-huh.

19 MR. RAY: And when I ask you questions if you will
20 say yes or no because the Court Reporter has a little
21 trouble translating head shakes. Try to help her out.
22 And you can say yes or no and explain whatever you need
23 to. Okay.

24 A Yes, sir.

25 Q Let's try is again. That was here in Spartanburg

1 that you were tried?

2 A Yes, sir.

3 Q Now, as we stated a few moments ago, you were tried
4 for CSC second degree; CSC third degree and contributing
5 to the delinquency of a minor?

6 A Yes, sir.

7 Q And as I just said a moment ago, your sentence was 20
8 suspended to 12 and 3 years of probation?

9 A Yes, sir.

10 Q And the CSC second, contributing to the delinquency
11 ran concurrent with that sentence?

12 A Yes, sir.

13 Q Who represented you in that trial?

14 A Andrea Price.

15 Q Were there any witnesses called for you in that
16 trial?

17 A No, sir.

18 Q While we are on that subject, had you requested any
19 witnesses to be called for you in that rial?

20 A I gave her a bunch of names of people that would be
21 viable in my trial that should have been here for my
22 trial.

23 Q When you say you gave it to her, it was given to her
24 by you or by someone else for you?

25 A Given to her through my mom and my sister.

1 Q Now, that list had a lot of different names on it,
2 didn't it?

3 A Yes, sir.

4 Q You remember if it had the names of Jonathan Isom on
5 there?

6 A Yes, sir.

7 Q It did?

8 A Yes, sir.

9 Q What about Bryan Black?

10 A Yes, sir.

11 Q Did it have Michael Kimbrell?

12 A Yes, sir.

13 Q And while we are at it, Michael Kimbrell was charged
14 at the same time as you for all the circumstances that led
15 up to you being charged as well. Is that right?

16 A Michael Kimbrell was charged with CSC second. And
17 Billy Miller was also charged. He was charged with the
18 CSC second and the CSC third and the contributing to the
19 delinquency of a minor.

20 Q And then I think the list also included David
21 Freeman, is that right?

22 A Yes, sir.

23 Q Did Ms. Price, to the best of your knowledge, did she
24 ever contact any of those individuals?

25 A No, sir.

1 Q On that list there is a total of--

2 A I think it is 12.

3 Q I think it totaled 18 deferent people, is that right?

4 A I am sorry.

5 Q Some of those people were lost, I guess, is that
6 right?

7 A Yes, sir.

8 Q And as of this moment we haven't been able to contact
9 some of them, is that correct?

10 A Yes, sir.

11 Q Did you testify?

12 A No, sir.

13 Q Did you think you needed to?

14 A Yes, sir.

15 Q Tell me why. Tell me this, if you were to have
16 testified, what would your testimony have been?

17 A I would have let them know how I, this girl come to
18 my house. She was driving, with a guy with a jeep. She
19 had my cousin, Jonathan was in the passenger seat. And
20 her daddy's girlfriend, Stephanie, was in the back of the
21 jeep. And they wanted to get high and I had to go
22 somewhere for something. But anyway, they left--

23 Q Let me stop you for just a second. When you say this
24 girl, are you talking about Victim

25 A Victim yes. She was driving the jeep.

1 Q Now, when you say Stephanie?

2 A She was in the back seat.

3 Q Do you remember Stephanie's last name?

4 A Maddox.

5 Q And that was Victim's father's girlfriend?

6 A Yes, sir.

7 Q So the incident you are talking about, now, is that
8 the first time you met Victim

9 A The first time I have ever seen her and met her.

10 Q So what happened?

11 A Well, Jonathan got out of the passenger seat and
12 walked up to my car--

13 Q I am sorry, let me stop you. When you say, Jonathan,
14 you mean Jonathan--

15 A Jonathan Isom.

16 Q Okay. Go ahead.

17 A He come up to the passenger seat, I mean come up to
18 my car, I was sitting out there doing something in my
19 carport and wanted to know if I had anything to get high
20 with. And Victim walked up there with him. And I said,
21 in a little while or something, now, I have got somewhere
22 to go. So I left and they left. And then later on that
23 night Jonathan Isom called me and asked me if I wanted to
24 go pick up Victim and Stephanie Maddox. So, I said
25 yes and we go, I pick him up at his house on Melvin Hill

1 Road, I think that is what it is. And then we go and pick
2 up Stephanie and Victim So we come back to my house and
3 we--

4 Q Let me stop you for a second. Where did you pick up
5 Stephanie?

6 A At Victim house in Landrum.

7 Q So we go back to my house and all of a sudden I get
8 high and Jonathan or John started arguing. And she claims
9 she is pregnant.

10 MS. OLIVE: Objection, hearsay, as to what he is
11 going to testify as to what she said.

12 MR. RAY: I don't know exactly what his answer is
13 going to be. I don't know if it is going to be relevant
14 to what has happened.

15 THE COURT: I will hear it, go ahead.

16 A They were arguing and she is claiming that she is
17 pregnant.

18 THE COURT: That is not offered to prove the truth of
19 the matter asserted. I am going to allow it.

20 A And so they are arguing. And so me and Stephanie go
21 to, I have got a pool room, we go back to the back of my
22 house, I give Jonathan some dope.

23 Q When you say dope, what is that?

24 A Methamphetamine.

25 Q Sir?

1 A Methamphetamines. And Stephanie Maddox, we go back
2 to my game room in my house and then we sat back there for
3 a little bit and smoked some dope. And me and her leave
4 and we go to Mayo.

5 Q You and who?

6 A Me and Stephanie Maddox leave to go to Mayo. And
7 then we sat there and it was about daylight the next
8 morning and me and Stephanie leave and we go and we get, I
9 think we go by Hardees or something and then we go back to
10 my house. Stephanie and Victim said they have got to get
11 home. And so me and Jonathan, me and Jonathan Isom and
12 Stephanie Maddox and Victim get in my car and we go
13 towards Landrum. But we go by some place where her dad
14 works to see if her dad was at work or something. And his
15 jeep was there. So anyway, me and Jonathan takes
16 Stephanie and Victim back to her house. And then dropped
17 Jonathan off at his house and then I come back home. And
18 then maybe a week or two later, not two, maybe a couple of
19 days later, a week, me and my cousin, Bryan's, Bryan Black
20 was sitting at my house and Jonathan Isom and Victim pulls
21 up. Victim is driving a white Ford Explorer. And
22 Jonathan was with her and they come in and we sat around
23 and get high. Jonathan and I and Victim and Bryan Black
24 was sitting around smoking dope, methamphetamines getting
25 high. And it was about, it was in between 12:30 or 2:00,

1 sometime around 1:00.

2 Q It was late?

3 A It was late at night, yes.

4 Q And who was driving?

5 A Victim was driving a white Ford Explorer. And so we
6 sat around and smoked dope. And she said, you know you
7 got Stephane kicked out of the house because she left with
8 you. Maybe an hour passed and we were sitting there
9 getting high and I get ready, I tell everybody we have got
10 to go. So, Bryan goes out there and I think he was in
11 his, I want to say a red car or his truck. Jonathan and
12 Victim got into the white Explorer and they left. And
13 Bryan left and then I left. And then it was like two or
14 three days later that she started calling me, Victim
15 started calling me that night. I guess it was March the
16 31st, she called me and she called me a number of times.
17 I finally, I went and picked her up and we got something
18 to drink and then we come back to my house. And we were
19 getting high and so we started getting high.

20 Q When you say you started getting high what were you
21 using?

22 A We were smoking methamphetamine, that is all I have.
23 I just had a little bit of drugs. Didn't have a whole lot
24 of drugs, maybe a gram. But me and Victim and Mike and
25 Kimberly was getting high. I went to my mailbox for

1 something and came back and I come back in and I filled
2 the bowl up with dope. And we were smoking the bowl. And
3 then Victim went back in my bedroom and we kissed and made
4 out and went down her pants and stuff. And then I went
5 back into the living room and Jeremy came over, Jeremy
6 Miller. And Jeremy came over and he had some weed. And
7 asked Victim, asked anybody if they wanted some weed. I
8 don't smoke weed but they smoked it. And we asked her if
9 she wanted to buy some. She said she didn't have no
10 money. And he told her she could strip and she started to
11 strip. I turned the radio up and me and Jeremy went to
12 the back room, looked for some condoms. And Mikey was
13 giving her oral sex when we went back in there. And she
14 was giving Jonathan oral sex. And I walked outside and I
15 come outside, I was probably out there for ten minutes.
16 She come to the door, or Jonathan come to the door and
17 said, Victim wants you. And so I walked back in there and
18 she pulls me down and gives me a kiss and she gives me
19 oral sex. Mikey is giving her oral sex. And then when
20 Mikey goes and sits on the couch and she is giving him
21 oral sex and Jeremy is behind her having sex with her.
22 And then she would get up and she would walk over to me
23 and give me oral sex. And Jonathan was behind her. And
24 this went on, she kept on going back and forth. And then
25 Jeremy leaves. The whole time during this whole process I

1 could never get an erection. And I was out of dope, I got
2 a call to get some more dope. So Jeremy had done left.
3 And so I leave and Mikey and her are still on the couch
4 whenever I leave. Later on I finally got a call, Melissa
5 Turner and them called me. They were at my house and they
6 called me and wanted some drugs, wanting some meth. I
7 told them, I said, well, go ahead and go in my house and
8 tell Mikey. I am on my way.

9 Q During all of this, how old did you think **Victim** was?

10 A I thought she was 18.

11 Q Now, I know you and your attorney tried to raise the
12 defense, during this time the Romeo clause was in effect
13 in the CSC law, right?

14 A Yes, sir.

15 Q So, during that time, what was the date that all of
16 this happened, do you remember?

17 A March the 31st of 2008.

18 Q So, during that time that defense would have been
19 important to you, is that right?

20 A Yes, sir.

21 Q Now, you mentioned the fact that I think Jeremy had
22 asked **Victim** to strip?

23 A Yes, sir.

24 Q Had y'all ever heard of her, did she ever say
25 anything about stripping?

1 A No, but her and Stephanie, me and Jonathan picked her
2 and Stephanie up that night, they said that they danced.

3 Q So, that was what they did for work?

4 A Yes.

5 Q Now, you didn't testify?

6 A No, sir.

7 Q And Judge Cole asked you a couple of times if you
8 wanted to, this was your opportunity in that trial to tell
9 your side?

10 A Yes, sir.

11 Q And you told him you weren't going to testify?

12 A I asked him if I could talk to Ms. Price.

13 Q Tell me about that.

14 A I talked to Ms. Price and she told me not to testify.

15 Q Did she way why?

16 A She said she had done enough.

17 Q And based on that--

18 A The Judge told me through the process again. And I
19 asked him again, he asked me if I was sure I wasn't going
20 to testify. And I went back and talked to Ms. Price
21 again. And she told me the same thing, not to testify.

22 Q And then what did you tell Judge Cole?

23 A I told Judge Cole I wasn't going to testify.

24 Q Looking back on that and understanding your
25 reasonable belief in what Victim age was would be

1 important in your defense. At this point, if you could do
2 it all over again would you choose to testify
3 understanding that or would you still have chosen not to
4 testify?

5 A I would have testified.

6 Q So, we have talked about the witnesses that you
7 wanted called. You talked about your testimony, that you
8 didn't testify. The only other thing I think you are
9 complaining of today is how Ms. Price asked the jury to
10 find you in the end. How did she ask the jury to find
11 you.

12 A Find me guilty.

13 Q Is that what you wanted?

14 A No, sir.

15 Q Let me go back, I forgot to mention something. You
16 spoke about Victim coming to your house, I think the
17 second time. And you mentioned that was in the early
18 morning hours, just after midnight or so, is that right?

19 A That would be the third time she came to my house.

20 Q Did that give you any belief as to what her age was?

21 A I seen her, she was in two different vehicles. She
22 was driving, she was driving late at night. I just never
23 in my mind thought she was under age.

24 Q Did Jonathan ever tell you how old she was?

25 A He said she was 18.

1 Q Did she look 18?

2 A Yes, sir.

3 Q Did she act like someone with the maturity of an
4 18-year-old or a little older?

5 A Yes, sir.

6 Q Tell me about that, how was it that she acted that
7 would have shown she was a little older?

8 A Jonathan was 25, Stephanie was 28, she was smoking
9 dope. Jonathan and Stephanie was smoking dope and she was
10 wanting to do whatever, other kind of dope she could get
11 her hands on.

12 Q Now, Stephanie being there, Victim father's
13 girlfriend, did Stephanie ever tell you how old Victim
14 was?

15 A No, sir.

16 Q She never told you she was actually under the age of
17 16?

18 A No, sir. Said they danced, stripped.

19 Q Are there any other details related to those things
20 or anything else you would like to Court to know?

21 A I would like the Court to know, that I would have
22 never talked to this girl if I knew her age, she would
23 have never been in my house. I would have never picked
24 her up, I never thought this girl was underage. She was
25 driving two different cars and she acted like an adult,

1 did some of the things that adults do.

2 Q One other thing that I forgot to mention, did you
3 ever force yourself on her?

4 A No.

5 Q Was she ever so drugged up that she was out of it and
6 didn't know what was happening and you had sex with her?

7 A No, sir.

8 Q Now, you have had experience with methamphetamine,
9 does methamphetamine have that effect on you?

10 A No, it wires you up, you are ready to go.

11 Q In fact you will sometimes go for extended periods of
12 time without sleeping?

13 A Days without sleep.

14 Q No more questions.

15 THE COURT: Ms. Olive.

16 CROSS-EXAMINATION

17 By Ms. Olive:

18 Q Mr. Miller, how many times did you meet with your
19 attorney before you went to trial, do you recall?

20 A It was about, she came to the jail to see me in
21 February to taking me back for a bond and then she come
22 in, I think it was May.

23 Q And do you recall her reviewing the discovery in your
24 case with you?

25 A I asked her to read me the statement that the girl

1 had wrote.

2 Q And she did?

3 A She read the statement to me.

4 Q So, and do you recall discussing possible defenses
5 with your attorney, with Ms. Price?

6 A Yes. She said that she had a Myspace page and that
7 would show her age.

8 Q The victim testified at the trial, correct?

9 A Yes, ma'am.

10 Q And she testified that she told you she was 15,
11 right?

12 A She testified that, she said she was 14.

13 Q Okay. My apologies. But you thought she was 18?

14 A Yes, ma'am.

15 Q And so you don't deny that you picked her up and,
16 well I am sorry. You don't deny that you gave her that
17 methamphetamine?

18 A No.

19 Q At your house?

20 A Yes, ma'am.

21 Q And you said that you gave Ms. Price some potential
22 witnesses to testify?

23 A Yes, ma'am.

24 Q And I think you said it was a list of 12 people?

25 A I think 12 is on the paper that she gave to all of

1 the Solicitors. I think there was 12 on it. She got a
2 subpoena list from my sister during my trial that there
3 was 18.

4 Q Okay. And how many of those 18 people were present
5 at your house?

6 A The day it happened or over the whole period of time?

7 Q The day that it happened.

8 A Jeremy, Mikey, and me, David Freeman came later on
9 that day.

10 Q What were those other witnesses going to testify
11 about?

12 A That she lied about her age.

13 Q Okay.

14 A She got on the stand and testified that, she got on
15 the stand and told me that, she told me that she was 14
16 years old. And in her statement, she wrote a statement
17 saying that Jonathan told me she was 14 years old.

18 Q Okay. Did your attorney ever discuss a plea offer
19 with you in this case?

20 A The day of my trial she was wanting me to take a
21 plea.

22 Q What was that plea to?

23 A ABHAN, no registry.

24 Q But you decided to go forward with a trial?

25 A Yes, ma'am.

1 Q And at your trial, well you testified here today that
2 you would have testified at trial, looking back, do you
3 think you should have testified at trial?

4 A If my lawyer had instructed me to testify I would
5 have.

6 Q Okay. And you did, the Judge did inform you about
7 your right to testify at your trial?

8 A Yes, ma'am.

9 Q That is all the questions I have.

10 A Can I add something?

11 Q No, I will ask the questions.

12 THE COURT: Mr. Ray.

13 REDIRECT EXAMINATION

14 By Mr. Ray:

15 Q Is what you wanted to add a continuation of your
16 response to her?

17 A I would like to add that, I was under the impression
18 she was 18, I was under the impression that I was getting
19 drugs for a woman, not no child.

20 Q No more questions.

21 THE COURT: You may step down. Call your next
22 witness.

23 MR. RAY: I would call Jonathan Isom, actually Your
24 Honor, I take that back. Next I will call ShaDon Miller,
25 please.

1 SHADON MILLER, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Ray:

5 Q Will you state your full name for the record, please?

6 A Amanda ShaDon Miller.

7 Q Everybody calls you ShaDon, right?

8 A Yes, sir.

9 COURT REPORTER: Can you spell your name, please.

10 A S-h-a-D-o-n.

11 Q Now, ShaDon, you heard what we are talking about
12 today, subpoena list?

13 A Yes, sir.

14 Q I would like to mark an exhibit. Now, ShaDon, I am
15 handing you what has been marked as Plaintiff's exhibit
16 number 1. Does that look familiar to you?

17 A Yes, sir.

18 Q Is that the list that you provided to Ms. Price?

19 A Yes sir, it is.

20 MR. RAY: Your Honor, I would move that to be placed
21 into evidence.

22 THE COURT: Ms. Olive.

23 MS. OLIVE: Your Honor, I am not sure if this is
24 proper at this time.

25 THE COURT: She says that is a list that she gave to

1 counsel. I will let it in.

2 (Whereupon, Petitioner's Exhibit 1 was admitted into
3 evidence.)

4 Q When did you give that to Ms. Price, do you remember?

5 A It was prior to, actually I had given Ms. Price this
6 list twice. I met her once behind the court house at the
7 bottom there is a ramp, there is a door beside the ramp
8 and that is where she asked me to meet her to give her the
9 list. This was several weeks or months before that trial.
10 And then I also gave her the list again when I let her
11 listen to a phone message to make sure because it had
12 Jonathan Isom on there. And she said that she couldn't
13 use the phone message, that would be irrelevant. But she
14 had witnesses. She had the witnesses, she had what she
15 needed.

16 Q You are talking about this phone message, what was on
17 the phone message?

18 A That was Jonathan stating the fact that he--

19 MS. OLIVE: Objection, hearsay testimony.

20 A Actually it is not hearsay--

21 THE COURT: Wait a minute, I am the one that decides
22 that. Ask your question again.

23 Q What did he say on the message.

24 THE COURT: This was a phone message?

25 MR. RAY: I haven't heard what was on it so this one

1 is new to me as well.

2 A Yes, it is a statement--

3 THE COURT: Wait a minute.

4 MR. RAY: Your Honor, I don't know if we can proffer
5 it.

6 THE COURT: Let's proffer it, let me hear what it is.

7 Q What did the message say?

8 A It was Jonathan stating that he had brought Victim
9 over and that Victim was his girlfriend and that if Shane
10 wouldn't have went behind his back and picked her up then
11 none of this would have happened.

12 MR. RAY: I will withdraw that question, Your Honor.

13 THE COURT: It is irrelevant.

14 Q Now, you talked about the first time you gave Ms.
15 Price the list. When was the second time you gave Ms.
16 Price the list?

17 A The second time was whenever I was trying to give her
18 the message on the phone.

19 Q When was that? Would that have been shortly before
20 trial?

21 A Yes, that was shortly before trial because whenever I
22 gave her the phone message I also gave her my brother's
23 clothes. And my mom was with me.

24 Q Did you and Ms. Price ever have any other
25 conversations about witnesses?

1 A She had several witnesses to call. I had supplied
2 her with the information that she needed.

3 Q Let me ask you this. Were any of these people there
4 to testify for your brother?

5 A Mikey was there, I don't know why they didn't call
6 him to the stand. Other than that, no. And I think the
7 only reason Mikey was there is because the Solicitors had
8 brought him in.

9 Q Thank you. No more questions.

10 THE COURT: Ms. Olive.

11 MS. OLIVE: I have no questions of this witness, Your
12 Honor.

13 THE COURT: You may step down.

14 MR. RAY: Your Honor, my next witness would be Sharon
15 Miller.

16 SHARON MILLER, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Ray:

20 Q State your name for the record?

21 A Sharon Elizabeth Miller.

22 Q Ms. Miller, how do you know Shane?

23 A He is my son.

24 Q I am showing you what has been marked as petitioner's
25 exhibit number 2. Now, other than, there is a little,

1 there is a date and a bunch of numbers at the top, 00002,
2 that is indicative coming from the Solicitor's office in
3 discovery. Other than that is this a letter or a document
4 that you provided to the Solicitor?

5 A I think I did this right away.

6 Q When you say right away, what do you mean?

7 A To try to find out what was going on, we know it
8 wasn't true. And I know that--

9 Q When you say right away, what do you mean by right
10 away?

11 A Immediately.

12 Q After what?

13 A As long as it took me to type it up and ShaDon
14 printed them.

15 Q Are you saying immediately after Shane was charged?

16 A Yes.

17 Q Okay.

18 A I found out everything, then I wrote these people,
19 all of those numbers and people's names and stuff. I
20 found out just, it didn't take me no time. If there was
21 an investigator on it this would have never been here.

22 Q This is a document you provided--

23 A Well, as far as I can see, I don't have my reading
24 glasses on.

25 Q Look at it, see if you can look at it.

1 A This is it.

2 Q That is it?

3 A I wasn't very good with the timeframe.

4 Q And that is a document with names and phone numbers?

5 A Yeah, but there was a whole lot more of it than this.

6 Q There was more than that?

7 A There was a whole lot more.

8 MR. RAY: Your Honor, I would move that into
9 evidence.

10 THE COURT: Ms. Olive?

11 MS. OLIVE: I object on relevance.

12 THE COURT: She is saying that these were witnesses
13 or names of people that she provided. I will let it in.

14 (Whereupon, Petitioner's Exhibit 2 was admitted into
15 evidence.)

16 Q Ms. Miller, ShaDon said you were with her when she
17 provided Mr. Price that subpoena list. Do you remember
18 that?

19 A Yes and I was with her when she played that phone
20 call for her. I have a tape, the one that he left on mine
21 saying that she said she was 18.

22 Q But is that accurate, that you were with her when she
23 provided that list?

24 A Yes sir, I was.

25 Q The second time?

1 A Yes, I was, when we took clothes.

2 Q Did you have any other conversations with Ms. Price?

3 A Yes, when she would talk to me. He never got no
4 discovery until 2014, three years after he was sentenced.

5 Q But did you have conversations with Ms. Price about
6 the witnesses?

7 A Yes sir, I did. I have talked to Ms. Price about the
8 witnesses.

9 Q What was--

10 A She claimed she couldn't subpoena and his phone
11 messages, she couldn't use. She claimed she couldn't
12 bring Mickey into the courtroom because he wouldn't
13 testify for them. So she couldn't bring him in there to
14 testify for Shane. He tried to fire her.

15 Q For a while Mickey was represented, wasn't he,
16 because he was charged in this as well?

17 A Yes. He was represented by Mr., um, Belcher or
18 something.

19 Q He was represented at the time?

20 A Yes, he was already in prison.

21 Q No more questions.

22 MS. OLIVE: I have no questions.

23 THE COURT: You may step down.

24 MR. RAY: Your Honor, next I would call Jonathan
25 Isom.

1 JONATHAN ISOM, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Ray:

5 Q State your name for the record.

6 A Jonathan Lee Isom.

7 Q Jonathan, you and I talked a while back, several
8 weeks ago about all of this. When all of this occurred
9 you and Victim had been dating, is that right?

10 A Yes.

11 Q How old did you think she was?

12 A 18.

13 Q Who told you that?

14 A She did.

15 Q Are any other things she did that made you think she
16 was 18 years old?

17 A She drove and the way she acted, she looked and the
18 way she acted.

19 Q And you had been with her at Shane's house, is that
20 right?

21 A Yes.

22 Q Did you ever hear her tell Shane that she was 14
23 years old?

24 A No.

25 Q Now there was, after Shane was arrested and charged

1 with this you had a conversation with **Victim** on the phone,
2 didn't you?

3 A Right.

4 Q What did you tell her?

5 A I told her to tell the truth about what she told
6 everybody.

7 MS. OLIVE: Your Honor, objection, hearsay.

8 THE COURT: That is clearly hearsay.

9 MR. RAY: Your Honor, this would be a statement
10 against the victim that he was speaking to.

11 THE COURT: Does this indicate a criminal act on her
12 part?

13 MR. RAY: It does and it is an inconsistent
14 statement.

15 THE COURT: It would be a prior inconsistent
16 statement.

17 MR. RAY: To what she testified--

18 THE COURT: In trial.

19 MR. RAY: And it indicated that she, either provided
20 false information to the police or filed a false police
21 report.

22 MS. OLIVE: She is not here to testify.

23 THE COURT: Didn't she testify in trial?

24 MS. OLIVE: She did, yes sir.

25 THE COURT: That means this would be a prior

1 inconsistent statement at the trial. I will allow it.

2 Q What did she tell you?

3 A She told me that she would tell the Judge that she
4 told everybody she was 18.

5 Q Did she say anything about what had caused her to
6 tell everybody that, either Shane had forced himself on
7 her or that she told him she was 14, anything about her
8 father?

9 A She said something about her daddy, yeah, about her
10 dad had called her or something. And her dad caught her
11 and it was him that was making her do this.

12 Q But that she was going to tell the truth and that
13 being--

14 A Said she was 18. She told everybody she was 18. She
15 looked 18, she acted 18.

16 Q Thank you.

17 THE COURT: Ms. Olive?

18 MS. OLIVE: No questions, Your Honor.

19 THE COURT: You may step down. Let me ask you this.
20 You were charged under these indictments arising out of
21 this incident. Were you facing charges at that time?

22 MR. RAY: He was not, Your Honor.

23 A No.

24 THE COURT: I see he is incarcerated.

25 MR. RAY: He has been picked up on some charge.

1 THE COURT: Something else?

2 MR. RAY: Yes sir, I am not sure what it is. Your
3 Honor, next I would call Bryan Black.

4 BRYAN BLACK, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Ray:

8 Q State your name for the record.

9 A Bryan Scott Black.

10 Q Now, Bryan, did you ever have an opportunity to meet
11 Victim

12 A Just the one occasion.

13 Q Tell me about that?

14 A The exact date I don't know but I was at Billy's
15 house and we was sitting there and there was a screen that
16 we were watching from cameras. And they pulled up and she
17 got out of the car she was driving and that was the only
18 occasion that I have ever met her. And they wasn't there
19 for too long. It was late at night also, it was like past
20 12:00, because I know they were already in the bed. So it
21 had to be after midnight. And they pulled up and I only
22 met her for approximately twenty minutes or so. And we
23 never really even talked, she just kind of came in and
24 went on about her business, you know, talked to Shane or
25 Jonathan or whatever. And then they went on. I never

1 even really spoke to her.

2 Q How did she appear?

3 A Well, I mean it was 12:00 o'clock at night. And she
4 was driving a vehicle, I would never appeared her to be
5 underage. I mean, it was not like it was a skating rink
6 on Friday night.

7 Q Physically did she look like a 14-year-old?

8 A No, sir. I have a 15-year-old.

9 Q What about the way she talked, the things she said?

10 A I mean I can't really, to be honest I can't even
11 remember a whole lot about what she had said or anything.
12 But I mean just by her being there after midnight with my
13 cousin that is my age, I automatically eliminated any
14 possibility of her being underage.

15 MS. OLIVE: Your Honor, I would object, this
16 testimony is irrelevant. It is not relevant, what age she
17 thought she was. There are pictures of her presented at
18 trial. What is relevant here is what the applicant
19 thought.

20 THE COURT: Well, the applicant was present. Wasn't
21 he at his house?

22 MR. RAY: Yes, sir.

23 THE COURT: She came to his house?

24 MR. RAY: Yes, sir.

25 THE COURT: It is relevant.

1 MS. OLIVE: Thank you, Your Honor.

2 Q And who was she with?

3 A She was with my cousin, Jonathan.

4 Q Jonathan Isom?

5 A Yes, sir.

6 Q And so, I guess you said, just to be sure, was there
7 anything she did or said or showed that would have
8 indicated she was a minor?

9 A No, sir. I mean, I just thought, if I am pulling up
10 at somebody's house, even me being grown and it is 12:00
11 o'clock at night and I don't know nobody there. I am not
12 going to just bebop out of the car and go up into the
13 house like I know somebody. I am going to probably sit in
14 the car and just kind of wait and see what happens. But
15 they did pull up in the driveway and she did get out of
16 the drivers side and marched right in the house like she
17 was where she wanted to be.

18 MR. RAY: No more questions, Your Honor.

19 THE COURT: Ms. Olive?

20 MS. OLIVE: No questions, Your Honor.

21 MR. RAY: Your Honor, next I would call David
22 Freeman.

23 DAVID FREEMAN, being
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 By Mr. Ray:

2 Q State your full name for the record.

3 A David Matthew Freeman.

4 Q Mr. Freeman, did you ever have a chance to meet

5 Victim

6 A Probably about two minutes, maybe three at the most.

7 Q Tell me about that situation?

8 A I went to see Shane, I went up and knocked on the
9 door and she opens the door topless. I looked down, and
10 she was like, you like them, don't you. I said, they are
11 nice. Where is Shane. He is busy doing something. I
12 looked over at Jeremy and I said, what do you want to do.
13 He said, what you going to do. I said I got to take a car
14 back. He said, well, I got to holler at him. I said,
15 well, if you need a a ride later holler at me. And so I
16 left.

17 Q This was Jeremy who?

18 A Miller.

19 Q So you left him there and you left?

20 A Yes.

21 Q When you saw Victim did, now was this around March
22 31st, 2008?

23 A It was right at my birthday. I don't remember what
24 time of day it was, it was starting to get dark.

25 Q Okay. Was there anything about Victim that looked

1 like she was sedated?

2 A Not sedated by any means. She was, I figured she was
3 high or something.

4 Q How old did she look to you?

5 A It was like, she said she was like 18 or 19.

6 Q That is how old she told she was?

7 A Yes.

8 Q Before me did anybody ever contact you about
9 testifying?

10 A No, sir.

11 Q Would you have been available to testify if someone
12 asked?

13 A I told Shane that when I was locked up. I had some
14 little day charge or something.

15 Q No more questions, Your Honor.

16 THE COURT: Ms. Olive.

17 CROSS-EXAMINATION

18 By Ms. Olive:

19 Q Did you just say that you would have been available
20 to testify while you were in jail?

21 A I told him I would help him any way I could.

22 Q Not while you were in jail?

23 A I mean, I would help him in the streets, I would help
24 him in jail. I will help anybody I can but I am not going
25 to do it if it is something I have to answer toward later

1 on in life or death.

2 Q No more questions.

3 THE COURT: You may step down.

4 MR. RAY: Your Honor, next I would call Michael
5 Kimbrell.

6 MICHAEL KIMBRELL, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Ray:

10 Q State your name for the record, please.

11 A Michael Charles Kimbrell.

12 Q You go by Mickey?

13 A Yes.

14 Q Mickey, what we are talking about in here is
15 regarding Victim [REDACTED] And I know you were originally
16 charged as well?

17 A Yes, sir.

18 Q And you ended up pleading to aggravated assault and
19 battery?

20 A Yes, sir.

21 Q Do you remember the date that you plead guilty?

22 A February 23rd I think.

23 Q Of what year?

24 A 2010.

25 Q 2010. So you plead guilty before Shane's trial?

1 A Yes, sir.

2 Q Before me did any of Shane's attorneys ever contact
3 you about testifying?

4 A No.

5 Q If they would have and you had testified in Shane's
6 trial, were you willing to do that?

7 A Yes, sir.

8 Q What would you have told everyone, what happened?

9 A I would have told the truth of what happened.

10 Q Tell us what happened that day?

11 A I woke up when Shame came in and I was laying on the
12 couch asleep. I woke up, he had some, **Victim** with
13 him. That was the first time I had ever met her. And we
14 were sitting around talking. And one thing led to
15 another. And, you know, let's see, trying to figure out,
16 and we wind up having sex. She had said that she used to
17 strip at a club, somewhere around Landrum.

18 Q And y'all were using methamphetamines?

19 A Yes.

20 Q Is that right?

21 A Yes.

22 Q So, when all of this going on, at some point Shane
23 left, is that right?

24 A Yes, sir.

25 Q After Shane left you were still there?

1 A Right.

2 Q Did you take Victim anywhere?

3 A Yeah, we went to Dollar General. I was trying to
4 take her home, she didn't want to go. She was doing
5 everything she could to try to stay. We went to Dollar
6 General, rode around for a little while, was waiting on
7 Shane to get back. I came back to his house and she still
8 didn't want to leave. And it got to be approximately
9 around 4:00 or 5:00 when I finally got her to, ready to go
10 home. And then she didn't want to go home, she wanted to
11 go to her neighbor's house and get some pills. So I was
12 all for that at the time. And I took her there and that
13 is where we run into, we were there for a little while and
14 her dad came and got her there and that is when I found
15 out how old she was then.

16 Q So, she wanted to go there to get pills?

17 A Yes.

18 Q Did she get any?

19 A Yes, she got some Valiums there.

20 Q So, before that had she taken any downers or anything
21 like that?

22 A Not that I was aware of.

23 Q But when she got there she got Valium?

24 A Yes.

25 Q Did she look like she was 18?

1 A She looked older, yes.

2 Q Did she act like it?

3 A Well, yeah. It wasn't her first time doing drugs or
4 any of that that she was doing.

5 Q She told you that?

6 A I mean we were sitting around and getting high and
7 everything else, she knew what she was doing. I mean you
8 just don't start off doing anything and going the rate she
9 was going.

10 Q Now, there is another little twist that is
11 interesting here. You were brought back here from the
12 Department of Corrections when Shane was doing his trial,
13 is that right?

14 A Yes, sir.

15 Q Who brought you here?

16 A SCDC.

17 Q Who caused you to come here?

18 A I am assuming it was the Solicitor, the prosecution.

19 Q Did they talk to you?

20 A Yea.

21 Q What did they say?

22 A They were assuming that I would testify, that I would
23 testify--

24 MS. OLIVE: Objection, hearsay.

25 THE COURT: I am going to hear it.

1 A They brought me back to testify against Shane. They
2 said we were under the understanding that you would be
3 willing to cooperate with us.

4 Q What did you tell them?

5 A I told them they were crazy.

6 Q Did you tell them you knew the facts?

7 A Yes, I told them that she had told us that she was
8 19, 18 or 19. It was 19 at the time because it was on her
9 MySpace account. And, you know, she is lying the whole
10 time and I have done plead guilty to it. And I didn't
11 even know the girl. And as far as I was aware that
12 everything was all right. And then testify against him
13 when he didn't know either.

14 Q Who was it that spoke to you?

15 A I don't know their name.

16 Q Do you remember what they look like?

17 A Big guy, gray hair and a black man, that is all I
18 remember.

19 Q A gentleman had a beard or anything?

20 A This has been a couple of years back. I wasn't
21 really trying to remember to be honest with you.

22 Q Was he thin, heavy set, medium build?

23 A Medium build.

24 Q Thank you.

25 THE COURT: Ms. Olive.

CROSS-EXAMINATION

1
2 By Ms. Olive:

3 Q Mr. Kimbrell, you plead guilty to ABHAN on these
4 charges. I mean you were charged as the result of this?

5 A Yes, ma'am.

6 Q And I think you testified earlier that you had just
7 met her?

8 A That night.

9 Q So you didn't know her. And, but you think that, you
10 think your testimony would have been helpful to Mr.
11 Miller?

12 A Well, I mean I know what she told us that night. I
13 mean I would think it would help, you know, that is the
14 truth.

15 Q And you do admit with having sex with the victim?

16 A Yes, ma'am.

17 Q Thank you.

18 THE COURT: Why would you plead to this. Since she
19 said she was 18.

20 A I sit in the Spartanburg County jail for 18 months
21 not hearing anything from anybody, any lawyers, nobody
22 came and talked to me. You sit in there that long, 23
23 hours a day you would be willing to plead to, you know, I
24 was just trying to get it over with. And they didn't tell
25 me I was going to have to register, you know, the

1 repercussions of what was going to happen with the
2 probation and all that when I got out.

3 THE COURT: Okay. You may step down. Did you think
4 to call the petitioner here to your trial?

5 A They didn't tell me I was going to court. They come
6 the night before, that I was going to court and told me,
7 asked me what size jumpsuit I was going to have. I didn't
8 have time to even make a defense.

9 THE COURT: Okay.

10 MR. RAY: That is our case, Your Honor.

11 MS. OLIVE: Your Honor, the State would call Andrea
12 Price to the stand.

13 ANDREA PRICE, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Ms. Olive:

17 Q Good afternoon, Ms. Price, thank you for being with
18 us today. Do you recall when you were, let me ask first,
19 were you appointed or retained in this case?

20 A I was appointed to the case by the Public Defender's
21 office.

22 Q Do you recall at what point, just in the chronology
23 in this case, you were appointed?

24 A I don't remember the exact date. This case was
25 originally assigned to Mr. McPherson in our office.

1 William actually retired and moved back home to Texas.
2 That was in 2008 I believe. And so I received Mr.
3 Miller's case after that.

4 Q And how many meetings, do you recall how many times
5 you met with Mr. Miller?

6 A Not exactly. It was several though. He was in the
7 jail during the entire course of my representation of him.

8 Q Did you file any Brady or Rule 5 motions?

9 A I did not, Mr. McPherson did and all of that was in
10 his file, discovery file when I got it.

11 Q Okay. And did you review that discovery with Mr.
12 Miller?

13 A I don't remember if I did or not. But, there, I
14 believe there is a note in here from Mr. McPherson on his
15 discovery.

16 Q It is your impression that Mr. McPherson reviewed
17 this?

18 A Yes, it is.

19 Q And did Mr. Miller cooperate with you during the
20 course of your representation with him?

21 A Can you be more specific.

22 Q I guess, did he give you his version of events?

23 A Yes, he did.

24 Q Were they consistent over time?

25 A Yes, actually they were.

1 Q Prior to trial did you discuss with him the elements
2 of the charges and what the State would be required to
3 prove?

4 A Yes, at that time, the time that he was charged the
5 Romeo clause was still in effect.

6 Q Can you explain that?

7 A Certainly. Also known as the mistake of age defense.
8 Mr. Miller had, at the time that he was charged it was
9 still an offense to CSC that the person was underage. And
10 if the party knew that or the defendant knew that and that
11 was a defense to the charge.

12 Q And I will get back to that. Did you discuss
13 possible defenses with him?

14 A Yes, I did.

15 Q And that would include the Romeo clause?

16 A Yes, it did.

17 Q And what kind of investigation did you do in terms of
18 this case?

19 A We brought up the discovery with him, talked to him.
20 He did have several codefendants in this matter. I did
21 speak with his mom and his sister on numerous occasions.
22 It seemed to me, in the course of looking into this case
23 that, that that would be a viable defense. Of course, it
24 is very fact specific and ultimately left up to a jury
25 whether or not they believe that.

1 Q And in fact that was brought out at trial, was it
2 not?

3 A Yes, it was.

4 Q Now, there are several witnesses today that
5 testified, the State provided you with these lists. I am
6 going to hand these to you. Starting with the first list,
7 that list is twelve people. Do you recall when you
8 received all of this?

9 A I do. Because I wrote it down on my notes on this
10 case.

11 Q And when was that?

12 A I got this on Friday, April the 8th, 2011.

13 Q And how soon before trial was that?

14 A He was on the court docket for the week of April
15 11th, 2011. So I got this Friday before he was on the
16 court docket on Monday.

17 Q Okay. And in looking at that list did you feel that
18 there was any particular, I mean, did you feel like it
19 would have been helpful to your case to pursue any of
20 those witnesses?

21 A No, not at that late juncture. I had no idea what
22 those people were going to say.

23 Q And I believe Mr. Miller's sister testified that she
24 gave that to you at an earlier time. Did she, in fact,
25 give that to you at an earlier time?

1 A I do not have any notes to that effect.

2 Q So, you only recall receiving this Friday prior to
3 trial?

4 A That's correct.

5 Q And that second list, I believe 9/25/08 at the top of
6 it?

7 A Yes.

8 Q Do you recall receiving that?

9 A That was in the file when I got it.

10 Q And did you review that?

11 A Yes, I did.

12 Q Did you feel that there were any, there was any
13 different information in there that would be, let me
14 rephrase that. I apologize. Was there any information in
15 that paper that would have prompted you to reach out to
16 these witnesses. Did you feel that those would have been
17 beneficial at trial?

18 A Not in my judgment, no.

19 Q Did Mr. Miller ever discuss with you any other
20 potential witnesses?

21 A According to my notes, not that I recall. The main
22 issue was whether or not he believed Victim particular
23 age to be 18 or over.

24 Q And why didn't you call the last gentleman, Mr.
25 Kimbrell?

1 A Mr. Kimbrell?

2 Q The last gentleman that testified today?

3 A Oh, yes, Mr. Kimbrell. Mr. Kimbrell was a
4 codefendant of Mr. Miller. Calling codefendants,
5 particularly those who have already plead is very, very
6 risky because if I were his attorney, or if I were the
7 State's attorney I would stand up and say, well, you have
8 already plead to this, why shouldn't we believe that these
9 are the facts that happened. I did not think that calling
10 Mr. Kimbrell, or any of the codefendants for that matter,
11 would have been very productive and in fact could have
12 potentially harmed him.

13 Q And were there any offers in place prior to the
14 trial?

15 A There were. I did receive a plea offer that I did
16 take to Mr. Miller and that he ultimately rejected. That
17 offer was assault and battery, high and aggravated under
18 the 2008 statute and that included no registrations, of
19 the registry and he rejected that.

20 Q And did you advise him that, did you advise him, the
21 pros and cons of pleading guilty versus going to trial on
22 these charges?

23 A Absolutely. Particularly since, given the amount of
24 time he had been in jail. Also in my notes are a
25 calculation of the amount of time he had spent to that

1 point. And according to my calculations it is 430 days.
2 This happened in 2008, he came to trial in 2011. So, 430
3 days is pretty substantial in time. I advised him to take
4 the offer, I thought it was pretty decent because he never
5 disputed the fact of the sexual activity. It was just the
6 age that was an issue. And I thought that under all the
7 circumstances, I thought that ABHAN, no registration was a
8 good offer particularly with the amount of time he already
9 had been in jail. And I advised him to take that and he
10 rejected it.

11 Q Do you feel that you had ample time to prepare for
12 the trial on the case?

13 A Absolutely.

14 Q Ms. Price, in looking back to the trial in this case
15 what would your strategy, was that your strategy in this
16 case?

17 A It was because of the drug use and the sexual
18 activity was not a dispute. He never disputed that. But
19 what was an issue was the age.

20 Q And the victim testified at trial that she was, she
21 had told him her age?

22 A I don't recall that right off. But if you can point
23 me to a page.

24 Q This would be of the transcript, page 91.

25 A Okay. Line 15. I told him I was 14 years old.

1 Q Correct.

2 A That is, in fact, what she did say on
3 cross-examination.

4 THE COURT: You were looking on page 91?

5 MS. OLIVE: Yes sir, Your Honor.

6 Q And in fact that you were, there is some discussion
7 about this Myspace page, that come out a little bit today?

8 A Yes, it did.

9 Q And that was brought up at trial?

10 A Yes and the pictures were put into evidence. I
11 believe that is in the back of this record.

12 Q And did you also argue that in your closing argument
13 at trial?

14 A Yes, as I recall.

15 Q I have no more questions.

16 THE COURT: Mr. Ray.

17 CROSS-EXAMINATION

18 By Mr. Ray:

19 Q Ms. Price, the primary evidence against Shane in the
20 trial was Victim testimony, is that right?

21 A Yes.

22 Q And tell me about what you did to Myspace page?

23 A Victim had a Myspace page with some pictures on
24 it that make her look very mature. She also, there is
25 also a box on the Myspace page that list personal

1 information, where you are from, what is your age, that
2 sort of thing. And she indicated on there that she was 18
3 years of age. And so I did question about that on
4 cross-examination and entered her photograph into the
5 record.

6 Q Now, Mr. Kimbrell, you were in here. You heard him
7 testify that the Solicitor actually had him here to, they
8 thought that he was going to testify. And apparently he
9 told the Solicitor that what his testimony would be is
10 that she told everybody she was 18 years old. Did the
11 Solicitor ever tell you that?

12 A That is the first I have heard about this, never did
13 he say that.

14 Q So, you were not provided that information from that
15 statement that Mr. Kimbrell made?

16 A No.

17 Q In any form?

18 A In any form.

19 Q Thank you.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 By Ms. Olive:

23 Q Just briefly. And I am pointing back to the
24 transcript of the direct testimony by the victim at trial,
25 on page 57. Ms. Price, the victim did testify on direct

1 examination as well that she was 14 years old, correct?

2 A Yes, it does.

3 Q Thank you, I have no more questions.

4 MR. RAY: I don't have any more questions for her,
5 Your Honor.

6 THE COURT: Ms. Price, let me ask you a couple of
7 questions. Ms. Price, during the petitioner's testimony
8 today as to what he would have testified, there is no
9 question at all that he engaged with sexual acts, sexual
10 battery with a 14 year old?

11 A Yes, sir.

12 THE COURT: No question about that. And there was no
13 question according to the transcript, on Myspace page and
14 other things of that nature, that this was a very mature
15 14 year old?

16 A Yes, sir.

17 THE COURT: And there was no question that this 14
18 year old engaged in adult like conduct?

19 A Yes, sir.

20 THE COURT: Late at night, things of that nature.
21 And there is no question that given the case that was
22 presented to you, as I look at it, the only defense is the
23 Romeo defense?

24 A That's correct.

25 THE COURT: And so then the only thing about this

1 particular defendant, I mean victim, that was damaging in
2 your case was her statement that she told petitioner that
3 she was 14 and she looked over 18, she acted over 18. The
4 key to the case was, on direct and cross she said I told
5 them I was 14?

6 A Yes.

7 THE COURT: We have had three or four witnesses,
8 though they might not be sterling examples, they still
9 described prior inconsistent statements by her, she told
10 this defendant and everyone that she was 18. Also the
11 defendant, was there any reason, anything in his past that
12 would prevent you from putting him up and letting him
13 testify?

14 A Yes, sir.

15 THE COURT: What was that?

16 A At the time of the trial Mr. **Victim** was so nervous,
17 he was literally shaking, Your Honor. And I did not feel
18 at the time, due to his nervousness that it would have
19 been in his best interest--

20 THE COURT: You are talking about Mr. **Victim**

21 A I am sorry, I am sorry, Mr. Miller.

22 THE COURT: Okay.

23 A That, I did not feel that he would have been a good
24 witness for himself at that point. He was scared to
25 death.

1 THE COURT: Okay. Thank you. You may step down. I
2 will hear from you, Mr. Ray.

3 MR. RAY: Thank you, Your Honor. Your Honor, we
4 would ask the Court to grant the petitioner's request for
5 a post conviction relief. There is the issue of his
6 testimony and what he would have stated if he had been
7 advised to testify. There was the issue of his defense
8 counsel asking that he be found guilty. The bigger issue
9 I think becomes these witnesses, in the case of Ard v.
10 Catoe, the Court said at a minimum counsel has the duty to
11 interview potential witnesses and make an independent
12 investigation of facts--

13 THE COURT: I am familiar with Catoe.

14 MR. RAY: Yes, sir. Because of that, as Ms. Price
15 indicated she didn't contact anybody, she didn't try to
16 contact anybody. There was nothing showing that Mr.
17 McPherson had contacted anybody or tried to. There were
18 the two different documents. One was provided through
19 discovery that indicated potential witnesses that had
20 phone numbers for them. Then there was the list--

21 THE COURT: The only witnesses I am concerned with is
22 the ones that you put up.

23 MR. RAY: Yes, sir.

24 THE COURT: Let's look at the Glover case. You put
25 up four, said she was 18.

1 MR. RAY: Yes sir, said she was 18, said she did not
2 seem sedated. Her testimony at trial was also that she
3 was sedated and Mr. Miller took advantage of that
4 situation. It wasn't until later, as the testimony was,
5 that she received a Valium and took that. But the four
6 witnesses that we called that were witnesses that were off
7 of this list. The information that was provided. I
8 believe that there is a reasonable probability, in this
9 case the alleged victim's testimony was vital to the
10 conviction, that being able to counter that, impeaching
11 her testimony with these other witnesses would have been
12 just as vital. And I believe there would have been a
13 reasonable probability that the outcome would have been
14 different had these witnesses been subpoenaed to testify.

15 THE COURT: All right, Ms. Olive.

16 MS. OLIVE: Your Honor, Ms. Price testified that she
17 didn't receive this list of witnesses until the Friday
18 before trial.

19 THE COURT: Move for a continuance.

20 MS. OLIVE: Yes, Your Honor. In this case we would
21 just rest on the testimony presented today.

22 THE COURT: All right. Strategic calls made by
23 attorneys should be viewed under a standard of reasonable.
24 Now, this case boils down to a situation where we have a
25 Romeo defense, you have got a victim who appears and acts

1 like an adult. The key here with the testimony, I told
2 them I was 14. Now, I don't know how the jury looked at
3 these other witnesses testimony. But that needed to be
4 counted, she needed to be impeached. I think that a
5 decision not to put him up, strategic decision not to call
6 these witnesses is beyond reasonable especially when
7 witnesses was not interviewed, they were not interviewed.
8 But the decision to whether to put them up or not. I am
9 going to grant the PCR. Prepare an order, Mr. Ray, keep
10 it in the confines of my ruling. Okay.

11 MR. RAY: Yes, sir. Thank you.

12 MS. OLIVE: Thank you, Your Honor.

13 THE COURT: That relief is granted, only on the
14 conviction with CSC with a minor. Okay. You want to be
15 heard on that?

16 MR. RAY: Would it be to both CSC's, Your Honor. One
17 was about, she said she--

18 THE COURT: Which one was, let me hear you on it.

19 MR. RAY: One of the CSC convictions, this minor
20 stated, concerning the fact that she said she was sedated
21 and didn't know what was going on. And then there was the
22 testimony by the witnesses that she was moving around
23 between--

24 THE COURT: Did that have anything to do with her
25 being a minor?

1 MR. RAY: No, sir. But he was convicted under both,
2 that he sedated her and had sex with her.

3 THE COURT: That had nothing to do with her
4 minority--

5 MR. RAY: No, sir.

6 THE COURT: The Romeo defense would not have applied
7 there, would it?

8 MR. RAY: No, sir. That is why we used the witnesses
9 to testify about the fact that she was not acting like she
10 was sedated. She was moving between the different ones.
11 The other witness, Mr. Freeman--

12 THE COURT: You are saying that they should have been
13 called for that purpose?

14 MR. RAY: For that purpose.

15 THE COURT: All right, I will grant also. But not
16 the distributing.

17 MR. RAY: Yes, sir.

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Spartanburg, South Carolina on the 9th day of November, 2015.

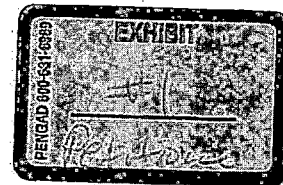
I do further certify that i am neither of kin, counsel nor interest to any party hereto.

May 24, 2016

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016



People to Subpoena

Jonathon Isom - [REDACTED] lives in VA at [REDACTED] Hiltons VA 24258

Stephanie Maddox -

Judy Patterson - [REDACTED] Landrum SC *VICTIM's neighbor

Chanda Stewart - [REDACTED] - Lives in Campobello SC (saw Stephanie and VICTIM at Rookies).

Tasha Cooper - Boiling Springs SC

Bryan Black - Perry Prison

Dillon Gosnell - Inman SC (father of VICTIM's baby which she got pregnant later in 2008). he is "whom is now 24, 25 or 26"

David Presnell - In jail with Shane and stated that he would testify what type of drug (slut) she was way before Shane ever met her. Her nickname is [REDACTED]

Michael Kimbrell - Prison

Dick Welch - Mikey's Public Defender

Melissa Turner - Chesness SC

Jimmy Pruitt - Owner or Manager of Rookies bar *where VICTIM hung out all the time.

Jerry Shields - [REDACTED] Chesnee SC *where VICTIM's mom Rhonda "The Stripper" was shacking up all the time.

Jason Jackson - VICTIM's 1/2 brother [REDACTED] Landrum [REDACTED]

Jeremy Miller - Boiling Springs SC

David Freeman - Spartanburg County Jail

William McPhearson - Shane's original PD

Heather Perry - Works at Great American Papers - [REDACTED] or

[REDACTED] - She works with Joe Lawson and can let you know that was a drug addict and whore long before she met Shane.



INFORMATION ON BILLY SHANE MILLERS CASE:...

VICTIM : CELL# [REDACTED]. THE 14yr. OLD WHO CLAIMED TO BE AN 18yr. STRIPPER.
 JOE LAWSON: VICTIM S FATHER HOME TELE# [REDACTED]. he allowed VICTIM TO DRIVE HIS YELLOW JEEP TO SHANES HOUSE. THE FIRST TIME SHANE MET HER SHE CAME TO HIS HOUSE WITH ~~SMEXKAX~~ JONATHAN ISOM, AND STEPHANIE MADDOX.
 JONATHAN ISOM: TELE# [REDACTED]. HE IS 25yr. OLD: HE WAS DATING VICTIM AND THEY THOUGHT SHE WAS PREGNANT. AT THAT TIME.
 STEPHANIE MADDOX: TELE# [REDACTED]. SHE IS A 28yr. OLD STRIPPER WHO WAS VICTIM S FATHERS LIVE IN GIRLFRIEND.
 BRYAN BLACK: TELE# [REDACTED]; HE WAS AT SHANES ON OR AROUND 3-25-08 WHEN VICTIM DROVE HER UNCLE JOHNNYS WHITE EXPLORER TO SHANES HOUSE: JONATHAN WAS WITH HER THEN. # VICTIM AND JONATHAN LEFT IN THE EARLY MORNING HOURS THE NEXT MORNING. SHE LATER WRECKED AFTER SHE LET JONATHAN OUT AT HIS HOUSE. SHE TOLD JONATHAN HER DAD HAD GOTTEN THE DAMAGE FIXED ON THE CAR. SHE SAID SHE RAN INTO A DITCH AT THE LITTLE CRICKET GOING INTO LANDRUM.

Rookies is owned and run by
 CHANDA STEWART: TELE# 457-5262; SHE SAW VICTIM AND STEPHANIE IN A BAR CALLED ROOKIES. THIS BAR IS LOCATED NEAR VICTIM S HOMER VICTIM TOLD JONATHAN THAT SHE HANGS OUT THERE ALL THE TIME. VICTIM TOLD JONATHAN THAT SHE DRINKS AND GETS HIGH WITH HER DAD ALL THE TIME. SHE SAID HE BUYS LIQUOR FOR HER: AND THAT HE SMOKES POT WITH HER.
 JUDY PATTERSON: TELE# [REDACTED]; VICTIM S NEIGHBOR THAT SHE GETS PILLS FROM. JOE LAWSON CAUGHT VICTIM ~~WITH~~ WITH MIKEY JUDY Smoked a joint Kimbell at this womans house on MARCH 31-2008. HER DAD DID WITH them & Gave them Valium & Called her Dad.
 KIMBELL AT THIS WOMANS HOUSE ON MARCH 31-2008. HER DAD DID WITH them & Gave them Valium & Called her Dad.
 NOT CALL THE POLICE OUT TO THIS WOMENS HOUSE BECAUSE HE DID NOT WANT HER TO GET INTO TROUBLE. THIS IS NOT THE FIRST TIME SHE HAS BOUGHT MEN THERE. HE LATER TOOK HER TO THE HOSPITAL BECAUSE SHE WAS SUPPOSED TO BE MESSED UP. BUT SHE WASNT TO MESSED UP TO TELL JONATHAN ABOUT THE WHOLE INSIDENT. JONATHAN SAID HE HAS SEEN ~~XXXXXX~~ VICTIM WITH ZANEX, ADDERALL, AND METHADON, AND VALIUM...
 JONATHAN SAYS SHE TAKES ANYTHING SHE CAN GET HER HANDS ON. VICTIM S FATHER KNEW SHE DATED OLDER MEN: HE KNEW ABOUT HER AND JONATHANS PREGNANCY SCARE. JOE LAWSON LET THIS GIRL DRIVE HIS JEEP. HE KNEW EXACTLY WHAT SHE WAS DOING. HE KNEW SHE WAS PRETENDING TO BE A 18yr. OLD STRIPPER. HE WAS PAYING FOR HER TO ADVERTISE IT ON HER MY SPACE ACCOUNT TO THE WHOLE WORLD. SHADON MILLER HORNE HAD THE GOOD SENSE TO PRINT IT OFF BEFORE THEY HAD TIME TO CHANGE IT. SHE ALSO LOOKED AT HER PICTURES WHERE VICTIM WAS LYING ON A BED IN HER PANTIES AND BRA. THERE WAS A PICTURE OF HER KISSING ANOTHER GIRL. HER HOME PHONE NUMBER WAS ON IT. VICTIM SAID THAT SHE LIKED MULTIPLE SEX PARTNERS.
 SHADON HORNE TELE# [REDACTED].
 THE DETECTIVES KNOW ALL THIS AND ALOT MORE ABOUT THIS GIRL AND HER FAMILY. I THINK IF ANYONE SHOULD BE IN TROUBLE IT SHOULD BE THIS GIRLS PARENTS.
 AT FIRST I WAS TOLD THERE WAS WARRENTS FOR 4 MEN
 BILLY SHANE MILLER (X) VICTIM told Tracy Mass that she
 JERAMY MILLER lied about being 18 yrs. Old. So did Stephanie
 MIKEY KIMBELL
 JONATHAN LEE ISOM

Account Number
1009161781

108/25/89 ~~CALLER~~ 9 times begging hi
to come get her, cause she didn't have a

Detail of Current Activity - Continued

Usage and Long Distance for (864)205-3876 - Continued

Item	Date	Time	Number Called	Calls To	Quantity Used	Rate	Charge Description	Charge
456	03/31	12:48A	(864)494-2487	SPARTANBG SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
457	03/31	1:13A		INCOMING	6.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
458	03/31	1:20A	(828)980-8076	RUTHEFRD TN NC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
459	03/31	1:46A		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
460	03/31	2:28A		INCOMING	5.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
461	03/31	2:51A		INCOMING	5.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
462	03/31	3:07A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
463	03/31	3:10A	(864)384-7130	SPARTANBG SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
464	03/31	3:20A		INCOMING	3.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
465	03/31	4:11A		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
466	03/31	4:36A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
467	03/31	5:36A	(864)238-1614	GREENVILLE SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
468	03/31	7:02A		INCOMING	3.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
469	03/31	8:31A		INCOMING	14.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
470	03/31	8:57A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
471	03/31	8:57A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
Victim 472	03/31	8:58A	(864)457-7196	LANDRUM SC	11.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
473	03/31	9:28A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
474	03/31	9:48A	(864)457-7196	LANDRUM SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
475	03/31	9:53A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
476	03/31	9:58A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
477	03/31	9:58A	(864)457-7196	LANDRUM SC	9.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
478	03/31	10:03A		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
					1.00 EVENT	0.00	CALL WAITING	0.00
479	03/31	10:15A		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
480	03/31	10:50A		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
481	03/31	10:59A	(864)596-3001	SPARTANBG SC	5.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
482	03/31	1:22P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
483	03/31	3:25P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
484	03/31	3:46P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
485	03/31	3:48P	(864)279-0223	SPARTANBG SC	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
486	03/31	4:10P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
487	03/31	4:30P	(864)909-8091	SPARTANBG SC	4.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
488	03/31	4:36P	(864)473-1610	INMAN SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
489	03/31	4:37P	(864)529-1124	SPARTANBG SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
490	03/31	5:03P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
491	03/31	5:11P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
492	03/31	5:26P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
493	03/31	5:43P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
494	03/31	5:49P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
495	03/31	5:52P		INCOMING	4.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
496	03/31	5:59P	(864)814-8053	SPARTANBG SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
497	03/31	6:00P	(864)497-4379	SPARTANBG SC	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
498	03/31	6:02P		INCOMING	3.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
499	03/31	6:06P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
500	03/31	6:09P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
501	03/31	6:14P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
502	03/31	6:18P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
503	03/31	6:20P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
504	03/31	7:02P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
505	03/31	7:08P	(864)909-8091	SPARTANBG SC	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
506	03/31	7:18P		INCOMING	5.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
507	03/31	7:34P		INCOMING	3.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
508	03/31	7:45P	(864)497-4379	SPARTANBG SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
509	03/31	7:45P	(864)497-4379	SPARTANBG SC	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
510	03/31	7:52P		INCOMING	2.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
511	03/31	8:01P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
512	03/31	8:05P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
513	03/31	8:12P		INCOMING	3.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
514	03/31	8:18P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
515	03/31	8:18P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
516	03/31	8:19P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
517	03/31	8:26P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
518	03/31	8:27P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00
519	03/31	8:28P		INCOMING	1.00 MINUTES	0.00	INCL MIN - ANYTIME	0.00

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

BILLY SHANE MILLER 259358)

PETITIONER,)

CASE NO. 13-CP-42-3190

VS.)

ORDER

STATE OF SOUTH CAROLINA)

RESPONDENT)

This matter came before this Court on November 9, 2015. In such hearing, the State was represented by Alicia Olive of the South Carolina Attorney General's Office, and the Petitioner was represented by Timothy Ray. Petitioner was tried and convicted of Contributing to the delinquency of a Minor, Criminal Sexual Conduct with a Minor 2nd Degree, and Criminal Sexual Conduct 3rd Degree on April 13, 2011. Among other things, Petitioner claimed that his trial counsel was ineffective for failing to interview witnesses on his behalf. After reviewing the record of the trial and hearing the testimony presented in this action, this Court agrees with Petitioner.

The testimony in this case showed that Defense counsel was presented with a list of possible witnesses that could have been used by the Defense in the trial. Defense counsel testified that she never attempted to contact any of the witnesses on the list, in order to interview them to determine if their testimony would have been useful to the Defense at trial. Defense counsel decided that the witness testimony would not be useful, without the benefit of having interviewed any of them.

Petitioner provided several of the witnesses that were included in the list given to trial counsel, and their testimony was given. The testimony of the witnesses was such to show that the alleged victim stated her age to be 18 or 19 years old, and that it was reasonable to believe that such statements were true. The witnesses testified to the alleged victim's manner of speaking, the fact that she drove a vehicle during the nighttime and early morning hours when it was dark, her appearance, that the alleged victim and her father's girlfriend were often together and stated that they both had previously been exotic dancers, and other details which would lead the Petitioner to reasonably believe that the alleged victim was above the age of sixteen.

At the time of Defendant's trial, it was a defense to Criminal Sexual Conduct with a Minor 2nd Degree that a defendant was reasonably mistaken as to a victim's age and believed her to be sixteen years of age or older. The alleged victim testified at trial that the Defendant had actual knowledge of her age because she had previously told him she was fourteen years old. No other testimony was presented that alleged Defendant's knowledge of the alleged victim's age. Therefore, impeaching the Defendant's accuser became paramount. The testimony of Petitioner's witnesses directly contradicted the alleged victim's testimony, and there is a reasonable probability that the outcome of the trial would have been different if those witnesses had been presented in defense of the Petitioner.

The alleged victim also stated that she had been given drugs and that she was intoxicated to the point that she was mentally incapacitated and physically helpless to resist engaging in sex acts with Petitioner. Petitioner's witnesses stated that the alleged victim was coherent and understood what was happening around her before, during, and after the time period that she alleged that Petitioner had sex with her. One witness also testified that, the time of the alleged sexual battery, the victim did not want to leave Petitioner's home, and that she was eventually convinced to go to another friend's home. The friend's home was located near the alleged victim's home. At the friend's home the alleged victim consumed Valium, and until then had only consumed methamphetamine and possibly marijuana. Her father arrived at that home, very angry, and he contacted police to file a report. One witness later stated that the alleged victim told him that her statements to police were not true and that her father was forcing her to follow through with the prosecution of Petitioner. Again, Petitioner's witnesses could have provided valuable testimony and there was a reasonable probability that the trial's outcome would have been different.

As defense counsel, a strategic decision must be reasonable, and at a minimum, witnesses must be interviewed to determine if their testimony could be helpful. As the South Carolina Supreme Court has stated in *Ard v. Catoe* 372 S.C. 318 (2007) defense counsel must conduct a reasonable investigation, and at a minimum, defense counsel must interview potential witnesses and conduct an independent investigation into the facts and circumstances of the case. This Court finds that Defense counsel's strategic decision to not attempt to interview any of the potential witnesses on the list that was given to her, especially considering the testimony of four of those witnesses presented to this Court, was unreasonable and Defense counsel was ineffective in assisting Petitioner in the trial of his case.

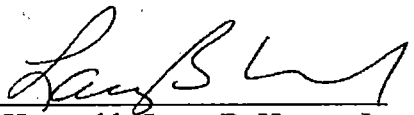
THEREFORE, IT IS ORDERED, that:

Petitioner is hereby granted the relief requested, and a new trial is granted as to his convictions of Criminal Sexual Conduct with a Minor 2nd Degree, and Criminal Sexual Conduct 3rd Degree.

IT IS FURTHER ORDERED, that:

Petitioner is denied the relief requested as it pertains to his conviction of Contributing to the Delinquency of a Minor, and that conviction will remain.

GIVEN under my hand and the Seal of this Court this the 8 day of January, 2016.


The Honorable Larry B. Hyman Jr.
Judge, Court of Common Pleas
Spartanburg, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Billy Shane Miller, #259358,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

Case No. 2013-CP-42-3190

**MOTION TO RECONSIDER, ALTER, OR
AMEND**

Respondent, pursuant to Rules 59(a) and (e), SCRCR, would respectfully show unto this Court:

I.

This matter came before the Court by way of an Application for Post-Conviction Relief filed August 19, 2013. The Court convened an evidentiary hearing into the matter on November 9, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Timothy Ray, Esquire. By order filed January 12, 2016, the Court granted relief on the grounds that counsel failed to conduct an appropriate investigation. Respondent received a copy of this order on January 13, 2016.

II.

Respondent respectfully asks this Court to reconsider its judgment granting Applicant post-conviction relief. In the order granting relief, the Court found trial counsel ineffective for "failing to interview witnesses on his behalf." (Order p. 1). Respondent respectfully submits this Court should reconsider this ruling on several grounds.

A.

First, Respondent submits the Order does not make all necessary findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80. The Order fails to set out the legal

standards that an applicant is required to satisfy in a post-conviction relief action.

In a PCR action, the applicant has the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must show 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant must prove both that counsel's performance was deficient and that such deficient performance prejudiced him. Strickland, 466 U.S. at 688.

The Court measures counsel's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117-18, 326 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). In other words, the question is whether counsel "provided representation within the range of competence required" in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id.

To show prejudice, the applicant must affirmatively prove 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 690). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Patrick v. State, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002). "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693.

B.

Second, Respondent respectfully submits this Court may have also misapprehended the standard of review in post-conviction relief actions. On collateral review, this Court is required to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]" Strickland v. Washington, 466 U.S. 668, 689 (1984). This presumption is necessary because "it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. (citing Engle v. Isaac, 456 U.S. 107 (1982)). Furthermore, the courts "must be wary of second-guessing defense counsel's trial tactics," Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011) (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992)), and "where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance." Whitehead v. State, 308 S.C. at 122, 417 S.E.2d at 531 (citing Goodson v. United State, 564 F.2d 1071 (4th Cir. 1977)).

C.

Third, Respondent submits this Court may have overlooked the legal principle set forth in Edwards v. State:

While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When

counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.

Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). The Court further stated that "So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses *when it is reasonable to do so*, his performance will not be deficient." Id. at 457, 710 S.E.2d at 64-65.

At the PCR hearing, Applicant introduced the following witnesses: Jonathon Isom, Bryan Black, Michael Kimbrell, David Freeman, Amanda Miller (Applicant's sister) and Sharon Miller (Applicant's Mother). The witness list provided by PCR Counsel at the hearing contained notations next to Isom's name indicating he was an inmate at the Spartanburg County Detention Center and next to Black's and Kimbrell's names indicating they were incarcerated. Andrea Price ("Counsel") testified the only list of witnesses she recalled being given was a list she received from Applicant's sister the Friday afternoon before trial. She testified she did not move for a continuance to try to contact these individuals. Counsel's testimony also demonstrated that she understood the nature of what these individuals would have testified to. She testified she did not feel their testimony would have been helpful at Applicant's trial.

Black testified that he only met the victim for twenty minutes or so and that he never really spoke to her. He stated that the reason he thought she was 18 was because in the brief time that she saw her, she was with the man she was dating who was in his early twenties and she came "bee-bopping" up to the house of someone she did not know. Respondent submits this Court overlooked the fact that this testimony fails to show that had Counsel contacted this witness or called him to testify at the trial, the outcome of the proceeding would have been different. Black was incarcerated at the time of the trial. The State would have had the opportunity to impeach his testimony with any felony convictions he might have. Given the fact that this witness was incarcerated and that his testimony was only that he had seen the victim

with an older man for twenty minutes without speaking to her, Respondent submits there is no reasonable probability that the jury would not have convicted Petitioner had Black testified at trial.

Isom testified that he and the victim had dated. He testified she told him she was 18 and he thought he was 18. Isom testified the victim told him she was 18 and said she would tell the truth and say she was 18. Applicant's mother testified that Counsel told her she could not call Isom because she could not get him. Respondent submits that the Court overlooked the probability that the jury would have found Isom's testimony to be not credible given that he was an inmate at the Spartanburg County Detention Center, coupled with the fact that the State would have had the opportunity to impeach his testimony. Furthermore, the testimony at the PCR hearing indicated that Counsel did consider contacting Isom but that she could not reach him at that point in time since it was two days before trial. Respondent submits that considering those circumstances, Applicant has failed to satisfy his burden of showing that Counsel's performance in not contacting Isom or asking for a continuance to contact Isom fell below an objective standard of reasonableness. Respondent further submits that there is not a reasonable probability that had Isom testified, the outcome would have been different.

Kimbrell testified that the victim said she used to strip at a club and that she said she was 18. He further stated that he "didn't even know the girl." Applicant testified that Kimbrell had also been convicted of Criminal Sexual Conduct with a minor 2nd degree and Criminal Sexual Conduct 3rd degree for his involvement in the same events that resulted in Applicant's convictions.

Respondent submits that this Court overlooked the fact that this list was provided to Counsel by Applicant's family members and not by Applicant himself. This Court could have concluded from Counsel's testimony that she reviewed the list that was given to her two days

prior to trial and determined that based on the information provided to her, as well as her experience as an attorney, that it was not necessary to seek a continuance to contact these witnesses. Additionally, the sheet itself set forth what Applicant's sister expected these individuals to testify about.

Furthermore, Applicant testified at trial that Isom and Black were involved in the events that took place leading up to the sexual encounter with the victim. Moreover, the testimony at the PCR hearing was that Michael Kimbrell was Applicant's co-defendant, and also pleaded guilty to Criminal Sexual Conduct with a Minor 2nd degree and Criminal Sexual Conduct 3rd degree, with respect to the same victim in this case, and he was incarcerated for those convictions at the time of trial. Therefore, the State could have impeached him with that information and regarding his motive for testifying in favor of Applicant. Respondent also submits that Counsel's failure to further investigate Kimbrell was not unreasonable given that he was Applicant's co-defendant.

According to Edwards, Counsel was not obligated to explore every single potential witness where it was unreasonable to do so. "[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id. at 456, 710 S.E.2d at 64 (citing Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). Here, not only did Counsel articulate valid reasons for not further investigating these individuals as potential witnesses, the Court can also infer based on the testimony of the witnesses and Counsel that she exercised reasonable professional judgment in making the decision not to call them. Additionally, Counsel testified that the only time she recalled seeing the list was the Friday before trial when Applicant's sister gave it to her. That list contained the names of 19 individuals and a few names had descriptions beside them. Respondent submits that Counsel's performance was not deficient in failing to contact all of those witnesses or the four witnesses who testified at the PCR hearing—three of whom were

incarcerated at the time of Applicant's trial. Respondent further submits that Applicant also failed to show that he was prejudiced by her failure to call these individuals to testify because there is no reasonable probability that the jury would not have convicted Applicant had these individuals testified.

Respondent also submits that the Court may have overlooked facts that were set forth in the trial transcript. The victim testified at trial. She testified that she consumed methamphetamine through both ingesting and smoking the substance. (Tr. pp. 63-63). She testified this went on virtually uninterrupted from 10:00am until about 6:00pm. (Tr. pp. 62-63). She testified that Applicant knew her age because she told him she was 14. (Tr. p. 67). Counsel extensively cross-examined the victim regarding her presenting herself as 18 and her level of intoxication. (Tr. pp. 90-99). Counsel asked her about the three statements she gave and pointed out that she did not tell police she was 14 until the third statement. (Tr. p. 92). Counsel also introduced the victim's Myspace page, on which she stated she was 18, and questioned her about that representation. (Tr. pp. 87-90). Counsel also asked the victim about consuming Valium at Judy's. (Tr. p. 86). Counsel also established during cross-examination that the consumption of the Valium happened after the time she left Applicant's house and before her father picked her up. (Tr. p. 86). The victim also admitted on cross-examination that she lied about her age on her Myspace page. (Tr. p. 87). Respondent submits that the record establishes that Counsel rendered representation within the range of competence required in criminal cases, and that Applicant has failed to meet his burden of proving ineffective assistance of counsel.

D.

Respondent respectfully requests this Court reconsider its ruling that Applicant should be granted a new trial on his conviction for Criminal Sexual Conduct 3rd Degree. Applicant's witnesses testified at the PCR hearing that the victim was coherent during the acts in question.

Respondent submits that this testimony does not create a reasonable probability that had these individuals testified at trial the outcome would have been different.

At trial, Counsel asked the victim about consuming Valium at Judy's. (App. p. 86). Counsel also established during cross-examination that the consumption of the Valium happened after the time she left Applicant's house and before her father picked her up. (App. p. 86). Therefore, any testimony regarding the victim's consumption of additional substances after leaving Applicant's house and the inference such consumption likely caused the state of intoxication that her parents found her in later that day would have been cumulative to testimony that was already presented through Applicant and her mother at trial. See Edwards v. State, 392 S.C. at 457, 710 S.E.2d at 65 (citing Murray v. Griffith, 243 Va. 384, 416 S.E.2d 219, 222 (1992) (finding counsel's failure to interview a particular witness not deficient where the witness's testimony would have been cumulative and witness himself could have been harmful to the defense)). Therefore, Respondent submits Counsel's failure to interview these witnesses or call them to testify regarding Applicant's level of intoxication and incapacity was not unreasonable under prevailing professional norms. Additionally, given Counsel's cross-examination of the victim coupled with the self-serving testimony of these individuals, there is not a reasonable probability that their testimony would have caused a different outcome at the trial.

[conclusion and signatures on the following page]

III.

WHEREFORE, Respondent respectfully requests the Court reconsider its ruling for the foregoing reasons.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General
Bar No. 102089

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

By: Alicia Olive
Attorneys for Respondent

January 22, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

BILLY SHANE MILLER 259358)

PETITIONER,)

VS.)

STATE OF SOUTH CAROLINA)

RESPONDENT)

IN THE COURT OF COMMON PLEAS

CASE NO. 13-CP-42-3190

PETITIONER'S REPLY
TO RESPONDENT'S
MOTION TO RECONSIDER

2016 FEB 22 PM 3:52
M. HOPE BLACKLEY

In reply to Respondent's motion to reconsider, Petitioner, by and through his attorney, respectfully submits to the Court the following:

Respondent's motion should be denied because the Court's findings of fact and conclusions of law are sufficient when the requirements of S.C. Code Ann. §17-27-80 are applied. The Court's order specifically references Petitioner's witnesses, the subject matter of their testimony, the importance of their testimony in contradicting the only witness against the Petitioner, and defense counsel's complete failure to act reasonably in determining if the testimony of the witnesses would have been helpful when viewed in light of *Ard v. Catoe* 372 S.C. 318 (2007).

Respondent's motion seems to argue that the Court could have taken a different view regarding defense counsel's failure to interview the witnesses before determining that they were not helpful. While Petitioner contends that the Court's decision was the only reasonable one,

even had defense counsel interviewed the witnesses, the decision to not use their testimony would have been unreasonable, and defense counsel would still have been ineffective.

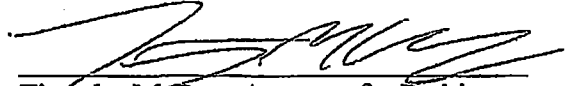
Respondent also argues that it is easy for the Court to look back in hindsight on defense counsel's failure to interview and produce the witnesses as being ineffective, but even as counsel was preparing for trial, it is the most basic requirement of trial preparation to determine if there are any witnesses, interview them, and decide if their testimony would be helpful. In the present case defense counsel knew of the witnesses, but failed to ever interview them, and stated that she did not think their testimony would have been helpful even though she never attempted to speak to them to determine what their testimony might have been.

While Respondent attempts to argue that the Court could have viewed the testimony of Petitioner's witnesses as lacking in veracity, their testimony was necessary to contradict the alleged victim's testimony, and some of the testimony involved a statement by the alleged victim stating that she had lied to the police and that her father was forcing her to follow-through with the prosecution of Petitioner. The testimony of the witnesses was vital to the defense of Petitioner, and it is likely that a jury would have given great weight to the testimony. Without their testimony, the adversarial process fails and the results of the trial are not valid. Defense counsel's decision to not interview and produce Petitioner's witnesses was so extremely detrimental and prejudicial to Petitioner that there cannot be given a rational excuse for the failure.

The Court's order states that defense counsel's representation was ineffective, that such was prejudicial to Petitioner, and also gave specific reasons why such was the case. The Court's order, very concisely, stated these very simple facts, and any argument to the contrary is without merit. It is for these reasons that Petitioner request's that Respondent's motion be denied.

Respectfully submitted

February 19, 2016



Timothy M. Ray, Attorney for Petitioner
Bar No. 70498
184 N. Daniel Morgan Ave.
Spartanburg, SC 29306
Phone: 864-764-5717
Fax: 864-585-0068

2016 FEB 22 PM 3:52
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	2013-CP-42-03190
BILLY SHANE MILLER,)	
Appellant,)	Transcript of Record
vs.)	
STATE OF SOUTH CAROLINA,)	July 7, 2016
Respondent.)	

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Timothy M. Ray, Esquire
Attorney for Plaintiff

Alicia A. Olive, Esquire
Attorney for Respondent

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

<u>JULY 7, 2016</u>	<u>Pg.</u>
Motion to Reconsider	3
Certificate of Court Reporter	22

E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>

(No exhibits were marked or admitted.)

1 (JULY 7, 2016)

2 THE COURT: It looks like it's the State's motion. Let
3 me hear from you.

4 MS. OLIVE: Yes, Your Honor. Good morning. This is the
5 State's motion to reconsider, alter or amend the order
6 granting post-conviction relief pursuant to Rule 59(e) and
7 this is Billy Shane Miller, 2013-CP-42-3190.

8 Your Honor, the State filed its motion asking Your Honor
9 to reconsider your order on the basis that -- for several
10 reasons. First, it's the State's position that the order does
11 not make all necessary findings of fact and conclusions of law
12 as required by Section 17-27-80 of the South Carolina Code.
13 Specifically, Your Honor, it does not set forth the standards
14 for ineffective assistance of counsel. It does not
15 specifically provide the applicant has the burden of proving
16 both prongs of the *Strickland v. Washington* standard. And the
17 first prong would be that counsel was deficient and that must
18 be shown by reasonableness of his -- excuse me -- of her
19 conduct in light of prevailing professional norms. And
20 second, that he was prejudiced by this deficiency and he must
21 show that there's a reasonable probability that but for the
22 alleged deficiency, the outcome would've been different.

23 Our second argument, Your Honor, is that the Court must
24 make specific findings as to each of the four witnesses that
25 was presented at the post-conviction relief hearing. And the

1 State asks Your Honor to reconsider, thirdly, that even though
2 Mr. Miller presented these four witnesses at the hearing, he's
3 failed to satisfy his burden of proving either deficiency or
4 prejudice as to each of these four individuals.

5 Your Honor, as I stated, deficiency -- in order to prove
6 deficiency, Mr. Miller was required to show that counsel
7 failed to act reasonably in light of prevailing professional
8 norms. This Court, according to *Strickland v. Washington* is
9 required to indulge a strong presumption that counsel's
10 conduct falls within a wide range of reasonable professional
11 assistance and Mr. Miller had to overcome that presumption.
12 Counsel does have a duty to make reasonable investigations but
13 as in any ineffectiveness case, a particular decision not to
14 investigate must be directly assessed for reasonableness in
15 all circumstances applying a heavy measure deference to
16 counsel's judgment.

17 Your Honor, generally, in this case, it's the State's
18 position that Ms. Price -- counsel did not act unreasonably in
19 this case. She testified that -- as Your Honor recalls, there
20 were two exhibits entered at the post-conviction relief
21 hearing and these were two lists. One was introduced through
22 Mr. Miller's mother, the other was introduced through Mr.
23 Miller's sister. They both testified that these lists were
24 provided to counsel and Your Honor had these lists before him
25 -- before you. The first list counsel testified was included

1 in the file when she received the file as part of discovery.
2 If -- and Your Honor, I have these lists with me and I'm happy
3 to hand them up if it would assist the Court.

4 THE COURT: Those were the witness lists, were they not?

5 MS. OLIVE: Yes, Your Honor. The -- some of ---

6 THE COURT: And she didn't call any of them as I recall?

7 MS. OLIVE: That's correct, Your Honor. The first list
8 has -- it does not have all of the names that are on the
9 second list. The first list, the only names that it had on
10 there of the witnesses who were presented at the PCR hearing
11 were Billy -- excuse me -- Brian Black and Jonathon Isom
12 (spelled phonetically). This last also provides a description
13 of presumably what these individuals -- what sort of
14 information these individuals would provide. Counsel
15 testified that she had reviewed that document, that she had
16 met with Mr. Miller's sister and mother a number of times. I
17 asked her at the post-conviction relief hearing whether there
18 was anything on that sheet that would've prompted her to feel
19 -- would've prompted her to contact Mr. Isom specifically --
20 well, I asked her if there was anything in that list that
21 would've prompted her to contact these individuals and she
22 testified that in her judgment, in light of information
23 provided on that sheet, there was no need to contact these
24 individuals. Specifically with regard to Mr. Black and Mr.
25 Isom, neither one of them were present at the house when these

1 incidents occurred. They could not be fact witnesses in that
2 regard.

3 THE COURT: But did they know this girl, had they seen
4 her, had contact with this alleged victim?

5 MS. OLIVE: Yes, Your Honor. However, nowhere in this
6 explanation on this sheet does it say that he was -- that Mr.
7 Isom could provide testimony as to what age he thought the
8 victim was. And in light of the fact that counsel gave a
9 reason why she did not think it was necessary to contact these
10 witnesses, I believe that ---

11 THE COURT: What reason did she give? I mean, they knew
12 the girl, they knew the girl's propensities, and she just
13 didn't feel it necessary to talk with them. I mean, how do
14 you explain that?

15 MS. OLIVE: Well, Your Honor, it's the State's position
16 that based on the information that was provided to her in
17 regards to what these witnesses were to provide, it was
18 reasonable for her ---

19 THE COURT: Where did she get that information?

20 MS. OLIVE: The information is on the sheet.

21 THE COURT: And she got that from his mother?

22 MS. OLIVE: Your Honor, it was part of the file. She
23 testified it was part of the file that she received when she
24 took over the case.

25 THE COURT: Okay. She took it over and she got the file,

1 she made no attempt to contact these witnesses or talk to
2 these witnesses at all, did she?

3 MS. OLIVE: Well, Your Honor, respectfully, I'd ask the
4 Court that we -- we do need to look -- the Court needs to look
5 at each individual witness specifically both as to deficiency
6 and as to prejudice.

7 THE COURT: Okay.

8 MS. OLIVE: Mr. Black ---

9 THE COURT: Well, I can tell you, in a case of this
10 seriousness, not to have even contacted the witness, you're
11 not gonna convince me that that wasn't deficient
12 representation. Now, we'll move to the second prong.

13 MS. OLIVE: Your Honor, well, it's the State's position
14 also that Ms. -- this second sheet that was provided to Ms.
15 Price, as to three of the witnesses who testified at the PCR
16 hearing, this sheet indicated that all of them were
17 incarcerated, Your Honor, and I think that it's reasonable for
18 her to see that and to ---

19 THE COURT: But doesn't the State depend on incarcerated
20 persons in their case all the time? I mean, every time I turn
21 around these gentlemen from CCI are bringing up a convict to
22 testify for the State.

23 MS. OLIVE: Your Honor and the State has better
24 bargaining power in that regard because they can influence ---

25 THE COURT: And that makes it -- that also makes that

1 particular witness subject to cross examination because of
2 this bargaining power. You know, if it's a convicted person
3 -- I mean, what you're telling me to do is apply two standards
4 here, to look at a convicted person that the State provides as
5 a State's witness and say, oh, he's perfectly good, but when
6 the defense calls someone who may be charged with an offense,
7 that person is automatically suspect. I don't buy that.

8 MS. OLIVE: Well, Your Honor, I'm not asking you to apply
9 two different standards. I'm simply stating that it was ---

10 THE COURT: But that's precisely what you're asking me to
11 do.

12 MS. OLIVE: Well, we're looking at what was reasonable in
13 light of the circumstances of the case and what counsel had
14 before her.

15 THE COURT: And counsel should have contacted these
16 witnesses. I'm telling you that. Now, let's go on to whether
17 or not he was prejudiced by failure to call.

18 MS. OLIVE: Your Honor, it's our position that he was not
19 prejudiced as to each one of these witnesses. Mr. Black --
20 Your Honor, I beg the Court's indulgence a moment.

21 First, Your Honor, counsel ---

22 THE COURT: Keep me -- what was reasonable about Ms.
23 Price not contacting these witnesses?

24 MS. OLIVE: Your Honor, Ms. Price ---

25 THE COURT: Cursory contact, what was reasonable about

1 that?

2 MS. OLIVE: Your Honor, it's the State's position that
3 based on the testimony that was presented at the PCR hearing,
4 the only witnesses that Ms. Price knew of in advance were
5 Brian Black and Jonathon Isom, neither of whom were present at
6 the incident, neither of whom -- the only thing that she
7 could've -- they could've ---

8 THE COURT: She didn't know what they could've said. She
9 had no idea what they could've said because she didn't contact
10 them.

11 MS. OLIVE: Your Honor, Ms. Price testified that she
12 talked to Mr. Miller's sister and mother a number of times in
13 preparation for trial. If they were the ones providing this
14 list, then presumably she discussed what these witnesses might
15 be able to testify to. This sheet ---

16 THE COURT: She didn't say that.

17 MS. OLIVE: Well, Your Honor, I'm simply stating an
18 inference that can be made upon the fact that she discussed --
19 this first sheet, all of the information on this sheet is
20 information -- testimony that these individuals would provide
21 that would've been excluded as either hearsay or under the
22 Rape Shield statute with regards to the victim's character and
23 the victim's propensity to present herself as ---

24 THE COURT: It certainly though establishes a basis for
25 an inquiry on the part of the attorney, though, doesn't it?

1 MS. OLIVE: Your Honor, I -- it's still the State's
2 position that it was reasonable for her to conclude ---

3 THE COURT: I know what the State's position is.

4 MS. OLIVE: --- based on that information. And, Your
5 Honor, with respect to the second sheet that was provided to
6 Ms. Price, she did testify that was provided to her on the eve
7 of trial. And I understand it's Your Honor's position that
8 she could've asked for a continuance, however that was never
9 presented to the Court. It was never presented to the Court
10 that counsel was ineffective for failing to ask for a
11 continuance so that she could contact these particular
12 witnesses. And, on the eve of trial, Your Honor, two days
13 before the trial was supposed to be called, he had been
14 indicted in May of 2008, this trial was called April of 2011.
15 Your Honor, it would be the State's position that, first, that
16 that was not presented as a ground for ineffective assistance
17 of counsel. Even if she had requested a continuance, it's
18 very unlikely that it would've been granted.

19 THE COURT: Well, tell me, what investigation did Ms.
20 Price do?

21 MS. OLIVE: Your Honor, she testified that she spoke with
22 Mr. Miller, she spoke with Mr. Miller's sister and mother, she
23 reviewed ---

24 THE COURT: And didn't follow up on the information they
25 gave her.

1 MS. OLIVE: Your Honor, she testified that she discussed
2 the defenses with Mr. Miller and that the defense that was
3 available to him was the mistake of age defense. She was
4 aware of this defense, she discussed it with him, she
5 mentioned it in her opening statement. Your Honor, she had
6 the victim -- excuse me -- the victim's -- she -- the victim
7 testified that she told Mr. Miller her age, that she told him
8 she was fourteen. Ms. Price impeached the victim on that
9 statement. She impeached her with her Myspace profile in
10 which she lied to the public and claimed that she was eighteen
11 years old. She introduced the photograph of the victim from
12 the Myspace page that she testified made her look very mature.
13 Your Honor, she cross examined the victim on the inconsistency
14 of her testimony versus three prior inconsistent statements
15 that she had provided to police.

16 THE COURT: What would've helped her at this point?
17 Number one, she's asking the victim and you know yourself how
18 difficult that can be when you have an underage victim and
19 you're trying to cross examine them in a case involving sexual
20 misconduct. On the other hand, if she'd had independent third
21 parties who could provide testimony, wouldn't that have been a
22 whole lot better?

23 MS. OLIVE: Your Honor, it's the State's position that
24 this Court has to presume that counsel acted reasonably under
25 prevailing professional norms and it's our position that it

1 was reasonable for her not to want to risk the credibility
2 issues that came along with presenting these witnesses who
3 were incarcerated.

4 THE COURT: What was she risking?

5 MS. OLIVE: Well, Your Honor, that they would ---

6 THE COURT: How is it going to reflect on the Defendant?
7 Couldn't have hurt him. How is that gonna hurt him?

8 MS. OLIVE: Your Honor, if they're showing up in
9 jumpsuits, I think the jury -- it's our position that -- not
10 only would it be the perception ---

11 THE COURT: There it goes right back. Don't you put up
12 witnesses all the time in jumpsuits?

13 MS. OLIVE: But the State would be able to cross examine
14 them as to all of their felony convictions.

15 THE COURT: And it all goes to -- it boils down to one
16 thing. Try as you may, how would you have shown that they
17 would've had any interest, prejudice or bias in this case?
18 You know, you think you could've talked to them about their
19 felony convictions but that would've had to stand the muster
20 of a 403 examination by the Court. The Court may very well
21 have found that that had -- those convictions had absolutely
22 no probative value in the case. It may've excluded it; I
23 don't know.

24 Let me hear from the defense.

25 MS. OLIVE: Your Honor ---

1 THE COURT: Excuse me. Go ahead.

2 MS. OLIVE: With respect, I have been able to address the
3 prejudice issue. With respect to Mr. Brian Black, he
4 testified that he only met the victim once, that it was late
5 at night. He never really spoke to her. And the only reason
6 why he thought she wasn't underage is because she was there
7 after midnight with his cousin. Your Honor, it's our position
8 that with respect to Mr. Black, there's no prejudice. The
9 only testimony that he provided was that the victim presented
10 herself -- the only testimony that he provided to show that
11 the victim presented herself to be more than fourteen was that
12 it was late at night and she walked up to the house with
13 confidence. He never testified that she told him that she was
14 a certain age. He testified he did not -- she did not
15 physically appear to be fourteen but he never testified to
16 what precise age she appeared to be. In addition, he never --
17 he stated he never even talked to her.

18 Your Honor, with respect to Johnathon Isom, Mr. Miller
19 never testified that he told counsel that Isom could identify
20 the victim, could testify that the victim presented herself as
21 eighteen. The victim testified at the trial -- the photo from
22 her Myspace account was shown to the jury. She testified she
23 told the Applicant how old she was. She testified he knew.
24 Counsel impeached her with three different statements she
25 provided. Isom could potentially have been charged with the

1 same conduct. In fact, Sharon Miller testified at the PCR
2 hearing and told the Trial Judge at sentencing the following:
3 Johnathon should be on trial. He knew how old that girl was.
4 He swore to Mr. Miller that she was eighteen. I've got it on
5 cell phone where he told Applicant she was eighteen. Nothing
6 was done to Johnathon. They had a warrant for him but they
7 threw it away because she was working with ---

8 THE COURT: But didn't counsel -- didn't they ask Ms.
9 Miller for a copy of that or to hear the cell phone? She says
10 apparently at the trial, she had him on cell phone saying he
11 told the Applicant that she was eighteen.

12 MS. OLIVE: Your Honor, I -- well, that cell phone was
13 not introduced at the PCR hearing. We can only speculate as
14 to that.

15 THE COURT: It's part of the record, isn't it?

16 MS. OLIVE: And he didn't testify to that.

17 THE COURT: He testified she was telling people at the
18 time of the trial, I got it. I mean, shouldn't she have
19 explored that? Shouldn't Ms. Price have explored that?

20 MS. OLIVE: Well, Your Honor, as you've stated ---

21 THE COURT: You know, we can infer that Ms. Miller told
22 her, I got him on tape saying this. You know, if you're gonna
23 infer a lot of things, I mean, that's on the record
24 apparently.

25 MS. OLIVE: Your Honor, with regard to prejudice, it's

1 the State's position that the jury had all this information
2 before them. In addition, I left out this before but Mr.
3 Miller's statement was read into the record at the trial.
4 One, he never mentioned David Freeman, which I'll get to that
5 as well. And, two, he said that he didn't know she was
6 fourteen in that statement that was read at the trial. Your
7 Honor, so it's our position that with respect to Mr. Isom, who
8 simply testified that she told people she was eighteen, that
9 this information, that that had already been called into
10 question at the trial and that his testimony did not -- it was
11 merely impeaching and cumulative to information that had
12 already been brought out at the trial and therefore did not
13 prejudice Mr. Miller.

14 And, Your Honor, I'll also note that these witnesses --
15 we have the issue of age with respect to the CSC second with a
16 minor and then we have the issue with the drugs with respect
17 to the CSC third. It's our position that none of these
18 witnesses provided any testimony that would've been helpful at
19 a trial in regards to the drug use and the fact that the
20 victim testified that she was -- she was out of it, she was
21 numb. Counsel did impeach her about that statement, asked her
22 why it wasn't in the three statements that she provided to
23 police. It's our position that none of these witnesses
24 prejudiced -- that failure to call any of these witnesses did
25 not prejudice Mr. Miller with respect to the CSC third

1 conviction.

2 Your Honor, Mr. Kimbrell, his testimony was not
3 prejudicial -- excuse me -- failure to call him was not
4 prejudicial. His testimony was inconsistent. He stated that
5 he met the -- excuse me -- Mr. Freeman is who I was referring
6 to. Mr. Freeman, the statement that was read at the trial did
7 not mention Mr. Freeman as having been at the location where
8 the incident occurred. Mr. Freeman testified that he met the
9 victim for two or three minutes. He stated that she answered
10 the door topless. He never testified -- he never testified to
11 what day that was. He was asked if that was around March 31st
12 2008 and he said it was right at my birthday, I don't remember
13 what time of day it was. It was starting to get dark. So, he
14 was not specific about what date that he saw her, Your Honor,
15 and that would -- so, our position would be that certainly
16 with the CSC third, there's no prejudice shown there.
17 Furthermore, he stated -- though he stated that she was
18 sedated, he stated, I figured she was high or something. Your
19 Honor, it's the State's position also that his testimony is
20 not credible. At first, he states he walks up to the door,
21 the victim is topless. He asked her -- she asks if he likes
22 her breasts and he asked -- he asked where Mr. Miller was.
23 She said, he's busy. And then Freeman said he left. And then
24 when counsel asked how old he thought the victim was, he said,
25 she said she was like eighteen or nineteen. But he didn't

1 mention that in his previous statement about the events that
2 occurred. Never did he say how old she appeared to be to him
3 either. It's our position that there's no prejudice with
4 respect to Mr. Freeman's testimony. Furthermore, he stated it
5 was dark outside when he -- excuse me -- he stated it was
6 getting dark outside which was inconsistent with every other
7 witnesses' testimony as to what time of day it was on the date
8 the incident occurred.

9 Your Honor, with respect to Mr. Kimbrell, Mr. Kimbrell
10 pleaded guilty to ABHAN on these same facts. Your Honor,
11 counsel respectfully argued -- excuse me -- the State
12 respectfully argues, Your Honor, that counsel gave a valid,
13 strategic reason for not contacting Mr. Kimbrell. He was a
14 codefendant of Mr. Miller's. He pleaded guilty on the same
15 facts. She testified that it's very, very risky to call a
16 codefendant to testify at trial because the State -- if -- she
17 said, if I was a State's attorney, I'm gonna ask him shouldn't
18 we believe that this happened because ---

19 THE COURT: It's especially dangerous when you haven't
20 talked to them. Would you agree with that?

21 MS. OLIVE: Your Honor, Mr. Kimbrell was brought by SCDC
22 to testify for the State. That's why he was there. I think
23 it's reasonable for her to assume ---

24 THE COURT: They would've brought him under subpoena for
25 the defense as well.

1 MS. OLIVE: Well, Your Honor, I think it's reasonable for
2 her to assume that he's not gonna provide helpful testimony if
3 he's there to testify for the State.

4 And, Your Honor, with respect to -- it's our position
5 there's no prejudice with respect to either the age issue or
6 the drugs. With respect to the drugs, even he -- the -- Mr.
7 Miller's statement that was read into the record at the trial,
8 he stated that they ate meth, that they smoked meth and that
9 they snorted meth. Mr. Kimbrell also stated that they were
10 using meth all day. He stated that around 4:00 or 5:00 he
11 finally got her to go home. He talked about her taking Valium
12 and smoking weed at a lady's house but that also came out at
13 trial. So, nothing in his testimony added anything to Mr.
14 Miller's case.

15 Your Honor, with respect to the age, it's our position
16 there's no reasonable probability that if Mr. Kimbrell had
17 testified the outcome would be different. His testimony
18 would've been merely impeaching as to her age. Also, in an
19 attempt to make her sound like she was older, he testified
20 that she behaved like an adult because she acted like somebody
21 who had done a lot of drugs because she was doing so many
22 drugs that day, basically, was his testimony. So, it's like
23 -- no prejudice there because his testimony would not have
24 been helpful as to the victim's state of consciousness at the
25 time that these events occurred. It would've actually

1 reinforced testimony that she consumed copious amounts of
2 methamphetamine that day.

3 Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. RAY: Thank you, Your Honor. Your Honor, as a
6 defense lawyer for the years that I've practiced, especially
7 in a serious case, you want to get the testimony from the
8 horse's mouth. When you've been given witnesses to talk to,
9 there needs to be some effort to hear them out and hear what
10 they've got to say. And here, defense counsel didn't do that.

11 THE COURT: Okay. Talk to me about prejudice.

12 MR. RAY: Yes, sir. The two parts of the case that we
13 were challenging were the CSCs. One provided that there was a
14 defense as to reasonable mistake of age. The witnesses that
15 testified, testified as to the way this girl carried herself,
16 the way she talked, the way she acted. Even the age that she
17 said she had, defense counsel presented evidence that she was
18 telling people she was eighteen by the Myspace page. The
19 testimony of these witnesses would've bolstered that, would've
20 helped to show, yes, this is true, this is what she's doing.
21 Mr. Kimbrell was called back to testify for the State and the
22 State chose not to because, as he testified in our hearing, he
23 told the Solicitor I would have -- I'm not gonna say she said
24 she was underage because she told everybody she was eighteen
25 years old. And he was -- the State purposely chose not to use

1 him because he was gonna hurt their case and they didn't
2 disclose that to counsel that was testified to as well but
3 that's kind of another issue that he would -- another way he
4 would be able to attack the case and motion for a new trial.
5 But, Your Honor, these witnesses were bolstering his defense
6 as to the reasonable mistake of age. They also -- Mr.
7 Kimbrell testified as to the fact that this girl was coherent
8 all through this time when they were at the house and all
9 these things were happening. Methamphetamine by my knowledge
10 is not one of those drugs that makes you incapacitated where
11 you don't know what's going on. In fact, you're more hyped up
12 and aware as to what's going on. And he testified that it
13 wasn't until after all this that she went to her neighbor's
14 house that she took Valium and then became more incoherent and
15 kind of out of what was going on. There's even testimony that
16 when she came over to Mr. Miller's house, she had come before
17 with her father's girlfriend and they told people that they
18 were strippers. That's what they did. All these different
19 things that bolster a defense that she portrayed herself as
20 older and she appeared older. And I believe it was vital to
21 his case that this alleged victim, being the only real witness
22 against him, the only real testimony. Having people that will
23 step in and say that's not the way it happened. It happened
24 this way. She told people she was eighteen. She didn't tell
25 people she was fourteen. That type of testimony is vital in a

1 case like this when all you have is the word of one witness
2 against someone. That's the prejudice. In my experience,
3 that would've made a difference. That would've been the most
4 important part of the case. In the Myspace page would've
5 kinda come in secondary to help prove what these witnesses had
6 said. And just the -- I believe if she had spoken to these
7 witnesses and not used them, he would've been -- she would've
8 been ineffective as well in that situation. So, the prejudice
9 here was great and I believe Your Honor heard that in the
10 testimony that was presented at trial and came to the right
11 decision.

12 THE COURT: All right. I'm gonna allow both of you to
13 submit proposed orders. Try to send them to me in the next
14 fifteen days. Okay?

15 MR. RAY: Yes, sir.

16 THE COURT: I'll take it under advisement.

17 MS. OLIVE: Thank you very much, Your Honor.

18 (ADJOURNED.)
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December 5, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

BILLY SHANE MILLER 259358

PETITIONER,

VS.

STATE OF SOUTH CAROLINA

RESPONDENT

IN THE COURT OF COMMON PLEAS

CASE NO. 13-CP-42-3190

ORDER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 24 PM 4:45
M. HOPE BLANCHLEY

This matter came before this Court on November 9, 2015. In such hearing, the State was represented by Alicia Olive of the South Carolina Attorney General's Office, and the Petitioner was represented by Timothy Ray. Petitioner was tried and convicted of Contributing to the delinquency of a Minor, Criminal Sexual Conduct with a Minor 2nd Degree, and Criminal Sexual Conduct 3rd Degree on April 13, 2011. Among other things, Petitioner claimed that his trial counsel was ineffective for failing to interview witnesses on his behalf. After reviewing the record of the trial and hearing the testimony presented in this action, this Court agreed with Petitioner. Thereafter, the State filed a Motion to Reconsider. This motion was heard on July 7, 2016, and again, after reviewing the record of the trial, hearing the testimony presented in this action, and considering the statements made by counsel for the parties, this Court agrees with Petitioner.

FACTS

The testimony in this case showed that Defense counsel was presented with a list of possible witnesses that could have been used by the Defense in the trial. Defense counsel testified that she never attempted to contact any of the witnesses on the list, in order to interview them to determine if their testimony would have been useful to the Defense at trial. Defense counsel decided that the witness testimony would not be useful, without the benefit of having interviewed any of them.

Petitioner provided several of the witnesses that were included in the list given to trial counsel, and their testimony was given. The testimony of the witnesses was such to show that the alleged victim stated her age to be 18 or 19 years old. The alleged victim had visited Petitioner's home previously with her father's girlfriend, Stephanie Maddox. The alleged Victim had claimed that she and Stephanie Maddox had been exotic dancers. The alleged victim was also seen driving a car into the early hours of the morning. There was also testimony tending to show that alleged victim carried herself and spoke using words and phrases normally heard from adults. At one point, one witness stated that when he knocked on Petitioner's door, the alleged victim opened it and was topless at the time. She then asked the witness what he thought of her breasts.

At trial, counsel for Petitioner presented evidence from social media wherein the alleged victim claimed to be eighteen years old. At the time of Defendant's trial, it was a defense to

Criminal Sexual Conduct with a Minor 2nd Degree that a defendant was reasonably mistaken as to a victim's age and believed her to be sixteen years of age or older. The alleged victim testified at trial that the Defendant had actual knowledge of her age because she had previously told him she was fourteen years old. No other testimony was presented that alleged Defendant's actual knowledge of the alleged victim's age.

Furthermore, Michael Kimbrell testified to the fact that he was transferred from prison to Spartanburg where the Assistant Solicitor, Mr. Gray, spoke with him to ask him to testify against Mr. Miller. Mr. Kimbrell stated that he told Mr. Gray that he could not testify against Mr. Miller because the alleged victim stated that she was either eighteen or nineteen years old. Mr. Gray chose not to use Mr. Kimbrell's testimony at trial.

The alleged victim also stated that she had been given drugs and that she was intoxicated to the point that she was mentally incapacitated and physically helpless to resist engaging in sex acts with Petitioner. Petitioner's witnesses, however, stated that the alleged victim was coherent and understood what was happening around her before, during, and after the time period that she alleged that Petitioner had sex with her. One witness also testified that, the time of the alleged sexual battery, the victim did not want to leave Petitioner's home, and that she was eventually convinced to go to another friend's home. The friend's home was located near the alleged victim's home. Mr. Kimbrell testified to the fact that while at the friend's home the alleged victim consumed Valium, and until then had only consumed methamphetamine and possibly marijuana. Mr. Kimbrell stated that it was after consuming Valium that the alleged victim became more incoherent. The alleged victim's father arrived at that home very angry, and he contacted police to file a report. Jonathon Isom testified to the fact that the alleged victim told him that her statements to police were not true and that her father was forcing her to follow through with the prosecution of Petitioner.

ANALYSIS

The analysis that is required in this situation is two-pronged. First, was defense counsel deficient in her representation of Billy Miller. Second, was defense counsel's deficiency prejudicial to Petitioner.

As defense counsel, a strategic decision must be reasonable, and at a minimum, witnesses must be interviewed to determine if their testimony could be helpful. As the South Carolina Supreme Court has stated in *Ard v. Catoe* 372 S.C. 318 (2007) defense counsel must conduct a reasonable investigation, and at a minimum, defense counsel must interview potential witnesses and conduct an independent investigation into the facts and circumstances of the case. This Court finds that Defense counsel's strategic decision to not attempt to interview any of the potential witnesses on the list that was given to her, especially considering the testimony of four of those witnesses presented to this Court, was unreasonable and Defense counsel was ineffective in assisting Petitioner in the trial of his case.

Next, this Court must look at the facts of the case and the testimony that some of the witnesses would have presented at trial if defense counsel had interviewed them and subpoenaed them to testify. Impeaching the Defendant's accuser became paramount in this case because her testimony was the only evidence that alleged that the Defendant knew her age, and that she was incapacitated

and helpless to resist when the Defendant engaged in intercourse with her. The testimony of Petitioner's witnesses would have directly contradicted the alleged victim's testimony. This Court finds it very likely that the Defendant's trial would have had a different outcome by the strength of this testimony alone. However, that testimony would be given greater deference when combined with the social media evidence that was presented at trial and would have increased the likelihood that the trial would have resulted in a favorable verdict for the Defendant. Either way, the failure of Defense Counsel to present the witness testimony at trial was prejudicial to Defendant.

Additionally, the witness testimony, also gave insight into the alleged victim's awareness of what was going on around her. The testimony tended to show that the alleged victim knew what was happening to her and around her until she later took a Valium when she arrived to a different friend's home. One particular witness even testified how the alleged victim answered the door when he knocked, and stated that she was topless and had a conversation with him.

The seriousness of Petitioner's charges and the evidence against him required that defense counsel interview witnesses. Without the knowledge of what a witness will say, defense counsel has no ability to determine if such witness will fit into her trial strategy. In this case, it appears that defense counsel chose to attack the alleged victim's credibility, and the fact that she held herself out to be older. The testimony of the witnesses would have been used for that exact defense. The testimony would have also been used to show that the alleged victim was conscious and aware of what was occurring when the Defendant engaged in sexual intercourse with her.

DECISION

Defense counsel was deficient in her representation of Defendant at trial. The Defendant was charged with very serious crimes, and when given a list of possible witnesses who may be able to present testimony that would help the Defendant, it is the responsibility of defense counsel to attempt to interview those witnesses. Here, if Defense Counsel had attempted to interview the witnesses, at least the witnesses that have now testified, she would have realized that *their testimony* was vital to the defense of the case.

Furthermore, it is the opinion of this Court that if the testimony that has now been presented to this Court is very persuasive in favor of the Defendant, and if such would have been presented to the jury at the trial of the case, then the outcome would have most likely been in favor of the Defendant.

Therefore, the failure of Defense Counsel to interview and present this witness testimony in the trial of the case demonstrated deficiency in Defense Counsel's representation of the Defendant and was prejudicial to Defendant. This Court's decision now, is the same as previously; a new trial should be granted.

Additionally, the State has not made any convincing argument as to why this Court's decision should be reversed. The State has not shown that Defense Counsel was not deficient in her representation of Defendant, nor has the State been able to show that the Defendant was not prejudiced by Defense Counsel's failure to interview and present witnesses of which she had been given notice. Therefore, the State's motion to reconsider should be denied.

THEREFORE, IT IS ORDERED, that:

Petitioner is hereby granted the relief requested, and a new trial is granted as to his convictions of Criminal Sexual Conduct with a Minor 2nd Degree; and Criminal Sexual Conduct 3rd Degree.

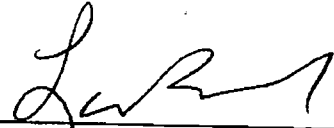
IT IS FURTHER ORDERED, that:

Petitioner is denied the relief requested as it pertains to his conviction of Contributing to the Delinquency of a Minor, and that conviction will remain.

IT IS FURTHER ORDERED, that:

The State's Motion to Reconsider is hereby denied.

GIVEN under my hand and the Seal of this Court this the 4 day of ^{Aug}~~July~~, 2016.



The Honorable Larry B. Hyman Jr.
Judge, Court of Common Pleas
Spartanburg, South Carolina.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 24 PM 4:45
M. HOPE BLANCHLEY

WITNESSES

SENTENCE MADE
Spartanburg County Sheriff's Office

2. REPORTED TO

3. CAPTIONED

4. FILED

5. ON JUNE 19, 2008

6. ON JUNE 19, 2008

7. RETURNED TO

CLERK

8. TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

M021316

329

ACTION OF GRAND JURY

Tome. Bill

Shelli

Foreperson of Grand Jury

Date: 5/15/08

VERDICT

Guilty

MARC KITCHENS

Gail Millward

4-13-11 2008 MAY 19 PM 3:26

SPARTANBURG COUNTY

CLERK

Foreperson of Petit Jury

DOCKET NO.

08-GS-42-2592

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 19 2008

TERM

THE STATE

vs.

Billy Shane Miller

Indictment for

CONTRIBUTING TO
DELINQUENCY OF A MINOR

SC Code: 16-17-490

CDR Code: 048

Class MIS-A

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

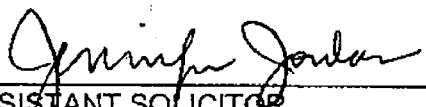
INDICTMENT

At a Court of General Sessions, convened on MAY 15 2008 the
Grand Jurors of Spartanburg County present upon their oath:

CONTRIBUTING TO DELINQUENCY OF A MINOR

That Billy Shane Miller did in Spartanburg County on or about March 31, 2008, unlawfully, knowingly and willfully encourage, aid or cause or did an act which caused the minor Victim, a minor under the age of 17, to violate a law or municipal ordinance and to deport himself or herself so as to willfully injure or endanger his or her morals or health, and/or to violate any law or any municipal ordinance and/or to engage in any occupation which is in violation of law and/or to associate with immoral or vicious persons and/or to so deport himself or herself as to willfully injure or endanger his or her morals or health or the morals or health of others to wit: by providing the victim illegal drugs, all in violation of §16-17-490, South Carolina Code of Laws (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Billy Shane Miller

AKA:

Race: W Sex: M Age: 33

DOB: [REDACTED] SS#: [REDACTED]

Address: 144 Colony Pike Dr

City, State, Zip: INMAN, SC 29349

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Minor / Contributing to the delinquency of a minor

INDICTMENT/CASE#: 2008GS4202592

A/W#: M021316

Date of Offense: 3/31/2008

S.C. Code §: 16-17-0490

CDR Code #: 0048

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Abel C. Gray GRAY, ABEL 12164 SC Bar# Billy Shane Miller Defendant Andrew Price Attorney for Defendant 75706 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL	\$	\$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

KG McKinney, CLMary DeGualand

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

ARREST WARRANT

M-021316

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

2008040003

against

Billy Shane Miller

Address 144 COLONY PIKE RD.

Inman, SC 29349-

Phone.

SSN

Sex M

Race W

Height: 6

Weight: 245

DL State: ID

DL #

DOB

Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Tracy Moss - 1004

Offense Minor / Contributing to the delinquency of a minor

Offense Code: 0048

Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant Billy Shane Miller
on 4/2/08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Tracy Moss whobeing duly sworn deposes and says that defendant Billy Shane Millerdid within this county and state on or about 03/31/2008

violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE Minor / Contributing to the delinquency of a minor

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on March 31, 2008, in the county of Spartanburg, one Billy Shane Miller did knowingly and willfully cause a minor to use
illegal drugs.

Based on police investigation and victim's statement.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 3/31/2008 defendant Billy Shane Miller

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

☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

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

Sworn to and subscribed before me

on 04/03/2008

(L.S.)

Signature of Issuing Judge

Robert Baker Hall

Judge Code: 5808

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-2335

Judge's Telephone (864) 596-2564

Issuing Court ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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

AFFIDAVIT

332

332
BW # M021316 - served 5-26-10 served 7-20-10

WITNESSES

DOCKET NO

08-GS-42-2593

1. SENTENCE MADE

Spartanburg County Sheriff's Office

2. REPORT MADE

3. OFFERED

4. RECEIVED

5. CASH RECEIVED

6. CASH RECEIVED

7. ADDRESS RECEIVED

8. ADDRESS RECEIVED

9. TRAFFIC VIOLATIONS COPIES

ARREST WARRANT NUMBER

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 19 2008

TERM

Direct Indictment

THE STATE

VS.

ACTION OF GRAND JURY

Billy Shane Miller

Foreperson of Grand Jury

Date: 5-15-08

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT,
THIRD DEGREE

SC Code:16-3-654

CDR Code: 162

Class FEL/E

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

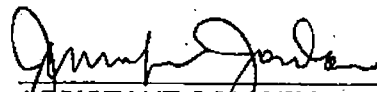
At a Court of General Sessions, convened on MAY 15 2008 the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT, THIRD DEGREE

That Billy Shane Miller did in Spartanburg County on or about March 31, 2008, engage in sexual battery upon the body of **Victim** to-wit: by having sexual intercourse with the victim without her consent by use of force or coercion and/or the actor knew or had reason to know that the victim was mentally incapacitated at the time of the sexual battery, all in violation of §16-3-654, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Billy Shane Miller

AKA:

Race: W Sex: M Age: 33

DOB: SS#:

Address: 144 Colony Pike Rd Lot B

City, State, Zip: Inman, SC 29349

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - Third degree

in violation of § 16-03-0654 of the S.C. Code of Laws, bearing CDR Code # 0162

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Abel GRAY, ABEL 12164 SC Bar# Billy Shane Miller Defendant Andrew Quinn Attorney for Defendant 75786 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk KG McKinney, OCCourt Reporter: Mary DiGirolamo

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4202593

A/W#: 08GS4202593

Date of Offense: 3/31/2008

S.C. Code § : 16-03-0654

CDR Code #: 0162

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

335

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

5. CHECKED WITH ARMS

6. CHECKED WITH FURN

7. ASSESSMENT AND

Computer

Computer

ARREST WARRANT NUMBER

M021315

336

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 5/15/08

VERDICT

Guilty

MARC KITCHENS

4-13-2011 19 PM 3:24

SPARTANBURG COUNTY

Foreperson of Petit Jury

Date:

DOCKET NO.

08-GS-42-2594

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 19 2008

TERM

THE STATE

vs.

Billy Shane Miller

Indictment for

CRIMINAL SEXUAL CONDUCT
W/ MINOR, SECOND DEGREE

SC Code: 16-03-655 (B)(2)

CDR Code: 0397

Class FEL/C

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 15 2008, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That Billy Shane Miller, did in Spartanburg County, on or about March 31, 2008,
commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree, in that
the Defendant did commit a sexual battery upon the minor, Victim, who was
less than sixteen (16) years of age, but who was at least fourteen (14) years of age at
the time of the incident and he Billy Shane Miller was older than the victim, in violation
of §16-03-655 (B) (2), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR

TATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Billy Shane Miller

AKA:

Race: W Sex: M Age: 33

DOB: [REDACTED] SS#: [REDACTED]

Address: 144 Colony Pike Dr

City, State, Zip: INMAN, SC 29349

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 16 yrs of age - Second degree

in violation of § 16-03-0655(2)(2)

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS of the S.C. Code of Laws, bearing CDR Code # 0397

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

ATTEST:

Gray, Abel
GRAY, ABEL

12164
SC Bar#

Billy Shane Miller
Defendant

Andrew Pinn
Attorney for Defendant

75786
SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
and/or to pay a fine of \$ 12; provided that upon the service of 12 days/months/years and/or payment

of \$ 12; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ 100.00 plus 20% fee: \$ 20.00

Payment Terms: 100.00

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Mary O. Givens

SCCA/217 (06/2010)

KG McKinney

Presiding Judge

Judge Code:

Sentence Date:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4202594

A/W#: M021315

Date of Offense: 3/31/2008

S.C. Code § : 16-03-0655(2)(2)

CDR Code #: 0397

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

12 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. 12

May serve W/E beginning 12

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 12 beginning 12

\$ 12 paid to Public Defender Fund

Other:

Registry 33-3-430

☐ Condition Discharge, § 44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

ARREST WARRANT

M-02131

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

20080840003

against

Billy Shane Miller

Address: 144 COLONY PIKE RD

Inman, SC 29349-

Phone: _____ SSN: _____

Sex: M Race: W Height: 6 Weight: 245DL State: ID DL #: _____DOB: _____ Agency ORI #: SC0420000Prosecuting Agency: Spartanburg County SheriffProsecuting Officer: Tracy MossOffense: Sex / Criminal sexual conduct with minor - victim
under 16 yrs of age - Second degreeOffense Code: 0397Code/Ordinance Sec.: 16-03-0655(C)This warrant is CERTIFIED FOR SERVICE in the☒ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Tracy Moss whobeing duly sworn deposes and says that defendant Billy Shane Millerdid within this county and state on or about 03/31/2008State of South Carolina (or ordinance of ☒ County/ ☐ Municipality ofSpartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim under 16 yrs of age - Second degreeI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on March 31, 2008 in the county of Spartanburg, one Billy Shane Miller did engage in sexual battery by engaging in vaginal
and oral intercourse with the victim being between fourteen and sixteen years old, and the defendant being older and in a position to
coerce the victim.

Based on police investigation and victim's statement.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone _____

ARREST WARRANT

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

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

on or about 3/31/2008 defendant Billy Shane Miller

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

☒ County/ ☐ Municipality of Spartanburg) as set forth below:DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 16 yrs of age - Second degreeHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 04/03/2008

Signature of Issuing Judge

Robert Baker Hall

Judge Code

5808

(L.S.)

Judge's Address Spartanburg County Judicial CenterSpartanburg, SC 29306-2335Judge's Telephone (864)596-2564Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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

AFFIDAVIT

339

Butt M021315 - Inman 5-26-10 Sayed 7-20-10